



California Energy Commission

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BIG PINE PAIUTE TRIBE OF THE OWENS VALLEY

Big Pine Paiute Indian Reservation

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California Energy Commission
Dockets Office, MS-4
Docket No. 09-RENEW EO-01
1516 Ninth Street
Sacramento, CA 95814-5512

Transmitted via email to: docket@energy.ca.gov

Subject: Comments on the Desert Renewable Energy Conservation Plan (DRECP) and
Environmental Impact Report/Environmental Impact Statement (EIR/EIS)

Dear California Energy Commission:

The Big Pine Paiute Tribe of the Owens Valley (Tribe), a federally recognized Tribe, submits the following comments regarding the DRECP draft EIR/EIS.

Nearly three years ago, the Tribe sent the California Energy Commission and the Bureau of Land Management scoping comments for the DRECP and draft EIR/EIS. The comments were ignored, and the Tribe was given a 10,000 page draft EIR/EIS that is disorganized, unfocused, and lacking even the most basic information which is needed for environmental analysis and decision-making. EISs were not meant to be 10,000 pages long, and this EIS clearly contradicts NEPA regulations 40 CFR 1502.7: "Page limits. The text of final environmental impact statements (e.g., paragraphs (d) through (g) of §1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages."

As the Tribe stated in its scoping comments, "The Big Pine Paiute Tribe of the Owens Valley (Tribe) has a long history of protecting the land, air, and water of the Owens Valley. Part of the proposed DRECP is within the ancestral lands of the Tribe, and the ancient cultural landscape of these lands will be extremely adversely affected by constructing large-scale solar power plants and wind projects in this area." Yet the proposed DRECP will promote large-scale solar, wind, and geothermal projects across the Mojave Desert. As a result, more Owens Valley Paiute ancestral lands will thus be added to the list of "sacrifice zones" of energy development, which in our region includes geothermal development near Coso Hot Springs, and in the Southwest includes the toxic and lethal impacts of uranium and coal mining on the Navajo, Laguna Pueblo, and other tribes.

The current draft EIR/EIS needs to be rejected. Another draft EIR/EIS on a plan for renewable energy

needs to be produced in coordination with Section 106 of the National Historic Preservation Act, and increased tribal consultation needs to be a cornerstone of this new effort. The following comments further explain why this is necessary.

The EIS/EIR alternatives, including the Preferred Alternative, were developed without adequate consultation with tribes, and there has not been effective NEPA/NHPA coordination. The Bureau of Land Management (BLM) was one of the agencies assigned to conduct tribal consultation for BLM lands covered by the DRECP. The BLM State Office facilitated a series of informational meetings for tribes in Palm Springs, but no one from Big Pine was able to attend these meetings because of the expense for travel and lodging. The BLM State Office did not reach out to provide information about the content of these meetings to tribes who could not afford to attend. The Bishop and Ridgecrest BLM Bishop Field Office staff became the primary contacts for consultation with the Owens Valley Tribes. They have done a commendable job in trying to fulfill consultation responsibilities, but no BLM State Office DRECP coordinators with specific expertise in the project came to help the local offices, so consultation fell short of being informative and meaningful.

Even though the comment period for the EIR/EIS will end on February 23, 2015, there is no draft Programmatic Agreement for BLM's land use plan amendments required for the implementation of the DRECP. The NEPA process has proceeded in an incomplete and haphazard fashion while full input from tribes has not been heard. The Section 106 regulations state that, "Agencies should consider their section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner" (36 CFR 800.8).

In 2012, the Tribe provided the BLM Bishop Field Office with comments on the DRECP, including the following (quoted from DRECP EIR/EIS Appendix V, p. V-4):

4/9/2012 – Provided tribal input on sacred lands via map.

2/21/2012 – All renewable energy development should occur at brownfield sites and previously developed lands near the end user. No area in the Owens Valley is appropriate for development.

However, regarding tribal input, the NEPA and NHPA Handbook states: "A Section 106 review should begin prior to a Federal agency's identification of a preferred alternative under NEPA... Their involvement in the development of alternatives and consideration of historic preservation issues will benefit both the NEPA and the Section 106 processes. The development of alternatives which resolve adverse effects and prevent the need to review or revisit previously eliminated alternatives advances environmental reviews" (CEQ and ACHP, March 2013). **All alternatives** for the DRECP will have Significant and Unavoidable Impacts on Cultural Resources and Native American Interests, and the adverse impacts cannot be mitigated (Executive Summary, pp. 49-50). Input from tribes in the development of Alternatives could have created an Alternative which reduces impacts to a less than significant level with mitigation measures. The Distributed Generation Alternative could have met these criteria, but this genuine Alternative was "not carried forward for detailed analysis." The Tribe strongly believes that this Alternative needs to be appropriately analyzed and included in the EIR/EIS (see below). Instead, the involved agencies devised a plan which would be destructive to Native American cultural landscapes and values and destructive to cultural resources. This planned destruction is completely unacceptable, especially when viable alternatives for renewable energy development are available. California needs to encourage conservation, carbon reduction, rooftop and point of use energy.

There is no explanation for the particular acreages that are designated as Development Focus Areas (DFAs). There is a very abstract and general explanation of how they were selected, but an EIR/EIS

should include clear reasons why they were identified as well as a narrative for each area explaining current conditions and the resources that will be affected by development. This information is essential because projects in the DFAs will cause much environmental harm as well as significant impacts to cultural resources and Native American interests which cannot be mitigated. The EIR/EIS contains about 10,000 pages, but this critical information is omitted. This alone qualifies the EIR/EIS for rejection, and a recirculated draft EIR/EIS should contain this information.

The DFAs proposed in Inyo County do not meet even the vague criteria for delineating DFAs. The EIR/EIS states on p. 1.3-55: "Using the principles laid out in Section I.3.5.3.1 to utilize disturbed lands where feasible, and to encourage compact development close to existing transmission, the planning process centered DFAs on already disturbed and degraded lands." **However, none of the DFAs in Inyo County in any of the Alternatives are on degraded lands, and disturbances, if any, are light and sporadic within these DFAs.** Clearly, the DFAs in Inyo County do not meet the DRECP's most plainly-stated criteria. It is likely the same holds true for DFAs in other counties, rendering the thousands of pages of prose explaining various types of plans meaningless.

None of the DFAs in Inyo County meet the Criteria of Alternative 1, which is defined as the Disturbed Lands and Low Resource Conflict Alternative according to the Factsheet on Alternative 1 at the DRECP website. The Tribe does not consider the Inyo County DFAs depicted in Alternative 1 as "disturbed" lands, and in the Owens Valley, the DFAs are in *extremely high* Resource Conflict areas. The DFAs in the Inyo County portion of Alternative 1 are: in Rose Valley; in Owens Valley east of Owens River along the base of the Inyo Range, and in areas on the north end of Owens Lake near Lone Pine. These areas all contain cultural resources and Owens Valley Paiute cultural landscapes which would be impacted by industrial-scale solar development. Also, the Big Pine Paiute Tribe, the Bishop Paiute Tribe, the Fort Independence Reservation, and the Lone Pine Paiute-Shoshone Reservation informed the BLM in 2012 that industrial-scale solar development should not be built in the Owens Valley (DRECP EIR/EIS Appendix V, pp 4-14). Yet Owens Valley DFAs are in *all* the alternatives, completely ignoring tribal comments.

In addition to the Owens Valley tribes' comments being ignored, the majority of Owens Valley residents (and the Big Pine Paiute Tribe) informed Inyo County that industrial-scale development was inappropriate for the Owens Valley because of numerous environmental impacts, including to cultural resources, cultural landscapes, and aesthetics. The DRECP Preferred Alternative also includes the Hidden Hills industrial-scale solar project proposed by Brightsource. This area was thoroughly studied by California Energy Commission staff which came to the conclusion that impacts to the Pahrump Paiute ethnographic landscape would be significant and could not be mitigated. The National Park Service also commented on the project by stating that the proposed solar project at Hidden Hills would have significant visual and aesthetic impacts on the Old Spanish Trail which could not be mitigated. Yet with no explanation, this area was included as a DFA.

The Variance Areas in Inyo County are located in lava flows to the west of Highway 395 at the base of the Sierra Nevada north of Independence. A lava flow seems like an unsuitable place for an industrial-scale solar power plant. In addition, the area has high cultural resources value, is an integral part of the Owens Valley Paiute Cultural Landscape, and is in one of the most scenic areas in the world. The Tribe made these comments to the BLM for the Solar PEIS, which first included these Variance Areas. Yet they remain, with no explanation and again the Tribe's comments were ignored.

A distributed generation Alternative, or some alternative emphasizing energy conservation and point of use needs to be developed by the entities involved in the DRECP. This new Alternative could include

conservation plans for protecting the environment and irreplaceable cultural landscapes in the Owens Valley and Mojave Desert and elements of the Preferred Alternative as well as the other Alternatives. For instance, the following places in Inyo County can be added, in both Areas of Critical Environmental Concern and National Conservation Lands:

- California Valley
- Coso Range area
- Knight Canyon (Panamint Valley)
- Lower Centennial Flat
- Malpais Mesa area (including northwestern Talc City Hills, Santa Rosa Flat, and Conglomerate Mesa)
- Rose Valley/McCloud Flat
- Osborne Canyon (Panamint Valley)
- Red Mountain
- Slate Range
- Snow Canyon (Panamint Valley)
- Sperry Hills/Kingston Range
- Wildrose Wash (Panamint Valley)

In addition, it is recommended that National Conservation Lands be off limits to new mining and mineral leases, with the exception of small-scale rock hounding activities. Areas of Critical Environmental Concern status should be retained within National Conservation Lands (instead of removing that special management designation), so that there will be an added layer of protection for these areas.

In conclusion, the Tribe's ancestors lived in harmony with the resources of California's desert since time immemorial. It is not acceptable to sacrifice cultural sites and landscapes, native vegetation, water, aesthetics and other resources for projects that will occupy the landscape for perhaps one or two human generations and which do not make best use of the resources for humankind. The Tribe expects the DRECP effort will continue; therefore the Tribe respectfully requests the BLM and others continue to engage the Tribe through consultation and other communication. Thank you for considering these comments.

Sincerely,



Genevieve A. Jones
Tribal Chairwoman

C: Steve Nelson, Bishop BLM Field Manager
Carl Symons, Ridgecrest BLM Field Manager
Vicki Campbell, DRECP Program Manager, BLM
Sally Jewell, Secretary of Interior
President Obama