California Native Plant Society • California Wilderness Coalition

Center for Biological Diversity • Defenders of Wildlife • Sierra Club

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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.

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, 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

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).

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.

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.

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.

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.

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.

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

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

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.

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.***

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:

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***

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*.

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***.

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.

- ***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.

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.

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.

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).

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).

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.

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.

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.

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.*

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

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.

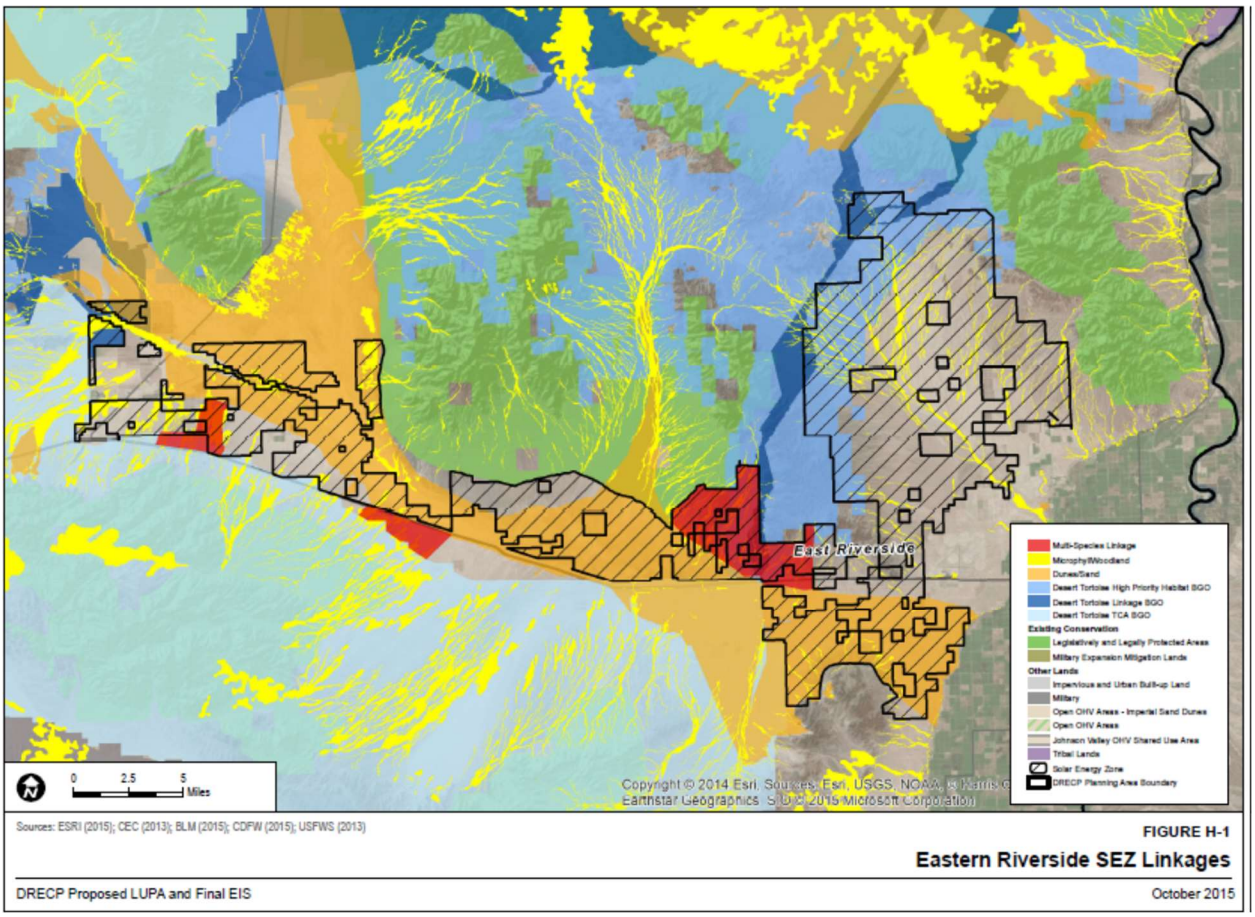

Figure 1. BLM-designated multi-species wildlife linkages (shown in red) in DRECP LUPA/FEIS.

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.

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.

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.

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*.

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.

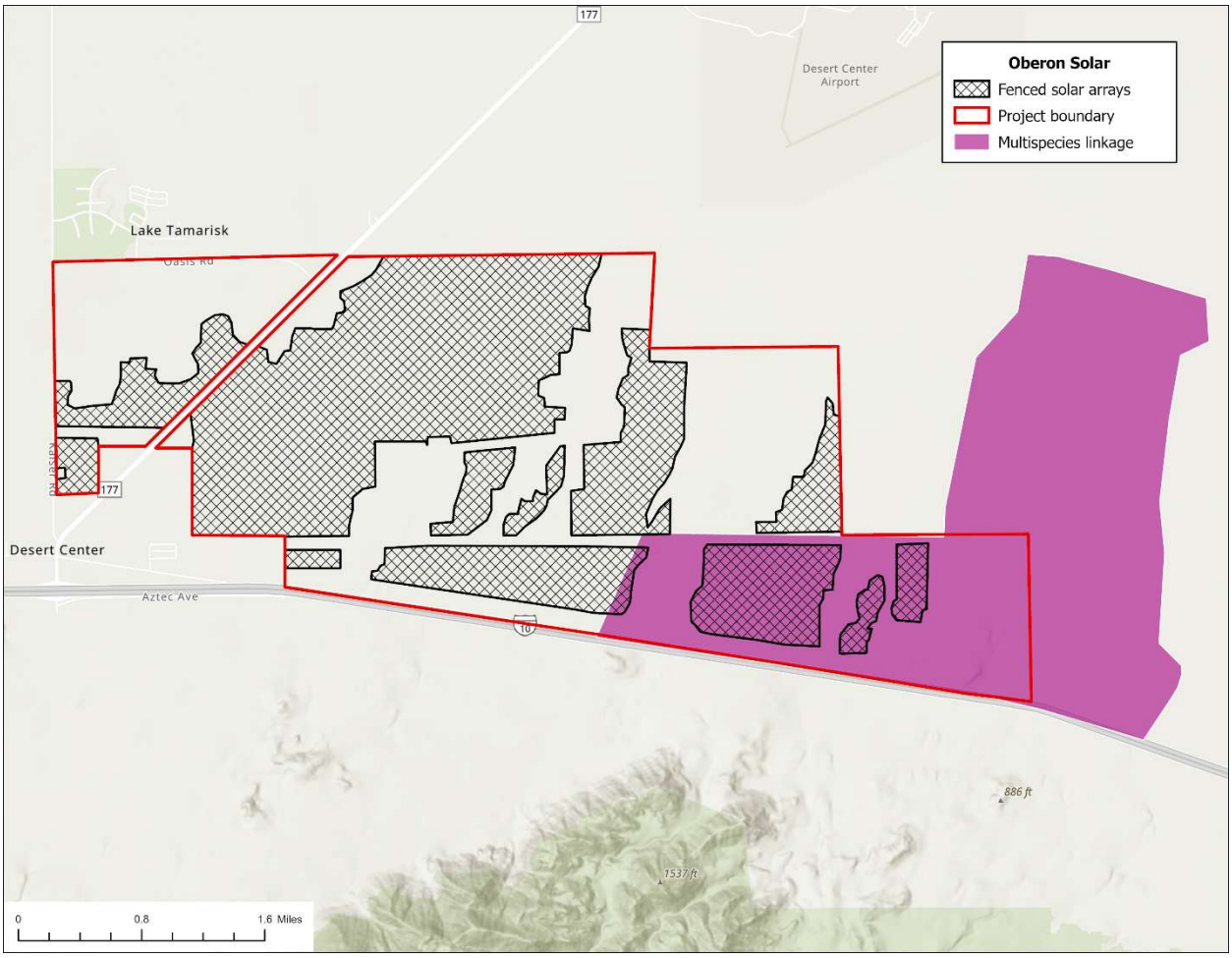

Figure 2. Proposed Oberon Project's overlap with BLM-designated Multi-species Linkage in the Riverside-East DFA.

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.

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*.

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*.

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.

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***

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

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.

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.

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.

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.

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

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.

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

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:

- *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-*

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)

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

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

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).

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

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

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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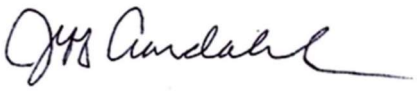

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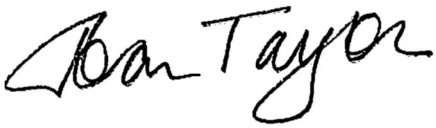

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