Los Angeles County
Department of Regional Planning

Planning for the Challenges Ahead

James E. Hartl, AICP
Director of Planning

September 10, 2003

United States Department of the Interior
Bureau of Land Management
22835 Calle San Juan De Los Lagos
Moreno Valley, CA 92553

RE: WEST MOJAVE PLAN: A HABITAT CONSERVATION PLAN AND CALIFORNIA DESERT CONSERVATION AREA PLAN AMENDMENT

The General Plan Development section has reviewed the Draft Environmental Impact Report and Statement (EIR/S) for the West Mojave Plan (Plan) insofar as it pertains to the County of Los Angeles. We are pleased to provide the following comments for your consideration.

We support the purposes of the plan: to protect Species of Concern, to provide equity in regulation and to reduce impacts from development. In addition, the goals set forth in Chapter Two are consistent with the County's own Significant Ecological Area program, which seeks to identify sensitive species and administer an additional layer of development review to ensure a balance between development and biotic resources. It is necessary, however, to point out a few areas of concern and clarify issues related to Significant Ecological Areas (SEAs), which we have detailed below.

Compensation Framework
The administrative structure proposed in section 2.2.2.1 provides a comprehensive framework in which to address development and conservation issues and, by virtue of the Implementation Team being consolidated into one office, would provide timely support to the public. However, it is unclear to what extent the County is proposed to be involved in staffing and supporting the Implementation Team and participating in the Advisory Committee. Clarification of this issue would be necessary prior to the release of a Final EIR/S.

Mitigation Fee
We concur with the intended result of the proposed mitigation fee structure, as a single fee that will benefit the public, as well as those local agencies implementing the plan. We understand this fee has not yet been established, but it is an important part of this evaluation in light of the compensation ratio. Implementation of this fee within Los Angeles County would be subject to adoption of an ordinance by the County Board of Supervisors through the public hearing process.

320 West Temple Street • Los Angeles, CA 90012 • 213-974-6411 • Fax: 213-626-0434 • TDD: 213-617-2292

The Fee Compensation Areas map should eliminate the uncertainty of development delays and expensive studies, which have occurred in this area due to the potential of significant species. We would like to know how often the Fee Compensation Areas map is anticipated to be updated and distributed to local agencies.

Significant Ecological Areas

The county is currently updating its General Plan, which includes an update of Significant Ecological Areas (SEAs). Initial public hearings on the update--including any changes to SEA boundaries--by the County's Regional Planning Commission are expected in mid-2004, with subsequent hearings and adoption by the County Board of Supervisors in 2005.

Fourteen SEAs are currently designated within the Planning Area. SEAs are ecologically important or fragile land and water areas that are valuable as plant or animal communities and often important to the preservation of threatened or endangered species. Each SEA includes areas that possess examples of plants and animals that cumulatively represent biological diversity. Preservation of this biological diversity is the main objective of the SEA designation and connecting important natural habitats plays an important role in maintaining biotic communities. SEAs are neither preserves nor conservation areas, as they do not take away a property owner's right to build. They are areas within which the county requires development be designed so as to respect and protect the existing biological resources and their ability to continue to function, even after a project is complete.

A balance between development and resource protection is often achieved through the additional level of environmental and design review that many proposed development projects must undergo when located within an SEA. This review is conducted by the Significant Ecological Areas Technical Advisory Committee (SEATAC), which is composed of seven scientists and professionals, specializing in different areas of biota in Los Angeles County. Combined, they offer over 100 years of field experience. The SEATAC members volunteer their time, without compensation from the county, to review, comment on and recommend alternatives that would better protect biotic communities found on a proposed development site, as well as the project's cumulative impact on the biological aspects of the surrounding area. Based on SEATAC recommendations, many large developments have clustered housing, reduced density and dedicated open space areas that might otherwise have been lost.

Based on the Los Angeles County SEA Update Study 2000 (SEA Study), staff is proposing that the existing SEAs within the Planning Area be consolidated into larger SEAs, which provide connectivity and meet the established SEA criteria. The SEA Study contained a number of recommendations to conserve the biotic resources within proposed SEAs. One such recommendation made by the consultant to the county is to

limit the allowable density to 1 unit per 10 acres within SEAs. The proposed SEAs throughout the county encompass areas with steep terrain, rivers, streams and associated floodplains which, by their nature, limit the allowable density. It is for this reason that staff is not recommending the Study's proposed density. Please omit the statement on page 2-13 of the EIR/S as well as on page one of the Draft Implementation Plan that states the county "has proposed zoning the area for a minimum lot size of 10 acres."

Role of Regional Planning

A majority of the Habitat Conservation Areas are encompassed within the proposed Antelope Valley SEA. Although certain development proposed within an SEA will undergo a more rigorous environmental evaluation by Regional Planning, the SEA designation itself will not ensure full compliance with the Plan. For example, there are various exemptions within the SEA regulatory framework—such as an individual single family home constructed a legal lot—which are not exempt under the Plan. In addition, the Department of Regional Planning does not issue grading and building permits, which is under the purview of the Department of Public Works. Therefore, it would be most appropriate to inquire with the Los Angeles County Department of Public Works about establishing an ordinance that would implement the mitigation fee process through the Building and Safety Department where grading and building permits are issued, as discussed on page 2-32.

Concluding Remarks

We appreciate this opportunity to comment on the draft EIR/S and feel this Plan will provide more certainty for future development, while meeting the preservation goals for the Desert Tortoise and multiple species of concern with the Antelope Valley. If you have any questions relating to the comment letter, please contact the General Plan Development Section at (213) 974-6417, Monday thru Thursday from 7:00am to 6:00pm.

Sincerely,

DEPARTMENT OF REGIONAL PLANNING
James E. Hartl, AICP
Director of Planning

Lee Stark

Lee Stark, Head
General Plan Development Section

LS:JL

cc: Norm Hinkley, Deputy, Fifth Supervisorial District
Paul Novak, Planning Deputy, Fifth Supervisorial District

September 5, 2003

Dear Sir or Madam:

I am writing about the proposed OHV route J1299. I am a property owner in this region – east of Juniper Flats ACEC. I am very concerned about the proposal for an open OHV route that runs through Juniper Flats. I would like to retire in this area, because I love the quiet and solitude of the area. We plan to build a permanent structure (house) with solar/wind – we already have the water. But if this route is opened to ORV – then it is certain that the solitude value will disappear – along with the appeal for the land. I will have sincere considerations about building if this happens.

I have put in my letter quotes from the Sierra Club Mohave Group, to avoid rewriting what has already been said, and as I very much support the purposed solution. But I would like to add some thoughts of my own.

This situation makes me very sad, as do so many things that are going on in our world, because it seems to be another case of the political bribery. Certainly on a much smaller scale – a microcosm, if you will, of larger world affairs. I was one of the participants of the BLM walk of this area recently, and at that time it was explained this route had been added to "appease" the motorcyclists as they wanted a route to the forest from the desert. I believe this to be very the much the truth. Someone with clout wanted this trail, and so it was "added" later despite the fact it is against the law. (Code of Federal Regulations 43 CFR 8342) I understand that compromise is sometimes needed and the wants of all should be taken in to consideration, but the hasty decision without proper input and study, gives this the air of a "quick deal under the table".

It is sad that so much of what man does to "appease", is detrimental to the earth. It is also scary – like the fact we keep being told that within 50 to 100 years there will be no drinkable water if we keep consuming as we do. And we ignore it. This action to "Appease" without a real study of what this OHV trail will do to this environment **does not** seem to me, to fall into your charge – the charge to conserve the land that you, as the BLM are responsible for. What people don't seem to really understand is that ***we are this land. What we do to the land we do to ourselves.*** I know this has been said before, but please, please, please think about it in terms of this OHV road you are opening in this valuable and sacred land – valuable not only to the wild life and plants that depend the water in this area, but for the people who keep it.

"In considering all of the available data, it is our opinion that extensive field work in the Juniper Sub Region is necessary in order to develop a manageable plan that will continue to provide for multi-use and conservation of resources. Our strong recommendation is to adopt a separate Management Planning Unit for the Juniper Sub Region that would comprise a collaborative effort with local cities, residents, and interested local groups. Pending completion of the collaborative effort, the "No Action" Alternative of the Route Designation Project should be implemented, and ranger patrol increased. This would give the BLM as well as interested groups, city recreation departments, and residents a chance to come together, complete the necessary fieldwork, and provide solutions for appropriate access and recreation, that will sustain the health, diversity and productivity of this area for the use and enjoyment of present and future generations. "

Please give this some sincere consideration. I am not asking to stop a route in the future, from the desert to the forest, just some time and work to come up with a less harmful solution.

Sincerely Linda L Van Voorhis
3978 2Nd ST
Riverside CA 92501

E-mail – earthdrumming@aol.com

Western San Bernardino County Landowner's Association

PO Box 903241
Palmdale, CA 93590
(760)382-8625

September 9, 2003

Mr. Bill Haigh, Project Director
West Mojave Plan
Dept. of Interior, BLM
22835 Calle San Juan de los Lagos
Moreno Valley, CA 92250

Dear Mr. Haigh,

As private landowners with holdings in the proposed DWMA, we note with interest the various restrictions to be imposed on us as well as the possible benefits laid out in the WEMO EIR. The Western San Bernardino County Landowner's Association is made up of 54 concerned residents and absentee landowners. The Association has been in existence since 1996 and was an active participant in the WEMO planning meetings.

Due to the restrictions on lot size and the requirements to pay a 5 to 1 mitigation fee, our investments in desert lands will be seriously affected, undoubtedly impairing chances of realizing a profit from our investments. Our lands now might have value only as remote homesites where nature-loving people willing to live with no planned provisions for power or water could build.

There are serious threats to the quality of life in the rural desert area. Among them are shooting, vandalism and off-highway vehicle impacts.

As noted in the WEMO EIR, intentional shooting has been a significant factor affecting the tortoise, ferruginous hawk and other rare species. Shooting is also unsafe, an unwelcome intrusion into our quality of life and contributes to the further destruction of cultural and natural resources on public and private lands. We support a total ban of all shooting within the DWMAs. As noted in the EIR, this will aid in the enforcement of existing laws by law enforcement personnel.

Regarding off-highway vehicle (OHV) use, we are pleased that BLM is designating routes. However, these routes must not cross private lands without permission from the owner. If BLM were to designate routes on private property and someone were to have a serious accident, the landowner would be liable. BLM at least needs to accept responsibility for any liability from lawsuits made by people injured on private property following BLM sanctioned routes. Below are the ID numbers of just a few of the routes which are designated as OPEN into private land:

EM 1046--OHV trail crosses private land.
EM 2002--this is a "de facto" open route as it crosses into private land in Section 19.
EM 2012, 2078--invites trespass into private Section 5.
EM 1007, 2082, 2085--invites trespass into private Section 9.
EM 1131--invites trespass into private section 14
EM 1046, 1069--invites trespass into private Sections 13, 25.

EM 1187, 1014--invites trespass into private Section 21.
EM 1078--invites trespass on private Sections 1, 5 near Red Buttes.

The routes in Section 2 of Township 7 North, Range 7 West and Sections 25, 26, 27, 34, 35, 36 of Township 8 North, Range 7 West are in the El Mirage Plan's "zone of influence" and may be traversed by licensed vehicles only. Further, these routes have been illegally created since the El Mirage Plan was put into effect in 1990 and should not be open to OHVs as they invite trespass and route proliferation in the DWMA from riders coming north from the El Mirage OHV park.

The El Mirage Plan was to draw OHV traffic into the El Mirage OPEN area. Millions of dollars have been spent to provide a 40 square mile OHV OPEN area, but riders continue to cross through the "zone of influence" and ride into the Edwards Bowl area. Routes leading north from Shadow Mountain Road should be signed as "Closed" to unlicensed Green Sticker vehicles per the El Mirage Plan.

The proposed WEMO EIR treats OHV use in the Edwards Bowl area as an afterthought with the issues of OHV trespass, safety, residents' quality of life, and trail proliferation being addressed "to the extent possible" (table 2-23). This is unacceptable to us. We have participated in countless public meetings, written letters to all levels of government, signed our private lands, repeatedly reported violations to law enforcement authorities and have made scores of personal contacts with OHV riders in the Edwards Bowl area. The problems of OHV trail proliferation continue unabated. Signs are continually defaced or removed, riders continue to blaze new trails on sensitive lands. BLM has not managed this area--either to close it or to enforce the route designation. Obviously it is impossible to control route proliferation in this area which has literally thousands of routes, hill climbs, racetracks and bowls and has never been relinquished by the OHV riding public. We request that the Edwards Bowl area either be closed to all motorized vehicle use or acknowledged as a riding area and managed as such with full-time law enforcement presence on the weekends.

An effective way to lessen negative effects of motorized recreation on the critical habitat areas within the DWMAs would be to limit vehicle speeds to 15 mph. This was suggested by us at several of the WEMO planning meetings, but was never offered as an alternative. OHV riders use the desert lands as a racetrack. Speeds in excess of 50 mph are common. There are many documented cases of tortoise mortality due to direct impacts from vehicles. Reduced speed will also aid in maintenance of air quality and general safety. If there were a speed limit of 15 mph, there would be fewer OHV visitors to the DWMAs and the goal of drawing OHV activity into the OPEN areas would be furthered.

In addition, We would like to offer the following recommendations:

1. All lands in the El Mirage Valley DWMA should be limited to street-legal vehicles--Alternative D.

2. Use the "CLOSED unless marked OPEN" policy of signing routes.

3..CLOSED routes should be restored, signed as CLOSED and patrolled by BLM law enforcement personnel.

4. If non-compliance with the route closures cannot be eliminated over a reasonable time frame, a larger area must be closed by BLM to the type of vehicle generating the non-compliance.

5. No routes should be designated across private lands, including "de facto" routes that are OPEN on two sides of a private section without the permission of the owners. BLM should not expose the owners of the land to liabilities possibly arising from a serious accident.

6. Enforce the El Mirage Plan. Routes are improperly designated and signed into the "zone of influence" inviting motorized trespass into lands not available for riding under the El Mirage Plan.

7. Close the Edwards Bowl to motorized use of all kinds. This area will never be rehabilitated without a complete respite from motorized use. It has above-average tortoise sign.

8. We support the NO ACTION alternative G that uses the route network designated by BLM in 1987.

9. There should be a ban on all shooting within the DWMAs.

10. We support the concept of boundary fencing around the DWMAs.

Thank you for the opportunity to comment on the West Mojave Plan. Please use this historic opportunity to protect the desert for future generations.

Sincerely,

Douglas Parham, Acting President
Western San Bernardino County Landowner's Association
PO Box 903241
Palmdale, CA 93590-3241
dsparham@starband.net

03 SEP 11 P1:12:44

Carol Stubblefield
25565 Skyline Dr
Apple Valley Ca 92308

760 240 5841

yorkshirerose1@juno.com

8th September 2003

U. S. Department Of the Interior
Bureau of Land Management
California Desert District
22835 Calle San Juan De Los Lagos
Moreno Valley, Ca 92553

Comments
West Mojave Plan
A Habitat Conservation Plan and California Desert Conservation Area Plan

As a resident on the boundaries of the Juniper Sub Region, please find enclosed my comments, specifically to the area mentioned above.

Trails and Off Road Use.
The Juniper Sub Region, before the two major fires was an area of multiple use, equestrian, hunting, hiking, vehicle touring and extensive technical motorbike use. After the Willow fire this area was closed with fencing, gates, under surveillance from regular ranger patrols, with help from local off road motorbike clubs. Even with these enforcements, the area was/is used heavily for "technical" motorbike use. Occurring during the week, night and week ends. I personally can hear this activity and have documented via photography, knocked down fences, new trails across the canyon sides, and disregard for red markers. Trails run parallel with riparian areas. Multi trails run along side each other, up steep terrain.
With out some form of conservation with in this area, disruption of cryptobiotic soil crusts, erosion, reduced soil-percolation rates, noise and wildlife/plant disturbance, will continue from these 'renegade bikers.' On communicating with 'responsible' off road bikers, they need access to the National Forrest and prefer to tour, covering 100's of miles not riding around in an approximately 8 square mile area.
J1001 from Coxey truck trail to Grapevine Canyon is a very steep sided, narrow route. Jeep 4x4 groups, motorbikes, equestrians and hikers all try to negotiate this route, this is a liability waiting to happen.

Off road usage is 'short-term', conservation is for the 'long-term'. The area is now designated 'limited use'.

Noise Disturbance
Ref: California Fish and Game Commission, title 14. Hunting in the immediate vicinity of wildlife waters, guzzlers included, is limited to 30 minutes.
On observation near riparian areas, one can find vast quantities of spent shells, broken, shattered objects from target usage.
With regards to vehicle noise, ref; comments from Bureau of Land Management with regards to trails near riparian areas, they can be .50 miles away. Therefore a hunter can shoot for 30 minutes, yet there is no limit to the time an off road vehicle can ride around using the different trails? Making unlimited noise.

Fire
At the present time a lot of the area is covered with Fiddleneck *amsinckia*, this is an invasive California native, when dry it is a very high fire danger. I have photographs of single motorbike tracks, plowing through this knee high dry plant.
I personally have called the Barstow Bureau of Land Management office and reported illegal woodcutting; J1001/ Arrastre Canyon (water fall) a huge pile of kindling was left. This area is a popular party place for drinking and smoking.
Ref: Bureau of Land Management comments J1001 is used as an access road for fire and emergencies. During the Willow Fire, fire personal used Milpas Drive for access, obtaining a key to the gate; they had access to Juniper Riviera County Water District's fire hydrants. A lot of the equipment is too large to negotiate J1001.

Cultural Areas
The area contains a unique concentration of habitation and special use archaeological sites. The ACEC addressed the impact of recreation, grazing and mineral exploration and were recognized as threats to conservation.

Monitoring and Ranger Patrol
Due to lack of government funding patrols are conducted at least monthly, these need to be increased. Especially during peak usage, which appears to be on an afternoon during the week and weekends. Vandalism is occurring to the historic mines, riparian areas are trashed. Private property owners are constant battling with 'renegade' bikers. Call out time from the local sheriff is 30 minutes or more, for non-emergency the time can be hours.

Community Growth
Within my water district area, the rate of new home growth is on the increase. More families and teenagers are using the Juniper Region. As the Victor Valley's population grows, more recreational land is needed. If all parties do not take a conservation effort, this area will not be available for ALL to enjoy and use.

The Juniper Region is a very diverse unique eco system. Back in 1980 the area was established as an Area of Critical Environmental Concern. In 1988 a Management Plan was signed "to define coordinated management actions that, when implemented, will meet the goals of the CDCA plan".

Within the Mojave Desert riparian areas with year round water are very rare. These areas are vital for wild life and migratory birds. They are also home to a vast array of plant life, found nowhere else. These animals and plants have adapted to the harsh desert conditions. We can enjoy this area, with out leaving vast scars on the side of the canyons, and disturbing the wildlife.

I personally would be willing to help with 'special management' of this area. If we are all to enjoy multi – 'limited' use within this area, we all need to come to some form of conservation agreement.

As per Webster's Dictionary "Conservation"
The act of keeping free from depletion, decay or injury. Wise management and maintaining.

I urge you, with the interested public's help to form a 'special management' group, to conserve this area, for the future generations.
Please notify me of any future meetings with regards to this area.

Sincerely

Carol Stubblefield

Carol Stubblefield

References:

BLM description of Juniper Sub Region use and Rules and Regulations
http://www.ca.blm.gov/barstow/jflats.html

Mojave Desert Wildflowers Pam Mackay

The Western Range Revisited Debra L. Donahue

The Jepson Desert Manual

July 2003 Response from comments from Bureau of Land Management.

180

KERN COUNTY WASTE MANAGEMENT DEPARTMENT
Daphne H. Washington, Director
2700 "M" Street, Suite 500
Bakersfield, CA 93301-2370
(661) 862-8900
(800) 552-KERN (option 6)
Fax: (661) 862-8901
http://www.co.kern.ca.us/wmd/wmd.htm

September 11, 2003

U. S. Department of the Interior
Bureau of Land Management
California Desert District Office
Attn: Mr. William Haigh
22835 Calle San Juan De Los Lagos
Moreno Valley CA 92553

Dear Mr. Haigh:

SUBJECT: Response to Draft Environmental Impact Report and Statement for the West Mojave Plan a Habitat Conservation Plan and California Desert Conservation Area Plan Amendment

The Kern County Waste Management Department (KCWMD) has reviewed the Draft Environmental Impact Report (DEIR) for the West Mojave Plan (WMP). KCWMD operates, or is responsible for the following solid waste facilities within or near the plan area.

Kern County Waste Management Department facilities and sites within the West Mojave Plan Area:

Mojave-Rosamond Sanitary Landfill
Mojave Burn Dump #1
Mojave Burn Dump #2
Ridgecrest Sanitary Landfill
Ridgecrest Burn Dump #1
Boron Sanitary Landfill
Randsburg Transfer Station
Randsburg Burn Dump
Inyokern/Indian Wells Burn Dump #1
Inyokern/Indian Wells Burn Dump #2
College Heights Burn Dump
Rosamond-Edwards Burn Dump
Tropico Burn Dump

The Kern County Waste Facilities Habitat Conservation Plan (KCWF-HCP) was adopted on October 14, 1997 by the U.S. Fish and Wildlife Service (USFWS), the California Department of Fish and Game (CDFG), and the KCWMD. The purpose of the KCWF-HCP is to ensure that take of listed species is avoided and minimized to the maximum extent practicable and to compensate for any habitat loss as a result of facility operations. The KCWF-HCP covers the Mojave-Rosamond Sanitary Landfill, Ridgecrest Sanitary Landfill, and the Boron Sanitary Landfill. KCWMD is currently working with USFWS and CDFG to develop an amendment to the KCWF-HCP that will include the other listed KCWMD facility sites.

Nine historic burn dumps are located within the WMP area. A burn dump is a site where in the past, solid waste was burned at low temperature and the residual burn ash and debris have been landfilled or stockpiled. Burn dumps typically contain little biodegradable organic material because of the combustion of waste materials and the age of the sites. Burn dumps were phased out in the early 1970's in response to federal and state air quality legislation. Most burn dumps are considered closed sites as their operations ceased prior to the development of regulations addressing the closure of disposal sites, provided that these sites were operated under applicable permits at the time.

Burn dump problems and potential hazards result primarily from:

1. Improper cover contributing to burn ash becoming airborne and being inhaled by humans or animals.
2. Inadequate erosion protection contributing to transport of burn ash into surface waters and being ingested by humans and animals.
3. Improper site security allowing humans or animals access to areas of waste and hazards from direct contact, inhalation, and ingestion.

West Mojave Plan, DEIR
Project Description and Project Objectives

The WMP addresses the management of 3.6 million acres of public lands administered by the BLM and 2.8 million acres of private lands. The WMP is being prepared collaboratively with local, state and federal agencies. It is the intent of the collaborators that the WMP serve as a habitat conservation plan (HCP) for this area. All public lands are within the California Desert Conservation Area, and the study area lies within the borders of Kern, Inyo, Los Angeles, and San Bernardino Counties.

A major part of the WMP is the preparations of the DEIR which will facilitate the issuance of programmatic incidental take permits by the CDFG and the USFWS to participating cities and counties. Issues included in the DEIR are conservation strategies for the desert tortoise, Mohave ground squirrel and other sensitive desert plants and animals, a motorized access network for public lands in the region and multiple use issues such as livestock grazing, mining, cultural resources and recreation.

The DEIR assesses the environmental impacts of proposed actions and a range of reasonable alternatives (including a "no action" alternative). The general plan structure of the WMP proposed conservation strategy recommends the following:

- Biological goals and objectives for threatened and endangered species in the covered area.
- Establishment of a regional Habitat Conservation Area (HCA) composed primarily of BLM-administered public lands established specifically to conserve areas for specific species.
- A compensation framework.
- Allowable ground disturbance of one percent within the HCA lands.
- A habitat credit component.
- Species conservation measures, including take-avoidance measures to minimize and mitigate the impact of new development and proactive wildlife management programs.
- A public education program.

Comment:

KCWMD understands that the WMP is a programmatic HCP and that new projects within the plan area will require additional environmental analysis. KCWMD appreciates the way HCPs, in theory streamline the process for project approval and mitigation in areas that are environmentally sensitive.

Section 2.2.4.2.3 Proactive Desert Tortoise Management Programs:

Landfills: (DT-27) *With the exception of the Barstow Landfill expansion, the planning of which has already been initiated, counties and cities shall ensure that no new landfills are constructed inside DWMAs or within five miles of them.*

Comments:

At present, all KCWMD sanitary landfills within the WMP are outside the Desert Wildlife Management Areas (DWMAs). KCWMD is concerned that since the DWMA boundaries are not set that potential boundary changes could force unplanned restrictions on existing permitted facilities. CEQA analysis of the WMP will need to address the potential lack of disposal facilities available to the residences located within the WMP if permitted sites are eliminated or severely restricted.

The WMP states that no new landfills would be located within the DWMAs or within five miles of them. KCWMD does not consider an expansion of an existing permitted facility a "new" facility. This position is supported by existing regulations found in subtitle D, 40 CFR, and Federal Aviation Act, section 1220 of the 1996 Reauthorization Act, 49 U.S.C. Section 44718(d). The solid waste facility permit (SWFP) number issued by the California Integrated Waste Management Board (CIWMB), and enforced by the Kern County Environmental Health Services Department (acting as the local enforcement

agency (LEA)) does not change once it is issued, and identifies a specific site and activity. SWFP are re-issued each time a facility undergoes a significant change in operation (i.e., change in days and hours of operations, change in permitted inbound waste tonnage, change in permitted inbound traffic volume, etc.). No new permitted facilities are currently planned for the WMP area, but concerns are raised if the WMP appears to potentially jeopardize the SWFP renewal process. This jeopardy could remove needed flexibility for essential sanitary waste disposal in the West Mojave area.

These essential public facilities are subject to significant federal, state, and local regulation for the protection of human health and safety. KCWMD is not entirely clear on what level of facility prohibition is being proposed.

KCWMD seeks and supports any environmental documents that will allow it to successfully complete its mandate to provide safe and environmentally sound solid waste disposal for the citizens of Kern County.

Ravens: (DT-30) *Reduce the density of ravens and number of birds that may take tortoises by reducing the availability to ravens of solid wastes at sanitary landfills. Reduce raven access to organic wastes at landfills: (i) ensure effective cover of waste multiple times each day (either < six (6) inches cover or complete cover of garbage with tarps temporarily), (ii) erect coyote-proof fencing, (iii) render raven-proof all sources of standing water at the landfill, and (iv) keep truck cleaning areas and temporary storage facilities clean and free from organic wastes and standing water.*

Comments: KCWMD is concerned about the ability of the WMP to place restrictions and mitigation actions on landfill operations without demonstrating that said restrictions will, in fact, be beneficial. It has not been effectively demonstrated that any of the proposed theoretical restrictions will be effective in reducing raven population numbers in the West Mojave HCA. KCWMD has contracted the services of a certified wild life biologist to survey KCWMD landfills and the surrounding lands. To date, large number of ravens at the landfills have not been observed or quantified by the consulting biologist for KCWMD facilities. Studies and research quantifying extensive raven use of KCWMD facilities, and demonstrating practical benefits from severe operational restrictions have not been received or reviewed by KCWMD.

The active reduction of raven populations over a large area could be considered a significant impact under CEQA/NEPA as these animals are covered under the federal Migratory Bird Treaty Act. No baseline has been established for endemic ravens in the Mojave. No threshold has been established as to what constitutes "too many ravens" at a site. Raven reduction is the proposed goal, but reduction to what number is not defined. Bird population reduction at landfill sites is a required operational activity, but should be at the judgment of site operators and inspectors. Title 27 California Code of Regulations (CCR), Section 20810, **Vector and Bird Control,** states:

> *The operator shall take adequate steps to control or prevent the propagation, harborage and attraction of flies, rodents or other vectors, and animals and to minimize bird attraction.*

Covering the working face of a landfill multiple times a day, without regard to the number of birds present, and with no guidance as to what constitutes excessive bird numbers is not a viable operation standard. Since regulatory relief already exists to control excessive bird numbers, the inclusion of this in the WMP is redundant.

KCWMD sanitary landfills are operated by contractors whose day-to-day operational activities are set out in an Operational Agreement, a contractual agreement negotiated between the KCWMD and the operations contractor. An integral part of that agreement is the application of daily cover at the site. Cover of waste is determined by best management practices developed by waste management professionals and authorized by CIWMB and the LEA. Deviation from LEA approved cover operations is a violation of the solid waste facility permit. Current federal regulations, 40 Code of Federal Regulations (CFR) , Subtitle D, only require cover at the end of the operating day.

Coyote–proof fencing is not specifically defined within the document. The engineering specifics or references as to what this entails is essential. Sanitary landfills (SLFs) are required to secure their perimeter. Any additional fencing represents substantial costs to operations.

KCWMD facilities (by permit) do not accept liquid waste. Standing water is not acceptable on a SLF by operational standards. Storm water collection sumps occur on all landfills. Storm water is managed in accordance with appropriate federal and state regulations including National Pollution Discharge Elimination System (NPDES) requirements in response to federal regulations promulgated in 1972 by the Water Pollution Control Act and codified as final regulations in 1990 in Title 40 of the Code of Federal Regulations, Part 122 (40 CFR 122).

"Truck cleaning areas" reference is vague and unspecific. Vehicles are only allowed to empty waste at the working face of the landfill. Under direction of the site contractor, customers proceed to the working face. After vehicles have deposited their load at the working face, the site operator compacts and smoothes the working face and applies daily cover. Either daily cover consists of a minimum of six inches of clean soil or an LEA approved alternate daily cover (ADC), such as a geosynthetic tarp. In general, the operator maintains a small, compacted working face that is covered on a daily basis. This type of design and operation minimizes the propagation or harborage of flies, rodents or other vectors and the creation of nuisances. These practices help maintain air and water quality, noise control, odor control, public safety and other pertinent matters related to the protection of public health.

Keeping temporary and truck cleaning facilities free of organic waste should be more specific in its definition of organic waste. Green material should be excluded from this

prohibition. Green material is organic in nature and is defined in Section 17852 by the CIWMB as "includes, but not limited to, yard trimmings, untreated wood wastes, natural fiber products, and construction and demolition wood waste. Green material does not include food material, biosolids, mixed solid waste, material processed from commingled collection, wood containing lead-based paint or wood preservative, mixed construction or mixed demolition debris." Green materials are diverted from the waste stream at some landfills and are temporarily stockpiled on site.

Ravens: (DT-31): *Reduce the availability to ravens of organic wastes outside of landfills. Take the following steps: (i) Encourage the use of self-closing trash bins at transfer stations and roadside rest stops, and behind restaurants, gas stations, and grocery stores; use raven-proof garbage drums at houses and other facilities; and avoid use of plastic bags for street side pick up in residential areas...(iv) clean up illegal dump sites that contain organic wastes.*

Comments: Transfer Stations (TS) and bin sites contain bins with closable tops. Signage at bin sites reminds the general public to close lid after depositing their waste into the containers. KCWMD staff all TS and bin sites during days and hours these sites are open to the general public. The staffs coordinate and direct the public in the proper disposal of waste into the containers. It is staff responsibility to make sure the public place their waste into the containers and the tops are closed. Receptacles are available at TSs and Bin sites. Landfills accept waste only at the working face. The Mojave and Ridgecrest SLFs have tipping sheds available for use during times of high winds.

Existing Kern County ordinances prohibit illegal dumping. Matters of illegal dumping are handled by County's Code Compliance Division.

There is no gate fee for Kern County residents disposing of residential solid waste at KCWMD facilities. The absence of a gate fee for residential solid waste disposal displaces the incentive for illegal dumping.

Section 2.2.4.10.8 Desert cymopterus

The proposed designated North Edwards Conservation Area (NECA) would be established for protection of the desert cymopterus. This location is an extension of known populations on EAFB. Because of the existing disturbance, such as the Kern County landfill (Boron SLF), *and the scattered locations of known occurrences, the boundaries are expected to change based on monitoring and additional botanical surveys. Until permanent conservation area boundaries are established, botanical surveys would be required for as new projects and the cap on new allowable ground disturbance and mitigation formula for conservation areas will apply. A goal of contiguity of conserved parcels and connectivity with EAFB applies to the NECA.*

Comments: A field inventory of the Boron Sanitary Landfill and surrounding "buffer" extending for 200 yards around this 20.33-acre parcel was conducted on February 9, 1992 by RMI biological consultants. This initial survey was supplemented with a follow-up inventory for sensitive plants on April 22, 1992 by RMI. No federally or state-listed plant or animal species were observed on the landfill site during the surveys. A single desert tortoise burrow was found approximately 250 yards east of the landfill boundary during a survey of the surrounding "buffer".

There are no anticipated impacts to listed species from continued operation and/or closure of this site. It is not anticipated that ravens will be attracted to the landfill site because the relatively small amount of waste deposited at this site is covered at the end of each day.

KCWMD purchased 160 acres from the Bureau of Land Management (BLM) as part of the land exchange for the Western Mojave Land Tenure Adjustment Project. This acreage is just west of the Boron Sanitary Landfill. A portion of this property may be needed for flood and drainage control. A portion may also be used for a small volume transfer station as an alternative to the existing landfill as KCWMD is investigating the option closing the Boron landfill.

The Biological Opinion of the USFWS dated Sept. 10, 1998, states that the proposed project (sale of property through the land exchange) is not likely to jeopardize the continued existence of the desert tortoise. Because the lands selected for exchange (which includes this 160 acres parcel) by the BLM are not within critical habitat, critical habitat will not be affected by the proposed action. This 160 acre buffer property is just south of the town of Boron, across the street from the Boron Landfill, and shares a fence with Edwards Air Force Base. This area has been disturbed by off road vehicles, illegal dumping, and other human activities.

The USFWS has agreed that anyone desiring to develop lands acquired from the BLM through the Western Mojave Land Tenure Adjustment Project would not be required to provide additional compensation in the form of land because the overall rate of exchange for the program is very favorable to the desert tortoise. It is KCWMD's understanding that the 160 acres acquired from BLM under this program are not subject to additional exaction of compensation should KCWMD develop it in the future.

Clarification:

Section 3.1.6. Acquiring Take Permits: Procedures and Costs Mitigation/Compensation (page **3-38):** *Incidental take permits have a land compensation component...Most Section10(a) permits have been compensated at 1:1, although Kern County Waste Management reported a compensation ratio of 3:1 for three landfills.*

Comment: Kern County Waste Management Department developed a HCP, completed in 1997, that established a mitigation ratio of 3:1 for Total Habitat Area (acres) affected at landfill sites. The '97 HCP covers 14 landfills located throughout Kern County. Three of the landfills are located in the high desert areas near Boron, Mojave and Ridgecrest. The Boron facility, in operation since 1973, had no habitat areas. Mojave, in operation since 1973, had no habitat areas. Ridgecrest, in operation since 1969, had no habitat areas. Since none of the three facilities had viable habitat areas at the time the HCP was developed, no mitigation was required for any of the three sites.

Conclusions:

KCWMD is supportive of the establishment of a HCP to cover the West Mojave area. KCWMD is determined to continue its mission of providing the citizens of Kern County with safe, environmentally sound waste disposal. KCWMD's concerns center on how the WMP's HCP will influence two major issues:

1) Cost of doing business,
2) Regulation of disposal practices.

Issues of increased costs are always a major concern. Increases in mandated mitigation, be it additional days and hours of operation, increased frequency of cover, additional fencing, or early closure of a facility, can represent substantial operational costs. Mandated changes in operations will require renegotiation of the Operational Agreement with the contracted operator. Mandated changes should be based on sound science and defined with objective action thresholds.

Issues of regulated practices which could result in denial or delay of facility re-permit will have major impacts on quality of service to constituents, costs of operation and the remediation and maintenance of historic burn dumps. KCWMD has no current plan to site a new solid waste disposal facility in the WMP area. However, KCWMD needs to maintain its ability to expand permitted facilities as need arises.

Any change in operational practices requires the approval of the LEA, CIWMB and possibly the Regional Water Quality Control Board for that specific operational area and may require CEQA and or NEPA analysis. If the WMP results in proposed operational changes to Kern County's Waste Management facilities these should be treated as "reasonably foreseeable effects" and analyzed as part of the environmental review process of the WMP.

Finally, the WMP DEIR will overlap nine existing HCPs (See **Section 3.1.4.5**). It is KCWMD's understanding that the pre-existing, site specific HCP is the primary document covering permitted activities occurring on that site.

Thank you for this opportunity to comment on the WMP DEIR. Please add the KCWMD to the mailing list for all activities related to the proposed project. If you have any questions, please contact Franklin Bedard, Waste Management Specialist, at (661) 862-8992.

Sincerely,
DAPHNE H. WASHINGTON, Director

By: Nancy L. Ewert, P.E.
Technical Resources Manager

FBB:lb
I:\Clerical\Letters\2003\03-383-FBB.lb.doc
File: WMD EIR

GERALD E. HILLIER

PUBLIC LAND USERS SERVICES
P.O. Box 480
San Bernardino, CA 92402
Phone (909) 683-5725 / Fax (909) 683-8544
e-mail: ghillierplus@msn.com

September 10, 2003

Mr. William Haigh
Bureau of Land Management
California Desert District Office
22835 Calle San Juan De Los Lagos
Moreno Valley, CA 92553

Re: Comments on West Mojave HCP

Dear Mr. Haigh:

The comments below are submitted in my capacity as a contracted consultant and functioning as Public Lands Consultant to the County of San Bernardino County. The County staff requested that I submit the comments to BLM on their behalf. In so doing, I have reviewed the substance of these comments with staff of the County of San Bernardino.

Comments will be divided into two parts: Part I, General Comments on the document as a whole or related to items that appear in several locations in the Draft, or proposals for general change or direction, and Part II, Specific Comments on specific sections of the Draft HCP.

While this plan may appear intimidating from its sheer bulk, it represents one of the most comprehensive, well prepared, and well-organized HCPs/EISs that I have reviewed. The inclusions in terms of the legal background, life histories of the species, and scientific and economic information and discussion go beyond commendable. This statement of quality, however, does not indicate that we agree with all the applications, analysis and conclusions; but the availability of the data within the document was well worth the effort for the public and outside parties.

Part I: General comments.

The HCP in all alternatives provides for private land acquisition by public agencies. We believe that these proposals should be tempered with a commitment that there be no net loss in assessed valuation. To aid in achieving this standard we believe the HCP should attempt to maintain a balance of Federal and private land ownership by adding an explicit commitment on the part of BLM to dispose of public lands that are intermingled with private lands in areas of predominate private ownership and within the recognized development areas of the County (outside of the Habitat Conservation Areas). This action would offset acquisitions and contribute to a more manageable land ownership pattern for the County and BLM by making Federal land that is not suitable for long-term conservation available for private acquisition by exchange or sale. BLM will thereby minimize loss of local private land base and tax revenue. We suggest one approach would be to model the effort on the successful LTA (Land Tenure Adjustment) Program cooperatively undertaken by the Barstow Field Office and Edwards AFB several years ago.

Continuing with this thought is the erroneous analysis of acquisitions and the relationship with the Federal Payment in Lieu of Taxes (PILT) program. Without going into detail here, we note that San Bernardino County cannot receive any additional PILT payment (beyond what may be provided by increased appropriations) since its population exceeds 50,000, and its Federal entitlement acreage exceeds 1,337,129 acres. (Inyo County faces a similar issue, but based on a population cap based on only 18,000 people. Kern and Los Angeles Counties do not face a cap at this time.) Table 4-41 on page 4-94 needs to be corrected.

Further, at Page 2-51 the goal for doing away with fragmented land ownership by public acquisitions may have currency but the flip side of maintaining local tax stability has not been followed, and the erroneous PILT statements in Chapter 4 create an erroneous impression of positive public benefits from acquisition without considering the negative impacts. Further, the plan does not deal adequately with the disposition of residual public lands in the fragmented land status areas of the urbanizing areas. There is a tradeoff that can be made, and this plan is the place to do it. This ties to the no net loss concept as well as using the plan to finish the evolution of land tenure adjustment and dispose of public lands that lack public values and cannot be effectively managed.

The proposed ½:1 compensation area should be expanded to an area rather than be limited to small isolated tracts as depicted on Map 2-8. We are submitting a proposal attached to this letter. Not only will the tract-by-tract approach be difficult to administer, we do not believe the intermingled 1:1 lands bounded by the ½:1 tracts meet the criteria for 1:1 compensation in that they do not provide viable and suitable habitat due to human influences from surrounding development. The ½:1 tracts should be aggregated into larger contiguous areas that can be easily recognized in mapped form for ease of administration of private land development during the course of the plan.

After full consideration the County believes that the Biological Transition Areas (BTAs) should be eliminated. The BTAs are proposed along certain portions of the DWMA boundaries, and appear to function as buffer areas. Upon further review the County believes that the proposed conservation areas, particularly in Alternative A, encompass sufficient areas such that buffers or special management zones are not sufficiently warranted. We believe the concept will be costly to administer, and this burden will fall on the counties since most of the BTAs as delineated fall on substantially private land.

We object to the Recovery Plan for Desert Tortoise driving the Preferred Alternative, Alternative A. We believe the Recovery Plan to be flawed in its lack of attention to disease and predation. Further, the population of tortoises was listed as a single population throughout the Mojave Desert. The treatment, in the Preferred Alternative, of the West Mojave as a distinct population segment (DPS), as well its four DWMA replications, seems drawn specifically from the Recovery Plan rather a specific need within the West Mojave. We do not believe the Fish and Wildlife Service has legally established desert tortoise habitat into DPSs, a matter addressed in the 60-day notice recently filed by the QuadState County Government Coalition and its member counties, including San Bernardino County.

In the context of Recovery Plan review, the final plan should contain a specific status statement on that review rather than the casual comment on page ES-7, and must carry a commitment that if revisions are made in Recovery Plan the West Mojave HCP would be revisited and revised accordingly.

We do not agree with the establishment of the Brisbane Valley Special Management Area for tortoise protection. In essence the Draft HCP in Alternative A establishes a fifth DWMA. First, we do not believe the area between the two highways is sustainable as a conservation area. Second the requirements, particularly for compensation, are egregious if the Preferred alternative with four DWMAs is adopted. If a conservation area is finally adopted we believe the 2:1 compensation apparently agreed upon with the mining industry (and proposed as conservation mitigation for Mohave monkey flower) is more appropriate than the 5:1 proposed for others. In addition, we object to the proposal (AD-18) on page 2-185 to its use as a receptacle for translocation. If the plan adopts alternatives with any DWMAs, those would be the appropriate areas for release (of disease-free) of tortoises. In addition, we believe the inclusion of this area as an added conservation area may have an adverse effect upon continuation of the BLM's Land

Tenure Adjustment Program that has released developable public lands in exchange for private land in support of military programs so that they will avoid base expansion and additional withdrawals.

We do not feel there has been an adequate accounting of and contribution of the effects on desert tortoise and other species conservation contributed from the CDCA Plan, the California Desert Protection Act (CDPA), and other plans recently adopted in the region, specifically Northern and Eastern Colorado (NECO), Northern and Eastern Mojave (NEMO) and the Mojave National Preserve General Management Plan (MNP GNP). (See text at pages 1-19 and 1-20. The plan discussion must include an accounting of what they are contributing to recovery.) Too often the text of the West Mojave HCP seems drafted in a context of a vacuum where no other plans are or will contribute to tortoise recovery, nor that previous actions may have been sufficient to provide for the Mojave Population maintenance and recovery. If the rationale for additional efforts is only because of the Recovery Plan recommendations then that should be explicitly stated. Of local (West Mojave) importance, the Desert Plan must be put into context. It is not as though there is not presently a commitment to manage public lands and that such is not happening. While the concept of a No-Action Alternative should capture this accounting, the analysis falls short. The accounting must include why the Desert Plan, at least as it applies to public lands, is inadequate, and the causes of that inadequacy, either too little protection or incomplete implementation, or some other factor.

Despite the inclusion of several cost tables in the text, and the inclusion of Appendix E, we still believe there is an inadequate totaling of the cost of plan implementation. I have drafted a table, attached to these comments, which would serve better to display estimates, even if only stated in a range. Missing from the current analysis is the level of on-going expenditure in the area, including mitigation by project proponents. The plan needs to inform the public about the incremental cost as well as the total cost associated with its implementation, and that can only be done by explicitly developing and stating a baseline of current effort. It would answer, in part, questions about adequacy of current management and programs toward accomplishing recovery, or failure thereof.

II. Specific Comments

1. The proposal in Alternative E, one DWMA, may have derived from County input at scoping. We do not agree with it being tied to "increased recreational opportunity." At the least the Alternative should reflect non-DWMA management appropriate to the CDCA Plan. We suggested the one DWMA alternative to provide for higher protection on part of the habitat within the Mojave population in total, but not carry the DPS concept to the 14 replications (throughout the Mojave) as recommended in the Recovery Plan. The County's proposal carried no implication to relax resource management on areas outside the one DWMA.

   We object to the straw-man analysis of Alternative E on page 2-188. Further, given the state of tortoise population within the West Mojave, we wonder why Ord-Rodman was not selected over a combination of Fremont-Kramer and Superior-Cronese. Data in the plan seem to indicate the former would be more viable and manageable, with less land acquisition and conflict, even though it does not reach the 1,000 square-mile threshold recommended in the Recovery Plan.

2. Alternative F, aggressive disease and raven management, is a positive inclusion, but inadequately developed. At page 2-193 the paragraph on both disease management and raven control is vastly understated. The language in paragraph AF-18 seems to indicate an orientation toward making this a throwaway alternative. We encourage a beef-up of the analysis to indicate various proactive programs such as quarantines for removing diseased animals from the population, aggressive population reduction of all predators, etc. We suggest serious consideration be given in the Final HCP to the inclusion of disease and predation control strategies.

3. Alternative G, No Action, lacks appropriate analysis within its framework the existence of the California Desert Protection Act, with established parks and wilderness, much of which contain tortoise habitat within the Mojave region of Southern California; and it must assume that the

Desert Plan as it currently exists provides a level of management, albeit under the framework of multiple use. The Alternative, too, must address that the West Mojave does not exist in a vacuum and Alternative G must include the existence and regional contributions of the NEMO and NECO plans upon which records of decisions have been issued.

4. Page ES-5: The authors have semantically mixed goals, objectives and implementing actions. Goal one is correctly stated as a goal. The three "objectives," including establishing three or four DWMAs that follow are not objectives at all, but implementing actions that carry out the Recovery Plan. Goal one should be stated with an objective of providing reserve level management on sufficient area to provide for recovery and let it go at that.

5. Page ES-7: In at least one of the alternates, genetic diversity should be addressed by an implementing action of periodically releasing one or more male tortoises from adjacent areas into protection areas. The statement in the second line on Page ES-7, "one has to question the validity of the biological goal in the first place" raises a question as to whether this really is a viable goal for consideration.

6. Page ES-8: The objectives stated under goal 4 again are implementing actions, not individual objectives. Table ES-4, Goal 4, seems to treat the area as currently being unmanaged which is untrue.

7. Page ES-8: The reference on the bottom line of the page "Monitoring is essential, but the efficacy of distance sampling to function as intended is questionable" may be appropriate and an appropriate editorial observation; but it fails to recognize that Fish and Wildlife Service, in conjunction with other agencies has formally adopted line distance sampling as the approved method for monitoring populations. Subsequently the HCP proposes or at least suggests that any means of monitoring, may be acceptable, and additionally does not provide for monitoring of the efficacy of implementing actions and already completed programs. The General Accounting Office (GAO) audit and report (December 2002) cited this (lack of efficacy monitoring) as a shortcoming of the desert tortoise program.

   Further, at page 2-153 the plan discusses monitoring but lacks a financial commitment to carry out the needed monitoring of both trends in habitat and population and the efficacy of implementation actions. BLM is currently falling short. Can the final plan direct HCP funds to meet monitoring needs? Lacking such funds, how will BLM meet the challenge of carrying out monitoring throughout the Mojave in future years?

   At page 2-154 makes reference to specific tortoise monitoring and directs readers to "see previous discussion." Such discussion appears to be missing. There is related material at 2.2.8.5 on page 2-160, appearing after the statement. The location citations and tie-ins need clarifications.

   At page 2-160-161 the Plan has a good discussion of the old plots and the tie with the line distance sampling. We believe, and Congress has asked, that there should be an attempt to correlate the data sets from the two surveys. This is particularly important since the old plot data is the basis for the listing. It also makes costing plan implementation monitoring very critical since one of the reasons the old plots have not been maintained as to reading has been the intensive labor and contract costs associated with them. Even more critically is the data to date has yet to be used to draw a baseline for the population within the West Mojave region, or anywhere in the Mojave Desert. In addition, the West Mojave Team introduced their own techniques for population that appear to not correlate with either old data or new line distance sampling data.

   Further, at page 2-161 it appears to be an ill-conceived idea to state, "It would be appropriate to modify the methodology." To the contrary, in our opinion it is important that over time the same methodology be repeatable so as the data remains consistent comparable and correlatable.

The gaps in monitoring are made more apparent by text at page 3-75 and in data in Table 3-12. That indicates many of the old plots have not been read in seven years or more; meanwhile the team launched surveys using new methodology that is not correlatable with either old data or the new line distance data.

8. At page 1-13, under principles, item 6 provides "the (West Mojave) Plan will ensure that no one group of desert users will be singled out to disproportionately bear the burden of the "West Mojave Plan implementation." This has not been met. Clearly the livestock producers bear the brunt of the economic based users that are being forced out of the area. Other users such as miners and off highway vehicle people are still left with their operations intact even though more restricted. BLM and other HCP parties need to address a solution to that including providing subsidy or buyout to mitigate this negative impact.

9. Page 2-3 *et seq.* The plan takes biological goals and the column headed "Biological Objectives" are not objectives at all, but implementing actions. **The emphasis on acquisition of private lands is counter to county desires,** certainly as to meeting the no net loss concept.

10. At page 2-4 the biological objectives related to goal 4 really do not deal directly or adequately with disease or predation. Objective 4-1 talks about proactive management to be implemented but doesn't say what that ought to be. Objectives 4-2 and 4-3 related to education and research continue the present levels of inadequate or non-existent response.

11. At pages 2-5 and 2-7 the HCP proposes acquiring private land for species protection, assuming that land remaining in private ownership is a negative. Is there not sufficient occupied habitat on Federal lands? If lands are acquired we believe there should be corresponding transfers of private lands.

12. Page 2-18. The special review areas create an additional conservation area outside the DWMAs. One aspect of management that does not appear to have been explored is simply translocating the animals from these areas and the ITAs to the designated conservation areas. It would seem that with some 2,000 square miles of protection area (if Alternative A is adopted) that those would be sufficient for the conservation.

13. Page 2-31, the Implementation Committee. The relationship of the implementation structure and the implementation committee needs to be tied to a relationship with county boards of supervisors as well as the BLM California Desert District Advisory Council. Because of its composition with outside people I can agree that it is not directly tied to the two, but coordination lines must be drawn particularly with Boards of Supervisors who will have to enact some of the plan's provisions and will also be involved in subsequent zoning actions. I do believe the text relating to the concept of the Stakeholders Advisory Committee and the Scientific Advisory Committee need to go into more detail in terms of who does the appointment, how they are selected, which groups actually will be invited to participate.

14. Page 2-34. The exemption for maintenance activities is certainly appropriate. We propose that public-related and public sector projects may also need to be found exempt or subject to a reduced level of compensation.

15. Page 2-40. Alternative A assumes incidental take permits. That needs to be more positively stated in the final plan, stating it <u>will</u> result in 10(a) and 2081 permits.

16. At page 2-45 regarding Lane Mountain milk vetch authorized take not on public lands. I think there may be some valid existing mining claims in that area. This needs to be checked out and a policy adopted with would cover take on mining claims unless the government or implementing authority intend to buy these out.

17. At page 2-46 regarding Mojave monkey flower the allowed take on private land should be restated to allow take on "non-federal land." There is potential Mojave monkeyflower on County-owned land.

18. At page 2-51 the restriction on "no new paved highways in DWMAs" does not include some County roads that may be paved in the future such as Camp Rock, and does not make specific reference to the improved highway to Fort Irwin. Those need to be at least treated in the text. There is an air quality issue since there is encouragement to pave dirt and gravel roads to control PM-10 and meet standards. In addition if roads such as Helendale and Camp Rock (see page 2-55) are forced by either policy or by travel to remain gravel, the depth of grading and berm height may be uncontrollable.

19. The implementation Feral Dog Management Plan proposed at page 2-54 seems to be carrying bureaucracy to its outer limits. It would appear adequate to proceed if, by signing the plan, appropriate agencies that are units of the signing jurisdictions could begin to initiate the required program and actions.

20. We agree with the implementation of a head-starting program (page 2-65).

21. Page 2-68 providing for determination of which ravens that are known to pray on tortoises prior to control is frankly impossible to achieve and not cost-effective. BLM and FWS need to establish an optimum raven population over the region and attempt to reduce numbers to that. Estimates indicate up to an 8-fold increase in raven population over the last 25 years that might provide an appropriate baseline to which to reduce current expanded population.

22. At page 2-99 the item under P-30 proposes lands within conservation areas would be withdrawn from mineral entry. And the next sentence says, "Claimholders with valid existing rights will be compensated." There needs to be an additional sentence that existing mining claims will be purchased with HCP available funds, unless agencies expect to receive appropriated funds for such purchases. That will clarify eliminating the perceived conflict, though there may also need to be some additional language relative to how valid existing rights will be determined.

23. At page 2-119 references to Terms and Conditions in the 1994 *Biological Opinion for Sheep Grazing* would be strengthened if the conditions or restrictions were stated or the BO was placed in the appendix.

24. Page 2-119 *et seq* the 230 pounds is based on the Avery work in the East Mojave and there's no determination that it is applicable to the West Mojave. The same is true for cattle, although it may be even more egregious for cattle grazing since it ignores both perennial and browse components of the vegetation. On many perennial forage ranges, there is infrequently 230 pounds of annual species production.

25. At page 2-121 there needs to be text about what has happened to the habitat since the sheep removal from categories 1 and 2 in 1990. Has the vegetation composition changed in the last 13 years? Second, has there been any indicated recovery in tortoise populations? This is a key place to show benefits from monitoring and efficacy of program measures.

26. Section 2.2.6 regarding motorized vehicles makes no reference to RS 2477 and the Recordable Disclaimer process that BLM has established. The BLM's rejection of the County's protest on the West Mojave Off Highway Vehicle designation program contained an assurance that any valid existing rights under RS2477 were not over-ridden. It would be desirable for local government to expect that there would be text in the HCP consistent with that determination and assurance and that such assurance extended not only to San Bernardino County but to other entities who may not have protested.

27. The paragraph allowing for camping and existing disturbed areas under MV-5 does seem appropriate and will better keep people out of potential harm's way. The further language on page 2-141 provides for 50 feet for parking and camping. Has BLM staff determined that this is truly a practical and safe distance?

28. Beginning at page 2-174 the analyses seem rather superficial compared to the Alternative A analysis. Since they are all rejected that may seem appropriate, yet an objective analysis may well indicate one of the other alternatives might be viable and more cost-effective.

29. At page 2-185 we object to AD-18, in which Brisbane Valley becomes a receptacle for translocation. Given the size and more remote geography of the other DWMAs in the alternative, they are more appropriate for any releases. This ties to previous comments that it should not be designated as a Conservation Area for tortoise.

30. At Page 2-194 the reference in the next to the last paragraph that "The DTNA would remain as the single place where management for tortoise conservation would be applied" is wrong. This needs to be placed in a range-wide context. It may be the single place exclusively designated for tortoise management within the West Mojave, but certainly not within the single Mojave population area. It further implies, unfairly, that the public lands outside preserves are not currently managed for habitat conservation and benefit.

31. At page 2-199 the acreage figure as given for Class C, 457,721, is inconsistent with Table 3-2, which says the designated wilderness is 458,814 acres. (Table 3-2 appears on page 3-9.)

32. At page 3-87 the significance of the population losses when compared with the disturbances that have occurred in the area by uses that are supposed to be in conflict with tortoises is noteworthy. The final plan should address this seeming inconsistency.

33. Page 3-131. The OHV events are interesting and of course always portrayed in a negative context. Data presents track measurements and event participants. Lacking are results from the follow-up surveys. All of these were under authorization, and the BO provided a level of take. Was there any take, how much compliance was there, and what was the population of tortoises before and after events? Event sponsors are required to perform a past-race sweep and report any take; thus the data should be available.

34. At page 3-135 the HCP refers to a 4,000-foot elevation cut-off. I am seeing data in other BLM and FWS documents (e.g. information from the Recovery Plan Assessment Committee) that now suggests a 5,000-foot cut-off for habitat. Which is it?

35. Page 3-182 regarding Barstow wooly sunflower the HCP states, "Off-road vehicle travel is a threat." Has it indeed been reduced by past off-road vehicle activity where it is in Johnson Valley Open Areas was established in 1972? To what extent?

36. In the discussion of desert cymopterus at page 3-184 the HCP indicates it is sensitive; and while the text speaks of grazing, there are questions as to whether it was actually eaten, does it have any forage value, and what has happened to it since sheep have been removed?

37. Page 3-187. Mojave Monkeyflower. The last paragraph leaves any management action questionable since there is little intervention by land managers that will affect inbreeding, genetic bottlenecks or colonization.

38. Section 3.4 starting on page 3-192. The data indicate the West Mojave region, particularly public land uses and the natural resources in the area are not very important economically either in a regional context or a county context. Residential use and out-of-area employment grows.

However, the effect of planning actions will certainly have effects at the family level particularly related to both mining and ranching activity. Within regional averages there is no way to count these or to put them in context. I don't know whether the plan authors or we can find appropriate wording to reflect that. More important is that the plan, in the public lands context, probably has its greatest impact at the cultural, heritage and life-style and activity level. This effect, the closing of the frontier if you will, is difficult to capture and is more a state of mind. The County's constituents however are very aware of it and addressing it certainly requires at least a qualitative statement and recognition in the text.

Further, while mining seems stable, it provides an important local resource and a source of local employment. While its numbers may not be large and the resource is sold outside the region, it is critical that it be fully recognized throughout the text.

39. Page 3-205. The value per acre of $489 appears consistent with information and observations I have. The use on a regional basis of $770 per acre which would funnel into the compensation formula results in a fairly high fee for development inside DWMA s since we're talking over $3,600 compared to Clark County at less than $600 even after the inflation factor. Even with the removal of other fees such as the State's endowment funding, I think the formula needs to be reworked. For example, from where did the 5:1 ratio originate? Would 3:1 be justifiable and supportable? (The 5:1 seemed to appear about the time of the solar plant development at Kramer. What was it based on then? It seems to have acquired and retained a life of its own since that era.)

40. Page 3-213. The mineral deposits section does not make a distinction between gross mineral deposits in the area or mineral deposits that have previously been placed off limits by the California Desert Protection Act. This distinction and perhaps a small amount of analyses need to be made.

41. The reference to the Barstow Landfill is addressed in a separate letter to the HCP staff from the County's Solid Waste Management Division. The closure language needs to clarify that that it is the current operation at the current pit on County-owned land that reaches capacity in 2007. The buildout site to the south is being handled in a separate HCP.

    At page 3-255 the reference to the Landers Landfill having a closure date of 2008 is appropriate. The text needs augmentation that after that date the material will be transported and be replaced by transfer station and solid waste will be transported to Victorville or Barstow.

    Page 3-255. Reference to the Victorville Landfill indicates a closure date of 2005. Again that applies to the active area currently in operation however the expansion area would continue to operate beyond.

42. At page 4-5 it does not appear how the expected impact on air quality will increase as a result of Alternative A. Private land development will probably occur based on the economic projections regardless of which alternative is selected, or even in the absence of a West Mojave Plan. I think neutral would be a more appropriate.

43. Page 4-6. Paved Roads. Again an increase in air quality impact. This is not clear why paved roads would have an increase? The note says, "Could eliminate paving as dust control measure on unsurfaced roads." Paving is usually a mitigation measure to meet PM-10 standards.

44. The tables beginning on page 4-15 need reworking and clarification. For example, relative to a Federal permit the statement on compensation says, "Would require payment of fees for construction of single-family residences in DWMAs, which is not currently required." How did the HCP authors construe that as a benefit except to the agency? It is a negative except for the HCP funding. Then, at the top block, DWMA prescriptions providing for more protection clearly is

properly stated as a benefit but a residual impact is that it will force more development to concentrate within the region on the remaining open lands.

Page 4-15. The block on State Permitting residual impacts and a single 2081 permit applying to all participating jurisdictions. The last set of blocks, compensation and fee structure, lists as benefits, "Compensation would be commensurate with the severity, type and location." This may not be a correct statement. It is a standard 5:1 (or less if a different figure is adopted pursuant to Point 39, above) if development occurs within the DWMAs. There isn't an allowance for temporary vs. permanent. There are no refunds made after vegetation is reestablished and there are no credits given, for example a pipeline after it's buried and re-vegetated. This is not to suggest there should not be such an added layer of sophistication to the compensation ratio.

- We've been told in briefings that the 5:1 compensation will overcome and eliminate the State of California endowment and enhancement fees, which currently amount to $295 per acre. We could not find a statement in the text that says that or even addresses that as being the current policy of the State of California and the legal support for it as currently constituted. There is a showing on page 4-83 that shows them going to zero and disappearing, but the text of the plan needs to confirm that as a point of State policy that will be changed by the HCP.

- Page 4-17. The text sounds magnificent, however it ignores the fact that even though public lands and areas outside the DTNA are not managed expressly and exclusively for tortoise protection they do receive management and basically are not subject to development or disposal.

- Page 4-18. Plan implementation benefits. Where does the priority for West Mojave implementation stack up with the NEMO and NECO plan implementations? While BLM may commit to all, what is the outlook for funding implementation?

- Page 4-19. Statement says at the bottom right corner block, "Inconsistent with BLM's NECO and NEMO plans for CDCA public lands, where Class M and unclassified public lands throughout DWMAs were re-designated as Class L to provide relatively more protection." This appears to be irrelevant. At the top right corner block, Class M is indicated as a residual impact. The intent of the Desert Plan, as we understand it, however, was that BLM was never to walk away from management of these areas. The text implies Class M is a giveaway to conflicting land uses, which it is not.

- Page 4-20. Residual Impact. The statement is perhaps true that it doesn't regulate authorized uses on public lands, but it does provided there is an option for placement of an improvement such as a microwave tower or utility outside the DWMA.

- Page 4-21. Table 4-10. The acquisition doesn't address the loss of tax base and speaks to acquisitions simply as a benefit. There is a loss in both Inyo and San Bernardino Counties. Kern and Los Angeles Counties have a cushion.

- Page 4-21. Table 4-10. "Would facilitate mine development on newly acquired public lands if mineral entry is not withdrawn." That statement actually leaves the issue hanging. Would the withdrawal be extended or would the lands be subject to entry? My guess is that the lands would probably not be opened, particularly if Alternative A or a variation on it were adopted.

45. Page 4-24. Disease Management. The statement may be true that "too little is known about tortoise disease to identify a functional disease management plan," but it's the cause of the loss. To assign a relatively lower priority strikes me as being wrong in the face of other restrictions on land use that may or may not be effective.

46. Page 4-24. Table 4-14. There is a reference to a "disease management trust fund" that does not appear elsewhere or has not yet been identified as to sources and management

47. Page 4-24. The block on negative aspects of the alternative regarding quarantine management talks about disease spread on a front. That may be right in one context but what about the alternative or strategy of testing animals and removing sick animals? That does not appear to be considered or addressed.

48. Page 4-27. Table 4-17. To state under benefits that development of new mines subject to 1% and compensation fees is a benefit raises a fascinating question: A benefit to whom? There may be a benefit to the tortoise, but certainly not to the miner or holder of the claim. Part of the tortoise benefit is that the development would be discouraged by the fees and surveys required. The focus of the term "benefits" needs to be clarified and defined.

49. Page 4-28. Continuing Table 4-17. Top right corner block. The residual impact is that mine exploration still may occur.

50. Page 4-29. Table 4-20. We disagree that cattle operations are so objectionable. While the economic data may indicate decreasing economic importance they do contribute to families in the area. The tables do an inadequate job of portraying benefits and beneficiaries, and losers in the process. The language needs to be less ambiguous and more objective. The residual impact of the loss of the cattle and sheep operations, however, is the loss of daily contact on the land and of the 24/7 supervision of vast areas by the owners and employees. BLM replacement from a patrol standpoint is not likely nor can orientation to replacement by local law enforcement be expected except in response to specific complaints.

51. Page 4-30. Again, there is the question of the application of the 230-pound per acre dry-weight floor for ephemeral vegetation, ignoring the perennial and browse forage components.

52. Page 4-30. The trampling and other impacts ignore a range management alternative. The HCP accepts property development and urbanization, with mitigation and payment of fees, though we know that habitat and animals will be lost. Yet BLM and FWS continue to raise the supposition that cattle may step on a tortoise, but we have no documentation regionally that that happens at all, or perhaps only rarely.

53. Page 4-31. The reference here to both the Harper Lake and the Ord Mountains Allotments talk about the population is at risk and local extinction. However cattle have coexisted with tortoises for over 100 years and the data part of the HCP may indicate that some of the better tortoise populations in the region—a definite inconsistency that should be addressed.

54. Page 4-39. The statement regarding Barstow Landfill expansion that the "Proposal does nothing to minimize impacts associated with the Barstow Regional Landfill, which occurs within the Ord-Rodman DWMA." Though correctly stated we have requested that the buildout acreage acquired from BLM and the agency's request, be excluded from critical habitat and the DWMA. The Solid Waste Management Division has written separately on this matter. Further, it implies that the buildout will not mitigate for tortoise habitat loss, though the County has already compensated for the land transaction by transferring 650 acres to BLM.

    Part of the trade-off in terms of Barstow moving ahead was that all other landfills in San Bernardino County have been closed and converted to transfer stations such that ravens and other adverse impacts of solid waste are minimized. This point should be added to the analysis.

55. Page 4-42. Top right block in Table 4-31 regarding ravens. We suggest the Final HCP find language that will move in a positive direction toward reducing populations.

56. Page 4-42, Table 4-31 says, "Alternative fails to regulate new road construction . . ." Except for Fort Irwin, where was this even anticipated within the region?

57. Page 4-43. Weed Control. The statement provides that the HCP will provide for better communication between implementation team and weed abatement groups. I'm not sure why the communication doesn't occur now. The existence of the plan won't help.

58. Page 4-45. The reference to 2,755 sq. miles on military administered lands and "cannot be conserved." What that really needs to say is cannot be counted as conserved.

59. Page 4-91. The Section 4.2.3.1.2 Fiscal Revenue needs to be completely reworked. No additional PILT can be received in Inyo or San Bernardino Counties, except as may be available based on increased appropriation. Only Kern and Los Angeles have any flexibility at all. The tax roll analysis probably is not unreasonable to assume based upon the $489 figure.

60. Page 4-94. Table 4-41 indicates a lack of knowledge of PILT by the plan authors, and that it pays on the basis of people up to 50,000 and not acres. It does use the figure and does reflect the disparity amongst the counties with San Bernardino County receiving only a small amount although the 16 cents an acre cited is for several fiscal years ago is now 20 cents an acre based upon current (FY2003) appropriation. To count any offsetting PILT against property tax loss is simply erroneous. The PILT payment stays the same since San Bernardino has over 8 million entitlement acres and receives only a payment based upon 50,000 people and the appropriation for that year. Table 4-41 needs to be completely reworked.

61. Page 4-191 *et seq.* The analysis on the one DWMA with enhanced recreation alternative is inadequate and the analysis is superficial at best. Further it counts inputs as benefits in terms of acres and not what might occur with the intensive management.

62. Page 4-193. I was struck with a simple reaction. BLM should look to managing one or two DWMAs well instead of trying to manage four DWMAs inadequately (and more when added to the DWMAs established in NEMO and NECO planning decisions and outside the California).

63. Page 4-195. First bullet in Table 4-59. "No representative part of the Southern Mojave that are ecotonal with the Colorado Desert would be "managed for proactive tortoise conservation," with reference to Pinto Mountain DWMA. This acts as though each DWMA represents a distinct population segment, whereas the Mojave population is not viewed as being managed and was listed as a single population by the FWS. Is this a legal and appropriate statement? The statement appears to go far beyond even the Recovery Plan recommendation.

64. Page 4-196. Same comment. Tortoises would be substantially more susceptible to extinction but there are other areas set aside for tortoise management across the four states. The West Mojave is not, in our opinion, a separate population.

65. Page 4-216. The no DWMA, aggressive disease and raven management alternative analysis lacks objectively as well as full development and analysis. Table 4-61 on Page 4-217 is negatively stated, "failure to establish a conservation area" is a serious flaw. What the plan authors imply is that there is no land or resource management now. The Draft HCP suggests failure without trying it.

66. Page 4-217. Second pair of blocks. Again all the inputs are on the acreage under fence and not how many tortoises might be saved if ravens were not eating them.

67. Page 4-224. The text does talk about management prescriptions and fences. The analysis stops short of any substantive recommendations relative to dealing with or treating disease.

Thank you for the opportunity to comment on the plan. If you have any questions regarding this input, or would like expanded discussion and interpretation please feel free to contact County staff or me. We look forward to working with the agencies to finalize this effort in a manner which properly manages lands and natural resources, retains the streamlining for permitting actions on private land, and will maintain quality of life and culture for County residents of the region.

Yours truly,

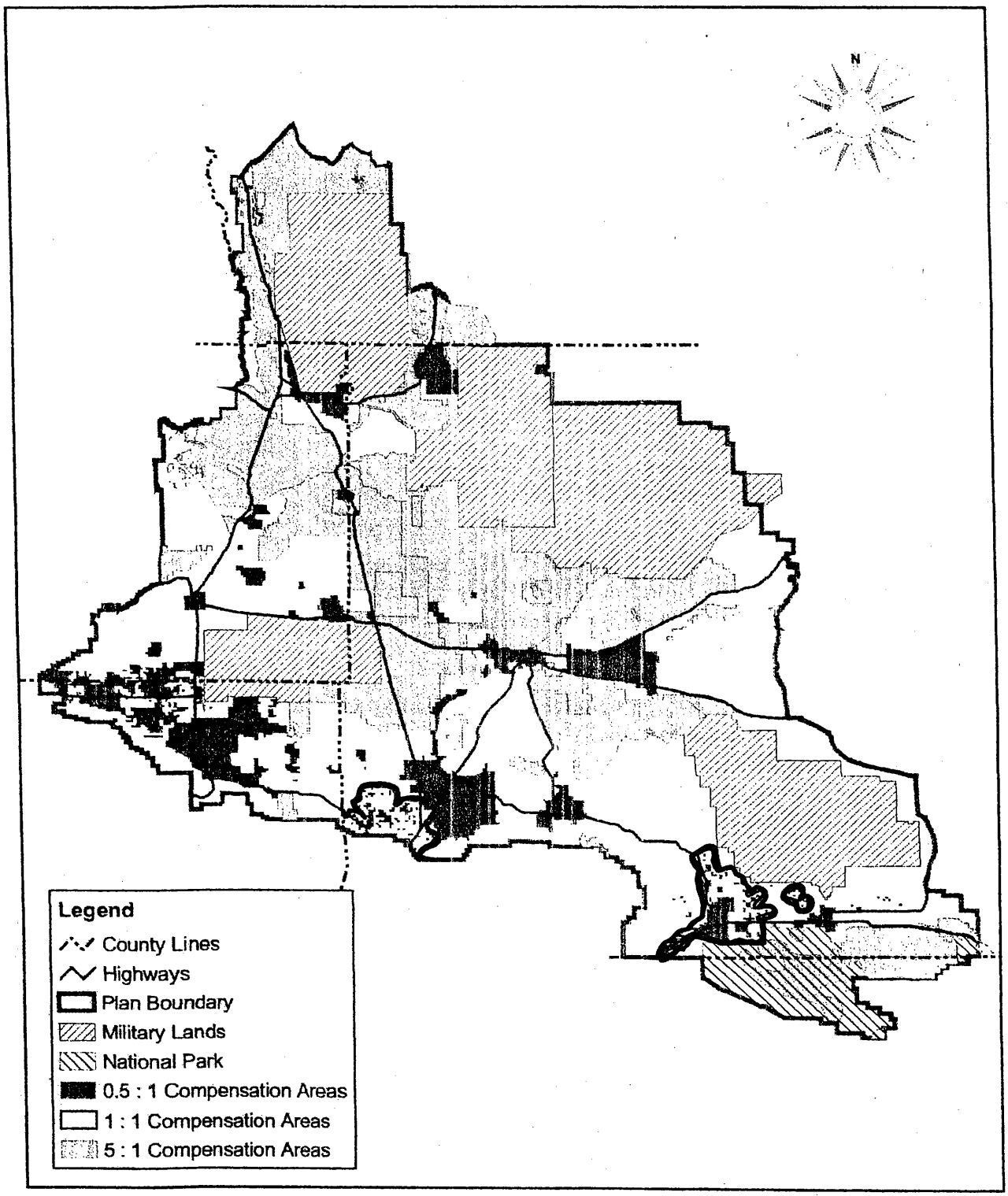
Gerald E. Hillier
Federal Lands Consultant to the County

GEH:vh

Attachments

cc: Dennis Hansberger, Chairman, Third District Supervisor
Bill Postmus, First District Supervisor
Mike Hays, Director Land Use Services
Randy Scott, Division of Advance Planning
Ken Miller, Director Public Works
Cong. Jerry Lewis
Cong. Buck McKeon
Ted James, Kern County Planning Director
Jon McQuiston, Kern County Supervisor and Local Government representative on the BLM Desert District Advisory Council
Wally Leimgruber, Imperial County Supervisor and Local Government representative on the BLM Desert District Advisory Council
Steve Quarles

Fee Compensation Areas



West Mojave Plan DEIR/S
Map 2-8

Scale: 1 : 1,750,000
0 10 20 30 Km
0 10 20 30 Miles

3/28/03

Proposal for showing West Mojave costs

	Present expenditures				West Mojave Plan Projected Incremental Increase Estimates, Years 1 to 5			
	Studies, inventory, monitoring and Research	Regulatory	Supervision	Investment	Studies, inventory, monitoring and Research	Regulatory	Compliance	Investment
Fed BLM								
Fed NPS								
Fed FWS								
Fed Army								
Fed Navy								
Fed Air Force								
State F& G								
State Parks								
State CalTrans								
State Other								
Local Inyo County								
Local Kern County								
Local LA County								
Local SB County								
Private								

For present expenditures use FY 2003 as a base.

For projected incremental change, use 5-year bands after plan adoption. For example, if BLM is currently spending $100,000 on studies and research in the area, and they anticipate they need to double that figure for monitoring and implementing raven and other programs, the annual increment would be +$100,000, and so the entry for Years 1 to 5 would be $500,000.

The table needs expansion to show the additional bands beyond the first 5 years, and also to include the city jurisdictions in the listing.

The addition of private expenditures is critical! This will tackle the cost of mitigation borne by applicants. Survey would be "regulatory" and mitigation would probably fall in investment, e.g. exclusionary boundary fencing.

Received via FAX 182
4:11 PM Sept 12

September 12, 2003

Mr. William Haigh, Bureau of Land Management
California Desert District Office
22835 Calle San Juan De Los Lagos
Moreno Valley, CA 92553

RE: Draft Environmental Impact Report and Statement for the West Mojave Plan - A Habitat Conservation Plan and California Desert Conservation Area Plan Amendment, Volumes 1 and 2 (prepared by the Bureau of Land Management - May 2003)

Dear Mr Haigh :

The following comments on the Draft EIR/EIS for the West Mojave Habitat Conservation Plan ("HCP") and California Desert Conservation Area ("CDCA") Plan Amendment (collectively the "West Mojave Plan" or "the Plan") are submitted on behalf of the Center for Biological Diversity ("the Center"), the San Bernardino Valley Audubon Society ("SBVAS") and Public Employees for Environmental Responsibility ("PEER") (collectively "Commentors," or "the Center").

Commentors are committed to the development and implementation of a conservation plan that will guarantee the survival and recovery of imperiled species in Western Mojave Desert in perpetuity. We hope that our comments will be carefully considered and incorporated into the final West Mojave Plan to ensure that the final Plan and environmental documentation are legally and biologically defensible. Commentors also incorporate herein the comments of the California Native Plant Society, the Sierra Club, Desert Survivors, the Desert Tortoise Council, and Defenders of Wildlife to the extent that they are consistent with these comments.

As a result of the size (9.36 million acres) and the number of species covered (58), this HCP certainly constitutes an enormous undertaking. However, the West Mojave Plan as currently written fails to meet the legal and biological obligations for each of the documents it supposes to represent. The Plan fails as an HCP because it falls far short of the requirements of section 10 of Endangered Species Act. The Draft EIR/EIS fails to meet the requirements of the National Environmental Policy Act ("NEPA"), as well as the California Environmental Quality Act ("CEQA"). The proposed CDCA Plan Amendment also conflicts with the requirements of the Federal Land Management Policy Act ("FLPMA"). Approval and implementation of the West Mojave Plan would result in additional violations of numerous other federal and state statutes and their implementing regulations, including: The Federal and California Endangered Species Acts ("ESA," "CESA"), The Clean Air Act ("CAA"), and The National Historic Preservation Act ("NHPA"). Each of these violations will be discussed below in turn.

I. VIOLATION OF SECTION 10 OF THE ENDANGERED SPECIES ACT

A. THE HCP MUST ENSURE SURVIVAL AND CONTRIBUTE TO RECOVERY OF LISTED SPECIES

The HCP must not "appreciably reduce the likelihood of survival and recovery" of covered species in the wild. ESA § 10(a)(2)(B)(iv); *see also* Cal. Fish & Game Code § 2081 (providing equivalent protections under state law). In addition, the HCP must provide additional biological protections where feasible ("the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such a taking."). ESA § 10(a)(2)(b)(ii)); Cal. Fish & Game Code § 2081; *see also* Cal. Pub. Res. Code §§ 21002, 21002.1, 21801 (under CEQA, projects may not be approved where feasible alternatives and mitigation measures are available to avoid or lessen environmental impacts). Within ESA Section 10, the term "conservation plan" must be consistent with the term "conservation" as described in Section 3, meaning "the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary." Regulated taking should occur *only* "in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved," ESA § 3(3). The HCP must abide by these principles to ensure the survival and contribute to the recovery of all the species covered by the plan. There are feasible alternatives and mitigation measures available to ensure a more biologically robust conservation plan than the proposed HCP. BLM has the opportunity – and the legal mandate under both state and federal law – to undertake such actions when feasible.

1. The HCP Must Not Appreciably Reduce the Likelihood of Survival and Recovery of Covered Species

The HCP must include measures that will bring federally and state listed species to a point where ESA protections are no longer necessary. The plan authorizes incidental take of 58 covered species, including 17 birds, 10 mammals, 5 reptiles and 26 plants, but falls woefully short of any assurance that such take will not appreciably reduce their likelihood of survival or recovery.

One of the most glaring deficiencies in the overall Plan is the fact that nearly 1/3 of the Planning Area (32%) is made up of privately owned land. (Plan Vol. I at 1-1). Private lands are of course important for the survival and recovery of a majority of the Plan's covered species. The plan, however, offers blanket take 33authority on private lands without any assurance whatsoever that the private lands deemed essential to the conservation of these species are actually preserved. For instance, a great many of the conservation proposals included in the Plan's preferred alternative and offered to offset the massive amount of incidental take authorized, rely on the acquisition of privately held lands from willing sellers. (*See* e.g. Plan at 2-45 (Habitat to be conserved for the *Lane Mountain milkvetch*)). However, the Plan never explains in earnest how it can ensure funding for such acquisitions. (*See* "Mitigation" section II-C-11 *infra*, and Plan at 2-32). More flagrantly, the Plan fails to explain how it can ensure that any of the private property owners involved will turn out to be "willing sellers." Such an oversight places the legitimacy of the entire proposed Habitat Conservation Area ("HCA") in question. Because many of the 18 conservation areas that make up the HCA rely on either unconfirmed private land acquisitions, or questionable-at-best mitigation fee

ratio arrangements in their makeup and overall acreage, the HCP cannot ensure that the take authorized will be offset by the habitat conserved. Therefore, the HCP fails to ensure that it will not appreciably reduce the likelihood of survival and recovery of the species covered.

The HCA also contains numerous other provisions that do not meet this requirement. First, the "overlap" proposed between certain individual species conservation areas not only results in an exaggerated total acreage conserved, but also raises further questions about the efficacy of the proposed Mitigation Fee program. (*See* Plan Vol. I at 2-11, 2-32).

Second, the Plan would result in a potential lessening of the current desert tortoise protections by allowing the Plan's newly created Desert Wildlife Management Areas ("DWMAs") to take precedence over current Area of Critical Environmental Concern ("ACEC") management plans. (*See* Plan Vol I at 2-12, stating: "If a provision of an included ACEC's management plan conflicts with any of the measures described herein for the Tortoise DWMA, the measures identified by [Alternative A] take precedence and the included ACEC's management plan would be amended to conform to the West Mojave Plan.") A lessening in these protections can only result in a reduction in the likelihood of survival and recovery of the species.

Another reason why the Plan, as written, cannot ensure that it will not appreciably reduce the likelihood of survival of the desert tortoise becomes evident from the way in which the Plan proposes to manage and monitor off-highway vehicle ("OHV") use in the planning area. For example, the Plan allows OHV open routes within Desert Tortoise Category I habitat. (Plan Vol. I at 2-21). How the Plan can allow this most damaging and least monitored degree of OHV recreation to occur in essential habitat of a federally threatened species is beyond reason. Such a concession certainly appreciably reduces the likelihood of both the survival and recovery of the species.

The proposed HCP contains these and other major deficiencies which must be rectified before the plan comes anywhere close to satisfying the biological and legal requirement of ESA Section 10.

2. The HCP Must Minimize and Mitigate the Impact of Takings to the Maximum Extent Practicable

Despite the net loss of habitat, the proposed HCP and Draft EIR/EIS provide no substantiation that the proposed HCA is sufficient in amount or type of habitat type needed to conserve and recover covered species. Furthermore, this provision stating that the Plan is intended as full mitigation impermissibly restricts the discretion of agencies under CEQA and NEPA to independently evaluate impacts to biological resources and require feasible alternatives and mitigation measures. As a practical matter, this provision could put an end to all mitigation requirements by agencies for impacts to biological resources under CEQA and NEPA. This would be a catastrophic result for wildlife, biological diversity, and the quality of life in western Mojave Desert.

The HCP fails to minimize and mitigate the impact of the takings as required under ESA Section 10, because many practicable alternatives to the mitigation measures set forth in Plan exist. Some of these practicable alternatives are set forth below.

-Overall, because of the shoddy and toothless Mitigation Fee program set forth under the Plan, the number of acres authorized for take far outweigh the number of acres that are actually guaranteed to be preserved. (*See* Section I-A-1 *supra*).

-The 5:1 flat mitigation ratio does not assure no net loss of habitat because it contains no provision for in-kind mitigation. Also this 5:1 ratio does not extend beyond only few specified conservation areas. Destroyed habitat throughout the rest of the planning area receives an even smaller ratio of mitigation.

-Many of the most essential conservation areas overlap, and the Plan contains no for multiplied mitigation ratios for habitat take in these areas. (*See* Section I-A-1 *supra*).

For the above going reasons, the HCP fails to minimize and mitigate the impact of takings to the maximum extent practicable, and therefore would result in a violation of ESA Section 10 if adopted.

3. The HCP Must Specify All Harmful Effects of the Proposed Action

The HCP must specify any harmful effects of the proposed action in order to meet the requirements of the ESA Section 10(a)(2)(a)(i), CESA, CEQA, and NEPA. Without a full analysis of all effects of a proposed action, any choice among alternatives and mitigation measures is uninformed. The EIS/EIR must include comprehensive analyses of edge effects, domestic pets, roads and trails (current within the proposed HCA, and potential roads throughout the Planning Area), and the effect of increased air and noise pollution on the plants and animals of the West Mojave. Such harmful effects will negatively affect the recovery and survival of covered species but are only briefly, when at all, mentioned in the species accounts. The Plan discusses conservation area configuration to a decent extent, but does not analyze in detail harmful edge effects. More detailed edge analyses should be conducted on a species-specific basis; otherwise the Plan is simply paying lip service to key complex ecological concepts.

In the context of edge effects, the only real discussion in the Plan offers the creation of Biological Transition Areas (BTAs) to lessen edge effects around the designated conservation areas of listed species. (Plan Vol. 1 at 2-17). However, these BTAs provide little to no further protection than land without such a designation, because the "heightened biological reviews" they claim to place on projects within their boundaries are in reality completely devoid of actual requirements. (*See* Plan Vol. 1 at 2-17).

Further discussion and attempts to curb edge effects in the planning area are non-existent within the West Mojave Plan.

The following concepts should also be more thoroughly analyzed for each species:

a. Habitat Fragmentation

Habitat fragmentation affects numerous ecological process across multiple spatial and temporal scales, including changes in abiotic regimes, shifts in habitat use, altered population dynamics, and changes in species compositions. Patch size has been identified as a major feature influencing the plant and small mammal communities, and native rodent populations are vulnerable to collapse in habitat fragments. The composition, diversity, and spatial configuration of patch types, distances from sources, edge-to-area ratios, and ecotonal features may also structure the plant and small mammal communities. The vagility of small mammals and the role of dispersal in their ecology suggest that factors determining long-term small mammals population dynamics could include patch size.

Habitat fragmentation can also increase impacts on rodent predators. Housecats, coyotes, striped skinks, opossums, great-horned owls, and red-tailed hawks are as abundant or more abundant in fragments than in unfragmented habitat.

The Plan does not provide an adequate analysis of the harmful effects that increased habitat fragmentation will have on the species in the planning area.

b. Domestic and Feral Cats and Dogs

The Plan does not adequately analyze the harmful effects of domestic pets on covered species. The Plan includes only a slight discussion of how it aims to curb desert tortoise take by both feral and domestic dogs in tortoise DWMAs. (*See* Plan at 2-54). However, while the species accounts included in the Plan point to domestic and feral cats and dogs as major threats to covered species, the Plan fails to analyze its proposed impacts. (*See* Plan at 3-162). Further urbanization through streamlined take authority will undoubtably lead to increased development and therefore an increase in this harmful impact. The final Plan must more fully discuss the harmful effects of this increase, as well as offer mitigation measures to curb its impact on the species covered.

c. Roads

Vehicles release a variety of pollutants, including oil and gas, ozone precursors, nitrogen oxides, particulate matter, carbon dioxide, carbon monoxide, and heavy metals (such as lead, zinc, and cadmium), all of which may have serious cumulative effects on the surrounding environment. Detectable amounts of toxic compounds have been shown to increase with traffic volume and concentrate in vegetation and soils adjacent to the road. For example, lead pollution from gasoline containing tetraethyl lead and from tires containing lead oxide is absorbed from the soil and air by

roots and leaves of roadside plants. The lead can accumulate up the food chain, with potentially severe effects on animals, including reproductive impairment, renal abnormalities, and death. Roadside lead pollution persists for decades and has been detected at distances up to 100 miles from urban areas.

Road-specific organic pollutants include compounds extractable with petroleum ether or carbon tetrachloride, some volatile aliphatic and aromatic hydrocarbons, polycyclic aromatic hydrocarbons, phenols, anionic surfactants, and total cyanides. Inorganic substances from roads spread farther underground than organic substances.

Noise pollution from vehicles has been found to significantly impact wildlife populations adjacent to roads.

Exotic plant species introduced by vehicle tires have invaded and successfully displaced native species in many habitats of western North America.

Construction of roads has an immediate impact on many wildlife populations through direct killing, habitat fragmentation, and conversion of interior into edge habitat.

The West Mojave Plan includes 1,833 acres of pre-approved (and therefore grandfathered) road improvements, but gives little to no analysis of how these massive improvements as well as the additional roads accompanying newly approved development will impact covered species. (*See* Plan Vol. 1 at 2-58, Table 2-12).

This is an entirely inadequate assessment of the impacts of new roads and road improvements on covered species. This assessment should include species-specific impacts of air and noise pollution, spread of exotic species, fragmentation, and direct mortality caused by current roads in the HCA and future roads throughout the planning area.

B. THE HCP MUST ENSURE ADEQUATE FUNDING TO CARRY OUT THE HCP

In order to acquire lands within the HCA and comply with the legal requirement to minimize and mitigate the effects of development, the HCP relies on several speculative sources of funding. The HCP has not demonstrated that "the applicant will ensure that adequate funding for the plan will be provided." 16 U.S.C. 1539(a)(2)(B)(iii) (emphasis added); *see also* Cal. Fish & Game Code § 2080. Assured funding is critical to the success of the conservation strategy and is a mandatory requirement of any HCP. *See, e.g., National Wildlife Federation v. Babbitt,* 128 F.Supp.2d 1274 (E.D.Cal. 2000).

As a preliminary matter, the HCP and Draft EIS/EIR do not clearly delineate and specify all funding needs for implementation of the plan, including but not limited to costs associated with acquisitions, adaptive management for the conservation areas and covered species, and scientific and

compliance monitoring. Only with this baseline information can the HCP accurately calculate and assure the amount of funding necessary to carry out the necessary measures for the life of the permit. The HCP must ensure sufficient funding for all agencies (whether local, state, or federal) with implementation responsibilities related to the HCA.

A glaring flaw in the HCP is the lack of seed fund, trust or endowment earmarked for the acquisition of mitigation lands from the start to ensure that under no circumstances will there be insufficient funds to acquire mitigation lands required under the HCP. Furthermore, it is inappropriate to reasonably say that the HCP assures adequate funding given the utter lack of commitment from private landowners to sell their lands. Mitigation that relies on the sale of private lands by third party non-signatories is an exercise in speculation. (*See* Section I-A-1 *supra).*

The Plan is replete with funding deficiencies in all aspects of its proposed implementation. Some examples follow:

1. The "Biological Objectives" section for the golden eagle reads: "Make all electrical transmission lines raptor safe." (Plan Vol. 1 at 2-5). However, nowhere in the Plan does BLM discuss the funding necessary for such a measure, nor where this funding will come from.

2. The "Biological Objectives" section for Parish's phacelia reads: "Acquire private land containing occupied habitat and essential connectivity." (Plan Vol. 1 at 2-7). Again, nowhere in the Plan does BLM discuss the funding necessary or how its acquisition will be ensured.

3. The "Habitat Conserved" section for the Lane Mountain milkvetch contains a similar promise without evidence of ensured funding, calling for "[a]cquisition of private land with occupied habitat." (Plan Vol.1 at 2-45).

4. In its discussion of how the DWMAs will be monitored and how access and other limitations will be enforced to protect tortoise, the Plan claims "[s]ubject to available funding, a minimum of eight (8) Law Enforcement Rangers and eight (8) maintenance workers would be assigned to the DWMAs." (Plan Vol. 1 at 2-65). However the Plan never explains where the funding will come from for even one of these employees.

5. Within this same section, the Plan claims that raven research measures should be implemented to determine "the behavior of ravens as they pertain to predation on tortoises." The Plan calls for data to be collected through "direct observations, radio tracking, diet analysis, wing tagging, and non-invasive behavioral manipulations." (Plan Vol. 1 at 2-68). However, no funding mechanism is ever mentioned.

6. In its supplementary species discussion of the Barstow wooly sunflower the Plan reads: "CDFG would perform botanical surveys of its West Mojave Ecological Reserve as funds become available. BLM would conduct surveys on public lands at known sites and adjacent to private parcels as funds become available." (Plan Vol. 1 at 2-157). Relying on future, unnamed funding

sources to complete surveys of covered species does not ensure that adequate funding for the Plan will be provided.

II. THE DRAFT EIR/EIS FAILS TO COMPLY WITH ALL REQUIREMENTS OF CEQA, NEPA, AND THEIR IMPLEMENTING REGULATIONS

NEPA requires federal agencies to prepare a detailed environmental impact statement (EIS) for "all major actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). "NEPA 'ensures that the agency . . . will have available and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger [public] audience.'" *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1149 (9th Cir. 1998) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)). As set forth below, the Draft EIR/EIS violates NEPA, and BLM must correct these below deficiencies in the Final EIR/EIS in order to avoid violating NEPA.

"The California Environmental Quality Act, Cal. Pub. Resources Code § 21000 et seq., is a comprehensive scheme designed to provide long-term protection to the environment. In enacting CEQA, the Legislature declared its intention that all public agencies responsible for regulating activities affecting the environment give prime consideration to preventing environmental damage when carrying out their duties. CEQA is to be interpreted to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Mountain Lion Foundation v. Fish and Game Comm'n*, 65 Cal.Rptr.2d 580, 584 (1997).

"The environmental impact report, with all its specificity and complexity, is the mechanism prescribed by CEQA to force informed decision making and to expose the decision-making process to public scrutiny. The EIR is, as the courts have said repeatedly, the 'heart of CEQA,' 'an environmental alarm bell,' and a 'document of accountability.' An EIR provides the public and responsible government agencies with detailed information on the potential environmental consequences of an agency's proposed decision." *Planning and Conservation League v. Department of Water Resources*, 100 Cal.Rptr.2d 173, 187-88 (Cal. App. 2000) (citations omitted).

The EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected. CEQA Guidelines § 15003(b). Thus, CEQA requires that the lead agency identify and disclose all of the significant environmental impacts of a proposed project. CEQA Guidelines § 15126.2. CEQA also requires the public agency to consider feasible alternatives to the project which would lessen any significant adverse environmental impact. Cal. Pub. Resources Code §§ 21002, 21081; *Planning and Conservation League*, 100 Cal.Rptr.2d at 188. As set forth below, the Draft EIR/EIS violates NEPA, and BLM must cure the following violations in the Draft EIR/EIS to avoid violating NEPA.

A. BLM FAILED TO GATHER ADEQUATE BASELINE DATA

A primary flaw in the Draft EIR/EIS is that BLM has not gathered and analyzed the baseline information necessary to determine the direct and indirect impacts of the project, as required under NEPA. BLM must "describe the environment of the areas to be affected or created by the alternatives under consideration." 40 C.F.R. § 1502.15. Establishing baseline conditions of the affected environment is an essential requirement of the NEPA process. In *Half Moon Bay Fisherman's Marketing Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988), the Ninth Circuit stated that "without establishing...baseline conditions...there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA."

Several important aspects of the Plan's implementation receive only a cursory analysis in the document. In many of these instances the BLM has failed, often admittedly, to gather the necessary baseline data necessary to predict the Plan's implications.

In its discussion of the Plan's effect on the geology and soils of the West Mojave region, BLM admits "[s]oil surveys have been completed by the United States Department of Agriculture on less than half of the planning area." (Plan Vol. I at 3-55). BLM can hardly claim to adequately assess the effects of increase development, more open OHV routes, and future road building on the area's soils, without first gathering the baseline data necessary to determine their current condition.

In another instance, in discussing the planning area's current air quality, the Draft EIR/EIS goes on at length about the different federal and state classifications of the surrounding air basins, but spends little to no time explaining current monitoring methods or results for specific pollutants. (*See* Plan Vol. 1 at 3-47 and Table 3-8). It is difficult to see how BLM can make predictions about the effect that Plan activities such as increased private land development, paved roads, livestock grazing, and increased OHV open routes will have on the planning area's air quality without the current monitoring data. (*See* Vol. 1 at Table 4-3).

Throughout the Plan there appears to be weak to no survey data collected for many covered species:

Burrowing Owl

In the Plan's discussion of the Burrowing owl, BLM admits "[b]ecause incidental take cannot be predicted with certainty, the take would be limited until future surveys and monitoring provide better definition of permanent conservation areas." (Plan Vol. 1 at 2-78). However, nowhere does the Plan explain when these surveys will take place, how take of unsurveyed owls can possibly be avoided in the meantime, or where the funding will come from.

Mojave fringe-toed lizard

The Plan discusses the preliminary investigations which have shown genetic differences among populations of the species within the planning area. (Plan Vol. 1 at 4-66). However, the BLM has failed to complete individual surveys on these potentially distinct population segments in order to show how the agency will be able to justify its take authorization if these populations are indeed found to be genetically distinct.

Desert cymopterus

BLM states that "additional survey information for this species is most likely to detect new occurrences on public lands...." (Plan Vol. 1 at 4-73). BLM also fails to give an actual estimate of how much habitat for the species is currently known within the planning area.

Desert tortoise

BLM, without further explanation, admits that it did not survey two separate OHV open areas where tortoise are historically know to be present. (*See* Plan Vol. 1 at 3-125). Not surveying for tortoise presence/absence in OHV open areas represents an egregious failure to gather adequate baseline data under NEPA.

For the above stated reasons, BLM has not gathered and analyzed the baseline information necessary to determine the direct and indirect impacts of the project, as required under NEPA.

B. THE DRAFT EIR/EIS FAILS TO CONSIDER A FULL RANGE OF ALTERNATIVES

NEPA requires that an EIS contain a detailed statement of alternatives to the proposed action. The discussion of alternatives, including the proposed action, is the "heart" of the EIS. 40 C.F.R. § 1502.14; *Druid Hills Civic Ass'n, Inc. v. Fed. Highway Admin.*, 772 F.2d 700, 712 (11th Cir. 1985). See also *NRDC v. Callaway*, 524 F.2d 79, 92 (2d Cir. 1975) (citing *Monroe County Conservation Society v. Volpe*, 472 F.2d 693 (2d Cir. 1972)) (recognizing that the alternatives analysis is "the linchpin of the entire [EIS]"). Specifically, NEPA requires that the preparing agency "[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." 40 C.F.R. §1502.14. Failure to include the full range of alternatives renders the EIS inadequate as a matter of law. *Dubois v. U.S Dept. of Agriculture*, 102 F.3d 1273, 1289 (1st Cir. 1996) ("existence of a non-*de minimis* 'viable but unexamined alternative' renders [an EIS] inadequate") (emphasis in original) (quoting *Resources Ltd., Inc. v. Robertson*, 35 F.3d 1300, 1307 (9th Cir. 1993)). *See also Alaska Wilderness Recreation and Tourism Ass'n v. Morrison*, 67 F.3d 723, 729 (9th Cir. 1995).

BLM has not included a true conservation alternative for consideration as required under NEPA. Alternatives C and D each feign attempts at the appearance of a conservation alternative, but neither comes anywhere close in substance.

Alternative C, "Tortoise Recovery Plan," claims to "combine those elements of Alternative A that are applicable to the Mohave ground squirrel and other sensitive species with the management program recommended by the 1994 Desert Tortoise (Mojave Population) Recovery Plan." (Plan Vol 1 at 2-1). However, this alternative does not represent a true conservation alternative because: (1) BLM is already tasked with following the recovery program recommended by the 1994 Desert Tortoise Recovery Plan, and compliance with such does not offer any further conservation benefit than the ultimate preferred alternative is already legally mandated to comply with, and (2) Alternative C itself does not comply with the recommendations of the 1994 Desert Tortoise Recovery Plan. (*See* section V-B *infra*).

Alternative D, the "Enhanced Ecosystem Protection" alternative, also fails as a true conservation alternative. Though it claims that it "places a high priority on the conservation of ecosystems and natural communities as a means to conserve sensitive plants and animals," this alternative would still allow many of the activities currently harming these same communities to continue. Mainly, Alternative D fails to distance itself from the numerous shortcomings of the preferred alternative. Alternative D would still adopt both the West Mojave Route Designation (with minor added restrictions), and the HCA (slightly reconfigured), while doing little else to resemble a true conservation alternative. (*See* Plan Vol. 1 at 2-182-87).

A true conservation alternative would propose the following: (1) adoption of the Interim Management Alternative in place of adopt the West Mojave Route Designation as a CDCA amendment; (2) place a 1% development cap on all conservation areas, not just DWMAs; (3) gather adequate survey data for covered species or omit from coverage those without adequate information; and (4) ensure both in-kind and fiscally viable mitigation measures.

C. THE DRAFT EIR/EIS FAILS TO PROVIDE ADEQUATE ANALYSIS OF ENVIRONMENTAL CONSEQUENCES

NEPA regulations require that an EIS contain a "full and fair discussion of significant environmental impacts." 40 C.F.R. §1502.1. The discussion must address all significant impacts, whether direct, indirect, or cumulative. 40 C.F.R. §1508.8. The document must analyze the environmental impacts of both the proposed action and alternatives to the proposed action, in comparative form, to "sharply defin[e] the issues and provid[e] a clear basis for choice among options by the decision maker and the public." 40 C.F.R. §1502.14. The Draft EIR/EIS prepared by BLM clearly fails this standard. Among other things, its discussion of impacts is inadequate in the following respects:

1. Inadequate Alternatives

First and foremost, for reasons given in Section II-B *supra*, the alternatives presented in the Draft EIR/EIS are inadequate. It is impossible to assess the true environmental impacts while using faulty alternatives. BLM does not rigorously or objectively explore a true conservation alternative, and the alternatives that it does discuss are not backed by scientifically sound data. As a result of

these inadequacies, it is impossible for BLM to account for the "true" environmental impacts of the proposed action. Even if the alternatives were acceptable, BLM fails to discuss all significant impacts, whether direct, indirect, or cumulative, as required by 40 C.F.R. §1508.8.

CEQA also requires the public agency to consider feasible alternatives to the project which would lessen any significant adverse environmental impact. Cal. Pub. Resources Code § 21002, 21081; *Planning and Conservation League*, 100 Cal. Rptr.2d at 188. "It is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which would substantially lessen or avoid the significant environmental effects of such projects." Cal. Pub. Resources Code § 21002; CEQA Guidelines § 15021(a). The CEQA Guidelines specifically prohibit the lead agency from approving a project unless all feasible mitigation and project alternatives have been adopted. CEQA Guidelines § 15091.

2. Biological Resources

Overall the Plan contains a wholly inadequate analysis of the impacts of the incidental take authorized on covered species other than desert tortoise and Mohave ground squirrel. The same is true for the Plan's analysis of the impacts of the route designation CDCA amendment and the resulting 690 miles of additional open routes. Two examples follow:

Lane Mountain milkvetch

The Plan admits "Alternative A does not achieve the level of habitat conservation necessary to avoid indirect impacts to the species." (Plan Vol. 1 at 4-75). However, the Plan never explains what these indirect impacts will be, how they will affect the species as a whole, or how it can justify authorizing incidental take without such information. Further, the Plan seems to rely on the Army and the Fort Irwin expansion operations plan to provide mitigation measures for the species. However, the expansion of Fort Irwin would result in the loss of nearly half the occurrences of the species, therefore much more attention must be given in the Plan to issues within BLM's jurisdiction, like the effects of the route designation, in order to provide an adequate analysis of the impacts of the Plan on the species.

Mojave fringe-toed lizard

The Plan admits "the preferred alternative...fails to address conservation on private lands. This could cause fragmentation of continuous populations along the [Mojave] river east of Barstow." (Plan Vol. 1 at 4-65). The Plan does not go any further in analyzing the impacts this failure will have on the species.

Finally, the lack of baseline survey data for certain species, pointed out Section II-A *infra*, also renders BLM's analysis of the environmental consequences of the action inadequate under NEPA.

3. Noise

Nowhere in the Draft EIR/EIS does BLM attempt to quantify or analyze the impacts of noise in any of its plan alternatives. There are no provisions for studies on the impacts of OHV noise on wildlife in the West Mojave, and nowhere does BLM provide for monitoring, scientific study, or even adaptive management accounting for the potential effects of OHV or other noise tied to increased development, the construction of new roads, or existing road improvements/expansions. (*See* Vol. 1 at 2-52, Table 2-12).

Considering BLM's mandate to protect listed and sensitive species from known threats, and its acknowledgment of previous studies showing that high noise levels negatively affect wildlife, this portion of its NEPA analysis is seriously flawed.

4. Air quality

BLM must analyze whether the Plan alternatives will meet both federal and state air quality standards. *See* 40 C.F.R. §1508.27 (10) (requiring that the preparing agency evaluate "[w]hether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment"). BLM fails to sufficiently analyze whether its proposed alternative for the Plan will comply with federal and state laws related to air quality.

The Plan lacks adequate analysis of air quality impacts that will result from planning area development growth, as well as from increased OHV open routes. (*See* Plan Vol. 1 at 3-53). Such inadequate information on which to evaluate the environmental impacts of present and future air pollution within the planning area fails to meet the standard under NEPA.

New federal CAA standards for finer particulate emissions, known as $PM_{2.5}$ standards, were proposed in 1997, but were subsequently challenged in court and are only now coming into force. The California Air Resources Board (CARB) has already promulgated new statewide standards, though they have yet to take effect. However, BLM makes no effort to consider the potential direct, indirect, and cumulative effects of the Plan alternatives on the attainment of $PM_{2.5}$ standards within the planning area. BLM is clearly aware that this new standard is being adopted, and that OHV use, road construction and increased development generally are all major contributors to particulate emissions due to the dust raised by soil disturbance. (*See* Plan Vol. 1 at 3-52). The agency's failure to discuss future compliance with $PM_{2.5}$ standards is a serious omission, since NEPA tasks federal agencies with considering "the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity." 42 U.S.C. § 4332.2 (C)(4). Such language implies adequate analysis of both the present *and* future impacts of proposed plan alternatives.

5. Law Enforcement And Public Safety

The Draft EIR/EIS never sufficiently describes nor analyzes how or if BLM can provide adequate law enforcement to ensure public safety and resource protection in the planning area. For example, in its discussion of "Proactive Tortoise Management Programs," the Plan submits that it will employ and commit 8 law enforcement officers to each tortoise DWMA "to facilitate Plan implementation, enforcement, and adaptive management." (Plan Vol. 1 at 2-65,6). However, this entire section is proceeded by the qualifier of "[s]ubject to available funding." Later the Plan does an about-face, stating that funding for such personnel is "guaranteed" by the proposed alternative "and would require focused monitoring and enforcement within designated DWMA boundaries." (Plan Vol. 1 at 4-34). However, the source of this "guaranteed" funding is never revealed.

Because BLM has not shown that it can provide adequate law enforcement to date, and since BLM has not developed a credible personnel plan for the future, its ability to implement the alternatives provided in the Draft EIR/EIS are thrown into serious doubt. As a result, the public cannot adequately evaluate the environmental impacts of these alternatives as required under NEPA.

6. Visual Resources

The proposed alternative will have significant impacts on the visual resources of the planning area. A major increase in OHV open route mileage, increased development resulting from streamlined incidental take procedures, and 1,833 acres of already approved road improvement within the planning area will all dramatically change the natural landscape of the West Mojave. However, BLM makes no attempt to analyze the environmental consequences of these impacts on the visual resource. These disruptive changes in the natural landscape are very significant to a large percentage of the public; including hikers, backpackers, photographers, and birdwatchers. BLM must analyze the proposed alternative's effects on the visual resources of the planning area in order to avoid violating NEPA.

7. Water Resources

The Plan includes a woefully inadequate analysis of the its effect on the water resources in the planning area. The Plan contains no analysis of how reduced groundwater levels will affect biological resources. (*See* Plan Vol. 1 at 2-72). The Plan also contains no analysis of the environmental consequences of grazing on water quality. (*See* Plan Vol. 1 at 2-110)

Finally, the Plan lacks an adequate analysis of the environmental consequences associated with increased development, grazing, road building, and other approved Plan activities will have on the planning area's water quality or groundwater basins as a whole. (*See* Plan Vol 1 at 3-59-62).

8. Transportation and Traffic

Traffic within the planning area will no doubt increase dramatically along with increased development, road building, and OHV open route mileage.

The majority of OHVs used in West Mojave OHV areas run on a two-cycle engine. These engines are extremely inefficient and can allow as much as 30 percent of the fuel and oil mixture to pass through the engine without being combusted. According to the State of California, unregulated OHVs contribute 118 times more hydrocarbon emissions per mile than a new 1997 passenger car. (*See* http://www.arb.ca.gov/msprog/offroad/ofhwymc.htm).

The State of California has emission standards for OHVs. Vehicles that meet the standard are given a green sticker, but noncompliant vehicles are given red stickers and are limited as to where and when they can ride.

The Draft EIR/EIS nowhere suggests placing any restrictions on vehicles built prior to 1997. These older, more worn-out vehicles were built without any standards. The pollution coming from these vehicles far exceeds that from the post-1997 compliant vehicles.

Secondly, there is nothing in place to monitor post-1997 compliant vehicles once they are sold. OHV enthusiasts often modify their vehicles, including the ignition and exhaust systems, in order to gain more horsepower. This also modifies the emissions, since the manufacturer's emission controls are either removed or disabled. Many of these models are advertised on the Internet and easily accessible. (*See* http://www.macdizzy.com/2stroke.htm).

BLM does not suggest regulating OHV traffic in any of the Plan's alternatives. Because nearly all of the planning area is classified as a nonattainment air quality area for PM_{10}, the BLM should enforce strict OHV use limitations. The lack of proper monitoring of OHV emissions, no OHV use limitations, and completely inadequate enforcement of OHV standards does not fully inform the public of the true environmental consequences of traffic in the West Mojave planning area.

9. Geology and Soils

Soil surveys have not been conducted on more than 50% of the planning area. (*See* Vol. 1 at 3-55). Instead "general soil information will be used and extrapolated in areas that are not covered by soil surveys...." (Plan Vol. 1 at 3-55). Such incomplete surveys do not allow adequate analysis of the environmental consequences of designating over 690 additional miles of additional OHV open routes on the planning area's soils.

BLM admits that "OHVs increase soil compaction, which in turn affects infiltration and water erosion, soil moisture, wind erosion, and soil chemistry." (Plan Vol. 1 at 4-7). However the agency never even attempts to analyze the consequences of the proposed route designation on the soils contained in the planning area.

Once again, BLM fails to fully inform the public of the true environmental consequences of the Plan.

10. Cumulative Effects

The CEQ regulations implementing NEPA clearly direct federal agencies to consider the direct, indirect, and *cumulative* effects of their actions on environmental resources. 40 C.F.R. §1508.8. The regulations define "cumulative effects" as:

> 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 cursory discussion of cumulative effects in the Draft EIR/EIS fails to meet this standard and is completely inadequate to assess such impacts. (*See* Plan Vol. 1 at 4-131-35). The analysis must consider the incremental impacts of the action in conjunction with the impacts of other past, present, and future actions. This requirement means that the agency must look beyond the life of the proposed action. Moreover, the past, present, and future actions that must be evaluated include all actions -- whether federal, non-federal, or private. The analysis of cumulative impacts should also focus on each affected resource, ecosystem, and human community, and address the sustainability of each.

One future impact BLM claims it will incorporate into the Plan, but fails to give adequate analysis to throughout, is the Fort Irwin expansion. BLM states that the Plan "has been coordinated with the Army's base expansion planning team so that the information presented in each document is consistent and the potential and cumulative impacts of the projects are adequately addressed." (Plan Vol. 1 at 1-11). However, the Plan contains no further discussion of how BLM expects to achieve such "coordination," nor is there any meaningful discussion of how the Fort Irwin expansion will affect the species covered by the HCP.

In its short discussion of the cumulative effects of the proposed alternative on the air quality of the planning area, the Plan fails to consider the effects of increased ozone and other emissions that will occur as a result of the Plan. (*See* Plan Vol. 1 at 4-131).

In its cultural resources discussion, the Plan admits "[c]umulative impacts to cultural resources would be significant [under Alternative A]." However, such a statement standing alone does not meet the requirement set forth under NEPA that the Plan consider the cumulative effects of the Plan, because BLM itself admits "[t]he total number of prehistoric/historic sites that are being affected by the open route network is unknown." (Plan Vol. 1 at 4-135).

11. Mitigation

Mitigation measures comprise an important part of the scientific and analytical basis for the comparative analysis required under NEPA. 40 C.F.R. §1502.16 (h). NEPA also requires this section to "[i]nclude appropriate mitigation measures not already included in the proposed action or alternatives" 40 C.F.R. § 1502.14.

The "Mitigation Fee" included in the proposed alternative is to apply to all "new ground-breaking activities located on public and private lands under the jurisdiction agencies participating in the HCP...." (Plan Vol. 1 at 2-32). The fee is to be based on the "average value of an acre of the private lands to be acquired for the implementation of this plan." (Plan Vol. 1 at 2-32). However, this mitigation scheme provides no assurance of the conservation of in-kind habitat, but instead bases itself purely on market property values. (*See Id.*) Such a scheme is not biologically defensible.

The Plan also contains instances of impermissible deferrals of mitigation under both CEQA and NEPA. For example, in its discussion of the Lane Mountain milkvetch, after admitting that the proposed alternative "does not achieve the level of habitat conservation necessary to avoid indirect impacts to species," the Plan's proposed mitigation is to "implement mitigation measures in order to achieve the conservation goals and objectives. Additional measures may be required....." (Plan Vol. 1 at 4-75). Such a deferral is unlawful under both NEPA and CEQA.

III. THE PROPOSED PLAN AMENDMENT VIOLATES THE CLEAN AIR ACT

The Draft EIR/EIS fails to meet the requirements of Section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.), and regulations under 40 CFR part 93, subpart w, which state that "no department, agency or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan."

Nearly all of the planning area has recorded concentrations of respirable particulate matter ("PM_{10}") and ozone in excess of the national and state air quality standards for these emissions. (Plan Vol. 1 at 3-47). In fact, the United States Environmental Protection Agency ("USEPA") has classified the entire planning area as a federal nonattainment area for PM_{10}, ozone, sulfates, carbon monoxide and/or hydrogen sulfide under the state and/or national standards. (*Id.*) In order to comply with the federal conformity provision stated above, BLM must ensure that the proposed plan conforms with the applicable state implementation plan ("SIP") before the plan is approved. In addition, the action cannot cause or contribute to any new violation of the National Ambient Air Quality Standards ("NAAQS") or delay timely attainment of any standard or any required interim emission reduction or other milestones. (40 CFR part 93).

The Draft EIR/EIS curiously concludes that the proposed plan will result in an overall reduction of PM_{10} emissions. (Vol. 1 at 4-6,7). However, the document provides no further analysis

on how this reduction will be achieved. In fact, the Plan only supplies evidence of how PM_{10} levels actually will be *increased* under the proposed alternative.

As discussed earlier, the Plan seeks to designate more than 690 miles of additional open OHV routes. All of these routes will occur in federal PM_{10} nonattainment areas. Two major activities that contribute to PM_{10} emissions are vehicle travel on dirt routes and OHV open areas. More open routes will result in more vehicle use and therefore an increase in PM_{10} emissions in these federal nonattainment areas. Increased development and new road construction and improvements will also lead to a further increase in PM_{10} emissions.

BLM's conclusion that the new route designation will result in a moderate decrease in PM_{10} emissions has no basis in science. Further, the agency's reasoning that it has somehow complied with the required federal conformity analysis by instituting a "ten-step" compliance process and then concluding that "[m]ost of these steps are carried out in the [Draft] EIR/S" is incorrect and completely unlawful. (Plan Vol. 1 at 4-7).

Because of the Plan's resulting increase in PM_{10}, ozone, and other emissions, BLM will be in violation of CAA Section 176(a), as amended (42 U.S.C. 7401 et seq) if the proposed alternative is adopted.

IV. THE PROPOSED ALTERNATIVE VIOLATES THE NATIONAL HISTORIC PRESERVATION ACT

Section 106 of the National Historic Preservation Act ("NHPA") requires that federal agencies take into consideration the effects of their decisions on cultural resources. (36 CFR Part 800 et seq.). The Plan acknowledges that there are *some* cultural resources within the planning area that would be *significantly* affected by the Plan. (*See* Plan Vol. 1 at 4-122) (emphasis added). However, BLM is unable to take into consideration what specific effects the proposed plan will have on these cultural resources, because, by its own admission, "[t]he effect of routes of travel on cultural resources has not been fully determined because information needed to assess effect is incomplete at the present time." (Plan Vol. 1 at 4-122). BLM must first obtain a full inventory of the cultural resources in the planning area before it can properly take into consideration the proposed Plan's effects on these resources. BLM claims that it is currently in consultation with the California State Office of Historic Preservation and that it meets its responsibilities through various undocumented agreements and protocols. (*See* Plan Vol. 1 at 3-287). However, a claim of "ongoing consultation" will not cure the NHPA violation that *will* occur if a full inventory of the area's cultural resources is not completed and the specific effects of the proposed alternative are not studied before the Plan is adopted.

In addition, an agency is required to solicit the views of Native Americans, local governments, and other potentially affected groups when conducting its NHPA analysis. 36 C.F.R. § 800.4(a)(1). Identification efforts involving Indian sites require more than just cursory efforts,

such as sending form letter requests, or informational packets to tribes. *See Pueblo of Sandia v. United States*, 50 F.3d 856 (10th Cir. 1995). BLM has failed to adequately comply with this requirement of the NHPA as well.

If the agency proceeds without complying with Section 106, it may be found in violation of NHPA and its action may be enjoined. *See National Trust for Historic Preservation v. United States Army Corps of Engineers*, 552 F. Supp. 784 (S.D. Ohio 1982).

V. THE PROPOSED PLAN VIOLATES THE FEDERAL ENDANGERED SPECIES ACT

A. Violation of Section 7

ESA Section 7(a)(1) tasks federal agencies with an affirmative duty to conserve endangered and threatened species occurring within their jurisdiction. ESA Section 7 (a)(2) and its implementing regulations require federal agencies to insure that any action they take is not likely to jeopardize the continued existence or adversely modify the critical habitat of any listed species. The ESA requires that such determination be made in consultation with the U.S. Fish and Wildlife Service ("FWS").

BLM has completely abrogated its duty to conserve the listed species occurring on public land in the planning area. Further, the Plan is replete with acknowledgments that the proposed action may jeopardize the continued existence and adversely modify the habitat of listed species.

The Plan's proposed authorization of over 690 miles of open routes beyond what is currently designated "open" through the proposed CDCA Amendment is in fact an action that is *likely* to jeopardize the continued existence and adversely modify the habitat of listed species. There is also no credible way BLM can claim it would meet its affirmative duty to conserve through adoption of this Plan. Some examples of the Plan's ESA Section 7 violations are set forth below.

The planning area includes many regions that have historically supported dense populations of the federally threatened desert tortoise. The Draft EIR/EIS itself includes an extraordinary number of ways in which the proposed alternative and the resulting route additions will jeopardize the continued existence of the desert tortoise and adversely modify its critical habitat. Some of these instances are listed below:

1. Desert Tortoise

a. The Draft EIR/EIS cites Jennings (1997a) who found that tortoises generally spent more time traveling and foraging in hills, washes, and washlets than on the flats, and that hills and washes were favored in the planning area for use by OHV recreationists. (Plan Vol. 1 at 3-122). Such a competing interest will only lead to jeopardy through actions such as direct mortality by crushing of individuals, as well as forage and burrow destruction.

b. The Draft EIR/EIS lays out a similar fate for designated tortoise habitat. FWS concluded that unauthorized activities, particularly OHV use, have degraded desert tortoise habitat, and that the access provided by BLM for "legitimate uses," such as recreation, actually facilitate unauthorized use. (Plan Vol. 1 at 3-123). It logically follows then that the proposed Plan's additional route designations will only result in further degradation of tortoise habitat through intensified authorized and unauthorized uses, leading to jeopardy for the species and adverse modification of critical habitat where so designated.

c. Lovich and Bainbridge (1999) found that wheel tracks of a full-size OHV vehicle operating in an undisturbed area could damage almost 1.25 acres with every 4 miles traveled. (Plan Vol. 1 at 3-122). Goodlett and Goodlett (1991) found that open routes also induce negative impacts for substantial distances; even at 500 feet from an open route, unauthorized tracks were observed at a rate of almost one per 20 linear feet. (Plan Vol. 1 at 3-122-23).

d. Some of the increased adverse effects of both route proliferation and unauthorized uses include: human removal of tortoises, vandalism, and release of captive desert tortoises. (Plan Vol. 1 at 3-124). An increase in such illegal activities will only result in continued jeopardy to the species.

e. Route proliferation itself, without further qualification, was identified by FWS (1994b) as a threat to tortoises and their habitat. (Plan Vol. 1 at 3-124).

f. Berry (1996) found that tortoise populations decreased significantly with increasing mileages of linear disturbances associated with roads, trails, routes, and tracks ($P<0.01$), while FWS concluded that "as mileage of roads, trails, and tracks increased on BLM study plots in California, desert tortoise populations declined at greater rates." (Plan Vol. 1 at 3-118).

g. Some of the Plan's designated OHV open areas, like both the Johnson Valley and Stoddard Valley Open Areas, allow unrestricted OHV recreation in documented high density tortoise areas. (Plan Vol. 1 at 3-125,26).

h. A 2002 opinion from FWS, included in the Plan, demonstrates the vital importance of minimizing adverse effects on the desert tortoise. FWS (2002) concluded: "Given the precariousness of the desert tortoise in large areas of the California desert and the likelihood that declines will continue to spread at least for some time, the loss of even a few individuals could impede recovery of the species." (Plan Vol. 1 at 3-118).

2. Lane Mountain Milkvetch

The Plan states: "Alternative A does not achieve the level of habitat conservation necessary to avoid indirect impacts to this species." (Plan Vol. 1 at 4-75). Such an

admission alone is evidence of BLM's failure to conserve. While the Plan attempts to cure this problem by closing certain routes that occur within occupied Lane Mountain milkvetch habitat, the closures fall far short of avoiding jeopardy to the species.

3. Carbonate Endemic Plants

The Plan designates open routes within the occupied and critical habitats of these species as well as within the proposed Carbonate Endemic Plants Research Natural Area ACEC. (Plan Vol 1 at 3-182). The Plan itself admits "[v]ehicle travel on occupied habitat...and travel off roads could adversely modify designated critical habitat." (*Id.*)

Jeopardy and Adverse Modification

As the above examples demonstrate, the Plan evidences likely jeopardy to several listed species and contains unequivocal acknowledgment of adverse modification of the designated critical habitat of others. Without a jeopardy opinion resulting from formal consultation, both BLM and FWS will be in violation of Section 7 of the ESA.

B. Violation of Section 4(f)

Section 4 of the ESA calls for the preparation of a recovery plan for every species listed under the Act. Recovery plans establish recovery goals and objectives, describe site-specific management actions recommended to achieve those goals, and estimate the time and cost required for recovery. 16 U.S.C. §1533(f). Section 4(f) specifically requires that the Secretary of Interior both "...develop and <u>implement</u> plans (hereinafter...referred to as 'recovery plans') for the conservation and survival of endangered species and threatened species..." 16 U.S.C. § 1533(f) (emphasis added). Drafting a recovery plan is not sufficient to comply with this statutory mandate. Consistent with the intent that recovery plans actually be implemented, Congress required that recovery plans "...incorporate...(i) a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species." 16 U.S.C. § 1533(f)(1)(B)(i).

In June 1994, FWS published the final Recovery Plan for the desert tortoise. The Recovery Plan identified six recovery units within the Mojave region, established a system of proposed Desert Wilderness Management Areas ("DWMAs") for the tortoise within those units, and developed specific recovery actions for those DWMAs necessary for the survival and recovery of the species. Four of the six recovery units are contained within the CDCA, and a small portion of the fifth recovery unit occurs on the CDCA as well.

The Recovery Plan describes numerous specific management measures that must be taken within DWMAs:

The following activities should be prohibited throughout all DWMAs because they are

generally incompatible with desert tortoise recovery and other purposes of DWMAs:
-all vehicle activity off of designated roads; all competitive and organized events on designated roads;
-habitat-destructive military maneuvers, clearing for agriculture, landfills, and any other surface disturbance that diminishes the capacity of the land to support desert tortoises, other wildlife, and native vegetation;
-domestic livestock grazing;
-grazing by feral ("wild") burros and horses;
-vegetation harvest, except by permit;
-collection of biological specimens, except by permit;
-dumping and littering;
-deposition of captive or displaced desert tortoises or other animals, except under authorized translocation projects;
-uncontrolled dogs out of vehicles;
-discharge of firearms, except for hunting of big game or upland game birds from September through February.

Recovery Plan at 56-57. Additionally, the Recovery Plan classifies implementation of these DWMA management prescriptions "Priority 1" actions. Priority 1 actions are actions "that must be taken to prevent extinction or to prevent the species from declining irreversibly in the foreseeable future." *Id.* at 63 (emphasis in original).

Despite the clear mandate of the ESA that the Secretary of Interior "implement" recovery plans, neither FWS nor BLM have implemented these requirements of the desert tortoise Recovery Plan. For example, the instant West Mojave Plan allows livestock grazing within critical habitat/DWMA's, similarly, the Plan allows vehicle activity in washes in critical habitat/DWMA's rather than just on designated roads. (*See supra* section V-A-I). Recovery Plan requirements for regulation of dogs and firearms are similarly ignored by the Plan. (*See* Plan Vol 1 at 2-54,55, prohibiting only dogs "off leash" in construction sites within DWMAs and allowing the discharge of firearms within DWMAs for activities such as target practice and without seasonal limitations). Most fundamentally, the DWMAs designated in the Plan have little in the way of actual management prescriptions- i.e. there is no prohibition on "surface disturbance that diminishes the capacity of the land to support desert tortoises." The utter failure of the BLM to implement the desert tortoise Recovery Plan constitutes a violation of section 4(f)(1) of the ESA. Any FWS approval of the Plan would likewise constitute a violation of this section.

VII. THE PROPOSED PLAN AMENDMENT VIOLATES THE CALIFORNIA ENDANGERED SPECIES ACT

A. FAILURE TO FULLY MITIGATE IMPACTS TO STATE LISTED SPECIES

CESA requires that the impacts of the authorized take on state listed species be "fully mitigated." (Fish & G. §2081(b).) To fully mitigate, CDFG and the permittee are required to mitigate "all impacts on the species that result from any act that would cause the proposed taking." (Fish & G §2081(b)(2); 14 Cal. Code Regs. § 783.4(a)(2).) "Fully mitigate" is construed so as to remedy the evils of "extinction as a consequence of man's activities" and of "destruction of habitat" expressly recognized by the Legislature. CESA is interpreted by "review of the... ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." *(Natural Resources Defense Council v. California Fish and Game Commission* ("*NRDC*") (1994) 28 Cal. App. 4th 1104, 1111, citing *Department of Fish & Game v. Anderson-Cottonwood Irrigation Dist.*, ("*Anderson-Cottonwood*") (1992) 8 Cal.App.4th 1554.) The purpose of CESA is "to conserve, protect, restore, and enhance any endangered species or threatened species and its habitat." (Fish & G. §2052; *NRDC, supra* at 1111-1112; *see also, Anderson-Cottonwood, supra* at 1563.)

The take authorized by the HCP causes significant adverse short and long term impacts to state listed species. The HCP fails to adopt reasonable and prudent measures that could have mitigated these impacts. Such impacts are certainly not "fully mitigated." as required by CESA. The EIR/EIS itself fails to find that take would be fully mitigated.

B. IMPROPERLY GIVING EQUAL CONSIDERATION TO ECONOMIC OBJECTIVES

CESA provides that:

> "The applicant will minimize and fully mitigate the impacts of the take authorized under a [§2081] permit. ...*Where* various measures are available to meet this obligation, the measures required shall maintain the applicant's objectives to the greatest extent possible."

(Rule 783.4(a)(2); Fish & G. §2081(b)(2), emphasis added). The HCP violates this standard by replacing the duty to first ensure that all impacts are minimized and "fully" mitigated with a balancing that gives equal or greater consideration to the applicant's economic objectives. The plain meaning of the statute requires that various full mitigation measures must be available prior to considering maintaining the applicant's economic objectives. If CDFG approves the current HCP it will violate this standard and prejudicially abuse its discretion.

C. FAILURE TO COLLECT ADEQUATE INFORMATION TO ENSURE IMPACTS WILL BE FULLY MITIGATED

Both CESA and CEQA require adequate information in order to evaluate the potential for significant adverse impacts to the environment, and to achieve the goal of fully mitigating impacts of the take of state-listed species. CESA requires that all mitigation measures must be capable of successful implementation and that CDFG base its issuance of the state ITP on the best scientific and

other information that is reasonably available, including known population trends. (Fish & G. §§2081(b)(2) & 2081(c).) Without surveys, CDFG cannot "identify the environmental impacts of the project or carry out its obligation to protect wildlife." (*Sierra Club vs. Board of Forestry* (1994) 7 Cal. 4th1215, 1236-1237.)

For examples of the Plan's inadequate surveys, see Section II-A *supra*, as well as the deficient surveys and survey techniques used for the Mohave ground squirrel (a species with its entire known range within the planning area). (*See* Plan Vol. At 3-141-66).

D. IMPROPERLY AUTHORIZING TAKE OF UNLISTED SPECIES

CDFG may only "authorize, by permit, the take of endangered species, threatened species, and candidate species." (Fish & G §2081(b).) Endangered, threatened and candidate species are defined by the statute and regulation, and do not include unlisted species. (Fish & G. §§ 2002, 2067, 2068.) CDFG provides "assurances" to the applicant in the HCP that the ITP will cover one or more of numerous currently "unlisted species" if they are subsequently listed as endangered, threatened or candidates species. CDFG has no authority under Fish and Game Code section 2081 to issue an ITP for currently unlisted species. Providing such assurance constitutes an illegal delegation of authority, because it deprives CDFG of its ability and duty to determine the appropriate measures to comply with Fish and Game Code sections 2081 and 2052 at the time the species is listed. To comply with CESA, CDFG must make an independent determination, at the time any species is listed, whether take of that species may be authorized given its status. By authorizing automatic incidental take authority for future listed species, CDFG has not only abrogated its own duty to ensure full mitigation when it issues a section 2081 permit, but bypassed the authority of the Fish and Game Commission as well. The Commission makes its listing decision after considering scientific information regarding the species (Fish & G. Code §§ 2070, 2072.3) In considering whether to issue section 2081 permits, CDFG must ensure full mitigation of "all impacts on the species that result from any act that would cause the proposed taking" and is prohibited from issuing a §2081 permit if it would jeopardize the continued existence of the species. (Fish & G. Code §§ 2081(b)(2) & 2081(c).) But, CDFG's jeopardy determination must consider the

> "*best* scientific and other information that is *reasonably available*, and shall include consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) *known* population trends; (2) *known* threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities." (Fish & G. Code § 2081(c); 14 CCR §783.4(b), emphasis added.)

The vice of such "advance approval" is that conditions may be very different when a species is listed and when consideration of an ITP would occur. In *Mountain Lion Foundation v. Fish and Game Com.*, (1997) 16 Cal.4th 105, 118-119, the court ruled that the decision to list is not so "fixed and objective as to eliminate the need for judgment and deliberation on the Commission's part." Because of the plain meaning of CESA and CDFG's own regulations, that an ITP be issued only after determining jeopardy based on *available* and *known* information, CDFG must make its

determination at the time the species is listed and not before. To the degree that the HCP does otherwise, it violates CESA. (*See* Plan Vol. 1 at 2-41,2).

E. IMPROPERLY AUTHORIZING REGULATORY ASSURANCES

The HCP provides regulatory assurances for "changed circumstances" and "unforeseen circumstances." As such, CDFG cannot require the applicant to implement any additional measures without the applicant's consent, even if CDFG determines that an unforeseen circumstance will result or has resulted in a significant decline in the species' population and determines that additional conservation or mitigation measures are required to control such decline. This violates CESA's requirement of "full mitigation"of "all impacts on the species that result from *any* act that would cause the proposed taking." (Fish & G. Code §2081(b)(2)). (*See* Plan Vol. 1 at 2-41,2).

F. VIOLATING FISH AND GAME CODE SECTION 3503.5

Fish and Game section 3503.5 prohibits the take, possession or needless destruction of any bird, or nest or egg of any bird in the order Falconiformes or Strigiformes. Several species covered by the HCP (e.g. burrowing owl, ferruginous hawk, prairie falcon, etc.) belong to one of these two orders. The HCP illegally authorizes take of these species and their nests and eggs in violation of this code section.

G. VIOLATING PUBLIC TRUST OBLIGATIONS IN APPROVING THE HCP

California courts have held that title to the fish and wildlife resources of the state are held in trust by the state of California for the benefit of the people. (*See e.g., Ex Parte Maier* (1894)103 Cal. 476, 483; *People v. Harbor Hut Rest.* (1983)148 Cal. App. 3d 1151, 1154.) In maintaining this public trust, "[t]he state has the duty to preserve and protect wildlife." (*Betchart v. California State Dept. of Fish and Game* (1984)158 Cal. App. 3d 1104, 1106.) This duty carries with it the "implied power to do everything necessary to the execution and administration of the trust." (*People v. California Fish Co.* (1913)166 Cal. 576, 597.)

The people of California, through the California Constitution (Article IV, section 20) vested the Legislature with substantial power to regulate fish and game within the state. In partially delegating this power to CDFG, the Legislature declared that "[t]he fish and wildlife resources are held in trust for the people of the state by and through the [D]epartment." (Fish & G. § 711.7.) As trustee for fish and wildlife resources, CDFG has "jurisdiction over the conservation, protection, and management of fish, wildlife, and native plants, and habitat necessary for biologically sustainable populations of those species." (Fish & G. § 1802.) To fulfill this duty, CDFG has the power to administer and enforce the provisions of the Fish and Game Code, including the provisions of CESA. (Fish & G. § 702.) Further, through CESA, the Legislature has required all state agencies, including CDFG, to "conserve, protect, restore and enhance" any endangered or threatened species and their habitat when undertaking any state action, such as issuance of a permit. (Fish & G. §§ 2052, 2055; *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125.) CDFG,

therefore, has an affirmative statutory public trust duty to ensure the preservation, recovery and enhancement of threatened, endangered, and candidate species and their habitat.

The HCP expressly prohibits CDFG from requiring that the applicant take any additional conservation measures beyond those in the HCP, thereby preventing CDFG from carrying out its affirmative public trust duties. These assurances and limitations violate CDFG's public trust obligation because the agency is obligated to use "all necessary methods and procedures" to conserve, protect, restore and enhance listed species and to protect biologically sustainable populations of other species. (Fish & G. §§ 1802, 2052, 2055, 2061.) Under these regulatory assurances provided to the applicant, the public trust can be substantially diminished and CDFG is precluded from exercising its affirmative duty to protect the state's fish and wildlife resources and to conserve, protect, restore and enhance listed and candidate species. (Fish & G. §§ 2052, 2055.)

The "dominant theme" and "core" of the public trust doctrine is the state's obligation "to exercise continued supervision over the trust." (*National Audubon Society v. Superior Court*, (1983) 33 Cal. 3d 426, 437; *Harbor Hut*, 148 Cal. App. 3d at 1154.) This duty is in addition to the statutory obligations under CESA. Moreover, CDFG's public trust duty is not limited to listed endangered species, but applies to all California's wildlife. In approving the HCP CDFG will violate its public trust obligations with respect to California's fish and wildlife resources by unlawfully 1) abandoning its obligation to protect wildlife from substantial population declines and foreseeable adverse effects, 2) abdicating its duty to exercise continuing supervision over public trust resources in the West Mojave region, and 3) delegating its public trust duties to the applicant.

VIII. THE DRAFT EIR/EIS FAILS TO SATISFY THE REQUIREMENTS OF FLPMA

A. BLM HAS FAILED TO CONSIDER ADEQUATE ALTERNATIVES TO THE PLAN IN VIOLATION OF THE FEDERAL LAND POLICY MANAGEMENT ACT

BLM has indicated that the Draft EIR/EIS is meant to provide the required environmental review of the decision to adopt the Route Designation and to amend the California Desert Conservation Area Plan (CDCA Plan). However, this effort by BLM is inadequate because it has failed to analyze adequate alternatives to the proposed route designation.

When amendment of a resource management plan under FLPMA requires the preparation of an EIS, the amending process is to follow the same procedure that is required for the initial preparation and approval of the plan. 43 C.F.R. § 1610.5-5. FLPMA requires that BLM "consider the relative scarcity of the values involved and the availability of alternative means . . . and sites for realization of those values." 43 U.S.C. § 1712(c)(6). Thus, as a part of the planning procedure, BLM must consider "all reasonable resource management alternatives . . . and several complete alternatives [must be] developed for detailed study." 43 C.F.R. § 1610.4-5. The plan must also

"note any alternative identified and eliminated from detailed study and shall briefly discuss the reasons for their elimination." *Id.*

The Draft EIR/EIS contain no evidence that the BLM has considered an alternative that would allow decrease or elimination of total OHV open route designations.

B. BLM HAS FAILED TO ADEQUATELY ANALYZE THE ENVIRONMENTAL IMPACTS ASSOCIATED WITH THE ROUTE DESIGNATION AND AMENDING THE CDCA PLAN IN VIOLATION OFFLPMA.

Under FLPMA, BLM has an obligation to protect the environment when making decisions about public lands. FLPMA requires BLM to "provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards" when engaging in land use planning. 43 U.S.C. § 1712. The legislation authorizing the CDCA Plan indicates that the purpose of the section is "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." *Id.* § 1781. Additionally, the CDCA Plan specifically requires the BLM District Manager to consider the environmental effects of amending a plan, CDCA Plan, at 121, and to "avoid sensitive resources wherever possible." *Id.* at 93.

Congress has specifically recognized that the California Desert Conservation Area contains unique "historical, scenic, archeological, environmental, biological, cultural, scientific, educational, recreational, and economic resources" that must be protected. 43 U.S.C. § 1781. In addition, the California desert is an "ecosystem that is extremely fragile, easily scarred, and slowly healed." *Id.* These 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." *Id.* Thus, Congress required BLM to engage in planning in order to protect these valuable resources.

As discussed in the NEPA section of these comments, BLM's analysis of the environmental impacts associated with the route designation plan and amending the CDCA Plan are inadequate. These inadequacies constitute a violation of FLPMA as well as NEPA. In addition, the Draft EIR/EIS fails to avoid Class L lands, which under FLPMA are protected from "unnecessary or undue degradation" and "undue impairment" of their resources.

C. BLM HAS FAILED TO ADEQUATELY EVALUATE THE IMPACT TO ADJACENT WILDERNESS AREAS IN VIOLATION OF FLPMA

The CDCA Plan requires BLM to "consider wilderness values" when making decisions about the Plan. CDCA Plan, at 93. The Plan claims that it will be consistent with the programs being implemented on nearly 300,000 acres of lands within Joshua Tree National Park, a large portion of

which is designated wilderness, but then never gives any explanation on how the preferred alternative proposes to do so. (Plan Vol. 1 at 1-1). Therefore, the Draft EIR/EIS has failed to adequately address the impacts to the wilderness areas in the vicinity of the Project. This failure violates the CDCA Plan as well as NEPA and CEQA.

IX. CONCLUSION

In addition to the clear statutory violations mentioned above, the Commentors believe that the HCP and Draft EIR/EIS are inadequate and unlawful in numerous other ways. None of the alternatives come even close to complying with BLM's statutory mandates. If BLM adopts the proposed alternative as written, the agency will once again likely find itself in court attempting to defend a facially illegal action. Thank you for your consideration of these comments.

Sincerely,

Kyle C. Kreischer
Legal Fellow
The Center for Biological Diversity

on behalf of:

The Center for Biological Diversity

San Bernardino Valley Audubon Society

Public Employees for Environmental Responsibility

cc:

Randy Scott, County of San Bernardino
Land Use Services Department
385 North Arrowhead Avenue
San Bernardino, CA 92415

Scott Priester, City of Barstow
Community Development Department
220 East Mountain View Street
Barstow, CA 92311-2888

DFG - ASSURANCES/NO SURPRISES: It is our sincere hope that DFG will be able to focus on the "whole" of this Plan and on the West Mojave ecosystem; not get hung up on its "parts". A high degree of DFG "assurance" is absolutely necessary to make this thing work.

CURRENT MANAGEMENT: A thorough review of current practices, existing local-state-federal regulations, biological opinions, ACEC's, CDCA Plan requirements, etc., etc. would likely ameliorate some of the concerns expressed in the text about residual impacts that aren't "mitigated" by the WMP. It looks to us like we are all pretty well "mitigated".

NOTE:::THIS DRAFT IS WELL WRITTEN AND THE CULMINATION OF A TREMENDOUS EFFORT. STAFF AND ALL PARTICIPANTS ARE TO BE COMMENDED. WE STAND READY TO WORK WITH WMP AND COUNTY STAFF TO HELP MAKE IT WORK.

Mojave Desert Resource Conservation District
17330 Bear Valley Road, #106 - Victorville, CA 92392
Phone: (760) 843-6882 - Fax: (760) 843-9521

September 10, 2003

West Mojave Plan
22835 Calle San Juan De Los Lagos
Moreno Valley, CA 92553

Below are the comments from the Board of Directors of the Mojave Desert Resource Conservation District (MDRCD) for the West Mojave Plan.

1. We firmly believe that our participation in the West Mojave Plan (WMP) Implementation Plan, and eventually the program itself, would benefit the process. Enclosed is a copy of our February 15, 2002 letter describing the District's authorizations and current partners.

2. The partnerships listed in said letter would also facilitate our assistance in the WMP's proposed habitat rehabilitation programs; consistent with our current work on weed management, the limestone endemic plants on the north slope, etc.

   The MDRCD through its unique partnership with the USDA Natural Resources Conservation Service (NRCS) can facilitate assistance to private landowners in utilizing NRCS's Wildlife Habitat Incentive Program (WHIP). This is a voluntary program that encourages creation of high quality wildlife habitats that support wildlife populations of National, State, Tribal, and local significance.

3. The District supports a strong raven management program, but certainly not "relocation." They relocate on their own quite efficiently. Attached is a copy of our resolution requesting reclassification of the Common Raven that was endorsed by the California Association of Resource Conservation Districts. We suggest that the WMP include reclassification as a primary objective.

4. The attached August 18, 2003 letter to Supervisor Bill Postmus explains the District's concerns regarding conversion of private lands to federal lands such as BLM, Department of Defense and the Forest Service and resultant losses of potential tax revenue. We strongly request that the WMP embody, and enforce, the principle of "No net loss of assessed value" in all such private/public land transactions.

5. The District strongly supports Dave Fisher's responses regarding the WMP's impacts on the Ord Mountain cattle allotment. Maintaining the water sources that he has rehabilitated, created and maintained is critical to the health of the region's wildlife diversity.

   If the WMP or any other pending actions result in cessation or even reduction of cattle grazing, potential for fire will increase. This will cause a significant impact for an ecosystem that did not evolve in a fire-prone environment, and thus be extremely vulnerable to long-term damage.

6. The MDRCD serves as coordinator for the Mojave Weed Management Area (see enclosed brochure). Invasive weeds, especially Saltcedar, are destructive to native riparian habitat and negatively impact water resources. We suggest that we meet to identify priority invasive weed management projects after WMP adoption.

   Paragraph 2.2.4.4 **Mojave River Bioregion...Small construction projects and invasive species removal** states, "These projects would minimize effects to these migratory birds by taking place in the fall and winter, when the birds are not present."

   As written, this broad statement will unnecessarily restrict weed management activities, and reduce the effectiveness of certain control methods. We suggest specifying that at sites where the Least Bell's vireo and Southwestern willow flycatcher bird species are known to be nesting, invasive weed removal projects will not take place during the nesting period.

7. We certainly agree with the WPM's proposal for a designation of "recreational" – not "Wild and Scenic" for the Afton Canyon portion of the Mojave River. It is currently sufficiently protected. Any additional layers of prescriptions will only serve to make it harder to remove weeds and perform other functions that enhance its habitat values.

8. It is our understanding that "new" agriculture is not covered under the WMP. However, if it occurred on native or even semi-disturbed habitat, it could be subject to ESA consultation on a project by project basis if it results in a potential "take." We assume that reinstated agriculture on fallowed land would not result in any such action. Is this the case?

   Per the Plan, conversion of fallowed ground (no matter the status of its habitat value) to types of development that require a discretionary permit would require compensation and payment of a fee. Herein lies the dilemma – Active farmland provides good habitat for many of the Plan's covered species. So does fallowed ground to a much lessor extent, until it becomes infested with weeds or becomes barren and subject to wind erosion for a long period of time (the most likely scenario). Farmland that has been fallowed for many years might even progress to a stage that has some values to native wildlife. All these conditions exist within the West Mojave, especially the weedy or barren situation. Shouldn't the compensation have some relationship to the level of impact? Wouldn't it be better to

urbanize/develop fallowed land that is unlikely to be farmed again, instead of building on relatively undisturbed creosote/burrobrush communities that still have some habitat values? We need to "get outside the box" long enough to come up with "incentives" to promote our mutual objectives. We would like to help you resolve this one.

9. Owners of potential mitigation lands within a DWMA should be able to get fair market value for their properties if they wish to sell. Does the establishment of a set compensation fee over whatever period of time interfere with market incentives?

10. It would be helpful if the Final WMP included a concise summary of current status vs. WMP action; environmental impacts, levels of significance, etc.

11. District board members are available to meet with our state conservation staff (Department of Conservation within the State Resources Agency), County/City representatives, Department of Fish and Game staff etc. in an effort to promote the assurances and "no surprises" that are critical to local government participation.

12. As a unit of state government, and not usually a project "applicant" per se, would it be necessary for the Mojave Desert RCD to become a signatory to the WMP in order to be covered? What is the process?

Thank you for taking the time to review our comments. We certainly appreciate the effort and time that went into this draft document.

Sincerely,

J Peter Lounsbury

J. Peter Lounsbury
President

Mojave Desert Resource Conservation District
17330 Bear Valley Road, #106 - Victorville, CA 92392
Phone: (760) 843-6882 - Fax: (760) 843-9521

February 15, 2002

Mr. Bill Haigh, Team Leader
West Mojave Plan
Bureau of Land Management
6221 Box Springs Blvd.
Riverside, CA 92507-0714

Dear Mr. Haigh:

The Board of Directors of the Mojave Desert Resource Conservation District would like to request representation on the West Mojave Plan's Implementation Task Force. We are a legally constituted unit of State Government, organized under provision of Division 9 of the Public Resources Code. I have enclosed a brochure that goes into more detail on the district and the services we provide.

The district has been in partnership with Bureau of Land Management since 1995 for a variety of projects in the Mojave Desert. This partnership funds district employees for the supervision, transportation and logistic support of inmate labor crews who are involved in the restoration of desert riparian areas. One of the major projects is the removal of salt cedar in the Mojave River.

Other agencies the district is currently in partnership with are:

USDA Natural Resources Conservation Service
Victor Valley College
Mojave Desert-Mountain Resource Conservation and Development
Mojave Water Agency
ECO Resources
Joint Powers of Authority, Desert Mountain Integrated Waste Management
San Bernardino County Hazardous Materials
San Bernardino County Flood Control
Desert Managers Work Group
Cities of Victorville, Apple Valley, Hesperia, Barstow, Crestline, Arrowhead, Mammoth Lakes, Lancaster and Palmdale.
Department of Water Resources
Department of Conservation

California Regional Water Quality Control Board – Lahontan Region
California Association of Resource Conservation Districts
National Association of Conservation Districts
Department of Defense
National Park Service
USGS
Mojave Environmental Education Consortium (MEEC)
Farm Services Agency
Farm Bureau

We would like to request that a representative from our board represent the Mojave Desert RCD on the Implementation Task Force. Our district will provide significant expertise for the many aspects of the West Mojave Plans implementation and management. We are able and willing to contract our services for resource-related functions and would like to discuss options that could benefit all parties.

Please provide us with a schedule of the Task Force's upcoming meetings. We would also appreciate a meeting with you at your convenience to discuss our possible future participation. Please contact Jackie Lindgren at 760-843-6882, ext. 101 to schedule this meeting.

Sincerely,

Mary Ann Salyards
President
Mojave Desert Resource Conservation District

Enclosure: as noted

RESOLUTION 2003-06

RE: Reclassification of the Common Raven

WHEREAS, the common raven *Corvus corax*, since its designation as a protected migratory non-game species, has increased its population and has shown evidence of becoming a non-migratory species, and

WHEREAS, it has been documented that as this species has increased in population it has become a major threat to many major native species that habitat the desert such as quail, chuckers, tortoise, etc., and

WHEREAS, its protected status inhibits any reasonable effort to control this species,

THEREFORE BE IT RESOLVED that the MDRCD asks CARCD, NACD and other groups and associations to join with us to request a re-classification of this species as a non-regulatory species until such time as its population is brought back into a reasonable balance with its environment.

ADOPTED, SIGNED AND APPROVED by the Board of Directors of the Mojave Desert Resource Conservation District at a regular meeting held on the 7th day of August, 2003.

J. Peter Lounsbury

J. Peter Lounsbury, President
Board of Directors

Mojave Desert Resource Conservation District
17330 Bear Valley Road, #106 - Victorville, CA 92392
Phone: (760) 843-6882 - Fax: (760) 843-9521

August 18, 2003

Supervisor Bill Postmus
385 North Arrowhead Ave., 5th Floor
San Bernardino, CA 92415-0110

Dear Supervisor Postmus:

The Board of Directors of the Mojave Desert Resource Conservation District is concerned about the significant conversion of private lands within the County to BLM and the resultant loss of current, and especially, future property tax revenue. It is highly unlikely that PILT revenue (payment in lieu of taxes to County from BLM/DOI) will ever be increased to compensate for such loss.

A land-exchange program that trades private parcels in remote areas for public lands on the periphery of urbanizing areas can be a net economic/environmental benefit. Even if it results in a net loss of private acreage, net assessed value, and development potential can increase. A flat-out conversion from private to public constitutes a loss of both private acreage and taxes to the County. The pending West Mojave Plan (WMP) will likely induce even more such conversions. Comments on the proposed WMP are due September 12, 2003. We will include this issue in our comments. We know how concerned you are about this matter and appreciate your strong positions regarding such public land/federal issues.

As part of the County's response to the WMP, would it be feasible to institute a County policy (if one does not already exist) opposing any "net loss of assessed value" in all such private/public transactions?

In addition, we have heard that the California Constitution, or possibly policy, MAY require some level of state administrative or legislative endorsement of conversions of private lands to federal control. Would County Counsel's office be able to determine if such a requirement exists?

We appreciate you and your staff's help on these matters. For further discussion, please contact Chuck Bell (760-248-9767) who will also be discussing this with Gerry Hillier.

Sincerely,

J. Peter Lounsbury
President

Cc: Gerry Hillier
Dennis Hansberger

Rinker
MATERIALS™

September 8, 2003

West Mojave Plan
22835 Calle San Juan De Los Lagos
Moreno Valley, CA 92553

Thank you for the opportunity to respond to the Draft Environmental Impact Report and Statement for the West Mojave Plan.

The Plan and environmental document address a subject of critical concern to our company. Rinker Materials' Lavic Quarry is located in the proposed Pisgah Crater ACEC as described on Map 2-11 and page 4-110 of Volume 1 and numerous citations throughout the document. The plan proposes to change the areas multi use class designation from M to L, overlay the area with an ACEC and implement a series of development restriction. The document does indicate that the designation would have an impact on mining and the economy and that mining may be encouraged to relocate from the area due to increased restrictions. The document, page 4-110, volume 1, implies the intent of the action is to relocate existing mines outside the ACEC.

Rinker Materials has mined cinders in the area for 23 years. The operation started in 1956 producing cinders for use throughout the state of California for the construction industry as well as for snow control for the higher elevations to make winter time traveling safer for the public. A legal description of the tract is as follows: Section 32, N½ SE¼ NW¼ W½ NW ¼ NE ¼. Our mine permit number is PHSA/81-1908/D585-275N Our California mine ID number is 91-36-0001.

We are concerned that the proposed plan will have a significant impact on our existing and future operations, that the assumptions used in proposing the ACEC are inaccurate and that the EIR/EIS does not identify the potential impacts to mining associated with the proposal.

The following points reflect our concerns.

- The western half of the proposed ACEC is dominated by active mining extending from the Pisgah cinder cone to the western boundary. Mining in the area is conducted by at least four separate mining companies. The area has been continuously mined since 1930's.

  Our mining operations for cinders encompass 160 acres; permit number 81M-013, and are currently approved until the year of 2006 at which time we will extend our permit.

- The ACEC designation would limit expansion of existing mining and increase mitigation requirements by five times previous compensation rates. The EIR/EIS does not consider the loss of resource potential, jobs or financial impact to the industry and local economy.

- The report fails to recognize the utility corridor that bisects the proposed ACEC or address potential impacts to maintenance and operations.

- The report refers to the area as relatively high tortoise habitat when, in fact, historic studies indicate the area to be low density habitat.

- Our investigation of the distribution of local plants and animals from existing published literature indicates the majority of the species of concern are located to the northeast outside the proposed ACEC boundary. The ACEC as proposed fails in its attempt to manage or protect the target species. Actual locations are not shown in comparison to the ACEC boundary. There is an undocumented assumption that species may benefit from the designation.

- We question the ability of the area to meet criteria for the establishment of an ACEC, particularly in the area of substantial significance and value. Research in the RNA should have indicated that the majority of sensitive plants reside outside the study boundary and that an ACEC designation would require a new boundary designation. Policy requiring conversion from RNA to ACEC was issued in 1996 and is believed to have been rescinded.

- The EIR/EIS does not assess the benefits to species derived by the proposed ACEC nor does it compare the benefits to the impacts to existing mine operations.

- It is not clear if the 1 percent development criteria relates to the total area of the ACEC or the cumulative total of all ACEC acreage within the plan. We assume from the document that future development within the Pisgah Crater ACEC would be limited to approximately 220 acres of undisturbed land.

Thank you for the opportunity to present our concerns regarding the EIR/EIS. We look forward to your response.

Sincerely,

Paul Chism

Date: September 06, 2003

To:
West Mojave Plan
22835 Calle San Juan De Los Lagos
Moreno Valley, CA 92553

From:
David Hatcher
301 W. Walnut Ave.
Arcadia, CA 91007

Dear Sir or Madam,

I would like to be included on the BLM's mailing list. In addition, I would like to comment on the proposed West Mojave Plan.

First I'd like to explain my interest in the Mojave Desert and how we use the West Mojave. My family and I have enjoyed many recreational activities in the California Mojave Desert. My grandfather and uncles raced motorcycles there in the 1960s and 1970s. I learned to ride a Honda Mini Trail 50cc motorcycle in 1979. Every year since then we have been enjoying family campouts and gathering in the Mojave desert and enjoy many recreational activities there such as camping, motorcycle riding, hiking, and exploring the vast desert via the jeep roads.

My father and I have spent many years together riding motorcycles in the desert. He passed away in 2001 as he was diagnosed with Parkinson's disease. The Mojave Desert holds a special place in my heart as it brings back memories of the times my father and I had spent together. One day I'd like to take my children to the West Mojave so that they can enjoy the same experiences I had as a child.

However, the West Mojave Plan concerns me in that it may take a way my opportunity to share the same experiences with my children and relive the experiences I had with my father.

The first thing I'd like to say about the West Mojave Plan is that I'd like to see the comment period extended. I feel 90 days is not enough time for the general public to review a document as large as this, let alone verify the sources quoted in the DEIR/S.

One big problem is there were no public meetings held near Los Angeles or Orange County. This is where the majority of recreational users of the West Mojave live. Instead the meetings were held in cities that were more than an hour commute from Los Angeles or Orange County which made it difficult for most of us to attend. Please add at least two more meetings, preferably near these two areas, so that the public can voice their opinions.

I'd like to see the BLM implement the "head start" program of captive breeding to replenish the tortoise population at Fremont Valley. Perhaps they could keep young tortoises for up to five

years then release them into the wild. They would then have a better chance of surviving into adulthood.

Another step that could be taken to protect the desert tortoise is to control the raven population. The raven is not an endangered bird and they didn't originate in the West Mojave. Establish a bounty on them. I've personally seen the ravens pecking on carcasses of dead tortoises.

Certainly we should not implement the fencing recommendations in the DEIR/S. Fencing will only provide a perch site for ravens. The enormous amount of money it would take to implement these fences would be better spent on something more useful, like the "head start" program for the tortoise.

The DEIR/S proposed four Desert Wildlife Management Areas (DWMAs) for the desert tortoise. The DWMAs would set aside 1.2 to 1.7 million acres depending on which alternate is accepted. The DWMAs proposed do not reflect the recommendations of the Super Group. The BLM has already locked up 1.1 million acres for tortoise recovery and designated 6.4 million acres as critical habitat. This is a huge area that I'd think is too large to manage properly. I'd like to see smaller, more manageable areas that can be properly supervised and managed with the proper funding. This can be funded with the money that was proposed for implementing the fencing, which we don't need.

Lastly, I recommend adding only one large DWMA as described in Alt. E. This DWMA has been established de facto by the closures and restriction created by the Route Designation process. The SWMA should be a combination of acreage from the proposed Fremont-Kramer and Superior-Cronese DWMAs and contain 1,118 square miles.

I sincerely appreciate the opportunity to voice my opinions on the West Mojave Plan and hope one day I can take my children to the same places in the West Mojave my father took me when I was a child.

Best regards,

David Hatcher

David Hatcher

195

Richard Kanatzar
2070 Marino Way
Ventura, CA 93003
AMA#398680

West Mojave Plan
22835 Calle San Juan De Los Largos
Moreno Valley, CA 92553

September 9, 2003

RE: Comments on the Proposed West Mojave Plan (WEMO)

As an active member of the American Motorcycle Association and the Ventura Motorcycle Club, and as an avid off-road enthusiast and frequent visitor to our public lands in the Western Mojave, I would like to comment on the proposed WEMO plan.

I recognize the need to ensure responsible use and management of our public lands, and that the democratic process of creating a fair and representative plan that incorporates the interests of all involved parties is essential to employ to ensure this end.

However, in the case of the proposed WEMO plan, this democratic process has failed. Moreover, the collective intelligence, or lack thereof, that the tenets of this document are based upon, is outdated, inconclusive, and lacks due diligence. Creating a fair and representative plan, based on bad data and uninformed assumptions, is absolutely negligent, and unequivocally irresponsible. Please see the comments and suggestions listed below:

- **Respect Interim Route Closures** – Trails and competition routes that have been temporarily close, should be reopened. For example, the "C" routes in the Spangler Open Area should be put back into the open inventory. Additionally, the Barstow to Vegas corridor has been deleted simply because it was deleted in NEMO. This corridor needs to be put back into the open inventory.

- **Mitigate Loss of Route Closures** – the Freemont Recreation Area described in Alternate E, should be created, and should be connected to the Spangler and El Mirage open areas using existing routes.

- **Reopen Duplicate Route Closures –** Duplicate routes are indiscriminately closed without regard for the differences in terrain or degree of difficulty. These routes must be reopened.

- **Responsible Protection of the Desert Tortoise -** The current proposal for setting up the Desert Wildlife Management Areas (DWMA) is based upon outdates tortoise studies from the 1970's and '80's. The assumptions made from those studies can no longer be relied upon. Respiratory disease and the predatory habits of the raven, a bird that is not indigenous to the area, need to be studied so a comprehensive and effective plan can be put into place. In general, smaller and better-funded DWMA's would be more manageable, have higher degree for success, and would open more land for the responsible use of off road enthusiasts.

Thank you, and I trust that these comments will be taken into account during the final WEMO decision making process. I can be reached at 805-647-8745 or Rkanatzar@aol.com

Sincerely,

Richard Kanatzar

Richard Kanatzar

196

BLM
West Mojave Plan
22835 Calle San Juan de Los Lagos
Moreno Valley, CA 92553

Dear Sirs,

I am writing you in regards to the West Mojave (WEMO) Plan. I am a member of the California Association of Four Wheel Drive Clubs, Inc. and I have concerns about the Draft Environmental Impact Statement. I support Alternative G – **NO ACTION** with the some modifications. I have listed those modifications below:

- Make the "Open unless posted closed" policy consistent throughout
- Start a Species Conservation Measures with respect to tortoise disease and predator control as discussed in Alternative F
- Complete the inadequate route inventory and analysis prior to designating any routes as closed

The tortoise plans that are being used are obsolete. They are, also, based on bad science. It is a known fact that predators and respiratory disease kill the majority of the tortoises

There are many people of CA4WDC that have gone and mapped many of the areas in this plan. It is my understanding that they have found and documented that the route inventory is incomplete. It should not be up to the public to have to do the work that should have been done by the BLM. Routes should have been survey on the ground, not by using maps based on the 85-85' route designation.

In addition, the review period for this draft is way too short considering the huge area that needs to be looked at to make sure that all the routes are included. And the comment period always seems to be during the hottest time in the desert. When temperatures are in excess of 100 degrees and it is unsafe to go out a map these areas.

There are many historical, mining, and archeological areas that can no longer be accessed. There are, also, wildlife water sources that will not longer be maintainable.

The "closed unless posted open" policy that is being proposed is not consistent with what is currently being used and will only confuse people, because they are use to the "open unless posted closed" policy. This is putting the responsibility on the user instead of the BLM. This policy is in the process of being challenged by a lawsuit in the El Dorado USFS.

In closing, I am recommending the above alternative because of the Draft EIS discrepancies in route designation and lack of a complete inventory of those routes, obsolete tortoise plans, and I am requesting that the "OPEN unless posted close" policy continue to be practiced. Please, place my name and address on any future notices on this process.

Sincerely,

Denise Bart

Mr. & Mrs. Scott Bart
1898 Summertime Ave.
Simi Valley, CA 93065

I'm Paul Vautrain, I'm 40 years old, been going to the Mojave for 40 years and 9 months, and I'd like to comment on the West Mojave Plan.

Riding and Racing motorcycles is my favorite thing to do. (actually the only thing I do well) and I'd like to continue doing the voo doo that I doo.

But before any decisions (either way) are made on this plan, we need to have more public input on this plan by extending the comment period and having some meetings around the Los Angeles area.

This could be a good time to look at a lot of issues and things in the Mojave. Some of these areas closed in the 1970's have never been re-evaluated to see if progress has been made in the habitat (tortoise).

Maybe some of these areas closed could be reopened to accomodate new areas being closed now. Possible areas such as the "C" routes in the cinnamon Hills and in the the Spangler Open Area (Sand hills). Also some of the area in Fremont Recreation Area could be opened for an Enduro or

a Dual Sport Event? I've heard that the area (Fremont) could be connected to spangler and El Mirage open areas using existing routes? I would like to do that ride! That would be like 5 hrs. in the saddle!! Opening the Johnson to Parker, Johnson to Stoddard again would lessen the impact on the trails in Johnson Valley and would make a bitchin' (sorry) Point to Point Race once a year!!

I apolizize for being longwinded but I get excited about new open areas (or the posibility of such), but I'll be O.K. with some of the duplicate or parallel routes being returned to open status. (Sand Hills) I've had a dream of one day racing the Barstow to Vegas and would love to see it reopened.

All and all, off roaders aren't bad people, but a few do make it bad for the many. I have joined a motorcycle club and try to give back what the desert has given me by packing out others trash, being legal (ie green sticker) noise ect. and promoting a good family oriented sport

Thank you Paul [illegible]

Scott Kemp (Permitee)
Box 448
Independence, CA 93526

Sept 9, 2003

West Mojave Plan
Att: Linda Hanson
CA Desert District, BLM

Dear Linda,

Cattle have been grazing in the vicinity of the desert tortoise for over 100 years without any discernable impact. The tortoise population began a major decline in the early 1970s due in large part to the countless number of RVs taking to the desert. Ravens follow RVs like seagulls follow fishing boats. I've watched baby tortoises being dropped on rocks by ravens from a height of 100 to 200 feet. In contrast, I've never seen a cow eat a tortoise or step on one or compete with one for vegetation..

The BLM can control the cattle and sheep and manage them out of existence. The BLM can't control a predator like the raven. If a program placing a bounty of twenty dollars per raven was enacted, the BLM wouldn't need this crazy West Mojave Management Plan and would probably save plenty of money.

Does the BLM have the funding to make the Health Assessments for Grazing?

Does the BLM have the expertise to make a decision on the expectation of ephemeral forage production over 230 pounds per acre?

Does the BLM have an employee who has any idea what a grazing strategy is?

The only time a BLM permit is utilized is during the growing season. The feed is useless during the dormant season. Twenty - five percent utilization of key species is unacceptable. Does the BLM have the expertise to establish twenty - five percent criteria?

I can't accept any part of this draft as a usable alternative. I can accept the notion that this draft is just another attempt to remove cattle and sheep from public lands.

Sincerely, Scott Kemp

Scott Kemp

To whom it may concern at the Bureau of Land Management 9-10-03

Enclosed are some of my thoughts and concerns regarding the West Mojave Plan, or WEMO as I will refer to it as.

- As a responsible user of public lands potentially effected by WEMO, I must plead for you to allow more time for you, myself, and other concerned parties to discuss the effects of WEMO. My understanding is that only a 90 day period is the allotted time frame for the public to understand and and comment on this plan that will have implications of over 30 years.
- As a resident of greater Los Angeles I find it troubling that only one meeting came to my attention on this plan, and it wasn't a BLM meeting, it was an AMA meeting. Does BLM hold meetings regarding issues such as WEMO? If so, where and when are they? Can I be more informed of these issues by BLM? Can we have more meetings and more information for the average public like myself?
- My understanding is that desert tortoise is the driving force in setting aside between 1 and 2 million acres of public land. It is also true that over 1 million acres have already been closed to public use in the form of off highway vehicles to "save the tortoise."

closing public land has not helped the tortoise.

- I am in support of captive breeding programs to save the tortoise, if in fact this is possible.

- Is it not science that disease is what is killing the desert tortoise? Is it not true that the raven is killing the desert tortoise? Wouldn't it be more cost effetive to control raven population than to close land? Open land can be used responsibly and generate revenue. Would it not be financially more responsible to fund research on what is actually killing the desert tortoise rather than just closing land? I have seen more tortoise on race courses than I have ever seen in closed areas. This is my observation and it is free to you. I am a taxpayer and I care about our environment.

- I want science to dictate decisions regarding WEMO.

- I want science to prevail, not arbitrary land closures.

- I want the right to use public land responsibly.

As it pertains to WEMO I support Alternate E.

John Gil
818 590 8144
18959 Wyandotte St.
Reseda, Ca. 91335
Ama # 499808
District 37 2003 # V20X
Father
Taxpayer
Environmentalist

200

Barbara M. Veale
32566 Saphire Road
Lucerne Valley, California 92356
(760) 248-7208

September 10, 2003

West Mojave Plan
22835 Calle San Juan De Los Lagos
Moreno Valley, CA 92553

RE: Draft Environmental Impact Report and Statement for the West Mojave Plan

Dear Sir:

I was glad to see Appendix J, "Threats to Desert Tortoise Population: A Critical Review of the Literature", which explains that a lot of the tortoise literature is still guess work. I think if we have a couple of years with sufficient rain, none of the endangered species will be endangered.

I was also glad to see Appendix P - "Minerals", which shows how important minerals are in the desert. I do not like to see so much of the desert closed off to mineral exploration. If there is not now a claim, there may be in the future.

Route Designation: I think all routes should remain open. If the route is there, there must be a reason for it to be there. If all routes are open, you will not have to worry about putting up signs. Many of the interesting sights are away from main roads, and how can those who are not physically fit go see them?

Education Program: I like the idea of the Education Program. Many of the city people and some of the desert people do not know how to treat the desert. But, the educators must be multiple-use people.

Lot Split: I do not think someone wanting to split a lot should be charged for mitigation until it is being used, then only what is being disturbed should be mitigated for.

Raven Control: Something must be done about the ravens. Shoot them or poison them, do not relocate them to become a pest elsewhere.

Grazing: Grazing should be allowed all the time. Cattle should not be moved off of areas, and them moved back. It is a waste of time and money. I don't think cattle bother the tortoise.

Afton Canyon: The Mojave River should not be listed as a Wild and Scenic River. People have used it for generations, and should be able to continue to do so.

Private Lands: There should be no net loss of private lands. Our tax base is small enough now, don't take more away.

Alternative A appears to me to be the only one the BLM will approve.

Sincerely,

Barbara M. Veale

Barbara M. Veale