

# CALIFORNIA DESERT BILL

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## HEARING BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

TO

RECEIVE TESTIMONY ON S. 2921, TO PROVIDE FOR THE CONSERVATION, ENHANCED RECREATION OPPORTUNITIES, AND DEVELOPMENT OF RENEWABLE ENERGY IN THE CALIFORNIA DESERT CONSERVATION AREA, TO REQUIRE THE SECRETARY OF THE INTERIOR TO DESIGNATE CERTAIN OFFICES TO SERVE AS RENEWABLE ENERGY COORDINATION OFFICES FOR COORDINATION OF FEDERAL PERMITS FOR RENEWABLE ENERGY PROJECTS AND TRANSMISSION LINES TO INTEGRATE RENEWABLE ENERGY DEVELOPMENT, AND FOR OTHER PURPOSES

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MAY 20, 2010



Printed for the use of the  
Committee on Energy and Natural Resources

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U.S. GOVERNMENT PRINTING OFFICE

61-623 PDF

WASHINGTON : 2010

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For sale by the Superintendent of Documents, U.S. Government Printing Office  
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## CALIFORNIA DESERT BILL

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THURSDAY, MAY 20, 2010

U.S. SENATE,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
*Washington, DC.*

The committee met, pursuant to notice, at 9:30 a.m. in room SD-366, Dirksen Senate Office Building, Hon. Jeff Bingaman, chairman, presiding.

### OPENING STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

The CHAIRMAN. OK, let us get started. Thank you all for being here.

This morning, we receive testimony on S. 2921, the California Desert Protection Act of 2010. This is legislation Senator Feinstein has proposed.

Sixteen years ago, Senator Feinstein shepherded into law one of the most sweeping conservation bills ever. That was the California Desert Protection Act, protecting millions of acres of southern California desert through a combination of wilderness and national park designations. The current bill would expand on the 1994 law with a series of new conservation, recreation, and renewable energy provisions.

Any legislation involving the California desert presents unique and complicated management challenges due to the many competing uses, including military bases, national parks, endangered species habitat, motorized and nonmotorized recreation, mining, and renewable energy development. I know Senator Feinstein spent a great deal of time and effort to try and balance these uses, and I congratulate her not only for her past California desert successes, but also for her continuing efforts as reflected in this bill we are considering.

At almost 180 pages of text, S. 2921 is not a typical park, wilderness, or energy proposal. Because of the broad scope of the bill, the large amount of acreage involved, as well as the many policy issues that are raised by the various conservation and renewable energy proposals, I thought that we should have a hearing before the full committee as the appropriate way for us to begin to understand the many issues that are dealt with.

Title I of the bill would make several new conservation designations, including 2 new national monuments, totaling over 1 million acres. It would designate 250,000 acres of new BLM and Forest Service wilderness, add almost 75,000 acres to the existing national

parks in the region, and establish 5 new off-highway recreation areas.

As Senator Feinstein knows from her work on other bills to designate wilderness in the California desert and elsewhere in the State, any conservation proposals on this scale will bring with them controversy, and we will work with her and Federal agencies to better understand the potential effects of these designations on other uses and address concerns with some of the specific management provisions.

Title II addresses the development of renewable energy on public lands. As I read the bill, these provisions would affect renewable energy authorizations on public lands West wide and not just in California. The energy legislation reported by the committee on a bipartisan basis last summer also addresses the development of renewable energy on public lands, and we need to focus on some of the provisions that I believe may be inconsistent with what the committee reported.

We look forward to working with Senator Feinstein on this whole range of issues. I know we share an interest in promoting the development of renewable energy on appropriate Federal lands, and I certainly support her efforts to protect important natural and cultural desert resources.

Before calling on Senator Feinstein for her statement, let me call on Senator Murkowski for her opening statement.

**STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR  
FROM ALASKA**

Senator MURKOWSKI. Thank you, Mr. Chairman.

Welcome to you, Senator Feinstein. Please know that I have great respect for you, your leadership here in the Senate, and for the people that you represent in the State of California.

While I—and I think certainly on this committee, we have a longstanding tradition of allowing a delegation from a State to take the lead on wilderness bills within their State, and I respect that, I do have some concerns about the bill that we have in front of us. I will just take a brief moment to state what those concerns are.

Primarily, the message that will be sent concerning the development of renewable energy on Federal lands. Many in this body, including myself, believe in the importance of reducing our dependence on oil by developing a new energy economy based on our alternative sources.

But it seems that many times, when we have actual wind or solar or geothermal projects proposed, there are those who will move to kill the project. My concern is that if we move forward without significant changes, that it will encourage more of the “not in my backyard” behavior that we have seen with respect to other renewable energy projects on Federal land.

I do think and agree quite strongly with the chairman that we must diversify our energy sources to include wind, solar, biomass, geothermal, as well as nuclear and other sources. But it has been frustrating when we recognize that it took 10 years to approve off-shore wind farm on the east coast, even more frustrating to see one of the better areas for solar production in the West to be encumbered by national monuments and wilderness areas.

I think that we must be cautious when we oppose renewable energy projects on Federal lands by proposing more wilderness areas and other forms of procedures where we essentially take those lands off the table before our Federal agencies have had an opportunity to complete their assessment, make recommendations as to where to site the projects.

I also will raise a concern about the rights of those who have invested private funds in pursuing the solar permits in the areas that are covered by S. 2921, and who did so at the suggestion of the Bureau of Land Management. As I understand, this bill would negate that investment without compensation.

I do understand that there is a process that would allow the companies that were working on developing the solar permit proposals to get bumped up in line for applications in other areas. But I think there is some question as to whether or not that is adequate compensation for the investments that are made.

I think we recognize that there is an issue that these companies depend on private financing to fund these projects, and we all know how difficult it is to secure the necessary financing in this economy. I am concerned that those who are willing to invest in these projects are going to get gun shy about investing in future projects if when they feel they have got a good project proposed that Congress or the administration or the courts again take the "not in my backyard" protest even before the impacts of the project have been evaluated.

I do look forward to working with the chairman, working with the committee on this issue about the concerns that I have raised and look forward to working with you, Senator Feinstein, as we try to find that balance that does allow for opportunities to truly expand our renewable resources, do so on our public lands, and do so in a way that is able to meet the needs of all involved.

With that, I thank you, Mr. Chairman.

The CHAIRMAN. Senator Feinstein, welcome to the committee and go right ahead.

#### **STATEMENT OF HON. DIANNE FEINSTEIN, U.S. SENATOR FROM CALIFORNIA**

Senator FEINSTEIN. Thank you very much, Mr. Chairman. Thank you for holding this hearing.

Senator Murkowski, thank you as well, and I thank both of you for your comments.

Let me get right to it. The bill I have introduced would designate 2 new national monuments. The first is the Mojave Trails National Monument, and there you have a picture of the very famous Cady Mountains, which are part of it. The Sand to Snow National Monument, and there you have a picture of the Pacific Crest Trail on that Sand to Snow Monument.

The bill would add adjacent lands to Joshua Tree and Death Valley National Parks and the Mojave National Preserve. Now those were all part of my 1994 desert bill. These parts simply fill in and are really done because they have been suggested to us by the Government as positive adds to that. There you see the Castle Mountains.

The bill would permanently protect 5 wilderness study areas as designated wilderness and protect 4 important waterways—the Amargosa River, Deep Creek—as wild and scenic rivers. The bill would also facilitate renewable development on suitable lands, improve the permitting process for wind and solar on public and private land, and enhance recreational opportunities, while ensuring that the training needs of the military are met.

Now here is how this all happened. Following the passage of the Desert Protection Act in 1994, it became evident that the southern part of the Mojave Preserve needed additional protection. There were literally hundreds of thousands of acres in patchwork squares owned by the Catellus Corporation on which private development could happen.

The Wildlands Conservancy at the time was able to raise \$40 million from the private sector. Together with \$18 million of Federal funds, which we put in over 6 years, we were able to purchase some 600,000 acres of these former Catellus inholdings to protect those lands for conservation.

Now I thought all was well. In February of last year, David Myers, who is going to be testifying today, of the Wildlands Conservancy, came to my office in San Francisco. He brought with him charts, photographs, and renderings of huge energy—solar trough facilities—intended for the very inholdings that had been purchased to remain in conservation.

Now, obviously, I viewed that with some surprise. Obviously, I thought, “Oh, my goodness, how did this happen?” But it happened.

Now, up to that point, the largest solar facility in America was approximately 160 megawatts. Yet I learned that some companies were proposing to build solar facilities of sizes that had never been built before. One company in particular proposed to build an 8-mile-square solar facility, 8 miles square, in Sleeping Beauty Valley, which is here, which would have generated 800 megawatts of power.

Now I should also mention that these large solar facilities do, in fact, alter the landscape. The ground is removed. It is leveled. Gravel is placed on it. The troughs go in. The tower goes up. Out-buildings are built. The projects are fenced. So they are very, very large. One 8 square miles is not a small facility. The area is substantially changed.

So, last March, I went out to see exactly where these projects would go. I asked the CEOs of BrightSource, Cogentrix, Southern California Edison, and PG&E to accompany me, and in fact, they did. We were also joined by individual company developers from Solel, Florida Power and Light, and Oak Creek Wind.

We spent the day looking at these lands, and I think it quickly became apparent that land set aside for conservation had been done so for very good reason. We saw prime desert tortoise habitat. We drove to the middle of this beautiful valley. We drove down the famous Route 66. We also stopped at the Pisgah lava flow and the Amboy Crater.

Over the course of many months then, my staff and I met key stakeholders, including Federal, State, and local officials, environmental groups, renewable energy companies, off-highway recreation enthusiasts, hunters, cattle ranchers, mining interests, the



Department of Defense, California's public utility companies, the county officials, and local officials that were involved.

We worked hard to incorporate the vast majority of their suggestions, and out of these meetings, this bill emerged. We tried to achieve a careful balance between conserving the desert's pristine heritage, while creating an efficient process for renewable energy development. We also made sure to incorporate lands designated for recreation and military training purposes.

So far, we have assembled a diverse coalition of support. I would like to submit to the committee 76 endorsements for the record.

The CHAIRMAN. We are glad to have that in the record.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

The bill is supported by several energy companies, including Cogentrix, Abengoa, and Edison International, the parent company of Southern California Edison. Southern California Edison, who will testify today, is one of the largest electric utilities in the country. It provides power to more than 13 million people across 11 counties in central, coastal, and southern California. They are, in fact, the largest purchaser of renewable energy in the entire country, particularly solar. Their support is very important to me.

One thing we learned through this process is that the Federal renewable energy permitting system was broken. Until recently, the BLM process had operated on a first-come, first-served basis. It didn't distinguish between a viable project and a speculative one.

In fact, over the past 5 years, more than 100 applications have been submitted to build utility-scale renewable energy projects on public lands, and not a single project has received a permit. Under this status quo, no one wins.

We have written this bill to try to help fix the system and ensure that the development of wind and solar occurs on suitable land. We have done this by streamlining the Bureau of Land Management permitting process for renewable energy development, seeing that disturbed private lands are not penalized, but can also be used for development.

When I drove through the area with biologists, environmentalists, what they pointed out to me were acres and acres of disturbed private land that could be used, but in this process, it was all public land. Now I happen to believe land is made public for a purpose, and one of those purposes is generally to conserve it and not to have development on it. Seeing that disturbed private lands are not penalized, but can also be used for development, which we do in this bill.

Improving and expanding the existing transmission infrastructure, which actually runs right through this area. Requiring that, in addition to the BLM, the Forest Service and the Department of Defense evaluate their lands and set up renewable energy development on that land which is suitable.

The BLM has identified 350,000 acres in California as solar energy study areas. Now California needs roughly 120,000 to 150,000 acres to meet the 33 percent renewable electricity goal by 2020. That goal is actually the highest of any State, and we can easily achieve twice that amount through the BLM zones.

Now, not one acre of the proposed monument is within these BLM solar study zones. Not one acre of what I propose is within

the solar study zones. The bill also has no negative impact on any of the 9 solar and 3 wind “fast-track” BLM proposals. Nor does it impact the 4,803 megawatts of solar energy under review at the California Energy Commission.

We have worked a map, which we will submit for your consideration, which clearly shows those zones and the fact that they do not conflict. Additionally, there are transmission corridors that can be improved to accommodate renewable power.

I would like to close by making one final recommendation. I would have no objection if the committee were to add an amendment to establish a new solar energy study area in the western Mojave. It is believed that there are literally hundreds of thousands of acres directly north of Edwards Air Force Base, which should be seriously evaluated for solar potential. I have encouraged the BLM to do this administratively, and I would welcome an amendment by the committee in this bill to achieve that.

I want to thank you for the opportunity to testify, and I am very grateful, Mr. Chairman, that you have scheduled this. I would look forward to working with the committee on any accommodations or changes that you might want to make.

The CHAIRMAN. Thank you very much for your excellent testimony.

Why don't we—unless Senator Murkowski or Senator Udall have questions, why don't we allow you to go on with your other duties, and we have 9 witnesses on 2 panels. So we would go ahead with the first panel at this point.

It is made up of 3 Government representatives: Honorable Robert Abbey, who is the Director of the BLM in the Department of Interior; Dr. Dorothy Robyn, who is the Deputy Under Secretary of Defense for Installations and Environment with the Department of Defense; and Faye Krueger, who is the Acting Associate Deputy Chief with the National Forest System, for the Forest Service in the Department of Agriculture.

So we are glad to have all 3 of you here, and I think, as is our usual custom, if you could take 5 or 6 minutes each and just make the main points. Obviously, we will include your complete statement in the record, and then we will have some questions.

Mr. Abbey.

**STATEMENT OF ROBERT V. ABBEY, DIRECTOR, BUREAU OF  
LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR**

Mr. ABBEY. Thank you, Mr. Chairman and members of the committee.

The Department of Interior appreciates the invitation to testify on S. 2921, the California Desert Protection Act of 2010. S. 2921 represents a milestone in Senator Feinstein's 2 decades-long effort to conserve the deserts of southern California while providing for appropriate public access, recreation, and development, including the growing demand for renewable energy development.

This bill provides a comprehensive approach to future management of Federal lands in the California Desert Conservation Area. In addition, S. 2921 strives to enhance the efficiency and responsiveness of the wind and solar energy development permitting process on public lands throughout the West.

The Department of the Interior supports the goal of S. 2921 and looks forward to working closely with Senator Feinstein and others as this bill moves through the legislative process.

I am accompanied today by Jim Abbott, the BLM's California State Director, and Ray Brady, Manager of the BLM's Energy Policy Team.

The California Desert Conservation Area contains over 25 million acres and includes 16 million acres of public lands administered by the Department of the Interior. The management of this conservation area's fragile resources must be balanced with the public's needs for recreation access, energy development, rights-of-way, and other uses.

Responsible renewable energy development is one of the department's highest priorities, and the BLM is balancing its renewable energy goals with the protection of its treasured landscapes, wildlife, and cultural resources. We have expanded our efforts to evaluate applications for wind and solar energy projects by establishing Renewable Energy Coordination Offices and expanded renewable energy staffing in 10 western States.

In addition, the BLM and the Department of Energy are preparing a Solar Energy Development Programmatic Environmental Impact Statement to address this use. Under consideration is a plan for selectively siting solar energy projects on BLM-administered public lands in the Southwest that have the best potential for utility-scale solar energy development. Landscape-scale planning and zoning could provide a more efficient process for permitting and siting this type of development.

The department is committed to working closely with Senator Feinstein, this committee, and the Congress on addressing the renewable energy national priority and the many challenges in accommodating a multitude of uses in California's deserts.

Title I of S. 2921 is the outcome of Senator Feinstein's extensive local collaborative effort. Her office engaged a broad cross-section of desert groups and interests in dialog, meetings, and field trips. This effort achieved a significant level of consensus among participating groups, most notably consensus regarding the bill's conservation provisions, and it led to important compromises concerning designation boundaries, accommodations for future military expansions, allowances for renewable energy development and transmission corridors, and many other uses.

Title I includes the establishment of 2 new national monuments, creation of 3 new wilderness areas and expansion of 2 existing wilderness areas, designation of potential wilderness areas, designation of 5 Off-Highway Vehicle recreation areas, expansion of 3 existing units of the National Park Service, and additions to the National Wild and Scenic River System.

Title II of S. 2921 proposes to improve the wind and solar energy development permitting process on BLM-administered lands throughout the West and balance renewable energy development and conservation in the California desert. Key provisions of title II include designation of BLM Renewable Energy Coordination Offices in each BLM State with significant wind and solar resources; distribution of revenue receipts from wind and solar projects on BLM-administered public lands; development of an MOU with af-

affected Federal agencies to address the processes for improving renewable energy project review; deposit of solar and wind energy revenues in the existing oil and gas BLM Permit Improvement Fund; and other miscellaneous provisions.

The Department of the Interior supports the goals of S. 2921, but we do have numerous substantive as well as minor and technical modifications to recommend. We look forward to working closely with Senator Feinstein, the member of this committee, and our Federal partners as S. 2921 moves through the legislative process. [The prepared statement of Mr. Abbey follows:]

PREPARED STATEMENT OF ROBERT V. ABBEY, DIRECTOR, BUREAU OF LAND  
MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON S. 2921

Thank you for the invitation to testify on S.2921, the California Desert Protection Act of 2010. S. 2921 represents a milestone in Senator Feinstein's two decades-long effort to conserve the deserts of southern California while providing for appropriate public access, recreation, and development, including the growing demand for renewable energy development. This bill, which amends the 1994 California Desert Protection Act (CDPA) (Public Law 103-433) and Section 365 of the Energy Policy Act of 2005, provides a comprehensive approach to future management of federal lands in the California Desert Conservation Area (CDCA). In addition, S. 2921 strives to enhance the efficiency and responsiveness of the wind and solar energy development permitting process on public lands throughout the west. We defer to the Department of Agriculture and the Department of Defense regarding provisions concerning their lands and interests.

The Department of the Interior supports the goals of S. 2921 and looks forward to working closely with Senator Feinstein, the Committee, and our federal partners as this bill moves through the legislative process. Given the complexity of the bill, we also note that the Department will provide a letter detailing our comments to the Committee at a later date. I am accompanied today by Jim Abbott, the Bureau of Land Management's (BLM) acting State Director in California and Ray Brady, Manager of BLM's Energy Policy Team.

*Background*

The CDCA contains over 25 million acres and includes 16 million acres of public lands administered by the Department. It was the only public land area in the country singled out for special management in the Federal Land Policy and Management Act of 1976 (FLPMA). Section 601 of FLPMA recognized the unique location of the CDCA which is adjacent to the metropolitan areas of the Southern California coastal region and its estimated 20 million citizens. This juxtaposition has always meant the management of the CDCA's fragile resources must be balanced with the public's need for recreation access, energy development, rights-of-way, and other uses.

The CDCA Plan, mandated by FLPMA and completed in 1980, was vast in scale, ambitious in goals, and designed to accommodate many future uses. In the early 1990s, however, concerns about conservation balance led to the enactment of the 1994 CDPA, which amended the Desert Plan on a broad scale. The current focus on renewable energy development is again raising concerns about how much of the Desert is protected, and how and where the national, region, and state priorities for renewable energy development will be accommodated. S. 2921 proposes to amend both the Desert Plan and the 1994 CDPA to address these public concerns and national priorities.

Responsible renewable energy development is one of the Department's highest priorities, and the BLM is balancing its renewable energy goals with the protection of its treasured landscapes, natural resources, wildlife, and cultural resources. We have expanded our efforts to evaluate applications for wind and solar energy projects by establishing Renewable Energy Coordination Offices (RECOs) and expanded renewable energy staffing in 10 western states. Renewable energy policies on payment of rents, required bonding, diligent development, and best management practices designed to support and guide progress in the field are being developed and issued.

In addition, the BLM and the Department of Energy are preparing a Solar Energy Development Programmatic Environmental Impact Statement (PEIS). Under consideration is a plan for selectively siting solar energy projects on BLM-administered public lands in the Southwest that have the best potential for utility-scale solar en-

ergy development. The plan will include mandatory best management practices. Landscape-scale planning and zoning could provide a more efficient process for permitting and siting this type of development. The draft Solar PEIS is expected to be released for public comment near the end of the year.

The BLM is also reviewing 34 “fast track” renewable energy projects that include 14 solar energy projects with a potential capacity of nearly 6,500 MW; 7 wind energy projects with a potential capacity of about 800 MW; 6 geothermal projects with a potential capacity of 285 MW, and 7 transmission projects traversing over 750 miles of BLM-administered lands. Through the “fast track” process, the Bureau is conducting full environmental analysis and public participation while focusing our staff and resources on the most promising renewable energy projects. The U.S. Fish and Wildlife Service (FWS) and the National Park Service (NPS) are also engaged in this review.

In California specifically, the BLM’s two RECO offices are fully staffed and operational with work proceeding on more than a dozen fast track projects. These offices are working to streamline application processing and enforce due diligence on pending applications to avoid speculation. The state of California is lead in the preparation of a Desert Renewable Energy Conservation Plan (DRECP), with the BLM and the U.S. Fish and Wildlife Service as full partners, to take a long-term strategic view of where best to site these important projects in the future, including on private lands already disturbed from past activities.

The Department is committed to working closely with Senator Feinstein, the Committee and the Congress on addressing the renewable energy national priority and the many challenges in accommodating a multitude of uses in California’s deserts.

#### *Title I—“California Desert Conservation and Recreation”*

Title I of S. 2921 is the outcome of Senator Feinstein’s extensive local collaborative efforts. Her office engaged a broad cross-section of desert groups and interests in dialogue, meetings, and field trips. This effort achieved a significant level of consensus among participating groups—most notably consensus regarding the bill’s conservation provisions—and it led to important compromises concerning designation boundaries, accommodations for future military expansions, allowances for renewable energy development and transmission corridors, and many other issues.

Title I includes—the establishment of two new National Monuments; creation of three new wilderness areas and expansion of two existing wilderness areas; designation of potential wilderness areas; establishment of five Off-Highway Vehicle (OHV) Recreation Areas; expansion of three existing units of the National Park System and additions to the National Wild and Scenic River System.

#### *Conservation Designations*

The spectacular and diverse landscapes of the BLM’s National Landscape Conservation System (NLCS) include 16 National Monuments. S. 2921 would add the Mojave Trails National Monument and the Sand to Snow National Monument to that list. The proposed Mojave Trails National Monument (NM) encompasses approximately 940,000 acres of BLM-administered public lands in the desert of southeastern California along historic Route 66 between Needles and Ludlow, California. It surrounds six existing designated BLM wilderness areas and lies to the south of the NPS’ Mojave National Preserve. The Mojave Trails NM would protect critical wildlife corridors between Joshua Tree National Park and the Mojave National Preserve as well as the best preserved section of the “Mother Road” (historic Route 66). Within the proposed NM are nearly 200,000 acres of “Catellus lands” acquired by the BLM through donation and purchase with Land and Water Conservation Fund monies in the late 1990s for conservation purposes. The BLM currently manages much of this area to protect the desert environment through administratively-created Areas of Critical Environmental Concern (ACECs) and Desert Wildlife Management Areas (DWMAs) protecting the habitat of the threatened desert tortoise and many other listed and sensitive species.

The proposed Sand to Snow National Monument straddles a biologically diverse terrain and includes approximately 73,000 acres of BLM-administered lands and 60,000 acres of lands under the management of the U.S. Forest Service within the San Bernardino National Forest. The proposed monument extends from the snows of the 11,000 foot Mount San Geronio on the west down through the sands of the Sonoran and Mojave deserts, on to the unusual desert riparian oasis of Big Morongo Canyon, and finally connects in the east to the stark beauty of Joshua Tree National Park.

Each of the National Monuments and National Conservation Areas (NCAs) designated by Congress and managed by the BLM is unique. However, all of these des-

ignations have certain critical elements in common, including withdrawal from the public land, mining, and mineral leasing laws; OHV use limitations; and language that charges the Secretary of the Interior with allowing only those uses that further the purposes for which the area is established. The designations proposed in S. 2921 are consistent with these principles and we support their designation.

The Department believes it is critical to maintain the integrity of existing designated federal rights-of-way and utility corridors throughout the United States. As we develop renewable energy throughout the west, new transmission capacity will be needed to bring this clean energy to the population centers. S. 2921 recognizes the critical role played by the public lands within the proposed Mojave Trails National Monument in the transmission of energy to southern California. As such, the bill specifically makes provisions for both existing and future energy transmission rights-of-way. In addition, the bill recognizes and preserves this portion of the West Wide Energy Corridor, established under the provisions of section 368 of the Energy Policy Act of 2005, which bisects the proposed monument. The Department supports these provisions.

While a variety of multiple uses continue in the BLM's NCAs and National Monuments, these energy transmission provisions are unusual and represent specific collaboration with stakeholders regarding the unique needs and values of this specific area. We do not anticipate similar management direction in future proposed monuments or NCAs. The Department would like the opportunity to work with the Committee on a number of specific provisions in S. 2921 regarding both the Mojave Trails and Sand to Snow National Monument.

At present there is only one grazing allotment within the proposed Mojave Trails NM. Section 1303(c) (1) provides that the monument designation does not affect that existing permit, and we do not oppose this subsection. However, subsection 1304(c) (2) and (3) makes allowance for the federal government to acquire the base property of this individual rancher, and associated grazing privileges. While we have no objection to acquiring this private inholding, the BLM has serious concerns about the practice of federal buyouts of grazing privileges in general. Grazing permits and leases are privileges and not rights, a position reaffirmed most recently by the Supreme Court in *Public Lands Council v. Babbitt*, 529 U.S. 728 (2000). Grazing permits do not rise to the level of a protectable property interest and they do not confer a right, title or interest to the lands of the United States. The provisions of Public Law 111-11, the Omnibus Public Land Management Act of 2009, that address the management of grazing in Owyhee County, Idaho, provide an alternative approach to a proposed reduction in grazing.

There are currently 12 pending renewable rights-of-way energy applications on the public lands within the proposed Mojave Trails NM, encompassing over 200,000 acres; six are for solar authorizations and six are for wind authorizations. These right-of-way applications do not represent valid existing rights and perfecting these applications would not be allowed after designation of the monument. Section 1307 provides authority to the six solar applicants to apply for replacement sites for other lands that are not currently encumbered by other applications or for lands within Solar Energy "Zones" to be designated by the Solar Programmatic EIS. Although these applications do not represent valid existing rights, the bill language would disrupt the application process. We would like the opportunity to work with the sponsor and the Committee to explore alternatives to address the concerns that have been raised regarding these applications.

Section 1501 would designate the 86,000-acre Avawatz Mountains Wilderness, 8,000-acre Great Falls Basin Wilderness, the 80,000-acre Soda Mountains Wilderness, and the 30,000 acre Bowling Alley Wilderness, and would expand the existing Golden Valley Wilderness by 2,600 acres, the Kingston Range Wilderness by 53,000 acres, and the Death Valley National Park Wilderness by approximately 59,000 acres. The Department supports each of these designations. These proposed National Wilderness Preservation System additions will protect fragile desert ecosystems and provide important habitat for a diversity of plant and animal life. They also serve as a unique and irreplaceable living research laboratory. The Avawatz Mountains has been identified as an important link for regional habitat connectivity, enabling wildlife to move across a large landscape. All of the proposed wilderness areas provide opportunities for hiking, rock-climbing and horseback riding, for those who wish to experience the desert solitude and an outstanding backcountry experience.

We would like the opportunity to work with Senator Feinstein and the Committee on mapping issues as well as management language modifications in both section 1502 and the related section 102(b) of S. 2921.

Section 1503 proposes to release over 120,000 acres of BLM-administered wilderness study areas (WSAs) from WSA restrictions thereby allowing a full range of

multiple uses. We support this provision and recommend additional small WSA releases in the Kingston Range WSA, Avawatz Mountains WSA, Death Valley WSA and White Mountain WSA. These lands are small portions of WSAs that were not designated wilderness by this or previous legislation.

Sections 1601 through 1604 create the 75,000-acre Vinagre Wash Special Management Area (SMA) and identify four future potential new wilderness areas or expansions of existing designated wilderness areas within the SMA. The Secretary is directed to preserve the character of these lands for eventual inclusion in the National Wilderness Preservation System with limited specific exceptions for military uses. Designation of the lands would occur when the Secretary of the Interior, in consultation with the Secretary of Defense, determines that all activities on these lands are compatible with the Wilderness Act of 1964.

On other lands within the SMA, 112 miles of motorized vehicle routes are designated. In recognition of the importance of the lands within the SMA to the Quechan Indian Nation and other Indian tribes, this section includes special protections of tribal cultural resources and provides for a two-year study of those resources and related needs.

Finally, the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended in Title I by adding segments of five rivers to the National Wild and Scenic River System. Three of these, the Amargosa River, Surprise Canyon Creek and Whitewater River, cross public lands managed by the BLM and NPS. All three of these are important and rare riparian areas in the deserts of southern California providing habitat for a number of threatened, endangered and sensitive species.

We support these designations and would like to work with the Committee on technical issues.

#### *National Park Service Transfers*

Over 72,000 acres of BLM-managed lands would be transferred to the NPS under the provisions of sections 1701-1703 for the expansion of Death Valley and Joshua Tree National Parks and Mojave National Preserve. These provisions will enlarge each unit to improve resource protection and management efficiencies. The BLM and the National Park Service support these provisions and would like to work with the Sponsor and Committee staff to address mapping issues, make management language modifications, and to clarify future management of rights-of-way and land acquisition authority of the agency in these areas.

#### *OHV Recreation*

Section 1801 designates five OHV Recreation Areas totaling nearly 345,000 acres. These areas were administratively designated as "open" areas for OHVs in the CDCA Plan of 1980. The BLM supports each of these designations as they would provide congressionally designated areas for this popular recreational activity in the California Desert. BLM-California estimates that these areas receive nearly 600,000 visitor days of use annually. We would appreciate the opportunity to work with Senator Feinstein and the Committee on minor and technical amendments to this section.

#### *Miscellaneous Provisions*

Sections 1901 through 1905 contain a number of miscellaneous provisions including transfers and land exchanges within the State of California, studies on climate change and tribal issues, and restrictions on donated and acquired lands. Specifically, the Secretary is directed to transfer nearly 1,000 acres of BLM-administered lands within the Table Mountain Wilderness Study Area to the California Department of Parks and Recreation; develop a process, in consultation with the California State Lands Commission, to exchange isolated parcels of federal and state land within the California Desert Conservation Area; develop a process, in consultation with the Secretary of Defense and the Commission, to purchase or exchange parcels of state lands within the area of expansion for the Twentynine Palms Marine Corp Base; convey approximately 3,500 acres of BLM-administered lands to the Department of Transportation for airport expansion in Imperial County; and grant the State Lands Commission right of first refusal to exchange state land for BLM-administered land within the city limits of Needles, California. The Secretary is also directed to complete studies on the impacts of climate change on the CDCA and a tribal resource management plan on the Xam Kwatchan Trail. Lastly, Section 1904 would prohibit certain uses on lands acquired for the Conservation Area through the Land and Water Conservation Fund and on lands donated to the Conservation Area for conservation purposes.

We generally do not object to these miscellaneous provisions and propose to work with the Sponsor and the Committee on minor modifications. For example, we pro-

pose that the land exchanges be conducted in accordance with FLPMA, standard appraisal practices, and reflect fair market value exchanges.

Section 520 prohibits the BLM from processing any right-of-way applications for projects that propose to use native groundwater from aquifers adjacent to the Mojave National Preserve in excess of the estimated recharge rate as determined by the United States Geological Survey (USGS). The USGS has developed a model to estimate recharge in the desert southwest using precipitation and air temperature data from 1970 through 2006. Rainfall, runoff, and recharge estimates for groundwater basins adjacent to Mojave National Preserve could be extracted from this model to assist in the evaluation of right-of-way applications for projects adjacent to the Mojave National Preserve. Continued hydrologic monitoring will be necessary to avoid any significant impacts on the groundwater resource and other environmental resources supported by groundwater. The Department has no objection to this provision, which would strengthen protection of this critical resource by requiring a careful and balanced review of development proposals in this area.

*Title II—“Desert Renewable Energy Permitting”*

Title II of S. 2921 proposes to modify the wind and solar energy development permitting process on BLM-administered lands throughout the West, and balance renewable energy development and conservation in the California Desert. Among its key provisions, Title II requires the designation of BLM Renewable Energy Coordination Offices (RECOs) in each BLM state with significant wind and solar resources; requires the distribution of revenue receipts from wind and solar projects on BLM-administered public lands; requires the development of a Memorandum of Understanding (MOU) with affected federal agencies to address the processes for improving renewable energy project review; places solar and wind energy revenues in the existing oil and gas BLM Permit Improvement Fund; and provides other miscellaneous provisions aimed at improving and streamlining the wind and solar energy application process.

*Renewable Energy Coordination Offices*

Section 201 would require the Secretary to designate at least one BLM field or district office in ten western states to serve as RECOs. The BLM has already established four RECOs in the states with the greatest renewable energy development demand: Arizona, California, Nevada, and Wyoming. In addition, the BLM has established renewable energy teams in six other western states—Colorado, Idaho, Montana, New Mexico, Oregon/Washington and Utah—to support the timely processing of renewable energy project applications. The BLM supports the RECO process but has concerns about the specific legislative mandates in this bill. We would like to work with Senator Feinstein and the Committee to ensure the Secretary maintains flexibility in determining the number and location of RECOs. This flexibility is necessary in order to maximize workload and management efficiencies.

S. 2921 recognizes the importance of improving the renewable energy permit process on federal lands throughout the west. The bill specifically requires the development of an MOU among affected federal agencies to address RECO coordination and to establish a single multiagency joint process for the review and approval of renewable energy projects. We support the need for improved coordination, and we recommend that the section be amended to include Department of Energy as a party to that MOU. However, we oppose the 90-day period for completion of an MOU, which would involve ten states and numerous and separate authorities for renewable energy, as this short timeframe would not provide the entities involved with sufficient time to develop an effective agreement. We would be happy to discuss alternative time frames.

*Renewable Energy Receipts*

Section 201 (a) provides for the deposit of wind and solar energy receipts into the existing oil and gas BLM Permit Processing and Improvement Fund, authorized under Section 365(a) of the Energy Policy Act. This fund is currently funded by receipts from oil and gas operations pursuant to separate authorities and responsibilities under the Mineral Leasing Act. The BLM has authority under the Mineral Leasing Act to authorize oil and gas operations on other federal lands. However, the BLM does not possess similar authorities to administer wind and solar development on other federal lands. As such, the bill would blend revenues from programs with different authorizing statutes and regulations, thus creating significant administrative and financial management issues.

We also have serious concerns regarding the diversion of solar and wind energy receipts from the Treasury, as this change in the revenue distribution formula would have significant long term costs. We would like to work with the Committee to resolve these concerns. The President’s fiscal year 2011 Budget proposes to termi-



nate the BLM Permit Processing Improvement Fund for the oil and gas program, replacing it instead with a combination of discretionary appropriations and user fees that have a clear connection to program funding needs. The Department strongly supports renewable energy development on the public lands, as evidenced by the attention and funding BLM's program has received in the President's Budget and through funding made available by the American Recovery and Reinvestment Act. Under Section 201, the revenue from wind and solar energy authorizations collected by the BLM would be distributed as follows: states (25%), counties (25%), BLM Permit Processing Improvement Fund (40% through 2020), Land and Water Conservation Fund (LWCF) (40% after 2020), and a Solar Energy Land Reclamation, Restoration, and Mitigation Fund (10%).

S. 2921 also contains provisions addressing performance bonds for reclamation of renewable energy sites upon termination of a project. The BLM already requires a performance and reclamation bond for all renewable energy project authorizations sufficient to cover the costs of reclamation and restoration. It is appropriate that all such costs remain the responsibility of the renewable energy project developer and not the federal taxpayer.

#### *Renewable Energy Application Process*

Section 202 contains provisions to streamline the solar and wind energy application process for projects on lands administered by the Secretary of the Interior such as: establishing timeframes for processing and evaluating wind and solar projects; providing guidance to deny and prioritize wind and solar right-of-way applications; and requiring a wind and solar application fee. The issuance of right-of-way permits for renewable energy projects is a discretionary decision. The BLM's existing regulations provide the authority to deny right-of-way applications based on several factors including when the proposed use is inconsistent with the BLM's existing land use plan, would not be in the public interest, would be inconsistent with FLPMA and other laws, or when the BLM determines that an application is deficient.

Section 202(h) requires a 50% refundable application processing fee (deposit) upon acceptance of a right-of-way application for a wind or solar facility on BLM-administered lands. Under existing authorities and regulations, the BLM currently collects full cost recovery as costs are incurred throughout the wind and solar application process. Due to the difficulty in estimating 50% of the total cost for processing an application upfront, the BLM recommends continuing its current cost recovery process.

#### *Mitigation Zones*

Section 205 describes a mechanism to allow payments into a federally administered mitigation fund to facilitate the review of renewable energy projects on non-federal land under Section 7 of the Endangered Species Act (ESA). While we share the objective of finding a means whereby projects on non-federal lands can be considered within the same timeframes as those on public lands, we have serious concerns with the establishment of new mandatory funding, supplemented by additional appropriations, and we would like to work with the committee to resolve these concerns.

#### *Miscellaneous Provisions*

Sections 203 through 208 contain a number of miscellaneous provisions including the following: requiring a Solar Programmatic Environmental Impact Statement (EIS); establishing a Habitat Mitigation Zone program in the California Desert Conservation Area; establishing a categorical exclusion for meteorological site testing and monitoring; and requiring various renewable energy reports to Congress. The bill would also require RECOs to prepare environmental reviews for renewable energy projects under the Habitat Mitigation Zone program on non-federal lands. This is a significant expansion of the role and responsibilities of the BLM RECOs, and we recommend deleting this provision. In addition, we recommend minor technical corrections throughout these sections.

#### *Conclusion*

The Department of the Interior supports the goals of S. 2921 and has numerous substantive as well as minor and technical modifications to recommend. Generally the bill includes substantial workloads within short timeframes which may be overly optimistic; we want to insure that the goals of the legislation can be realistically achieved. We look forward to working closely with Senator Feinstein, the Committee, and our federal partners as this bill moves through the legislative process.

The CHAIRMAN. Thank you for your statement.

Dorothy Robyn, we are glad to see you here in your new capacity.

**STATEMENT OF DOROTHY ROBYN, DEPUTY UNDER SECRETARY OF DEFENSE, INSTALLATIONS AND ENVIRONMENT, DEPARTMENT OF DEFENSE**

Ms. ROBYN. Thank you, Senator Bingaman, and thank you for the other members of this distinguished committee for allowing me the opportunity to testify today.

The California Desert Protection Act represents a significant and laudable effort to preserve the environment and promote the development of renewable energy while, at the same time, protecting the ability of the U.S. military to carry out its mission. The Department of Defense supports all 3 of these goals.

Renewable energy represents a critical plank in the Department's energy security platform. Military installations, many of them located in the Southwest and along our coasts, are well-situated to support large-scale solar, wind, and geothermal energy projects. Such projects can help the department achieve 2 important goals.

First, renewable energy can help us reduce our costly reliance on fossil fuels and the related greenhouse gas emissions they generate. The Department of Defense has pledged to reduce its greenhouse gas emissions by a third over the next decade, and the expansion of renewable energy development on our installations will be key to meeting that goal.

Second, the development of renewable energy can help installations provide for greater mission assurance. When combined with microgrid technology and energy efficiency investments that significantly reduce demand, distributed renewable energy sources can assist in allowing military installations to carry out mission-critical activities in the event of disruption to the electricity grid.

For these and other reasons, we have been actively pursuing solar, wind, geothermal, and other forms of renewable and alternative energy. For example, Nellis Air Force Base, where the President spoke a year ago, in southern Nevada built a 1-megawatt photovoltaic solar array. Nellis saves \$1 million a year in electricity costs and avoids 24,000 tons of carbon dioxide emissions.

The military's interest in renewable is nothing new. Naval Air Weapons Station China Lake in California has been operating a 270-megawatt geothermal plant since 1987. The department is also doing a significant amount of R&D on renewable energy. The Navy is looking at ocean thermal energy conversion, OTEC. A program that I oversee is using DoD installations as a testbed for next-generation renewable and other forms of energy technology.

Those technologies that prove effective, the military can help create a market for them, as it has done with aircraft, electronics, and the Internet. So, in many, many ways, we are deeply supporting renewable energy, but specific projects can pose problems for us.

The siting of a large-scale renewable energy project on or near a military installation may not be compatible with a current or projected mission. The issue of wind turbines and radar comes to mind. I have been dealing with that lately.

A second potential conflict arises from the fact that military installations, which represent some of the best protected and most pristine land in the Federal inventory, are home to many threatened and endangered species, more than 300 to be exact. An instal-

lation may not be able to, in all cases, accommodate the construction of, say, a large solar facility if it would adversely affect sensitive habitat.

We are grateful to Senator Feinstein for recognizing how important her legislation is to the military and for working so cooperatively with the department's regional environmental staff in California prior to introducing the bill. As a result of that collaboration, the bill incorporates many provisions that address and protect our operations.

Let me highlight several things where our initial review suggests that we would like to have further discussion. First, in Title I, we see many potential benefits to the bill's basic approach, namely the designation of large monument and wilderness areas as off limits to development. I lay out a number of reasons why that would have positive benefits for military installations.

It could, depending on—the devil is in the details, depending on where the—if that serves to steer development to other areas, that could conceivably present a problem for us. So we need to do a more detailed site-by-site analysis of exactly what is in the bill in order to determine that.

In title II, there are 2 specific sections that raise potential concerns for us. Section 206 calls for the Defense Department and other Federal agencies to do a programmatic Environmental Impact Statement. We like that approach for a variety of reasons.

However, we are concerned with the time restrictions included in the bill. For the results of this programmatic EIS to improve the quality of our siting process and our land management decisions, we need to use a rigorous and complete analysis. We believe it will take significantly more time than currently provided in the bill.

Second, section 201 calls for BLM to create Renewable Energy Coordination Offices in 10 States. It is not clear from the bill if the intent is for those offices to have permitting authority for all Federal lands in these States or only for those lands currently managed by the BLM. We have overriding responsibility to protect our ability to test, train, and operate on all of our installations, including those formed in whole or in part from lands withdrawn from the public domain.

The Department of Defense already has a permitting process, under its separate authorities, for lands under its management. This process works well to ensure that appropriate energy production occurs on these lands, without interfering with the mission of the department. Although our own permitting process would no doubt benefit from additional coordination with the permitting process of BLM, it would not be beneficial to limit our authority with regard to permitting on our installations.

In closing, we strongly support the goals of S. 2921. We like many of the approaches embodied in the bill. We will provide additional views on the bill in the near future, and along with the other Federal agencies here today, we look forward to working closely with the committee in the coming months to address the issues that I have highlighted today.

Thank you very much.

[The prepared statement of Ms. Robyn follows:]

PREPARED STATEMENT OF DOROTHY ROBYN, DEPUTY UNDER SECRETARY OF DEFENSE,  
INSTALLATIONS AND ENVIRONMENT, DEPARTMENT OF DEFENSE

Thank you for the opportunity to testify today and provide preliminary comments on S. 2921, the California Desert Protection Act of 2010, introduced by Senator Feinstein. This bill represents a significant and laudable effort to preserve the environment and promote the development of renewable energy while at the same time protecting the ability of the U.S. military to carry out its mission. The Department of Defense supports these goals and we want to work closely with the committee to ensure that military, renewable energy, and environmental equities are protected as you further develop this legislation. We defer to the Department of Interior and Agriculture with respect to provisions that solely concern their lands and interests.

As the Quadrennial Defense Review made clear, crafting a strategic approach to energy and climate change is a high priority for the Department. This reflects mission considerations above all. The Department's own analysis confirms what outside experts have long warned: our military's heavy reliance on oil and other fossil fuels creates significant risks and costs at a tactical as well as a strategic level. They can be measured in lost dollars, in reduced mission effectiveness and in U.S. soldiers' lives. Unleashing warfighters from the tether of fuel and reducing our military installations' dependence on a costly and potentially fragile power grid will not simply enhance the environment, it will significantly improve our mission effectiveness.

Renewable and alternative energy represents a critical plank in the Department's energy security platform. Military installations-many of them located in the Southwest and along our coasts-are well-situated to support large-scale solar, wind and geothermal energy projects that are carefully sited and developed in ways that are consistent with our current and projected military mission requirements. The development of such mission-compatible renewable energy to support our military installations can help the Department achieve two important goals.

First, it can help the Department reduce its costly reliance on fossil fuels and the related greenhouse gas emissions they generate. DoD's permanent installations, which include some 300,000 buildings and 2.2 billion square feet of floor space, account for about 28 percent of the Department's total energy usage (\$4 billion in 2009). Installations account for even more of DoD's greenhouse gas emissions-nearly 40 percent-because of their reliance on the commercial electricity grid, which is heavily powered by coal. The Department has pledged to reduce greenhouse gas emissions from non-combat activities by 34 percent over the next decade, and the expansion of renewable energy development on our installations will be key to meeting that goal.

Second, combined with appropriate technologies and necessary energy assurance policies, the development of renewable energy can help military installations provide for greater mission assurance. According to the Defense Science Board, the increasing fragility of the commercial grid to cyberattack, natural disaster and other threats places the continuity of critical military missions at growing risk.<sup>1</sup> When combined with microgrid technology and energy efficiency investments that significantly reduce demand, distributed renewable energy sources can assist in allowing installations to carry out mission-critical activities and support restoration of the grid in the event of disruption.

The military has been actively pursuing solar, wind, geothermal and other forms of renewable and alternative energy to achieve these and other goals. For example, Nellis Air Force Base in southern Nevada built a 14-megawatt (MW) photovoltaic solar array: more than 72,000 solar panels track the sun to generate 30 million kilowatt-hours of electricity per year-equivalent to a quarter of the total power used at the 16,000+ population base. As with most renewable energy projects on military installations, Nellis took advantage of third-party financing. Nellis saves \$1 million a year in electricity costs and avoids 24,000 tons of carbon dioxide emissions.

The military's interest in renewable energy is nothing new. Naval Air Weapons Station China Lake in California has been operating a 270-MW geothermal plant since 1987. The heat from 166 wells, some of them 12,000 feet deep, is sufficient to light up 180,000 homes. The Navy is helping the Army tap into geothermal resources at its Weapons Depot in Hawthorne, Nevada, and that project will be capable of producing 30 MW of clean power. Working to further develop and deploy advanced geothermal technologies to make this a viable strategy at additional installations may be an important element of our energy assurance program.

Also relevant is the Department's effort to use DoD's installations as a testbed for next-generation energy technologies coming out of industry, Department of En-

<sup>1</sup>"More Fight-Less Fuel," Report of the Defense Science Board Task Force on DoD Energy Strategy, February 2008.

ergy and university laboratories. These include technologies to improve the conservation and efficiency of building energy, control and management of local energy loads, as well as on-site alternative and renewable energy generation. DoD can assess the performance, cost, and environmental impact of these advanced, pre-commercial technologies. For those technologies that prove effective, DoD can serve as an early customer, helping create a market, as it did with aircraft, electronics and the internet. This approach is key to meeting the Department's needs but it is also an essential element of a national strategy to develop and deploy the next generation of energy technologies needed to support our built infrastructure.

Despite the Department's support for renewable energy, specific renewable energy projects can pose problems for the military. Let me discuss three situations.

First, the siting of a large-scale renewable energy project on or near a military installation may not be compatible with the current or projected mission of the installation. For example, wind turbines or a solar tower can interfere with mission-critical navigation or other radar. We are working actively both to identify potential problems well in advance of siting and to develop better mitigation technology. However, some conflicts may be unavoidable, and sustaining our ability to conduct our current and projected mission requirements must be our overriding consideration.

A second potential conflict arises from the fact that military installations, which represent some of the best protected and most pristine land in the federal inventory, are home to many threatened and endangered species and other species at risk. Such an installation may not be able to accommodate the construction of, for instance, a large solar facility if it would adversely affect sensitive habitat. Even if the proposed site for a solar facility were outside of the installation fence, the facility could negatively affect military operations by placing additional burdens on the installation for species recovery or by potentially increasing the vulnerability of installation populations.

A third potential conflict has to do with the competition for water. The same areas that are ideally suited to large solar projects also typically face severe water shortages. The construction of such a solar project on or near an installation will almost always increase the competition for water supplies that are already scarce and which may become even more scarce in the future. In addition to putting pressure on the military mission directly, this can make it even more difficult for an installation to maintain its sensitive habitat and the threatened and endangered species it sustains.

In sum, the military has significant interests and equities in federal policy dealing with the development of renewable and alternative energy sources. This is particularly the case with respect to energy development in the Mojave and Colorado Deserts, where we conduct an enormous amount of testing, training and other operational activity. The test and training ranges in this unique part of the country are among the Department's most valuable and irreplaceable installations, often described as our "crown jewels."

We are grateful to Senator Feinstein for recognizing how important this legislation is to the military and for working so cooperatively with the Department's regional environmental staff in California prior to introducing the bill. As a result of that collaboration, the bill incorporates many provisions that address and protect our operations. Below, I mention some of them. I also highlight several sections where the Department's initial review has revealed the need for further discussion. We will provide a letter to the Committee detailing our comments after we have had an opportunity to review the legislation in depth.

#### *Title I—California Desert Conservation and Recreation*

We appreciate that, throughout Title I, the bill recognizes that the military is an essential presence in both the proposed Mojave Trails National Monument and the Sand to Snow National Monument. Let me cite three examples:

- The bill includes representatives from the Department of Defense on the Advisory Committee for both Monuments, giving us an important role in their long term management.
- The bill excludes certain areas from the Mojave Trails National Monument pending possible withdrawal and addition to the Marine Corps Air Ground Combat Center at Twentynine Palms, protecting our options to address future mission needs.
- In establishing the Avawatz Mountains, Golden Valley, and Soda Mountains Wilderness Areas adjacent to Fort Irwin, the Great Falls Basin Wilderness Area adjacent to China Lake, and the Kingston Range Wilderness Area to the east of Fort Irwin, the bill protects the authority of the Secretary of Defense to conduct military activities at desert installations, facilities, and ranges. Particu-

larly critical is the language explicitly protecting those military activities that can be seen or heard from within the Wilderness Areas.

Nevertheless, to ensure that our activities are protected, we must better understand the bill's land management requirements in total, particularly as they relate to our ability to conduct testing, training, and operational activities and our responsibilities under the Endangered Species Act to protect threatened and endangered species and the associated critical habitat.

We see many potential benefits to the bill's approach—namely, the designation of large monument and wilderness areas as off-limits to development. This approach may protect our installations from the encroachment that such development could cause. Having these areas protected may expand critical habitat and spread species management responsibilities over a larger area, thereby lessening the pressures on the species and on DoD's land management responsibilities. Precluding development in these areas would also reduce the competition for limited water resources. On the other hand, the limitation of development in certain areas would likely steer development to other areas, which may not be compatible with our current and projected mission requirements in every case. Therefore, we need to conduct a detailed, site-by-site analysis in light of our current and projected missions to understand the full implications of Title I.

#### *Title II—Desert Renewable Energy Permitting*

One thrust of Title II would be to concentrate renewable energy development in particular geographic areas within the Mojave Desert. This is potentially quite beneficial: the designation of specific areas for renewable energy development would facilitate such development by giving developers and Federal agencies alike clear parameters early in the planning process, by facilitating coordination with ongoing regional planning efforts at the local, state, and federal levels, and by streamlining that process in numerous other ways. Depending on where those areas are located, however, the concentration of renewable energy development could be incompatible with the Department's current and projected mission requirements. Here, again, we would need to conduct a more detailed analysis.

In addition, based on our preliminary review of the legislation, there are three specific sections in Title II that are of particular interest or that raise potential concerns for the Department.

##### *Programmatic Environmental Impact Statement (Sec. 203)*

We appreciate the bill's intent to have federal agencies evaluate the environmental impacts of renewable energy in a programmatic manner, early in the process. This approach enables a more strategic assessment of the range of options and the associated direct, indirect and cumulative impacts. By evaluating these impacts earlier, it shortens the process when we move to site specific decisions while ensuring that we better understand the cumulative impacts of each project.

The Department is, however, concerned with the time restrictions included in the bill. As you can appreciate, for the results of this programmatic environmental impact statement to improve the quality of our siting process and our land management decisions, we need to gather the appropriate information and apply a rigorous and complete environmental analysis. To ensure that this is a thoughtful and meaningful process, we believe it will take significantly more time than currently provided in the bill. Moreover, in the interests of efficiency and overall environmental protection, any programmatic assessment for renewable energy options by DoD should be produced concurrently with assessments done by the Forest Service, Bureau of Land Management and other federal agencies to coordinate efforts, scope, regional coverage, use of data and desired outcomes.

##### *Military Installations Study (Sec. 204)*

The military installations study directs the Department to assess the financial, environmental, and national security implications of renewable energy development on military installations in the Mojave and Colorado Deserts in the States of California and Nevada. This area includes many large and critical military installations and contains some of the most important testing and training ranges within the Department of Defense. Renewable energy is a critical component of the Department's energy strategy and this region of the country has significant renewable energy resources that could be exploited. Section 204 identifies important issues that the Department must consider as we continue to develop renewable energy programs. The Department needs to understand the full impacts of renewable energy development on our installations. We have already initiated plans to conduct such a study based on language in the Department of Defense Appropriations Act for FY 2010.

*Renewable Energy Coordination Offices (Sec. 201)*

We appreciate the Senator's efforts to make the Department an integral part of the Federal permit coordination process. Renewable energy siting decisions in this region, on or off military installations, must comport with military activities in order to ensure the viability of our training, testing, and operations, to safeguard the public, and to protect the security of sensitive activities.

We believe some aspects of the prescribed process and structure need clarification. First, it is not clear if the Renewable Energy Coordination Offices that the bill would create will have permitting authority for all Federal lands in these states or only those lands currently managed by the Bureau of Land Management (BLM). We have the overriding responsibility to protect our ability to perform testing, training, and operational missions on all of our installations, including those formed in whole or in part from lands withdrawn from the public domain. The Department of Defense already has a permitting process, under its separate authorities, for lands under its management. This process works well to ensure that appropriate energy production occurs on such lands, without interfering with the mission of the Department. The Department's authorities provide strong incentives to installation commanders to pursue such projects. Although the Department's own permitting process would benefit from additional coordination with the permitting process of BLM, it would not be beneficial to limit the authority of the Department with regard to permitting on our installations.

In addition, siting of renewable energy facilities and associated infrastructure on private and state lands has the potential to have a significant impact on our testing, training, and operational missions. It is not clear that the permitting process outlined in the bill adequately addresses the critical interaction of Federal agencies with state and local permitting processes.

*Conclusion*

We strongly support the goals of S. 2921—namely, to advance renewable energy while protecting the environment and protecting our current and projected military missions. We will provide additional views on the bill in the near future. Along with the other federal agencies, the Department of Defense looks forward to working closely with the Committee in the coming months to address the issues we have highlighted today.

The CHAIRMAN. Thank you very much.

Ms. Krueger, why don't you go ahead? Then I know that Senator Udall has to leave by 10:15 a.m. So we will defer to him to ask a question before he leaves after you finish your testimony.

**STATEMENT OF FAYE KRUEGER, ACTING ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM, DEPARTMENT OF AGRICULTURE**

Ms. KRUEGER. All right. Mr. Chairman, members of the committee, thank you for the opportunity to provide the views of the Department of Agriculture on S. 2921.

The department supports this bill. However, we defer to the Department of Interior and Department of Defense regarding the provisions concerning their lands and interests. We look forward to working closely with Senator Feinstein, the committee, and our Federal partners to address the concerns of the administration as this bill moves through the legislative process.

Most of the Forest Service lands in the bill are in the San Bernardino National Forest. The San Bernardino National Forest Land Management Plan Revision of 2006 was developed through an extensive 5-year process with considerable public involvement. The monument and wilderness designations in S. 2921 are closely aligned with recommended wilderness and forest management objectives included in the revised plan.

S. 2921 would designate approximately 60,000 acres of land in the San Bernardino National Forest, along with approximately

73,000 acres of Bureau of Land Management lands as the Sand to Snow National Monument, to be managed jointly by both agencies. The purpose of the monument would be to preserve the nationally significant biological, cultural, educational, geological, historic, scenic, and recreational values at the convergence of the Mojave and Colorado Deserts and the San Bernardino Mountains.

The legislation would also provide for consistent management of the area with BLM. The Forest Service and BLM have been successful in similar co-management in California. The proposed wilderness addition would also designate a little over 7,000 acres to be added to the San Geronio Wilderness in San Bernardino National Forest, and the department supports the wilderness designation.

The bill would also designate 76.3 miles of the Deep Creek and Whitewater River as part of the National Wild and Scenic River System. During our initial evaluation, we found each river eligible for designation based on their free-flowing character and regionally important river-related values. The department supports designation of these eligible rivers.

Energy section 203 would direct the Secretary to complete a programmatic Environmental Impact Statement no later than 18 months after the date of enactment of the bill. The programmatic EIS would analyze the potential impacts of a program to develop solar, biomass, and wind energy on National Forest System lands.

We agree that renewable energy options from sources on National Forest System lands should be fully explored, and we would like to look at how best to focus our resources for on-the-ground efficiencies. We would like to work with the committee on revisions to clarify the roles and relationships of Federal agencies in the permitting process as well.

In conclusion, Mr. Chairman, the department generally supports this legislation and looks forward to working with the committee on the changes requested. I would be happy to answer any questions you might have.

Thank you.

[The prepared statement of Ms. Krueger follows:]

PREPARED STATEMENT OF FAYE KRUEGER, ACTING ASSOCIATE DEPUTY CHIEF,  
NATIONAL FOREST SYSTEM, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the Committee, thank you for the opportunity to provide the views of the Department of Agriculture on S. 2921. The Department supports the goals of S. 2921. However, we defer to the Department of the Interior (DOI) and the Department of Defense regarding provisions concerning their lands and interests. We look forward to working closely with Senator Feinstein, the Committee, and our Federal partners to address the concerns of the Administration as this bill moves through the legislative process. Most of the Forest Service lands in the bill are in the San Bernardino National Forest. The San Bernardino National Forest Land Management Plan Revision of 2006 was developed through an extensive five-year process with considerable public involvement. The selected plan alternative emphasized "environmentally sustainable recreation." The monument and wilderness designations in S. 2921 are closely aligned with recommended wilderness and forest management objectives included in the revised plan. We would like to work with the committee on some minor modifications to provisions in Title I, including some technical aspects of the bill such as map reference dates and wilderness acreage figures.



### *Monument Designation*

S. 2921 would add section 1402 to the California Desert Protection Act of 1994 to designate approximately 60,000 acres of land within the San Bernardino National Forest; along with approximately 73,000 acres of Bureau of Land Management (BLM) lands as the Sand to Snow National Monument, to be managed jointly by the agencies. The purpose of the monument would be to preserve the nationally significant biological, cultural, educational, geological, historic, scenic and recreational values at the convergence of the Mojave and Colorado Deserts and the San Bernardino Mountains. Designation would also secure the opportunity for present and future generations to experience and enjoy the magnificent vistas, wildlife, land forms, and natural and cultural resources of the monument. The bill also would direct DOI and USDA to complete a management plan for the conservation and protection of the monument within 3 years, and address whether a visitors center should be established.

The 2006 Forest Plan recognizes the importance of wildlife connections and corridors to and from the National Forest, as well as the significant biological, cultural, scenic and recreational values of the greater San Geronio Mountain ecosystem. The monument designation would help us address these critical wildlife and resource issues.

The legislation would also provide for consistent management of the area with the BLM. The Forest Service and BLM are successfully using the Service First co-management model for the Santa Rosa and San Jacinto Mountains National Monument. The Department anticipates using a similar management model if this new monument is designated.

The requirement to establish an advisory committee that would provide advice on the development and implementation of the management plan for the monument closely mirrors the success of the Santa Rosa and San Jacinto Mountains National Monument. The Department believes that an advisory committee would also be helpful in developing the Sand to Snow Monument plan.

However, due to the length of time necessary to establish a FACA committee, and the importance of creating a successful management plan, the Department recommends that the bill language be changed to provide that the management plan be completed three years after the advisory committee is established.

The Department agrees that the monument plan should address the needs for a visitor center. If the Secretaries determine that a visitor center is needed, it is critical that the advisory committee provide recommendations about sources of funding to build, staff, operate and maintain the visitor center.

### *Proposed Wilderness Addition*

Section 1501(c), as added to the California Desert Protection Act of 1994 by S. 2921, would also designate a 7,141-acre wilderness addition to the west and south of the existing 95,953-acre San Geronio Wilderness in the San Bernardino National Forest. The area under consideration is currently an inventoried roadless area. The Department supports the wilderness designation. Although this designation is smaller than what was recommended in the 2006 Forest Plan revision, the adjustment would make management of the area less complex.

### *Wild and Scenic River Designation*

Section 102 of S. 2921 would designate approximately 76.3 miles of the specified rivers as part of the National Wild and Scenic Rivers System. Of this total, approximately 34.5 miles of Deep Creek, including its principal tributary, Holcomb Creek, and 17.1 miles of the North, Middle and South Forks of the Whitewater River are within the boundary of the San Bernardino National Forest and would be administered by the Department of Agriculture.

During step one of the evaluation process, the Forest Service found each river eligible for designation based on their free-flowing character and regionally important river-related values. We have not conducted the second part of the evaluation process, the suitability study, for either of the rivers. However, the Department supports designation of these eligible rivers based on general support from the communities of interest and consistency of designation with the management of National Forest System lands within the river corridors. We wish to work with the Subcommittee to clarify the co-administration of the designated segments of the Whitewater River and provide other technical corrections.

### *Energy*

Section 203 would direct the Secretary to complete a programmatic environmental impact statement (EIS) not later than 18 months after the date of enactment of the bill. The programmatic EIS would analyze the potential impacts of a program to de-

velop solar, biomass, and wind energy on National Forest System (NFS) lands, and any necessary amendments to land use plans for the land as appropriate.

We agree that renewable energy options from sources on NFS lands should be fully explored. We'd like to look at how best to focus our resources to expand our on-the-ground efficiencies; including whether a programmatic EIS might be helpful in expanding our capabilities while protecting our National Forests. In addition, any programmatic assessment for renewable energy options should be done concurrently with assessments done by the Bureau of Land Management, Department of Defense, and other federal agencies to coordinate efforts, scope, regional coverage, use of data, and desired outcomes.

Section 201(a) of the bill would amend section 365 of the Energy Policy Act of 2005 (42 U.S.C. 15924) to add subsection (j) requiring the Secretary of the Interior to establish a process for the coordination of Federal permits for projects to develop renewable energy derived from wind, solar, renewable biomass, hydro and geothermal sources and associated transmission lines, and a subsection (k) providing for the distribution of income collected by the Bureau of Land Management (BLM) for solar and wind energy development. We would like to work with the committee to clarify the roles and relationship of Federal agencies in the permitting process.

In conclusion Mr. Chairman, the Department supports the goals of this legislation and looks forward to working with the committee on the changes requested. I would be happy to answer any questions you may have. Thank you.

The CHAIRMAN. Thank you very much.

Senator Udall, why don't you go ahead with your questions?

Senator UDALL. Thank you, Mr. Chairman, for putting me at the front of the line. I very much appreciate it.

The testimony this morning is important. I did want to acknowledge Senator Feinstein's leadership. These are big and important and contentious questions. But if we were to avoid facing them, then we miss opportunities on the renewable energy front. We also miss opportunities to preserve these remarkable lands.

I look forward to working with the chairman and the ranking member and others as we grapple with what I think can ultimately be an important solution.

Let me make a comment in addition, and then I have a question for Dr. Robyn. I did want to just register, Mr. Chairman, my concern about the use of categorical exclusions in the bill.

I understand the need to move quickly. I understand energy industry frustrations. But I also think we have seen, in some cases, CEs, as they are known in the parlance, being used perhaps inappropriately. Most notably, the oil and gas spewing out of the Gulf right now was part of a process where a CE was used. So I think it would be important to have conversations about the use of categorical exclusions, particularly in a broad-based way.

So if I could turn to Dr. Robyn? Again, thank you for your testimony. I serve on the Armed Services Committee, as does the chairman, and I am really interested in your testimony in regard to the DoD serving as a testbed for new and emerging technology. You already are, frankly. There are lot of great stories, and the military is leading on this whole effort, this mission to be energy self-reliant.

I would ask that you would provide detailed information to the committee concerning this initiative that would outline the current scope of activities, the relationships with the DOE and other agencies, current and projected resources to take advantage of this approach, and the applicability of the approach to a broader range of energy technologies, as well as energy-related policies and programs within the broader Federal Government.

I have thrown a lot at you. Can you talk briefly about this and then provide additional information for the record? If you would turn your mike on, that would be great, too.

Ms. ROBYN. Yes. You asked me about my—perhaps my favorite topic. The Defense Department in general, but in particular, installations that I oversee, serving as a testbed for pre-commercial technology, technology coming out of DOE labs, industry laboratories.

First of all, let me say that the reason the Defense Department has been so successful as in support for technology going back to Eli Whitney and interchangeable parts for musket production is that we perform the R&D, and then we have a hand-in-glove relationship with the people who take that R&D, the services, and use it. No one else has that kind of a relationship, and it has historically been incredibly successful.

In the case of energy, we won't be doing the bulk of the R&D. We will be doing R&D in areas where we have mission-unique needs. But most of the R&D is going to be done in the Department of Energy, in industry, other places. But we still have that ability to serve as a very, very sophisticated first adopter. So at the alpha and beta stage for this pre-commercial technology, and then as an early customer, as we have done historically.

So for those technologies that are successful, we can help create the market. We are working closely—the Department of Energy has from Dr. Chu on down, have recognized that this is a natural partnership, that where DOE has been weak in the past has been the lack of customer pull. It has all been technology push from the laboratory.

So we are working with them so that we can be their customer, in effect, and so that they can carry out R&D on batteries, storage, building energy in ways that suit our needs as a customer. That will make both of us more effective. So I see this as being a very, very powerful part of our national energy program, and I would love to give you more information.

Senator UDALL. I very much look forward to additional information for the record. I know the chairman, the ranking member, and the rest of the committee would as well.

It seems only right, given that the DOE is, in effect, an offspring of the Department of Defense, and perhaps now that it is an adult child will work fully hand-in-hand with the Department of Defense. But DoD is going to lead us in many ways to this goal we have of energy self-reliance.

Thank you.

Mr. Chairman, just one 10-second additional comment.

Ms. Krueger, thank you for your testimony, and I was thinking about Colorado when you talk about a Sand to Snow National Monument. We may have a model that would be of some use as an analog, and that is the Great Sand Dunes National Park, based in the San Luis Valley, which includes elevations from about 6,000 feet to 14,000 feet and is a quilt, if you will, of Federal land, some private lands, forest lands, now national park lands. There may be some examples and lessons learned there that would be applicable as we pursue Senator Feinstein's vision that is tied to this important piece of legislation.

Thank you.

Ms. KRUEGER. Thank you for that information.

Senator UDALL. Thank you.

Mr. Chairman, thank you.

The CHAIRMAN. You are certainly welcome.

Senator Murkowski, go ahead with your questions.

Senator MURKOWSKI. Thank you, Mr. Chairman. I appreciate it.

Mr. Abbey, with regards to the renewable energy permitting office in section 201 that sets forth the specific uses for the funding and how the income that is generated is disbursed. Can you inform me whether or not if 2921 is enacted, would you impose this revenue-sharing proposal on all renewable projects that are proposed for Federal lands?

Mr. ABBEY. Senator Murkowski, it is my understanding, based upon my interpretation of the bill, that it would apply to all renewable energy, or solar energy projects throughout the West, the distribution of revenue.

Senator MURKOWSKI. Correct. But you say on Federal lands throughout the West. What if you have Federal lands that are not necessarily in the West? I just want to know whether you envision this as a nationwide revenue proposal?

Mr. ABBEY. It would apply to BLM-managed projects.

Senator MURKOWSKI. OK. All right. Then how is this proposed formula different than from the onshore oil and gas royalty formula?

Mr. ABBEY. The oil and gas revenue include both rental and royalties. The rental revenue provides 50 percent to the State and 50 percent to the oil and gas permit processing improvement fund. The royalties go 50 percent to the State and 50 percent to the Federal Treasury.

The distribution of revenue as proposed by Senator Feinstein is unique. It differs from what is currently in place for oil and gas revenues. So it would create a different disbursal—mechanism for disbursal.

Senator MURKOWSKI. Is the BLM in agreement that that distinction is something that you would support?

Mr. ABBEY. This is one of those areas that we would like to work with Senator Feinstein and the members of this committee to address. We certainly have differences of opinions of how those monies could be disbursed.

Senator MURKOWSKI. Let me ask you about the situation with the companies that had potential leases for solar development on these lands, have a pending application. Now as I understand it, these companies will have the option to move to the head of the line for other potential lease opportunities on Federal lands, but doesn't specify where.

The first question is did BLM encourage companies to consider leasing solar sites within any of these 1.6 million acres that are proposed by the bill?

Mr. ABBEY. I wouldn't use the term "encourage." We certainly accepted applications within those areas. We were—we received several hundred applications over a short period of time. Some of the applications that were submitted on the Catellus lands that were acquired and donated to the Bureau of Land Management pri-

marily for conservation purposes were included in some of those applications.

The BLM did receive applications on those lands. They began processing those applications up until May 2009, when the Bureau of Land Management issued clarifying directions to our offices, restricting the acceptance of applications on lands that were acquired through lands and water conservation funds or through donations for purposes of conservation.

Senator MURKOWSKI. So, those that were pending have effectively been placed on hold since May of last year?

Mr. ABBEY. The applications are still being processed. We are working with the proponents for those projects on their applications to see whether or not their projects are compatible with the uses of those land.

Senator MURKOWSKI. Tell me where you are seeking to make these Federal lands available for these applicants that will be allowed to jump to the head of the line.

Mr. ABBEY. We would be directing them toward lands that are under consideration as part of the solar study areas that are now being analyzed. These applicants would be directed to look at the appropriateness of those lands for their projects.

Senator MURKOWSKI. Do you know whether they would have equivalent or perhaps better solar potential, not only the potential but access to infrastructure such as the roads and transmission?

Mr. ABBEY. Those solar study areas were selected for specific reasons, and one of the primary factors were that they were more conducive to this type of development. We believe those areas that would be designated in the future as solar zones would probably be more compatible for such development than where they are currently being proposed.

Senator MURKOWSKI. Let me ask you, Dr. Robyn, just very quickly, given the proposals in the bill related to the wilderness and national monuments, are you prepared to say that the training and the other needs for the military for the present and then going into the future are going to be fully protected under this legislation?

Ms. ROBYN. We need to look more closely at exactly what lands are set aside. We like the general approach. We just—it can be—some of these areas can provide buffer protection around installations. But if they serve to steer development to other areas that are incompatible, then that could be an issue.

So we need to look at it closely. We like the approach. The devil is in the details.

Senator MURKOWSKI. Thank you.

Mr. Chairman, I have some additional questions that I will be submitting for the record. I have to attend another hearing this morning, but I appreciate the testimony from the witnesses.

Thank you.

The CHAIRMAN. Thank you very much.

Let me ask a few questions that occur to me. First, Director Abbey, let me ask you about it is my understanding that Secretary Salazar set up a group called the Renewable Energy Action Team, REAT. I don't know if that is the right way to pronounce the acronym. But it is comprised of representatives of the BLM, the Cali-

California Energy Commission, the U.S. Fish and Wildlife, California Department of Fish and Game.

That team, according to what I have been told, is developing a Desert Renewable Energy Conservation Plan for the State, which would identify areas primarily for conservation and other areas suitable for development. If that is underway—I guess that group was set up in November 2009—and the report is due, I guess, later this year, wouldn't it be premature for us to be trying to legislate in many of these areas dealt with in this bill until we see the results of that team's report?

Mr. ABBEY. I am not sure I would use the term "premature," but certainly, as we move forward and continue to work in cooperation with the State of California as well as our other Federal partners, we are learning more and more about which areas are more appropriate for such large-scale commercial development for solar and wind projects.

We have a tremendous working relationship in the State of California, as we do throughout the western United States since our common goals is to increase the amount of renewable energy as part of our Nation's energy portfolio.

The purpose of the California Desert Renewable Energy Conservation Plan is to look at a variety of lands, including previously disturbed lands, for possible use for such development. The conservation plan will help direct where such solar and wind commercial projects should be developed, whether that is Federal or private lands.

The CHAIRMAN. Let me ask about this permitting system that there is a set of proposals for changing the permitting system. What is the status of the BLM's effort to revise its permitting process with regard to renewable energy projects on BLM land?

Mr. ABBEY. Mr. Chairman, I am glad you asked that because this morning I just pulled together some of the actions that have been taken over the past year to help improve the efficiencies and the effectiveness of our permitting process. For one, you have heard about the solar programmatic EIS that is now moving forward.

We anticipate releasing a draft programmatic EIS in December 2010. As part of this effort, the Bureau of Land Management is analyzing 23 million acres, which appear to be technically and environmentally suitable for solar energy development, and also within that acreage, 24 solar energy study areas, encompassing almost 700,000 acres. Four areas are located in California.

In the meantime, we are processing 34 fast-track renewable energy projects, and by fast track, I mean that we anticipate reaching decisions on all 34 of those projects by December 2010. Even though the Bureau of Land Management got off to a fairly slow start as far as dealing with solar energy project proposals, we are rapidly advancing the permitting process. We are working with the industry to improve the efficiencies of our permitting process without taking shortcuts because we are talking about large-scale footprints on our public lands.

We want to make sure that all analysis is thorough, that mitigation measures are identified and potentially incorporated into any decision document. I am quite pleased with the progress that we have made over the course of the last year.

The CHAIRMAN. Let me just try to ask a little more specifically. It seems to me that we reported a bill out of our committee here last summer that contains some provisions that are intended to improve the process itself, the permitting process that you folks follow. You have got other initiatives underway to improve that process.

Senator Feinstein's legislation that we are considering this morning has a whole series of recommended changes in that process. Has the BLM settled on what it would like that process to look like and how it would like that process to operate, separate from the question of how many applications you can get approved by December. But the process itself, do you have a good idea of what that should look like and how much of it we should be trying to legislate?

Mr. ABBEY. Mr. Chairman, we do have a good idea. In fact, we continue to provide directions to our field offices regarding this particular issue. Quite frankly, we do have some concerns with the provisions that are incorporated into Senator Feinstein's legislation relative to the process.

We believe that there are areas that need improving. We have the administrative remedies to create those efficiencies ourselves without a legislative mandate. We understand the serious role that we have to be smart from the start when addressing and reviewing these project proposals that come before us. We are, again, as I mentioned earlier, making significant progress in improving the process.

The CHAIRMAN. Let me just ask finally, and then I will call on Senator Bennett for his questions. But I think both Interior and Defense have noted that they will provide detailed comments on the bill at a later time. When would we be able to expect that?

Mr. ABBEY. We will work with this committee to provide timely responses to the questions that we might receive, based upon how quickly you would like to move this bill.

The CHAIRMAN. I think we would like any—if you are preparing detailed comments on the bill, not responses to questions from us, but detailed comments on the bill, which is what I thought you had indicated, then we would be anxious to get those as soon as you have them available.

Mr. ABBEY. We can have those available fairly quickly because we have done a thorough analysis of this bill.

The CHAIRMAN. OK. If you could get those to us in the next couple of weeks, is that reasonable? That would be very helpful.

Senator Bennett.

Senator BENNETT. Thank you, Mr. Chairman.

Thank you all for being here. My own attitude about wilderness bills is that great deference should be paid to the attitude and wishes of the Senator in the State in which the wilderness is being created. We have had a number of fights about that with respect to Utah, and I have always argued the Utah Senator should be the one to make this decision. So I am more than happy to defer to Senator Feinstein and Senator Boxer in this area. But I do have some questions, and you may not be the ones to answer them.

I would like a procedure where we have an EIS, not only an Environmental Impact Statement, but an economic impact statement.

I wonder if any studies have been done as to how much economic value will really come out of these various solar arrays that get put there?

Solar energy is one that always has great promise, but only produces with heavy subsidies, and we are going to put your phrase, Mr. Abbey, large-scale footprints in some of the area of greatest protection for our public lands, and what are we going to get out of it? Has anybody in the department done any examination of that?

Mr. ABBEY. We haven't performed any kind of economic analysis of this bill. I would like to point out, Senator Bennett, that in the areas proposed for designation, we have received 12 applications—6 for solar, 6 for wind—all within the proposed Mojave Trails National Monument.

Again, looking at the resources within the proposed area, we believe there are more appropriate lands managed by the Bureau of Land Management or even on private lands where such projects can be developed rather than where they are currently being proposed. This information doesn't address your concerns relative to an economic impact study.

Senator BENNETT. Once you generate the electricity, how do you get it to market?

Mr. ABBEY. Through transmission.

Senator BENNETT. Yes. My examination, cursory though it has been, suggests that transmission lines are going to intrude in wilderness areas or other areas in ways that a lot of folks may not like.

Now maybe subsequent witnesses, Wilderness Society and others, can address that and tell us how the transmission of this power is going to get to market in such a way that it will not be damaging. But is that an area that any of you looked at?

Mr. ABBEY. Let me address that, and then maybe there would be some other responses as well. Senator Feinstein has worked diligently with—through a collaborative process to identify where transmission needs might be for some of the proposed renewable projects in southern California. She has provided for corridors in some of these proposed national monuments and some of the other areas to allow transmission lines to be built not in designated wilderness areas, but certainly in some of the other designated areas.

Senator BENNETT. They are handy to where the solar array would be or the wind farm would be?

Mr. ABBEY. Based upon our best projections and where we anticipate development.

Senator BENNETT. Ms. Krueger, you look anxious to respond?

Ms. KRUEGER. Oh, I was just going to respond and say for the wilderness in the monument area, we didn't find any conflict with transmission lines.

Senator BENNETT. OK, very good. My concern about solar, the sun doesn't always shine. Now maybe in this part of the world it always does. But there is one factor that applies to solar that can be depended upon is that at the end of the day, the sun goes down.

Some studies that I have seen suggest that the assumption that solar power is available during the peak hours of demand, in fact, are off by about an hour or 2. That is the sun is shining and



strongest about an hour or 2 before the demand for peak power hits.

Now, Dr. Robyn, have you had any examination of that as far as your experience at Nellis? Or does the Nellis array not service the peak power demands of Nellis Air Force Base?

Ms. ROBYN. Actually, I think the power from Nellis goes directly into the commercial grid, and then—

Senator BENNETT. Yes. Right.

Ms. ROBYN [continuing]. Nellis. So, no. I mean, we typically analyze these things in terms of the benefits to us rather than the broader economic benefits that you are referring to.

Senator BENNETT. We are talking about—just a concluding comment, Mr. Chairman. We are talking about a very significant commitment. Again, to use your phrase, Mr. Abbey, a large-scale footprint, and the Senator from California is fine with that, other people are fine with that, I am fine with that—if, at the other end, we get something worthwhile.

I want to be absolutely sure that the studies have been done to say once we have this massive amount of land that is taken over by solar arrays or wind farms, and we have got the transmission lines built, do we know that the way the power will be generated, because both solar and wind are intermittent power. This is not a nuclear plant where you know it is available 24 hours a day.

Do we know, has somebody done—did the State of California, the Government—maybe Southern California Edison when they can testify will describe it. Has somebody done a very careful economic analysis to say once all of this has been built, and as I say, with solar and wind, it will be built with subsidies because right now, the market does not support either solar or wind without some kind of subsidy.

This massive amount built with subsidies, will we get anything out of it that we can actually use? I think that is a legitimate question, and I hope that if not in this panel, the next we can get some answers to it.

The CHAIRMAN. All right. Thank you.

Senator Wyden.

Senator WYDEN. Thank you very much, Mr. Chairman.

Questions for you, if I could, Dr. Robyn. I am increasingly concerned about the gridlock between 2 objectives that this country absolutely has to address. One of them is national security. I sit on the Intelligence Committee. It's obviously a dangerous world. The other is energy security. As you know, there are pending scores of projects that can result in thousands of good-paying jobs for our people and thousands of megawatts of good, clean, renewable green power.

But there has got to be a way to resolve these conflicts that are cropping up all over the country, and I want to relate very specifically what I am concerned about this morning. As you know, I and the Oregon congressional delegation, we are very troubled about the problem of getting approved what will be the world's biggest wind farm. It will be located at Shepherds Flat in eastern Oregon. The challenge was dealing with radar that was near Fossil, Oregon.

I put more than 4 years into the project, 4 years. At the very last minute, DoD came in and raised an objection. Came out of nowhere. Nobody had heard word one about this during the 4 years. The last minute, DoD comes in.

As you know, we were in extensive discussions with Secretary Gates and the White House and others, and a couple of weeks ago, we got it resolved. That is good news. I appreciate it and appreciate the department stepping up and helping us in that regard.

My concern is yesterday I just learned we have got the same problem at another project close by. In other words, Shepherds Flat, after all of the wrestling and all of the discussions back and forth, got approved. But just yesterday, I heard about a problem at the Montague wind project, again in the general area—400 megawatts of wind power, 2,000 construction jobs, 80 permanent jobs—and exactly the same situation.

Instead of a hands-on discussion with the Defense Department and the community and the energy people and all the people related, the Defense Department did exactly what it did until I and the congressional delegation stepped in on Shepherds Flat, and the Defense Department filed all these objections with the Federal Aviation Administration. Everything is on hold.

We can't go on like this. The investors, for example, are going to walk. They are going to walk on these projects if the Defense Department doesn't step up and get a way to resolve these issues. I read your statement, and you basically said, hey, conflicts are unavoidable. By God, we have got to get our mission taken care of.

I support your mission completely. It is a dangerous world. I am not going to take a back seat to anybody in terms of national security. But what is the department going to do to set in place a system, a process to get these issues resolved? Because that is what is really needed.

As you know, a group of Senators sent you a letter a year ago, and there is still no evidence that a system is being developed. The area, for example, that I am most concerned about is let us bring these conflicts out at the beginning rather than the end. That alone, if you were to do nothing else but to have a system that would provide for that, I would feel we are moving in the right direction.

So tell me, if you would, what is being done to get a system in place? So this country can have national security and energy security together rather than these conflicts which, after the good news at Shepherds Flat, I am now concerned we are going to be back in exactly the same spot not just in Oregon, but all over the country.

Ms. ROBYN. Let me address the specific one and then talk more generally. I think the—well, let me talk about the general problem.

We are not a regulator, nor do we want to be a regulator. When these issues come up, we are able to resolve them in almost all cases. Something like 98 percent of all wind farm proposals, we have had no—we have approved outright or have been able to find mitigation for.

I think we all got a wakeup call with the Caithness project at Shepherds Flat. We realized how ill-suited the timing of the FAA process, the obstacle OEAAA process that the FAA has is for DoD. The FAA does not need to know until fairly late in the process

where—what a developer is proposing. They are looking for impediments to air navigation.

We use that process. We want to continue to use that process, but we need to have developers come to us at an earlier stage. I could not agree more. The process is broken. I said that in testimony several months ago.

I think the silver lining of Caithness, aside from the fact that it did get resolved, is that it made very, very clear to everybody and all agencies at the National Security Council, and we are very actively working now to come up with an alternative process. Do we need our own screen? Can we continue to rely on the FAA, but get developers to us at an early stage?

Senator WYDEN. Mr. Chairman, my time has expired.

Dr. Robyn, I feel so strongly about this. I need to have more specifics on this. Will you get back to me, to the committee, within 30 days and outline your plan for a strategy here? Will you get that to me within 30 days?

Ms. ROBYN. Yes. Can I just say one more piece of it because there has been—

Senator WYDEN. But you will get to me within 30 days?

Ms. ROBYN. Yes. No, no, no. I would be happy to.

There is a tendency—I mean, fixing the process is step one. There are things in the pipeline that are not going to—we are still going to have issues with them. But fixing the process is step one.

But step 2 is increasing the level of R&D by the Defense Department, Homeland Security, and other agencies in 2 areas. Coming up with better tools, better modeling tools to estimate what the impact of proposed turbines or a solar tower will be on radar. That is the low-hanging fruit. Then the somewhat higher-hanging fruit is mitigation technology. Digital signal processing, stealth blades, there are a variety of things.

We don't have a silver bullet here. I am very hopeful that Lincoln Lab will come up with a mitigation strategy at Fossil, Oregon, and that that will take care of the Montague project as well. We won't know that until they come back. But R&D is as important as fixing the process. Technology will solve this problem at the end of the day.

The CHAIRMAN. All right. Senator Barrasso.

Senator BARRASSO. Thank you very much, Mr. Chairman.

Mr. Chairman, there is an article in today's Wyoming Tribune-Eagle in Cheyenne, Wyoming—Governor Dave Freudenthal on the wind projects. Wind projects and power transmission lines are the topic for a question-and-answer session in Wheatland, Wyoming, with Governor Dave Freudenthal.

This is in light of, Ms. Krueger, in November 2009, the U.S. Forest Service published new guidelines for siting transmission lines, and in Wyoming, we have world-class wind. The new manual reads, "The Forest Service will—" and this is FSM 2700 under Denial of Use. "The Forest Service will deny proposals," this is in quotes, "deny proposals for uses of National Forest System land which can reasonably be accommodated on non National Forest System land."

So the directive seems very plain and simple. Your position is just say no. The administration is forcing transmission lines onto

private land. That means farms, ranches, businesses, homes, and schools will have transmission lines, but not Federal land. This will site these lines using eminent domain.

The administration's policies explicitly disadvantage private land owners. I tried to fix this problem with an amendment to the energy bill by requiring transmission siting to minimize use of private land whenever possible. Unfortunately, that amendment was defeated in this committee, but we will certainly take that up with the bill gets to the Senate floor in the future.

So I want to just get this straight. Does the Obama administration oppose private property rights?

Ms. KRUEGER. The Governor did bring that issue forward to the Forest Service, and we have done a policy review. Our manual direction, we proposed some updates to it because we don't want to just say no. We have over 14,400 miles of transmission line on National Forest System land. So our policy is not to just say no, and we work in conjunction often with BLM and other agencies to permit those.

So we do support energy transmission lines. We have reinstated our direction with a letter in March 2010, of this year, to our field units to make sure that it is not a just say no policy, that we continue to look at opportunities to site energy lines on National Forest System lands. So we are moving forward to clarify our policy.

Senator BARRASSO. We will look forward to some additional clarification.

Mr. Abbey, if I could, you don't follow the same manual. Can you talk a little bit about the BLM policy directing transmission siting and private land?

Mr. ABBEY. We entertain proposals from the industry to place transmission lines on public lands that are managed by the Bureau of Land Management, and we go through an application review. We conduct a NEPA analysis to determine whether or not those lands are appropriate for such a use and make a decision accordingly.

Except where areas are designated for special uses like wilderness or national conservation areas or national monuments, we look at the appropriateness of the public lands where applications are submitted.

Senator BARRASSO. I appreciate that. I wanted to talk a little bit, Mr. Abbey, if I could, with you about oil and gas leasing.

Mr. ABBEY. You bet.

Senator BARRASSO. Whether it is siting transmission lines or permitting wind or solar or natural gas product, the process obviously takes years. On Monday, the Department of Interior added what seems to me to be more red tape to the process. The policy changes are going to discourage energy production and investment in the Rocky Mountain West, and I think it is going to cost jobs, hurt State and local budgets.

In Wyoming, the revenues paid by private companies to BLM for oil and gas bonus bids and for rental fees were down considerably between 2008 and 2009, and I think 2008, we collected \$93 million, and in 2009, it dropped to \$10 million. So \$93 million down to \$10 million, and that is a huge loss of revenue not just for the State of Wyoming, but also to the Federal Government.

So did the department analyze the potential loss in terms of jobs before implementing these changes and also about loss of revenues for the State and for the Federal Government?

Mr. ABBEY. Senator Barrasso, we believe that some of that downward trend in the oil and gas industry was based upon the market conditions. We do not believe the new procedures that we have distributed to our field offices on Monday will add the additional bureaucratic layer that you described.

The whole purpose of these new procedures is, again, to be smart from the start. We want to determine the appropriateness of leasing those areas prior to leasing them and then dealing with the aftermath of the issues that might come about during the analysis of an application for permit to drill.

In 1999, 1 percent of all the parcels that were proposed for leasing by the Bureau of Land Management were protested or litigated. In 2009, the number of parcels that were protested or litigated was almost 50 percent.

We believe by putting our efforts up front to do a thorough review prior to offering these parcels for leasing, that it will actually provide greater certainty to the industry and to all the public who have interest in how these public lands are going to be managed for the long term.

Senator BARRASSO. Thank you, Mr. Abbey.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

At this point, I think we will dismiss the first panel and call the second panel of six witnesses. Thank you all very much for your testimony. Appreciate it.

The second panel is made up of 6 witnesses from California: David Myers, executive director of the Wildlands Conservancy in Oakland, California; Pedro Pizarro, who is the executive vice president for power operations with Southern California Edison; David Hubbard, who is an attorney with EcoLogic Partners; Harry Baker, who is south district vice president with the California Association of Four-Wheel Drive, 4WD Clubs, Inc.; V. John White, who is the executive director for the Center for Energy Efficiency and Renewable Technologies in Sacramento; and Johanna Wald, who is a senior attorney with the Natural Resources Defense Council.

Thank you all for being here. I think we will try to do the same format as before. If each of you could take about 5 minutes and make the main points you think we need to understand, and we will include your entire statement in the record, as if read.

Mr. Myers, why don't you go ahead? Then we will just go right down the table.

**STATEMENT OF DAVID MYERS, EXECUTIVE DIRECTOR, THE  
WILDLANDS CONSERVANCY, OAK GLEN, CA**

Mr. MYERS. Mr. Chairman, members of the committee, S. 2921 will preserve California's irreplaceable desert landscapes, including the geographic center, as Mojave Trails National Monument. This legislation will not impact millions of acres being studied and planned for renewable energy in California.

The Mojave Trails National Monument honors one of America's storied landscapes. This land includes the Creation Trail that is sa-

cred to all seven Colorado River tribes. It includes the Mojave Trail, the route early pioneers forged through steep red rock canyon walls of Afton Canyon along the Mojave River. It includes the National Trails Highway, which John Steinbeck traveled in search of America's soul and dubbed "The Mother Road" in *The Grapes of Wrath*.

It covers a vast network of jeep roads for exploring, sightseeing, and remote camping amid heroic scenery with names like Sleeping Beauty Mountains and Pisgah lava flow. It encompasses hiking trails that wind into Amboy Crater, a national natural landmark, and trails leading to the Trilobite Fossil Beds, home of 450 million-year-old creatures that were among the first living things on Earth to have eyes.

It includes valleys and vistas so vast that our hopes seem grand and our problems seem small. These iconic national treasures, including magnificent cactus gardens, are bundled into the Mojave Trails National Monument.

The Wildlands Conservancy answered our Nation's call when Catellus Development Corporation was selling over 600,000 acres inside Joshua Tree National Park, Mojave National Preserve, 20 congressionally designated wilderness areas, and critical wildlife habitat. We donated \$45 million in private funds toward acquiring this land, which was called the largest land gift in American history.

This gift became the hallmark of Vice President Gore's Legacy of the Land Program. Vice President Gore called these lands "some of the most pristine and scenic desert lands in the world." He also stated, "These stunning California desert lands are being preserved for future generations through a true public-private partnership."

The monuments and wilderness areas in this legislation are outside the Department of the Interior's 351,000 acre solar energy study areas, as well as outside the preliminary 2.7 million acre renewable energy study area that the California Renewable Energy Action Team is looking at. All 14 Federal fast-track wind, solar, and transmission projects lie outside the conservation lands in this bill.

Over 1 million acres of BLM applications for solar, wind, and geothermal energy projects in California are also outside this bill's proposed conservation lands. Additionally, environmentalists support solar energy on hundreds of thousands of acres of degraded, fallowed, and abandoned farmlands throughout high-solar insolation areas of the State.

Some opponents of this legislation say the Mojave Trails National Monument will take a million acres out of potential solar development. The 468,000 acres of the 941,000 acre monument are within wildlife management areas and areas of critical environmental concern, 99 percent of which are restricted from disturbance.

The 84,000 acres are in the Cady Mountains wilderness study area and off limits for solar. The 103,000 acres outside of the areas of critical environmental concern were donated and pledged for conservation. Of the remaining 283,000 acres, the vast majority is over 5 percent slope and too steep for solar or in critical Big Horn sheep wildlife corridors.

Conservationists originally recommended a 2.8 million acre national monument that was scaled down to 941,000 acres to accommodate energy projects on the east, west, and south sides of the monument boundary, many of which would industrialize donated lands. The Wildlands Conservancy supports the legislation and its provision for the acquisition of private inholdings inside Mojave Trails National Monument as a one-to-one compensation for donated lands outside the monument repurposed for energy development.

This legislation honors the representations to protect this land made by President Clinton, Vice President Gore, Interior Secretary Bruce Babbitt, and BLM Director Tom Fry. Ten years ago, prominent Democrats and Republicans alike saluted this donation as a patriotic private sector solution. We urge the committee to support this legislation and to reaffirm America's tradition of wildlands philanthropy that has expanded national parks from Acadia to Grand Tetons to the California redwoods.

Thank you.

[The prepared statement of Mr. Myers follows:]

PREPARED STATEMENT OF DAVID MYERS, EXECUTIVE DIRECTOR, THE WILDLANDS  
CONSERVANCY, OAK GLEN, CA

Ladies and Gentlemen—Good Morning

Senate Bill 2921 will preserve California's last large unprotected desert landscapes, including the geographic center, as Mojave Trails National Monument. This legislation will not impact millions of acres being studied or planned for renewable energy in California.

The Mojave Trails National Monument honors one of America's storied landscapes. This land includes the Creation Trail that's sacred to all seven Colorado River tribes. It includes the Mojave Trail, the route early pioneers forged through the steep red rock canyon walls of Afton Canyon along the Mojave River. It includes the National Trails Highway, which John Steinbeck traveled in search of America's soul and dubbed the Mother Road in *The Grapes of Wrath*. It covers a vast network of Jeep roads for exploring, sight seeing, and remote camping amid heroic scenery with names like: Sleeping Beauty Mountains and Pispah Lava Flow. It encompasses hiking trails that wind into Amboy Crater, a National Natural Landmark; and trails leading to Trilobite fossil beds, home of 450 million year-old creatures that were among the first living things on Earth to have eyes. It includes valleys and vistas so vast that our hopes seem grand and our problems seem small. These iconic national treasures, including magnificent cactus gardens, are bundled into the Mojave Trails National Monument.

The Wildlands Conservancy answered our nation's call when Catellus Development Corporation was selling over 600,000 acres inside Joshua Tree National Park, Mojave National Preserve, 20 congressionally designated wilderness areas, and critical wildlife habitat. TWC donated \$45 million in private funds toward acquiring this land, which was called the largest land gift in American history. This gift became the hallmark of Vice President Gore's Legacy of the Land Program. Vice President Gore called these lands "some of the most pristine and scenic desert lands in the world." He also stated, "These stunning California Desert lands are being preserved for future generations through a true public-private partnership . . . ."

The monuments and wilderness areas in this legislation are outside of the Department of the Interior's 351,069 acre Solar Energy Study Areas as well as outside California's preliminary 2,771,807 acre Renewable Energy Study Area. All 14 federal fast-tracked wind, solar and transmission projects lie outside the conservation lands in this bill. Over 1 million acres of BLM applications for solar, wind and geothermal energy projects in California are outside this bill's proposed conservation lands. Additionally, environmentalists support solar energy on hundreds of thousands of acres of degraded, fallowed or abandoned farmlands throughout high solar insulation areas in California.

Opponents of this legislation say the Mojave Trails Monument will take a million acres out of potential solar development.

1. 468,672 acres of the 941,000 acre monument are in Wildlife Management Areas and Areas of Critical Environmental Concern, 99% of which is restricted from disturbance.
2. 84,400 acres are in the Cady Mountains Wilderness Study Area and off limits to solar.
3. 103,221 acres that are outside the Areas of Critical Environmental Concern were donated and pledged for conservation.
4. Of the remaining 283,707 acres, less than 78,000 acres is under 5% slope and suitable for solar.

Conservationists initially recommended a 2.8-million-acre national monument that was scaled down to 941,000 acres to accommodate energy projects on the east, west, and south sides of the monument boundary, many of which will industrialize lands donated for conservation. TWC supports the legislation's provision for the acquisition of private inholdings inside Mojave Trails National Monument as a one to one land compensation for donated lands outside the monument repurposed for energy development.

This legislation honors the representations to protect this land (which you have copies of) made by President Clinton, Vice President Gore, Interior Secretary Bruce Babbitt, and BLM Director Tom Fry. Ten years ago prominent democrats and republicans alike saluted this donation as a patriotic private sector solution. We can protect America's natural heritage while developing renewable energy resources. We must do both.

The CHAIRMAN. Thank you very much for your statement.  
Mr. Pizarro, go right ahead.

**STATEMENT OF PEDRO PIZARRO, EXECUTIVE VICE PRESIDENT, POWER OPERATIONS, SOUTHERN CALIFORNIA EDISON, ROSEMEAD, CA**

Mr. PIZARRO. Thank you, Chairman Bingaman.

I want to thank you and the rest of the committee for inviting Southern California Edison to participate here. Our utility, or our parent company, Edison International, have worked with you and several of the members of the committee on renewable-related projects in each of your respective States, and I thank you for those efforts also.

Importantly, I also want to thank Senator Dianne Feinstein for her leadership and tireless effort in drafting this bill, the California Desert Protection Act of 2010. As testimony today indicates, this legislation impacts a number of very disparate and sometimes competing interests, and Southern California Edison applauds Senator Feinstein for working to address all of these views.

As many of you know, last year, Governor Arnold Schwarzenegger signed an executive order setting a new goal that 33 percent of California's energy come from renewable generating sources like wind, solar, and geothermal. I believe this act will help the State increase its renewable energy resources in a manner that safeguards our State's natural beauty and resources.

SCE, again, a subsidiary of Edison International, is currently country's the largest purchaser of renewable electricity. In 2009, we delivered 13.7 billion kilowatt hours of renewable energy, representing approximately 17 percent of our customers' energy consumption. We are also the leading purchaser of solar energy, and we procured approximately 65 percent of all U.S. solar generation in 2008.

I am responsible for the procurement, generation, and delivery of electricity for our customers. As such, a lot of my time is spent working to increase the company's renewable power portfolio and



ensuring that our high-voltage transmission system is capable of delivering that renewable power.

The California Desert Protection Act of 2010 protects 1.7 million acres of California desert from development. It should also help speed up renewable development outside of those areas, while preserving a corridor for the construction and upgrade of transmission lines that are needed to bring renewable power to urban load centers.

There is probably no entity on which these new designations will have more direct impact than Southern California Edison, both as a transmission owner and as a purchaser of renewable resources. I want to assure the committee that SCE would not support this legislation if we believed, as some critics suggest, that it would endanger our ability to increase delivery of renewable energy to our customers.

The actual threat to building transmission comes from the arbitrary and sometimes draconian nature of the permitting process. Just as an example, today SCE has energized recently the first 700 megawatts of one of the most significant renewable transmission lines in the country, bringing wind and solar energy from the Tehachapi region to the demand center in Los Angeles.

We are ready to construct the rest of the 4,500 megawatt line, but we may face some considerable delay from 11th-hour concerns raised by a Federal agency. So we understand what it takes to work to these issues.

SCE believes that the desert renewable energy permitting provisions of the bill will help expedite the development of new renewable energy projects. The bill allows projects on private lands to mitigate environmental impacts by providing funding to help purchase or rehabilitate additional BLM lands.

SCE also supports provisions establishing deadlines for action by Federal agencies and holding those agencies accountable for meeting those deadlines. Just as importantly, the bill ensures that the agencies have the staff and the resources to enable them to meet those deadlines, which is critical.

Finally, SCE appreciates the language in the bill that expressly authorizes the company to maintain, to upgrade, and to replace existing transmission and substation facilities in the monuments, including the development of a new east-to-west line that has been preliminarily identified through the State of California's Renewable Energy Transmission Initiative, or RETI, stakeholder process.

I want to take just a moment to point out the extraordinary steps that Senator Feinstein has taken to build consensus for this legislation. She led a group of stakeholders including Ted Craver, the chairman and CEO of Edison International; 2 of today's panelists, Mr. Myers and Ms. Wald; and others on a tour of the proposed monument site. Seeing the natural beauty of California's desert areas made it clear why the Senator is so passionate about this issue.

Simply put, this legislation is a win-win for the environment. It will conserve irreplaceable desert lands for future generations while promoting renewable energy development. Senator Feinstein is to be commended for her leadership in developing this very innovative and comprehensive approach.

Thank you, Mr. Chairman.  
 [The prepared statement of Mr. Pizarro follows:]

PREPARED STATEMENT OF PEDRO PIZARRO, EXECUTIVE VICE PRESIDENT, POWER  
 OPERATIONS, SOUTHERN CALIFORNIA EDISON, ROSEMEAD, CA

I want to thank Chairman Bingaman, Ranking Member Murkowski, and the rest of the Committee for inviting Southern California Edison to participate in this hearing. I also want to thank Senator Dianne Feinstein for her leadership and tireless effort in drafting S. 2921, the California Desert Protection Act of 2010. As today's testimony indicates, this legislation impacts a number of very disparate and sometimes competing interests. Southern California Edison applauds Senator Feinstein for working to address all of these views.

As many of you know, last year, Governor Arnold Schwarzenegger signed an executive order setting a new goal that 33 percent of California's energy come from renewable generating sources such as wind, solar, and geothermal. Developing significant new wind and solar generation while protecting California's natural resources is a big challenge—especially since most of our state's best renewable areas lie amidst relatively pristine desert and remote mountain areas. Absent a thoughtful balancing of interests, doing the right thing by reducing California's emissions can be the wrong thing for our own desert natural resources. This legislation does a good job of reconciling these important and sometimes competing interests in a reasonable way. I believe the California Desert Protection Act of 2010 will help the state increase its renewable energy resources in a manner that safeguards our state's natural beauty and resources.

Southern California Edison (SCE), a subsidiary of Edison International, is currently the largest purchaser of renewable electricity in the country. SCE serves about 13 million people and 300,000 businesses over a 50,000 square mile service territory in southern and central California. In 2009, we delivered 13.7 billion kilowatt hours of renewable energy, representing approximately 17 percent of our customers' energy consumption. Since 2002, SCE has entered into 58 contracts that are expected to deliver up to 31.2 billion kilowatt-hours per year of renewable energy. SCE signed contracts for every major renewable technology: wind, solar, geothermal, small hydropower and biomass. SCE is the nation's leading purchaser of solar power, and procured approximately 65 percent of all U.S. solar generation for its customers in 2008. In February 2009, SCE executed one of the world's largest solar deals. The series of seven "power tower" projects will provide up to 1,300 megawatts of solar thermal energy; they are to begin producing in San Bernardino County, California, starting in 2013.

As SCE's Executive Vice President for Power Operations, I am responsible for the procurement, generation, and delivery of electricity for our customers. As such, much of my time is spent working to increase the company's renewable power portfolio and ensuring that our high voltage transmission system is capable of delivering that renewable power.

The California Desert Protection Act of 2010 protects 1.7 million acres of California desert from development. It should also help speed up renewable development outside of those areas, while preserving a corridor for the construction and upgrade of transmission lines needed to bring renewable power to urban load centers.

Senator Feinstein's proposed creation of the Mojave Trails and Sand to Snow national monuments and the proposed expansion of the Death Valley, Mojave Preserve and Joshua Tree national parks are all within SCE's service territory. There is probably no entity on which these new designations will have more direct impact than Southern California Edison, both as a transmission owner, and as a purchaser of renewable resources. We have worked long and hard with Senator Feinstein to make sure the proposals are good for our customers and employees and will help us meet the policy goals of the state of California.

I want to assure the Committee that SCE would not support this legislation if we believed it would endanger our ability to increase delivery of renewable energy to our customers.

SCE believes that the desert renewable energy permitting provisions of the bill will help expedite the development of new renewable energy projects. Some of the most noteworthy aspects of the legislation are the provisions designed to encourage the development of renewable projects on previously disturbed private lands through the creation of Habitat Mitigation Zones in the California Desert Conservation Area.

Currently, when projects impact federally protected species or their habitat, the process for permitting renewable energy development on private lands is signifi-

cantly slower than projects proposed on public lands, taking years instead of months. The bill addresses this inequity by allowing projects on private lands to mitigate environmental impacts by providing funding to help purchase or rehabilitate additional BLM lands. Use of this money would be guided by an advisory panel consisting of environmental groups, state and local governments, and the renewable energy industry.

SCE also supports provisions establishing deadlines for actions by federal agencies and holding those agencies accountable for meeting those deadlines. Just as importantly, the bill ensures that the agencies have the staff and resources to enable them to meet those deadlines by creating a dedicated revenue stream through solar and wind leasing revenues.

Finally, SCE appreciates the language in the bill that expressly authorizes the company to maintain, upgrade, and replace existing transmission and substation facilities in the monuments, including the development of a new east-to-west line that has been preliminarily identified through the State of California's Renewable Energy Transmission Initiative (RETI) stakeholder process. S. 2921 will both protect public lands and enable the construction of transmission projects necessary to support renewable energy development and deliver clean power to southern California. Specifically, SCE will be able to expand the current Pisgah switchyard to a new 500 kV substation which will collect power from renewable projects in the Mojave Desert and deliver it to California's electric customers. Additionally, the legislation permits future high voltage transmission lines within the monuments.

I want to take just a moment to point out the extraordinary steps that Senator Feinstein has taken to build consensus for this legislation. She led a group of stakeholders including Ted Craver, Chairman and CEO of Edison International, two of today's panelists, Mr. Meyers and Ms. Wald, and others, on a tour of the proposed monument site. Seeing the natural beauty of California's desert areas made it clear why Senator Feinstein is so passionate about this issue. This act would conserve these spectacular and sensitive lands for the benefit and enjoyment of future generations.

Decisions on where to site generation and transmission facilities require a delicate balancing act between providing electricity and protecting the environment. This legislation will help to achieve this balance. It is a win-win for the environment by conserving pristine land and promoting renewable energy projects. Senator Feinstein is to be commended for her leadership in developing a comprehensive approach that will spur renewable development in California and will provide new protections for vast portions of the desert.

The CHAIRMAN. Thank you.  
Mr. Hubbard.

**STATEMENT OF DAVID P. HUBBARD, ESQUIRE, GATZKE,  
DILLON & BALLANCE LLP, ESCONDIDO, CA**

Mr. HUBBARD. Good morning, Mr. Chairman, and thank you for this opportunity to speak.

Since 2001, I have been legal counsel for a host of off-highway vehicle groups, and among the many venues visited by my clients, the deserts of California are, by far, the most popular. Every year, my clients and their members, along with millions of other OHV enthusiasts, recreate in the California deserts, pumping hundreds of millions of dollars into local and regional economies. In fact, without OHV revenue, many of the little towns in the California desert would dry up and blow away.

But the last 2 decades have taken a toll on OHV recreation and other outdoor activities that depend on OHVs for safe access to remote locations. While OHV sales have increased and while the number of OHV users continues to rise, the areas available for OHV recreation and camping have diminished sharply in both number and size. This has forced OHV users onto smaller parcels with fewer trails, resulting in more concentrated impacts on natural and cultural resources.

So it is with great skepticism that my clients receive news of a fresh piece of legislation seeking to protect the California desert. Such statutes almost always result in us having to do more with less.

But every once in a while, there is something new under the sun. The bill currently under review represents a radical departure from the way desert land use legislation has typically been developed. Rather than have a bill shoved down our throats, Senator Feinstein's staff asked for our input early and often, as they did with other stakeholders.

The big surprise was not that we had disagreements on some issues or on the wording of certain provisions. The big surprise was that we had so much in common. For example, we agreed that OHV use and camping in the California desert are important recreational activities and warrant Federal recognition and protection.

We also agreed that there are some places in the California desert where OHV use is not appropriate. We agreed that new monuments and wilderness areas could be created without reducing existing OHV routes and use areas.

We agreed that renewable energy exploration and development was critical, but that it need not necessarily trump conservation areas and efforts or recreational uses. We also agreed that renewable energy projects needed a better process for permitting.

We agreed that the military's mission, specifically with respect to the Twenty-Nine Palms Marine Corps Base, had to be accommodated in this bill but could be done in a way that was sensitive to both natural resources and recreational needs.

These agreements did not come easy. They did not come cheap. People had to compromise. Yet we kept going, and we kept making progress.

Now there are members of my OHV community who disagree and who oppose this bill. They don't like it at all. But as much as I respect their opinion, I think they are missing an opportunity to recast the old debate between OHV recreation and environmental protection, and they are also missing a chance to advance the somewhat more recent debate between public access and renewable energy development.

In short, they are missing the chance to shape land use in the California desert for the next 50 years. This bill represents a new step forward, a paradigm shift that is long overdue.

A couple of things I wanted to point out. One is that the bill does not create any new OHV trails or OHV use areas. It simply preserves the status quo, including trails that exist in monuments and in wilderness areas, but it doesn't create any new trails.

With respect to the OHV recreation areas, what it does is it codifies the existing permitted OHV uses in those areas. It doesn't create anything new. The point for us is that this is Federal recognition that OHV recreation is a bona fide and accepted, under the Federal scheme, use of these public lands.

The last thing I would want to say is that it is up to the Defense Department to decide whether and to what extent they need to expand into Johnson Valley. That hasn't been determined yet. We are more than happy to continue working with the military and with

the Senator's office to find a means where perhaps a joint use alternative could be accommodated.

Thank you.

[The prepared statement of Mr. Hubbard follows:]

PREPARED STATEMENT OF DAVID P. HUBBARD, ESQUIRE, GATZKE, DILLON & BALLANCE LLP, ESCONDIDO, CA

#### *Introduction*

Since 2001, I have been legal counsel for a host of organizations that engage in off-highway vehicle (OHV) recreation throughout the western United States. Among the venues visited by my clients, the deserts of California, especially those managed by the federal government, are the most popular. Every year, my clients and their members, along with millions of other OHV enthusiasts, recreate in the California deserts, pumping close to a billion dollars into local and regional economies.

But the last two decades have taken a toll on OHV recreation and other outdoor activities that depend on OHVs for safe access to remote locations. While OHV sales have increased, and while the number of OHV users continues to rise, the areas available for OHV recreation and camping have diminished sharply in both number and size. Hundreds of thousands of acres formerly open to OHV use have been closed in the last 10 years alone. This has forced OHV users onto smaller parcels with fewer trails, resulting in more concentrated impacts on natural and cultural resources. It has also devalued the wilderness experience for those families who travel to the desert to ride their motorcycles and quads in a safe and uncrowded environment.

#### *The Process of Developing the "California Desert Protection Act of 2010"*

The trend of closures is a sad and disturbing one for my clients. Not only do they consider themselves good stewards of the land, they view OHV recreation as one of those rare activities that allow families to spend time together outdoors—away from the television and video games, and away from the drugs and crime and violence which, unfortunately, characterize life in many California cities and suburbs.

So it is with great skepticism that my clients receive news of a fresh piece of legislation seeking to "protect" the California Desert. Such statutes almost always cause further erosion of recreational access to the public lands of the state. My clients are never consulted, their interests are disregarded, and they are forced to do more with less.

But every once in awhile, there is something new under the sun.

The bill currently under review—the "California Desert Protection Act of 2010"—represents a radical departure from the way desert land use legislation has typically been developed. Rather than shove the bill down our throats, Senator Feinstein's staff asked for our input early and often, and then did the same with other stakeholders, including key conservation organizations, energy interests, and the Department of Defense. The big surprise was not that we had disagreements on some issues and on the wording of certain provisions. We all kind of expected that. The big surprise was that we had so much in common.

Let me give you some examples.

- We agreed that OHV use and camping in the California Desert are important recreational activities that warrant federal recognition and protection.
- We agreed that there are some places in the California Desert where such activities are appropriate and can be enjoyed with relatively minor environmental impacts.
- We agreed that there are some places in the California desert where OHV use is not appropriate, where the potential for damage to natural and cultural resources is simply too high to allow vehicle access.
- We agreed that new National Monuments and New Wilderness Areas could be created without reducing existing OHV routes and use areas.
- We agreed that renewable energy exploration, while important to the nation and feasible in certain parts of the desert, must not trump conservation efforts and recreational use.
- We agreed that renewable energy project projects deserved a streamlined permitting process.
- We agreed that, with creative land use strategies, the expansion of the Twenty-Nine Palm Marine Corps Base, which is vital to our nation's security, could be accomplished without significant loss of recreational opportunity or natural resources.

These “agreements” did not come easy. Nor did they come cheap. Everybody had to bend. Everybody had to compromise. There were hurt feelings, bruised egos, and internal feuds within each stakeholder camp. Yet we kept it together. We kept moving forward, making progress—largely because of the excellent leadership of the legislative staff and the open-mindedness of the groups involved.

Are there members of the OHV community who oppose this bill? Sure. There are some who hate it, who view it as a travesty and a betrayal. You will hear from some of them today. But as much as I respect their opinion, I think they are missing the point. Worse, they are missing a great opportunity to recast the old debate between OHV recreation and environmental protection, and advance the somewhat more recent debate between public access and renewable energy development. In short, they are missing the chance to shape land use in the California Desert for the next 50 years. They want to fight the same old battles, using the same arguments and tactics which, in the past, have failed to produce enhanced recreational access, improved environmental protection, or a sound alternative energy policy. The current bill represents a new step forward—a paradigm shift that is long overdue.

#### *The Benefits of the Proposed Bill*

So what did we achieve? Let me highlight a few key provisions that answer this question. The bill, if approved, would:

- Establish the Mojave Trails National Monument and the Sand-to-Snow Monument. Existing OHV trails in the monuments would be preserved, but no new trails would be created.
- Add Wilderness areas to the Death Valley National Park (59,264 acres), the San Geronio Wilderness (7,141 acres), and the Bowling Alley Wilderness (30,888 acres).
- Establish new Wilderness Areas in the following areas:
  - the Avawatz Mountains (86,614 acres)
  - Golden Valley (21,633 acres)
  - Great Falls Basin (7,871 acres)
  - Kingston Range (53,321 acres)
  - Soda Mountains (79,376 acres)
- Release Wilderness Study Areas (WSAs) in the Cady Mountains, in Great Falls, and in the Soda Mountains, so that they can be planned and managed for other purposes consistent with the “multiple use” mandate of the Federal Land Policy and Management Act.
- Establish a Special Management Area in Vinagre Wash (75,595 acres) that safeguards natural and cultural resources, respects the OHV access needs of existing residents, and protects Navy SEAL training areas.
- Add land to Death Valley National Park (40,740 acres), the Mojave National Preserve (29,246 acres), and the Joshua Tree National Park (2,904 acres).
- Establish OHV Recreation Areas at
  - El Mirage (25,600 acres)
  - Johnson Valley (180,000 acres minus USMC expansion of Twenty-Nine Palm training base)
  - Rasor (24,170 acres)
  - Spangler Hills (56,198 acres)
  - Stoddard Valley (38,931 acres)

It is important to note that OHV use is currently permitted in each of these newly-designated Recreation Areas. The new designations would merely codify the status quo; no new OHV routes or use areas would be created. However, the bill does instruct the Secretary of the Interior to conduct studies to determine whether more land might be added to the OHV Recreation Areas, provided the proposed acquisitions would not result in resource conflicts.

#### *Renewable Energy, Military Preparedness, and OHV Use*

The proposed bill also addresses two other difficult land use issues in the California Desert—renewable energy development and military base expansion. With regard to the first, the bill would improve and streamline the federal permit process for renewable energy facilities. It also would create a rational method for distributing the income derived from solar and wind energy projects located on federal land. Finally, it would allow renewable energy projects to utilize programmatic Environmental Impact Statements and Land Use Plans, thus making compliance with NEPA and FLPMA easier, faster, and more cost effective.

Contrary to what some people have stated, the bill would not preclude renewable energy development in the OHV Recreation Areas. Instead, the bill simply requires

that energy projects proposed in such areas be compatible with OHV use. This is not an exceptionally difficult hurdle to overcome, if the project applicant is willing to work with the OHV community and BLM. It does, however, operate as a deterrent to energy speculators who wish merely to tie up desert land in hopes of "flipping" it for a profit.

So please, review the text of the OHV and energy provisions closely. The bill does not sacrifice renewable energy development at the altar of OHV recreation; but neither does it allow the recreating public to be run over by those who want a cheap ride on the renewable energy bandwagon.

With respect to military base expansion, the bill defers to the Secretary of the Navy to determine how much land must be added to the Marine Corps training facility at Twenty-Nine Palms. Indeed, it is very likely that a significant portion of the newly-designated Johnson Valley OHV Recreation Area will be lost to the expansion of the base. This is a substantial impact to the OHV community; but my clients—many of whom are or were members of the armed services—recognize that when it comes to preparing American Marines for battle, recreational interests must yield to those of national security. In addition, the Marine Corps has worked hard to integrate existing OHV uses into its land planning vision. As a result, the proposed bill includes a "joint use" provision. Under this provision, the Marine Corps and the recreating public would both have access to certain areas within Johnson Valley. Given the challenges that currently face our military, my clients consider this an acceptable compromise.

#### *Conclusion*

In its 178 pages, the proposed bill covers a lot of ground and tackles many issues that are fraught with conflict. Yet the bill succeeds because it respects and honors both sides of these long-standing debates, without getting bogged down in them. Instead, it builds a new land management regime on a platform of shared interests. The California Desert is a natural resource, an economic opportunity, a recreational haven, and a military asset. Senate Bill 2921 allows the Desert to play each of these roles simultaneously, while minimizing clashes between them. For that reason, it has earned my clients' support. We hope it earns yours as well.

Thank you.

The CHAIRMAN. Thank you very much.  
Mr. Baker.

#### **STATEMENT OF HARRY BAKER, VICE PRESIDENT, CALIFORNIA ASSOCIATION OF 4 WHEEL DRIVE CLUBS, SACRAMENTO, CA**

Mr. BAKER. Thank you.

Good morning. I am Harry Baker, and I am here to give my organization's views of S. 2921. Thank you for this opportunity.

We oppose legislation that denies the public's access to public lands. We represent families and individuals, virtually anyone that uses a vehicle, including the handicapped, to access public land be it for work, recreation, sightseeing, trail head access, film making, or just relaxing.

We are joined in these efforts and in this opposition by the California Off-Road Vehicle Association. Contrary to what you may have been told, not all OHV recreationalists support this bill.

This legislation is really about changing the classification of public land to please special interest groups, and not because these lands present an opportunity to protect a special environment. The proposed new national monuments will block alternative energy and natural resource development in areas that have been identified for potential use.

The management plans that are required for this monument has the potential to change the current uses and management, as has happened in monuments like the Carrizo Plains National Monument in California and the Escalante National Monument in Utah.

This proposed bill will increase the wilderness acreage in the California desert, which already has 9 million acres of wilderness. Not all of this land is designated as being suitable for wilderness. These new wilderness areas would be on lands managed by the National Park Service, the U.S. Forest Service, and the Bureau of Land Management.

While there is language in this legislation that certain OHV areas will be congressionally protected, there is no guarantee in this bill that they will remain as open areas, and that is very critical to the off-road community and the recreation community. There is nothing in this legislation that will require that.

We object to language in the bill that would restrict the amount of acreage that can be set aside for OHV use. One of the OHV areas, the Johnson Valley OHV area, is being reviewed as an area for possible expansion of the Twenty-nine Palms Marine Base. Should this expansion occur, it would severely impact the amount of acreage available for recreational use. It would cut it by one third.

The lands being added to the national parks that are now managed by the BLM as limited use areas. Do we really need to transfer this land to the National Park Service at this time of economic decline and incur the added cost of managing this land by the Park Service? It seems to us that this is not a prudent use of national taxpayers' money.

This proposed legislation is about more than vehicle use. It is about alternative energy and national monuments. It is about limiting public access to public lands, creating a special interest, removing land from potential alternative energy development, blocking the military from future expansion of national defense needs, and ignoring the economic impact to the surrounding areas.

This proposed legislation is using the terms "conservation," "recreation," "special management areas," and "renewable energy" to push a goal of locking up the California desert. We cannot support legislation which has been conceived and championed by special interest groups as being what the majority of Californians need and wants and supports.

We respectfully request that field hearings be held in the areas that would be affected by this legislation to allow the local communities and desert visitors to have their voices heard and that all the current and cumulative financial ramifications be fully examined.

I did have a map that I brought today. I want to kind of explain a couple of things on that. One of them is the land use right now, all the areas that you see in orange, those are wilderness areas currently in the California desert. The areas in gray are the military installations. The light yellow is the BLM-managed land.

This area here in green, this is the proposed national monument, the Mojave Trails National Monument, and this is the proposed Sand to Snow National Monument. Huge areas of public land being locked up from public access.

Yes, the bill right now says that all current uses will continue. We know that doesn't hold true. There is kind of a historic precedence set that as soon as a bill becomes or the land becomes a national monument, steps are taken to change the management plan,



and uses that are in there today are phased out. We are very concerned about that.

I would like to present that map as testimony in this presentation. Thank you for the opportunity to have our views heard.

[The prepared statement of Mr. Baker follows:]

PREPARED STATEMENT OF HARRY BAKER, VICE PRESIDENT, CALIFORNIA ASSOCIATION  
OF 4 WHEEL DRIVE CLUBS, SACRAMENTO, CA, ON S. 2921

The California Association of 4 Wheel Drive Clubs is opposed to S. 2921. We oppose legislation that restricts the public's access to public lands. We oppose the creation of new National Monuments and Wilderness areas that withdraw lands from public access and close existing routes. We oppose the creation of new Wilderness areas that do not meet the standards of the Wilderness Act of 1964, which established the National Wilderness Preservation System. We oppose legislation that attempts to close any area or route of travel without verification of the economic impact to the area. And we oppose legislation that proposes to use public lands for development on private land.

The California Association of Four Wheel Drive Clubs, a state wide organization, is the largest organization of its type in the United States. It was founded in 1959 and has over 50 years of service to the recreating public. The Association works to maintain access to public lands and promotes responsible use of those lands. Our members come from all walks of life and economic circumstances. We represent families and individuals, virtually anyone that uses a vehicle, including the handicapped, to access public land be it for work, recreation, sightseeing, trail head access, film making, or just relaxing.

We are joined in these efforts and in this opposition by the California Off Road Vehicle Association whose members recently voted to oppose to this Legislation. We have also received petitions containing more than 6000 signatures from individuals that use public lands stating their opposition to this bill. Copies of the petitions have been provided electronically for the record and are available from our office.

This proposed legislation, S. 2921 the California Desert Protection Act of 2010, will limit or curtail those activities or access, by creating new National Monuments, by setting aside land for Wilderness, by designating a Special Management Area, by transferring BLM managed land to the National Park Service and by using public lands as mitigation for development on private lands. It will have a severe impact on the local communities, desert residents, hunters, property owners, miners, wildlife and off-road recreational enthusiasts. The American taxpayer will be tasked with paying for the enormous cost for the provisions in this bill.

This legislation is really about changing the classification of public land, to please special interest groups, and not because these lands present an opportunity to protect a special environment.

The proposed new National monuments, The Mojave Trails National Monument, 941,000 acres and the Sand to Snow National Monument, 134,000 acres, will block Alternative Energy and Natural Resource development in prime areas that has been identified for potential use. They will block future growth and development and or will create hardships for any community or individuals in the area of the monuments. The bill proposes to take land that was purchased by the federal government, with no caveats, and protect it from development for a special interest group and thereby eliminating other groups from using it. Any and all land that is taken out of exploration, recovery or production of natural resources makes us more dependent on other areas and even foreign countries, like China, for our future needs.

Proponents will say that all current uses can continue should these Monuments be approved but we know from experience that this is not the case. In places like the Carrizo Plains National Monument in California and the Escalante National Monument in Utah and in other National Monuments, access has been limited, roads have been closed and time honored historic uses such as grazing and mining have been eliminated. This legislation does call for a new management plan for this area that will set new regulations for the use of the land within the monuments. We are very concerned that while this legislation calls for the continued management of the land by the BLM, the management could very easily be changed to the National Park Service and thereby increase the cost of managing the land and change the regulations that would govern it.

This proposed bill would increase the areas that are wilderness in the California Desert District, which already has more than 9 million acres of Wilderness. While some of these proposed areas are currently Wilderness Study Areas, there is addi-

tional land being included as wilderness which in our opinion is an attempt to further restrict alternative energy development and curtail any future development of mining, expansion of military bases or any other types of land use. These new wilderness areas would be on lands managed by the National Park Service, the U.S. Forest Service and the Bureau of Land Management. Much of the land that is proposed for wilderness does not meet the criteria for designation as set forth in the Wilderness Act of 1964 which established the National Wilderness Preservation System. There are more than 14 million acres of Wilderness in California and we believe that enough is enough.

There is language in the legislation that certain Off Highway Vehicle (OHV) areas, but not all of the OHV areas in the Desert District, will be congressionally protected, but there is no guarantee that this language will remain in the bill and it has been stated by Senator Feinstein's staff that the Environmental community is adamantly opposed to having these areas congressionally designated. There is nothing in the legislation that would require that the OHV areas would remain as unrestricted cross country travel "open" areas. There is a requirement for new management plans to be developed or the existing plans to be reviewed. We object to the language in the bill that would restrict the amount of acreage that can be set aside for OHV use. The largest OHV area, proposed for designation is the Johnson Valley OHV area, which although being considered is not fully protected. It is under study for possible expansion by the Twentynine Palms Marine Base, should this expansion occur it would severely impact the amount of acreage available for recreational use. We believe that a deal has been made with the Marines to facilitate their expansion into Johnson Valley, with little concern for the impact that this would have on the desert communities of Johnson Valley and Lucerne Valley. A Marine Base expansion into the Johnson Valley area will devastate the local economy, create a hardship on, and have a severe impact on the way of life of those citizens living in the surrounding area. While we support National Defense and the Marines with their need for training, if expansion is required, we believe that an expansion to the east would be best. It would have the least impact on the citizens and still enable the Marines to complete their mission.

The 74,000 acres being added to the National Parks, are now managed by the BLM as limited use areas. Do we really need to transfer this land to the National Park Service at this time of economic decline and incur the added cost of managing that land by the Park service? It seems to us that this is not a prudent use of the tax payer's money.

A Special Management Area, of 76,000 acres, is proposed of which 49,000 acres will be managed as potential Wilderness. Again we see this as an attempt to lock up more land in the guise of protection, to block out alternative energy, other natural resource development and public access. This special management area and potential wilderness is also catering to a special interest group which wants the land removed from potential development.

This legislation also calls for the setting aside of a minimum of 200,000 acres of land, in no specified areas, as mitigation for alternative energy development on private land. Why should public land be used to mitigate development on private land? We believe that this action, should it be approved, will further erode the public's access to public lands. Alternative energy development should be encouraged on private land but not at the expense of public lands.

This proposed legislation is about more than vehicle use, alternative energy and National Monuments, it is about limiting public access to public lands, catering to special interests, removing land from potential alternative energy development, blocking the military from further expansion for national defense needs, and ignoring the economic impact to the surrounding areas. This proposed legislation is using the terms; conservation, recreation, special management areas and renewable energy to push a goal of locking up the California Desert and ultimately all public lands to all forms of entry and use.

We cannot support legislation which has been conceived and championed by special interest groups as being what the majority of Californians need, or wants and supports.

We respectfully request that field hearings be held in the areas that would be affected by this legislation to allow the local communities and desert visitors to have their voices heard, and that all the current and cumulative financial ramifications be fully examined.

The CHAIRMAN. Thank you for your testimony. We are glad to get the map. Thank you.

Mr. White.

**STATEMENT OF V. JOHN WHITE, DIRECTOR, CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES, SACRAMENTO, CA**

Mr. WHITE. Mr. Chairman, thank you very much for the invitation to be here. My name is John White. I am the director of the Center for Energy Efficiency and Renewable Technologies. We are a partnership of renewable energy developers and environmental organizations committed to working on global warming and air pollution reduction.

This collaboration and the kind of discussion we are having today is crucial for moving forward with respect to balancing and integrating our renewable energy goals with resource protection goals and other uses.

In recent years, we have had a renewal of interest in solar energy in the desert, along with wind energy, after many years of being asleep. During the time that we were off on other adventures, even though we had the early years of development of renewables in California, the largest solar plant existing in the world today are in the Mojave Desert. But there hasn't been any new plants developed since the 1980s.

During the planning period that a lot of the desert conservation work was done, the solar voice wasn't really much part of the discussion. So we are grateful to Senator Feinstein for recognizing the importance of including the renewable industry in these deliberations, and also we want to note the extraordinary cooperation that has gone on between the Obama administration Department of Interior and Governor Schwarzenegger's administration.

We have an intensive State and Federal planning efforts now underway, as you noted, with regard to the Renewable Energy Action Team and the Desert Renewable Energy Conservation Plan. In our written testimony, we make some specific suggestions for how these can be best coordinated. We think a combination of statutory direction and oversight by the committee is important.

We have a couple of specific areas that we would like to commend Senator Feinstein for, particularly her statement this morning about adding a new solar energy study zone for the west Mojave area. This is an area that is not affected by the monument proposal but is an area with significantly better solar resources than in the east by about 10 percent. It is also land that is closer to transmission, largely disturbed, but will require intensive coordination on wildlife management and also with the military.

We also commend Senator Feinstein for getting the military to recognize their role with regard to renewable energy development, as well as with regard to, we hope, helping with species planning.

The mitigation bank proposal that is included in the legislation is a very important one, but it needs to be closely coordinated with the State effort so that the mitigation is put to its best use. Scarce resources are deployed effectively.

Also we would note that the discussion about moving more renewable development to private land is a position of the conservation community and one that we share. However, there are significant barriers to the development of renewables on private land, including specifically the issue of coordinating review by the U.S. Fish and Wildlife Service.

Unless there is a Federal nexus, it can take significantly longer to get a Fish and Wildlife review on private land. So, that is an area that we would urge the committee to give some attention to. We also think that the mitigation bank should be made available to private—excuse me, to private as well as public land so that we can, again, coordinate with the ongoing planning efforts.

California has a really unique resource in this, in solar. Some of the very best land in the world within 100 miles of 10 million people and all the air conditioning that we need in southern California. Secretary Salazar, when he was out in California in March, said that we are the point of the spear in the Nation's fight to get more renewable energy on the ground.

We are doing an extraordinary amount of coordination and cooperation between and among all of the various groups and the agencies, State and Federal, and we urge the Congress to work with us. Senator Feinstein's legislation can be a vehicle for ensuring some of that cooperation, although we note the chairman's leadership also with regard to renewable energy and transmission, and we would like to see these efforts merged, coordinated, and overseen once they are passed.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. White follows:]

PREPARED STATEMENT OF V. JOHN WHITE, DIRECTOR, CENTER FOR ENERGY  
EFFICIENCY AND RENEWABLE TECHNOLOGIES, SACRAMENTO, CA

It is with great appreciation and respect that the Center for Energy Efficiency and Renewable Technologies (CEERT) offers this testimony regarding the California Desert Protection Act of 2010. CEERT is a partnership of major environmental groups and private-sector clean energy companies who strive to advance global warming solutions and renewable energy policies in California and the West. Collaboration between environmentalists and renewable energy developers, among other stakeholders, is crucial for the holistic planning and protection of California's desert resources, so our organization appreciates the opportunity to present our views on how to improve this important legislation.

California and the Federal Government have a long history of desert conservation that spans the legacy of the late Senator Alan Cranston and culminated with the passage of Senator Feinstein's California Desert Protection Act in 1994. In addition to Senator Feinstein's legislation, the Bureau of Land Management adopted the West Mojave Management Plan, which further restricts development in the critically important West Mojave; home to some of the best solar radiation land in the United States. These desert protection efforts, while critically important for wildlife conservation, wilderness and recreation interests, largely failed to consider or evaluate future development needs and opportunities for the abundant and strategic renewable resources which lie within California's desert.

Even though California launched the global wind and solar industries in the 1980's, our state and the federal government fell asleep shortly thereafter, lulled by low energy prices and electricity deregulation. When desert conservation and recreation planning efforts were launched in the 1990's in California, everyone was at the table except the renewable energy industry and renewable energy advocates. Consequently, vast tracts of land were set aside for habitat conservation for protected species, along with expansion of military lands, recreation, and wilderness. But virtually no land was reserved for renewable energy in areas with some of the highest solar radiation in the world. This failure to identify and reserve areas for solar and wind development has come back to haunt California and jeopardize the strategic national interest in renewable energy.

In recent years, the return of high oil prices and global attention to climate change sparked a revival in renewable energy. A solar land rush resulted in a flood of speculative lease applications on the Bureau of Land Management's desert lands at the end of the Bush Administration. More than a million acres of lease applications were filed, with no effort by BLM to weed out speculators and paper projects. The desert conservation community became alarmed, which prompted calls for a

moratorium on lease applications and late but comprehensive solar planning initiatives by BLM.

Our failure to plan for large-scale solar development, combined with the continuing expansion of protected lands for desert conservation, recreation, and military training, has exposed us to the possibility that much of the most productive high solar radiation land in the state has already been taken off the table. As a result, we are struggling to find a way to integrate and balance environmental conservation and recreational needs with the imperative to develop and reserve our extraordinary renewable resources in the desert.

We support the protection of lands for conservation purposes, but believe that protection should be accorded for those lands that have true conservation value, not just all lands that are available for that purpose. In so doing, we can prioritize our conservation objectives without unnecessarily eliminating the best sites for solar and wind energy. As Congress takes on energy legislation over the coming months, and examines the need to increase our long-term domestic energy supply, we must think about the most sustainable path toward energy independence. The California Desert is a national resource which we feel should be considered for long-term energy needs, especially as we discuss reopening other areas of national significance for oil and gas exploration.

Part of the challenge involves identifying areas where renewable development would not be restricted due to other designations and protections. Of public lands in the California desert, 4.8 Million acres are protected for the Desert Tortoise and 1.7 Million acres for the Mohave Ground Squirrel, a state-protected species. Although the Mohave Ground Squirrel management area allows 1% of the covered land for development, BLM has, so far, been unwilling to designate even a fraction of 1% of this land for solar development in this most valuable solar resource area. Seven hundred thousand acres are open to off-highway vehicle use. Furthermore, two large military training facilities lie within in the most productive and valuable solar lands in the Mojave Desert; China Lake and Edwards Air Force Base, which together comprise 1.4 Million acres.

For these reasons, we strongly urge the Committee and Senator Feinstein to direct the BLM to revisit the West Mojave Plan's provisions limiting solar development. This review of the West Mojave Management Plan should consider the best available scientific information on habitat and species protection, and take into account the availability of disturbed land with very high solar radiation levels, which is also close to electric transmission lines.

We would also urge the Committee and Senator Feinstein to encourage BLM to clear out speculative lease applications and those which represent projects which are not moving forward, and only approve those projects which are commercially feasible and have a reasonable expectation of being developed.

In order to reach the 2020 goal of 33% renewable energy, California needs to develop fifty to one hundred thousand acres of prime solar land in the desert (ideally previously disturbed land with high solar radiation). To achieve the 2050 climate goal, approximately 350,000 acres of desert land are needed for development. The amount of land that should be considered for renewable energy development is quite small in comparison to land that has already been conserved for other purposes. And although BLM has set aside around 200,000 for a PEIS study area in Riverside East, one BLM field manager has suggested that a maximum of one-eighth of that area could be developed while avoiding environmentally sensitive lands, leaving the need for developable solar lands unmet.

Of course, the sun is not the only extraordinary renewable resource found in California's Desert, and so we urge the Committee and Senator Feinstein to consider the area's other renewable resources alongside other desert attributes. For example, we understand that the California Wind Energy Association (CalWEA) has proposed very minor adjustments to the Monument's border areas, mostly on already disturbed lands, which would preserve the viability of four projects totaling 1,300 MW. We suggest consideration of all renewable resources in future planning efforts in the desert.

To limit reliance on public lands for renewable energy development, the conservation community often suggests construction of renewable energy facilities on private land. A number of barriers require attention in order to make development on private lands a viable option. First, if no federal nexus exists (i.e. the project is not on federal lands), Section 10 consultation by the US Fish and Wildlife Service is necessary. Renewable project developers tell us that this takes significantly longer than a Section 7 consultation; and can take as long as 7-10 years. This creates a practical disincentive not to develop on private lands. Furthermore, the extreme parcelization of the region to multiple landowners-often over 100 per square mile-

severely limits the acquisition of plots of private land large enough to sustain a large-scale renewable electricity generation facility.

We are encouraged by the leadership and cooperation provided by Secretary Salazar and Governor Schwarzenegger in achieving an unprecedented level of inter-agency cooperation on renewable project permitting, and for integrating conservation and renewable resource planning. We look forward to sustaining and expanding this cooperation, and extending it to the recently initiated California Desert Renewable Energy Conservation Plan (DRECP). In addition, California recently enacted Senate Bill 34, which requires the California Department of Fish and Game to develop a funded interim mitigation strategy for “fast-track” renewable energy projects in the desert.

Section 205 of the California Desert Protection Act of 2010 establishes an innovative mitigation banking system to encourage development of renewable energy projects on private lands, which may help remedy the Section 7 issue we identified earlier. This language was drafted prior to the initiation of the DRECP and enactment of SB 34, and therefore should be modified so as not to undermine the current rigorous scientific and consensus-building planning efforts in California. More specifically:

- Design and implementation of the proposed federal mitigation program should be coordinated with the DRECP. Upon completion and approval of the DRECP by the BLM, the mitigation program should be subsumed into the DRECP conservation structure.
- Design and implementation of the proposed federal mitigation program should coordinate with the California Department of Fish and Game’s (DFG) interim mitigation strategy, per California Senate Bill 34, so that any land acquisition or other mitigation actions identified by BLM for conservation are done in collaboration with DFG’s strategy. This modification will prevent any overlap and potential conflict between separate mitigation efforts.
- The cap to limit the mitigation payments for land acquisition to 75% of the fair market cost of purchasing the acreage needs to be changed to 100% of fair market value in order to ensure conformance with the developing DRECP and the state’s interim mitigation strategy. This will ensure that it does not unintentionally limit the use of this fund for projects.
- The Mitigation Council should include one representative from the DRECP.
- This section should apply to all projects, not just those located on private land.
- All funds provided by BLM land rents or leases should support conservation and should be directed toward mitigation, monitoring, and management.

We are grateful to Senator Feinstein that a number of elements of the proposed legislation will assist the state, region, and country in identification and development of solar development lands. We applaud the designation of Renewable Energy Coordination Offices throughout the west to accelerate the issuance of federal permits for renewable energy projects and transmission lines to integrate renewable energy development. This will accelerate the often sluggish permitting process. Additionally, we support the proposed establishment the California Desert Mitigation Bank Pilot Program, under which eligible lands in the California Desert Conservation Area will be made available as habitat mitigation zones for the development of renewable energy projects on non-federal land. Because of the noted constraints on development on private land, we would respectfully urge the mitigation bank be made available to projects on federal land as well. Finally, we support the proposed statute’s requirement for a study analyzing the impacts of a program to develop renewable electricity generation projects on military installations in California and Nevada. Identifying the potential for development in these areas will be a key first step in building a productive partnership between the renewable energy industry and the Department of Defense.

In conclusion, CEERT strongly believes that we can achieve the proper balance between desert protection and renewable energy development, recognizing the multiple uses demanding land in the desert. We support the protection of valuable habitat and historical viewsheds. We appreciate Senator Feinstein’s significant efforts to ensure timely and orderly renewable energy development in the desert, and hope that land use restrictions will be based on conservation value and best available science, while taking into account the most valuable solar and other renewable energy resources. In order to more effectively manage the needs of various stakeholders and desert resources, and to identify the appropriate lands for solar development in such a rich and important region, we urge every effort be made to improve consistency with ongoing state and federal planning and permitting. Such cooperation has already advanced the dialogue between parties within the region, and will

continue to shape the sustainable management of desert character and resources in the future.

We commend Senator Feinstein for her leadership in protecting California's fragile and extraordinary desert resources, and for her and the Committee's willingness to listen and respond to the constructive suggestions from the wide variety of citizens and interests seeking to coexist in a manner that preserves the desert's environment.

Thank you.

The CHAIRMAN. Thank you very much.

Ms. Wald, you are the final witness. Thank you for being here.

**STATEMENT OF JOHANNA WALD, SENIOR ATTORNEY, NATURAL RESOURCES DEFENSE COUNCIL, SAN FRANCISCO, CA**

Ms. WALD. Thank you, Mr. Chairman. Thank you for the invitation to appear today.

I am Johanna Wald, and I am a senior attorney with the Natural Resources Defense Council. NRDC is a national nonprofit environmental organization, which has worked for 4 decades to protect lands managed by the Department of Interior's Bureau of Land Management and to promote sustainable energy policies.

NRDC supports the overarching goals of S. 2921 to protect unique and special places on the public lands while facilitating renewable development on appropriate areas, and we commend Senator Feinstein for her leadership on these issues. At the same time, we have some serious concerns about the energy title that we would like to work with this committee and the Senator to resolve.

Like Senator Feinstein, NRDC believes that we do not need to sacrifice special places on public lands to obtain the renewable energy necessary to meet the unprecedented challenge of global warming. Not all lands in the California desert are appropriate for renewable energy or other development, and the protections this bill would extend to wildlands and wild rivers in the desert are certainly warranted.

Like the Senator, NRDC believes we need to develop renewable energy as quickly as possible to address global warming. However, we must do that development right, whether on public or private lands. We must put more emphasis on conservation, efficiency, and distributed generation, and we must have sound environmentally responsible renewable energy programs.

More specifically, we must have a renewable energy program for the public lands that ensures that necessary development takes place on appropriate areas and that allows the Secretary of the Interior and BLM to learn from experience gained in the permitting and operation of solar and wind projects.

The Interior Department and administration have said that they want this kind of program. But BLM and Interior have very little experience with these technologies. What is more, the scale of these projects is unprecedented, and we do not yet know the full range of their impacts.

BLM and Interior are learning, though, and we should expect them to adapt their environmental reviews, decision-making, and policies to reflect what they learn from the permitting and operating of these projects. So, our fundamental concern with the energy title is that it would legislate key components of a renewables

program for the public lands at the very beginning of its life rather than allow the agencies to learn from experience.

For example, the bill would impose very tight deadlines on BLM review of permit applications, jeopardizing the quality of those reviews. Rather than locking in deadlines, Congress should tell the Secretary to establish deadlines and report back on their effectiveness.

The bill would also legislate a categorical exclusion for the National Environmental Policy Act for certain wind and solar testing projects. This is unwise and unnecessary. Interior has authority underneath it to establish categorical exclusions where appropriate, and BLM has already decided that an administrative exclusion can be used for wind testing projects under certain circumstances.

Similarly, the bill would legislate baseline statistics that BLM would have to use in calculating rental fees for solar projects. We are concerned that the specified statistics will undervalue public lands. Instead, the Secretary should retain the authority to set an appropriate fee for solar projects, which is the approach the bill takes for wind projects.

We are also very concerned about the fact that this bill accepts the right-of-way system as the basis for allocating wind and solar development rights on public lands. We understand the bill aims to enhance this system, which is what BLM is using now, but we are concerned that it would, in effect, codify a system with known shortcomings.

Instead, Congress should clearly acknowledge that a more robust, not simply a faster system, such as competitive leasing, is needed and give the Secretary discretion to adopt such a system. Our written testimony goes into greater detail about these and other aspects of the bill.

Thank you again, Mr. Chairman, for your invitation and for your consideration of our views.

[The prepared statement of Ms. Wald follows:]

PREPARED STATEMENT OF JOHANNA WALD, SENIOR ATTORNEY, NATURAL RESOURCES DEFENSE COUNCIL, SAN FRANCISCO, CA

Mr. Chairman and Members of the Committee:

Thank you for the invitation to testify today regarding S. 2921, the California Desert Protection Act of 2010. My name is Johanna Wald, and I am a senior attorney at the Natural Resources Defense Council (NRDC). NRDC is a national, non-profit organization of scientists, lawyers and environmental specialists dedicated to protecting public health and the environment. Founded in 1970, NRDC has more than 1.3 million members and online activists nationwide, served from offices in New York, Washington, D.C., Chicago, Los Angeles, San Francisco and Beijing.

#### *Introduction*

NRDC has a long history of efforts to protect and conserve the nation's federal lands and resources, including the lands and resources managed by the Department of Interior's Bureau of Land Management (BLM) in California and other western states. In addition, we have an extensive history of advocacy promoting the increased use of energy efficiency and renewable energy sources to meet the nation's energy needs. NRDC believes the nation must transition away from fossil fuels as quickly as possible in response to the unprecedented threats posed by global warming. We must employ energy efficiency, conservation and demand side management practices, and develop clean renewable energy at multiple scales, from distributed generation to utility scale renewable energy projects to reduce the nation's output of greenhouse gas pollution.

The three main points that we will make in our testimony today are as follows:



1. The nation does not need to sacrifice special and unique places on the public lands to still have renewable energy on public lands—energy that we need to address the climate challenge.
2. We do need to develop renewable energy as quickly as we can, because of the unprecedented threat posed by global warming to natural resources as well as public health and wellbeing, and because treasured natural resources are already suffering the effects of warming.
3. We need a renewable energy program for the public lands that ensures that necessary development takes place in appropriate areas and that allows the Secretary of the Interior and the BLM to learn from and adapt to experience gained in the permitting and operation of renewable energy projects.

#### *I. We do Not Have to Make a Choice*

The President has expressed clear and strong support for the public lands to play a critical role in his vision of a clean energy economy. For almost three years, NRDC has been heavily engaged in efforts at the national level as well as in the West, and particularly in California, to ensure that renewable energy development on these lands will take place in a balanced and environmentally responsible manner. We affirmatively support the twin goals of Senator Feinstein's legislation—to protect unique and sensitive publicly-owned wildlands in California while simultaneously lighting the way toward a cleaner energy future. We commend her for the leadership she has shown in advancing these goals.

Senator Feinstein's legislation is an important step toward balancing America's need to shift to clean energy as quickly as possible with the need to protect our precious wildlands. Coupled with support for its goals, however, we remain concerned about some aspects of the Energy title, Title II, which addresses features of renewable energy planning and siting. It is those concerns that our testimony will focus chiefly on today.

To summarize our views, we believe that this Title would legislate matters that should be left to the discretion of the Secretary of the Interior, given the fact that renewables development on the public lands is in its infancy. The Interior Department, the BLM and indeed the nation would benefit greatly from the ability to learn from and adapt to experience gained with the permitting and operation of these new projects. We very much look forward to working with the Senator and with Committee members to address our general and specific concerns going forward.

As indicated, NRDC agrees with the overarching goals of the Senator's legislation. First, we believe that our country does not have to choose between protecting our special places and having the renewable energy that we need to address the climate challenge. Senator Feinstein knows this as well and it is reflected in her bill.

The California Desert is a unique and special environment, as Congress recognized more than 30 years ago when it enacted the Federal Land Policy and Management Act of 1976 (FLPMA) and established the California Desert Conservation Area (CDCA).<sup>1</sup> This vast landscape is home to diverse biological communities, scenic and wild places, and other resources including significant renewable resources. Not all of the lands in the Desert are appropriate for renewable energy—or other economic development—and the protections that the Senator's bill would extend to important wild areas and wild rivers as well as the lands within the two new National Monuments are certainly warranted.<sup>2</sup>

<sup>1</sup> See 43 U.S.C. § 1781(a)(1)–(4). Upon passing this legislation, Congress found the following:

(1) the California desert contains historical, scenic, archeological, environmental, biological, cultural, scientific, educational, recreational, and economic resources that are uniquely located adjacent to an area of large population;

(2) the California desert environment is a total ecosystem that is extremely fragile, easily scarred, and slowly healed;

(3) the California desert environment and its resources, including certain rare and endangered species of wildlife, plants, and fishes, and numerous archeological and historic sites, are seriously threatened by air pollution, inadequate Federal management authority, and pressures of increased use, particularly recreational use, which are certain to intensify because of the rapidly growing population of southern California;

(4) the use of all California desert resources can and should be provided for in a multiple use and sustained yield management plan to conserve these resources for future generations, and to provide present and future use and enjoyment, particularly outdoor recreation uses, including the use, where appropriate, of off-road recreational vehicles . . .

*Id.*

<sup>2</sup> Other positive aspects of title I of this legislation include its recognition of the need to allow for the possibility of transmission expansion in the new monuments: it may be necessary to transmit renewable energy produced on appropriate sites outside of the monuments or outside

## *II. Renewable Energy is Needed as Quickly as Possible due to Climate Change*

We agree with Senator Feinstein that the nation needs to increase the generation and use of renewable energy as quickly as we can. The devastating and ongoing oil spill in the Gulf of Mexico provides tragic evidence of the need to break our nation's addiction to fossil fuels.

What is more, global warming itself represents an unprecedented threat to the survival of ecosystems and wildlife, including publicly owned resources, and the human communities that depend on those resources. Indeed, distinctive resources of publicly-owned lands in California and elsewhere are already suffering the impacts of global warming. To take just two examples: conifer forests and pikas, small chinchilla-like animals, are moving uphill in places like Yosemite National Park to escape warming temperatures. Joshua trees may not persist much longer in Joshua Tree National Park and other high desert areas because of climate warming.<sup>3</sup>

However, while the nation needs renewable energy quickly, we must ensure that its development is done right. We are at the very beginning of a new era, one which will culminate with the transformation of this country's economy from one based on fossil fuels to one based on clean and green energy. To ensure that this new economy has the soundest possible footing, we must be "smart from the start" in where and how we obtain that energy, whether on private or public lands. We must not only put more emphasis on conservation, efficiency, demand side management and distributed generation, we must have sound, environmentally responsible renewable energy development programs.

The Interior Department and the Obama administration have expressed a clear desire to have an environmentally responsible renewable energy program for our public lands—and NRDC, is committed to helping them achieve this objective. Developing such a program is a challenge, however. We are talking about new technologies with which the Interior Department and the BLM have very little experience. The Bureau has only just begun permitting these new technologies: as of this date, no solar projects have been permitted and only 202 wind projects have been approved on the public lands<sup>4</sup>—representing less than two percent of the total installed wind capacity within the nation.<sup>5</sup> What is more, the scale of these projects is unprecedented—one of the proposed solar projects in California that the BLM is reviewing at this time involves more than 7,000 acres, and the average footprint of the solar projects now under review is about 5,000 acres.<sup>6</sup> Given the scale of these projects alone, we really cannot know what the full range of impacts might be. Because so few of these projects have been permitted, BLM and other federal agency staff have almost no experience in predicting their impacts, in developing best management practices or in evaluating the efficacy of such practices and mitigation

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the state to population centers of southern California to meet the state's ambitious renewable goals (although we believe that the bill's language on this issue can be improved.) Furthermore, NRDC welcomes the Senator's acknowledgement of the importance of addressing the equitable interests of legitimate solar developers with proposed projects within the new monuments. See S. 2921, §101(a) (amending the California Desert Protection Act of 1994, Pub. L. 103-433 (1994)) to add Section 1307, which grants applicants who meet specified terms a "right of first refusal" in solar energy zones to be designated by BLM). With other organizations, NRDC advocated for such a provision for companies which have invested substantially in areas with BLM's encouragement (although again we believe that the proposed statutory language can be improved). Lastly, as an organization with a longstanding interest in the BLM's administration of grazing privately-owned livestock on the public lands, we also appreciate Senator Feinstein's inclusion of provisions authorizing the Secretary of the Interior to permanently retire grazing permits within the Mojave Trails National Monument and to prohibit grazing on lands within the CDCA that were acquired using federal funds or donated funds. See Section 101(a) (amending the Sections 1304(c)(3) and 1904(b)(2)(C) of the California Desert Protection Act of 1994, Pub. L. 103-433 (1994)) (although, to be sure, we would have preferred this grant be for the entire California Desert Conservation Area).

On the other hand, we are very troubled by the proposal to legislatively designate permanent off-highway vehicle recreation areas. In our view, land use decisions such as these are better left to land management agencies to make through their established planning processes.

<sup>3</sup>Stephen Saunders, Tom Easley, Dr. Jesse A. Logan, & Theo Spencer, *Losing Ground: Western National Parks Endangered by Climate Disruption* (Rocky Mtn. Climate Org. & NRDC), July, 2006, at 6, 11, available at <http://www.nrdc.org/land/parks/gw/gw.pdf>.

<sup>4</sup>Figures based on right-of-way authorizations through fiscal year 2009. See BLM, DEPT OF THE INTERIOR, BUDGET JUSTIFICATIONS AND PERFORMANCE INFORMATION FISCAL YEAR 2001 (IV-165 (2010)), available at [http://www.doi.gov/budget/2011/data/greenbook/FY2011\\_BLM\\_Greenbook.pdf](http://www.doi.gov/budget/2011/data/greenbook/FY2011_BLM_Greenbook.pdf).

<sup>5</sup>In fiscal year 2009, the BLM administered 427 megawatts of installed wind capacity. In comparison, the nation has 29,440 megawatts of total installed wind capacity. See *id.* at I-20.

<sup>6</sup>See BLM, *Fast-Track Renewable Energy Projects*, May 7, 2010, [http://www.blm.gov/wo/st/en/prog/energy/renewable\\_energy/fast-track\\_renewable.html](http://www.blm.gov/wo/st/en/prog/energy/renewable_energy/fast-track_renewable.html) (providing a frequently updated list of projects receiving fast-track review by the BLM).

measures. In short they have little to no expertise in renewables development on the lands under their jurisdiction.

They are learning, however, and NRDC and other members of the environmental community are expecting that they will learn a great deal from the experiences that they are having in permitting the fast-track projects—that is, those projects that are potentially eligible for approval by December 2010 and thus for funding under the American Recovery and Reinvestment Act of 2009. In California, the BLM is not only gaining experience in permitting projects on lands it manages, it is learning how to work with state agencies—and particularly the California Energy Commission and the California Department of Fish and Game—in new and effective ways that we believe will ultimately help speed the approval and construction of renewables projects on not just public lands within the state and elsewhere, but also private lands.

As indicated, we appreciate and share the goal of the energy title of the Senator's bill—namely to speed development of renewable energy on appropriate public lands, including lands managed by the U.S. Forest Service and Department of Defense, as well as BLM. This title incorporates a number of praiseworthy concepts including its recognition that the lands managed by the Bureau are not the only federal lands that should help the nation meet its needs for renewable energy. See S. 2921, §§ 203-204 (requiring the Forest Service and the Defense Department to prepare programmatic NEPA documents assessing the suitability of federal lands under their respective jurisdictions for renewable energy development).

The bill also includes language to address the significant backlog of solar applications that accumulated during the last administration, and specifically provisions aimed at weeding out applications for renewable generation projects that are either speculative in nature or proposed in locations that are unsuitable for development. See S. 2921 § 202 (providing for deadlines for applicants and direct authority for the Secretary of the Interior to screen applications for significant resource conflicts). It is our understanding that there are projects of both types now pending in California. To achieve a rapid transition to a clean energy economy, investments of federal staff and resources must go to viable proposals whose proponents have recognized the value of getting projects on line quickly by avoiding and minimizing adverse environmental impacts.<sup>7</sup>

### *III. Renewable Siting—Smart From the Start*

At the same time, however, and as noted above, the Energy Title raises some serious concerns that we would like to work with the Committee to resolve.

Our fundamental concern with this title is that it seeks to legislate key components of a renewable energy program for the public lands at the very beginning of its life, rather than allow the federal agencies to learn from and adapt to experience gained in both the permitting process and the operation of these projects going forward.

For example, Section 202 of the bill seeks to legislate ambitious and ill-conceived deadlines for BLM review of permit applications, placing a heavy resource burden on the agency, while also jeopardizing the quality of its environmental reviews. Rather than locking in deadlines for these critically important reviews, we believe that the Secretary of the Interior should be required to establish appropriate deadlines and to report to Congress on the effectiveness of those deadlines once established.

In addition, the bill seeks to establish a class of wind and solar testing projects that would be eligible for categorical exclusion (CE) from compliance with the National Environmental Policy Act (NEPA). The conservation community is very critical of efforts to legislate CEs and with good reason: historically they have created confusion and resulted in administrative abuses.<sup>8</sup> What is more, such exclusions do

<sup>7</sup>We were also pleased to see the inclusion of provisions that aim to promote advanced, high-efficiency electricity transmission in Section 209, and that recognize the importance of using some of the revenues from renewable energy development on public lands for conservation purposes. See S. 2921 §201(k)(ii)(directing a significant sum of those revenues to the Land and Water Conservation Fund (LWCF) beginning in 2021).

<sup>8</sup>U.S. Gov't Accountability Office, *Energy Policy Act of 2005: Greater Clarity Needed to Address Concerns with Categorical Exclusions for Oil and Gas Development Under Section 390*, GAO-09-872, at 30 (2009). (referring to the CE created by Section 390 of the Energy Policy Act, GAO found that "BLM's use of section 390 categorical exclusions has frequently been out of compliance with both the law and BLM guidance . . ."). The report further found that "[a]lack of clear guidance and oversight contributed to the violations and noncompliance. While many of these are technical in nature, others are more significant and may have thwarted NEPA's

not necessarily guarantee expedited development would occur for numerous reasons, including the increased likelihood of litigation.

NRDC has a long history of opposing attempts to legislate CEs and we oppose this one. Not only is it bad policy, it is also unnecessary. The Interior Department has broad discretion under NEPA to establish administrative CEs where appropriate, including in connection with proposed renewable energy activities. Furthermore, as a consequence of BLM's Wind Energy Development Programmatic Environmental Impact Statement,<sup>9</sup> the Bureau considered the extent and breadth of such proposed activities for wind resources at a policy level. Through that process, the Bureau established that an administrative CE can be applied to meteorological testing of wind under certain circumstances.<sup>10</sup>

Similarly, the bill seeks to legislate the baseline statistics that BLM must use in determining the fair market value of public lands and thus the rental fees to be charged solar energy developers. See S. 2921 § 201(k)(2)(A). We are concerned that the specified statistics—from the National Agricultural Statistical Service—will likely undervalue the public lands because they are derived from activities unrelated to energy production of any kind, such as dryland agriculture. Rather than encourage undervaluation of these lands, Congress must ensure that DOI receives fair market value when the right to develop public lands for wind and solar resources is conveyed to private interests.

Traditionally, energy development on the public lands has been governed by a system that addresses both the need to recompense American taxpayers fairly for the loss of a limited resource (surface area, subsurface minerals, or both) and the need to compensate taxpayers for the loss of other uses of the area subject to development. This legislation does not address the issue of a royalty—which would compensate for loss of other uses. We understand the Secretary is now contemplating such a policy. NRDC would support a royalty system as part of a comprehensive program for the development of renewables on public lands. At a minimum, rather than require use of the specified baseline metrics which would discount the value of lands allocated to renewable development, Congress should ensure that the Secretary retains the discretion to determine an appropriate fee at an appropriate time. In fact, that is the approach the bill takes for wind projects. See S. 2921 § 201(k)(2)(B) (providing that the Secretary shall establish a fee schedule).

We are also extremely concerned about the fact that this legislation is predicated on an historic realty-based system—the right of way system codified in Title V of FLPMA—as the basis for allocating wind and solar development rights on public lands. While we understand that the aim of the legislation is to enhance this system, which is the one the BLM is currently using, we are concerned that it would instead in effect codify the system—even though its utility for use in authorizing large scale renewable developments is unproven and it has a number of structural flaws that make it ill-suited for the long-term management of solar and wind resources.

For one, the right of way system was designed to issue conveyances for linear facilities such as irrigation ditches, roads and pipelines.<sup>11</sup> As well, the system is agnostic about ensuring that the best energy resources are chosen and planned for development. Rather, the process of developing these energy resources is dependent on the priorities of an administration. Whatever emphasis a particular administration may or may not place on approving projects can be the determinant factor for success or not. This also means that strategic decisions to develop the best available energy resources are often foregone. That is, often the system does not attempt to ensure that the types of projects considered are actually the most suitable for approval and will produce the greatest dividends. Additionally, terms of approval can be changed arbitrarily, which undermines the type of long-term economic certainty these kinds of projects require. Lastly, the system does not ensure that taxpayers receive a fair share of revenues in allocating public assets to private enterprises. This also means that mitigation payments and other reclamation assurances are not guaranteed in the current right of way system.

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twin aims of ensuring that BLM and the public are fully informed of the environmental consequences of BLM's actions." *Id.*

<sup>9</sup> 71 FR 1768

<sup>10</sup> See BLM, Dep't of the Interior, Inst. Memo. No. 2009-043, Wind Energy Development Policy (Dec. 19, 2008) (expiring on September 30, 2010), available at [http://www.blm.gov/wo/st/en/info/regulations/Instruction\\_Memos\\_and\\_Bulletins/national\\_instruction/2009/IM\\_2009-043.html](http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2009/IM_2009-043.html). BLM, Dep't of the Interior, H-1790-1, National Environmental Policy Handbook, 152 (2008), available at [http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information\\_Resources\\_Management/policy/blm\\_handbook.Par.24487.File.dat/h1790-1-2008-1.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/blm_handbook.Par.24487.File.dat/h1790-1-2008-1.pdf).

<sup>11</sup> See 43 CFR § 2801.6

Rather than reinforce use of the right of way system, we think Congress should clearly acknowledge that a more robust—not simply a faster—system, such as competitive leasing, is needed and the Secretary should be given the discretion to develop and update as appropriate such a system. In this regard, we commend to the Committee’s attention Section 366 of S. 1462, the American Clean Energy Leadership Act of 2009.

Last but not least, we are concerned about Section 205 of the bill which would establish a creative mitigation banking system to encourage development of renewable energy projects on private lands in California. NRDC supports the goal of this section because we believe that renewable development should not be limited to public lands, but rather should be balanced between private and public lands. This section was drafted prior to the start of the Desert Renewable Energy Conservation Plan (DRECP)—a major effort involving the state and federal governments and multiple stakeholders, including members of the conservation community and renewable developers, to identify appropriate zones for renewable development and for conservation along with a comprehensive mitigation strategy for public and private lands in the California Desert. The DRECP’s first official meeting occurred in March of this year with the first meeting of its independent science advisors’ panel occurring in April.

The bill was also drafted prior to the enactment, in March, 2010, of California’s Senate Bill 34, which requires the California Department of Fish and Game to develop an interim mitigation strategy for “fast track” renewable energy projects in the Desert.<sup>12</sup> Under these circumstances, we urge that careful consideration be given to ensure that this section does not undermine the rigorous scientific and public participation requirements that the DRECP is subject to under the State’s Natural Communities Conservation Planning Act of 1991. Provisions of particular concern include Section 205(d)(3)(C)(i), which provides that only 75% of the cost of acquiring mitigation lands need to be paid by participants. We also urge that consideration also be given to ensuring that the 200,000 acres or more of land required to be identified as part of this mitigation banking system under Section 205(c)(1) is done in collaboration and consistent with state mitigation and planning efforts.

#### *Conclusion*

In conclusion, NRDC supports the goals of Senator Feinstein’s legislation and believes that it is an important step toward balancing America’s need to shift to clean energy with the need to protect unique and sensitive lands. We stand ready to work to resolve the concerns detailed above with the Senator and with this Committee.

Thank you for considering our views.

The CHAIRMAN. Thank you very much.

I just have a few questions. Mr. Myers, as I read this, the legislation establishing the monuments, it seems that current uses of these areas are expressly allowed to continue, including hunting, off-road vehicle recreation in certain areas, electric transmission rights-of-way, grazing. The one thing which would be prevented, of course, is the sighting of renewable energy projects in these areas.

Is that the main thrust of the legislation or the establishment of these monuments, as you would see it?

Mr. MYERS. Yes. The goal is to preserve the status quo. The status quo is a product of many years of public hearings, both with BLM and at a local level, and nobody has disputed these uses over the last 10 years, and these existing uses have all been challenged

<sup>12</sup> Cal. S.B. 34 (2010). The California Senate reported that the bill, S.B. 34, would authorize the [California Department of Fish and Game], in consultation with the Energy Commission and, to the extent practicable, the United States Fish and Wildlife Service and United States Bureau of Land Management, to design and implement actions to protect, restore, or enhance the habitat of plants and wildlife that can be used to fully mitigate the impacts of the take of endangered, threatened, or candidate species (mitigation actions) resulting from certain solar thermal and photovoltaic powerplants in the planning area of the Desert Renewable Energy Conservation Plan, as defined. The bill would establish the Renewable Energy Resources Development Fee Trust Fund as a continuously appropriated fund in the State Treasury to serve, and be managed, as an optional, voluntary method for developers or owners of eligible projects, as defined, to deposit fees sufficient to complete mitigation actions established by the department and thereby meet their requirements pursuant to CESA or the certification authority of the Energy Commission.

Id. at 2.

by renewable energy projects that would displace them. So the goal of this is not to change the existing recreational uses of these lands.

The CHAIRMAN. Ms. Wald, let me ask you, I put a question to the earlier panel about whether or not it was premature for us to be legislating all of the various things that are in this legislation, particularly with regard to the permitting of renewable energy projects on Federal land. It seems as though that is somewhat the gist of your testimony.

You seem to be saying let us let the Federal land managers develop and refine their permitting system before we step in and try to legislate or prescribe how it would work in detail. Is that a correct paraphrasing of what your testimony is?

Ms. WALD. Yes, it is, Mr. Chairman. These technologies, these projects, these programs are in their infancy now on public lands. We think it is appropriate for the Interior Department to be given the opportunity to develop experience—gain experience and develop the expertise in permitting these projects and in seeing how they operate. Now as I—

The CHAIRMAN. Go ahead.

Ms. WALD. I wanted to make clear that we understand the desire for accountability and would encourage the Secretary and encourage Congress to tell the Secretary to establish deadlines, to report back on the progress that he is making. But we think it is too early in time to decide what the program for developing renewable energy on public lands ought to look like.

The CHAIRMAN. We have in the bill we reported last July from the committee a provision that calls on the Secretary to look at this issue of competitive leasing rather than the issuance of rights-of-way. Is that an appropriate action by the Congress, as you see it?

Ms. WALD. Yes. Yes. I think that is a very constructive suggestion. We understand that, in fact, the Secretary is considering competitive leasing as part of the solar programmatic EIS that is under preparation and that Director Abbey spoke about. We certainly think that consideration of a leasing framework is something that they ought to look at extremely carefully, and a pilot project I think would be helpful in that regard.

The CHAIRMAN. Mr. White, did you have a position on that point?

Mr. WHITE. Yes, Mr. Chairman. We generally agree with Ms. Wald's view on this matter. I think the key is to have an interactive relationship between the oversight and statutory direction of the Congress and the process as it is unfolding.

We are learning a lot as we speak and as we move forward. I think one of the areas I wanted to mention about the leases, however, is the notion of rental fees and raising revenues for solar projects needs to be carefully done, and done in a way that is consistent with what has already been done with wind. We also need to be sure that at least some of those revenues are dedicated to help support the ongoing mitigation work that is going to be required.

These projects are fragile themselves. The technologies are expensive, but they are very important. We think that there is also going to be an extraordinary amount of mitigation that is going to accompany these projects and how that mitigation gets managed

and how the land, as a whole, works together is going to be important.

I think we also think the BLM should be more careful in the way the lands are leased now. They are currently sort of first-come, first-served, and there is a lot of projects that have applied for leases that we don't believe will ever be built. So, weeding those out and then maybe moving to some kind of a competitive system, considering, though, that the revenues that are gained from these lands need to be balanced against the cost of the projects and not be too heavy on the front end.

The CHAIRMAN. All right. We have, I think, got good testimony here from all of you. As I indicated at the beginning, we want to, if you have additional points that you think we need to understand, please supplement your testimony here in the next few days. We would appreciate that.

But I think this has been a good hearing, and we appreciate you all being here.

We will conclude the hearing.

[Whereupon, at 11:25 a.m., the hearing was adjourned.]





## APPENDIXES

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### APPENDIX I

#### Responses to Additional Questions

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##### RESPONSES OF HARRY BAKER TO QUESTIONS FROM SENATOR MURKOWSKI

You have complained that many of these areas proposed for Wilderness do not meet the Definition of a Wilderness as set forth in the 1964 Wilderness Act.

*Question 1.* Could you give me some specific examples of how the proposed Wilderness areas conflict with your understanding of the 1964 Wilderness Act?

Answer. The Wilderness Act of 1964 specified among other criteria that Wilderness is where earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. Wilderness further excludes all forms of motorized and mechanized equipment. There can not be any roads within a Wilderness area and the area can not be less than 5,000 acres, nor can there be any mining, structures, radio towers or other signs of man in Wilderness areas.

In the proposed Avawatz Wilderness Area there are existing roads which were traveled on with Senator Feinstein's staff, by vehicle on May 28, 2010. Also on that tour, mine adits were seen as well as mine tailings and debris. The ruins of several structures were also photographed as well as a modern radio tower, all within the proposed Wilderness area.

The Proposed Wilderness Area has been expanded to the Right of Way of Highway 127 and now includes an area that was considered for siting of alternative energy development.

The Proposed Kingston Range Wilderness Addition also is expanded out to the Right of Way of Highway 127 and includes part of the area that was considered for alternative energy. The proposed area is cut by the Tidewater and Tonopah Railroad grade and another non wilderness corridor that truncates the proposed Wilderness into an area of less than 5,000 acres.

Both the Avawatz and Kingston additions include flat alluvial fans that are not wilderness quality land and appear to be nothing more than a land grab to block alternative energy.

The southern section of the proposed Golden Valley Wilderness Area is bisected into six sections, five of which are less than 5,000 acres, by several non-wilderness motorized corridors. These proposed corridors include the historical Twenty-Mule Team Road.

The northern section of the proposed Golden Valley Wilderness Area, along with the southern portion and the existing Golden Valley Wilderness and the Grass Valley Wilderness will completely block any westward expansion of the China Lake Naval Weapons Center should it become necessary in the future for national defense.

The proposed Great Falls Basin Wilderness could be supported as wilderness as it meets the criteria for wilderness except that when it is combined with the existing Argus Range Wilderness any potential expansion of the China Lake Naval Weapons Center to the east is blocked.

If a road, a mining operation or mans presence exists in a proposed Wilderness area and is recognized by the proponents of Wilderness, is the area really Wilderness? I think not.

*Question 2.* Could you provide me with some specific examples of where future growth and development will be blocked by these National Monuments?

Answer. A study of areas for alternative energy development included the area that is now included within the proposed Mojave Trails National Monument and will be blocked by this legislation. A map depicting the Solar Energy Study Areas

in California which was prepared June 5, 2009 and available through the Washington BLM Office clearly shows the land in the proposed Mojave Trails National Monument as being analyzed for Solar Development. There were proposals submitted to the BLM for Solar sites within the proposed MTNM. These potential alternative energy areas have been omitted from the map that is being used to show where the boundaries of the proposed MTNM would be in an attempt, I believe to disguise the fact that the area of the proposed monument is prime for the siting of solar.

Any of the communities that are within the boundaries of the MTNM, such as Amboy, Ludlow, Goffs, etc., will not be allowed to expand in the future. Conversely these communities could benefit and expand if alternative energy sites are constructed in their vicinity.

The proposed Wilderness areas and the MTNM are all on the perimeters of military bases and if designated, will stop any further expansion by the military for National Defense needs; an example of this is the proposed expansion of the Twentynine Palms Marine Base. The study areas for the expansion are to the East, South and West but the Eastward expansion away from homes and business is limited by the Sheep Hole Wilderness Area. Although dedesignation of the northern portion of the Sheep Hole Mountains Wilderness Area would enhance the Marine Base expansion, Senator Feinstein has stated that this is a non starter and not to be considered. This, in my opinion says that once an area is designated as Wilderness even the needs of the Marine Corps will not trump Wilderness.

*Question 3.* Could you provide me with some specific examples of the hardships on communities and individuals that these designations will impose if passed?

Answer. We know from past experiences that with new management plans such as are mandated by this legislation, that the present usages are not guaranteed, and will likely not be allowed to continue, for example in the Carrizo Plains National Monument in California grazing is being eliminated, rock hounding is no longer allowed and access roads are being eliminated. Existing roads and uses are also being eliminated in the Escalante National Monument in Utah. These were all existing uses that were to be allowed to continue in the monuments per the original legislation.

*Question 4.* In your mind what part of the state of California should be reserved in a combination of Wilderness, Wilderness Study Areas, National Monuments, National Parks, Wild and Scenic Rivers and other set-asides?

Answer. I do not believe that a certain percentage or quota needs to be set, rather the criteria for special designation be it Wilderness, National Parks and Monuments, Wild and Scenic Rivers or other set-asides should be on merit, what the land designation currently is, it's use and the potential national need. National Monuments and Wilderness should not be used to appease a special interest group, Wild and Scenic River designation should not be used for dry river beds and to block motorized access to private property, and other set-asides must not be used to stop public access. No more land should be locked up for an exclusive use.

Fifty percent of the total land in California is privately owned. Presently there is approximately 16 percent of the land in California designated as Wilderness or 32 percent of the public land! I believe that the initial Wilderness Act envisioned about 20 million acres in the United States as suitable and today we have over 109 million acres, when will enough be enough? There is constant pressure to take more land out of production in the name of protection which diminishes our tax base and limits our ability to extract natural resources and makes us more dependent on foreign countries.

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#### RESPONSES OF DAVID P. HUBBARD TO QUESTIONS FROM SENATOR MURKOWSKI

*Question 1.* If we are not going to develop renewable energy on federal lands in the desert, where do you recommend these resources be developed?

Answer. Although my client, EcoLogic, would like to see renewable energy projects sited on private as opposed to public land, it realizes that this is not always possible. For this reason, EcoLogic does not believe that renewable energy projects should be excluded categorically from federal lands in the California desert. However, the matter is complex. We are concerned that the intense federal and state interest in developing renewable energy resources has attracted speculators who will tie up public land but never really produce a project that generates significant renewable energy. We are also concerned that the push for renewable energy may operate to forfeit recreational interests, with little or no mitigation for the loss. Specifically, if the federal government is going to site these large energy projects in popular recreational areas of the desert, the entities who will profit from those projects

should be required to develop compensatory recreational areas at a 1:1 ratio. In short, our support for renewable energy development in the desert comes down to a single issue—mitigation.

*Question 2.* Are you concerned that actions by the Congress, the Administration or the Courts to prohibit renewable energy development every time a project is proposed on Federal land will result in investors being less willing to invest in renewable energy projects in our country?

Answer. Legal regulation is always a deterrent to business development; but it is a necessary evil, as it ensures the well-being of the public and of the resources held in trust by the federal government. So the question is not whether regulation will deter, to some extent, investment in renewable energy, but whether the regulations are so stringent as to strangle such investment altogether. As stated above, EcoLogic does not wish to unduly impede the development of alternative energy sources—in the California desert or anywhere else. That does not mean, however, that renewable energy development applicants should be given a free pass and be relieved of all regulation. That would be a huge mistake, and an unnecessary one. Given how little the energy companies will be paying to use the federal land on which the projects will be located, and given how much those companies stand to make in terms of profit, there is no need to relax the regulatory controls that govern other business in the energy sector. Further, the proposed bill (S.2921) provides for a more streamlined approval process for renewable energy projects.

*Question 3.* Is it your experience that being forced to develop on private land is more costly and time consuming than proceeding on federal land? If so how much on average does it cost?

Answer. In the context of renewable energy projects, development on private land may be, and likely is, more expensive and time consuming than development on federal land, if only because the federal lease terms are very favorable to the project applicant. Indeed, one of our concerns is that the federal government, in an effort to attract renewable energy investment on federal land, may be lowering the bar of entry to such an extent that BLM will be inundated with applications from unworthy, unstable, and/or unreliable project proponents. This will serve only to clog the system and delay the actual development of bona fide renewable energy projects.

*Question 4.* In your mind what percent of the State of California should be reserved in a combination of Wilderness, Wilderness Study Areas, National Monuments, National Parks, Wild and Scenic Rivers and other set-asides?

Answer. I do not think this question can be answered by giving a percentage of land area. There are only so many areas in California that qualify as Wilderness, or may meet the criteria of a Wild and Scenic River. So these kinds of resources are highly location-specific. One must assess them on an individualized basis. That said, however, it has been our experience that the process of designating Wilderness Study Areas has been roundly abused and employed primarily as a means to tie up land that (1) has no hope of ever qualifying as Wilderness, and (2) could be put to better public use. This practice should be stopped. For this reason, we support the effort of S.2921 to release a number of Wilderness Study Areas that do not meet the established criteria for Wilderness.

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#### RESPONSES OF PEDRO PIZARRO TO QUESTIONS FROM SENATOR MURKOWSKI

*Question 1.* The State of California has one of the most aggressive Renewable Electricity Standards in the nation—requiring 20% of electricity to come from renewable sources by this year and a whopping 33% by 2020. Where is Southern California Edison on meeting this requirement? Doesn't legislation to block off some of the most promising solar areas in the desert make it even harder for California entities to comply with this standard?

Answer. In 2009, SCE purchased and delivered 13.6 billion kWh of energy from eligible renewable resources. This represents about 17% of SCE's customers' needs. SCE has enough contracts with new renewable resources to achieve the current 20% goal framework for the foreseeable future.

SCE's ability to meet future California renewables goals is more difficult to predict in light of programmatic changes currently under consideration. While there is an Executive Order in place setting a 33% renewables goal for California, the specific rules regarding what types of resources will count toward that goal are not final. Similarly, the structure of proposed legislation continues to be the subject of vigorous debate in Sacramento. SCE is working with energy agencies and California's legislature to ensure that any increased goals for renewables contain programmatic structures which recognize California's various environmental needs and do not unduly restrict the ability to meet new goals if the supply of renewables in

California is constrained. Accordingly, if a renewables program is instituted that does not include necessary flexibility, 33% may be difficult for California to achieve. On the other hand, if a program containing appropriate flexibility is adopted, 33% may be more achievable.

*Question 2.* Would you agree that the process laid out in the provisions of Title II Sections 201–208 to govern renewable energy permitting substantially differs from the process this Committee approved in Sec. 366 (Development of Solar and Wind Energy on Public Land) of S. 1462 the American Clean Energy Leadership Act of 2009?

Answer. According to the Report language for Section 366, only a pilot program is being initiated and only two solar and two wind sites are to be chosen. Section 366 does not seem to contain modifications to the authorization process that would appear to shorten the process for obtaining a permit for renewable generation facilities located on federal lands.

*Question 3.* If Title II of S. 2921 were to be stripped in the mark up process, would you and your company still support this bill?

Answer. SCE endorsed S. 2921 as it was introduced in Congress. Any modifications to the legislation would require additional review to determine the impact on the company. SCE perceives the permitting components of the bill as a key benefit to SCE's customers in helping California meet its renewable energy goals. The permitting improvements are viewed by SCE as a reasonable tradeoff for the removal of portions of the California desert from potential development.

*Question 4.* If we are not going to develop renewable energy on federal lands in the desert, where do you recommend these resources be developed?

Answer. This legislation removes a relatively small amount of federal land with perceived important natural resources from development. Less environmentally valuable public land and private land is better suited for the development of renewable power.

*Question 5.* Are you concerned that actions by the Congress, the Administration or the Courts to prohibit renewable energy development every time a project is proposed on Federal land will result in investors being less willing to invest in renewable energy projects in our country?

Answer. There are many barriers to building on both private and government land. We believe this legislation will remove many of those barriers.

*Question 6.* Is it your experience that being forced to develop on private lands is more costly and time consuming than proceeding on federal lands? If so how much on average does it cost?

Answer. It is premature to determine whether developers face any difference in cost or time when it comes to site renewable projects on private vs. government land. Building on private land will likely require a longer time frame for the Endangered Species Act (ESA) review because there is no federal nexus. Potentially balancing the longer ESA review is the fact that private disturbed land may have less environmentally sensitive issues than building on non-disturbed government land.

*Question 7.* In your mind what percent of the State of California should be reserved in a combination of Wilderness, Wilderness Study Areas, National Monuments, National Parks, Wild and Scenic Rivers and other set-asides?

Answer. SCE believes that all protections of federal land should be reviewed on a case by case basis.

*Question 8a.* The bill directs BLM to “ensure that existing rights-of-way and utility corridors within the [Mojave Trails National] Monument are fully utilized before permitting new rights-of-way or designating new utility corridors within the Monument.” How should the BLM determine whether or not an existing right-of-way is “fully utilized”?

Answer. BLM should rely upon the utilities using established engineering, operations and maintenance standards, and transmission system planning criteria to determine whether a utility has the ability to safely and reliably install additional facilities within an existing right of way.

*Question 8b.* What if an existing right-of-way is 100 miles away from a needed utility corridor?

Answer. In that case, then an additional right of way should be granted. Utilities should not be required to route facilities into corridors that are not located in the general vicinity of the proposed route. The National Environmental Policy Act environmental review process requires that a federal permitting agency consider a “reasonable range of alternatives”. This standard should be used for determining when the use of an existing right of way should be considered for a proposed transmission line.

## RESPONSES OF DOROTHY ROBYN TO QUESTIONS FROM SENATOR BINGAMAN

*Military Lands*

*Question 1.* I understand that DOD is interested in using some public lands withdrawn for military purposes for utility-scale renewable energy development. Under what legal authority would DOD do this? Prior to authorizing a utility-scale project on these lands, will DOD review each applicable withdrawal order to ensure that utility-scale renewable energy development is a "military purpose" within the meaning of the withdrawal order? How does DOD propose to dispose of the revenues received for these facilities?

Answer. The Department of Defense has various authorities, mostly contained in chapter 173, Energy Security, of title 10, United States Code, that address renewable and alternative energy projects. In particular, sections 2916 and 2917 of that chapter deal with sale of electricity from alternate energy and cogeneration production facilities and development of geothermal energy on military lands. In addition, 10 U.S.C. §2667, the DoD's general leasing statute, may be utilized in appropriate circumstances to allow such a project.

Section 203 of the 2005 Energy Policy Act (Pub. L. 109-58) and section 2911 of title 10, United States Code, both require that the Department of Defense increase the percentage of energy consumed from renewable sources. Each project authorized on a military installation must comply with all applicable requirements, including any requirements contained in withdrawal legislation. The various withdrawal statutes are not uniform, however. Consequently, projects need to be reviewed on an individual basis.

Regarding revenues received from such projects, the Department of Defense can only use funds in a manner authorized by Congress. For example, 10 U.S.C. §2916 explicitly authorizes the use of proceeds from the sale of electricity from alternate energy facilities to be credited to the appropriation account currently available to the military department concerned for the supply of electrical energy. If the facility were constructed under a lease pursuant to 10 U.S.C. §2667, the DoD's general leasing statute, the proceeds could be used in accordance with the various uses authorized under that statute. Generally speaking, revenues are used to support the installation performing its mission. However, the Department may receive other benefits from these projects, such as direct provision of electrical power and guaranteed access to generation capability.

*Coordination*

*Question 2.* Please describe and provide for the record any Memorandum of Understanding (MOU) or Cooperative Agreement between DoD or any branch of the Armed Services and the Bureau of Land Management, Department of the Interior, relating to the siting of renewable energy projects. If such agreements do not exist, is there a plan to enter into any such agreement? To help facilitate the authorization of wind and renewable projects?

Answer. For the last two years, the Bureau of Land Management and the Department of Defense have had an MOU in place that establishes a process for DoD to review and comment on proposed wind energy applications on BLM-administered public lands and a process to develop mitigation measures. The MOU also includes an appeals process through existing BLM structures. The MOU is attached to this answer. We are considering expanding the scope of the MOU to include other renewable energy sources, such as solar.

*Program Administration*

*Question 3.* BLM currently administers the oil and gas leasing program on National Forest System Lands and public lands withdrawn for military purposes, where consistent with the particular withdrawal order. Should BLM also administer the solar and wind energy development programs on these lands?

Answer. The BLM and DoD have a long history of working together successfully on energy development issues, including the development of renewable energy on military installations. Moreover, DoD is actively seeking to develop renewable energy projects on its installations, including on withdrawn land where consistent with the withdrawal order. However, in contrast to the arrangement with oil and gas leases, DoD needs to be able to administer such projects, albeit in close consultation with BLM. First, unlike oil and gas development, renewable energy development on a military installation is usually designed to assure energy supply to the installation itself and thereby facilitate continuity of operations. The installation commander needs to have direct control over what could be a critical source of energy security. Second, renewable energy projects must be sited and managed in a way that preserves the installation's ability to meet its testing, training and other

operational missions, which DoD can do most effectively. Finally, DoD has the incentive and ability to respond more quickly than other federal agencies to proposals for renewable energy development on military installations, thus facilitating their approval and implementation.

#### RESPONSES OF DOROTHY ROBYN TO QUESTIONS FROM SENATOR MURKOWSKI

##### *Boundaries Between the 29-Palms Base and the New Proposed Wilderness*

*Question 1.* If there will have to be negotiations on where boundaries are finally drawn between the 29-Palms base and the new proposed Wilderness wouldn't it make more sense to just wait to designate the Wilderness at some later point when the military and the BLM have completed their discussions?

*Answer.* Answer: DoD supports the approach taken in S.2921, the California Desert Protection Act of 2010. The bill identifies a process by which lands may be withdrawn either as wilderness area or for military use. Although it may take some time to identify the final boundary between the installation at Twentynine Palms and the new proposed wilderness area, the bill establishes clear limitations on any future use of the land, protecting the interests of the Department and BLM while the decision-making process proceeds. Therefore, we have no objection to enactment of such legislative language, even before the final boundaries are agreed upon.

##### *DOD Renewable Energy Goals*

*Question 2.* Is it correct that DOD has established a goal to generate 25% of its energy needs from renewable resources by 2025? What percentage of renewable electricity does the Defense Department currently use? How realistic is your 25% target by 2025?

*Answer.* Yes. The Department established the goal to purchase and/or generate renewable energy equal to or greater than 25% of electricity consumed by 2025. The goal was then codified by section 2852 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364).

The Department is currently on track to meet the 25% by FY2025 goal. In FY2009, the Department produced or procured 9.8% of its total electricity from renewable energy sources. The goal is aggressive; to meet it, the Department will need to invest in small-scale renewable projects while also leveraging private sector capital to develop large-scale renewable projects.

##### *Renewable Energy Study*

*Question 3.* The legislation directs DoD to study the viability of developing a renewable energy program on Southwest military bases. Has this type of study been undertaken previously by the Defense Department in other areas? Has DoD considered a national approach to assessing the renewable energy potential on its lands?

*Answer.* This legislation overlaps the requirements in the National Defense Authorization Act for Fiscal Year 2010, which requires DoD to examine the feasibility of renewable energy in its 2010 Annual Energy Management Report (AEMR) [and a study requested in the Department of Defense Appropriations Act for FY 2010]. Senate Report 107-68 previously directed the DoD to conduct an assessment of wind, solar, and geothermal energy potential on U.S. military installations. The Department completed that assessment in March 2005. The Military Services are currently conducting renewable energy assessments to identify promising locations, rule out poor or marginal locations and identify the approximate capacity available. The results of these assessments will be included in the 2010 AEMR.

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#### RESPONSES OF JOHANNA WALD TO QUESTIONS FROM SENATOR MURKOWSKI

*Question 1.* Your organization has been at the forefront of the renewable energy movement. Does the NRDC believe it is good public policy to set-aside 1.6 to 2 million acres of some of the most promising lands with solar potential for additional National Monuments and Wilderness-particularly in an area such as this which is already heavily populated with Wilderness and National Parks?

*Answer.* NRDC believes that our nation does not need to choose between protecting special and unique places on our public lands and obtaining the renewable energy that we need from those lands. Indeed, we believe that the key to obtaining the renewable resources found on our public lands is to promote their development on lands with relatively low natural resource values and to avoid lands that are highly valued for preservation, such as the kinds of lands that would be set aside by S. 2921. Promoting development on lands with highly valued ecological resources will inevitably lead to conflict, controversy and delay whereas proposing develop-

ment on lands with comparatively low potential for conflict and controversy should facilitate their timely review and processing.

*Question 2.* If this bill is signed into law, what does that suggest about the potential future for renewable energy development on other federal lands?

Answer. If S. 2921 is signed into law, it will, we believe, signal to all concerned that the nation does not have to sacrifice our special places to meet our needs for renewable energy. This result should help the renewable energy industry continue to cultivate the broad support it now has from the public given the measurable economic and environmental benefits this industry can provide for the nation. Passage should also help reassure concerned members of the public that places that are not appropriate for development will be protected as we transition to a cleaner energy economy.

*Question 3.* Many of the companies who have begun the process to get leases in the area, did so after being encouraged by the BLM to look in this general area. If this bill is enacted do you think the federal government should compensate them for the investments they had already made to develop their proposals?

Answer. Like Senator Murkowski, NRDC understands that a number of the companies which began the process of obtaining renewable rights-of-way within one of the national monuments proposed by S. 2921, the proposed Mojave Trails National Monument, did so with the encouragement of some BLM field staff. However, it is well-established within the Code of Federal Regulations that pending right-of-way applications do not represent valid existing rights. Accordingly, if S. 2921 were enacted, they would not be entitled to receive compensation from the federal government for any investments they have made in the application process. That said, NRDC urged that S. 2921 acknowledge the equitable interests of legitimate solar developers with proposed projects within the proposed monument and we welcome the bill's inclusion of language that aims to do just that. See S. 2921, §101(a) (amending the California Desert Protection Act of 1994, Pub. L. 103-433 (1994) to add Section 1307, which grants applicants who meet specified terms a "right of first refusal" in solar energy zones to be designated by BLM).

*Question 4.* In your mind what percent of the State of California should be reserved in a combination of Wilderness, Wilderness Study Areas, National Monuments, National Parks, Wild and Scenic Rivers and other set-asides?

Answer. NRDC does not have any preconceived idea as to what percent of the public lands in California should be reserved for conservation purposes. While many areas have already been protected, for example by designation as Wilderness Areas, Wilderness Study Areas, and National Parks and still others are under consideration for protection, including the lands subject to S. 2921, we do not doubt that there are additional areas on public lands in California equally deserving of protection from commercial development, including energy development. Sound, environmentally responsible renewable energy programs for the public lands that are designed to guide development to the most appropriate places under the circumstances will minimize, if not entirely eliminate, conflicts over renewable development on our public lands. We are working with BLM to ensure that such programs are put in place as promptly as possible.

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CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES,  
Sacramento, CA, June 18, 2010.

Hon. JEFF BINGAMAN,  
*Chairman, U.S. Senate Committee on Energy and Natural Resources, Washington, DC.*

DEAR SENATOR BINGAMAN, Thank you for the opportunity to appear before the Senate Energy and Natural Resources Committee on Thursday, May 20, 2010 to offer testimony on S. 2921, and for the opportunity to respond to Senator Murkowski's questions regarding Senator Feinstein's California Desert Protection Act of 2010. Please find my responses to Senator Murkowski's questions below.

*Question 1.* What signal does this bill send to those who might consider investing in the development of renewable energy projects in California?

*Question 2.* What signal does this bill send to those who might consider investing in the development of renewable energy projects on Federal lands?

Answer. Senator Feinstein's bill signals that land lease applications for renewable development in areas that had been donated for conservation purposes will be extremely difficult to successfully develop. In retrospect, there was too little effort by the Bureau of Land Management (BLM) to weed out speculative applications, and a failure to anticipate conflicts over areas that were likely to be controversial on the part of both BLM and some developers.

The federal government and the state of California haven't done the kind of integrated planning for desert lands that should have been done decades ago. While great attention has been paid to the interests of the military, off road vehicle users, mineral extraction, as well as wilderness and wildlife conservation, too little attention has been paid to renewable energy development.

We appreciate the recent efforts that have attempted to identify the best places for renewable energy development, such as California's Renewable Energy Transmission Initiative and the BLM solar Programmatic Environmental Impact Statement (PEIS). We are hopeful that the combined efforts of the BLM and the Department of the Interior, under the leadership of Secretary Salazar, and the state of California, through the work of the state and federal Renewable Energy Planning Group to expedite permitting of ARRA eligible projects, and the California Desert Renewable Conservation Plan (DRECP), can remedy these earlier conflicts, and create a sustainable environment for new investment.

*Question 3.* You have complained that Off-Road Vehicle and motorcyclists are getting special treatment, are you suggesting that solar and wind and geothermal need their own reserves for dominant use too?

Answer. Given the extraordinary dependence of our country on fossil fuels, and the body of evidence regarding their impact on the environment, human health, and the global atmosphere, it is inconceivable to me that our planning for the use of federal land in the California desert would have paid so much attention to the special interests of Off-Highway Vehicles users, while at the same time essentially ignoring the high quality abundant renewable energy resources on desert lands. More than 750,000 acres have been set aside for off-road vehicle use of desert lands, while virtually no renewable development areas have been identified as part of previous conservation and multiple use planning efforts. We realize that this disparity is in large part the result of historic practices and policies, but it is time to fix them. We are hopeful that efforts to identify and preserve the best renewable resource land as part of BLM's solar PEIS and the state and federal cooperative planning now underway as part of the California DRECP will remedy this disparity. We strongly support the suggestion Senator Feinstein made in her testimony before the Senate Energy and Natural Resources Committee that the BLM should include a new Solar Energy Study Area in the West Mojave, where solar radiation levels are among the very best in the world.

*Question 4.* If so how much land should be set-aside in the State of California for these uses?

Answer. We have estimated that the approximate amount of land needed for renewable development in California in order to meet the state's 33 percent by 2020 renewables target is between 50,000 and 100,000 acres. We reached these numbers by making assumptions about energy demand, renewable resource areas, and land use requirements for each technology. We based the energy demand on a "net short" estimate produced with broad support by RETI and adopted by the California Transmission Planning Group (CTPG). To reach a renewable energy portfolio of 33 percent by 2020, we estimate that 52,764 GWh/yr would need to be produced. We assumed that 70 percent of the new renewable energy would come from inside California's border, and 70 percent of the in-state energy (roughly 23,000 GWh/yr) would likely come from land within the DRECP planning area. The ratio of in state to out of state generation is consistent with the CTPG estimates. We based our estimate of land used per MW on an energy analysis done by Black & Veatch.

Additional land would be needed to meet the state's 2050 climate target, but the amount needed will depend on the quality of the resource and the proximity to transmission.

*Question 5.* Are you concerned that actions by Congress, the Administrations or the Courts to prohibit renewable energy development every time a project is proposed on Federal land, will result in investors being less willing to invest in renewable energy projects in our country?

Answer. Significant financial risks and uncertainty exist around permitting for renewable energy projects in California and in other regions for projects on federal as well as private land. No standards exist for the permitting process or timeline, or for mitigation. Because costs are uncertain when no standard process exists, we are concerned about the willingness to invest in renewable energy in our country. We believe the best way to overcome these risks and create a stable and attractive investment climate for renewable energy is to follow a policy of sustained, orderly development of renewable resources. Such development should occur through intensive cooperation among state and federal agencies and consensus-based planning that involves key stakeholders, including conservation and clean energy oriented environmentalists, native American tribes, as well as state and local governments.



We believe the Obama Administration and California state government have made significant efforts to create a more predictable and stable environment for permitting and planning new renewable energy projects, especially with respect to ARRA eligible projects. We are hopeful that these efforts are expanded and sustained over the next several years, and that innovative strategies for wildlife conservation and recovery, such as California Senate Bill 34 (Padilla), can reduce conflict with important conservation objectives, while expediting renewable project approvals.

*Question 6.* Is it your experience that development on private lands is more costly and time consuming? If so how much on average does it cost?

Answer. We would agree that significant administrative and financial barriers exist in the development of renewable projects on private lands. The extreme parcelization of the region to multiple land-owners, including those who received a few acres of land through radio giveaways in the 1920s, severely limits the acquisition of plots of private land large enough to sustain a solar plant, and obtaining timely review of potential wildlife impacts from the U.S. Fish and Wildlife Service (USFWS) can take nearly three times the length of time required on BLM lands due to the lack of a federal nexus. While we do not have specific information regarding the magnitude of the additional cost of developing renewable projects on private lands, it is clear that the increased cost barriers of working with multiple land owners who own much smaller parcels of land than the federal government, combined with the longer response time from the USFWS, would increase both the time and the cost of most projects.

The California desert conservation community is extremely interested in removing barriers to development on private land, and is working with renewable developers to try and make private land more available for renewable development. But many of these barriers, including state policy to require substantial mitigation for the loss of private land from agricultural use, will be difficult to overcome. In the meantime, it would be extremely helpful to eliminate the extraordinary delays that too often require reviews by USFWS on private land where no federal nexus exists.

*Question 7.* In your mind what percent of the State of California should be reserved in a combination of Wilderness, Wilderness Study Areas, National Monuments, National Parks, Wild and Scenic Rivers and other set-asides?

Answer. Conservation of land with wilderness value is crucial to maintaining California's ecological character, and we do not object to land designations for wilderness study areas, national parks and monuments, wild and scenic rivers, or other purposes. We do, however, believe that it is necessary to balance wilderness preservation with development of extraordinary renewable resource development. The amount of federal land needed for renewable energy development in the California desert to meet renewable energy and climate targets is modest, and can be ably accommodated alongside the preservation of land for wilderness, conservation, military and recreational uses. However, up until recently, renewable energy has taken a back seat to all of these other uses, and has been, at best, an afterthought in state and federal desert planning efforts. We believe it is essential that the highest quality renewable resource areas that are close to existing transmission corridors, such as the West Mojave, be given equal consideration alongside conservation, wildlife, and recreational uses, and protected and preserved for future development where appropriate. We also believe that military lands and training operations that are in close proximity to prime renewable resource areas and wildlife habitat corridors, such as the China Lake Weapons facility, should be planned and executed in a manner that supports strategic renewable resource development and wildlife conservation.

Again, thank you for the opportunity to respond to these questions. If you or any other Members or staff have additional questions, please feel free to contact me.

Sincerely,

V. JOHN WHITE,

*Executive Director, Center for Energy Efficiency and Renewable Technologies.*

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#### RESPONSES OF FAYE KRUEGER TO QUESTIONS FROM SENATOR BINGAMAN

*Question 1.* Authorities—Under what legal authority does the Forest Service issue authorization for the use of National Forest System lands for wind and solar projects?

Answer. Section 501(a)(4) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1761(a)(4) (FSM 2701.1, paragraph 15) authorizes the Forest Service to issue rights-of-way for the use and occupancy of NFS lands for generation, transmission, and distribution of electric energy.

*Question 2. Guidelines*—What is the status of the development of guidance by the Forest Service for the issuance of authorizations for wind and solar projects on lands administered by the Forest Service?

*Answer.* The Forest Service is currently working to finalize its wind energy directives. It is anticipated that the final wind energy directives will be published in the Federal Register later this summer. The Forest Service has not developed directives specifically addressing solar projects on National Forest System lands. An application to construct and operate a solar project would be evaluated utilizing existing special use regulations and directives.

*Question 3. Status*—Please provide for the record a listing of all wind and solar projects authorized to date by the Forest Service. Please also provide a listing of all applications for wind and solar energy production on National Forest System lands received by the Forest Service.

*Answer.* No wind or solar projects have been authorized on National Forest System lands. However, recent interest in wind energy has spurred 14 projects to collect data regarding the feasibility of developing a wind energy facility on National Forest System lands. Nine of these testing sites are in California, two are in Michigan, and the remaining three are in Oregon, Washington, and Wyoming. One request for construction and operation of a wind energy facility on National Forest System lands, to be located in Vermont, is undergoing environmental analysis. Additionally, the Forest Service is analyzing one request for a permit to test the feasibility of converting a decommissioned radar installation site in California to a solar energy facility. A spreadsheet of wind and solar special use applications is attached.\*

*Question 4. NEPA*—Has the Forest Service undertaken any programmatic analysis under the National Environmental Policy Act with respect to the development of wind or solar energy on National Forest System lands? If not, does the Forest Service plan to do so?

*Answer.* The Forest Service has chosen not to prepare a programmatic environmental impact statement for wind testing on National Forest System lands. Given the diversity of National Forest System lands and their uses and the small number of projects proposed to date, the Forest Service believes it is more efficient and effective simply to look at each proposed wind and solar energy site and assess the potential effects of the proposed use as it relates to that site.

*Question 5. Program Administration*—BLM currently administers the oil and gas leasing program on National Forest System Lands and public lands withdrawn for military purposes, where consistent with the particular withdrawal order. Should BLM also administer the solar and wind energy development program on these lands?

*Answer.* No. We believe special use authorizations should remain under the administration of the Forest Service. It is unclear what efficiencies would be gained if solar and wind permitting were to be handled by BLM, since the Forest Service would still need to review all projects to ensure consistent and coordinated land management of all activities conducted on the surface of those lands.

#### RESPONSES OF FAYE KRUEGER TO QUESTIONS FROM SENATOR MURKOWSKI

Ms. Krueger, you heard me ask Mr. Abbey for maps on land use designation vs. solar potential in the area. I see that the Forest Service has a number of small Wilderness Additions proposed in this legislation.

*Question 1.* Could you have your agency personnel work with the Bureau of Land Management to provide my office with the maps and data tables that the BLM prepared for the State of California, as well as a map and data table that adds the lands authorized for protection in this bill? I would like those maps within three weeks.

*Answer.* We have provided wilderness information to the BLM to include with the mapping information you requested. We do not have the renewable energy data you requested.

*Question 2.* Does the Forest Service believe it is ever appropriate to site and build renewable energy projects and their associated transmission lines on Forest Service lands?

*Answer.* Yes. The Forest Service is facilitating development of wind energy facilities on National Forest System lands by issuing directives for that purpose. Locating wind and solar energy facilities on National Forest System lands presents several challenges. For example, commercial solar operations generally require large, flat areas of land, which are more common on lands administered by the Bureau of

\*Spreadsheet has been retained in committee files.

Land Management. With regard to wind energy, the public has expressed concerns about impacts on scenery from ridge top development; as we make specific siting decisions, these concerns need to be reconciled with the clear benefits that wind energy development can provide.

The Forest Service is updating Forest Service Manual 2703 to include policy and direction encouraging the authorization of renewable energy and electric transmission lines on National Forest System (NFS) lands where it is compatible with existing uses and land use plans, and where it complies with applicable agency and federal regulations.

National Forest System lands have the potential for other types of renewable energy development as well. For example, there is significant potential for biomass production on National Forest System lands as an added benefit of our efforts to reduce hazardous fuels and develop healthier, more fire-resistant, and more sustainable national forests. In addition, there is significant potential to increase the efficiency of hydroelectric facilities located on National Forest System lands, as well as to provide for additional small-scale, environmentally compatible hydroelectric facilities. There are also additional opportunities for geothermal development on National Forest System lands.



## APPENDIX II

### Additional Material Submitted for the Record

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THE AMERICAN MOTORCYCLIST ASSOCIATION,  
D37 COMPETITION,  
*Garden Grove, CA, May 20, 2010.*

Hon. JEFF BINGAMAN,  
*Senator, Energy and Natural Resources Committee, 304 Dirksen Senate Building,  
Washington, DC.*

DEAR SENATOR JEFF BINGAMAN: I am writing to you today about S.2921, The California Desert Protection Act of 2010. My organization The American Motorcyclist Association District 37 (AMA D37) is non-profit and dedicated to providing our members with fun, family oriented events, and protecting the rights of our members to be able to enjoy the sport of motorcycling. AMA D37 has been involved with protecting the rights of motorcyclists for over 40 years. We have over 3500 members and hold 40 off-road events a year in the high desert of Southern California. At this time AMA D37 is in support of S.2921 as it is currently written. If there are changes to the language as it moves through the legislative process we will have to re-evaluate our support.

S. 2921 is a product of complex negotiations and compromises amongst a very diverse group of stakeholders. Senator Feinstein and her staff have done an amazing job of trying to fulfill the needs of the recreation, conservation and renewable energy communities that will be affected by this bill. We are concerned that certain components in this bill, the ones that are key to our support (listed below), might be removed and or changed during the legislative process.

- The language that congressionally designates the 5 open areas as Off-Highway Vehicle Recreation Areas.
- The language that allows all current existing uses to continue in both the proposed OHV recreation areas and proposed monuments.
- The language that allows the open areas to continue to operate under their existing management plans until either the DOI creates new plans or amends the existing ones.
- The language that mandates the Department of the Interior (DOI) study land adjacent to the open areas for possible expansion.
- The language that ensures continued use of OHV/green sticker vehicles on designated trails.
- The language that continues to allow commercial touring in the proposed monuments.

We are grateful to have been included in the formation of this monumental piece of legislation. Please consider this letter our formal request to have these comments included in the official record for this hearing.

Sincerely,

JERRY GRABOW,  
*AMA D37 Off-Road—President.*

BLUERIBBON COALITION,  
Pocatello, ID, May 20, 2010.

Hon. DIANNE FEINSTEIN,  
U.S. Senate, 331 Hart Senate Office Building, Washington, DC.

Hon. JEFF BINGAMAN,  
Chairman, Senate Committee on Energy and Natural Resources, 304 Dirksen Senate  
Building, Washington, DC.

Hon. LISA MURKOWSKI  
Ranking Member, Senate Committee on Energy and Natural Resources, 304 Dirksen  
Senate Building Washington, DC.

DEAR SENATORS FEINSTEIN, BINGAMAN AND MURKOWSKI, the BlueRibbon Coalition (BlueRibbon) is an Idaho non-profit corporation with over 10,000 individual, business and organizational members representing approximately 600,000 individuals nationwide. BlueRibbon members use motorized and non-motorized means, including Off-Highway Vehicles (OHV), snowmobiles, horses, mountain bikes and hiking, to access and enjoy recreating upon state and federally-managed lands throughout the United States, including such lands throughout the National Forest System and Bureau of Land Management (BLM) lands.

A significant percentage of BlueRibbon's members live in California and recreate on federally-managed lands throughout the state, including the lands affected by the California Desert Protection Act of 2010 (S.2921). S. 2921 is a hugely complicated piece of legislation concerning a wide range of uses of public lands. S. 2921 addresses military base expansion, Wilderness designation, off-highway vehicle management, renewable energy development, habitat migration zones, and state land exchanges and transfers.

Senator Feinstein's staff is to be commended for navigating the many challenges of issues and viewpoints across the political spectrum. In addition to the Senator's staff, BlueRibbon commends the leadership of the various stakeholder groups involved, including recreational off-highway vehicle groups, local cities, counties and conservation groups. Given the dizzying array of hugely contentious issues, S. 2921 does a good job of balancing competing interests to provide some benefit to all of the stakeholders.

One purpose of S. 2921 is to mitigate the loss of OHV recreation caused in part by the Marine base expansion at Twentynine Palms, CA, by establishing OHV Recreation Areas at El Mirage, Johnson Valley, Razor, Spangler, Stoddard Valley and Vinagre Wash. Associated language in sections 1801 and 1603 is especially important to our qualified support of S. 2921, and we request the language in those sections to remain intact as currently drafted and faithful to its originally intended purpose.

Some preservationist special interests are likely to portray S. 2921 as a "pro" off-highway vehicle bill. Our members wish Congress to understand that the military base expansion alone will eliminate meaningful, currently available, off-highway vehicle riding opportunities. While we recognize and appreciate the particular efforts in section 1801 and elsewhere to acknowledge the legitimacy of effectively-managed off-highway vehicle recreation, it remains likely that its opponents will continue to seek restriction of off-highway vehicle access throughout the desert, including in designated OHV Recreation Areas.

Off-highway vehicle recreation is a very popular family activity, especially in Southern California. According to the California State Off-Highway Motor Vehicle Recreation Division (OHMVR), between 1980 and 2007 the number of registered OHVs has increased 370%. Unfortunately, since 1980 the amount of desert lands available for this type of recreation has fallen dramatically. Due to its proximity to southern California metropolitan areas, Johnson Valley is one of the most important areas for serving this growing demand for both in-state and out-of-state visitors.

Many off-highway enthusiasts feel conflicted; on one hand supporting the US Military and understanding the economic importance of Twentynine Palms to adjacent communities. On the other hand, off-highway vehicle users have, over the years, been "crammed" into the Johnson Valley area after decades of Wilderness designation, administrative closures, and lawsuits that closed millions of acres of the California desert, making it a difficult pill to swallow to lose the area now to the base expansion.

In light of this, we appreciate, as stated above, that S. 2921 attempts to mitigate the loss of off-highway vehicle recreation areas and provide some assurance the remaining off-highway areas will remain open and be actively managed for off-highway vehicle and other types of recreation. In recognition of the effort to forge a difficult balance here, BlueRibbon supports S. 2921, provided that the locations and

language addressing continuation of OHV recreation in OHV Areas, proposed monuments, and elsewhere in the bill, is not diluted.

We appreciate the opportunity to provide this testimony and look forward to participating in this and other public lands management efforts.

Sincerely,

GREG MUMM,  
*Executive Director.*

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CALIFORNIA OFF-ROAD, VEHICLE ASSOCIATION,  
*Simi Valley, CA, May 15, 2010.*

Hon. JEFF BINGAMAN,  
*U.S. Senate Energy and Natural Resources Committee, Washington, DC.*

DEAR Honorable Committee Members, At the Annual Meeting of the California Off-Road Vehicle Association (CORVA) held in Bakersfield, CA on May 15, 2010, the Members voted in opposition to the California Desert Protection Act of 2010. CORVA has joined the California Association of 4WD Clubs in opposition to the Act, which if passed may have a major negative impact on the desert environment, the business environment, the recreational choices of the public and the availability of access to the desert by future generations.

Further, the Association states the main reasons for opposition includes (but is not limited to):

- 1) The addition of more than 290,000 acres of Wilderness to the already 9 million acres of Wilderness currently designated in the California Desert recognizing that the Wilderness designation removes this land from all human visitation except hikers.
- 2) The removal of vast Desert areas currently and historically used by the American public for multiple uses with no guarantee that more areas will not be removed from use in the future.
- 3) The addition of yet another management plan replacing the management plan currently controlled by the Bureau of Land Management, without stipulated funding to implement the new plan or guarantees that the management plan will match the original bill.
- 4) The plan to locate necessary solar energy resources in the desert, geographically distant from where the power will be used necessitating a transmission infrastructure and perhaps further eroding multiple use land.

Although our Association, which represents over 5000 Californians who use off-highway motorized vehicles, has voted in opposition to S2921, we acknowledge the courtesy and professionalism of Senator Diane Feinstein and her staff for including our members, most of whom are her constituents, in the discussion. We further encourage the Senator to continue this practice and include all stakeholders in continuing discussion of this legislation and future legislation affecting OHV recreation.

Respectfully submitted,

JIM WOODS,  
*President.*

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CALIFORNIA WIND ENERGY ASSOCIATION,  
*Berkeley, CA, May 18, 2010.*

Hon. JEFF BINGAMAN,  
*Chairman, Energy and Natural Resources Committee, 304 Dirksen Senate Building, Washington, DC.*

DEAR CHAIRMAN BINGAMAN, The California Wind Energy Association (CalWEA) offers the following comments on S. 2921, the California Desert Protection Act of 2010 (CDPA), for the Committee's consideration at the upcoming hearing on May 20th. In brief, we have significant concerns about the negative impact that the bill, in its present form, would have on wind energy development in California and the West. We have discussed these concerns with Senator Feinstein's staff and have provided staff with a relatively modest set of proposed changes that, if accepted or otherwise addressed, would enable CalWEA to support the bill.

CalWEA is a trade association comprised of 25 companies engaged in wind energy development in California and other Western states. The CDPA, which would significantly affect the siting and permitting of wind energy projects, is therefore of significant interest to CalWEA and its members.

CalWEA appreciates Senator Feinstein's desire to protect the California desert region from development that would reduce its essential character and unduly compromise its ecological values. This goal must be carefully balanced against equally important national energy interests and achievement of California's greenhouse gas reduction and renewable energy goals. In the case of wind energy, we believe this balance can be achieved with modifications to the bill as follows.

*Title I: Wind energy resources lost to land preservation*

Only a small fraction of California's valuable wind energy resources remain available for development. In wind-rich San Bernardino County, for example, of almost 13 million total acres of land, nearly 5 million acres host commercial-grade winds but only 1.3 million of those acres remain available for project development, due to military and environmental federal land designations. Under the CDPA, this amount would be reduced to just 800,000 acres (with some of this area undevelopable due to military, aviation, or other conflicts), eliminating some of California's most concentrated remaining wind energy resource areas.

With its small ground disturbance "footprint" and careful siting, wind projects can be compatible with land preservation efforts while reducing reliance on traditional energy sources which are causing serious impacts on our climate, air quality, water resources, and human health. CalWEA has therefore proposed to Senator Feinstein limited and reasonable adjustments to the boundaries of the proposed conservation areas which, along with providing access to the existing transmission grid, would enable several commercially active project development areas to remain viable. Most of these developments are located on previously disturbed lands and/or are proximate to existing roads, pipelines, and other infrastructure. Our proposed boundary adjustments would:

- Enable the development of four projects totaling over 1,300 MW of wind energy capacity—preserving about 45% of the commercial wind resource potential that otherwise will be lost to the monument.
- Reduce the monument area by approximately 3%, while disturbing less than 1,000 acres.
- Provide an additional \$18 million annually in property tax revenues to San Bernardino County (\$26 million in total from the projects if built as proposed).
- Create an additional 50 permanent direct jobs (with the projects creating over 70 direct permanent jobs in total), and an additional 200-400 construction jobs lasting 3 to 5 years as these projects are constructed.
- All told, these projects would create an estimated 6,000 job-years, including both direct and indirect jobs.

Altogether, these projects would satisfy over 1% of California's total electricity supply, or 10% of the additional electricity needed to meet California's 33% RPS requirement.

*Title II: Facilitating permitting on private lands*

CalWEA supports the primary objective of Title II of the CDPA—to facilitate permitting on private lands, thereby possibly reducing permitting pressures on public lands. We also appreciate proposed Section 207(b), which would facilitate the permitting of temporary resource measurement activities on public lands, which now requires an inordinate amount of time and resources.

We have, however, identified many areas in which these objectives require clarification so as not to inadvertently complicate permitting on public or private lands. We have provided Senator Feinstein's office with specific suggestions for achieving much of the needed clarification.

CalWEA looks forward to further discussions with Senator Feinstein to enable the achievement of both desert protection and wind energy development goals. We would be glad to share our detailed proposals with the Committee.

Sincerely,

NANCY RADER,  
*Executive Director.*

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STATEMENT OF KIM DELFINO, CALIFORNIA PROGRAM DIRECTOR, DEFENDERS OF WILDLIFE

Defenders of Wildlife (Defenders) thanks the Committee for the opportunity to submit testimony for the record regarding S. 2921, the California Desert Protection



Act of 2010 (“CDPA”)<sup>1</sup>. My name is Kim Delfino, and I am the California Program Director for Defenders. Founded in 1947, Defenders is a nonprofit organization with more than 1 million members and supporters across the nation and is dedicated to the protection and restoration of wild animals and plants in their natural communities.

#### *Background*

As a conservation organization strongly committed to addressing both the causes and impacts of global warming, Defenders recognizes and supports the need to shift from greenhouse gas-emitting energy sources, such as coal and oil-fired power plants, to renewable energy sources, such as solar and wind. In making this transition, however, we also strongly believe that, as with any other type of energy development, renewable energy development, including development of associated transmission facilities, must be carried out in a way that avoids significant adverse impacts on wildlife and ecosystems and minimizes and mitigates those impacts that are unavoidable.

Defenders has taken the lead among conservation organizations in recognizing the benefits of renewable energy while also sounding a cautionary note, calling attention to the potential negative impacts on wildlife, habitat and ecosystems from the push for wide-scale renewable energy development on public and private lands. Defenders has provided comments highlighting the impacts to wildlife and habitat that will result from proposed projects, as well as comments on the Bureau of Land Management’s (“BLM”) solar programmatic Environmental Impact Statement. In our comments, we highlight the need to protect wildlife and ecosystems and advocate for incentives to steer renewable energy development away from sensitive wildlife habitat and toward already-degraded areas on public and private lands. Currently in California, Defenders is working with renewable energy companies to locate solar power plants in areas where the impacts on wildlife will be avoided and/or minimized. In addition, we are collaborating with California state energy officials to develop the Desert Renewable Energy Conservation Plan to help ensure responsible solar and wind development in the Mojave Desert.

We appreciate Senator Feinstein’s commitment to both protect conservation land and promote responsible yet rapid generation of renewable energy on appropriate lands. While we support the goals of the legislation, we continue to have concerns about Title I, California Desert Conservation and Recreation, and Title II, Desert Renewable Energy Permitting.

#### *I. Title I: California Desert Conservation and Recreation*

Although California’s Mojave Desert has recently drawn national attention as ground-zero in the nation’s transition to renewable power, Senator Feinstein aims to put the spotlight back on what makes the Mojave such a remarkable place. The areas protected in Senator Feinstein’s conservation bill will help numerous imperiled animals and declining desert plants, including the threatened desert tortoise, bighorn sheep, Mojave fringe-toed lizard and the iconic Joshua tree. Although we fully support the designation of new national monuments, wilderness, and additions to Joshua Tree and Death Valley National Parks and the Mojave National Preserve, we have concerns over the following aspects of the monument provision of the bill.

First, while the bill would protect large areas from renewable energy development, it would also mandate that certain areas be open to off-road vehicles, a determination which is currently made by the BLM on a case-by-case basis. One of the most important reasons to conserve our desert lands is to reduce the pressure placed on imperiled plants and animals. Our concern is that the bill would create permanent off-road vehicle areas and take away the flexibility from the BLM in determining what areas should be open and what areas should be closed to this destructive use. Off-road vehicles can permanently scar the fragile desert with erosive tire tracks that fragment habitat and drive wildlife away from these important places.

Unlimited off-road vehicle use in the CDCA is incompatible with standards for public land health established in the Federal Land Policy and Management Act<sup>2</sup> and BLM policy. The possible expansion of the designated areas to adjacent public lands would result in impacts to recently designated conservation areas for the Desert Tortoise and Mohave Ground Squirrel. In addition, the possible establishment of competitive off-road vehicle racing corridors between the Johnson Valley and Stoddard Valley would involve the destruction of critical habitat for the Desert Tortoise. In addition, the bill would require the Secretary of the Interior to author-

<sup>1</sup> The California Desert Protection Act of 2010, S. 2921, 111th Cong. (2010).

<sup>2</sup> 43 U.S.C. §§ 1701 et seq.

ize the expansion of the open areas to include any such opportunities identified in a mandatory study. Defenders would support modification of the bill with regard to existing off-road vehicle recreation areas if it resulted in establishing sustainable and environmentally responsible opportunities for off-road vehicle use through application of land health assessments, mitigation and stabilization of areas that have been heavily impacted by intensive vehicle use.

The bill also authorizes motorized vehicle use within the new national monuments on currently designated open vehicle routes, and such use would be allowed for both licensed and unlicensed vehicles, including off-road vehicles. Defenders strongly supports only licensed (street-legal) motorized vehicle use on designated open vehicle routes, and a requirement that all vehicle operators have a state-issued driver license. An analysis of current open routes needs to be done and those routes found to be contrary to the purposes of the monument should be closed through a planning process.

An additional concern is that, pursuant to the CDPA, new national monuments would be open to target shooting and plinking using firearms. Other than for legitimate hunting purposes, all firearm use in the new monuments should be prohibited. Target shooting and plinking is of concern to us because it contributes to accumulation of trash from discarded shell casings, targets, broken bottles, and appliances. It also poses a safety risk to the visiting public and increased incidence of wildlife injury and mortality from gun-shots. These issues are widespread in various parts of the California Desert and especially the western Mojave region.

In addition, we would like the Committee to retain the entire Cady Mountains Wilderness Study Areas as wilderness. We would also like to extend wilderness protection to the southern portion of the Soda Mountains. These areas support the threatened Desert Tortoise and Desert Bighorn Sheep. We believe wilderness designation of these two areas is the most effective way of protecting these important habitats and species.

We want to commend Senator Feinstein for recognizing the need for climate change and wildlife corridor studies, and requiring that those studies be done within two years of enactment of the bill. The studies include the identification of critical areas that should be preserved for maintaining wildlife movements through various habitats and regions in the California Desert. We support this and strongly recommend that the bill require the land managing federal agencies to implement the recommendations of the studies including the designation and preservation of wildlife movement corridors within two years after completion of the study.

## *II. Title II: Desert Renewable Energy Permitting*

This bill provides a good start at addressing some of the difficult issues surrounding the siting and permitting of renewable energy projects, timely processing of applications and coordination between federal agencies and states in wildlife matters. While we support the overall intentions of this provision, we continue to have reservations about several aspects of the bill including but not limited to: categorical exclusions for wind and solar testing facilities, permitting deadlines, designation of habitat mitigation zones; the distribution of solar and wind income; and determinations about fair market value of public lands.<sup>3</sup> Although we welcome the opportunity to discuss all of our concerns in greater detail, we would like to take this opportunity to draw your attention to S. 2921 Sec. 201, the distribution of solar and wind energy income, and S. 2921 Sec. 205, habitat mitigations zones.

The two main points that we will make in our statement for the record are:

1. As our nation makes the transition to green energy, we must ensure that efforts to mitigate the impacts of renewable energy are adequately funded; and
2. We need to ensure that a federal mitigation banking program to encourage renewable energy development is consistent with California Senate Bill 34 and other existing state laws.

### A. REVENUES FROM RENEWABLE ENERGY DEVELOPMENT SHOULD BE DIRECTED TO CONSERVATION EFFORTS

The California Desert Protection Act sets out a revenue structure for income from solar and wind energy development.<sup>4</sup> As currently drafted, the CDPA distributes income collected by the BLM for permitting as follows:

- 25% to the states and 25% to counties hosting renewable energy development.

<sup>3</sup> See S.2921, §§ 207, 202, 205, and 201

<sup>4</sup> Id. §201(a)(k)

- For fiscal years 2009-2040, 40% to the BLM Permit Processing Improvement Fund
- For fiscal years 2021 and onward, 40% to the Land and Water Conservation Fund
- 10% to the Solar Energy Land Reclamation, Restoration and Mitigation Fund (SELRRM) to be used for reclamation and mitigation of lands disturbed by solar development, with a lifetime total cap of \$50,000,000, with surplus directed to the general Treasury fund.

Defenders highlights two distinct issues with this section. First, we believe the funds directed to LWCF should instead be directed to the Cooperative Endangered Species Conservation Fund, and be deposited immediately, instead of delaying deposits until 2021. Second, given the significant impacts large scale energy development will have on the fragile California desert, including habitat fragmentation and direct impacts on species, we appreciate and support Senator Feinstein's acknowledgment that mitigation efforts and funding are essential to a comprehensive and robust renewable energy program. We believe any fund used for mitigation of lands disturbed by renewable energy development should analyze the costs of a mitigation project in order to provide a more realistic estimate of funding needs (i.e. 10% may not be enough). The development of a single major solar plant in the California Desert, for example, can involve leveling and clearing thousands of acres of biologically-fragile desert land that supports a wide range of sensitive and imperiled species (including the desert tortoise and Mohave ground squirrel) and unique habitats. Defenders would also like to highlight for the committee our position that all money directed to a mitigation fund should be dedicated without further appropriation, and without a lifetime total cap.

#### *B. Habitat Mitigation Zones and Potential Conflict with New State Law*

Senator Feinstein's bill creates a mitigation banking system in the California Desert to encourage development of renewable energy projects on private lands.<sup>5</sup> This includes a requirement that the Secretary identify at least 200,000 acres of federal lands to use as mitigation for private land development. At the time the bill was drafted, there was no comprehensive renewable energy planning or mitigation effort in place in California. With the enactment of California's Senate Bill 34, which requires the California Department of Fish and Game to develop an interim mitigation strategy for "fast-track" renewable energy project in the desert, and the official initiation of the Desert Renewable Energy Conservation Plan planning effort—both of which include the requirement of identifying areas for mitigation, Defenders believes the bill must ensure that the mitigation banking program is consistent with the new planning and mitigation efforts.

In addition, the mitigation banking system limits the mitigation payments for land acquisition to 75% of the fair market cost of purchasing the acreage necessary for mitigation. Because the California Endangered Species Act requires "full mitigation" of impacts to threatened and endangered species, Defenders remains concerned that the bill does not adequately ensure that project developers will still meet, or can meet, state endangered species law requirements. In addition, in light of the new planning and mitigation tools which are being developed under the new California Senate Bill 34 and the Desert Renewable Energy Conservation Plan, it is unclear how the 75% cap on mitigation payments comport with these two efforts, which rely on full mitigation.

#### *Conclusion*

In conclusion, Mr. Chairman, we appreciate and support Senator Feinstein's effort to conserve important lands in California and promote responsible renewable energy development. Defenders looks forward to working with the Committee to address the issues we have highlighted above. Thank you for the opportunity to submit a statement for the record.

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STATEMENT OF TERRY WEINER, IMPERIAL COUNTY PROJECTS AND CONSERVATION  
COORDINATOR, DESERT PROTECTIVE COUNCIL, SAN DIEGO, CA

Honorable Senators,

This testimony is submitted on behalf of the Desert Protective Council and its members. I request that these comments be placed in the record during the ten day window for additional testimony on S. 2921 following the May 20 2010 Senate Energy and National Resources Committee Hearing on this legislation.

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<sup>5</sup>Id §205

The Desert Protective Council submitted comments to this committee on May 20 2010 regarding our concerns with several sections of the bill related to off-road vehicle recreation. The comments below will briefly cover our concerns with the renewable energy permitting provisions of the bill. Our support of the CDPA is qualified pending amendments to the off-road recreation and these renewable energy sections of the bill:

*Section 1304 Uses of the [Mojave Trails National] Monument*

*Section 1404 Uses of the [Sand to Snow National] Monument*

These sections clarify non-prohibited uses of the proposed Monuments ranging from legal hunting and access to in holdings to expansion of energy transmission corridors as well as establishment of new transmission corridors, and rights of way to same.

1) We are greatly concerned at the potential impact of this section on some of the most unspoiled desert wild lands remaining in the Southwest—lands the Monuments are expressly intended to preserve. While the language of the bill reaffirms that all new transmission corridors or expansions of existing corridors must comply with Federal environmental law as well as with the Monument management plans, insufficient specifics are provided as to the evaluation of cumulative effects of expansion of such corridors and rights of way on the landscape. The cumulative effects with which we are concerned include but are not limited to:

- Fragmentation of habitat for retiring wildlife species such as desert bighorn sheep;
- Destruction of habitat for sensitive species such as the desert tortoise, fringe-toed lizard, and other species within the construction footprint of new transmission rights of way;
- Disruption of normal wildlife behavior patterns with results such as increased raven predation on desert tortoises due to new development corridors in formerly intact desert, new secure raven nesting sites in the transmission towers, and ravens' increased facility in spotting vulnerable tortoises due to the tall perching surfaces transmission towers would provide;
- Introduction and spread of invasive exotic plants into previously un-colonized lands, which spread is known to be accelerated by development and road-building;
- Increased risk of devastating wildfire sparked by faults in electrical transmission lines or pipelines carrying combustible fluids, and;
- Loss or degradation of some of the most compelling visual resources to be found in the continental United States, in which hundreds of square miles of desert can currently be viewed with no obvious human intrusion or presence apparent.

*Title II: Renewable Energy Permitting*

*Sec. 201: Renewable Energy Coordination Offices*

This section mandates designation of BLM offices as Renewable Energy Coordination Offices for ten western states, and authorizes coordination of agency procedure and timelines for public lands energy project permitting.

1) The current system of evaluation and permitting of industrial energy development projects on public lands is broken. Despite the best intentions and remarkable skills of Federal employees charged with overseeing the permitting process, the sheer volume of applications has overwhelmed the system. Required environmental surveys of project sites have been done in rushed and slipshod fashion, with deadline pressures contributing to incomplete accountings of wildlife populations, visual impacts, vegetative communities and hydrological risks to construction. In many places contractors have conducted surveys of project sites without leaving their vehicles.

The result has lead to incomplete and sometimes seriously misleading official assessments of the environmental impacts of each project. This poses a serious obstacle to informed citizen input where avenues for it exist, and deprives land managers of the information they need to make creditable decisions in the permitting process.

It is clear that we need to do things differently. Coordination of state, local and federal agencies is an important first step. However, we have strong concerns that the language in the bill will be read as a mandate to "streamline" the permitting process. The process has been streamlined far too much already. In order to best protect our irreplaceable public lands and the resources thereon we feel that the best reform of the permitting process includes benchmarks rather than deadlines.

We urge Senators to amend the bill to establish and/or reaffirm credible baseline standards for the environmental reports required of each applicant.

The beauty and ecological integrity of the southwestern deserts, in particular, have been under-appreciated and under-researched. New species, and new populations of rare species, are discovered in our deserts with remarkable frequency. We owe it to future generations to ensure that those who would convert publicly owned desert wild lands to industrial use commit to basic due diligence in their surveys of the wildlife, archaeological, and other values of the land proposed for development.

2) We feel strongly that fair market cost based on a right-of-way standard is an improper basis for establishing fees charged developers of industrial energy projects on public wild lands. These projects utterly and irrevocably change the character of the land upon which they are sited. A right-of-way standard that may apply to building of a road or railway, or of a small facility such as a microwave repeater, seems to us misapplied in projects that involve the wholesale destruction of thousands of acres of desert land at a time. Given the slow recovery of arid land habitat communities, these disturbances are essentially permanent. Charging developers fees based on a 20-year right-of-way equates to charging a tenant rent on a building when their plan is to demolish that building. We urge Senators to amend the bill to establish a cost calculation that takes into account the full and permanent destruction of these lands' many values.

Chairman Bingaman and members of the Committee, thank you for your work and for consideration of our comments.

We look forward to working with you and with Senator Feinstein to improve and pass the California Desert Protection Act 2010.

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STATEMENT OF FREDERIC C. JOHNSON III, PG, UTAH LICENSED PROFESSIONAL  
GEOLOGIST, VIRGIN, UT

Honorable Chairman Bingaman and Members of the Committee, thank you for this opportunity to discuss ramifications of S. 2921 upon the ability of the United States and the State of California to maintain and sustain a viable renewable energy program consistent with national security, and to discuss some necessary steps to help return the Nation and the State of California to economic good health.

As a professional mining geologist with 36 years experience that includes living and working in the California Desert for 30 years and working as an advisor with BLM and Inyo County on the initial Sec. 603 FLPMA mandated Desert Plan in the 1980's, I appreciate the opportunity to discuss this legislation that will so drastically affect the people of the desert. S. 2921 needs significant revision to keep from negatively affecting the people of the desert area and continuing to negatively affect California. Although the land designations for renewable energy projects are a good idea to keep from impacting the desert environment, the proposed designations of National Monuments and wilderness areas that were partially crafted by environmental lobby groups are not a good idea for California's fragile and collapsing economy.

During my 25 years of work with the borate industry in and near Death Valley, California and experience in the deserts of the southwestern United States, I learned that many areas within the diversely and richly mineralized California Desert have never been adequately explored for important industrial minerals and much of it is now considered off limits to mineral exploration due to short-sighted legislations. These legislations that refused to address the importance of our mineral estate to this nation have damaged and almost destroyed what was a \$1.3 to 2 billion dollar industrial mineral industry in the 1990's in a State that is approaching financial bankruptcy. Today S. 2921 proposes more withdrawals of mineral exploration territory from exploration, research, and development at a time when our nation needs to be independent for its energy (renewable or otherwise) and economically productive.

S. 2921 unfortunately overlooks priority one. This first priority should be to study and address the ramifications of the proposed bill on national security and the socioeconomic viability of local, state, and national economies. S. 2921, ignores mining and mineral uses that should be considered to support not only renewable energy with products, but to help bolster a dying economy. It is disturbing to see a country put itself out of business by adopting non-scientific short-sighted land management practices that deter the research and development (exploration) necessary for the future.

If the good things that lead to permitting land bases for renewable energy projects are to be realized with this S. 2921 Bill, then the bill needs to be re-written to allow

exploration, research, responsible development, and innovative uses of local industrial minerals to support technological advances in renewable energy facilities in the future. This exploration and study should include all the lands in S. 2921.

To enumerate several important issues that are being overlooked and worst yet being stifled by S. 2921 please consider the following list:

1. All renewable energy projects and their developing technology are in their infancy and are still working on what mineral bases make the best materials for energy capture. Minerals are the basis for the capturing mechanisms and research and development is on going. As some environmental activists would advocate to preserve all land to make sure you do not overlook an endangered species, one who understands the importance of energy independence and the need for minerals to supply that independence would state the obvious; "If it can't be grown, it has to be mined". therefore, lets explore, research, and responsibly develop the resources we have to heal our country. New mineral species found in new ground could be the next saving grace for the free world just like the finding of new animal species can be the next great cure. Therefore the continued removal of the shrinking federal land base from exploration has dire consequences for the future.

2. Much of the new wilderness proposed by S. 2921 does not qualify as wilderness according to the descriptions of wilderness in the Wilderness Act of 1964. Most newly proposed wilderness areas have roads and/or were previously inventoried by BLM and deemed unsuitable because other multiple uses benefited the nation better. In fact, some of the wilderness areas designated in the 1994 California Desert Protection Act have roads that are not even signed. If Congress insists on making wilderness with roads (contrary to the Wilderness Act), then put a provision in the bill that the roads into a wilderness can be driven to access the wilderness so that many of our unsuspecting public do not become criminals.

3. The small amount of exploration and mineral study that has been done in some of the areas proposed for wilderness and National Park expansions shows several areas with high potential for the rare earths and other industrial minerals that are critical to our technological world. Presently, communist China is the only active producer of rare earths, and they are trying to buy controlling interests in our rare earth and other mineral deposits every day.

4. At this time in our economic history, our country needs to produce and manufacture and sell something "Made in the USA" to climb out of the economic hole, but continuing to ignore the problem will get us deeper in the hole.

5. S. 2921 ignores another major economic factor. 'Tourism and being the "service station" for the rest of the world will never give this nation sustainable economies, because something has to be produced and sold somewhere for an economy to allow tourism'. If it is only other nations' tourism we are supporting then we truly will become the "service station for the world" and we will be owned.

6. S. 2921 will send more good paying jobs that produce something in California to other countries by continuing to scare producing industries off. No one will risk capital in a country or state that legislatively restricts and prohibits land use in most of its area; therefore, mining companies and capital investors look beyond the U.S. and California to countries that do not have the environmental conscience of our nation.

7. The job of wilderness lobby groups like the ones who have helped draft this legislation is to put land into "No Use" categories that subsequently put other people out of business and take away jobs. As a country we have large amounts of wilderness and many National Parks. Wilderness lobby groups say there will never be enough wilderness because it is their jobs, but it is time to consider putting someone who produces something back to work. Enough wilderness has been reached, our nation cannot economically stand to let it go on. We can develop in an environmentally responsible way.

8. No further lands should be withdrawn from mineral entry. The self-initiative exploration promoted by the mining law is the beginning of the research and development and discovery of new mineral resources and uses. Removing lands from this process sends all those willing to explore to other countries.

9. A careful inventory of and use of existing roads for access to all lands identified in the bill should be written into the bill. Keep existing accesses open.

10. Maintaining a significant landmass open to exploration should be a critical concern in these economic and perilous times. Mineral exploration can boost economies and may well lead to more efficient energy alternatives like the uses of Lithium, Gallium, Germanium, and other rare earths in solar and computer

technologies and the use of high quality Calcium Carbonate to replace many petroleum product uses. Additionally, mineral exploration should be considered vital to this nations security. If we need it and we don't know where it is when we need it, it just may be too late. Please, No more wilderness.

11. Please realize that of all the millions of acres of public land explored, less than 0.02% ever becomes a mine. So we are not talking about mining the west here, we are talking about exploring to maintain our country's security and to help recover its economic viability.

12. Contrary to projected belief by wilderness lobbyists that the Desert is being destroyed, once one is away from the populated centers, the peace and tranquility is there and ATV's are not running amuck because the terrain is difficult. Traveling the desert like I have around Death Valley for 36 years it seems that the trail riding ATV and Motorcycle folks respect the Desert also and stay on the existing trails and roads. The massive destruction scenario is a falsehood promoted by those that are in the business of putting others out of business.

13. A few good things in this bill are the designation of land areas for energy development and for ORV play.

In these economic hard times an extremely important aspect of the mining sector is that each mining job creates 2 to 3 additional jobs, so why is S.2921 trying to run these jobs out of the country. At a recent meeting with the Inyo County, California Supervisors, the representative of the California Wilderness Coalition who helped draft and is promoting the wilderness portion of this legislation was asked why wilderness was proposed in areas where it was highly mineralized and roaded and previously rejected as non-wilderness in character. The answer from the Wilderness Coalition was that "it is just to stop mining". Is this the reason for legislating wilderness?

Please consider implementing the following concerning S. 2921:

1. Please consider a thorough mineral inventory for all areas of the bill that are proposed for withdrawal from mineral entry. After inventory results are made public, field hearings would allow the public to express their support or opposition of S. 2921. The inventories should be for all possible economic mineral potential to insure that jobs and future needed mineral developments are not prohibited by withdrawal.

2. Please consider establishing the Monuments, if needed, with provisions to allow mineral entry by exploration and discovery, and potential mining under special use permits for proven critical minerals. Enhanced reclamation standards can apply in any specially designated areas. Any needed withdrawals should be studied, proposed, and brought through the processes that BLM is allowed under FLPMA and NEPA to insure that the decisions to withdraw are backed by good science and not a lobbyist's desires.

3. Please write into S. 2921 that a thorough non-partisan and non-biased socioeconomic study of the ramifications of all aspects of S. 2921 on the local people of the affected areas will be done before field hearings and consideration of the bill for passage. The results of this study would be good information for discussion at field hearings.

4. Please allow field hearings for the public to voice their support or reservations on this large public land withdrawal in an area that is already economically devastated.

5. Please consider no further additions to the Wilderness system because a land base is needed in the mineral rich and diverse California Desert for mineral exploration to help guide our nation into the future and insure local minerals to support renewable energy development.

6. Please consider provisions in the bill to use the present management structure for land protection under the FLPMA and NEPA laws by bolstering the agencies with directives to help all concerned with the desert to achieve their goals without prejudice to others and in a fashion that protects while expediting needed economic concerns. After all, the issue of the environmental impact of permitting large land areas to develop renewable energy was brought to light in the public process mandated by NEPA.

The designation of areas for renewable energy projects in S. 2921 is a great idea, and I agree that the desert should be protected from over development. However, highly mineralized areas like the large rare earth areas in and adjacent to Joshua Tree National Park, un-studied mineralized areas in the Avawatz Mountains with roaded access, the highly mineralized and relatively unstudied Bowling Alley with roaded access and private lands, and the Soda Mountains with high and poorly

studied mineral potential should be left open for mineral exploration and not put into wilderness.

I am not totally against all aspects of S. 2921; however, the noted issues that are not addressed in S. 2921 are extremely important to California and our Nation. This legislation needs a lot of revision to help all concerned.

Thank you again for this opportunity to testify on this important legislation that could be made good or bad.

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STATEMENT OF GARY NILES, RESIDENT, WALTERS CAMP, IMPERIAL COUNTY, PALO VERDE, CA

*Walters Camp Resident Supports Desert Protection*

*A 25-Year Perspective of Local Land Use*

I am Gary Niles, a homeowner at Walters Camp since 1987 and full-time resident since 2002. I am greatly concerned as special interest groups compete for the last vestiges of California's pristine desert lands. Walters Camp is especially vulnerable, where five wilderness areas and two wildlife refuges surround 58 homes and a BLM campground along the Colorado River. Surprisingly the growth rate here exceeds Los Angeles and San Diego where the majority of Walters Camp homeowners live permanently. New construction will soon add 34 more vacation homes to total 92, more than doubling the number of private residences over a 25 year period.

*I strongly support Senate Bill S.2921 proposing 74,714 acres in nearby Vinagre Wash as a Special Management Area (Title XVI, Section 1602).*

*Then and Now*

In 1985 most folks were lucky to share an old jeep with their entire family. The annual "poker run" of 20 or 30 vehicles was considered a big event and easily accommodated by local sand washes. Water sports dominated three seasons with hunting, rock-hounding and trail-riding reserved for winter months. A decade later the explosive popularity of off-roading changed all that.

In 2010 families have at least one ORV for every man, woman and child, capable of going virtually anywhere at any speed. More visitors arrive here each year to escape the crowds at Glamis. Increased population and vehicle performance makes Walters Camp a convenient "launch point" for hundreds of drivers to access backcountry lands on any given weekend.

*Culture Shock*

A handful of neighbors at Walters Camp have worked diligently to identify local ORV trails to be included in the proposed legislation. However this is not our greatest challenge. What cannot be legislated is tomorrow's "off-road culture" which is a very socially-complex issue. Lacking the restraint of previous generations, some off-roaders show-off their vehicles and driving skills by competing on pristine hillsides and waterfalls in culturally significant areas. Rogue riders continue to make new trails which are soon followed by others and, even if corrected, the erosive scarring lasts for decades. A culture of trespassing on private and public property is rationalized by those who believe they have a "prescriptive right" to drive wherever they wish.

This behavior is witnessed by youngsters eager to make their own mark on the world while maps, private land and wilderness boundaries are ignored. Like the nearby Glamis sand dunes, if left unchecked our desert wilderness will evolve into just another giant amusement park.

*Off-Roading We Can Live With*

Any successful negotiation, they say, leaves all sides frustrated, no one getting everything they want. For better or worse, we are governed by compromise. Such is the "battle" over how public land is used. The river basin south of Walters Camp is bounded by remnants of California's wilderness first inhabited by our Native American ancestors. As citizens we have a responsibility to preserve these unspoiled areas for future generations. The proposed legislation is a first step toward responsible management and will determine the ultimate fate of our precious natural resources. Your support of Senate Bill S.2921 is greatly appreciated.



STATEMENT OF ROSE CHILCOAT, ASSOCIATE DIRECTOR, GREAT OLD BROADS FOR  
WILDERNESS, DURANGO, CO

Thank you for the opportunity to comment on this important piece of legislation. Great Old Broads for Wilderness is a national wilderness advocacy organization that uses the voices and activism of elders to preserve and protect wilderness and wild lands. We have more than 5,000 members in all 50 states and exist to give voice to the millions of older and no longer so able Americans who still desire to see America's remaining wild landscapes protected for future generations. More information on our organization can be found at [www.greatoldbroads.org](http://www.greatoldbroads.org) <<http://www.greatoldbroads.org>>.

We applaud Senator Feinstein for her strong leadership regarding wilderness protections and we fully support the three new wilderness areas, Avawatz Mountains, Great Falls Basin and Soda Mountains and the additions proposed for the Golden Valley, Kingston Range, Death Valley National Park Wilderness and the San Geronio Wilderness in the San Bernadino National Forest. These are all important wild landscapes that deserve the strongest possible protection in a world of ever diminishing wildness. However, there are some further improvements that could be made to this bill. Please give wilderness designation to the entire Soda Mountains Wilderness Study Area or if that is not possible, please do not "release" the remaining WSA from its present protections.

We believe that the Cady Mountains, a wilderness study area east of Barstow and west of the Mojave National Preserve also deserves to be designated as wilderness in this bill. Prior opposition is no longer relevant and wilderness would provide the greatest degree of protection for these lands. Inclusion of this area in the Mojave Trails National Monument, while good, would not protect this area from degradation from potential development, power lines or off-road vehicle use.

There is one other area, Conglomerate Mesa, that we feel should be included in this bill. It would be a valuable and logical addition to the Malpais Mesa wilderness.

The two new National Monuments, Mojave Trails and Sand to Snow would both provide valuable protected wildlife habitat corridors and connectivity with other protected landscapes. Please be sure to include language to ensure use of off-road vehicles is addressed via a management plan for these areas. We support and applaud these protective designations as a legacy for future generations of Americans. Our children and grandchildren will thank us.

While we overall support this legislation, there are some aspects that we believe are mis-guided and troubling, namely the Congressional designation of more than 400,000 acres of off-road vehicle (OHV) use areas as National Recreation Areas. To enshrine permanently by law the use of public lands for off-road vehicle use/abuse is short-sighted and removes completely the ability of the managing agencies to reduce, regulate or stop such use should circumstances change or unacceptable impacts occur. This also sets a terrible precedent for similar language to be included in other future wilderness bills. Our public lands agencies already have the ability to respond to public demands for various types of recreational opportunities. This does not need the attention or action of Congress. Providing for multiple use while ensuring soil stability, water quality, air quality, wildlife habitat and other values are maintained and not degraded is part of every agency's purpose. Congress should not feel compelled to step in and interfere with this role. Land use and development is not lacking on our public lands, land protection is; this is why the Wilderness Act of 1964 was passed by a bipartisan majority. Please do not weaken the intent of this landmark act by making permanent destructive concessions to a single user group for self serving and potentially dangerous and damaging purposes. Many communities across America are struggling to deal with the negative impacts of off-road vehicles. Putting into place Congressional direction for such use simply is incredulous. Our desert landscapes are already under assault from far more deserving proposals such as renewable energy development. Adding to the impacts and stress on these fragile resources makes no sense ecologically or legislatively. In the face of climate change, it further ties our hands in being able to ensure our public lands are healthy and resilient. Please remove the language designating these off-road vehicle areas from this legislation.

Thank you for this opportunity to have input into such an important legislative proposal.

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STATEMENT OF DAVID LAMFROM, CALIFORNIA DESERT PROGRAM MANAGER FOR  
NATIONAL PARKS CONSERVATION ASSOCIATION (NPCA), BARSTOW, CA

Chairman Bingaman and committee members, National Parks Conservation Association appreciates the committee's consideration of the California Desert Protection

Act of 2010 (S. 2921). We support this bill because an integral part of our mission is to protect and enhance the National Park System-S. 2921 will enhance these desert parks. S.2921 is another historic opportunity to better protect the California Desert, a location with diverse and sometimes competing industrial and recreational opportunities and interests. The bill balances the needs of both residents and visitors, with needed protection for world-renowned, pristine ecological systems. It honors the history of the Westward Movement and Native Americans of the region through landscape preservation, while seeking to develop a responsible and responsive system for harnessing the California desert's immense renewable energy potential.

National Parks Conservation Association has been the leading voice for the National Parks since 1919. We are comprised of 320,000 members, including 44,000 in California. We strive to uphold the protections awarded to the California desert national parks in the original California Desert Protection Act of 1994. We applaud Senator Feinstein for her leadership and vision in protecting these critical lands. Stakeholders and other California Desert residents have embraced her thoughtful and inclusive process to educate and engage communities and organizations about this opportunity to conserve our legacy, while carefully creating economic opportunities and a renewable energy future.

Title 1 proposes the creation of two National Monuments; the protection of critical watersheds through Wild & Scenic designation; the designation of wilderness; and the expansion of Death Valley National Park, Joshua Tree National Park, and the Mojave National Preserve. NPCA is supportive of these recommended protections. The Mojave Trails National Monument, which incorporates hundreds of thousands of acres of Catellus lands, will protect 1.6 million acres of rugged mountains and sandy valleys that connect species like Desert Bighorn Sheep to their lambing grounds and along their ancestral migration corridors. This proposed monument will protect critical habitat for federally threatened species including the desert tortoise and preserve the longest remaining continuous stretch of Historic Route 66. Mojave Trails National Monument will also connect Mojave National Preserve, Joshua Tree National Park, and 13 wilderness areas. This significant landscape level protection will incorporate varied elevational gradients and provide desert species protection from the worst effects of global climate change. Protecting connected ecosystems allows gene-flow across populations, and increases the resilience of many species in the face of a rapidly changing environment. Similarly, the Sand to Snow National Monument will connect a national parkland to neighboring conservation lands. In addition to being a tourist destination for Inland Empire, Morongo Basin, and San Bernardino Mountain communities, this monument will effectively connect Joshua Tree National Park to the San Bernardino Mountains. This monument, which includes the highest point in Southern California, will also protect critical watersheds such as the Whitewater River and the Big Morongo Canyon springs and bosque.

Roughly 70,000 acres will be added to the California desert national parks through this legislation. These additions will protect watersheds, discourage inappropriate adjacent development and provide interpretative and educational opportunities. The 29,000 acre Castle Mountains proposed addition to Mojave National Preserve represents a parcel that was pulled out of the original California Desert Protection Act of 1994 due to the presence of gold. Viceroy Mine operated three open-pit mines on 700 acres of this parcel, and they retain approximately 1200 acres of patented land. Viceroy no longer actively mines this area, and has successfully revegetated much of the disturbed land. This largely-pristine parcel represents one of the rarest ecosystems in the California Desert, high desert grassland. The area, lush with Joshua Trees, Juniper, and native bunch grasses, was recognized in 1980 by the BLM as a Unique Plant Assemblage. Castle Mountains is home to both resident and migratory herds of Desert Bighorn Sheep and desert tortoise, and will be studied for the re-introduction of pronghorn antelope by the National Park Service.

The 32,000 acre Bowling Alley proposed addition to Death Valley is a long and thin parcel separating Death Valley National Park from the Fort Irwin Military Reservation. This rugged landscape is important desert tortoise habitat and is home to several perennial springs. Adding this parcel to Death Valley National Park will provide consistent management in this area, and is a common-sense boundary adjustment recommended by the National Park Service.

Crater Mine, a defunct sulfur mine, is a BLM inholding within Death Valley National Park. This 6,300 acre parcel proposed for addition into Death Valley National Park will provide the National Park Service the opportunity to feature a sulfur mine as one of their interpretative programs which teach about mining history and the history of the West. The proposal of Wild and Scenic River designation for Surprise Canyon's perennial spring and stream and riparian area, as well as additional mileage of designation for the Amargosa River support critical riparian corridors on

Death Valley National Park's Eastern and Southwestern boundaries. The protection of surface flow and riparian corridors in one of the hottest places on Earth is critical for the protection of species that depend on them for survival. The Amargosa River is a critical water resource for gateway communities in Southern Death Valley.

The 2800 acres of additions to Joshua Tree National Park are currently managed by the BLM, and feature cactus gardens, old-growth Joshua Trees, and protect a wildlife corridor between Joshua Tree National Park and the Twentynine Palms Military Base. Similarly to the Bowling Alley, these parcels, directly connected to Joshua Tree National Park make common-sense additions to the park for consistency of management.

NPCA looks forward to working with committee staff and Senator Feinstein to improve the legislation's language. We encourage more protective language within the National Monuments section of title 1. We request that all energy transmission corridors within Mojave Trails and Sand-to-Snow National Monuments be limited to existing right-of-ways. We do not oppose the expansion or maintenance of existing corridors, consistent with the National Environmental Policy Act to meet energy transmission needs.

NPCA also requests that the language forming a Memorandum of Understanding between Death Valley National Park and Inyo County be removed from the legislation. The National Park Service should retain discretion when managing park roads. At a minimum, the provision should be changed to include "may develop a memorandum of understanding" to ensure the agency has full discretion to allow or disallow use of a road for the stated purpose in the legislation.

Additionally, we believe that commercial overflight language in both new national monuments should be consistent with the Santa Rosa and San Jacinto National Monuments of 2000. Language pertaining to the management of commercial air tours should be added that caps air tour operations at the same amount of tours taking place at the time the monuments are established. Such action will preserve natural values inherent to the proposed National Monument that makes this area prized by recreationists.

Based on the significant positive impact of this proposed legislation to national parks in the California Desert, NPCA supports the improvement and passage of this bill. We look forward to continuing to work with both this committee and Senator Feinstein on this legislation.

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OFF-ROAD BUSINESS ASSOCIATION,  
Bakersfield, CA, May 20, 2010.

Hon. JEFF BINGAMAN,  
Senator, Energy and Natural Resources Committee, 304 Dirksen Senate Building  
Washington, DC.

DEAR SENATOR BINGAMAN: I am writing to you today about S.2921, The California Desert Protection Act of 2010, on behalf of the Off-Road Business Association (ORBA) a national non-profit trade association representing all aspects of the motorized recreation industry—from OEM manufacturers to aftermarket suppliers, distributors, and local retailers across the United States. We believe this bill strikes a good balance between recreation, conservation and responsible renewable energy development. At this time ORBA is in support of S.2921 as it is currently written. If there are changes to the language as it moves through the legislative process we will have to re-evaluate our support.

S. 2921 is a product of complex negotiations and compromises amongst a very diverse group of stakeholders. Senator Feinstein and her staff have done an amazing job of trying to fulfill the needs of the recreation, conservation and renewable energy communities that will be affected by this bill. We are concerned that certain components in this bill, the ones that are key to our support (listed below), might be removed and or changed during the legislative process.

- The language that congressionally designates the 5 open areas as Off-Highway Vehicle Recreation Areas.
- The language that allows all current existing uses to continue in both the proposed OHV recreation areas and proposed monuments.
- The language that allows the open areas to continue to operate under their existing management plans until either the DOI creates new plans or amends the existing ones.
- The language that mandates the Department of the Interior (DOI) study land adjacent to the open areas for possible expansion.
- The language that ensures continued use of OHV/green sticker vehicles on designated trails.

- The language that continues to allow commercial touring in the proposed monuments.

We are grateful to have been included in the formation of this monumental piece of legislation. Please consider this letter our formal request to have these comments included in the official record for this hearing.

Sincerely,

FRED WILEY,  
*President/CEO.*

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STATEMENT OF KAREN SCHAMBACH, CALIFORNIA FIELD DIRECTOR, PUBLIC  
EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY, GEORGETOWN, CA

Honorable Senators:

I am writing on behalf of Public Employees for Environmental Responsibility, our staff and members. PEER is a national, nonprofit service organization dedicated to assisting federal, state and local resource professionals who fight to uphold environmental laws and ethics within their organizations. PEER protects public employees who protect our environment. There is probably no single issue about which we hear more about from state and federal employees in California than damage associated with off-road vehicles (ORVs) on our public lands.

PEER generally supports S. 2921, but we have some serious concerns regarding portions of the bill that address off-road vehicles. Some sections of this bill are in conflict with existing laws and regulations that attempt to manage ORVs. Existing regulations require federal land managers to manage ORVs to minimize damage by these vehicles to soils, water, wildlife, wildlife habitat, vegetation and cultural resources. We fear the following provisions in S2921 weaken or nullify the Bureau of Land Management's ability to enforce those regulations.

1. We are opposed to the creation of National Recreation Areas in four current BLM ORV Open Areas.

Not only does this provision not belong in a Wilderness Bill, but also it sets a terrible precedent to permanently dedicate public lands for ORV use. Current law requires BLM to monitor ORV use on its lands and close areas where damage to resources is significant. This provision would eliminate BLM's ability to responsibly manage ORV use in these areas. The Bill states there will be no new management plans, essentially tying BLM's hands should the need to protect natural or cultural resources require a management change. Wilderness Areas are subject to new or revised management plans, and often do adopt new plans to address changing needs. Why would we require less of a use that is far more challenging to manage, and which has the potential for very serious impacts on resources?

We ask that the provisions for NRAs be removed from this bill and addressed in separate legislation. At a minimum, management plans must be required, with the ability for BLM to update and revise the plans as necessary to protect the public's lands and the wildlife and cultural resources that reside within those lands. Land managers must retain the authority to enforce existing regulations that allow them to close areas where unacceptable damage is resulting from ORV use.

2. The Imperial County Vinegre Wash Special Management Area (SMA) promotes off-road vehicle recreation in an area that should be managed to protect its extensive Native American cultural resources. The SMA would not even require a management plan! We request this bill be amended to require a Management Plan specifically crafted to protect the rich cultural resources of the area and based on an inventory of those cultural resources. Vehicle travel should be limited to street legal vehicles. ORVs simply will not stay on designated routes, and a designated route system is essential to protecting this area.

3. For the same reason, vehicle travel in National Monuments should be limited to street legal vehicles. Too many ORV riders simply refuse to stay on designated routes.

Thank you for the opportunity to comment.

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STATEMENT OF RICHARD L. RUSSELL, SIDEKICK OFF ROAD, APPLE VALLEY, CA

To whom it may concern,

I am against any further restrictions of access to public lands, especially by motorized use.

My family and friends enjoy visiting and exploring the backcountry in off highway vehicles. We explore historic routes, old mining camps and remote areas. We car-camp and picnic in areas that S-2921 would close. The previous Wilderness Bill removed thousands of acres from public access by restricting motorized travel in newly established Wilderness Areas, severely limiting travel in the newly established Mojave Preserve and expanding restrictive National Park rules to many more acres that were previously accessible by off road vehicles under the management of the BLM. Even when motorized routes are "cherry stemmed" to protect motorized access, such as Surprise Canyon was in the S-21 Bill, the non-motorized groups pressure the land managers to close access. The land managers always seem to surrender to these minority environmental groups.

I have been making and selling backcountry maps to the motorized community for over 20 years and am quite familiar with the areas covered by S-2921. Not only would this bill negatively affect my business, but also more than 150 stores who sell our products.

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SIERRA CLUB,  
May 20, 2010.

Hon. JEFF BINGAMAN,  
U.S. Senate, Washington, DC.

DEAR CHAIRMAN BINGAMAN, on behalf of the more than 1.3 million members and supporters of the Sierra Club, I am writing to thank you for holding a legislative hearing on S. 2921. This bill is at the center of the ongoing conversation about balancing conservation of the California desert and appropriate renewable energy development.

Sierra Club commends Senator Feinstein for her dedication to protecting the California desert and for her work to bring together many divergent interests and views to craft S. 2921, the California Desert Protection Act of 2010. This bill represents an important first step towards achieving balance between the protection of public lands and wildlife in the desert and the pressing need for renewable energy development to address the challenge of climate change. While the Sierra Club supports Senator Feinstein's goals and many of the bill elements, we continue to have concerns with S.2921, as it is currently written.

*Balancing Renewable Energy Development and Land Conservation in a Warming World*

For more than 100 years, Sierra Club members and activists have worked to protect the California desert from the traditional threats of development, pollution, and extractive industries. More recently, we have worked to protect the fragile desert ecosystems from a dramatic increase in off-road vehicle abuse. Today, the California desert is also threatened by the impacts of climate change. In the face of the unprecedented threats posed by global warming to our natural resources, public health, and local communities we need to develop clean renewable energy as quickly as possible. America's treasured landscapes, natural resources, wildlands and wildlife are already suffering the effects of global warming.

However, we must not sacrifice special landscapes or important wildlife habitat in the rush to combat climate change. Instead, we need a renewable energy program that ensures that necessary renewable energy development takes place in areas inventoried and identified as appropriate for development while avoiding, minimizing and mitigating impacts; and that allows land managers to learn from and adapt to experience gained in the permitting and operation of renewable energy projects.

*S. 2921—The California Desert Protection Act of 2010*

Sierra Club strongly supports the wilderness designations, wild and scenic rivers designations and the National Park expansions found in Title I of S.2921. The bill represents a good opportunity to preserve some of the California desert's most spectacular scenery, from rugged mountains and hidden springs to tranquil desert washes and Joshua tree woodlands. The bill will designate approximately 371,000 acres of wilderness from the Avawatz Mountains near Death Valley to Milpitas Wash, the largest Sonoran Desert woodland in North America. It will also create two new national monuments, the Mojave Trails National Monument and the Sand to Snow National Monument, expand Joshua Tree and Death Valley National Parks and the Mojave National Preserve, and protect important free-flowing rivers like the Amargosa River and Deep Creek as Wild and Scenic Rivers.

Sierra Club also strongly supports several provisions included in Title II. The bill aims to clarify the BLM's solar and wind energy permitting processes and includes

efforts to improve permitting of wind and solar energy projects on public and private lands. The bill recognizes the need for additional policy, guidance, and procedures for focusing federal resources on the most economically and environmentally viable renewable energy development proposals. In addition, the bill includes a strong provision that reinvests new revenues in important land acquisition programs.

While we are supportive of much of the bill, we continue to have some concerns, and look forward to working closely with Senator Feinstein and the Committee staff to make improvements to the bill. Specifically, Sierra Club's remaining concerns with S. 2921 include:

#### *Title I*

##### *OHV Recreation Areas*

Sierra Club strongly opposes the designation of the proposed OHV Recreation Areas in Title I.

- Title I would designate five 'Off-Highway Vehicle Recreation Areas' encompassing more than 400,000 acres. While these areas are currently used for such purposes, we see no reason to tie the hands of future land managers in requiring that these lands be permanently focused on this destructive use.
- We believe strongly that designating large areas of public land, for a single type of destructive recreation, is bad public policy. First, it assumes that the demand for such recreation will continue for the foreseeable future. Second, it assures that restoration of the lands in question will not be possible regardless of future needs for other multiple uses, or for habitat protection as a result of climate change.
- We also worry that this provision will set a dangerous precedent, which will significantly increase the pressure from OHV groups for such designations in any new public lands bills, not just in California but nationwide.
  - Sec 1801 (f), also requires that there be a study of possible expansion of all four of these OHV recreation areas. There are limitations including not exceeding the current acres administratively designated for OHV use in the CDCA, and excluding areas needed for conservation or renewable energy development or transmission. However, the provision still opens the door for including even more acreage in this permanent, harmful, singleuse OHV system of designated management areas.

##### *Cady Mountains WSA release*

Sierra Club opposes the release of the Cady Mountains WSA (Sec 1503 (b)(1)), the release of the Soda Mountains WSA, and the exclusion of the Conglomerate Mesa area from wilderness designation.

- The Cady Mountains are included in the Mojave Trails National Monument boundaries. However, the monument management language would leave this area at risk from new utility corridors and motorized vehicle routes. Preferably, we would like to see this area designated as wilderness or otherwise protected from potential negative impacts.

#### *Title II*

##### *Renewable energy permitting process*

Sierra Club would like to see the bill's tight deadlines in Section 202 relaxed.

- We would prefer a provision requiring the Secretary to establish achievable deadlines and report to Congress on the effectiveness of those deadlines once established.
- Additionally, Section 202 should provide greater discretion to the Secretary to determine and update the legal framework most appropriate to govern commercial wind and solar energy production on federal lands. While this legislation seeks to enhance the current system that relies on rights-of-way grants, we are very concerned this approach would, in effect, codify an unproven system with known shortcomings.

##### *Categorical exclusion of wind and solar testing facilities.*

Sierra Club has long opposed attempts to legislate categorical exclusions.

- The Interior Department has broad discretion under NEPA to establish administrative CEs where appropriate, including in connection with proposed renewable energy activities. Section 207 should be removed as it is unwarranted and unnecessary.

*Fair market value*

The baseline metric for calculating fair market value for solar in Section 201(k)(2) should be removed, and instead the bill should clearly spell out that the agency's responsibility and discretion for determining an appropriate valuation system that ensures a fair return.

In conclusion, I would like to reiterate Sierra Club's gratitude to Chairman Bingaman and the other committee members for holding this important hearing on S. 2921. I also would like to express our appreciation to Senator Feinstein for her leadership in working to protect the California Desert. Sierra Club supports much of S. 2921, but we continue to have some remaining concerns. We look forward to working with Senator Feinstein and the other members of the Committee to make improvements to the bill, in order to offer our full support.

Thank you for your consideration,

DEBBIE SEASE,  
*National Campaign Director, Sierra Club.*

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STATEMENT OF RHONE RESCH, PRESIDENT & CEO, SOLAR ENERGY INDUSTRIES  
ASSOCIATION

Mr. Chairman and Members of the Committee,

Thank you for the opportunity to submit this testimony on S. 2921, the California Desert Protection Act of 2010. We are grateful that the Committee recognizes the important role that public lands play in shaping our clean energy future.

*I. Introduction*

Established in 1974, the Solar Energy Industries Association is the national trade association of the solar energy industry. As the voice of the industry, SEIA works with its 1,000 members to make solar a mainstream and significant energy source by expanding markets, removing market barriers, strengthening the industry and educating the public on the benefits of solar energy. SEIA represents solar companies across a variety of solar energy technologies, including photovoltaic (PV), solar water heating and concentrating solar power (CSP). SEIA members include manufacturers, distributors, contractors, installers, financiers and developers of solar energy projects for both utility-scale and distributed generation deployment.

Despite the recession, the U.S. solar industry grew significantly in 2009—doubling the size of the residential photovoltaics market and adding three new concentrating solar power plants. In addition, the industry added 10,000 new solar jobs to the U.S. economy.<sup>1</sup>

*II. Overview of the Solar Industry*

SEIA is grateful to Senator Feinstein for her long commitment to promoting the greater use of renewable energy in the United States. We commend her introduction of S. 2899, the Renewable Energy Incentive Act, which would extend the highly successful Treasury Grant Program for renewable energy and would create new incentives for renewable energy deployment.

While many think of solar energy as a distributed generation resource, deployment of utility-scale solar power plants is increasingly common. Utility-scale solar can create domestic jobs across the country now and quickly diversify our energy portfolio. In July 2008, this Committee held a field hearing in Albuquerque, New Mexico, on concentrating solar power technologies where this trend was discussed. In addition to the CSP plants already operating in the Southwest, many announced projects intend to use photovoltaic arrays to generate hundreds of megawatts of electricity nationwide.<sup>2</sup> Regardless of the technology, solar project developers share a common goal: environmentally-responsible solar development.

Utility-scale solar power can generate significant amounts of clean energy as part of a diverse energy portfolio, providing one of the quickest ways for states to meet their renewable portfolio standards and reduce their greenhouse gas emissions. The Southwest U.S. has some of the world's best sunlight and we should take advantage of this limitless natural resource to generate clean energy and transmit it to America's population centers.

While overwhelming support for increased use of solar energy has long been known (92% of Americans think it is important to develop and use solar energy<sup>3</sup>),

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<sup>1</sup> See the U.S. Solar Industry Year in Review 2009 at Attachment 1.

<sup>2</sup> See Utility-Scale Solar Projects List at Attachment 2.

<sup>3</sup> See [http://www.seia.org/cs/news\\_detail?pressrelease.id=638](http://www.seia.org/cs/news_detail?pressrelease.id=638)

a recent poll by Gotham Research found that the American public broadly supports the development of solar energy on public lands: three out four Americans support developing solar energy plants on public lands. This same poll shows that the most important energy challenge facing the country today is developing energy sources while protecting the environment, according to respondents.<sup>4</sup>

The last two years have brought many changes and an increased focus on the issue of developing solar energy on public lands. In 2008, the Bureau of Land Management initiated a Programmatic Environmental Impact Statement (PEIS) for solar development. Last year Secretary Salazar established four Renewable Energy Coordination Offices within BLM, initiated “fast-track” procedures for the permitting of 14 solar projects, and identified 24 “Solar Energy Study Areas” to undergo rigorous environmental review as part of the solar PEIS. Solar developers, Interior Department staff, and environmental stakeholders alike are adjusting to the increased activity and emerging processes for developing utility-scale solar power in the United States.

### *III. The Solar Industry Is Committed to Responsible Energy Development*

Development of solar energy on public lands is one important piece of the increased generation of renewable power in this country. There are numerous provisions in this proposed legislation that the solar industry supports, others that merit further review, as outlined below.

#### *A. Provisions the Solar*

Industry Supports SEIA supports the establishment of a mitigation bank to be accessed by any solar developer, whether on public or private lands. California’s collaboration with BLM to establish a mitigation pool could serve as an effective model for this program. Allowing developers to pool financial resources and perform mitigation on high-quality habitat is a win-win scenario.

The solar industry also supports having the Department of the Interior perform an analysis of climate change impacts. Further, we believe that this legislation should empower BLM to use those study results and take into account the positive impacts of renewable energy development on climate change when it considers right-of-way applications.

Secretary Salazar’s establishment of Renewable Energy Coordination Offices last year was lauded by the solar industry, and we support the continuation and expansion of offices whose employees are expert in the permitting of renewable energy applications. Continued coordination among BLM, the U.S. Fish and Wildlife Service, and state agencies will be necessary to achieve the goal of greater renewables deployment.

Rents paid by the solar energy industry should be used to further the goals of better and faster permitting, full staffing of the Renewable Energy Coordination Offices, and a share could go to state and local government entities where these projects are located. On the broader topic of solar rents paid to BLM, SEIA supports a rental policy that provides fair, transparent, and consistent results that are comparable to private land transactions for similar uses.

#### *B. Provisions that Merit Further Review*

The proposed legislation would prohibit BLM processing of any right-of-way application that could affect native groundwater supplies, both within and adjacent to the proposed Mojave National Preserve. The National Environmental Policy Act and other laws already require the consideration of the environmental impacts of water use by any proposed project, and SEIA believes these existing provisions to be sufficient. The additional requirement proposed in S. 2921 could serve to restrict solar development, even on lands outside protected areas.

Another provision in this proposed legislation would allow BLM to deny a right-of-way application for any project which is on “wilderness quality land” or which may impact “sensitive species listed by the BLM.” SEIA is concerned that these provisions are overly broad and could unduly limit solar energy development in the Southwest.

### *III. Conclusion*

We cannot fight climate change without clean energy sources like solar. Solar energy is pollution-free, produces no carbon, and is fueled by an inexhaustible and renewable resource—the sun. Utility-scale solar power plants will power millions of homes with clean energy as part of a diverse energy portfolio that includes distributed generation, solar water heating and other renewable sources.

<sup>4</sup>See Gotham Research Polling Results at Attachment 3.



The solar industry is committed to solving our most pressing energy and environmental challenge in a thoughtful manner. Solar power plants can be developed in a way that balances environmental protection with our energy demands. The Southwest's plentiful solar resources can be harnessed in a way that safeguards water resources, habitat, and wildlife.

Again, thank you for allowing SEIA to submit this testimony. We look forward to working with the Committee to improve this proposed legislation and the process for developing utility-scale solar power in the United States.

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STATEMENT OF JANINE BLAELOCH, DIRECTOR, WESTERN LANDS PROJECT

I submit this testimony on behalf of the Western Lands Project and its members and request that these comments be placed on the record.

Ours is the only organization in the country whose mission is to monitor federal land sales, exchanges, and conveyances and to oppose actions that would privatize federal public lands. Our goal is to keep public land public.

We are opposed to S. 2921 as now proposed on the basis of three broad issues:

- (1) It employs a quid pro quo strategy that trades protection on some federal lands for intensified use on others.
- (2) It sanctions, facilitates, and streamlines the development of potentially massive "renewable" energy developments that have the potential to greatly harm public lands and fragile habitat-and which we believe entails virtual privatization.
- (3) It provides incentives to the BLM that may inappropriately facilitate permit approvals.

*Quid pro quo protection*

In the past several years, we have submitted testimony to this Committee and worked in many other ways to oppose various quid pro quo wilderness bills that "balanced" wilderness designation in some areas with the sale, conveyance, or intensified use of public land elsewhere. Like those bills, S. 2921 seeks to buy the silence of wilderness-and protection-averse constituents such as off-road vehicle users by sanctioning their continued destruction of public land outside of the new, special-protection zone the bill creates. This type of legislation treats public land as a conglomeration of special areas to be afforded protection and purportedly not-so-special sacrifice zones doled out to satisfy political and utilitarian needs.

S. 2921 repeats this pattern with the special designations and permanent consignment of vast acreages of public land to high-impact off-road vehicle use. This provision is similar to one that was proposed in an early version of the Central Idaho Economic Development and Recreation Act, whereby an overlay covering some 300,000 acres would have created a priority area for ORV use. The provision could not get through even under the former, anti-public land Republican majority, and this type of environmentally harmful political horse-trading should not be brought back now.

Similarly, S. 2921 seeks to secure protection of some public land by offering up other, unknown public lands for "renewable" energy development. It proposes to fast-track these potential projects by providing special deadlines for permitting and environmental analysis.

In other provisions, it allows land exchanges between the State and Federal governments that entail special land-value arbitration procedures and waive regulations regarding land-value "credit balances." Another allows lessees on state land acquired by the federal government whose leases expire to bypass the National Environmental Policy Act when applying for a continuation of the lease.

We oppose any waiver or truncation of the NEPA process, and we continue to oppose this quid pro quo approach to protecting and simultaneously doling out public land.

*Desert relegated to "energy corridor"*

For more than ten years, from eastern California to southwest Utah, we have scrutinized numerous projects that treated the Mojave Desert as a disposable commodity. Land exchanges, sales, and outright disposals coming from both the BLM and Congress have posed an ongoing threat to the integrity of the Mojave, a perennially undervalued ecological treasure.

Many of the projects we have reviewed have been located in habitat of the threatened desert tortoise, and have proposed to address effects on that species by "translocating" the tortoises, even though it does not appear translocation has been effective, and in some cases results in mortality. Another major issue in many

projects we have scrutinized is water supply, which, like the tortoise issue, always seems to get ironed out in favor of more development.

Recently, our concern has focused on the numerous, gargantuan plans in play to fast-track massive solar, wind, and geothermal projects on public lands of the arid West, many of which involve, among other things, both species viability and water supply issues. We fear that the Mojave and other biologically rich parts of the arid West are being carved up and sucked dry to the point of ecological collapse and to the detriment of the numerous benefits they offer the American public.

A bottom-line issue for us, as pertains particularly to massive-footprint solar projects, is that the multifaceted invasiveness and long-term, even permanent, impacts of these projects essentially add up to privatization of the public lands they would occupy. The fact that these are public lands belonging to all Americans is repeatedly glossed over with the unquestioned public value of "renewable" energy development.

From our review of several environmental analyses for pending projects, it appears that what the National Environmental Policy Act (NEPA) calls the "irreversible or retrievable commitments of resources" associated with these projects are substantial.

Most rights-of-way issued by the government are either small projects or linear rights-of-way such as for pipelines or transmission lines that have a comparatively small impact area within the right-of-way and around or under which other activities and natural processes can continue. This doesn't appear to be the case with large-scale planned solar facilities: while footprints of the projects may not occupy the entire area under right-of-way, between the collection apparatus and other structures such as buildings and fences, their impact on the site is complete. Clearly, there is a big difference in intensity between the virtually permanent impact of a powerline corridor or road and that of one of these facilities.

Considering the number and size of the projects that are planned, these will create impacts on a massive scale. The California Desert District of the BLM alone has nine fast-tracked solar projects pending that would occupy more than 43,000 acres. Those are just the fast-tracked solar projects. Fast-tracked wind and transmission line projects will pose more distributed and linear impacts on about 20,000 acres and along about 300 miles of new transmission-line corridors.

#### *Misguided incentives*

We are very alarmed by Title II of this bill. Its provisions go far outside the California Desert Conservation Area to substantially amend the Energy Policy Act of 2005 and create a further-streamlined and incentive-laden process for energy project permitting in ten western states.

Of particular concern is the proposed redistribution of proceeds of rental income from rights-of-way, including the allocation of 40 percent of the funds toward BLM permit administration. There should be no direct nexus between the income from permitted projects and the income of BLM staff who issue them. The same is provided in regard to oil and gas processing. In light of recent events, including the consequences of fast-tracked permitting, we do not believe these provisions are remotely appropriate.

#### *Conclusion*

The desert is not just an "energy corridor." We cannot continue to treat it merely as a swath of cheap land to be the repository of any use we desire. We believe the headlong enthusiasm for "renewable" energy projects that has now become accepted policy needs immediate, serious reconsideration.

In addition to rejecting this legislation as now proposed, we ask that the Committee begin a concerted effort to explore alternatives to these damaging projects, such as distributed solar-installations on rooftops, parking lots, etc.-and other more environmentally sound and efficient approaches.

It may be possible to put fossil fuels, Deepwater Horizons, and Upper Big Branch Mines behind us, but the policy that is now being followed, and would be further facilitated in S. 2921, is not a responsible way to do that.

Thank you for your consideration.

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STATEMENT OF WILLIAM H. MEADOWS, PRESIDENT, THE WILDERNESS SOCIETY, SAN FRANCISCO, CA

Chairman Bingaman and members of the committee, thank you for scheduling this hearing on this important bill regarding conservation of the California Desert and renewable energy permitting.

The Wilderness Society is a national non-profit conservation organization founded in 1935 with over 500,000 members and supporters. Our mission is to protect wilderness and inspire Americans to care for our wild places.

Let me start by expressing my deep appreciation to Senator Feinstein not only for all of her work consulting stakeholders and crafting this balanced bill, but more broadly for her distinguished accomplishments championing the preservation of America's natural heritage.

From Joshua tree forests to endless acres of spring wildflowers, from inhospitable salt flats to life giving streams, the California desert provides a multitude of variety where plants and animals flourish, including such noted species as bighorn sheep, Mojave ground squirrel, and desert tortoise.

This landscape also benefits mankind in numerous ways. It provides places for a wide array of recreation and relaxation, substantial economic benefits from tourism and new residents, and has the necessary conditions for appropriate development of much needed renewable energy. These lands also help connect us with our past as they include many significant Native American sites, relics from America's pioneer history, and even noteworthy traces of our 20th century progress, such as historic Route 66.

The California Desert Protection Act of 2010, which The Wilderness Society supports, comprehensively addresses the many needs of both society and nature in one of our country's most dramatic landscapes.

Title I of the bill would designate two new National Monuments, create three new wilderness areas, expand four existing wilderness areas, protect over 70 miles of wild and scenic rivers, and designate a new Special Management Area. It would also transfer some Bureau of Land Management holdings to adjacent National Park Service units and protect the native groundwater of the Mojave Preserve.

The new monuments and BLM wilderness will be important additions to the National Landscape Conservation System and expansion of the National Park units will continue our nation's tradition of protecting our most spectacular natural national treasures.

You have heard testimony from some who say that the protection of these lands will significantly harm the prospects for renewable energy development in the California desert. Our review of the bill in the context of other efforts currently underway indicates that this is patently not the case. In fact, the BLM is now assessing the suitability of 351,000 acres in the California desert for potential solar energy development zones. This acreage is significantly more than experts estimate is needed to meet California's renewable energy portfolio goal. Also, the BLM is moving forward expeditiously with key projects across the west that will result in 5,300 megawatts of new wind, solar, and geothermal power. Neither the BLM study areas nor any of the projects in process are precluded by the land designations in Senator Feinstein's proposal. Further, no existing or designated energy transmission corridor would be adversely affected.

Title I also designates five new National Off-Highway Vehicle Recreation Areas which would permanently give off-road vehicle users places to ride. Though The Wilderness Society is not supportive of permanent designation of off-road vehicle areas, the bill as written enables the BLM to manage these areas in a manner that protects their natural resources and non-motorized recreational opportunities.

Ideally, The Wilderness Society would like to see a few changes made to Title I of the bill as it moves through the legislative process.

First, regarding the management language for the national monuments, the bill currently contains provisions stating that monument designation does not preclude, prevent, or inhibit the maintenance, upgrade, expansion, or development of new energy transport facilities within the monuments (Sec. 1304 (f)(1) and 1404(e)(1)). We recognize the need for new electric transmission facilities in the region, but we believe this language is overly broad and unnecessary as the issue of energy transmission is addressed in other sections of the bill. We do not oppose the provisions allowing for maintenance, upgrade, expansion and development of energy transport facilities within existing corridors. The monument management language also contains ambiguous provisions that could be interpreted to require all existing off-road vehicle use within the monuments to continue (Sec. 1304(a)(1) and 1404(a)(1)). It is our hope that this will be revised to make its intent to designate off-highway vehicle routes through the management planning process clearer.

Next is the issue of releasing the entirety of the Cady Mountains Wilderness Study Area (Sec 1503 (b)(1)). The bulk of this released WSA would be designated as part of the Mojave Trails National Monument but as written, the monument management language would leave this area at risk from new utility corridors and motorized vehicle routes. Preferably, we would like to see this area designated as wilderness or otherwise protected from potential negative impacts.

Sec 1603 (b)(1) and (2) of the bill prohibit the permanent closure of any off-highway vehicle routes within the Special Management Area. It is our strong belief that the BLM should be allowed to actively manage OHV use within the Special Management Area and that this authority include permanent closure of routes due to natural or cultural resource damage or public safety concerns.

Finally, Senator Feinstein's proposal requires the BLM to survey lands adjacent to the newly designated National Off-Highway Vehicle Recreation Areas for potential inclusion in those areas (Sec. 1801 (f)). We would like to see the potential expansion of the recreation areas more tightly limited.

Title II of the bill would clarify the BLM's solar and wind energy permitting processes and includes efforts to improve permitting of wind and solar energy projects on public and private lands. The bill recognizes the need for additional policy, guidance, and procedures for focusing federal resources on the most economically and environmentally viable renewable energy development proposals. The bill includes a strong provision that reinvests new revenues in important land acquisition programs. The bill also affirms the government's authority to reject poorly-sited projects at any point in the time-bound permit process it establishes. While the bill is a step toward responsibly addressing renewable energy development, The Wilderness Society would like to see several changes to this title as the bill moves forward.

Regarding the renewable energy permitting process, we would like to see the bill's tight deadlines in Section 202 relaxed, instead requiring the Secretary to establish achievable deadlines and report to Congress on the effectiveness of those deadlines once established. Additionally, Section 202 should afford greater discretion to the Secretary to determine and update the legal framework most appropriate to govern commercial wind and solar energy production on federal lands. While this legislation seeks to enhance the current system that relies on rights-of-way grants, we are very concerned this approach would, in effect, codify an unproven system with known shortcomings.

The categorical exclusion of wind and solar testing facilities in Section 207 should be removed as it is unwarranted and unnecessary. According to the BLM, wind and solar site testing facility authorizations have been processed in a year or less on average, and the agency already has authority to execute such exclusions based on professional judgment under the National Environmental Policy Act.

The baseline metric for calculating fair market value for solar in Section 201(k)(2) should be removed, and instead the bill should clearly spell out that the agency's responsibility and discretion for determining an appropriate valuation system that ensures a fair return. We believe the National Agricultural Statistical Service tool, which was designed to price land in agricultural production, could significantly undervalue the commercial value of land used for solar generation.

Chairman Bingaman and members of the Committee, thank you for your consideration of our comments and we look forward to working with you and Senator Feinstein to both improve and pass this important legislation.

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STATEMENT OF RICHARD E. STODDARD, CHAIRMAN OF THE BOARD OF MINE  
RECLAMATION, LLC AND OF THE BOARD OF KAISER VENTURES LLC

Recent testimony offered by Donna Charpied before the Senate Energy and Natural Resources Committee regarding S. 2921, the California Desert Protection Act of 2010, contained a number of factual errors and outrageous assertions that must be corrected for the record.

At various points within the testimony there are references to lands owned by Kaiser Eagle Mountain ("Kaiser") and by the Bureau of Land Management ("BLM") as "pristine" and "untrammelled by man". In fact, the Kaiser and BLM lands approved in 1999 for development as the Eagle Mountain Landfill project are hardly "pristine" or "untrammelled by man" as shown clearly in the \*photo below.

In fact the lands referenced in the Charpied testimony of May 20, 2010, are devastated by over 40 years of mining and were approved in 1999 to be reclaimed for another purpose as a regional, rail-haul solid waste landfill. The project will be owned and operated by the Los Angeles County Sanitation Districts in cooperation with Riverside County, the jurisdiction charged with local land use authority.

The Charmed testimony also seeks to rewrite history related to Kaiser and BLM lands, the landfill project, Joshua Tree National Park and the original California Desert Protection Act ("Act").

Originally, the boundary for the proposed Joshua Tree National Park (then Monument) included the lands proposed for the Eagle Mountain Landfill project. It was

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\*Photo has been retained in committee files.

the leadership of Joshua Tree National Monument and local environmental interests that requested that the boundary be changed to exclude the landfill project.

Throughout the processing of the proposed legislation and prior to the adoption of the Act, Senator Feinstein sought the support of numerous stakeholders, including Kaiser and one of its major owners, the New Kaiser Voluntary Employee Benefit Association (VEBA) and its then over 7,000 members. VEBA is a non-profit trust of retirees and their dependents who lost lifetime medical and death benefits during the 1987 bankruptcy of Kaiser Steel Corporation. VEBA was established for the purpose of restoring those lost benefits.

After numerous meetings and consultations with stakeholders during the processing of the Act, Senator Feinstein simply agreed to make adjustments to the legislation as a result of their requests and with the support of the landowner.

In 1995, Senator Dianne Feinstein clarified Desert Protection Act legislative intent in a letter to Kaiser Ventures Inc. Chairman Richard E. Stoddard. "During the consideration of the legislation, I met with dozens of desert users, visited the region, and offered more than 50 amendments to address different concerns," she stated. "In reviewing the proposed Eagle Mountain Landfill project which is outside of the boundaries of the desert parks and wilderness areas, it appears its status is unchanged by the enactment of the California Desert Protection Act. It is not the intent of this Act to impose on the project any new or additional federal environmental regulations to be satisfied."

Senator Feinstein made perfectly clear prior to and subsequent to the passage of the Act that approval of the landfill was solely a matter for federal, state and local law. The proximity of the project to Joshua Tree National Park was not to be an issue.

Landfill project developer and the land owner understood that the National Park Service opposed the project due to its proximity to the Park. There was never a dispute about their position. But the landfill was proposed many years before the federal government moved the Park boundaries closer to the project. The closest campground or trail is over 15 miles away from the landfill project site. The landfill is downwind from the Park. Visitors cannot see the landfill from the Park. Senator Feinstein indicated during Desert Protection Act hearings that the expansion of the Park boundaries should not interfere with the development of the landfill since that process was already well underway and in the hands of the local permitting authority.

The legislative history of the original Act makes clear, and Senator Feinstein's repeated written clarifications underscore, that the Act was never intended to create a defacto buffer zone around the Park for purposes of land use. With these assurances in place, Kaiser pursued the required permits and approvals for the landfill and related land exchange. During the permitting process, and in response to a proposal by a former Joshua Tree National Park Superintendent, Kaiser agreed to go further than required to address issues of concern related to the Park and negotiated an agreement with the National Park Service to provide unprecedented protections and ongoing funding for the Park.

In summary, the facts related to the Kaiser Eagle Mountain and BLM lands referenced by the Charpiet testimony before the Committee are clear. The lands are devastated as opposed to "pristine". Further, the history of Senator Feinstein's leadership in insuring that thousands of acres of desert lands are protected for future generations is also clear, as is the legislative history related to the intent of the Act with respect to adjacent lands. The landfill project was well known to those considering boundaries for the proposed Joshua Tree National Park created by the Act. Moving the boundary closer to the Kaiser and BLM lands was never intended to add or create buffer zones around the Park or add any additional federal requirement or burden for the Eagle Mountain project.

Thank you for allowing us to correct the record and underscore the importance, value and appreciation we all owe to Senator Feinstein for her consistent leadership and unrelenting efforts to insure that environmental and economic interests can effectively be served with desert protection legislation.