Statement of
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Senate Energy and Natural Resources Committee
Subcommittee on Public Lands and Forests
S. 2921, California Desert Protection Act of 2010
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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 energy 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 Gorgonio 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 designations 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 propose 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 terminate 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.