

Excerpts From

Desert Renewable Energy Conservation Plan Draft Planning Agreement

This Planning Agreement regarding the Desert Renewable Energy Conservation Plan (“Planning Agreement”) is entered into as of the Effective Date by and among the California Department of Fish and Game (“DFG”), the California Energy Commission (“CEC”), the United States Bureau of Land Management (“BLM”), and the United States Fish and Wildlife Service (“USFWS”).

2.0 Scope and Goals of the DRECP

2.1 Desert Renewable Energy Conservation Plan

Today, only 12 percent of California’s retail electric load is served by renewable energy sources. The RPS, established by State law, requires all retail energy sellers to obtain 20 percent of their delivered electricity from renewable energy sources by 2010. In November 2008, the Governor of California increased the RPS target to 33 percent by 2020, through Executive Order S-14-08.

In addition to the California effort, in 2005 the federal Energy Security Policy Act renewed interest in developing utility-scale renewable energy facilities on federal public land. It established a target of approving 10,000 MW of non-hydropower renewable energy generation on public lands within 10 years of the Act. The United States Congress also intensified the need for accelerated development of such projects with passage in early 2009 of the American Recovery and Reinvestment Act, which confers economic benefits on renewable energy projects that begin construction before the end of 2010.

While the State and federal governments are committed to developing compatible renewable energy generation facilities and related transmission infrastructure to achieve these requirements and goals, they are also committed to conserving biological and natural resources within the state. The desert regions of California provide extensive renewable energy resource potential. They also support extraordinary biological and other natural resources of great value, including numerous threatened and endangered plant and animal species. The DRECP is intended to advance state and federal conservation goals in these desert regions while also facilitating the timely permitting of renewable energy projects under applicable State and federal laws.

Executive Order S-14-08 and associated Memoranda of Understanding by and among several State and federal agencies established the joint State-federal REAT, which consists of the Parties to this Planning Agreement. The USFWS and BLM are voluntary

participants in the REAT. Federal participation in the REAT is supported by the Secretary of the Interior's Secretarial Order 3285 (March 2009) directing all Department of the Interior agencies and departments (which include the BLM and USFWS) to encourage the timely and responsible development of renewable energy, while protecting and enhancing the nation's water, wildlife, and other natural resources. In October 2009, Governor Schwarzenegger and Secretary Salazar signed a Memorandum of Understanding on Renewable Energy between the State of California and the Department of Interior that merges the work efforts of both orders.

The REAT's primary mission is to streamline and expedite the permitting processes for renewable energy projects, while conserving endangered species and natural communities at the ecosystem scale. Executive Order S-14-08 directs the REAT to achieve these twin goals in the Mojave and Colorado Desert regions through the DRECP. The REAT is directed to develop a conservation strategy that identifies and maps areas for RPS-project development and areas for long-term natural resource conservation. This conservation strategy will form the foundation of the DRECP. This approach is supported by the State's NCCPA, and the section 10 habitat conservation planning provisions and section 7 consultation provisions of the FESA, as appropriate. This Planning Agreement is intended to explain generally the DRECP process and its purpose, and identify the responsibilities of the Parties in the DRECP process.

The Parties intend that the DRECP will encompass development of solar, solar PV, wind, and other forms of renewable energy within the Mojave and Colorado Desert regions.

2.2 Purposes of the DRECP Planning Agreement

The purposes of this Planning Agreement include:

- Defining the Parties' goals and commitments with regard to development of the DRECP;
- Defining the geographic scope of the Planning Area;
- Identifying a preliminary list of natural communities and species known or reasonably expected to be found in those communities that are intended to be the initial focus of the DRECP;
- Identifying preliminary conservation objectives for the Planning Area;
- Establishing a process for the inclusion of independent scientific input into the DRECP development process;
- Ensuring coordination between the Wildlife Agencies, CEC and BLM;
- Establishing an interim process to be used during DRECP development to review and act on project proposals within the Planning Area in a manner that is consistent with achieving the preliminary conservation objectives and maintaining viable conservation opportunities and alternatives for the DRECP; and
- Ensuring public participation and outreach throughout the DRECP development process.

2.3 Planning Goals

The goals of the DRECP include:

- Provide for the long-term conservation and management of Covered Species within the Planning Area;
- Preserve, restore, and enhance natural communities and ecosystems that support Covered Species within the Planning Area;
- Build on the Competitive Renewable Energy Zones identified by RETI;
- Further identify the most appropriate locations within the Planning Area for the development of utility-scale renewable energy projects, taking into account potential impacts to threatened and endangered species and sensitive natural communities;
- Provide a means to implement Covered Activities in a manner that complies with the NCCPA, FESA, NEPA, CEQA, and other relevant laws;
- Provide a basis for the issuance of Take Authorizations allowing the lawful Take of Covered Species incidental to Covered Activities;
- Provide for issuance of Take permits for other species that are not currently listed but which may be listed in the future;
- Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements for Covered Activities within the Planning Area;
- Provide a framework for a more efficient process by which proposed renewable energy projects within the Planning Area may obtain regulatory authorizations and which results in greater conservation values than a project-by-project, species-by-species review would have;
- Provide durable and reliable regulatory assurances, as appropriate, under the NCCPA and the FESA for Covered Activities that occur within the Planning Area; and
- Identify and incorporate climate change adaptation research, management objectives, and/or policies into the final plan document.

The Parties recognize that, until conservation strategies are developed for the Covered Species and their habitats, and conservation partnerships are formed, the cost and feasibility of achieving these goals will not be known. During the development of the DRECP, the DRECP goals, preliminary conservation objectives, Covered Species, Covered Activities, and Planning Area may be modified to ensure that implementation of the DRECP will be practicable.

2.4 Compliance with Federal and State Laws

The Planning Area contains valuable biological resources, including native species of wildlife and their habitats. Among the species within the Planning Area are certain

species that are protected, or may be protected in the future, under the CESA and/or the FESA. The Parties intend for the DRECP to satisfy the requirements for an NCCP under the NCCPA, and to serve as the basis for Take Authorizations that will be issued to Applicants and Federal Action Agencies under these Acts, as applicable, for Covered Activities to the extent allowed by and consistent with federal and State law. DFG intends to adopt the DRECP as an NCCP.

Under State law, Take of species listed pursuant to the CESA may be authorized under Fish and Game Code section 2080.1, section 2081 (both provisions of the CESA), Fish and Game Code section 2835 (a provision of the NCCPA), or Public Resources Code section 25500 (a provision of the Warren-Alquist Act). The NCCPA provides that upon approval of an NCCP, DFG may permit the taking of any identified species, listed or non-listed, whose conservation and management are provided for in the NCCP. For projects under its exclusive jurisdiction, the CEC may also authorize the Take of State-listed species pursuant to the Warren-Alquist Act and in accordance with the Fish and Game Code and any Take Authorization the CEC receives from USFWS pursuant to the FESA.

To the extent allowed under federal laws and regulations, the Parties also intend that the DRECP will serve as the basis for one or more HCPs that meets the requirements of section 10(a)(2)(A) of the FESA, and further serve as the basis for the Biological Assessments that support consultations between Federal Action Agencies and the USFWS under section 7(a)(2) of the FESA, and the issuance of Take Authorizations for Covered Activities. The Parties acknowledge that the DRECP may be used to address compliance with other applicable federal and State statutes.

The FESA provides that USFWS may permit the Incidental Taking of fish and wildlife species covered in an HCP if the HCP and permit application meet the requirements of section 10(a)(2)(A) and (B) of the FESA. FESA also provides that USFWS may permit Take associated with actions conducted for scientific purposes, pursuant to section 10(a)(1)(A). Take Authorization for the FESA-listed fish and wildlife species covered in the HCP is generally effective upon issuance of an Incidental Take Permit. Take Authorization for any non-listed species covered in the HCP becomes effective if and when the species is listed pursuant to the FESA.

For actions authorized, funded, or carried out by a Federal Action Agency, Take of listed species may be exempted under section 7 of the FESA based on a Biological Opinion issued by the USFWS.

2.4.1 Natural Community Conservation Planning Act

The NCCPA was enacted to encourage broad-based planning to provide for effective protection and conservation of the state's wildlife resources while continuing to allow appropriate development and growth. The purpose of the NCCPA is to provide for the conservation of biological diversity by protecting biological communities at the

ecosystem and landscape scale. Conservation of biological diversity includes protecting sensitive and more common species, natural communities, and the ecological processes necessary to sustain the ecosystem over time. An NCCP identifies and provides for the measures necessary to conserve and manage natural biological diversity within the Planning Area, while allowing compatible and appropriate economic development, growth, and other human uses.

2.4.2 Habitat Conservation Planning under the FESA

Under Section 10 of the FESA, HCPs may be developed to provide the basis for meeting the criteria for issuance of Incidental Take Permits authorizing the Incidental Take of threatened and endangered species. HCPs must ensure that the impacts of any Take of species covered by the plan are minimized and mitigated to the maximum extent practicable. Applicants may also seek Take Authorization for unlisted species that are covered in the HCP.

2.4.3 Section 7 Consultation under the FESA

Under section 7(a)(2) of the FESA, a Federal Action Agency is required to consult with the USFWS if its action may affect listed species or designated critical habitat. If an action is likely to adversely affect listed species or critical habitat, consultation under section 7(a)(2) will result in a Biological Opinion issued by USFWS to a Federal Action Agency, such as BLM, which analyzes the effects of a proposed action on listed species and designated critical habitat and provides an Incidental Take Statement, as appropriate. The BLM has exclusive jurisdiction to authorize use and occupancy of federal public lands and a primary mechanism that BLM uses to authorize such use and occupancy is through Title V of FLPMA, the right-of-way grant. If consultation under section 7(a)(2) of the FESA is required, such consultation must be completed, and a Biological Opinion issued by the USFWS, as appropriate, before the BLM issues such a grant to a Project Proponent. Through the right-of-way grant, the Project Proponent is required to comply with the terms and conditions of the Incidental Take Statement. So long as the BLM and the Project Proponent carry out the action in compliance with the terms and conditions of the Incidental Take Statement, they receive an exemption from FESA section 9 prohibitions for Incidental Take of federally listed species.

2.4.4 Energy Commission's Licensing under the Warren-Alquist Act

Pursuant to Public Resources Code section 25500, the CEC has exclusive authority to certify (license) energy facilities that are thermal power plants with a generating capacity of 50 MW or more, their appurtenant facilities (e.g., natural gas pipelines, water lines, tanks, etc.), and certain electric transmission lines. The CEC's certificate is in lieu of any permit or similar document required by any State, local, or regional agency (Pub. Resources Code, § 25500), including a Take Authorization that would otherwise be

issued by DFG. Before approving a power project within its jurisdiction, CEC must make findings on whether the project conforms to applicable local, regional, state, and federal standards, ordinances, and laws. When necessary to ensure conformity with such standards, ordinances, and laws, CEC imposes conditions of certification on the project.

Under the Warren-Alquist Act, CEC has independent authority to authorize Take in conformity with CESA, and for projects within the CEC's jurisdiction DFG does not issue Take Authorization. Similarly, for projects that fall within the scope of an adopted NCCP, CEC has independent authority to authorize Take in conformity with the terms of the adopted NCCP. Under the NCCPA, participating agencies with land use authority within an NCCP plan area receive Take coverage through permits issued under Section 2835, which allow them to confer Take Authorization for specific projects in conformity with the approved NCCP and the associated permit. Because the Warren-Alquist Act preempts the Section 2835 permitting process and provides the CEC with independent authority to issue Take Authorization in conformity with the terms of an approved NCCP, CEC need not and will not apply to DFG for a Section 2835 permit under the DRECP.

As part of its exclusive permitting authority, the CEC must confer with DFG on the permittee's proposed activities, mitigation measures, and conditions of CEC certification to ensure the protection of biological resources that may be significantly affected by a project under the CEC's jurisdiction. When approving projects that fall within the scope of the DRECP, once approved by DFG, CEC will need to make findings that the project conforms to the terms of the DRECP.

2.5.3 Transmission Line Permitting Agencies' Participation in the DRECP

It is the intent of the Parties for the DRECP to include as Covered Activities the construction, retrofit, operation, and maintenance of RPS-associated transmission infrastructure necessary to deliver renewable power to the state's power grid and load centers. The recommendations of the RETI stakeholder process regarding transmission planning will be used to inform the development of the DRECP.

With respect to transmission-related activities that may be covered under the DRECP, the Parties will coordinate with the California Public Utilities Commission, the California Independent System Operator, and Local Governments that have permitting or other regulatory-approval authority related to the siting of transmission facilities. The Parties will also encourage these entities to participate in the DRECP process.

4.0 Planning Area

The DRECP Planning Area encompasses the Mojave and Colorado Desert Ecoregions as identified in California. The western boundary of the Planning Area has been modified using the CREZ boundaries, so that the Planning Area boundary has

expanded slightly to the west, to ensure incorporation of complete RETI CREZs. The Planning Area includes all or a portion of the following counties: Kern, Los Angeles, San Bernardino, Inyo, Riverside, Imperial, San Diego, and Tulare. A map of the DRECP Planning Boundary is provided as Exhibit A.

The Parties intend to evaluate and analyze information regarding biological resources and anticipated Covered Activities in the Desert. Based on this analysis, the Parties anticipate the Planning Area boundaries will be further modified and refined to reflect where the locations of these activities are likely to be implemented.

The Parties acknowledge the DRECP Planning Area overlaps, in whole or in part, with several existing NCCPs, HCPs, and other conservation and land-use plans involving one or more of the Parties. The Parties shall seek to maintain compatibility between the DRECP and these other plans, and any other such plans that may be approved before the DRECP is finalized, by adapting the DRECP to be compatible with existing plans, by amending existing plans, or by some combination of these methods.

6.0 NCCPA Preliminary Conservation Objectives

Pursuant to the NCCPA, California Fish and Game Code section 2810(b)(4), the preliminary conservation objectives the Parties intend to achieve through the DRECP are to:

- Provide for the conservation of Covered Species and associated natural communities and ecosystems that occur within the Planning Area;
- Preserve the diversity of fish, wildlife, plant and natural communities within the Planning Area;
- Identify biologically sensitive habitat areas;
- Minimize and mitigate, as appropriate, the Take of Covered Species;
- Preserve and restore habitat and contribute to the recovery of Covered Species;
- Reduce the need to list additional species as being threatened or endangered;
- Set forth species-specific goals and objectives;
- Set forth specific habitat-based goals and objectives;
- Implement an adaptive management and monitoring program to respond to changing ecological conditions;
- Avoid actions that are likely to jeopardize the continued existence of Covered Species or result in the destruction or adverse modification of designated critical habitat for such species; and
- Address climate change adaptation through reserve design.

7.0 Conservation Elements

7.1 *Ecosystems, Natural Communities, and Covered Species List*

The DRECP will employ a strategy that focuses on the conservation of ecosystems, natural communities, and ecological processes in the Planning Area. In addition, the DRECP will establish species-specific minimization, mitigation, conservation, and management measures where appropriate. For federal public lands under BLM administrative jurisdiction, the DRECP will likewise focus on and take into consideration public land resource values and protections afforded and determined by existing, modified, and/or proposed land use planning documents and processes.

Natural communities that are likely to be addressed by the DRECP include, but are not limited to: creosote brush scrub, desert saltbush, Joshua tree scrub, desert wash, alkali scrub, juniper-pinyon woodlands, springs, and seeps.

The DRECP Covered Species list will be developed through the planning process with input from the public and other stakeholders. The Parties anticipate that species may be added or removed from the list based upon input from independent scientists (see section 8.3 below) and as additional information is revealed that informs the nature of the Covered Activities and the impact of Covered Activities on native species within the Planning Area.

A preliminary list of natural communities, and the endangered, threatened, candidate, and other species known, or reasonably expected to be found, in those communities, that are intended to be the initial focus of the DRECP is attached as Exhibit B.

7.2 *Conservation Areas and Viable Habitat Linkages*

As an NCCP, the DRECP will protect, enhance, or restore natural communities and habitats within the Planning Area and provide or enhance habitat linkages, where appropriate within the Planning Area. The DRECP will also identify where linkages between important habitat areas inside and outside the Planning Area should occur. The Parties intend the DRECP conservation strategy to address, among other things, a range of environmental gradients and ecological functions, and will address appropriate principles of ecosystem management, ecosystem restoration, and population biology.

7.3 *Climate Change*

The Parties intend that the DRECP and its conservation strategy will explicitly incorporate climate change adaptation research and establish climate change adaptation goals. Conservation actions within the climate change adaptation context will consider

retention of representative natural communities and habitat types in a matrix with sufficient flexibility to accommodate anticipated climate change outcomes.

7.4 Project Design

The Parties intend that the DRECP will ensure that each Covered Activity is appropriately designed to avoid and/or minimize direct and indirect impacts to Covered Species and their habitats.

8.0 Process for Preparing the DRECP

The Parties intend that this Planning Agreement will establish a mutually agreeable process for preparing the DRECP that meets the procedural requirements of the NCCPA and FESA. The process used to develop the DRECP will incorporate independent scientific input and analysis and include extensive public participation with ample opportunity for comment from the general public and from groups of key stakeholders, as described below.

8.1 Best Available Scientific Information

The DRECP will be based on the best available scientific information, including, but not limited to:

- Principles of conservation biology, community ecology, landscape ecology, individual species ecology, climate change, and other appropriate scientific data and information;
- Thorough information about all natural communities and proposed Covered Species within the Planning Area;
- Input from well-qualified, independent scientists; and
- Integration of relevant scientific and ecological research results from efforts currently underway in the Planning Area.

8.2 Data Collection

The Parties agree that the DRECP will be based on the best available scientific information, and that the Parties will collaborate to ensure that such information is obtained through a range of credible governmental and non-governmental sources. Data collection efforts for preparation of the DRECP will be coordinated with existing efforts. Preference should be given to collecting data essential to address conservation requirements of natural communities and proposed Covered Species for purposes of developing conservation measures and strategies for the DRECP. Data will be gathered and compiled to establish baseline conditions, evaluate impacts of Covered

Activities on Covered Species, and develop conservation strategies and measures for Covered Species. Data needed to accomplish these tasks may include, but will not necessarily be limited to: species' life histories, species' occurrence, population abundance and distribution, population trends, population genetics, habitat locations and conditions, habitat connectivity, and ecological threats and stressors.

The science advisory process and analysis of existing information may reveal gaps in data that are necessary for the full and accurate development of the DRECP. Data needed for preparation of the DRECP may not be known at this time or identified herein. Therefore, the Parties anticipate that data-collection priorities may be adjusted from time to time during the planning process. All data collected for the preparation and implementation of the DRECP will be made available to the Wildlife Agencies in hard and digital formats, as requested, and will be made reasonably available to other agencies and to the public.

8.3 *Types of Data*

Data will be gathered to establish baseline conditions, evaluate impacts of Covered Activities on Covered Species, and develop conservation strategies and measures for Covered Species. Data needed to accomplish these tasks may include, but will not necessarily be limited to: species' life histories, species' occurrence, population abundance and distribution, population trends, population genetics, habitat locations and conditions, barrier and hazard types and locations, habitat connectivity, and ecological threats and stressors.

8.4 *Independent Scientific Input*

The Parties intend to include independent scientific input and analysis to assist in the preparation of the DRECP. For that purpose, independent scientists representing a broad range of disciplines, including conservation biology and locally-relevant ecological knowledge, convened by the State will, at a minimum:

- Recommend scientifically sound conservation strategies for species and natural communities proposed to be covered by the DRECP;
- Recommend a range of conservation actions that would address the needs of species, ecosystems, and ecological processes in the Planning Area proposed to be addressed by the DRECP;
- Recommend reserve design principles and processes that are adaptable to changing climate conditions and the needs of species, landscapes, ecosystems, and ecological processes;
- Recommend management principles and conservation goals that can be used in developing a framework for the monitoring and adaptive management component of the DRECP; and
- Identify data gaps and uncertainties so that risk factors can be evaluated.

The Parties will design and implement the science advisory process, in consultation with the Executive Steering Committee (see section 8.5 below). The Parties will develop a detailed scope of work for the independent science process and establish funding and payment procedures. The independent science advisory process will include the use of a professional facilitator, input from technical experts, and production of a report by the scientists. The Parties will make the report available to the public during the planning process.

8.5 *Executive Steering Committee*

To assist in the development of the DRECP, the Parties have formed an Executive Steering Committee that consists of designated representatives of the Parties. The Parties expect that the Executive Steering Committee will be the principal forum in which the efforts of the participating federal and State agencies are adequately coordinated and that policy matters are fully discussed and considered.