

Renewable Energy Action Team Mitigation Account Memorandum of Agreement with the National Fish and Wildlife Foundation

Frequently Asked Questions

May 18, 2010

This document answers basic questions about the Memorandum of Agreement (MOA) and operational process of the Renewable Energy Action Team Mitigation Account (REAT Account) through the National Fish and Wildlife Foundation. The MOA, the REAT Account and this document do not address the process for determining project specific mitigation measures that the agencies may require of the project proponent in order to receive an authorization or permit for a renewable energy project. Detailed mitigation measures are determined on a project specific basis, and are contained in the project's environmental analyses and decision documents.

Project proponents have a number of options by which they can fulfill their mitigation requirements. Use of the REAT Account is only one of many options available to the proponent, and participation is voluntary.

Q1. What does the Memorandum of Agreement (MOA) do?

A. The MOA signed by the Renewable Energy Action Team (REAT) agencies - U.S. Fish and Wildlife Service, Bureau of Land Management, California Department of Fish and Game, California Energy Commission, and the National Fish and Wildlife Foundation (NFWF) - establishes a REAT Account that may be used by project developers to deposit funding for specified mitigation for approved renewable energy projects in the Mojave and Colorado Desert region of southern California. Each project utilizing the REAT Account will be an individual subaccount of the REAT Account for tracking, compliance and accounting purposes. NFWF will disburse the mitigation funding for each project subaccount, on behalf of the REAT agencies.

Q2. Does the MOA set up an in-lieu fee program for mitigation?

A. No. The MOA sets up the REAT Account. The MOA does not establish a mitigation in-lieu fee program.

Q3. Does the REAT Mitigation Account alter or reduce mitigation requirements for projects?

A. No. The MOA only establishes accounts for use in depositing mitigation funds from project proponents to be distributed by NFWF, at the direction of the REAT agencies, to satisfy mitigation requirements of the REAT agencies. Use of the REAT Account does not

change any of the requirements a project proponent must fulfill in order to comply with applicable State and Federal environmental laws governing the permitting of the projects. Also refer to question 4.

Q4. Does the REAT Account provide for the use of funds to mitigate for renewable energy impacts to viewsheds, noise, air quality, or cultural resources?

A. No. Use of the REAT Account is strictly to provide an alternative method to implement mitigation for impacts to fish, wildlife, plants, and their habitats from renewable energy projects. Other mitigation for impacts associated with renewable energy projects will be undertaken by each project proponent.

Q5. Why are these mitigation accounts being established by the REAT agencies?

A. There are numerous renewable energy projects proposed in California that will require mitigation for impacts to wildlife, plants, and their habitat associated with the projects. Currently, each project proponent is required to identify and implement mitigation independently. The REAT agencies established the REAT Account as a way to more efficiently implement mitigation and maximize the overall conservation benefit derived from mitigation actions.

Additionally, some of the proposed renewable energy projects are seeking eligibility for one or more financial incentives available through the American Recovery and Reinvestment Act (ARRA). These programs require projects to meet specific deadlines for contracting and construction. Use of the REAT Account will provide project proponents with a more efficient and timely method of satisfying some or all mitigation requirements. This will lead to timelier contracting and construction which will increase a project's chances to be eligible for ARRA funding.

Q6. What area of California is covered by the REAT Account?

A. The use of the REAT Account is applicable to proposed renewable energy projects in the Mojave and Colorado Desert region of southern California.

Q7. How are funds deposited into accounts and how will they be managed?

A. For each project that utilizes the MOA, the project proponent will deposit funding to cover its respective mitigation responsibilities into a sub-account that will be managed by NFWF. Each project specific sub-account will have a list of the specific mitigation actions, the cost, a timeframe for carrying out the actions, and will identify which of the REAT agencies is responsible for requiring and coordinating the mitigation actions. After the money is deposited, NFWF will disburse the funds to pay for the specified mitigation actions.

Q8. How will this MOA help conserve wildlife?

A. Funds deposited in the REAT Account from individual projects can be pooled together by the REAT agencies to accomplish positive benefits for wildlife, including: allowing the REAT agencies to identify contiguous blocks of habitat for acquisition to better provide for wildlife

connectivity, and climate change adaptation; conducting research needed to effectively implement project mitigation while also providing useful information to aid in the conservation of State or Federally listed species; and improving or enabling additional management programs for existing conserved lands to benefit wildlife (e.g., non-native plant removal).

Q9. Does a project proponent's use of the MOA's REAT Account create a Federal nexus under the Federal Endangered Species Act for their project?

A. No. Use of the REAT Account does not create a Federal nexus for a project, nor does it eliminate or change any Federal nexus that may already exist for a project. A Federal nexus will exist for a project if it is authorized, funded, or carried out by a Federal agency. For example, a project proposed on land managed by the Bureau of Land Management that may affect Federally listed species will require consultation with the U.S. Fish and Wildlife Service under section 7 of the Federal Endangered Species Act.

Q10. Does the REAT Account apply only to renewable energy project on lands managed by BLM?

A. No. The REAT Account can be used for renewable energy projects on other public and private land.

Q11. How does this MOA relate to the SBX834 legislation recently signed by Governor Schwarzenegger?

A. The REAT Account is designed to help project proponents and the State and Federal governments more effectively implement mitigation for renewable energy projects in the Mojave and Colorado Desert region of southern California. It also will aid project proponents in carrying out contracting and construction activities in a timely manner per requirements for ARRA funding eligibility.

The SBX8 34 legislation that was signed into law by the Governor created a \$10 million loan that provides for advanced mitigation habitat purchases. This advanced mitigation can be used by a qualifying solar renewable energy project to receive credit for implemented mitigation after a project proponent pays into the Renewable Energy Development Fee Trust Fund that was created by the SBX8 34 legislation (SBX8 34 Trust Fund).

To qualify for use of this law, the following must apply: 1) the projects are within the boundaries of the Desert Renewable Energy Conservation Plan (DRECP) as currently proposed in the Planning Agreement; 2) have been identified as seeking ARRA funding; and 3) either the California Energy Commission had determined that the application was complete by February 1, 2010; or, a Notice of Preparation under California Environmental Quality Act (CEQA) had been issued by February 1, 2010; or, a complete permit application has been submitted, if applicable, to the local government land use authority. Funds in the MOA REAT Account and the SBX8 34 Trust Fund are similar in that renewable energy project proponents pay into accounts set up to receive project-specific mitigation funds, and a third party entity implements the mitigation actions.

Q12. Can project specific mitigation funds in the SBX8 34 Trust Fund be used in combination with project specific mitigation funds in the MOA REAT Account?

A. Yes. The funds are for separate, but related purposes. The \$10 million loan is designed to implement advanced land acquisition that will be reimbursed by renewable energy project proponents. Some monies in the SBX8 34 Trust Fund might be transferred to the MOA REAT Account to accomplish specific mitigation actions required by the REAT agencies, when the transfer is consistent with California law, terms of the MOA, and permit requirements. The SBX8 34 land acquisition funds advanced by the State and payments made to reimburse the State for that advance could not be transferred to the REAT Account. Funds deposited in the REAT Account from individual projects, including those from SBX8 34, can be pooled together by the REAT agencies to accomplish positive benefits for wildlife. In addition to land acquisition, a specified mitigation action may be for habitat management including, but not limited to habitat restoration, fencing, and invasive plant control.

Q13. Can a project proponent deposit mitigation funds for a single project in both the SBX8 34 Trust Fund and MOA REAT Account?

A. Yes. The funds, while separate are for related purposes and both might be used to carry out a single project's mitigation. For example, a project proponent might use the SBX8 34 Trust Fund for acquisition of habitat lands and the REAT Account to accomplish habitat management on lands managed by the Bureau of Land Management.

Q14. The MOA states that funds can only used for renewable energy projects in the Mojave and Colorado Desert region of southern California. If there are projects proposed in other states that are receiving ARRA funds, are separate provisions being made to assist those projects in meeting the deadlines?

A. The MOA and REAT Account approach is specifically for renewable energy projects in the Mojave and Colorado Desert region of southern California. However, since NFWF's authority to set up such accounts is nation-wide, NFWF could establish accounts with governmental agencies in other parts of the country to streamline the implementation of mitigation requirements for renewable energy projects in other States.

Q15. What factors will be used to determine how much money a project proponent must deposit into the REAT Account established by the MOA?

A. Every proposed renewable energy project must comply with applicable State and/or Federal environmental laws that protect biological resources. Each of the applicable State and/or Federal resource laws have specific requirements to avoid, minimize and mitigate impacts to fish, wildlife, plants, and their habitats. During the project review and authorization process, the REAT agencies will work together and with a project proponent to determine the appropriate mitigation for each individual project. The types of mitigation actions are specified in each agency's decision document for a project. Examples of decision documents include: BLM right-of-way grant, a Biological Opinion from the Fish and Wildlife Service, a California Department of Fish and Game 2080.1 consistency determination, and the California Energy Commission's certification.

Q16. The MOA states that if additional funds are needed to complete mitigation measures identified for a proposed project, then the REAT agencies may require a project proponent to ensure that additional funds are deposited into the project sub-account to cover the shortfall. How will this requirement affect projects that already received their permits from the State and Federal agencies?

A. This requirement is consistent with applicable State and Federal laws because the project proponent is not being asked to undertake any additional mitigation or conservation measure to what was originally determined necessary. Rather, it ensures the mitigation and conservation measures already identified can be fully implemented.

The SBX8 34 applies to a limited number of qualifying solar projects for the mitigation required under State law. If the SBX8 34 Trust Fund is utilized and the fees collected from a developer fall short of the actual cost of a mitigation action, the project proponent does not have a continuing obligation to ensure a mitigation action is implemented. This is because SBX8 34 directs the project proponent to pay the estimated cost of one or more mitigation actions, as determined by the permitting agency, plus up to 5% of the total cost estimate as security. The State anticipates that this contingency will be sufficient to cover the full cost of the identified mitigation. The mitigation fees to meet state law, including up to 5% security, would not apply to mitigation required under Federal law for the projects that qualify for SBX8 34.

Q17. Will the public be able to find out how funds in the accounts are being spent?

A. Yes. All analysis and decision documents produced by the State and Federal REAT agencies are part of the public record. The document cataloging all of the REAT agencies' required mitigation and associated costs deposited into the REAT Account managed by NFWF is also part of the public record. In addition, NFWF will report on the status of each of the project specific accounts twice a year - June 15 and December 15. These reports will be provided to the REAT agencies and will also be available to the public.

Q18. Does the management of the REAT Account by NFWF exclude land trusts and other organizations from taking part in implementing mitigation actions, such as land acquisition?

A. No. NFWF manages the REAT Account and is responsible for disbursing the funds for specific mitigation actions on behalf of the REAT Agencies. Land trusts and other similar organizations play a vital role in land conservation. The REAT Agencies and NFWF fully expect that land trusts and other similar organizations will continue to have an active role in securing lands for conservation into the future working with NFWF, the REAT agencies, and project proponents.

Q19. Can a project proponent begin construction immediately after securing all approvals and depositing the required amount of funding into the REAT Account or will construction have to wait until the specified mitigation actions have been completed?

A. A project proponent may begin construction after receiving all applicable approvals, depositing the required amount of mitigation funding into the REAT Account, and satisfying

any pre-construction and on-site conditions, and other required conditions that may or may not be related to biological mitigation.

Q20. What role does NFWF play in determining what mitigation measures will be implemented?

A. None. Detailed mitigation actions are determined by the applicable REAT agencies on a project specific basis, and are contained in the project's environmental analysis and decision documents. After the money is deposited into the REAT Account by the project proponent, NFWF will disburse the funds to pay for the specified mitigation actions. Also, refer to question 7.