

**MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF
THE INTERIOR, BUREAU OF LAND MANAGEMENT CALIFORNIA AND THE
CALIFORNIA ENERGY COMMISSION
CONCERNING COORDINATED ENVIRONMENTAL REVIEW, COMPLIANCE
MONITORING, AND DECOMMISSIONING FOR POWER PLANT PROJECTS**

I. PURPOSE

This Memorandum of Understanding (MOU) documents the relative roles, responsibilities and relationships the Bureau of Land Management (BLM) and the California Energy Commission (collectively referred to as “the Parties”) expect to follow in conducting coordinated environmental review, construction and operation compliance monitoring, and decommissioning of power plant projects.

This MOU and its activities are in the interest of the Parties, project developers, and the public and are intended to ensure that the Parties:

- Coordinate and collaborate in the preparation of environmental analyses and the permitting, compliance monitoring, and decommissioning of these projects
- Develop more efficient processes and avoid duplication of efforts
- Share expertise and information
- Promote intergovernmental cooperation and integrate the involvement of other local, state, and federal agencies
- Facilitate public involvement
- Meet State and Federal requirements.

This MOU updates and replaces the MOU signed by the Energy Commission and BLM in 2007 titled “Memorandum of Understanding Between the U.S. Department of the Interior, Bureau of Land Management California Desert District and the California Energy Commission Staff Concerning Joint Environmental Review for Solar Thermal Power Plant Projects.”

This MOU also applies to any other project proposed on federal land managed by BLM and subject to the Energy Commission's jurisdiction.

II. BACKGROUND

Both the Energy Commission and the BLM have permitting authority over power plant projects with a generating capacity of 50 megawatts or greater (Projects) within California on BLM-managed public lands. Developers of these projects will need a right-of-way authorization from BLM and a certificate from the Energy Commission. The Energy Commission and BLM have collaborated on permitting and post-authorization compliance for several projects since 2007, and anticipate additional projects to be proposed in the future as California seeks to reduce its greenhouse gas emissions and increase its use of renewable energy for power generation.

Under federal law, BLM is responsible for processing requests for rights-of-way to authorize the Projects and associated transmission lines and other appurtenant facilities to be constructed and operated on public lands. In processing the applications, BLM must comply with the requirements of the National Environmental Policy Act (NEPA), which requires that federal agencies reviewing projects under their jurisdiction consider the environmental impacts

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associated with their construction and operation. In the case of power plant projects, this will generally be accomplished through preparation of Draft and Final Environmental Impact Statements (EIS). Separate consultation requirements and associated documentation are required for Section 106 of the National Historic Preservation Act and Endangered Species Act (ESA) section 7 consultations associated with the Projects. These consultations will be completed by BLM during their right-of-way review process. BLM is also responsible for Native American consultation, including Government-to-Government consultation. The result of this cooperative effort is intended to result in a public participation process and environmental documents that fully meet BLM's requirements.

Under California law, the Energy Commission is responsible for reviewing the applications for certification filed for the Projects, and also has the role of lead agency for the environmental review of the Projects under the Warren-Alquist Act and the California Environmental Quality Act (CEQA). (Pub. Resources Code, section 25500 et seq; Pub. Resources Code, section 21000 et seq.) The Energy Commission conducts this review in accordance with the administrative adjudication provisions of the Administrative Procedure Act (Gov. Code, section 11400 et seq.) and its own regulations governing site certification proceedings (Cal. Code Regs., tit. 20, section 1701 et seq.) These provisions require the staff to conduct an independent analysis of applications for certification and prepare an independent assessment of a project's potential environmental impacts, feasible mitigation measures, and alternatives as part of this process. The Energy Commission considers the staff assessments, along with those of the applicant, interested local, regional, state, and federal agencies, intervenors, and interested Native American tribes, in developing its decision on an application for certification. The Energy Commission has a certified regulatory program under CEQA that exempts the agency from having to draft an environmental impact report and, instead, requires a final staff assessment, evidentiary hearings, and a decision based on the hearing record, which includes the staff's and other parties' assessments.

After a project is approved, both the BLM and Energy Commission are required to ensure it complies with all permit requirements during construction and operation and that it is appropriately closed or decommissioned following its useful life. The agencies are also required to review any proposed changes that relate to areas of their jurisdiction.

III. ROLES AND RESPONSIBILITIES

Although there are differences in the BLM's and Energy Commission's permitting and compliance monitoring processes, both Parties must:

- Identify and fully describe all the potential significant adverse environmental consequences of a project
- Consider feasible alternatives
- Establish measures or conditions that avoid, reduce, or compensate for potentially significant adverse environmental impacts
- Monitor construction and operation to ensure mitigation and other permit requirements are fully implemented

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- Review proposed changes in approved projects that may significantly change its design, operation, or environmental consequences
- Decommission projects following their useful life
- Meaningfully inform and involve the public and tribes.

Through this MOU, the Parties agree to coordinate and collaborate in their respective activities on proposed and approved projects during permitting, compliance, and decommissioning; to discuss and exchange information about proposed and approved projects on a regular basis; to develop agency relationships and work together to avoid duplication; to improve the overall efficiency and effectiveness of their combined processes; and to collectively learn from previous experiences.

To the extent possible, all information exchanged between the Parties during project permitting, compliance monitoring, and decommissioning will be provided electronically. The Parties will also seek to coordinate all information requests and reporting requirements of the project owner to reduce duplication and confusion and allow information to be provided electronically to the extent feasible.

The Parties will identify and maintain a primary point of contact for each Project (generally each agency's project manager) that will have the responsibility and authority to coordinate the communications and exchange of information between the Parties and raise issues to the required level for resolution. The Parties will develop and maintain an organizational chart to demonstrate how the coordination, communication, and issue resolution process will function during project permitting and compliance monitoring. These charts will be available to project developers, other agencies, and the public so they are fully informed of how the process will work. Details on the Parties expected coordination during the permitting, compliance monitoring, and decommissioning phases are included in Attachment A.

IV. IMPLEMENTATION/AMENDMENT

This MOU becomes effective upon signature by the Parties, and may be subsequently amended or modified through written agreement of both Parties.

V. DISPUTE RESOLUTION

If there are disagreements between the Parties regarding the provisions of this agreement, representatives from each Party will meet to discuss the issues in dispute and will work towards resolution. If agreement is not reached within 14 days of this initial meeting or at some other time mutually agreeable to the Parties, the signatories of this MOU or their representatives will confer to attempt to resolve the disagreement.

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VII. TERMINATION

This MOU will remain in effect until all terms set forth herein are carried out to the satisfaction of the Parties. This MOU may be formally terminated in writing by either Party upon providing 30 days written notice to the other Party of an intention to terminate.

VIII. SIGNATURES

The Parties hereto have executed this MOU on the dates shown below.

James G. Kenna, State Director
Bureau of Land Management California

Date

Robert P. Oglesby, Executive Director
California Energy Commission

Date

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ATTACHMENT A

The Parties agree to coordinate in the following specific ways during permitting, compliance monitoring, and decommissioning on each proposed and approved project.

A. PERMITTING

The Parties agree to maintain close coordination during the process for permitting power plants and other projects that are subject to the jurisdiction of both Parties. The goals of this coordination are to respect each Party's regulatory responsibilities and authorities, share information, take advantage of each agency's knowledge and expertise, avoid unnecessary duplication of effort, and avoid confusion resulting from conflicting decisions and permit requirements. The following subsections describe specific procedures the agencies will implement before and during permitting to ensure close coordination.

1. **Regular Communication.** The Parties will meet on a regular basis to discuss known and potential permitting projects, program and policy issues related to energy project development and permitting, and other topics of mutual interest. These meetings may also be used as a forum to discuss potential concerns, provide and receive feedback, and resolve project or program conflicts. Meeting frequency and attendance will be commensurate with need, but to begin with meetings will be held quarterly and will include both agency leadership and project managers.
2. **Pre-application Meetings.** The Parties will coordinate pre-application meetings with potential applicants to the fullest extent possible, so that representatives of both Parties and other agencies may attend. Pre-application meetings will provide the agencies the opportunity to discuss and comment on a project developer's site selection process, consideration of alternatives, potential issues, and environmental survey protocols including biological and cultural resources. A primary objective of this process for both Parties is to ensure that Applicants are fully informed of the data and information needs of both the Energy Commission and the BLM at the time of application. It is critical, and in the interest of the Applicants, that the applications meet the Parties' data and information needs to allow timely and coordinated permitting.
3. **Project Description.** The Parties will encourage applicants to fully and consistently describe the project in the Plan of Development (POD) prepared for the BLM and the Application for Certification (AFC) prepared for the Energy Commission. Although the level of detail may vary to meet each Party's needs, the primary project features, systems, approaches, and operations should be identical. Similarly, the Final POD prepared for BLM following issuance of the ROW Grant should also reflect the Energy Commission decision and any other agency requirements. Both Parties may use this document as the starting point for evaluating subsequent project changes.
4. **Data Adequacy/Sufficiency.** Both Parties typically review any applications, including changes to approved projects, to determine whether there is sufficient information to ensure a timely and appropriate permitting decision for the proposed project. The Energy Commission staff seeks to ensure that the (AFC) filing meets the informational

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requirements of the Energy Commission’s regulations and, if so, to recommend to the Energy Commission that the application be accepted as complete. During this period, the Energy Commission staff will confer with the BLM regarding the sufficiency of information provided in the AFC.

5. **Scoping.** After the ROW application and the AFC for a project is determined to be complete by the BLM and Energy Commission, respectively, the Parties agree to cooperate in developing and making decisions on:
 - the scope of issues to be addressed during permitting and environmental review
 - public meetings, mailing lists, agency website information
 - preparation and distribution of fact sheets, news releases, announcements, and public notices
 - coordination with other federal, state, and local agencies

Whenever feasible, the Parties should coordinate and hold a publicly noticed scoping/information meeting to provide a description of the proposed project to the public at a location near the project site, describe the respective permitting processes of the Parties, provide an opportunity for public comment, and assist in determining the appropriate scope of project review.

Dates for other public meetings, including workshops and site visits, will be coordinated between the Parties to the fullest extent possible. To the extent sufficient resources are available, each Party should endeavor to have a staff representative available at each public meeting where issues relevant to their jurisdiction will be discussed.

6. **Discovery and Information Collection.** The Parties have numerous methods of gathering information from the project developer, other agencies, and other sources during the permitting, project change or amendment, and decommissioning process. Each Party agrees to promptly identify any outstanding information it needs that may be in possession of the other Party and provide any information it possesses or receives that is relevant to the responsibilities of the other Party for its review of the project. In particular the Energy Commission staff should coordinate with BLM and include any of BLM’s information needs in its information requests to the applicant and discussion at data collection workshops.
7. **Environmental Analysis.** The BLM is responsible for preparing an environmental analysis of the project and its alternatives sufficient to meet the requirements of NEPA, and the Energy Commission is responsible for preparing an environmental analysis sufficient to meet its Certified Regulatory Program requirements under CEQA. Although requirements and content for these analyses may vary, the Parties agree to collaborate on the technical analyses for their respective environmental documents. This includes collaboration on topics including: air quality, biological resources, cultural resources, water resources, geological resources and hazards, hazardous materials handling, land use, noise, paleontological resources, public health, socioeconomics, soils, traffic and transportation, visual resources, waste management and worker safety and fire protection. The Parties agree to collaborate on selection of the environmental baseline to the extent

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consistent with their respective legal requirements, scope of environmental impact analysis, selection of alternatives, and recommendation of mitigation measures to provide consistency of the analyses and proposed permitting requirements. The Parties agree that preparing a joint CEQA/NEPA document may NOT be appropriate in all circumstances, and the Parties could decide to prepare separate environmental documents under this MOU. The Parties agree to collaborate in their interactions with other federal, state, and local agencies and exchange any documents and/or recommendations or requirements received from these agencies.

8. **Native American Consultation.** The BLM and Energy Commission have separate responsibilities for Native American consultation required by federal and state law but will collaborate and conduct joint consultation activities to the extent possible, considering the preference of affected Tribes.
9. **Public Meetings, Workshops, and Hearings.** The Parties agree that, when Energy Commission and BLM staff collaborate on environmental assessments, each agency will provide its staff to participate in public meetings, workshops and hearings.
10. **Coordination of Decisions.** To the extent possible, the Parties agree to have staff confer and collaborate on the preparation of their Agency's respective final decision to ensure they avoid conclusions or requirements that are inconsistent and contrary.
11. **Conflict Resolution.** If technical, administrative, or relational conflicts arise in association with the permitting process, the Parties will seek to resolve them at the lowest management level as quickly as possible. Unresolved issues will be rapidly elevated to higher management levels if needed. To respect the ex-parte requirements of the Energy Commission, resolution on issues involving the technical positions or conclusions of the Energy Commission staff will not be discussed with Energy Commissioners and issues related to the deliberations of the Energy Commissioners will not be discussed with Energy Commission staff.
12. **Lessons Learned.** The Parties will use regular coordination meetings to exchange information and perspectives on the permitting process and working relationship between the Parties in an on-going effort to make improvements.

B. COMPLIANCE MONITORING

1. **Regular Communication.** The Parties will use the regular coordination meetings described in Section A.1 to discuss project status and issues associated with project compliance during construction, operation, and decommissioning. The meetings may also be used as a forum to discuss potential concerns, provide and receive feedback, and resolve project or program conflicts.
2. **Preconstruction and Construction Meetings.** Consistent with Policy, the Parties will jointly hold at least one pre-construction meeting on each approved project to outline the Parties' expectations, establish communication protocols and chain of command, discuss

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the process for reviewing project changes and the process for dealing with non-compliance issues. The meeting will involve each Party's compliance leadership staff, the project developer and construction contractor, any of the Parties' on-site delegates, and other agencies as deemed appropriate.

The Parties will also ensure that conference calls, meetings, and field meetings are held on a regular and as-needed basis with each Party's compliance staff, the project developer and construction contractor, any of the Parties' on-site delegates, and other agencies as deemed appropriate. These calls and meetings will discuss construction status and anticipated work, implementation status of mitigation measures, safety and environmental compliance issues, and other topics.

3. **On-site Representatives.** The Energy Commission typically retains third-party contractors to serve as its delegate Chief Building Official (CBO) overseeing engineering and code compliance on energy facilities under its jurisdiction. Similarly, the BLM often retains third-party contractors to serve as its on-site environmental compliance monitor. The contractors serve as an agent of and under the oversight of the Energy Commission and BLM, respectively. In the event that a delegate CBO and environmental monitor are assigned to a project under the joint jurisdiction of the Parties, the Parties agree to encourage the third-party contractors to coordinate and maintain regular communication regarding project construction activities, potential safety and environmental issues, reporting requirements.
4. **Project Changes.** During project construction, operation, and decommissioning, the project developer or others may propose changes to the project. Project changes are dealt with by the BLM through a three level construction deviation process and by the Energy Commission through a two level amendment process. The Parties will inform each other of any proposed project changes and collaborate on any required environmental or other analyses, mitigation or other approval requirements, and timing of their decisions. No project changes in areas where the Parties have joint jurisdiction will be made until approved by the Parties. The Parties will also work to coordinate their project change review and approval processes.
5. **Reporting and Documentation.** Regular, focused, and meaningful reporting is critical to ensuring the Parties and public are informed on a project's compliance with permit requirements, proposed project changes, and resolution of non-compliance issues. Reporting is also used to document problems and their resolution, approved project changes, and the completion of construction or decommissioning activities. The Parties agree to work together to coordinate reporting requirements to avoid duplication and enhance the usefulness and value of compliance documents. To the extent feasible, the Parties will distribute and file electronic copies of reports and other documents and use shared web-based document storage, retrieval, and communication systems.
6. **Access and Stop Work.** The Parties staff and their delegates shall have access to the project site and all facilities at any time with or without prior notification unless there is a specific and valid safety concern. The Parties staff and their delegates have authority to

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stop construction or operation of approved projects if there is a significant deviation from project environmental and cultural resource protection requirements, approved construction plans, or public or worker health and safety concerns. In the event of a stop work order, the Party imposing the stop work order will immediately notify the other Party. If there is sufficient time, the Parties shall consult in advance on any potential stop work order.

7. **Non-Compliance.** A noncompliance incident occurs when an activity violates a project's environmental or other permitting requirements, results in damage to significant environmental or other resources; places sensitive resources at unnecessary risk, or places the public or worker health and safety at risk. The Parties agree to immediately notify each other in the event of a potential non-compliance incident related to areas of shared jurisdiction or interest. The Party identifying the non-compliance incident will provide a copy of reports or other documentation of the noncompliance incident to the other Party. The Parties will work collaboratively to collect information regarding the non-compliance incident, meet with the project owner and any other applicable agency, decide on any corrective measures, and monitor implementation of any actions.

A serious non-compliance violation may result in the need for the Parties to jointly meet with the project owner to discuss the violation, take corrective actions, and consider possible follow-up enforcement actions that could be imposed.

8. **Conflict Resolution.** If technical, administrative, or relational conflicts arise in association with compliance monitoring, the Parties will seek to resolve them at the lowest management level as quickly as possible. Unresolved issues will be rapidly elevated to higher management levels if needed.
9. **Lessons Learned.** The Parties will use regular coordination meetings to exchange information and perspectives on the construction compliance monitoring process and working relationship between the Parties in an on-going effort to make improvements. These meeting may include delegates, project owners, and other agencies.

C. DECOMMISSIONING

Closure and Decommissioning Plans. As the land management agency, the BLM has primary authority for requiring reclamation of the project site. The Energy Commission routinely requires project owners to prepare and submit unplanned (temporary) closure plans prior to commercial operation and planned (permanent) closure or decommissioning plans one-year prior to permanent shutdown of an approved project. The BLM also requires a Closure, Decommissioning, and Reclamation Plan to be developed before terminating a right-of-way authorization. The Parties will share these plans with each other to ensure consistency. No permanent closure or decommissioning activities under joint jurisdiction of the Parties will occur unless approved by the Parties.

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**Table 1
Project Permitting and Compliance Monitoring Personnel**

Function	Name	Organization	Phone	E-mail
BLM Permitting Project Manager				
CEC Siting Project Manager				
BLM Field Manager				
CEC Siting Office Manager				
Project Owner’s Permitting Representative				
BLM Archaeologist				
CEC Archaeologist				
BLM Biologist				
CEC Biologist				
Project Owner’s Construction Representative				
Construction Manager				
Lead Environmental Inspector				
Designated Biologist				
Cultural Resource Specialist				
Lead Tribal Monitor				
Paleontological Resource Specialist				
BLM Compliance Project Manager				
CEC Compliance Project Manager				
BLM Authorized Officer				
BLM Field Manager				
CEC Siting Office Manager				
CEC Deputy Director				
BLM Biologist				
CEC Biologist				
BLM Archaeologist				
CEC Archeologist				
California Department of Fish and Wildlife				
US Fish and Wildlife Service				
US Army Corps of Engineers				
Regional Water Quality Control Board				

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Figure 1
Project Compliance Coordination

