

Item 1a

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
CALIFORNIA DESERT DISTRICT OFFICE

AND

THE CALIFORNIA ENERGY COMMISSION

REGARDING

NORTH GILA TO IMPERIAL VALLEY #2
500KV TRANSMISSION LINE PROJECT

I. Introduction

This Memorandum of Understanding (MOU) establishes a cooperating agency relationship between the Bureau of Land Management's California Desert District Office ("BLM") and the California Energy Commission, ("Cooperating Agency" or "Cooperator") for the purpose of preparing the environmental impact statement (EIS) for the North Gila to Imperial Valley #2 500kV Transmission Line Project and Draft Resource Management Plan (NGIV2). The BLM is the lead federal agency for development of the NGIV2 EIS. The BLM acknowledges that the Cooperating Agency has jurisdiction by law and/or special expertise applicable to the NGIV2 EIS effort, as defined at 40 CFR 1508.15 and 1508.26. This MOU describes responsibilities and procedures agreed to by the Cooperating Agency and the BLM ("the Parties").

The cooperating agency relationship established through this MOU shall be governed by all applicable statutes, regulations, and policies, including the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (in particular, 40 CFR §1501.6 and §1508.5), the Federal Land Policy Management Act (FLPMA) (43 CFR §1761 et seq.), the BLM's planning regulations (in particular, 43 CFR §1601.0-5, §1610.3-1, and §1610.4), and the Department of the Interior Manual (516 DM 2.5).

II. Purpose

The purposes of this MOU are:

- A. To designate Cooperating Agency in the NGIV2 EIS process.
- B. To provide a framework for mutual cooperation and coordination between the BLM and the Cooperator that will ensure successful completion of the NGIV2 EIS in a timely, efficient, and thorough manner.
- C. To recognize that the BLM is the lead agency with responsibility for the completion of the NGIV2 EIS and the Record of Decision (ROD).
- D. To recognize and provide guidance for the development of a mutually respectful and effective Cooperating Agency relationship between the Parties which reflects their unique working relationship as it relates to the tasks at hand.
- E. To describe the respective responsibilities, jurisdictional authority, and expertise of each of the Parties in the planning process.

III. Authorities for the MOU

- A. The authorities of the BLM to enter into and engage in the activities described within this MOU include, but are not limited to:
 - 1. National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
 - 2. Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).
- B. Regulations implementing the above authorities:

1. Council on Environmental Quality regulations (40 CFR 1501 et seq.)
 2. Bureau of Land Management planning regulations (43 CFR 1601 et seq.)
- C. The authorities of Cooperating Agency to enter into this MOU include, but are not limited to:
1. Council on Environmental Quality regulations (40 CFR 1501 et seq.)
 2. Pub. Res. Code §§ 25219, 25302, 25324, and 25500 et seq.

IV. Roles and Responsibilities

A. BLM Responsibilities:

1. As lead agency, the BLM retains final responsibility for the content of all planning and NEPA documents, which include the Draft EIS, the Final EIS, any supplemental documents, and the ROD. The BLM's responsibilities include determining the purpose of and need for the EIS, selecting alternatives for analysis, identifying effects of the proposed alternatives, selecting the preferred alternative, and determining appropriate mitigation measures. In completing these responsibilities, the BLM will meaningfully involve the Cooperator throughout the entire NEPA process, including but not limited to: development of the alternatives, identification of effects, selection of the preferred alternative, and determination of appropriate mitigation measures, review of public comments, and development of a Record of Decision.
2. To the maximum extent possible consistent with the BLM's responsibilities as lead agency, the BLM will gain early and consistent involvement of the Cooperator, consider the comments, recommendations, data, and/or analyses provided by the Cooperator in the EIS process, giving particular consideration to those topics on which the Cooperator is acknowledged to possess jurisdiction by law or special expertise.
3. To the fullest extent practicable the BLM will timely provide the Cooperator with copies of documents underlying the EIS relevant to the Cooperator responsibilities, including technical reports, data, analyses, comments received, working drafts related to environmental reviews, and draft and final EISs.

B. Cooperating Agency Responsibilities:

1. The California Energy Commission is a Cooperating Agency in this NEPA process and is recognized to have jurisdiction by law and special expertise on all subject matters for which it has statutory responsibility including but not limited to:
 - a. The California Energy Commission is the State of California's lead agency for energy planning and is responsible for ensuring the public has access to reliable sources of electricity.

2. The Cooperator will provide information, comments, and technical expertise to the BLM regarding those elements of the EIS, and the data and analyses supporting them, in which it has jurisdiction or special expertise or for which the BLM requests its assistance. In particular, the Cooperator will provide information on the following topics:
 - a. Any potential impacts the transmission line would have on regional energy planning.
 - b. Other such additional information that is relevant to planning issues or data needs.
3. Within the areas of their jurisdiction or special expertise, the Cooperator may participate in any of the activities identified in Attachment A. These activities include, but are not limited to: providing guidance on public involvement strategies, identifying data needs, suggesting management actions to resolve issues raised during scoping, identifying effects of alternatives, suggesting mitigation measures, and providing written comments on working drafts of the EIS and supporting documents. (See also Section C.4.)
4. The Cooperator will have one member, and an alternate, appointed to represent its interests and work with the core and/or interdisciplinary team (ID team).

C. Responsibilities of the Parties:

1. The Parties agree to participate in this planning process in good faith and make all reasonable efforts to resolve disagreements. Where procedural or substantive disagreement may impede effective and timely completion of the NGIV2 EIS, the Parties agree to utilize the facilitation and conciliation procedures described below (see Section V.G). Participation as a CA does not negate the cooperator's right to comment, protect, or appeal the analysis or a decision nor does it diminish or restrict the Cooperators ability to coordinate with the BLM under the authority of FLPMA (43 U.S.C. 1712(c)(9)).
2. The Parties will make best effort to comply with the schedule provided as Attachment B, which includes dates for NGIV2 EIS milestones and timeframes for Cooperator's reviews and submissions.
3. Each Party agrees to fund its own expenses associated with NGIV2 EIS process, except that the BLM may contract with a Cooperator for technical studies within its jurisdiction or special expertise, as provided for in Section IV.B.4, and a Cooperator may volunteer to provide financial assistance to the BLM to complete tasks associated with the NGIV2 EIS.
4. The Parties agree to carefully consider whether proposed meetings or other activities would waive the Unfunded Mandates Reform Act exception to the Federal Advisory Committee Act (2 U.S.C. 1534(b) and 5 U.S.C App.).

V. Other Provisions

- A.** Authorities not altered. Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within its respective jurisdiction. Nothing in this MOU shall require any of the Parties to perform beyond its respective authority.
- B.** Financial obligations. Nothing in this MOU shall require any of the Parties to assume any obligation or expend any sum in excess of authorization and appropriations available.
- C.** Immunity and Defenses Retained. Each Party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.
- D.** Conflict of interest. The Parties agree not to utilize any individual or organization for purposes of plan development, environmental analysis, or Cooperator representation, including officials, employees, or third party contractors, having a financial interest in the outcome of the NGIV2 EIS. Questions regarding potential conflicts of interest should be referred to BLM HQ or Field Ethics Counselors for resolution.
- E.** Documenting disagreement or inconsistency. Where the BLM and one or more Cooperators disagree on substantive elements of the NGIV2 EIS (such as designation of the alternatives to be analyzed or analysis of effects), and these disagreements cannot be resolved, the BLM will include a summary of the Cooperator's[s'] views in the Draft NGIV2 EIS. The BLM will also describe substantial inconsistencies between its proposed action(s) and the objectives of state, local, or tribal land use plans and policies.
- F.** Management of information. The Cooperator acknowledges that all supporting materials and draft documents may become part of the administrative record and may be subject to the requirements of the Freedom of Information Act (FOIA) and other federal statutes. The Cooperator agrees not to release these materials to individuals or entities other than the Parties to this MOU and their contractors, unless required to do so by law. The Cooperator shall ensure their contractors adhere to the same level of confidentiality.
 - 1.** The BLM acknowledges that the Cooperator is subject to the California Public Records Act. The BLM may withhold from the Cooperator those documents that would otherwise be available for public release under the California Public Records Act if those documents are otherwise exempt from disclosure under a specific provision of FOIA.
- G.** Conflict Resolution. The Parties agree to make reasonable efforts to resolve procedural or substantive conflicts, and may agree to initiate an Alternative Dispute Resolution (ADR) process. The Parties acknowledge that BLM retains final responsibility for the decisions identified in the NGIV2 EIS and ROD.
 - 1.** Facilitation. The Parties agree that they may retain an independent facilitator to foster clear and efficient communication, if they deem it necessary. The parties will split the cost of facilitation equally.

H. Coordination with the BLM's contractor. {CONTRACTOR NAME} serves as the BLM's contractor for public involvement, data collection, environmental analysis, and NGIV2 EIS preparation. Cooperator may communicate with the contractor through BLM's representative, provide information and comments directly to the contractor, or collaborate with contractor's technical staff and subcontractors on matters within the Cooperator's special expertise. The Cooperator acknowledges that the BLM retains the exclusive responsibility to authorize modifications to the contract with {COMPANY NAME} and that the Cooperator is not authorized to provide technical or policy direction regarding the performance of this contract.

VI. Agency Representatives

Each Party will designate a representative and alternate representative, as described in Attachment C, to ensure coordination between the Cooperators and the BLM during the planning process. Each Party may change its representative at will by providing prior written notice to the other Party.

VII. Administration of the MOU

- A. Approval. This MOU becomes effective upon signature by the authorized officials of the BLM and the Cooperator.
- B. Amendment. This MOU may be amended through written agreement of all signatories.
- C. Termination If not terminated earlier, this MOU will end when the ROD for the NGIV2 EIS is approved by the BLM Authorized Officer. Any Party may end its participation in this MOU by providing 30-days written notice to the other Party. During this period, the parties will enter negotiations to resolve the disagreement(s). If the disagreement(s) are unresolved by the end of the 30-day period, the MOU will terminate. In the event that negotiations are progressing but are not concluded by the end of the 30-day period, the party initiating the request to terminate may request termination be postponed for an additional 30-day period.

VIII. Signatures

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

AGENCY, by and through:

Drew Bohan
Executive Director

Date

BUREAU OF LAND MANAGEMENT, by and through:

Beth Ransel
California Desert District Office Manager

Date

Attachment A

Cooperating Agency Participation in the [Insert NEPA related process or EIS]

	NGIV2 EIS	Potential Activities of Cooperating Agencies (CAs) within their acknowledged areas of expertise
1	Conduct scoping and identify issues	Provide input on coordination requirements based on CA plans; identify significant issues; identify relevant local and regional organizations and interest groups; provide non-financial sponsorship of public forums with the BLM; collaborate in assessing scoping comments; identify connected, similar, and cumulative actions; identify other relevant agencies.
2	Develop planning criteria	Provide advice on proposed planning criteria.
3	Collect inventory data	Identify data needs; provide data and technical analyses within the CA's expertise.
4	Formulate alternatives	Collaborate with the BLM in developing alternatives. Suggest land allocations or management actions to resolve issues. Decision to select alternatives for analysis is reserved to the BLM.
5	Estimate effects of alternatives	Provide effects analysis within the CA's expertise; identify direct, indirect, and cumulative effects within the CA's expertise; suggest mitigation measures for adverse effects.
6	Select the preferred alternative; issue Draft NGIV2 EIS	Collaborate with the BLM in evaluating alternatives and in developing criteria for selecting the preferred alternative; provide input on Preliminary Draft EIS. The CAs may provide written, public comments on draft if desired. Decision to select a preferred alternative and to issue a draft is reserved to the BLM.
7	Respond to comments	As appropriate, review comments within the CA's expertise and provide assistance in preparing BLM's responses.
7a	Issue Proposed Final EIS	Action reserved to BLM.
7b	Initiate Governor's Consistency Review	Once initiated by the BLM, state CAs should contribute to the Governor's Consistency Review.
8	Sign Record of Decision (ROD) [or]	Action reserved to the BLM.
8a	Resolve protests; modify Proposed Final EIS if needed; sign ROD	Action reserved to the BLM. A CA that has provided information relevant to a protest may be asked for clarification.

Attachment B
Schedule

Task	Responsibility	Dates
Scoping Period	core team, cooperators	Four week notice prior to review timeframes
Alternatives Development	core team, cooperators	
Preparation of Draft EIS	core team, cooperators	
Draft EIS Public Comment Period	cooperators, core team	
Review of Proposed Changes to Final EIS	cooperators, core team	
Preparation of Final EIS	core team	
Final EIS Public Availability Period	cooperators	

Attachment C
Agency Representatives

Bureau of Land Management

Primary Representative: Mark Mackiewicz
Sr. National Project Manager
BLM Washington Office
Phone: (435) 636-3616
Email: mmackiew@blm.gov

Backup Representative: Scott Whitesides
Deputy Project Manager
BLM NTST
Phone: (801) 539-4054
Email: swhitesides@blm.gov

The California Energy Commission

Primary Representative: Shawn Pittard
Deputy Director of the STEP Division
California Energy Commission
Phone: (916) 654-5100
Email: shawn.pittard@energy.ca.gov

Backup Representative: Gabriel Roark
Staff Archaeologist
California Energy Commission
Phone: (916) 657-4774
Email: Gabriel.roark@energy.ca.gov

STATE OF CALIFORNIA

**STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION**

RESOLUTION RE: NORTH GILA – IMPERIAL VALLEY #2 TRANSMISSION LINE

RESOLVED, that the Energy Commission approves the Memorandum of Understanding (MOU) with the Desert District of the Bureau of Land Management (BLM) for a \$0 agreement, commemorating the parties intention that the Energy Commission will serve as a cooperating agency in the BLM's Environmental Impact Statement (EIS) process for the proposed North Gila-Imperial Valley #2 Transmission Line (NGIV2); and

FURTHER BE IT RESOLVED, that this document authorizes the Executive Director or his or her designee to execute the same on behalf of the Energy Commission.

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted at a meeting of the California Energy Commission held on October 3, 2018.

AYE: [List of Commissioners]

NAY: [List of Commissioners]

ABSENT: [List of Commissioners]

ABSTAIN: [List of Commissioners]

Cody Goldthrite,
Secretariat