

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CALIFORNIA DEPARTMENT OF FISH AND GAME,
THE CALIFORNIA ENERGY COMMISSION, THE BUREAU OF LAND
MANAGEMENT, THE U.S. FISH AND WILDLIFE SERVICE, AND
THE U.S. DEPARTMENT OF DEFENSE REGARDING
PARTICIPATION AND ENGAGEMENT IN
THE CALIFORNIA RENEWABLE ENERGY ACTION TEAM AND
THE DESERT RENEWABLE ENERGY CONSERVATION PLAN**

I. INTRODUCTION AND BACKGROUND

The Governor of the State of California issued Executive Order S-14-08 (November 17, 2008) establishing a state policy goal of producing 33 percent of California's electrical needs with renewable energy resources by 2020. A substantial increase in the development of qualified Renewable Portfolio Standards (RPS) energy projects is needed to meet this policy goal. The RPS energy projects, including wind, solar, and geothermal, also contribute to achieving the state's climate change goals of reducing greenhouse gases to 1990 levels by 2020 and to 80 percent of 1990 emissions levels by 2050, making the success and expansion of RPS energy generation a key priority for California's economic and environmental future.

Concurrent with the Governor's Executive Order S-14-08, the California Department of Fish and Game (CDFG) and the California Energy Commission (CEC) created the Renewable Energy Action Team (REAT) through the "Memorandum of Understanding Between the California Energy Commission and the California Department of Fish and Game Regarding the Establishment of the Renewable Energy Action Team" (November 17, 2008). Additionally, CDFG, the CEC, the Bureau of Land Management (BLM), and the United States Fish and Wildlife Service (USFWS) (REAT Agencies) committed to a cooperative relationship to achieve shared energy policy goals through the "Memorandum of Understanding Between the California Department of Fish and Game, the California Energy Commission, the Bureau of Land Management, and the U.S. Fish and Wildlife Service Regarding the Establishment of the California Renewable Energy Permit Team" (November 17, 2008). In signing the second Memorandum of Understanding, the state and federal agencies sought, among other things, to ensure that RPS energy projects under review satisfy all applicable state and federal laws, regulations, and policies and to develop the Desert Renewable Energy Conservation Plan (DRECP), a multispecies desert energy conservation plan in the Mojave and Colorado Desert Regions. The DRECP will be complete by 2012 and will guide solar and other qualified RPS energy project siting in the DRECP Planning Area and ensure the conservation of California's natural resources.

The DRECP Planning Area contains large U.S. Department of Defense (DoD) installations that are critical to support national defense, including, but not limited to, Edwards Air Force Base, a portion of the Naval Air Weapons Station, China Lake,

Naval Air Station, El Centro, the National Training Center and Fort Irwin, Marine Corps Logistics Base Barstow, Marine Corps Air Ground Combat Center 29 Palms, and the Marine Corps' Chocolate Mountains Aerial Gunnery Range. The deployment of both RPS generation projects across the state and electric transmission projects needed to deliver RPS energy to load centers may affect these installations and their respective missions and aid in the accomplishment of DoD's mission to ensure national security.

The REAT's ongoing coordination efforts and joint development of the DRECP presents an important opportunity for the REAT and DoD to develop the DRECP in a manner that is consistent with DoD's military mission. DoD's participation can inform the REAT Agencies and the DRECP planning effort about installations, critical training areas, and airspace needs that merit heightened consideration in the siting of facilities. The REAT Agencies can assist DoD by providing information necessary for biological and/or cultural resource reviews, mitigation and conservation decisions, and ongoing DoD programs and wildlife management activities.

II. PARTIES

This Memorandum of Understanding (MOU) is entered into by and between the California Department of Fish and Game, the California Energy Commission, the Bureau of Land Management, the U.S. Fish and Wildlife Service, and the U.S. Department of Defense (collectively, Parties) and will become effective as of the latest date shown below on the signatures page.

III. PURPOSE

The purpose of this MOU is to form a cooperative relationship between the Parties to effectively plan for and promote renewable energy development in California consistent with DoD's military mission. DoD will participate in REAT planning and policy meetings as the REAT assists with the implementation of applicable state and federal laws, regulations, and policies, and the Parties will cooperate to help ensure that REAT and DRECP goals for renewable energy development and environmental protection are accomplished in a manner that is consistent with and does not impede DoD's ability to maintain a ready military force.

The purpose of this MOU is also to facilitate coordination between the Parties to develop and implement the DRECP and renewable energy projects in the State of California. The DoD's direct participation in the joint state and federal effort will enhance the development and implementation of the DRECP, through acquisition and sharing of comprehensive environmental baseline data, environmental analyses, impact assessments, and conservation and mitigation opportunities throughout the DRECP Planning Area, and also through identification of areas and installations

(including airspace) that are critical to the DoD's military mission and that may, as a consequence, be unsuitable sites for certain energy facilities.

Therefore, the Parties agree to work in cooperation to develop a multispecies conservation strategy (the DRECP) and to facilitate and streamline compliance with all applicable state and federal laws.

IV. AUTHORITY TO ENTER INTO THIS MEMORANDUM OF UNDERSTANDING

- A. California Department of Fish and Game Authority: Public Resources Code Section 21000, et seq. (CEQA); Fish and Game Code Sections 1600, 1802, 2050, et seq., (CESA); Code of California Regulations, Title 14; Fish and Game Commission Policies.
- B. California Energy Commission Authority: Public Resources Code Sections 25218, subds. (d)-(e), 25219, 25302, 25324, and 25500 et seq.
- C. Bureau of Land Management Authority: Section 307(b) of the Federal Land Policy and Management Act of 1976 (43 USC § 1737).
- D. U.S. Fish and Wildlife Service Authority: 16 U.S.C. sections 1531-1544 (FESA), and 16 U.S.C. sections 703-712 (Migratory Bird Treaty Act, as amended).
- E. Department of Defense Authorities: Section 670c-1 of title 16, United States Code (Sikes Act); DoD Instruction 4715.03 "Natural Resources Conservation Program" March 18, 2011; DoD Instruction 4715.02 "Regional Environmental Coordination" August 28, 2009; and DoD Instruction 4170.11 "Installation Energy Management" December 11, 2009.

V. PRINCIPLES OF AGREEMENT

The Parties mutually agree to:

- A. Work together through the REAT, and develop interagency working groups as necessary, to coordinate, share, and/or combine resources and data in conducting environmental and resource analyses to assist in the development of the DRECP and other appropriate interim guidelines, to the extent appropriate and allowed by law. However, nothing in this agreement shall be construed to create or confer any advisory role for non-governmental entities.
- B. Work together to ensure involvement of state agencies, local governments and agencies, Indian tribes, non-governmental organizations, energy companies and utilities, and other interested parties in public meetings and public

stakeholder groups to benefit the process of developing the DRECP and other appropriate interim guidelines, to the extent appropriate and allowed by law.

- C. Apprise each other, as far in advance as practicable, of any related actions or problems that might affect the environmental analyses and documentation process or that might affect the respective Parties.
- D. Foster candid discussions and share documents related to the preparation of the DRECP and other appropriate interim guidelines, to the extent appropriate and allowed by law.
- E. Provide releasable Geographical Information Systems (GIS) data and products, and staff technical expertise (and coordination on DoD projects and programs like the Solar Potential and Deployment Analysis and the Environmental Security Technology Certification Program) to assist other agencies and the interagency working group in the development of the documents associated with renewable energy projects.
- F. Work together on the development of additional renewable energy resources in California's Mojave and Colorado Desert Regions, including identifying, as far in advance as practicable, those geographic areas and technical and environmental features that merit heightened consideration so that renewable energy project and transmission line development is consistent with and does not impede DoD's military mission.

VI. GENERAL PROVISIONS

- A. Nothing in this MOU is intended to or shall be construed to limit or affect in any way the authority or legal responsibilities of CDFG, CEC, BLM, USFWS, or DoD.
- B. Nothing in this MOU binds CDFG, CEC, BLM, USFWS, or DoD to perform beyond their respective authorities.
- C. Nothing in this agreement may be construed to obligate the DoD or the United States to any current or future expenditure of resources in advance of the availability of appropriations from Congress. Nor does this agreement obligate the DoD, the United States, or the State of California to spend funds on any particular project or purpose, even if funds are available.
- D. The mission requirements, funding, personnel, and other priorities of either CDFG, CEC, BLM, USFWS, or DoD components may affect their respective abilities to fully implement all the provisions identified in this MOU.

- E. Specific activities that involve the transfer of money, services, or property between or among the Parties shall require execution of separate agreements or contracts.
- F. Nothing in this MOU is intended to or shall be construed to restrict BLM, USFWS, DoD or the State of California, whether through CDFG, CEC, or other agencies or departments, from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
- G. Any information furnished between the Parties under this MOU is potentially subject to the Freedom of Information Act, 5 U.S.C. § 552, et seq. (FOIA) and the California Public Records Act, Gov. Code § 6250, et seq. (CPRA). The Parties agree to consult one another prior to releasing potentially privileged or exempt documents and to cooperate in good faith to assert all such privileges and exemptions permitted by FOIA and CPRA.
- H. Each and every provision in this MOU is subject to the laws of the State of California, the laws of the United States of America, and to the delegated authority assigned in each instance.
- I. All cooperative work under the provisions of this MOU will be accomplished without discrimination against any employee because of race, sex, creed, color, or national origin.
- J. Amendments or supplements to this MOU may be proposed by either CDFG, CEC, BLM, USFWS, or DoD and shall become effective upon written approval of all Parties.
- K. CDFG, CEC, BLM, USFWS, or DoD may terminate its participation in this MOU at any time through written notification to the other Parties at least thirty (30) days prior to termination.
- L. This MOU shall become effective upon signature by the Parties. This MOU may be executed in one or more counterparts, each of which will be considered an original document. The effective date shall be the date of the last signature as shown below, excepting subsequent amendments and addition of counterparts.
- M. This MOU shall remain in effect for three (3) years after the effective date of this MOU and may be renewed if all Parties agree.
- N. This MOU is only for the cooperative management purposes of the Parties. It is not a contract for acquisition of supplies or services; it is not legally enforceable; and it does not create any legal obligation of any of the Parties or create any private right or cause of action for or by any person or entity.

VII. CONTACTS

The primary points of contact for carrying out the provisions of this Memorandum of Understanding are:

- California Department of Fish and Game: Kevin Hunting
- California Energy Commission: Roger Johnson
- Bureau of Land Management: Tom Pogacnik
- U.S. Fish and Wildlife Service: Mike Fris
- Department of Defense: Commanding General Marine Corps Installations West or DoD Rec 9.

VIII. APPROVALS



Director
California Department of Fish and Game

12.2.11

Date



Executive Director
California Energy Commission

10-30-11

Date



California State Director
The Bureau of Land Management

11-01-11

Date



Acting

Regional Director, Pacific Southwest Region
United States Fish and Wildlife Service

11-22-11

Date



Deputy Under Secretary of Defense
(Installations & Environment)
Department of Defense

12.10.11

Date