

**Desert Renewable Energy Conservation Planning Agreement**  
**Responses to Public Comments**  
**May 39, 2010**

	<b>SUMMARY OF COMMENT</b>	<b>COMMENTS(S)</b>	<b>RESPONSE</b>
<b>Policy Considerations</b>			
1.	The DRECP should include local governments (e.g., counties) as integral participants	Inyo County  California Wind Energy Association  Los Angeles County  Audubon California/Center for Biological Diversity/Defenders of Wildlife/Sierra Club  California Desert and Solar Working Group  Large-Scale Solar Association	If the REPG determines local government involvement should be more explicit than is currently contemplated in the PA, add paragraph to Section 2.5.2 indicating that the agencies view local governments as key participants in the DRECP process and outlining steps to incorporate local government participation
2.	The NCCPA provides that DFG can enter into an agreement with any person or entity “in cooperation with a local agency that has land use authority over the activities proposed to be addressed in the plan,” but no local governments are included in the Planning Agreement	California Desert and Solar Working Group  Large-Scale Solar Association	See response to comment 1 re roles of local government
3.	Indian tribes must be consulted during the DRECP process	Quechan Tribe of the Fort Yuma Indian Reservation	If the REPG determines local government involvement should be more explicit than is currently contemplated in the PA, add paragraph to Section 2.5.2 indicating that the agencies will consult with Indian tribes in the planning area and outlining steps to incorporate tribal participation

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4.	The military should be brought into the DRECP planning process as a full plan participant	California Desert and Solar Working Group  Large-Scale Solar Association	If the REPG determines local government involvement should be more explicit than is currently contemplated in the PA, add paragraph to Section 2.5.2 indicating that the agencies view the military as a key participant in the DRECP process and outlining steps to incorporate military participation
5.	How will other entities be incorporated as participants in the DRECP over time?	Ronald D. Rempel	Add language to Section 2.5.2 to indicate how counties, tribes, military, and others can join the DRECP as participants after the Planning Agreement is finalized
6.	CEC's power to over-ride provisions of state law pursuant to the Warren-Alquist Act is inconsistent with the NCCPA's requirement that a conservation strategy be implemented	Audubon California/Center for Biological Diversity/Defenders of Wildlife/Sierra Club  California Desert and Solar Working Group	Clarification and resolution of this issue will be addressed in the Plan Implementing Agreement.
7.	Under Section 8.10.1, no credit should be given for mitigation associated with interim projects unless one of the parties to the Planning Agreement is agreeing to fully implement the DRECP and assemble the reserve system regardless of what projects are approved in the future	Ronald D. Rempel	See revisions to Section 8.10.1
8.	The interim permitting procedures set forth in the Planning Agreement and to be established should not apply to projects already well-advanced in the permitting process	Large-Scale Solar Association	See revisions to section 8.9

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9.	To address the significant issue of habitat fragmentation, shouldn't the PUC and Cal-ISO be incorporated as parties to the Planning Agreement?	Ronald D. Rempel	Both the CPUC and Cal-ISO are participants in the REAT and REPG. They have agreed to monitor the need for more explicit involvement as a signatory to the Planning and ultimately, Implementing agreement.
<b>BLM Consideration</b>			
10.	The Planning Agreement should clarify that BLM is adopting the DRECP as a BLM program, and BLM's commitment to the DRECP should be clarified and strengthened	Audubon California/Center for Biological Diversity/Defenders of Wildlife/Sierra Club  California Desert and Solar Working Group  Large-Scale Solar Association	Revise Section 2.5.1 to incorporate relevant information from BLM's November 20, 2009 Notice of Intent
<b>Executive Director Consideration</b>			
11.	<p>The Planning Agreement takes a narrow view of public participation and does not provide for a stakeholders' committee or any other adequate public participation that is transparent, balanced, and collaborative</p> <p>The Planning Agreement should provide for a stakeholders' committee or a more broadly inclusive steering committee</p> <p>Steering committee meetings should be open to the public and all correspondence between steering committee members should be made public</p>	<p>Inyo County</p> <p>California Wind Energy Association</p> <p>Protect Our Communities Foundation</p> <p>Los Angeles County</p> <p>Audubon California/Center for Biological Diversity/Defenders of Wildlife/Sierra Club</p> <p>California Desert and Solar Working Group</p> <p>Large-Scale Solar Association</p> <p>Ronald D. Rempel</p>	A DRECP Director has been hired and a formal stakeholder committee convened since the publication of the draft Planning Agreement. The process is transparent, open to the public, and interactive.

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<b>Legal Considerations</b>			
12.	CEC's in lieu permitting authority does not apply to Section 2835 permits under the NCCPA because the Warren-Alquist Act only preempts other state permits and entitlements "required by law," and participation in NCCPs and the receipt of permits under Section 2835 are defined by statute as voluntary acts	Audubon California/Center for Biological Diversity/Defenders of Wildlife/Sierra Club  California Desert and Solar Working Group	Clarification and resolution of this issue will be addressed in the Plan Implementing Agreement.
13.	The Planning Agreement is unclear with respect to the roles of CEC and BLM in the DRECP process  The DRECP is unclear on relationship between DFG adopting it as an NCCP and CEC issuing state take authorization pursuant to Warren-Alquist without receiving a Section 2835 permit	California Wind Energy Association  Protect Our Communities Foundation  Audubon California/Center for Biological Diversity/Defenders of Wildlife/Sierra Club  Large-Scale Solar Association	See revisions to Sections 2.4.3, 2.4.4, and 2.5.1.
14.	The interim permitting process should be more fully articulated and fails to meet the interim process requirements set forth in FGC Section 2810, including the requirement that the Planning Agreement provide for interim take of covered species	Audubon California/Center for Biological Diversity/Defenders of Wildlife/Sierra Club  California Desert and Solar Working Group  Large-Scale Solar Association	See revisions to Section 8.9.
15.	Incidental take should not be defined with reference to the CESA definition in the Planning Agreement  Take under Section 2835 need not be incidental to an otherwise lawful activity (e.g., for monitoring, etc.)	Ronald D. Rempel	See revisions to the Planning Agreement to clarify the statutory requirements of NCCP.

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<b>Respond as Indicated</b>			
16.	Under the NCCPA, public review drafts and related documents must be made available in a “timely manner,” not simply prior to a workshop as indicated in Section 8.7.3 of the Planning Agreement	Ronald D. Rempel	See response to category 11 above. The DRECP Director is committed to meeting the requirements under the NCCPA for availability of public draft documents.
17.	All data collected in the preparation and implementation of the DRECP should be shared not only with the Wildlife Agencies, pursuant to Section 8.2, but also with the public	Ronald D. Rempel	See revisions to Section 8.2.
18.	The Planning Agreement should clearly state the agencies intent to abide by the NCCPA and adopt the DRECP as an NCCP	Protect Our Communities Foundation  California Desert and Solar Working Group  Large-Scale Solar Association	See revision to Section 2.1 and 2.4.
19.	The DRECP should be led by a full-time director	Audubon California/Center for Biological Diversity/Defenders of Wildlife/Sierra Club  California Desert and Solar Working Group  Large-Scale Solar Association	A full-time DRECP Director has been hired.
20.	The Planning Agreement is overly oriented toward solar development and does not adequately address issues specific to wind energy development.	California Wind Energy Association	See revisions to Section 2.1.

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21.	DRECP should focus more on solar PV, which is a more environmentally sound method of reaching the RPS goals than utility-scale solar development in the desert	Protect Our Communities Foundation	See response to comment 20 above.
22.	The Planning Agreement is confusing in that it incorporates references to Section 2081, and the mitigation standard under 2081 (fully mitigate) is different from the standard under the NCCPA (conservation of the species)	Ronald D. Rempel	See revisions throughout the Planning Agreement (e.g., 2.1, 2.4) that address this comment.
23.	The DRECP should evaluate the presence, preservation, and protection of cultural and historical resources	Quechan Tribe of the Fort Yuma Indian Reservation	The DRECP is a Natural Communities Conservation Plan which, by definition, results in incidental take authorization from the state for listed species. It is limited to addressing biological issues. However, cultural, and historic resources will be addressed in the CEQA and NEPA analysis completed as part of the environmental review of the Plan.
24.	The Planning Agreement is unclear as to the relationship between the DRECP and existing HCPs	California Wind Energy Association	Clarify discussion in Section 4.0 to explain more fully what steps the agencies will take to make the DRECP compatible with existing HCPs and NCCPs
25.	As currently drawn, the DRECP planning area includes areas completely inappropriate for renewable energy development	Protect Our Communities Foundation	See revisions to Section 4.0
26.	The first sentence in Section 2.3 of the Planning Agreement incorrectly describes the definition of conservation under the NCCPA	Audubon California/Center for Biological Diversity/Defenders of Wildlife/Sierra Club  California Desert and Solar Working Group	See revisions to Section 2.3.

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27.	The Planning Agreement list of covered species should be expanded to include Crissal Thrasher, LeConte's Thrasher, Lucy's Warbler, Mountain Plover, Snowy Plover, and all CNPS list 1B and 2 plants occurring within the planning area	Audubon California/Center for Biological Diversity/Defenders of Wildlife/Sierra Club	See revised list of covered species.
28.	To the maximum extent possible, the DRECP should integrate Clean Water Act and Streambed Alteration Agreement requirements into the plan	California Desert and Solar Working Group Large-Scale Solar Association	Comment not relevant for PA. Issue for inclusion in DRECP IA and associated CEQA and NEPA documents.
29.	An in-lieu fee program should be instituted that will apply to both interim projects and projects developed after approval of the DRECP	Large-Scale Solar Association	An in-lieu fee program has been instituted to address certain desert projects. The DRECP may contain mechanisms for implementing mitigation that function similar to an in-lieu fee program.
30.	The Planning Agreement should clarify when it is using NCCPA definitions and when it is not, and it should use NCCPA definitions whenever possible	Ronald D. Rempel	See revisions throughout document.
31.	The Planning Agreement should cite authority, if any exists, for the assertion that an NCCP can balance renewable energy project assurances with ecosystem protection	Ronald D. Rempel	See revisions to language in Section 1.11.
32.	First sentence of Section 2.3 misstates the conservation standard under the NCCPA	Ronald D. Rempel	See revisions to Section 2.3.
33.	Providing regulatory assurances should not be a "goal" of the DRECP listed in Section 2.3	Ronald D. Rempel	See revisions to Section 2.3.
34.	How will independent scientists with actual or potential conflicts of interest be precluded from participating in the independent science advisory process?	Ronald D. Rempel	No change to PA required. DRECP ED has created a policy statement in conjunction with science panel lead.

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35.	How will DFG ensure that monitoring of covered species is achieved when there will be multiple permittees?	Ronald D. Rempel	No change to PA required. DRECP Implementing Agreement will bind participants to monitoring requirements.
36.	The DRECP should utilize information from the Western Mojave Plan to the extent possible	Inyo County	Comment noted
37.	All of Inyo County should be included in the planning area	Inyo County	The DRECP boundary is based on well-defined bio-geographical regions that align with conservation elements.
38.	Geographic boundaries of DRECP planning area should be the same as BLM's California Desert District	California Wind Energy Association	The DRECP boundary is based on well-defined bio-geographical regions that align with conservation elements.
39.	The statement in the Planning Agreement that utility-scale renewable energy facilities must be developed to meet RPS goals is false	Protect Our Communities Foundation	See revisions to relevant Planning Agreement Sections.
40.	The agencies should delay interim projects in sensitive desert areas	Protect Our Communities Foundation	Comment noted
41.	The planning goals should identify consistency with local government general plans as a criterion for siting renewable energy facilities	Los Angeles County	See revisions to relevant Planning Agreement Sections.
42.	The definition of take in Section 1.38 correctly reflects the statutory definition but ignores court precedent that has clarified that definition	Ronald D. Rempel	Comment noted
43.	Section 3.2 should be revised to clarify that DFG is not required to provide regulatory assurances	Ronald D. Rempel	Comment noted
44.	Since the parties to the Planning Agreement do not have the authority to modify existing NCCPs, this option should be removed from consideration in Section 4.0	Ronald D. Rempel	Comment noted



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