

**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
THE BUREAU OF LAND MANAGEMENT, THE U.S. FISH AND WILDLIFE
SERVICE, THE CALIFORNIA ENERGY COMMISSION, AND THE CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE REGARDING COLLABORATION AND
PARTNERSHIP IN IMPLEMENTING THE DESERT RENEWABLE ENERGY
CONSERVATION PLAN.**

I. STATEMENT OF PURPOSE

The Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (USFWS), the California Energy Commission (CEC), and the California Department of Fish and Wildlife (CDFW) agree to work with each other to implement the Desert Renewable Energy Conservation Plan (DRECP) in an effort to streamline renewable energy project permitting and conserve biological and natural resources within the DRECP Area. The BLM, USFWS, CEC and CDFW (referred to collectively as the Agencies) have developed this memorandum of understanding (MOU) for the purpose of strengthening and memorializing their commitment to implement the DRECP in the interagency manner and spirit in which it was developed, including coordination to protect and conserve fish, wildlife, plants and their habitat within the DRECP Area, and facilitate streamlined renewable energy project permitting consistent with the DRECP. This MOU supplements the MOU by and between the Agencies entered into in October 2011 and is itself supplemented by the November 27, 2012 Memorandum of Understanding between BLM and CDFW, the [insert date of execution of final version of September 12, 2014 draft agreement] Agreement between BLM and CDFW, and the [insert date of execution of NCCP IA] NCCP Implementing Agreement for the Desert Renewable Energy Conservation Plan.

II. STATEMENT OF AUTHORITIES

The BLM, USFWS, CEC, and CDFW each have specific administrative responsibility or regulatory authority under Federal and state statutes. These statutes direct them, in part, to take into consideration the effects on the human environment, including but not limited, to biological and natural resources within the state and effects resulting from public, private, and state land use and development actions. These statutes include but are not limited to:

1. BLM. The Federal Land Policy and Management Act of 1976 (FLPMA) 43 U.S.C. § 1701 et seq.; the Omnibus Public Lands Management Act of 2009 (OPLMA), Pub. L. 111-11, March 30, 2009; the Consolidated Appropriations Act of 2012, Pub. L. 112-74, December 23, 2011; the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1531-1544, Sec. 2 (c)(1) and Sec. 7(a)(1) and (2) (ESA); the Sikes Act of 1974, 16 U.S.C. § 670 g-o; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq. (NEPA); Recreation and Public Purposes Act, 43 U.S.C. § 869, et seq. (RPPA); and 43 C.F.R. Part 24, Department of the Interior Fish and Wildlife Policy: State-Federal Relationships.

2. USFWS. The Endangered Species Act of 1973, as amended (ESA), 16 U.S.C. § 1531-1544; the Migratory Bird Treaty Act, as amended 16 U.S.C. § 703-712; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668-668d.

3. CEC: Public Resources Code Sections 25518, subs. (d)-(e), 25302, 25324, and 25500 et seq.

4. CDFW. The California Endangered Species Act, Fish and Game Code § 2050, et seq. (CESA); the Natural Community Conservation Plan Act, Fish and Game Code § 2800, et seq. (NCCPA); Fish and Game Code § 1600, et seq., the Native Plant Protection Act, Fish and Game Code § 1900, et seq. (NPPA); Fish and Game Code §§ 3511, 4700, 5050, and 5515; Fish and Game Code §§ 3503, 3503.5, and 3513; Fish and Game Regulations, Title 14, Cal. Code Regs.; Fish and Game Code § 1802; and the California Environmental Quality Act, Public Resources Code § 21000, et seq. (CEQA).

III. PRINCIPLES OF AGREEMENT

Successful integration and implementation of the BLM Land Use Plan Amendments, California Natural Communities Conservation Plan and permits, and Endangered Species Act section 10 General Conservation Plan and permits depend upon cooperation among the parties to this agreement. Therefore, the Agencies mutually agree to:

- A. Collaborate and partner with one another to implement the DRECP in the interagency partnership in which it was developed.
- B. Maintain regular communication at all levels of the Agencies, as appropriate.
- C. Periodically review DRECP implementation as it relates to planning goals, best available science and new data.
- D. Resolve issues and differences in a timely manner to facilitate continued implementation of the DRECP and accomplishment of planning goals.
- E. Apprise each other of any related actions or issues that might affect the implementation of the DRECP or its environmental analyses.
- F. Work together to ensure involvement of other Federal and state agencies, local governments and agencies, tribes and tribal governments, non-governmental organizations, energy companies and utilities, and other interested parties in the implementation of the DRECP, as appropriate.

IV. COORDINATION AND COOPERATION

The Agencies mutually agree to:

- A. To collaborate and partner in the implementation of the DRECP and its component parts - the BLM Land Use Plan Amendments, California Natural Communities Conservation Plan and permits, and Endangered Species Act section 10 General Conservation Plan and permits - including but not limited to, (i) the streamlining of renewable energy project review; (ii) the conservation and

management of Covered Species and their habitat within the DRECP Area; (iii) the assembly and management of a reserve and other conservation areas; (iv) the establishment and maintenance of the integrated project proposal review process set forth in the DRECP; (v) addressing the funding needs for the DRECP; (vi) monitoring, reporting, and adaptive management as set forth in the DRECP; and (vii) any other significant and relevant policy, planning, and implementation decisions that have the potential to affect renewable energy permitting, fish, wildlife, and plant resources, or the habitat upon which they depend, in the DRECP Plan Area, to the maximum extent possible consistent with Federal and state law.

- B. Fulfill the DRECP Implementation Structure (Volume II.3.1.5.2), including but not limited to assigning appropriate staffing levels to the Executive Policy Group (Volume II.3.1.5.3) and Coordination Group (Volume II.3.1.5.4)¹, within 30 days of signed decisions.
- a. Maintain the integrated databases established by and for the DRECP.
 - b. Conduct integrated compliance, implementation, and effectiveness monitoring for the DRECP Area.
 - c. Provide appropriate staffing to ensure the Integrated Project Proposal Review Process (Volume II.3.1.5.3) is carried out in the manner and timelines put forward.
 - d. Foster candid discussion and share documents related to renewable energy projects and projects in the conservation areas.
 - e. Work together to ensure the selection of a Program Manager within 120 days of the signed decisions.
 - f. Work together to ensure the establishment of the Adaptive Management Team, the Public Agency Working Group, and the Stakeholder Working Group in accordance with the DRECP.
 - g. Work together to ensure the Stakeholder Working Group continues as an integral element of DRECP implementation for the life of the plan, as appropriate.

C. Dispute Resolution :

- a. The Agencies recognize that disagreements concerning implementation or interpretation of this MOU may arise from time to time and agree to work together in good faith. In the event that the Agencies may reach an impasse

¹ The Coordination Group will be initially formed in Sacramento, CA, but one or more of the agencies may transition their representation to staff in the DRECP Plan Area.

in resolving an issue, it is in the best interest of each agency to resolve the issue at the lowest possible level of each organization.

- i. The first level will involve the BLM Field Office Manager, USFWS Assistant Field Supervisor, CEC Project Manager, and CDFW Environmental Program Manager, as appropriate.
- ii. If resolution cannot be reached at that level, the next level will involve the BLM District Manager, USFWS Field Supervisor, CEC Deputy Director for the Division of Siting, Transmission, and Environmental Protection, and the CDFW Regional Manager, as appropriate.
- iii. If resolution cannot be reached at that level, the next level will involve the DRECP Executive Policy Group - BLM State Director, USFWS Regional Director, CEC Executive Director, and CDFW Director.
- iv. The DRECP Coordination Group will be available to all three levels to aid in resolution.
- v. All agencies agree to make the appropriate individual or their representatives available within a reasonable timeframe to discuss the disagreement.

V. ADMINISTRATIVE PROVISIONS

- A. This MOU is made and entered into as of the last date of signature by and between the BLM, USFWS, CEC, and CDFW.
- B. Notwithstanding any other provision in this MOU, nothing in this MOU is intended to be nor shall it be interpreted to be inconsistent with any applicable Federal or state law or regulation.
- C. Nothing in this MOU is intended to or shall be construed to limit or affect in any way the authority or legal responsibilities of BLM, USFWS, CEC, or CDFW.
- D. Nothing in this MOU binds BLM, USFWS, CEC, or CDFW to perform beyond their respective authorities.
- E. This MOU does not obligate any funds from any agency. Subject to the availability of funds, the BLM, USFWS, CEC, and CDFW each agrees to fund its own expenses associated with this MOU. Nothing contained in this MOU shall be construed as obligating any Federal agency to any expenditure or obligation of funds in excess or advance of appropriations, in accordance with the Anti-Deficiency Act, 31 U.S.C. §1341.
- F. No member of or delegate to Congress shall be entitled to any share or part of this MOU, or to any benefit that may arise from it.
- G. The parties will comply with the Federal Advisory Committee Act to the extent it applies.

- H. This MOU is considered the principal instrument between the agencies for implementation of the DRECP. All other Agreements and MOUs regarding DRECP implementation tier from this principal MOU.
- I. The NCCP Implementation Agreement between CDFW and its Permittees, the BLM-CDFW Durability MOU (signed November 27, 2012), the BLM-CDFW Durability MOU (signed _____, 2015), and all subsequent Agreements and MOUs concerning the implementation of the DRECP are tiered to this MOU and are contained in attached Appendices

VI. CONTACTS

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

- Bureau of Land Management: Tom Pogacnik
- U.S. Fish and Wildlife Service: Michael Fris
- California Energy Commission: Roger Johnson
- California Department of Fish and Wildlife: Kevin Hunting

VII. APPROVALS

U.S. BUREAU OF LAND MANAGEMENT

Signature

Date

Title

U.S. FISH AND WILDLIFE SERVICE

Signature

Date

Title

CALIFORNIA ENERGY COMMISSION

Signature

Date

Title

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

Signature

Date

Title