I.2 LEGAL FRAMEWORK

At both the federal and state levels, current energy policy includes targets for increasing electricity generated from renewable energy sources. California's deserts have renewable energy potential of statewide importance, and renewable energy and transmission development is proceeding throughout the desert region. California's deserts also support irreplaceable biological, physical, cultural, scenic, and social resources. The Bureau of Land Management (BLM) Land Use Plan Amendment (LUPA) and Final Environmental Impact Statement (EIS) analyzes the potential environmental impacts of renewable energy and transmission projects and establishes requirements and conditions, including impact avoidance, and minimization and mitigation measures, which allow for streamlined federal permitting of such projects.

The LUPA includes conservation and management actions for special-status species and vegetative types, as well as other physical, cultural, scenic, and social resources, on BLM lands.

This chapter describes the context within which the BLM LUPA and Final EIS was developed. The following statutes, regulations, executive orders, and policies establish requirements or standards for the lead and cooperating agencies in the development and implementation of the Desert Renewable Energy Conservation Plan (DRECP) and Final EIS. For a summary of other resource-specific federal and state laws, orders, and regulations, see Volume III.

I.2.1 Bureau of Land Management

I.2.1.1 Federal Land Policy and Management Act

The Federal Land Policy and Management Act of 1976 (FLPMA), as amended, 43 United States Code (U.S.C.) Section 1701 et seq., provides the authority for the BLM land use planning. Section 102 (a) (7) and (8) sets forth the policy of the United States concerning the management of the public lands. FLPMA requires that "goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law" (Section 102[7]).

Section 201 requires the Secretary of the Interior to prepare and maintain an inventory of the public lands and their resources and other values, giving priority to Areas of Critical Environmental Concern (ACECs), and, as funding and workforce are available, to determine the boundaries of the public lands, provide signs and maps to the public, and provide inventory data to state and local governments.

Section 202 (a) requires the Secretary, with public involvement, to develop, maintain, and when appropriate, revise land use plans that provide by tracts or areas for the use of the public lands.

Section 202(c)(1–9) requires that, in developing land use plans, the BLM shall use and observe the principles of multiple use and sustained yield; use a systematic interdisciplinary approach; give priority to the designation and protection of ACECs; rely, to the extent it is available, on the inventory of the public lands; consider present and potential uses of the public lands; consider the relative scarcity of the values involved and the availability of alternative means and sites for realizing those values; weigh long-term benefits to the public against short-term benefits; provide for compliance with applicable pollution control laws, including state and federal air, water, noise, or other pollution standards or implementation plans; and consider the policies of approved state and tribal land resource management programs; developing land use plans that are consistent with state and local plans to the maximum extent possible and consistent with federal law and the purposes of the FLPMA.

Section 202 (d) provides that all public lands, regardless of classification, are subject to inclusion in land use plans, and that the Secretary may modify or terminate classifications consistent with land use plans.

Section 202 (f) and Sec. 309 (e) provide that federal, state, and local governments and the public be given adequate notice and an opportunity to comment on the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for the management of the public lands.

Section 302 (a) requires the Secretary to manage BLM lands under the principles of multiple use and sustained yield, in accordance with available land use plans developed under Section 202 of FLPMA. There is one exception: where a tract of BLM land has been dedicated to specific uses according to other provisions of law, it shall be managed in accordance with such laws.

Section 302 (b) recognizes the entry and development rights of mining claimants, while directing the Secretary to prevent unnecessary or undue degradation of the public lands.

Section 601 establishes the California Desert Conservation Area (CDCA), and instructs the Secretary of the Interior to prepare and implement a comprehensive, long-range plan for the management, use, development, and protection of the public lands within the CDCA. That plan must take into account the principles of multiple use and sustained yield in providing for resource use and development, including, but not limited to, maintenance of environmental quality, rights-of-way (ROWs), and mineral development. Changes must be made through and in consideration of land use planning and other FLPMA requirements.

I.2.1.1.1 California Desert Conservation Area Plan

The CDCA Plan was approved in 1980 to meet this congressional direction. The CDCA Plan provides a multiple-use management blueprint for approximately 25 million acres in Imperial, Inyo, Kern, Los Angeles, Mono, Riverside, and San Bernardino counties, of which 10 million acres are managed by the BLM. Since adoption, the BLM has amended the CDCA Plan numerous times (BLM 1999). The major CDCA amendments within the Plan Area include the West Mojave Desert CDCA Plan Amendment (2006), the Northern and Eastern Mojave Desert CDCA Plan Amendment (2002), the Northern and Eastern Colorado Desert CDCA Plan Amendment (2002), the Western Colorado Desert California Desert Conservation Amendment CDCA Plan Amendment (2003), and the Imperial Sand Dunes Recreation Area Management Plan (2013). These amendments are discussed in detail in Volume III, Section III.11.3.1.1, Bureau of Land Management.

The CDCA Plan, as amended, is based on the concepts of multiple use, sustained yield, and maintenance of environmental quality. The goal of the CDCA Plan "is to provide for the use of the public lands, and resources of the California Desert Conservation Area, including economic, educational, scientific, and recreational uses, in a manner which enhances wherever possible—and which does not diminish, on balance—the environmental, cultural, and aesthetic values of the Desert and its productivity" (CDCA Plan, Introduction, BLM 1999, pp. 5–6).

This goal is achieved in the CDCA Plan through the direction given for management actions and resolution of conflicts. "Direction is stated first on a geographic basis in the guidelines for each of the four multiple-use classes. Within those guidelines further refinement of direction is expressed in the goals for each Plan element. Direction is also expressed in certain site-specific Plan decisions such as Areas of Critical Environmental Concern (ACECs)." Plan elements for the CDCA Plan include: Cultural Resource Element, Native American Element; Wildlife Element; Vegetation Element; Wilderness Element; Wild Horse and Burro Element; Livestock Grazing Element; Recreation Element; Motorized-Vehicle Access Element; Geology, Energy, and Mineral (G-E-M) Resources Element; Energy Production and Utility Corridors Element; and Land Tenure Adjustment Element.

Decisions within the CDCA Plan that are being amended by the LUPA are described in detail in Volume II, Chapter II.2, No Action Alternative.

I.2.1.1.2 Bakersfield Resource Management Plan

The Bakersfield Resource Management Plan (RMP) was approved in 2014. The Bakersfield Field Office is located in southern-central California and encompasses about 17 million acres throughout Kings, San Luis Obispo, Santa Barbara, Tulare, Ventura, Madera, eastern Fresno, and western Kern counties. Stretching from the coastal islands in the Pacific Ocean

across the Central Valley to the crest of the Sierra Nevada Range, public lands are scattered across the planning area in numerous small parcels. The larger blocks of public land lie in and adjacent to the Carrizo Plain of eastern San Luis Obispo and western Kern counties, in the Three Rivers-Kaweah River region of Tulare County, and in the Lake Isabella-Chimney Peak-Walker Pass region of Kern and Tulare counties. The decisions in the Bakersfield RMP apply to approximately 400,000 acres of BLM-administered public land and 1.2 million acres of Federal mineral estate in the Field Office.

The Bakersfield RMP consists of management objectives, allocations, and guidelines that will direct where things may happen, the resource conditions to be maintained, and the use limitations necessary to meet management objectives. Bakersfield RMP decisions that are being amended by the DRECP are described in detail in Volume II, Chapter II.2.

I.2.1.1.3 Bishop Resource Management Plan

The Bishop RMP was approved in 1993. The Bishop RMP provides direction for managing BLM-administered public land surface and federal mineral estate in the Bishop Resource Area, which is located in the eastern Sierra region of California in Inyo and Mono counties. The Bishop RMP focuses on four major issues: recreation, wildlife, minerals, and land ownership and authorization. In addition to these issues, specific decisions relate to ACECs, Special Recreation Management Areas, Scenic Byways, and streams eligible for study as potential additions to the National Wild and Scenic River System. There are also decisions addressing livestock grazing, cultural resources, fuelwood harvesting, fire suppression, and an east–west transmission line corridor. Decisions within the Bishop RMP that are being amended by the DRECP are described in detail in Volume II, Chapter II.2.

I.2.1.1.4 BLM Manual 1613 – Areas of Critical Environmental Concern

BLM Manual 1613 – Areas of Critical Environmental Concern (BLM 1988) provides the policy and procedural guidance on the identification, evaluation, and designation of ACECs in the development, revision, and amendment of RMPs. It also clarifies the relationship of ACECs to other designations and provides procedural guidance on the monitoring and management of ACECs.

I.2.1.2 National Environmental Policy Act

The National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) directs "a systematic, interdisciplinary approach" to federal planning and decision making and requires the preparation of EISs for "major federal actions significantly affecting the quality of the human environment." The Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR] 1500–1508) require federal agencies to identify and assess reasonable alternatives to proposed actions that will

restore and enhance the quality of the human environment and avoid or minimize adverse environmental impacts. Federal agencies are further directed to emphasize significant environmental issues in project planning and to integrate impact studies required by other environmental laws and Executive Orders into the NEPA process. The NEPA process should therefore be seen as an overall framework for the environmental evaluation of federal actions.

Land use plan amendments are federal actions subject to NEPA compliance.

The NEPA and land use planning process includes public involvement through scoping, which the Council on Environmental Quality regulations define as an "early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action" (40 CFR 1501.7). Volume V, Section V.1.1, of this document describes the scoping process. The federal agencies will review and address substantive public comments received for the Draft DRECP and Environmental Impact Report (EIR)/EIS. The EIS process culminates in issuance of a Record of Decision (ROD). The ROD will document the alternative selected for implementation; describe additional terms and conditions, stipulations, or mitigations that may be required; and discuss considerations that the agencies considered in making the final decision.

I.2.1.3 Federal Endangered Species Act of 1973

The Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.):

1. Provides a means whereby the ecosystems upon which endangered and threatened species depend may be conserved and provides a program for the conservation of such endangered and threatened species (Section 1531[b], Purposes).
2. Requires all federal agencies to seek to conserve endangered and threatened species and utilize applicable authorities in furtherance of the purposes of the ESA (Section 1531[c][1], Policy).
3. Requires all federal agencies to avoid jeopardizing the continued existence of any species listed or proposed for listing as threatened or endangered or destroying or adversely modifying its designated or proposed critical habitat (Section 1536[a], Interagency Cooperation).
4. Requires all federal agencies to consult (or confer) in accordance with Section 7 of the ESA with the Secretary of the Interior, through the U.S. Fish and Wildlife Service to ensure that any federal action (including land use plans) or activity is not likely to jeopardize the continued existence of any species listed or proposed to be listed under the provisions of the ESA, or result in the destruction or adverse modification of designated or proposed critical habitat (Section1536[a], Interagency Cooperation, and 50 CFR 402).

Although not required by regulation (50 CFR 402.12[b]), BLM has determined it will develop a Biological Assessment for the purpose of evaluating the potential effects of its LUPA, a federal action subject to Section 7(a)(2), on species listed or proposed to be listed as threatened or endangered under the ESA, and on critical habitat that has been designated or proposed for designation within the DRECP Plan Area. If an action is likely to adversely affect listed species or critical habitat, consultation under Section 7(a)(2) would result in a Biological Opinion and/or Conference Opinion issued by the U.S. Fish and Wildlife Service (USFWS) to the federal action agency. The Biological Opinion may also include a Conference Opinion for proposed species or critical habitat (50 CFR 402.10). The Biological Opinion would indicate whether the USFWS believes the action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat (50 CFR 402.14(g)(4)). In addition, the Biological Opinion would provide a statement of incidental take if such take may occur (50 CFR 402.14(g)(8)).

I.2.1.3.1 BLM Special-Status Species

It is BLM policy to manage for the conservation of special-status plants and their associated habitats and to ensure that actions authorized, funded, or carried out do not contribute to the need to list any sensitive species as threatened or endangered.

BLM Handbook 6840 (BLM 2008) states:

> Special-status species are: (1) species listed or proposed for listing under the Endangered Species Act (ESA), and (2) species requiring special management consideration to promote their conservation and reduce the likelihood and need for future listing under the ESA, which are designated as Bureau sensitive by the State Director(s).

I.2.1.3.2 Executive Order 13112

Executive Order 13112, Invasive Species, (64 FR 6183 et seq.) provides that no federal agency shall authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk or harm will be taken in conjunction with the actions.

I.2.1.4 National Historic Preservation Act of 1966

Section 106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C. 300101 et seq.), requires federal agencies to take into account the effects of their undertakings (projects), licensed or executed by the agency, on historic properties listed or

eligible for listing in the National Register of Historic Places, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings (16U.S.C. 470[f]). The Section 106 process seeks to accommodate historic preservation concerns with the needs of federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects, and seek ways to avoid, minimize, or mitigate any adverse effects on historic properties. This investigation provides the information to evaluate the potential effects to cultural resources from each of the proposed alternatives.

Historic properties are defined as prehistoric and historic sites, buildings, structures, districts, and objects included in or eligible for inclusion on the National Register of Historic Places, as well as artifacts, records, and remains related to such properties (16 U.S.C. 470w[5]). Historic properties may include places of traditional religious and cultural importance to Indian tribes. Places of traditional religious or cultural importance to tribes may be archeological sites but often they are not. Consultation with tribes is required to identify such properties, assess their significance, determine the effects of the undertaking upon them, and determine appropriate treatment to avoid or reduce any adverse effect to them.

An undertaking is defined as a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; those requiring a federal permit, license, or approval; and those subject to state or local regulation administered pursuant to a delegation or approval by a federal agency.

I.2.1.5 Omnibus Public Land Management Act of 2009

In June 2000, the Department of the Interior (DOI) and BLM established the National Landscape Conservation System (NLCS) to provide for coordinated protection of the BLM's conservation lands. On March 30, 2009, President Barack Obama signed into law the Omnibus Public Land Management Act of 2009 (PL 111-11) (Omnibus Act), which congressionally established the NLCS, to "conserve, protect and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations." The NLCS includes areas administered by the BLM such as national monuments, conservation areas, wilderness study areas, national scenic trails or national historic trails designated as a component of the National Trails System, components of the National Wild and Scenic Rivers System, components of the National Wilderness Preservation System, and public land within the CDCA administered by the BLM for conservation purposes (Section 2002 of the act). Section 2002(c)(2) directs the Secretary of the Interior to manage the system in accordance with any applicable law (including

regulations) relating to the components of the system, and in a manner that protects the values for which the components of the NLCS were designated.

The NLCS brings into a single system some of the BLM's premier designations. Inclusion in the NLCS does not create any new legal protections for the lands already designated as national monuments, conservation areas, wilderness study areas, national scenic trails or national historic trails designated as a component of the National Trails System, components of the National Wild and Scenic Rivers System or components of the National Wilderness Preservation System. Inclusion in the NLCS system will create new legal protections through the land use plan decision for conservation lands in the CDCA. Within this document, lands within the NLCS are called "National Conservation Lands." The BLM will use the LUPA element of the DRECP to define which lands within the CDCA are included in the NLCS.

The National Conservation Lands of the California Desert have the conservation, protection, and restoration mandate of other specially designated lands in the NLCS, pursuant to the Omnibus Act and Secretarial Order 3308 (see Section I.2.1.5.1), consistent with FLPMA Section 601. The DRECP process, a process that includes a FLPMA land use planning component, offers a timely opportunity to reassess the conservation potential of CDCA lands. The DRECP will be used to identify, through amendments to the CDCA Plan, the public lands in the California Desert best suited for conservation under NLCS, as appropriate and consistent with law and policy.

I.2.1.5.1 Secretarial Order 3308

Secretarial Order 3308, Management of the National Landscape Conservation System (DOI 2010a), furthers the purpose of the Omnibus Public Land Management Act of 2009 (PL 111-11), which established the NLCS under the jurisdiction of the BLM in order to conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations, and the president's initiative on America's Great Outdoors.

The order instructs the BLM to ensure that components of the NLCS are managed to protect the values for which they were designated. Appropriate multiple uses may be allowed, but the BLM should prohibit uses that are in conflict with the values for which the units were designated. The Secretarial Order also directs the BLM to manage NLCS components as integral part**s** of the larger landscape, in collaboration with neighboring land owners and surrounding communities, to maintain biodiversity, and promote ecological connectivity, and resilience in the face of climate change. The BLM is instructed to**:**

- integrate science and interdisciplinary perspective into the management of these areas**;**

- offer visitors the adventure of experiencing natural, cultural, and historic landscapes through self-directed discovery;
- build and sustain communities of partners and volunteers;
- draw upon the expertise of specialists throughout the BLM, in coordination with tribes, other federal, state, and local government agencies, interested local landowners, adjacent communities, and other public and private interests; and
- endeavor to inspire the next generation of natural resource and public land stewards by engaging youth through education, interpretation, partnerships, and job opportunities.

I.2.1.6 Secretarial Order 3330

Secretarial Order No. 3330, Improving Mitigation Policies and Practices of the Department of the Interior, establishes a DOI-wide mitigation strategy that will ensure consistency and efficiency in the review and permitting of infrastructure development projects and in conserving the nation's valuable natural and cultural resources. Central to this strategy are "(1) the use of a landscape-scale approach to identify and facilitate investment in key conservation priorities in a region, (2) early integration of mitigation considerations in project planning and design, (3) ensuring the durability of mitigation measures over time, (4) ensuring transparency and consistency in mitigation decisions, and (5) a focus on mitigation efforts that improve the resilience of our Nation's resources in the face of climate change" (DOI 2013).

I.2.1.7 Other Relevant Federal Authorities

I.2.1.7.1 Antiquities Act of 1906

The Antiquities Act of 1906 (16. U.S.C. 431 et seq.) grants the president authority to designate national monuments to protect objects of historic or scientific interest. While most national monuments are established by the president, Congress has also occasionally established national monuments protecting natural and historic features. Since 1906, the president and Congress have created more than 100 national monuments. The BLM, National Park Service, U.S. Forest Service (USFS), and USFWS manage national monuments. No national monuments are within the DRECP Plan Area, although the Santa Rosa–San Jacinto Mountains National Monument is within the CDCA boundary.

I.2.1.7.2 American Indian Religious Freedom Act

This act (42 U.S.C. 1996) recognizes that freedom of religion for all people is an inherent right and that traditional American Indian religions are an indispensable and irreplaceable part of Indian life. Establishing federal policy to protect and preserve the inherent right of religious freedom for Native Americans, this act requires federal agencies to evaluate their

actions and policies to determine if changes should be made to protect and preserve the religious cultural rights and practices of Native Americans. Such evaluations are made in consultation with native traditional religious leaders.

I.2.1.7.3 Indian Sacred Sites

Executive Order 13007 (Indian Sacred Sites), 61 FR 26771 et seq. (1996), requires federal agencies to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions to (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners, and (2) avoid adversely affecting the physical integrity of such sacred sites.

I.2.1.7.4 Consultation and Coordination with Indian Tribal Governments

Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments; 63 FR 27655), provides, in part, that each federal agency shall establish regular and meaningful consultation and collaboration with Indian tribal governments in developing regulatory practices on federal matters that significantly or uniquely affect their communities.

I.2.1.7.5 Secretarial Order 3175

Secretarial Order 3175 (incorporated into the Departmental Manual at 512 DM 2; DOI 1993) requires that if DOI agency actions might impact Indian trust resources, the agency must explicitly address those potential impacts in planning and decision documents, as well as consult with the tribal government whose trust resources are potentially affected by the federal action.

I.2.1.7.6 Secretarial Order 3206

Secretarial Order 3206, American Indian Tribal Rights, Federal-Tribal Trust Responsibilities (DOI 1997 and the ESA), requires DOI agencies to consult with Indian tribes when agency actions to protect a listed species, as a result of compliance with ESA, affect or may affect Indian lands, tribal trust resources, or the exercise of American Indian tribal rights.

I.2.1.7.7 Secretarial Order 3215

Secretarial Order 3215, Principles for the Discharge of the Secretary's Trust Responsibility (DOI 2003), guides DOI officials by defining the relatively limited nature and extent of Indian trust assets, and by setting out the principles that govern the Trustee's fulfillment of the trust responsibility with respect to Indian trust assets.

I.2.1.7.8 Wild and Scenic Rivers Act of 1968

Selected rivers in the United States are preserved for possessing outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values. Rivers, or sections of rivers, so designated are preserved in their free - flowing condition and are not dammed or otherwise impeded. A national wild and scenic designation essentially vetoes the licensing of new hydropower projects on or directly affecting the river. It also provides very strong protection against bank and channel alterations that adversely affect river values; protects riverfront public lands from oil, gas, and mineral development; and creates a federal reserved water right to protect flow- dependent values (16 U.S.C. 1271 et seq.).

I.2.1.7.9 National Trails System Act

The National Trails System was created by the National Trails System Act (16 U.S.C. 1241 et seq.). The act created a series of national trails "to promote the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas and historic resources of the Nation." Specifically, the act authorized three types of trails: the National Scenic Trails, National Recreation Trails, and connecting-and-side trails. In 1978, as a result of the study of trails that were most significant for their historic associations, a fourth category of trail was added: the National Historic Trails.

National Scenic Trails. A congressionally designated trail that is a continuous and uninterrupted extended, long-distance trail so located as to provide for maximum outdoor recreation potential and for the conservation and enjoyment of the nationally significant resources, qualities, values, and associated settings and the primary use or uses of the areas through which such trails may pass. A segment of the Pacific Crest National Scenic Trail is located within the DRECP Plan Area.

National Historic Trails. A congressionally designated trail that is an extended, long-distance trail, not necessarily managed as continuous, that follows as closely as possible and practicable the original trails or routes of travel of national historic significance. The purpose of a National Historic Trail is the identification and protection of the historic route and the historic remnants and artifacts for public use and enjoyment. A National Historic Trail is managed in a manner to protect the nationally significant resources, qualities, values, and associated settings of the areas through which such trails may pass, including the primary use or uses of the trail. Segments of the Old Spanish and Juan Bautista de Anza National Historic Trails are located within the DRECP Plan Area.

National Recreation Trails. A trail designated by the Secretary of the Interior, through a standardized process, including a recommendation and nomination by the BLM. National Recreation Trails provide a variety of compatible outdoor recreation uses in or

reasonably accessible to urban areas or high-use areas. The Nadeau National Recreation Trail is located in the DRECP Plan Area.

I.2.1.7.10 Wilderness Act of 1964

Enacted in 1964, this act (PL 88–577) established the National Wilderness Preservation System of areas to be designated by Congress. It directed the Secretary of the Interior, within 10 years, to review every roadless area of 5,000 or more acres and every roadless island (regardless of size) within National Wildlife Refuges and National Park Systems and to recommend to the president the suitability of each such area or island for inclusion in the National Wilderness Preservation System, with final decisions made by Congress. The Secretary of Agriculture was directed to study and recommend suitable areas in the National Forest System. BLM-administered lands were brought under the direction of the Wilderness Act with the passage of FLPMA in 1976. Sections 603 and 201 of FLPMA (43U.S.C. 1701 et seq.) also directed the BLM to conduct inventories and make recommendations to the president for suitability of areas to be included in the system.

The act provides criteria for determining suitability and establishes restrictions on activities that can be undertaken on a designated area. Criteria set by Congress within this act state that wilderness areas have the following characteristics: (1) generally appear to have been affected primarily by the forces of nature, with the imprint of human's work substantially unnoticeable; (2) outstanding opportunities for solitude or primitive and confined types of recreation; (3) at least 5,000 acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value. The Wilderness Act also outlines accepted and prohibited uses of designated wilderness areas.

The act also sets special provisions for an agency's continuing management of existing or grandfathered rights such as mining and grazing and other agency mission-related activities. Lands acquired through donation adjacent to designated wilderness may become part of the wilderness upon completion of specific notification requirements.

I.2.1.7.11 Recreation and Public Purposes Act

This act (43 U.S.C. 869 et seq.) provides for the lease or disposal of public lands, and certain withdrawn or reserved lands, to state and local governments and qualified nonprofit organizations to be used for recreational or public purposes. Prices that are charged for land use or acquisition are normally less than market value of the specific lands. The act allows for reversion of the lands under certain conditions.

I.2.1.7.12 Surface Mining Control and Reclamation Act

This act (30 U.S.C. 1201 et seq.) establishes a program for the regulation of surface mining activities and the reclamation of coal-mined lands, under the administration of the Office of Surface Mining, Reclamation, and Enforcement in the DOI.

The law sets forth minimum uniform requirements for all coal surface mining on federal and state lands, including exploration activities and the surface effects of underground mining. Mine operators are required to minimize disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable. Restoration of land and water resources is ranked as a priority in reclamation planning.

I.2.1.7.13 Mineral Leasing Act

This act (30 U.S.C. 181 et seq.) authorizes and governs leasing of public lands for development of deposits of coal, oil, gas and other hydrocarbons, sulfur, phosphate, potassium, and sodium.

I.2.1.7.14 Federal Onshore Oil and Gas Leasing Reform Act

An amendment to the Mineral Leasing Act, the Federal Onshore Oil and Gas Leasing Reform Act of 1987, granted the USFS the authority to make decisions and implement regulations concerning the leasing of public domain minerals on National Forest System lands containing oil and gas. The act changed the analysis process from responsive to proactive. The BLM administers the lease but USFS has more direct involvement in the leasing process for lands it administers. The act also established a requirement that all public lands available for oil and gas leasing be offered first by competitive leasing.

I.2.1.7.15 General Mining Law of 1872

This authority (30 U.S.C. 21 et seq.) sets forth rules and procedures for the exploration, location, and patenting of lode, placer, and mill site mining claims. Claimants must file notice of the original claim with the BLM, as well as annual notice of intention to hold, affidavit of assessment work, or similar notice.

I.2.1.7.16 Mining and Mineral Policy Act

This act (30 U.S.C. 21a) expressed the national policy to foster and encourage private enterprise in:

> (1) the development of economically sound and stable domestic mining, minerals, metal, and mineral reclamation industries; (2) the orderly and

> economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security, and environmental needs; (3) mining, mineral, and metallurgical research, including the use and recycling of scrap to promote the wise and efficient use of our natural and reclaimable mineral resources; (4) the study and development of methods for the disposal, control, and reclamation of mineral waste products; and (5) the reclamation of mined land, so as to lessen any adverse impact of mineral extraction and processing upon the physical environment that may result from mining or mineral activities.

I.2.1.7.17 Taylor Grazing Act

The Taylor Grazing Act of 1934 (43 U.S.C. 315) provides for two types of authorized use:

> (1) a grazing permit, which is a document authorizing the use of the public lands within an established grazing district; and (2) a grazing lease, which is a document authorizing the use of the public lands outside an established grazing district. A grazing district is the specific area within which the public lands are administered in accordance with Section 3 of the Taylor Grazing Act. Public lands outside grazing district boundaries are administered in accordance with Section 15 of the act.

I.2.1.7.18 Consolidated Appropriations Act, 2012

The Consolidated Appropriations Act, 2012 (PL 112-74), affects management of the BLM's livestock grazing program. The appropriations language directs the Secretary of the Interior to accept "the donation" of any valid existing grazing permit or lease within the CDCA. The term donation in this provision is interpreted by the BLM to mean "voluntary relinquishment" of the permit or lease to graze on a public land grazing allotment and the preferential position that the permittee or lessee enjoyed, in relation to other applicants, to receive that permit or lease.

In addition to automatic termination of the relinquished permit or lease, the Secretary is directed to permanently end grazing on the land covered by the permit or lease. Designating specific areas of land as unavailable for livestock grazing is typically a land use plan decision; however, in this case Congress has directed that the lands be unavailable for livestock grazing upon relinquishment. In addition, while forage allocation is typically a land use plan decision, Congress has directed the BLM to make the land available for mitigation by allocating the forage to wildlife use.

To reflect the permanent end to grazing, to allocate the forage to wildlife use, and to bring the CDCA Plan into conformance with the Consolidated Appropriations Act, the CDCA Plan

must be amended. The Consolidated Appropriations Act does not itself amend the CDCA Plan. These land use changes resulting from application of the act may be accommodated during the next scheduled plan amendment.

I.2.1.7.19 Public Rangelands Improvement Act of 1978

The Public Rangelands Improvement Act (43 U.S.C. 1901 et seq.) establishes and reaffirms the national policy and commitment to (1) inventory and identify current public rangeland conditions and trends; (2) manage, maintain, and improve the condition of public rangelands so that they become as productive as feasible for all rangeland values in accordance with management objectives and the land use planning process; and (3) charge a fee for public grazing use that is equitable. This act also continues the policy of protecting wild, free-roaming horses and burros from capture, branding, harassment, or death, while facilitating the removal and disposal of excess wild, free-roaming horses and burros that pose a threat to themselves, their habitat, and to other rangeland values.

I.2.1.7.20 Wild Free-Roaming Horses and Burros Act

The Wild Free-Roaming Horses and Burros Act, as amended (16 U.S.C. 1331 et seq.) provides that wild horses and burros shall be considered comparably with other resource values in formulating land use plans, and that management activities shall be undertaken with the goal of maintaining free-roaming behavior.

I.2.1.7.21 Executive Orders 11644 and 11989

Executive Orders 11644 (1972; 37 FR 2877) and 11989 (1997; 42 FR 26959) establish policies and procedures to ensure that off-road vehicle use shall be controlled to protect public lands.

I.2.1.7.22 Executive Order 12898

The 1994 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Executive Order 12898) requires that each federal agency consider the impacts of its programs on minority and low-income populations (49 FR 7629).

I.2.1.8 Renewable Energy Laws and Other Relevant Policies

I.2.1.8.1 Geothermal Steam Act of 1970

The Geothermal Steam Act of 1970, as amended, governs the leasing of geothermal steam and related resources on public lands (30 U.S.C. 1001 et seq.). This act authorizes the Secretary of the Interior to issue leases for the development of geothermal resources and prohibits leasing on a variety of public lands, such as those administered by the USFWS.

In accordance with the Geothermal Steam Act and the Geothermal Resources Leasing Rule (43 CFR 3201.10), the BLM may issue leases on the following "available" lands:

- Lands administered by the DOI, including public and acquired lands not withdrawn from such use.
- Lands administered by the USFS with its concurrence.
- Lands conveyed by the United States where the geothermal resources were reserved to the United States.
- Lands subject to Section 24 of the Federal Power Act, as amended (16 U.S.C. 818), with the concurrence of the Secretary of Energy.

Conversely, the BLM is prohibited from issuing leases on the following statutorily closed federal lands as defined in the Geothermal Resources Leasing Rule (43 CFR 3201.11).

- Lands where the Secretary of Interior (Secretary) has determined that issuing the lease would cause unnecessary or undue degradation of public lands and resources.
- Lands contained within a unit of the National Park System or otherwise administered by the National Park Service.
- Lands where the Secretary determines after notice and comment that geothermal operations, including exploration, development, or utilization of lands, are reasonably likely to result in a significant adverse effect on a significant thermal feature within a unit of the National Park System.
- Lands within a National Recreation Area.
- Fish hatcheries or wildlife management areas administered by the Secretary.
- Indian trust or restricted lands within or outside the boundaries of Indian reservations.
- Lands where Section 43 of the Mineral Leasing Act (30 U.S.C. 226 et seq.) prohibits geothermal leasing, including:
    - Wilderness areas or wilderness study areas administered by the BLM or other surface-management agencies.
    - Lands designated by Congress as wilderness study areas, except where the statute designating the study area specifically allows leasing to continue.
    - Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-sixth Congress (House Document 96-119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or are released to uses other than wilderness by an act of Congress.

I.2.1.8.2 Energy Policy Act of 2005

On August 8, 2005, the Energy Policy Act of 2005 (42 U.S.C. 15801 et seq.) was signed into law. Section 211 of the act states:

> It is the sense of the Congress that the Secretary of the Interior should, before the end of the 10-year period beginning on the date of enactment of this Act, seek to have approved non-hydropower renewable energy projects located on the public lands with a generation capacity of at least 10,000 megawatts of electricity.

As of February 2014, the DOI has authorized 115 large-scale renewable energy projects nationwide on or involving public lands, including 27 solar facilities, 40 wind farms, and 48 geothermal plants. When completed, these projects will provide more than 16,316 megawatts of power. Other applications being reviewed could contribute to this goal.

I.2.1.8.3 Secretarial Order 3285A1: Renewable Energy Development by the Department of the Interior

Secretarial Order (SO) 3285A1, dated February 22, 2010, establishes the development of renewable energy as a priority for the DOI. It established a DOI-wide approach for applying scientific tools to increase understanding of climate change and to coordinate an effective response to impacts on tribes and on the land, water, ocean, fish and wildlife, and cultural heritage resources managed within the DOI. SO 3285A1 also establishes an energy and climate change task force that identifies specific zones on U.S. public lands where the DOI can facilitate a rapid and responsible move toward large-scale production of solar, wind, geothermal, and biomass energy (DOI 2010b).

I.2.1.8.4 BLM Solar Energy Program

The BLM developed and issued a Solar Energy Development Policy in 2007 to address increased interest in solar energy development on BLM-administered lands and to implement goals to construct renewable energy facilities on public lands. This 2007 policy establishes procedures for processing ROW applications for solar energy development projects on public lands administered by the BLM in accordance with the requirements of the FLPMA and the BLM's implementing regulations (43 CFR 2800), and for evaluating the feasibility of installing solar energy systems on BLM-administered facilities. This policy was updated in 2010 by two more detailed policies that establish a maximum term for authorizations, diligent development requirements, bond coverage, potential best management practices for solar energy development projects, and interim guidance on how to calculate rent for utility-scale solar energy facilities (BLM 2010a, 2010b).

The BLM and Department of Energy prepared a Solar Energy Development Programmatic EIS (Solar PEIS) to assess environmental impacts associated with the development and implementation of agency-specific programs that would facilitate environmentally responsible utility-scale solar energy development in six western states (Arizona, California, Colorado, New Mexico, Nevada, and Utah). The DOI's ROD for the Solar PEIS (Western Solar Plan) identified Solar Energy Zones, which are areas with few impediments to utility-scale production of solar energy where BLM will prioritize solar energy and associated transmission infrastructure development. This ROD amended the CDCA Plan, the Bishop RMP, and the Caliente RMP.

The Western Solar Plan designated two Solar Energy Zones in California, both of which are within the boundaries of the DRECP Plan Area. The Imperial East Solar Energy Zone has a total area of 5,722 acres and is in southeastern Imperial County near the U.S.–Mexico border. The Riverside East Solar Energy Zone has a total area of 147,910 acres and is in southeastern Riverside County. A third Solar Energy Zone, the West Chocolate Mountains, was designated through the West Chocolate Mountains Renewable Energy Evaluation Area ROD, signed in August 2013. The West Chocolate Mountains is also within the boundaries of the DRECP Plan Area. The Western Solar Plan also identified "variance" lands with solar energy resource potential that are available for application and solar energy development with additional environmental reviews and clearances. Some 576,989 acres of "variance" lands were identified in the CDCA.

The Western Solar Plan also included programmatic and Solar Energy Zone-specific design features to be required for all utility-scale solar energy projects on BLM-administered lands to avoid and/or minimize adverse impacts. For information on design features, see Appendix A, Section A.4 of the ROD. The Solar PEIS ROD also made a commitment that BLM would develop mitigation strategies to avoid, minimize, and compensate for adverse impacts associated with utility scale solar development.

The BLM executed a Solar Programmatic Agreement on September 24, 2012. Signatories include the BLM, the Advisory Council on Historic Preservation, and State Historic Preservation Officers from Arizona, California, Colorado, Nevada, New Mexico, and Utah. The Programmatic Agreement establishes procedures the BLM will follow to meet its Section 106 obligations under the National Historic Preservation Act for all future, site-specific solar energy applications where the BLM is the lead federal agency and the application is for projects on public lands managed by the BLM. The Programmatic Agreement applies to all solar applications processed under the decisions and policies in the Western Solar Plan (BLM 2012).

The Western Solar Plan also carried forward a proposal to establish a competitive leasing program for renewable energy through new regulations. On September 26, 2014, the BLM

published a proposed rule in the Federal Register called "Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections." The proposed rule would promote the use of preferred areas for solar and wind energy development and establish competitive processes, terms, and conditions for solar and wind energy ROWs both inside and outside of these preferred areas.

I.2.1.8.5 BLM Wind Energy Program

To address increased interest in wind energy development, implement the Energy Policy Act of 2005 recommendation to increase renewable energy production, and ensure the responsible development of wind resources on BLM-administered lands, the BLM evaluated wind energy potential on public lands and established wind energy policy. To support wind energy development on public lands while minimizing potential environmental and socio-cultural impacts, the BLM established a Wind Energy Development Program that includes (1) an assessment of wind energy development potential on BLM-administered lands through 2025 (a 20-year period), (2) policies regarding the processing of wind energy development ROW authorization applications, (3) best management practices for mitigating the potential impacts of wind energy development on BLM-administered lands, and (4) amendments of specific BLM land use plans to address wind energy development.

In connection with this program, the BLM, in cooperation with the Department of Energy, prepared a programmatic EIS in 2005 to (1) assess the environmental, social, and economic impacts associated with wind energy development on BLM -administered land; and (2) evaluate a number of alternatives to determine the best management approach for the BLM to adopt in terms of mitigating potential impacts and facilitating wind energy development (BLM 2005).

The BLM's proposed rule "Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections" described in Section I.2.1.8.4 also would apply to wind energy development.

I.2.1.8.6 BLM Geothermal Leasing Programmatic EIS

In October 2008, the BLM published the Final Programmatic EIS for Geothermal Leasing in the Western United States (BLM and USFS 2008). It addressed geothermal leasing on lands administered by the BLM and the USFS in 12 western states including Alaska. Specific to the BLM, the ROD of the Final Programmatic EIS approved the BLM's decision to facilitate geothermal leasing of the federal mineral estate in these 12 western states. This decision (1) allocates BLM lands as open to be considered for geothermal leasing or closed for geothermal leasing; (2) develops a reasonably foreseeable development scenario that

indicates a potential for 12,210 megawatts of electrical generating capacity from 244 power plants by 2025, plus additional direct uses of geothermal resources; and (3) adopts stipulations, best management practices, and procedures for geothermal leasing and development on BLM-administered lands.

I.2.1.8.7 Programmatic EIS Designation of Energy Corridors on Federal Land in 11 Western States

Section 368 of the Energy Policy Act of 2005 (42 U.S.C. 15801 et seq.), enacted August 8, 2005, directs the secretaries of Agriculture, Commerce, Defense, Energy, and the Interior (the Agencies) to designate under their respective authorities corridors on federal land in 11 western states (Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming) for oil, gas, and hydrogen pipelines, and electricity transmission and distribution facilities (energy corridors).

The Final PEIS was prepared by the BLM and the U.S. departments of Energy, Agriculture, and Defense as part of their work to implement Section 368 of the Energy Policy Act of 2005. The Final PEIS, released on November 28, 2008, identifies energy corridors to facilitate future siting of oil, gas, and hydrogen pipelines, as well as renewable energy development projects and electricity transmission and distribution facilities on federal lands in the West to meet the region's increasing energy demands while mitigating potential harmful effects to the environment.

Section 368 does not require that the agencies consider or approve specific projects, applications for ROWs, or other permits within designated energy corridors. Importantly, Section 368 does not direct, license, or otherwise permit any on-the-ground activity of any sort. If an applicant is interested in obtaining an authorization to site a project within any corridor designated under Section 368, the applicant would have to apply for a ROW authorization, and the Agencies would consider each application by applying appropriate project-specific reviews under requirements of laws and related regulations including, but not limited to, NEPA, the Clean Water Act, the Clean Air Act, Section 7 of the ESA, and Section 106 of the National Historic Preservation Act.

On July 7, 2009, multiple organizations filed a complaint in *Wilderness Society, et al. v. United States Department of the Interior, et al.,* No. 3:09-cv-03048-JW (N.D. Cal.). The plaintiffs raised a variety of challenges in response to the Agencies' RODs.

In July 2012, the BLM, USFS, and Department of Energy entered into a settlement agreement with the plaintiffs. One of the requirements of the agreement was that the BLM and USFS make future recommendations for revisions, deletions, and additions to the Section 368 corridor network consistent with applicable law, regulations, agency

policy, and guidance, and that they would consider the following general principles in future siting recommendations:

- Corridors are thoughtfully sited to provide maximum utility and minimum impact on the environment.
- Corridors promote efficient use of the landscape for necessary development.
- Appropriate and acceptable uses are defined for specific corridors.
- Corridors provide connectivity to renewable energy generation to the maximum extent possible, while also considering other sources of generation, in order to balance the renewable sources and to ensure the safety and reliability of electricity transmission.

I.2.1.9 Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 et seq.), is the domestic law that affirms, or implements, the United States' commitment to four international conventions (with Canada, Japan, Mexico, and Russia) for the protection of a shared migratory bird resource. Each of the conventions protect selected species of birds common to both countries (that is, they occur in both countries at some point during their annual life cycle). The MBTA protects migratory birds and their nests, eggs, young, and parts from possession, sale, purchase, barter, transport, import, export, and take. For purposes of the MBTA, take is defined as "to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect" (50 CFR 10.12). It is a strict liability statute wherein proof of intent is not an element of a taking violation. The MBTA applies to migratory birds identified in 50 CFR 10.13.

In general, the MBTA protects all birds occurring in the United States except for house (English) sparrow (*Passer domesticus*), European starlings (*Sturnus vulgaris*), rock doves (pigeons; *Columba livia*), any recently listed unprotected species in the *Federal Register*, and non-migratory upland game birds. The USFWS has regulatory authority over implementation and enforcement of the MBTA. For species listed under both the ESA and MBTA, the USFWS has the authority to authorize incidental take with special terms and conditions under Section 10(a)(1)(B) of the ESA and have this permit also serve as a Special Purpose Permit under the MBTA (50 CFR 2I.27). Special Purpose Permits are required in the event that an action would take, possess, or involve the sale or transport of birds protected by the MBTA.

I.2.1.10 Bald and Golden Eagle Protection Act of 1940, as Amended

The Bald and Golden Eagle Protection Act (Eagle Act) (16 U.S.C. 668 et seq.) is the primary law protecting bald eagles (*Haliaeetus leucocephalus*) and golden eagles (*Aquila chrysaetos*). "Take" under this statute is defined as "pursue, shoot, shoot at, poison, wound, kill, capture,

trap, collect, or molest or disturb." "Disturb" is defined as "to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle; (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior; or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior" (50 CFR 22.3).

In 2009, the USFWS promulgated a new permit rule under the Eagle Act that provides a mechanism to authorize unintentional take of eagles (50 CFR 22.26). Under this new rule, the USFWS can issue permits that authorize individual instances of take of bald and golden eagles when the take is associated with, but not the purpose of, an otherwise lawful activity, and cannot be practicably avoided. The regulations also authorize permits for "programmatic" take, where take of eagles is anticipated to be (1) recurring, but not caused solely by indirect effects; and (2) occurring over the long term and/or in a location or locations that cannot be specifically identified, such as that associated with turbine operations for wind energy generation. However, under the regulations, any ongoing or programmatic take authorized must be unavoidable, even after the implementation of advanced conservation practices intended to avoid and minimize take. Project developers and operators are not legally required to seek or obtain an eagle take permit. However, the take of an eagle without a permit is a violation of the Eagle Act and could result in prosecution.

Eagle take permits may be issued only in compliance with the conservation standards of the Eagle Act. This means the take must be compatible with the preservation of each species, defined as "consistent with the goal of stable or increasing breeding populations" (74 FR 46836). A permit to take eagles under an ESA Section 10(a)(1)(B) permit can be issued when eagles are covered under an associated HCP.