

CALENDAR ITEM

134

A & S: Statewide

06/23/11
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**CONSIDER APPROVAL OF MEMORANDUM OF UNDERSTANDING
WITH STATE AND FEDERAL AGENCIES TO FACILITATE PARTICIPATION
AND ENGAGEMENT IN THE RENEWABLE ENERGY ACTION TEAM AND
THE DESERT RENEWABLE ENERGY CONSERVATION PLAN**

PARTIES:

California State Lands Commission

California Energy Resources Conservation and Development Commission

California Department of Fish and Game

United States Bureau of Land Management

United States Fish and Wildlife Service

BACKGROUND:

The California State Lands Commission ("Commission") has been invited to work with the Renewable Energy Action Team ("REAT") toward completion of the Desert Renewable Energy Conservation Plan ("DRECP"), the development of which was mandated by Executive Order #S-14-08 with the purpose of advancing state and federal conservation goals in the desert regions of California, while also facilitating the timely permitting of renewable energy projects under applicable State and federal laws. The REAT was formed in 2008 to oversee implementation of the DRECP and is comprised of the California Department of Fish and Game ("DFG"), the California Energy Resources Conservation and Development Commission ("CEC"), the United States Bureau of Land Management ("BLM"), and the United States Fish and Wildlife Service ("FWS"). The objectives of the REAT were further refined in a Memorandum of Understanding ("2009 MOU") signed by the United States Secretary of the Interior and the Governor of California in October 2009.

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The DRECP is being prepared pursuant to the Natural Community Conservation Planning ("NCCP") Act (Fish & G. Code § 2800 *et seq.*), and is currently expected to be completed by the end of 2012. Generally speaking, an NCCP "identifies and provides for the regional or area-wide protection of plants, animals, and their habitats, while allowing compatible and appropriate economic activity....The primary objective of the NCCP program is to conserve natural communities at the ecosystem level while accommodating compatible land use. The program seeks to anticipate and prevent the controversies and gridlock caused by species' listings by focusing on the long-term stability of wildlife and plant communities and including key interests in the process." (<http://www.dfg.ca.gov/habcon/nccp/>).

The primary goals of the DRECP are to: provide for the long-term conservation and management of sensitive species; preserve, restore, and enhance natural communities and ecosystems that support those species; identify the most appropriate locations for the development of utility-scale renewable energy projects, taking into account potential impacts to threatened and endangered species and sensitive natural communities; provide a comprehensive means to coordinate and standardize mitigation and compensation requirements; provide a framework for a more efficient process by which proposed renewable energy projects within the DRECP planning area may obtain regulatory authorizations and which results in greater conservation values than a project-by-project, species-by-species review would have; and identify and incorporate climate change adaptation research, management objectives, and/or policies into the final plan document.

In May 2010, the REAT Agencies entered into a Planning Agreement pursuant to Fish and Game Code section 2810 which specifies, among other things, the conservation objectives for the planning area, the roles and responsibilities of the plan participants. The Planning Agreement also describes the process the plan participants agree to follow to ensure the inclusion of independent scientific input and public participation, development of sound conservation strategies and reserve design, and compliance with federal and state permitting requirements and other laws. The currently proposed MOU between the Commission and the REAT would facilitate coordination between Commission staff and the REAT Agencies to ensure that REAT and DRECP goals for renewable energy development and environmental protection are accomplished in a manner that is consistent with and advances CSLC's management objectives for School Lands in the DRECP Planning Area.

Because the DRECP is a project subject to the requirements of the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA"), a joint Environmental Impact Report/Environmental Impact Statement ("EIR/EIS") is being prepared that will disclose and analyze the potentially significant environmental effects of implementing the DRECP. Additionally, if the NCCP is approved, it will include an Implementation Agreement executed and agreed to by the

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plan participants, which will contain specific provisions required by Fish and Game Code section 2820, subd. (b). These provisions include biological and compliance monitoring, funding, implementation oversight and management responsibilities, establishment of reserves, conditions for species coverage and coverage revocation, and procedures for “third-party” delegation of any incidental take authorization which may be issued to plan participants by the DFG and the FWS pursuant to provisions of the NCCP Act and the federal Endangered Species Act, respectively, upon approval of the DRECP by those agencies.

PROPOSED MEMORANDUM OF UNDERSTANDING:

The geographic extent of the DRECP planning area includes the Mojave and Colorado Desert regions of southern California, which contain extensive lands under the jurisdiction of the Commission that are administered under the State Lands Act, pursuant to California Public Resources Code (“PRC”) sections 6001, et seq. (“School Lands”). Execution of the proposed MOU will enable Commission staff to work collaboratively with the REAT Agencies and other federal, state, and local agencies and stakeholders, to develop the DRECP and, potentially, become a plan participant and signatory to the Implementation Agreement if the Commission determined that doing so was in the best interest of the State. While the proposed MOU would facilitate the Commission’s participation in the DRECP planning process and provide input related to the use of School Lands in the DRECP planning area, it would not obligate the Commission to take any particular action with regard to lands under its exclusive jurisdiction; it would simply provide the opportunity for Commission staff to participate in the planning process to the extent the Commission deems such participation appropriate. Staff has analyzed the proposed MOU, the REAT MOUs, and the DRECP Planning Agreement and has concluded that execution of the proposed MOU and participation in the DRECP process with the REAT is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission’s delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, § 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of CEQA because it is not a “project” as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060(c)(3) and 15378.

2. More information about the DRECP and the REAT, including a schedule of activities and maps, can be found at <http://drecp.org>.

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EXHIBIT:

- A. 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 California State Lands Commission Regarding Participation and Engagement in the California Renewable Energy Action Team and the Desert Renewable Energy Conservation Plan.

IT IS RECOMMENDED THAT THE COMMISSION:

1. Find that the activity is not subject to the requirements of CEQA pursuant to Title 14, California Code of Regulations, section 15060(c)(3) because the activity is not a project as defined by Public Resources Code section 21065 and Title 14, California Code of Regulations, section 15378.
2. Authorize the Executive Officer to execute the Memorandum of Understanding in substantially the form attached as Exhibit A.

EXHIBIT A

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 CALIFORNIA STATE LANDS COMMISSION 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. In 2011 the California Legislature enacted and the Governor signed legislation (SB 2X-Simitian) adopting the 33 percent by 2020 standard. 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) (collectively, 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 Action 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 is scheduled to be completed in 2012 and will guide solar and other qualified RPS energy project siting in the DRECP Planning Area to ensure the conservation of California's natural resources.

The DRECP Planning Area contains extensive lands under the jurisdiction of the California State Lands Commission (CSLC) that are administered under the State Lands Act, pursuant to California Public Resources Code (PRC) sections 6001, et seq. (School Lands). 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 lands and the lands may in many cases be appropriately used as renewable energy sites with revenues from such facilities accruing to the benefit of the State Teachers' Retirement System pursuant to PRC section 6217.5. By resolution, adopted October 16, 2008 (Minute Item 57), the CSLC expressed its support for the environmentally responsible development of Schools Lands under its jurisdiction for renewable energy projects and has encouraged the submission of applications for such developments on its School Lands.

The REAT's ongoing coordination efforts and joint development of the DRECP presents an important opportunity for the REAT and CSLC to develop the DRECP in a manner that is consistent with the CSLC's management and use of the state School Lands. CSLC staff participation can inform the REAT Agencies and the DRECP planning effort about lands under its jurisdiction that would be suitable and available for renewable energy or transmission line development and may assist in identifying constraints on renewable energy development on or in proximity to lands under the CSLC's jurisdiction. The REAT Agencies, conversely, can assist the CSLC by providing information necessary for biological and/or cultural resource reviews, mitigation and conservation decisions, in connection with ongoing CSLC programs and 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, Bureau of Land Management, the U.S. Fish and Wildlife Service, and the California State Lands Commission (collectively, Parties).

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 in a way that advances the CSLC's renewable energy development initiatives and statutory directives applicable to School Lands managed by the CSLC. CSLC staff 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 advances CSLC's management objectives for School Lands in the DRECP Planning Area..

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 CSLC'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, renewable energy development, conservation and mitigation opportunities throughout the DRECP Planning Area. The CSLC's participation in the DRECP is in anticipation of the identification of renewable energy and transmission development opportunities on School Lands under the CSLC's jurisdiction and is recognition of the CSLC's interest in being an Implementing Agency of the DRECP upon plan completion.

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 including, but not limited to, the California Endangered Species Act, the federal Endangered Species Act, and the Federal Land Policy and Management Act of 1976.

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. California State Lands Commission Authority: Public Resources Code sections 6001, et seq.

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.
- B. Work together to coordinate 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 Geographical Information Systems (GIS) staff, technical expertise, data and products (i.e. the Mission Compatibility Awareness Tool (MCAT) 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 advances CSLC's policy goals and management objectives for the school lands it manages in the DRECP Planning Area..

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 CSLC. Specifically, nothing in this MOU shall be construed as limiting the CSLC's exercise of its approval authority or discretion over any proposal or development affecting its School Lands.

Nothing in this MOU binds CDFG, CEC, BLM, USFWS, or CSLC to perform beyond their respective authorities.

- B. Nothing in this MOU requires CDFG, CEC, BLM, USFWS, or CSLC to assume or expend any funds in excess of available appropriations authorized by law.
- C. The mission requirements, funding, personnel, and other priorities of CDFG, CEC, BLM, USFWS, or CSLC components may affect their respective abilities to fully implement all the provisions identified in this MOU.
- D. Specific activities that involve the transfer of money, services, or property between or among the Parties may require execution of separate agreements or contracts.
- E. Nothing in this MOU is intended to or shall be construed to restrict BLM, USFWS, or the State of California, whether through CDFG, CEC, CSLC or other agencies or departments, from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
- F. 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.
- G. 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.
- H. 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.
- I. Amendments or supplements to this MOU may be proposed by either CDFG, CEC, BLM, USFWS, or CSLC and shall become effective upon written approval of all Parties.
- J. CDFG, CEC, BLM, USFWS, or CSLC 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.

- K. 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.
- L. This MOU shall remain in effect for three (3) years after the effective date of this MOU.
- M. This MOU is intended to facilitate cooperation among 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 or between 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: Terry O'Brien, Roger Johnson
- Bureau of Land Management: Tom Pogacnik
- U.S. Fish and Wildlife Service: Mike Fris
- California State Lands Commission: Jennifer Lucchesi

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VIII. APPROVALS

United States Fish and Wildlife Service

Date:

California State Lands Commission

Date:

California Department of Fish and Game

Date:

United States Bureau of Land Management

Date:

California Energy Commission

Date: