DOCKET
09-RENEW EO-1
DATE
RECD. JUN 02 2010

Planning Agreement

by and among

California Department of Fish and Game,

California Energy Commission,

United States Bureau of Land Management, and

United States Fish and Wildlife Service

for the

Desert Renewable Energy Conservation Plan

May 2010

California Energy Commission | Department of Fish and Game | Bureau of Land Management | U.S. Fish and Wildlife Service

Table of Contents

1.0 Definitions 1
2.0 Scope and Goals of the DRECP 5
2.1 Desert Renewable Energy Conservation Plan 5
2.2 Purposes of the DRECP Planning Agreement 6
2.3 Planning Goals 7
2.4 Compliance with Federal and State Laws 8
2.4.1 Natural Community Conservation Planning Act 8
2.4.2 Habitat Conservation Planning under the FESA 9
2.4.3 Section 7 Consultation under the FESA 9
2.4.4 Energy Commission's Licensing under the Warren-Alquist Act 9
2.5 Goals and Expectations 10
2.5.1 Participation by CEC and BLM 10
2.5.2 Future Participation of Other Entities in the DRECP 11
2.5.3 Transmission Line Permitting Agencies' Participation in the DRECP 11
2.6 Future FESA Section 7 Consultations 11
2.7 Other Fish and Wildlife Protection Laws 12
2.8 Concurrent Planning for Wetlands and Waters 12
3.0 Regulatory Assurances 12
3.1 Regulatory Assurances under the FESA 12
3.2 Regulatory Assurances under the NCCPA 12
4.0 Planning Area 13
5.0 Plan Participants' Roles and Responsibilities in Developing the DRECP 13
5.1 California Energy Commission 13
5.2 California Department of Fish and Game 14
5.3 U.S. Bureau of Land Management 14
5.4 U.S. Fish and Wildlife Service 15
6.0 NCCPA Preliminary Conservation Objectives 15
7.0 Conservation Elements 16
7.1 Ecosystems, Natural Communities, and Covered Species List 16
7.2 Conservation Areas and Viable Habitat Linkages 16
7.3 Climate Change 17
7.4 Project Design 17
8.0 Process for Preparing the DRECP 17
8.1 Best Available Scientific Information 17
8.2 Data Collection 18
8.3 Types of Data 18
8.4 Independent Scientific Input 18
8.5 Executive Steering Committee 19
8.6 Reserved Authority 19
8.7 Public Participation 19
8.7.1 Solicitation of Public Input 20
8.7.2 Outreach 20
8.7.3 Availability of Public Review Drafts 20

8.7.4 Public Review and Comment Period Prior to Adoption 21
8.8 Covered Activities 21
8.9 Interim Project Processing 21
8.9.1 Notification Process for Interim Projects 22
8.9.2 Wildlife Agency and Energy Commission Review of Interim Projects 22
8.9.3 Coordinating Interim Process with DRECP Preparation 23
8.10 Protection of Habitat and Other Resources during Planning Process 23
8.10.1 Conservation Actions 23
8.10.2 Other Planning Processes within Planning Area 24
8.10.3 Mitigation for Specific Projects 24
8.11 Implementing Agreement 24
9.0 Commitment of Resources 25
9.1 Funding 25
9.2 DFG and CEC Assistance with Funding 25
9.3 USFWS and BLM Assistance with Funding 25
9.4 Expertise of the Parties 25
10.0 Miscellaneous Provisions 26
10.1 Public Officials Not to Benefit 26
10.2 Statutory Authority 26
10.3 Multiple Originals 26
10.4 Effective Date 26
10.5 Duration 26
10.6 Amendments 26
10.7 Termination and Withdrawal 27
10.8 Funding 27
10.9 No Precedence 27
Exhibit A: DRECP Planning Area Map 29
Exhibit B: DRECP Natural Communities and Species of Planning Interest 30
Exhibit C: Preliminary List of Covered Activities 34

Desert Renewable Energy Conservation Plan
Planning Agreement

This Planning Agreement regarding the Desert Renewable Energy Conservation Plan ("Planning Agreement") is entered into as of the Effective Date by and among the California Department of Fish and Game ("DFG"), the California Energy Commission ("CEC"), the United States Bureau of Land Management ("BLM"), and the United States Fish and Wildlife Service ("USFWS").

1.0 Definitions

A. Terms used in this Planning Agreement that are defined in the Natural Community Conservation Planning Act have the meanings set forth in California Fish and Game Code section 2805, except as otherwise expressly provided in this Planning Agreement.

B. The following terms as used in this Planning Agreement will have the meanings set forth below.

1.1. "Action Area" means all areas that will be affected directly or indirectly by the Covered Activities and not merely the immediate area involved in the action.

1.2. "Applicant" means any person, individual, corporation, partnership, trust, association, State, or Local Government entity that seeks Take Authorization from one or both of the Wildlife Agencies for the purposes of facilitating the implementation of Covered Activities. The CEC is an Applicant only to the USFWS for purposes of the FESA. The BLM is not an Applicant to either of the Wildlife Agencies.

1.3. "Biological Assessment" or "BA" means the information prepared by or under the direction of a Federal Action Agency for the purpose of evaluating the potential effects of the action within the Action Area on species which are listed or proposed to be listed as threatened or endangered under the FESA, and on critical habitat which has been designated or proposed for designation under the FESA, and submitted to the USFWS pursuant to section 7(c)(1) of the FESA.

1.4. "Biological Opinion" means a document prepared by the USFWS pursuant to 50 C.F.R 402.14 at the conclusion of formal consultation under section 7(a)(2) of the FESA.

1.5. "Certification" means the issuance of a certificate by the California Energy Commission pursuant to its exclusive power to certify all sites and related

facilities in the state under the California Public Resources Code section 25500.

1.6. ”CEQA” means the California Environmental Quality Act, Public Resources Code, section 21000, *et seq.*

1.7. “CESA” means the California Endangered Species Act, California Fish and Game Code, section 2050, *et seq.*

1.8. “Competitive Renewable Energy Zone” or “CREZ” means a geographic area that can be developed in the most cost effective and environmentally benign manner to produce between 250 megawatts (MW) and 10,000 MW of renewable energy.

1.9. “Covered Activities” means those certain activities that will be addressed in the DRECP and for which Take Authorization may be issued by the Wildlife Agencies pursuant to the California Fish and Game Code (section 2835) and/or the FESA, and/or by the CEC pursuant to the Warren-Alquist Act.

1.10. “Covered Species” means those plant and animal species, whether or not they are Listed Species, which are identified as such in the DRECP, the conservation and management of which are provided for in the DRECP, and the Take of which may be authorized in accordance with the NCCPA and/or the Warren-Alquist Act, and/or the FESA.

1.11. “DRECP” means the Desert Renewable Energy Conservation Plan. The DRECP is an NCCP, which will help provide for effective protection and conservation of desert ecosystems while allowing for the appropriate development of renewable energy projects. The final DRECP will provide long-term endangered species permit assurances, facilitate the California Renewables Portfolio Standard, and provide a process for conservation funding to implement the DRECP. The DRECP will also serve as the basis for one or more HCPs under the FESA, and provide biological information necessary for consultation under section 7 of the FESA.

1.12. “Effective Date” means the date on which this Planning Agreement has been executed by BLM, CEC, DFG, and USFWS.

1.13. “Executive Order” means Executive Order S-14-08 of the Governor of the State of California.

1.14. <u>"Existing Projects" means the projects that meet the criteria of subdivision (b) of section 2069 of the Fish and Game Code.</u>

1.15. “Federal Action Agency” means a federal agency that authorizes, funds, or carries out actions that may require consultation with the USFWS pursuant to the FESA section 7(a)(2). The BLM is a Federal Action

Agency for purposes of the FESA section 7. Other federal agencies may serve as Federal Action Agencies.

1.16. "FESA" means the federal Endangered Species Act, 16 United States Code section 1530, *et seq.*

1.17. "FLPMA" means the Federal Land Policy and Management Act, 43 United States Code section 1701, *et seq.*

1.18. "Habitat Conservation Plan" or "HCP" means a plan prepared pursuant to section 10(a)(2)(A) of the FESA.

1.19. "Implementing Agreement" or "IA" means the agreement required pursuant to Fish and Game Code section 2820(b) and authorized under 16 U.S.C. section 1539(a)(2)(B).

1.20. "Incidental Take Permit" or "ITP" means a permit authorizing Take of listed species incidental to otherwise lawful activities pursuant to section 10 of the FESA (16 U.S.C. 1539(a)(2)(B)).

1.21. "Incidental Take Statement" means a written statement provided by the USFWS with a Biological Opinion that specifies the impact of incidental taking on the species, specifies those reasonable and prudent measures that the USFWS considers necessary or appropriate to minimize such impact, and sets forth the terms and conditions that must be complied with by the Federal Action Agency to implement the reasonable and prudent measures pursuant to section 7 of the FESA (16 U.S.C. 1536(b)(4)).

1.22. "Listed Species" means those species designated as candidate, threatened or endangered pursuant to the CESA and/or listed as threatened or endangered under the FESA.

1.23. "Local Governments" means cities, counties, cities and counties, and special districts vested with certain jurisdiction to permit energy and transmission projects.

1.24. "Natural Community Conservation Plan" or "NCCP" means a plan prepared pursuant to the NCCPA.

1.25. "NCCPA" means the Natural Community Conservation Planning Act, California Fish and Game Code, section 2800, *et seq.*

1.26. "NEPA" means the National Environmental Policy Act, 42 United States Code section 4321, *et seq.*

1.27. "Planning Area" means the geographic area that the DRECP proposes to cover, as described in Section 4 and depicted in Exhibit A.

1.28. "Party" means the DFG, CEC, BLM, and USFWS; additional parties will be identified in an exhibit to the Planning Agreement.

1.29. "Project Proponent" means an entity that, as part of developing Renewables Portfolio Standards projects, seeks to engage in Covered Activities.

1.30. "REAT" means the Renewable Energy Action Team, which consists of the DFG, CEC, BLM and USFWS, and which was established pursuant to MOUs between State agencies, and between State and federal agencies and recognized in Executive Order S-14-08, issued by the Governor of California in November 2008. The duties of the REAT were further addressed in the MOU signed by the Secretary of the U.S. Department of the Interior and the Governor of California in October 2009.

1.31. "RETI" means the Renewable Energy Transmission Initiative, a statewide initiative to identify transmission projects to accommodate renewable energy goals, facilitate transmission corridor designation, facilitate transmission and generation siting and permitting, and support future energy policy.

1.32. "Renewables Portfolio Standard" or "RPS" means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to procure pursuant to California Public Utilities Code, section 387 (California Public Utilities Code, section 399.11, *et seq*.).

1.33. "Section 6" means 16 United States Code section 1535 of the FESA.

1.34. "Section 7" means 16 United States Code section 1536 of the FESA.

1.35. "Section 10" means 16 United States Code section 1539 of the FESA.

1.36. "Section 2835" means California Fish and Game Code, section 2835.

1.37. "Take" is defined in the CESA and the FESA. Under FESA, section 3(18), "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Harm and harass are further defined in federal regulation (50 CFR 17.3).

Under the CESA, "Take" means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill (California Fish and Game Code, section 86).

1.38. "Take Authorization" means authorization issued by the USFWS and/or DFG to Take listed species, pursuant to the FESA (through a FESA section 10 permit or section 7 exemption) and/or the California Fish and Game Code, and/or issued by the CEC for Take of State-listed species under State law in accordance with the DRECP for activities that are under its exclusive jurisdiction pursuant to the Warren-Alquist Act.

1.39. "Utility-Scale Renewable Energy Facility" has an electricity-generating capacity of 20 MW or larger.

1.40. "Warren-Alquist Act" refers to California Public Resources Code, section 25000, *et seq.*

1.41. "Wildlife Agencies" means the United States Fish and Wildlife Service and the California Department of Fish and Game.

2.0 Scope and Goals of the DRECP

2.1 Desert Renewable Energy Conservation Plan

Today, only 12 percent of California's retail electric load is served by renewable energy sources. The RPS, established by State law, requires all retail energy sellers to obtain 20 percent of their delivered electricity from renewable energy sources by 2010. In November 2008, the Governor of California increased the RPS target to 33 percent by 2020, through Executive Order S-14-08.

In addition to the California effort, in 2005 the federal Energy Security Policy Act renewed interest in developing utility-scale renewable energy facilities on federal public land. It established a target of approving 10,000 MW of non-hydropower renewable energy generation on public lands within 10 years of the Act. The United States Congress also intensified the need for accelerated development of such projects with passage in early 2009 of the American Recovery and Reinvestment Act, which confers economic benefits on renewable energy projects that begin construction before the end of 2010.

While the State and federal governments are committed to developing compatible renewable energy generation facilities and related transmission infrastructure to achieve these requirements and goals, they are also committed to conserving biological and natural resources within the state. The desert regions of California provide extensive renewable energy resource potential. They also support extraordinary biological and other natural resources of great value, including numerous threatened and endangered plant and animal species. The DRECP is intended to advance state and federal conservation goals in these desert regions while also facilitating the timely permitting of renewable energy projects under applicable State and federal laws.

Executive Order S-14-08 and associated Memoranda of Understanding by and among several State and federal agencies established the joint State-federal REAT, which consists of the Parties to this Planning Agreement. The USFWS and BLM are voluntary participants in the REAT. Federal participation in the REAT is supported by the Secretary of the Interior's Secretarial Order 3285 (March 2009) directing all Department of the Interior agencies and departments (which include the BLM and USFWS) to encourage the timely and responsible development of renewable energy, while protecting and enhancing the nation's water, wildlife, and other natural resources. In October 2009, Governor Schwarzenegger and Secretary Salazar signed a Memorandum of Understanding on Renewable Energy between the State of California and the Department of Interior that merges the work efforts of both orders.

The REAT's primary mission is to streamline and expedite the permitting processes for renewable energy projects, while conserving endangered species and natural communities at the ecosystem scale. Executive Order S-14-08 directs the REAT to achieve these twin goals in the Mojave and Colorado Desert regions through the DRECP. The REAT is directed to develop a conservation strategy that identifies and maps areas for RPS-project development and areas for long-term natural resource conservation. This conservation strategy will form the foundation of the DRECP. This approach is supported by the State's NCCPA, and the section 10 habitat conservation planning provisions and section 7 consultation provisions of the FESA, as appropriate. This Planning Agreement is intended to explain generally the DRECP process and its purpose, and identify the responsibilities of the Parties in the DRECP process.

The Parties intend that the DRECP will encompass development of solar, solar PV, wind, and other forms of renewable energy within the Mojave and Colorado Desert regions.

2.2 Purposes of the DRECP Planning Agreement

The purposes of this Planning Agreement include:

- Defining the Parties' goals and commitments with regard to development of the DRECP;
- Defining the geographic scope of the Planning Area;
- Identifying a preliminary list of natural communities and species known or reasonably expected to be found in those communities that are intended to be the initial focus of the DRECP;
- Identifying preliminary conservation objectives for the Planning Area;
- Establishing a process for the inclusion of independent scientific input into the DRECP development process;
- Ensuring coordination between the Wildlife Agencies, CEC and BLM;
- Establishing an interim process to be used during DRECP development to review and act on project proposals within the Planning Area in a manner that is consistent with achieving the preliminary conservation objectives

and maintaining viable conservation opportunities and alternatives for the DRECP; and

- Ensuring public participation and outreach throughout the DRECP development process.

2.3 Planning Goals

The goals of the DRECP include:

- Provide for the long-term conservation and management of Covered Species within the Planning Area;
- Preserve, restore, and enhance natural communities and ecosystems that support Covered Species within the Planning Area;
- Build on the Competitive Renewable Energy Zones identified by RETI;
- Further identify the most appropriate locations within the Planning Area 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 means to implement Covered Activities in a manner that complies with the NCCPA, FESA, NEPA, CEQA, and other relevant laws;
- Provide a basis for the issuance of Take Authorizations allowing the lawful Take of Covered Species incidental to Covered Activities;
- Provide for issuance of Take permits for other species that are not currently listed but which may be listed in the future;
- Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements for Covered Activities within the Planning Area;
- Provide a framework for a more efficient process by which proposed renewable energy projects within the Planning Area may obtain regulatory authorizations and which results in greater conservation values than a project-by-project, species-by-species review would have;
- Provide durable and reliable regulatory assurances, as appropriate, under the NCCPA and the FESA for Covered Activities that occur within the Planning Area; and
- Identify and incorporate climate change adaptation research, management objectives, and/or policies into the final plan document.

The Parties recognize that, until conservation strategies are developed for the Covered Species and their habitats, and conservation partnerships are formed, the cost and feasibility of achieving these goals will not be known. During the development of the DRECP, the DRECP goals, preliminary conservation objectives, Covered Species, Covered Activities, and Planning Area may be modified to ensure that implementation of the DRECP will be practicable.

2.4 Compliance with Federal and State Laws

The Planning Area contains valuable biological resources, including native species of wildlife and their habitats. Among the species within the Planning Area are certain species that are protected, or may be protected in the future, under the CESA and/or the FESA. The Parties intend for the DRECP to satisfy the requirements for an NCCP under the NCCPA, and to serve as the basis for Take Authorizations that will be issued to Applicants and Federal Action Agencies under these Acts, as applicable, for Covered Activities to the extent allowed by and consistent with federal and State law. DFG intends to adopt the DRECP as an NCCP.

Under State law, Take of species listed pursuant to the CESA may be authorized under Fish and Game Code section 2080.1, section 2081 (both provisions of the CESA), Fish and Game Code section 2835 (a provision of the NCCPA), or Public Resources Code section 25500 (a provision of the Warren-Alquist Act). The NCCPA provides that upon approval of an NCCP, DFG may permit the taking of any identified species, listed or non-listed, whose conservation and management are provided for in the NCCP. For projects under its exclusive jurisdiction, the CEC may also authorize the Take of State-listed species pursuant to the Warren-Alquist Act and in accordance with the Fish and Game Code and any Take Authorization the CEC receives from USFWS pursuant to the FESA.

To the extent allowed under federal laws and regulations, the Parties also intend that the DRECP will serve as the basis for one or more HCPs that meets the requirements of section 10(a)(2)(A) of the FESA, and further serve as the basis for the Biological Assessments that support consultations between Federal Action Agencies and the USFWS under section 7(a)(2) of the FESA, and the issuance of Take Authorizations for Covered Activities. The Parties acknowledge that the DRECP may be used to address compliance with other applicable federal and State statutes.

The FESA provides that USFWS may permit the Incidental Taking of fish and wildlife species covered in an HCP if the HCP and permit application meet the requirements of section 10(a)(2)(A) and (B) of the FESA. FESA also provides that USFWS may permit Take associated with actions conducted for scientific purposes, pursuant to section 10(a)(1)(A). Take Authorization for the FESA-listed fish and wildlife species covered in the HCP is generally effective upon issuance of an Incidental Take Permit. Take Authorization for any non-listed species covered in the HCP becomes effective if and when the species is listed pursuant to the FESA.

For actions authorized, funded, or carried out by a Federal Action Agency, Take of listed species may be exempted under section 7 of the FESA based on a Biological Opinion issued by the USFWS.

2.4.1 Natural Community Conservation Planning Act

The NCCPA was enacted to encourage broad-based planning to provide for effective protection and conservation of the state's wildlife resources while continuing to allow appropriate development and growth. The purpose of the NCCPA is to provide for the conservation of biological diversity by protecting biological communities at the ecosystem and landscape scale. Conservation of biological diversity includes protecting sensitive and more common species, natural communities, and the ecological processes necessary to sustain the ecosystem over time. An NCCP identifies and provides for the measures necessary to conserve and manage natural biological diversity within the Planning Area, while allowing compatible and appropriate economic development, growth, and other human uses.

2.4.2 Habitat Conservation Planning under the FESA

Under Section 10 of the FESA, HCPs may be developed to provide the basis for meeting the criteria for issuance of Incidental Take Permits authorizing the Incidental Take of threatened and endangered species. HCPs must ensure that the impacts of any Take of species covered by the plan are minimized and mitigated to the maximum extent practicable. Applicants may also seek Take Authorization for unlisted species that are covered in the HCP.

2.4.3 Section 7 Consultation under the FESA

Under section 7(a)(2) of the FESA, a Federal Action Agency is required to consult with the USFWS if its action may affect listed species or designated critical habitat. If an action is likely to adversely affect listed species or critical habitat, consultation under section 7(a)(2) will result in a Biological Opinion issued by USFWS to a Federal Action Agency, such as BLM, which analyzes the effects of a proposed action on listed species and designated critical habitat and provides an Incidental Take Statement, as appropriate. The BLM has exclusive jurisdiction to authorize use and occupancy of federal public lands and a primary mechanism that BLM uses to authorize such use and occupancy is through Title V of FLPMA, the right-of-way grant. If consultation under section 7(a)(2) of the FESA is required, such consultation must be completed, and a Biological Opinion issued by the USFWS, as appropriate, before the BLM issues such a grant to a Project Proponent. Through the right-of-way grant, the Project Proponent is required to comply with the terms and conditions of the Incidental Take Statement. So long as the BLM and the Project Proponent carry out the action in compliance with the terms and conditions of the Incidental Take Statement, they receive an exemption from FESA section 9 prohibitions for Incidental Take of federally listed species.

2.4.4 Energy Commission's Licensing under the Warren-Alquist Act

Pursuant to Public Resources Code section 25500, the CEC has exclusive authority to certify (license) energy facilities that are thermal power plants with a generating capacity

of 50 MW or more, their appurtenant facilities (e.g., natural gas pipelines, water lines, tanks, etc.), and certain electric transmission lines. The CEC's certificate is in lieu of any permit or similar document required by any State, local, or regional agency (Pub. Resources Code, § 25500), including a Take Authorization that would otherwise be issued by DFG. Before approving a power project within its jurisdiction, CEC must make findings on whether the project conforms to applicable local, regional, state, and federal standards, ordinances, and laws. When necessary to ensure conformity with such standards, ordinances, and laws, CEC imposes conditions of certification on the project.

Under the Warren-Alquist Act, CEC has independent authority to authorize Take in conformity with CESA, and for projects within the CEC's jurisdiction DFG does not issue Take Authorization. Similarly, for projects that fall within the scope of an adopted NCCP, CEC has independent authority to authorize Take in conformity with the terms of the adopted NCCP. Under the NCCPA, participating agencies with land use authority within an NCCP plan area receive Take coverage through permits issued under Section 2835, which allow them to confer Take Authorization for specific projects in conformity with the approved NCCP and the associated permit. Because the Warren-Alquist Act preempts the Section 2835 permitting process and provides the CEC with independent authority to issue Take Authorization in conformity with the terms of an approved NCCP, CEC need not and will not apply to DFG for a Section 2835 permit under the DRECP.

As part of its exclusive permitting authority, the CEC must confer with DFG on the permittee's proposed activities, mitigation measures, and conditions of CEC certification to ensure the protection of biological resources that may be significantly affected by a project under the CEC's jurisdiction. When approving projects that fall within the scope of the DRECP, once approved by DFG, CEC will need to make findings that the project conforms to the terms of the DRECP.

2.5 Goals and Expectations

2.5.1 Participation by CEC and BLM

The CEC voluntarily seeks to develop the DRECP in order to streamline and expedite permitting of jurisdictional renewable energy facilities. The Parties intend that the DRECP will in no way abrogate, abridge, or modify the CEC's duty to ensure its permitees' compliance with State or federal endangered species laws. The Parties intend that the DRECP and the CEC's execution of an Implementing Agreement will require the CEC to certify jurisdictional power facilities located in the Planning Area in accordance with the terms of the DRECP and Implementing Agreement.

The CEC is an Applicant only to USFWS for the purposes of applying for Take Authorization in accordance with Section 10 of the FESA. Upon approval of the DRECP

through one or more HCPs under Section 10, the USFWS will issue the CEC one or more ITPs in accordance with the FESA.

The BLM is not an Applicant for any purpose to any of the other Parties to this Planning Agreement. The BLM will be a Federal Action Agency pursuant to section 7 of the FESA with respect to certain activities that will be covered by the DRECP. BLM must follow and meet the requirements of NEPA, FLPMA, FESA, and other applicable federal law. To the extent allowed under federal laws and regulations, BLM intends to incorporate the NCCP public-input process for the DRECP into the public-review process for the preparation of an environmental impact statement and land use plan amendment, if necessary, in order to be consistent with the DRECP.

2.5.2 Future Participation of Other Entities in the DRECP

The Parties to this agreement acknowledge that Local Governments and other entities may choose to participate in the DRECP, joining with Parties or other plan participants, or collaborating with the Parties and plan participants, to achieve the DRECP goals and objectives. As such, the Parties intend for the DRECP to be developed in a manner that anticipates and accommodates future participation of these entities and provides the basis for regulatory authorizations for the full range of RPS projects that are likely to occur within the Planning Area. To facilitate such an outcome, the Parties will explore with Local Governments the feasibility of integrating existing NCCPs, HCPs, and other relevant plans into the DRECP and, in instances where no such plans exist, will work with Local Governments and incorporate them into the DRECP.

2.5.3 Transmission Line Permitting Agencies' Participation in the DRECP

It is the intent of the Parties for the DRECP to include as Covered Activities the construction, retrofit, operation, and maintenance of RPS-associated transmission infrastructure necessary to deliver renewable power to the state's power grid and load centers. The recommendations of the RETI stakeholder process regarding transmission planning will be used to inform the development of the DRECP.

With respect to transmission-related activities that may be covered under the DRECP, the Parties will coordinate with the California Public Utilities Commission, the California Independent System Operator, and Local Governments that have permitting or other regulatory-approval authority related to the siting of transmission facilities. The Parties will also encourage these entities to participate in the DRECP process.

2.6 Future FESA Section 7 Consultations

To the extent allowed under federal laws and regulations, the Parties intend that the conservation measures included in the DRECP, once approved by the USFWS, will

meet FESA Section 7 regulatory standards, and will, to the extent appropriate, be incorporated into future Section 7 consultations between the USFWS and the BLM (if consistent with BLM's land use plans) or other applicable Federal Action Agencies regarding Covered Activities that may adversely affect federally listed Covered Species or designated critical habitat for such species.

2.7 Other Fish and Wildlife Protection Laws

Based on the DRECP, an Applicant may seek approval or authorization under other State and federal wildlife protection laws, including, but not necessarily limited to, the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, and various provisions of the California Water Code and California Fish and Game Code. The Parties agree to collaborate to explore the feasibility of developing the DRECP to serve as the means by which Covered Activities may comply with these additional laws.

2.8 Concurrent Planning for Wetlands and Waters

Based on the DRECP, an Applicant may seek future programmatic permits or other forms of authorization under the federal Clean Water Act, Section 1600 *et seq*. of the California Fish and Game Code, and the Porter-Cologne Water Quality Control Act, as necessary for Covered Activities. The Parties agree to work together to explore the feasibility of undertaking concurrent, but separate, planning regarding these permits. However, such programmatic permits or other forms of authorization are not necessary for approval of the DRECP or for issuance of the FESA and NCCPA Take Authorizations.

3.0 Regulatory Assurances

3.1 Regulatory Assurances under the FESA

Upon approval of the DRECP and issuance of the FESA section 10(a)(1)(B) Incidental Take Permits for Covered Species, USFWS will provide regulatory assurances pursuant to Title 50 C.F.R. §§ 17.22(b)(5) and 17.32(b)(5) to those Project Proponents that receive coverage under such Incidental Take Permits.

3.2 Regulatory Assurances under the NCCPA

Upon approval of the DRECP and pursuant to the NCCPA, DFG and CEC will issue Take Authorization and may provide assurances consistent with their statutory authority. Under Section 2820(f) of the Fish and Game Code, DFG may provide assurances

commensurate with the level of long-term conservation and associated implementation measures provided in the DRECP.

4.0 Planning Area

The DRECP Planning Area encompasses the Mojave and Colorado Desert Ecoregions as identified in California. The western boundary of the Planning Area has been modified using the CREZ boundaries, so that the Planning Area boundary has expanded slightly to the west, to ensure incorporation of complete RETI CREZs. The Planning Area includes all or a portion of the following counties: Kern, Los Angeles, San Bernardino, Inyo, Riverside, Imperial, and San Diego. A map of the DRECP Planning Boundary is provided as Exhibit A.

The Parties intend to evaluate and analyze information regarding biological resources and anticipated Covered Activities in the Desert. Based on this analysis, the Parties anticipate the Planning Area boundaries will be further modified and refined to reflect where the locations of these activities are likely to be implemented.

The Parties acknowledge the DRECP Planning Area overlaps, in whole or in part, with several existing NCCPs, HCPs, and other conservation and land-use plans involving one or more of the Parties. The Parties shall seek to maintain compatibility between the DRECP and these other plans, and any other such plans that may be approved before the DRECP is finalized, by adapting the DRECP to be compatible with existing plans, by amending existing plans, or by some combination of these methods.

5.0 Plan Participants' Roles and Responsibilities in Developing the DRECP

5.1 California Energy Commission

The CEC is the State's primary energy policy and planning agency. Created by the Legislature in 1974, the CEC's responsibilities include:

- Forecasting future energy needs and maintaining historical energy data;
- Certifying thermal power plants 50 MW or larger;
- Transmission planning and transmission corridor designation; and
- Supporting the development of renewable energy.

Pursuant to Section 25500 of the Public Resources Code, the CEC has the exclusive power to certify all sites and related facilities for power plants within its jurisdiction.

During the planning process for the DRECP, the CEC will, among other things:

- Attend all relevant REAT operational meetings and all REAT managers' meetings;

- Attend meetings with local partners and agencies, presenting information as necessary; and
- Collaborate with the Parties, as well as other public agencies such as the California Natural Resources Agency, in the development of the DRECP.

5.2 California Department of Fish and Game

DFG is the agency of the State of California authorized to act as trustee for the state's wildlife, designated rare and endangered plants, game refuges, ecological reserves, and other areas administered by the Department. DFG also administers and enforces the provisions of the Fish and Game Code and is authorized to enter into agreements with federal and local governments and other entities for the conservation of species and habitats. DFG may authorize, pursuant to the CESA, the Take of species listed as threatened or endangered which is incidental to an otherwise lawful activity. DFG may also permit such Take and provide regulatory assurances under the NCCPA for identified species whose conservation and management is provided for in a DFG-approved NCCP.

During the planning process for the DRECP, the DFG will, among other things:

- Attend all relevant REAT operational meetings and all REAT managers' meetings;
- Provide field- and state-level data and information to support the development of the DRECP;
- Attend meetings with local partners and agencies, presenting information as necessary;
- Advise State agencies and local entities on measures necessary to comply with the NPPA and other relevant laws; and
- Work with the CEC and the federal REAT Partners, leading the development of the biological portions of the DRECP, establishing a conservation strategy, and arranging for independent science input.

5.3 U.S. Bureau of Land Management

The BLM is an agency of the United States Department of the Interior authorized by Congress to manage and regulate multiple-use activities on federal public lands located within the Planning Area under the Federal Land Policy and Management Act of 1976. The BLM manages public land through its public land-use planning process with public input and in a manner meant to protect various resource values while providing for human occupancy and use. Any changes to existing or proposed land-use planning documents within the Planning Area as a result of the DRECP or the DRECP planning process may require complete and independent review under the NEPA, FLPMA, and FESA authorities. In addition to land-use planning authorities, the BLM regulates public land use and occupancy through promulgated rules and regulations. Project permitting of Utility-Scale Renewable Energy Facilities on federal public land is a function of the

BLM. BLM has exclusive authority to permit the use of federal public land through its FLPMA authorities.

During the DRECP planning process, the BLM will, among other things:

- Attend all relevant REAT operational meetings and all REAT managers' meetings;
- Provide field- and state-level data and information to support the development of the DRECP;
- Attend meetings with local partners and agencies, presenting information as necessary; and
- Use the findings of the Solar Programmatic Environmental Impact Statement and other relevant BLM studies and analyses to help inform the development of the DRECP.

5.4 U.S. Fish and Wildlife Service

The USFWS is an agency of the United States Department of the Interior authorized by Congress to administer and enforce the FESA with respect to terrestrial wildlife, non-anadromous fish species, insects and plants, and to enter into agreements with states, local governments, and other entities to conserve threatened, endangered, and other species of concern, to authorize Take under the FESA, and to provide regulatory assurances in accordance with 50 C.F.R. section 17.22(b)(5) and section 17.32(b)(5).

During the DRECP planning process, the USFWS will, among other things:

- Attend all relevant REAT operational meetings and all REAT managers' meetings;
- Provide field- and state-level data and information to support the development of the DRECP;
- Attend meetings with local partners and agencies, presenting information when necessary; and
- Advise State agencies and local entities on measures necessary to comply with the FESA and other relevant laws.

6.0 NCCPA Preliminary Conservation Objectives

Pursuant to the NCCPA, California Fish and Game Code section 2810(b)(4), the preliminary conservation objectives the Parties intend to achieve through the DRECP are to:

- Provide for the conservation of Covered Species and associated natural communities and ecosystems that occur within the Planning Area;
- Preserve the diversity of fish, wildlife, plant and natural communities within the Planning Area;
- Identify biologically sensitive habitat areas;

- Minimize and mitigate, as appropriate, the Take of Covered Species;
- Preserve and restore habitat and contribute to the recovery of Covered Species;
- Reduce the need to list additional species as being threatened or endangered;
- Set forth species-specific goals and objectives;
- Set forth specific habitat-based goals and objectives;
- Implement an adaptive management and monitoring program to respond to changing ecological conditions;
- Avoid actions that are likely to jeopardize the continued existence of Covered Species or result in the destruction or adverse modification of designated critical habitat for such species; and
- Address climate change adaptation through reserve design.

7.0 Conservation Elements

7.1 Ecosystems, Natural Communities, and Covered Species List

The DRECP will employ a strategy that focuses on the conservation of ecosystems, natural communities, and ecological processes in the Planning Area. In addition, the DRECP will establish species-specific minimization, mitigation, conservation, and management measures where appropriate. For federal public lands under BLM administrative jurisdiction, the DRECP will likewise focus on and take into consideration public land resource values and protections afforded and determined by existing, modified, and/or proposed land use planning documents and processes.

Natural communities that are likely to be addressed by the DRECP include, but are not limited to: creosote brush scrub, desert saltbush, Joshua tree scrub, desert wash, alkali scrub, juniper-pinyon woodlands, springs, and seeps.

The DRECP Covered Species list will be developed through the planning process with input from the public and other stakeholders. The Parties anticipate that species may be added or removed from the list based upon input from independent scientists (see section 8.3 below) and as additional information is revealed that informs the nature of the Covered Activities and the impact of Covered Activities on native species within the Planning Area.

A preliminary list of natural communities, and the endangered, threatened, candidate, and other species known, or reasonably expected to be found, in those communities, that are intended to be the initial focus of the DRECP is attached as Exhibit B.

7.2 Conservation Areas and Viable Habitat Linkages

As an NCCP, the DRECP will protect, enhance, or restore natural communities and habitats within the Planning Area and provide or enhance habitat linkages, where appropriate within the Planning Area. The DRECP will also identify where linkages between important habitat areas inside and outside the Planning Area should occur. The Parties intend the DRECP conservation strategy to address, among other things, a range of environmental gradients and ecological functions, and will address appropriate principles of ecosystem management, ecosystem restoration, and population biology.

7.3 Climate Change

The Parties intend that the DRECP and its conservation strategy will explicitly incorporate climate change adaptation research and establish climate change adaptation goals. Conservation actions within the climate change adaptation context will consider retention of representative natural communities and habitat types in a matrix with sufficient flexibility to accommodate anticipated climate change outcomes.

7.4 Project Design

The Parties intend that the DRECP will ensure that each Covered Activity is appropriately designed to avoid and/or minimize direct and indirect impacts to Covered Species and their habitats.

8.0 Process for Preparing the DRECP

The Parties intend that this Planning Agreement will establish a mutually agreeable process for preparing the DRECP that meets the procedural requirements of the NCCPA and FESA. The process used to develop the DRECP will incorporate independent scientific input and analysis and include extensive public participation with ample opportunity for comment from the general public and from groups of key stakeholders, as described below.

8.1 Best Available Scientific Information

The DRECP will be based on the best available scientific information, including, but not limited to:

- Principles of conservation biology, community ecology, landscape ecology, individual species ecology, climate change, and other appropriate scientific data and information;
- Thorough information about all natural communities and proposed Covered Species within the Planning Area;
- Input from well-qualified, independent scientists; and

- Integration of relevant scientific and ecological research results from efforts currently underway in the Planning Area.

8.2 Data Collection

The Parties agree that the DRECP will be based on the best available scientific information, and that the Parties will collaborate to ensure that such information is obtained through a range of credible governmental and non-governmental sources. Data collection efforts for preparation of the DRECP will be coordinated with existing efforts. Preference should be given to collecting data essential to address conservation requirements of natural communities and proposed Covered Species for purposes of developing conservation measures and strategies for the DRECP. Data will be gathered and compiled to establish baseline conditions, evaluate impacts of Covered Activities on Covered Species, and develop conservation strategies and measures for Covered Species. Data needed to accomplish these tasks may include, but will not necessarily be limited to: species' life histories, species' occurrence, population abundance and distribution, population trends, population genetics, habitat locations and conditions, habitat connectivity, and ecological threats and stressors.

The science advisory process and analysis of existing information may reveal gaps in data that are necessary for the full and accurate development of the DRECP. Data needed for preparation of the DRECP may not be known at this time or identified herein. Therefore, the Parties anticipate that data-collection priorities may be adjusted from time to time during the planning process. All data collected for the preparation and implementation of the DRECP will be made available to the Wildlife Agencies in hard and digital formats, as requested, and will be made reasonably available to other agencies and to the public.

8.3 Types of Data

Data will be gathered to establish baseline conditions, evaluate impacts of Covered Activities on Covered Species, and develop conservation strategies and measures for Covered Species. Data needed to accomplish these tasks may include, but will not necessarily be limited to: species' life histories, species' occurrence, population abundance and distribution, population trends, population genetics, habitat locations and conditions, barrier and hazard types and locations, habitat connectivity, and ecological threats and stressors.

8.4 Independent Scientific Input

The Parties intend to include independent scientific input and analysis to assist in the preparation of the DRECP. For that purpose, independent scientists representing a

broad range of disciplines, including conservation biology and locally-relevant ecological knowledge, convened by the State will, at a minimum:

- Recommend scientifically sound conservation strategies for species and natural communities proposed to be covered by the DRECP;
- Recommend a range of conservation actions that would address the needs of species, ecosystems, and ecological processes in the Planning Area proposed to be addressed by the DRECP;
- Recommend reserve design principles and processes that are adaptable to changing climate conditions and the needs of species, landscapes, ecosystems, and ecological processes;
- Recommend management principles and conservation goals that can be used in developing a framework for the monitoring and adaptive management component of the DRECP; and
- Identify data gaps and uncertainties so that risk factors can be evaluated.

The Parties will design and implement the science advisory process, in consultation with the Executive Steering Committee (see section 8.5 below). The Parties will develop a detailed scope of work for the independent science process and establish funding and payment procedures. The independent science advisory process will include the use of a professional facilitator, input from technical experts, and production of a report by the scientists. The Parties will make the report available to the public during the planning process.

8.5 Executive Steering Committee

To assist in the development of the DRECP, the Parties have formed an Executive Steering Committee that consists of designated representatives of the Parties. The Parties expect that the Executive Steering Committee will be the principal forum in which the efforts of the participating federal and State agencies are adequately coordinated and that policy matters are fully discussed and considered.

8.6 Reserved Authority

The Parties further recognize that several Parties have statutory or legal responsibilities that cannot be delegated, and that no action of the Executive Steering Committee or provision of this Planning Agreement or the DRECP and its Implementing Agreement shall be construed to delegate or abrogate any of those responsibilities.

8.7 Public Participation

The Parties will ensure an open and transparent process with an emphasis on obtaining input from a balanced variety of public and private interests. The DRECP planning

process will also provide for thorough public review and comment and will be supported by applicable environmental review under CEQA and NEPA.

8.7.1 Solicitation of Public Input

The CEC in collaboration with and in participation with the Parties will conduct regular workshops to provide an opportunity for public participation and input in the development of the DRECP. Public workshops regarding development of the DRECP will be planned and conducted in a manner that satisfies the requirements of the NCCPA, FESA, CEQA, NEPA, and any other applicable State or federal laws.

8.7.2 Outreach

The Parties will provide access to information for all persons or entities interested in the DRECP, including interested tribes and people of diverse races, cultures and socio-economic status. The Parties expect and intend that public outreach regarding preparation of the DRECP will be conducted largely by and through public notices of document availability, review and comment periods on those documents, and scheduled workshops, meetings, and hearings, as appropriate. The Parties will hold public workshops to present proposed approaches regarding the preparation of the DRECP to allow the public the opportunity to comment on and inquire about the proposed approaches.

A key element of early outreach will be with Local Governments to introduce the DRECP process, engage their input on potential participation in the process and outline approaches for effective interface between the federal, State, and local agencies. Other outreach efforts will include the creation of a DRECP website and the compilation of a list of public and private interests to serve informational mailings.

8.7.3 Availability of Public Review Drafts

The Parties will make available for public review in a reasonable and timely manner, and in accordance with applicable statutory and regulatory deadlines, “public review drafts” of pertinent planning documents, including but not limited to plans, memoranda of understanding, maps, conservation guidelines, and species coverage lists. At a minimum, such documents will be made available by the Parties within a reasonable time prior to any public workshop conducted by a Party to address these documents. The Parties agree that the Internet will be the principal means of making documents available for public review, but that more traditional means such as distribution and display of hard copies of such documents will be used where practicable and/or required.

8.7.4 Public Review and Comment Period Prior to Adoption

The Parties will concurrently release the draft DRECP, Implementing Agreement, and draft environmental documents and make them available for public review and comment for a minimum of 90 days before adoption.

8.8 Covered Activities

The DRECP will identify and address the Covered Activities that may result in the Take of Covered Species within the Planning Area. The Parties intend for the DRECP to provide a means by which Covered Activities in the Planning Area can proceed in a manner that meets the requirements of the NCCPA and FESA, and potentially other laws as described in Section 2.3.

A list of proposed Covered Activities is attached as Exhibit C. The list of Covered Activities in this Planning Agreement is intended to establish an initial set of actions that the Parties anticipate could result in Take of listed species and for which Take Authorization is sought under the DRECP. The Parties acknowledge additional Covered Activities may be identified and others removed from the list as part of the DRECP Planning process.

8.9 Interim Project Processing

The Parties acknowledge and agree that certain renewable energy projects and activities may be proposed within the Planning Area prior to completion of the DRECP. For all proposed projects except Existing Projects, the Parties agree to the interim project process set forth in sections 8.9.1, 8.9.2, and 8.9.3 to (1) help ensure that new renewable energy projects approved or initiated in the Planning Area before completion of the DRECP are consistent with the preliminary conservation objectives (Section 6); (2) facilitate FESA,CESA, NEPA, CEQA compliance for such interim projects that require such compliance; and (3) ensure that processing of such interim projects will be conducted by the Parties in an efficient manner, and not unduly delayed as a result of the development of the DRECP.

The Parties acknowledge and agree that substantial progress already has been made in processing the Existing Projects and that expedited processing is necessary for these projects to achieve the national and state job-creation purposes of, and remain eligible for funding pursuant to, the federal American Recovery and Reinvestment Act. The Parties recognize that the Existing Projects will be required to comply with all applicable State and federal laws, including FESA, CESA, Warren-Alquist Act, NEPA and CEQA.

The Parties acknowledge and agree that the Department of Fish and Game will conduct the review required by paragraph (8) of subdivision (b) of section 2810 of the Fish and Game Code for the Existing Projects coincident with the development of the interim

mitigation strategy authorized by paragraph (2)(A)(ii) of subdivision (c) of section 2069 of the Fish and Game Code, and that the Department of Fish and Game shall consider participation in the interim mitigation strategy to provide, where appropriate, recommended mitigation measures that will help achieve the preliminary conservation objectives of the DRECP. Coincident with the development of the interim mitigation strategy, the Department of Fish and Game may also make recommendations among the alternatives to the Existing Projects being considered as part of the review conducted for those projects under Division 13 (commencing with section 21000) of the Public Resources Code, that will help achieve the preliminary conservation objectives of the DRECP. The review will be conducted without any additional delay to the processing of Existing Projects, and will be completed by the 60 day deadline set forth in subdivision (e) of section 2069 of the Fish and Game Code for completion of the strategy. The Parties agree that the Existing Projects, therefore, will not require separate or additional review pursuant to the interim process set forth in sections 8.9.1, 8.9.2, and 8.9.3, unless changes in the Existing Projects are made after the date of this Agreement that trigger subsequent or supplemental review under Division 13 (commencing with section 21000) of the Public Resources Code.

8.9.1 Notification Process for Interim Projects

The Parties will request and encourage a Project Proponent whose renewable energy project within the Planning Area is proposed to begin construction prior to completion of the DRECP, to notify the Parties prior to the time, or as soon as possible after, the project description or application for such project is deemed complete. The Parties shall require that the Project Proponent submit, among other items, the following information in its request for notification: (1) a depiction of the project location either using geographic coordinates or on a United States Geological Survey 7.5 minute quadrangle map with the quadrangle name and section, township, and range identified; (2) a copy of the project description or application, including a description of the project along with the land cover types present on the project site using the most current land cover data available; and (3) any other biological information available to the developer about the project area. Once any Party receives a notification regarding a proposed interim project, that Party will ensure that every other Party has also received or will receive the same information in a timely manner.

8.9.2 Review of Interim Projects

The Parties shall take steps necessary to obtain from Project Proponents proposing interim projects all required information in a complete and timely manner. A Project Proponent need not submit this information to the BLM for projects that do not require BLM authorization. The Parties shall review and provide comments on the projects within any legally prescribed comment periods. The Wildlife Agencies intend to recommend mitigation measures or project alternatives that will help achieve the preliminary conservation objectives of the DRECP and that will not preclude important

conservation planning options or connectivity between areas of high habitat values. In so doing, the Parties shall take into consideration information developed pursuant to the independent scientific input process established pursuant to this Planning Agreement.

The DRECP process will involve extensive input from and discussion among the Parties, other public agencies, Project Proponents, industry groups, environmental organizations, other public, private, and nonprofit organizations, and individual members of the public. The Planning Area, the conservation goals, and other key elements of the DRECP may be revised or modified during the planning process. For these reasons, among others, the Parties recognize and agree that certain approaches to mitigation and project alternatives that may be recommended or required by the Wildlife Agencies or proposed by project proponents to ensure that interim projects comply with the FESA, CESA, Warren-Alquist Act, NEPA and CEQA may not be appropriate for, transferable to, or consistent with the approaches that are ultimately reflected in the DRECP. As such, regulatory conditions and requirements established for projects covered under the DRECP may differ from those of projects approved pending completion of the DRECP.

The Parties intend to develop new or employ existing mechanisms and approaches to expedite and streamline the process of identifying and implementing project mitigation to offset effects on biological resources. Such mechanisms may include an in-lieu fee to facilitate project mitigation, enabling Project Proponents, upon the approval of the applicable permitting authorities, to satisfy regulatory requirements, in whole or in part, through the payment of a specified fee that will be used by approved third parties to implement specific mitigation actions for each project, rather than requiring each Project Proponent to individually implement such identified mitigation actions. The Parties expect that an in-lieu fee will help accelerate the development of renewable energy projects and result in more beneficial and effective conservation outcomes within the DRECP Planning Area.

8.9.3 Coordinating Interim Process with DRECP Preparation

The Parties will meet as needed to discuss interim projects of which they have been notified, and to coordinate the consideration of such interim projects with development of the DRECP. Independent scientific input will be considered by the Parties during interim project review.

8.10 Protection of Habitat and Other Resources during Planning Process

8.10.1 Conservation Actions

To further the purposes of the DRECP, and prior to the completion and approval of the DRECP, Applicants, Parties, and other entities may elect to preserve, enhance or restore, either by acquisition or other means, habitat in the Planning Area that supports Covered Species or natural communities. The Wildlife Agencies agree to credit such resources, in accordance with their biological value, toward the habitat protection, enhancement, and restoration requirements of the DRECP, as appropriate, provided these resources support Covered Species and natural communities; are appropriately conserved, restored or enhanced; and contribute to the DRECP conservation strategy.

8.10.2 Other Planning Processes within Planning Area

The Parties will also closely coordinate with the planning and implementing authorities for existing and in-process conservation planning efforts including, but not limited to, the Western Riverside NCCP/HCP, the West Mojave Plan HCP, and the Coachella Valley NCCP/HCP. In addition, the DRECP Plan participants intend to fully consider and integrate, to the extent feasible, conservation elements of public land management plans and associated Biological Opinions.

8.10.3 Mitigation for Specific Projects

Actions to protect, enhance, or restore habitat that are undertaken solely to mitigate the impacts of specific projects, actions, or activities approved prior to DRECP approval and within the DRECP Plan area will only be considered as mitigation for those projects, actions or activities. Such measures will be considered during the DRECP analysis, but will not count toward mitigation requirements established under the approved DRECP.

8.11 Implementing Agreement

An Implementing Agreement that includes specific provisions and procedures for the implementation, monitoring and funding of the DRECP will be developed for the DRECP. A draft of the Implementing Agreement will be made available for public review and comment with the final public review draft of the DRECP. The Implementing Agreement will contain provisions for:

- Conditions of species coverage;
- The long-term protection of any habitat reserves or other measures that provide equivalent conservation;
- Implementation of mitigation and conservation measures;
- Adequate funding to implement the plan;
- Terms for suspension or revocation of Take permits;
- Procedures for amendment of the DRECP , Implementing Agreement, and Take Authorizations;
- Implementation of monitoring and adaptive management;
- Oversight of DRECP effectiveness and funding; and

- Periodic reporting.

9.0 Commitment of Resources

9.1 Funding

The Parties agree that they will work together to bring available funding to the DRECP planning effort.

9.2 DFG and CEC Assistance with Funding

DFG and CEC agree to cooperate with the other Parties in identifying and securing, where appropriate, federal and State funds that may be used to support the development and implementation of the DRECP. DFG's and CEC's commitments and obligations under this Planning Agreement are subject to the availability of appropriated and other funds and the written commitment of funds by an authorized DFG or CEC representative.

9.3 USFWS and BLM Assistance with Funding

The USFWS and BLM agree to cooperate with the other Parties in identifying and securing, where appropriate, federal and State funds that may be used to support the development and implementation of the DRECP. Potential federal funding sources may include: the USFWS' Cooperative Endangered Species Conservation Fund, Land and Water Conservation Fund, and land acquisition grants or loans through other federal agencies such as the Environmental Protection Agency, the Army Corps of Engineers, or the Departments of Agriculture, or Transportation or Energy. Implementation of this Planning Agreement by the USFWS and BLM is subject to the requirements of the Anti-Deficiency Act (31 U.S.C. section 1341) and the availability of appropriated funds. Nothing in this Planning Agreement is intended or shall be construed by the Parties to require the obligation, appropriation, or expenditure of money from the U.S Treasury.

9.4 Expertise of the Parties

Subject to funding and staffing constraints, the Parties agree to provide technical and scientific information, analyses and advice to assist with the timely and efficient development of the DRECP.

10.0 Miscellaneous Provisions

10.1 Public Officials Not to Benefit

No member of or delegate to Congress will be entitled to any share or part of this Planning Agreement, or to any benefit that may arise from it.

10.2 Statutory Authority

The Planning Agreement is not intended, nor will it be construed, to modify any authority granted by statute, rule or regulation. The Parties will not construe this Planning Agreement to require any Party to act beyond, or inconsistent with, its statutory authority.

10.3 Multiple Originals

This Planning Agreement may be executed by the Parties in multiple originals, each of which will be deemed to be an official original copy.

10.4 Effective Date

The Effective Date of this Planning Agreement will be the date on which it is fully executed by the Parties.

10.5 Duration

This Planning Agreement will be in effect until the DRECP is finalized and Take Authorizations or exemptions have been issued by the Wildlife Agencies, but shall not be in effect for more than three years following the Effective Date, unless extended by amendment. This Planning Agreement may be terminated pursuant to Section 10.7 below.

10.6 Amendments

This Planning Agreement can be amended only by written agreement of all Parties.

10.7 Termination and Withdrawal

Subject to the requirement in Section 10.8 of the Planning Agreement, any Party may withdraw from this Planning Agreement upon 30 days' written notice to the other Parties, after which time the withdrawing Party shall no longer be a Party. The Planning Agreement will remain in effect as to all non-withdrawing Parties unless the remaining Parties determine that the withdrawal requires termination of the Planning Agreement. This Planning Agreement can be terminated only by written agreement of all non-withdrawing Parties. The withdrawing Party or Parties shall make all relevant data and materials available to the remaining Parties; provided, however, that no Party shall be required to release data and/or other materials that are the intellectual property of any entity other than the withdrawing party or that is subject to a legally cognizable privilege.

10.8 Funding

In the event that federal, State or local funds have been provided to assist with DRECP preparation or implementation, any Party withdrawing from this Planning Agreement shall return to the granting agency unspent funds awarded to that Party prior to withdrawal, likewise, the remaining Parties shall return to the withdrawing Party any unspent funding it may have provided. A withdrawing Party shall also provide the remaining Parties with a complete accounting of the use of any federal, State or local funds it received regardless of whether unspent funds remain at the time of withdrawal. In the event of termination of this Planning Agreement, all Parties who received funds shall return any unspent funds to the grantor prior to termination.

10.9 No Precedence

This Planning Agreement is not intended, and shall not be construed, to modify any existing or subsequently amended law, rule, regulation or other legal authority, or requirements established thereunder.

The Parties' execution of this Planning Agreement and participation in the development of the DRECP is voluntary and does not ensure that any of said Parties will participate in later planning phases of the DRECP or related agreements or actions. As provided in Section 10.7, above, any Party may withdraw from this Planning Agreement. In addition, as provided in Section 2.5.1 above, the Parties understand that this Planning Agreement, the DRECP, and the Implementing Agreement cannot and shall not in any way abrogate, abridge, modify the CEC's exclusive authority under State law to permit jurisdictional power facilities, or in any way abrogate, abridge, modify the BLM's exclusive authority under federal law to permit use and occupancy of the public lands.

SIGNATURES:

Dated: May 17, 2010

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: [signature]

Title: DIRECTOR

Dated: _____, 2010

CALIFORNIA ENERGY COMMISSION

By: _____

Title: _____

Dated: _____, 2010

U.S. BUREAU OF LAND MANAGEMENT

By: _____

Title: _____

Dated: _____, 2010

U.S. FISH AND WILDLIFE SERVICE

By: _____

Title: _____

SIGNATURES:

Dated: _____, 2010

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: _____

Title: _____

Dated: May 14, 2010

CALIFORNIA ENERGY COMMISSION

By: _____

Title: Executive Director

Dated: _____, 2010

U.S. BUREAU OF LAND MANAGEMENT

By: _____

Title: _____

Dated: _____, 2010

U.S. FISH AND WILDLIFE SERVICE

By: _____

Title: _____

SIGNATURES:

Dated: _____, 2010

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: _____

Title: _____

Dated: _____, 2010

CALIFORNIA ENERGY COMMISSION

By: _____

Title: _____

Dated: 5·10·, 2010

U.S. BUREAU OF LAND MANAGEMENT

By: James Wesley Abbott

Title: Acting State Director

Dated: _____, 2010

U.S. FISH AND WILDLIFE SERVICE

By: _____

Title: _____

SIGNATURES:

Dated: _____, 2010

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: _____

Title: _____

Dated: _____, 2010

CALIFORNIA ENERGY COMMISSION

By: _____

Title: _____

Dated: _____, 2010

U.S. BUREAU OF LAND MANAGEMENT

By: _____

Title: _____

Dated: May 14, 2010

U.S. FISH AND WILDLIFE SERVICE

By: _____

Title: Regional Director

Exhibit A: DRECP Planning Area Map

Exhibit B: DRECP Natural Communities and Species of Planning Interest

Communities

CWHR Habitat Type	Cheatham and Haller (1975)	CNDDB (1986)
Pinyon Juniper	Pinyon-Juniper Woodland	Mojavean Pinyon Woodland
Juniper	Northern Juniper Woodlands	Mojavean Juniper Woodland and Scrub
Desert Riparian	Desert Dry Wash Woodland	Mojave Riparian Forest Colorado Riparian Forest Desert Dry Wash Woodland Mojave Desert Wash Scrub Colorado Riparian Scrub
Joshua Tree	Joshua Tree Woodland	Joshua Tree Woodland
Bitterbrush	Sagebrush Scrub	Big Sagebrush Scrub Rabbitbrush Scrub Shadscale Scrub
Sagebrush	Great Basin Sagebrush Wyethia Meadow-Scrub	Blackbrush Scrub Big Sagebrush Scrub Sagebrush Steppe Rabbitbrush Scrub
Mixed Chaparral	Mixed Chaparral Semi-Desert Chaparral Serepentine Chaparral Island Chaparral	Upper Sonoran Mixed Chaparral Semi Desert Chaparral Upper Sonoran Ceanothus Chaparral Upper Sonoran Manzanita Chaparral Alluvial Fan Chaparral Upper Sonoran Subshrub Scrub
Chamise-Redshank Chaparral	Mixed Chaparral Chamise Chaparral Red Shank Chaparral	Chamise Chaparral Red Shank Chaparral
Desert Succulent Shrub	Desert Cactus Scrub	Sonoran Mixed Woody and Succulent Scrub Mojave Mixed Woody and Succulent Scrub
Desert Wash	Desert Dry Wash Woodland	Desert Dry Wash Woodland Mojave Desert Wash Scrub
Desert Scrub	Partially Stablized and Stabilized Desert Dunes Blackbrush Scrub Low Dwsert Scrub	Stabilized and Partially Stabilized Desert Dunes Stabilized and Partially Stabilized Sand Fields Sonoran Desert Scrub Mojavean Desert Scrub Rabbitbrush Scrub
Alkali Desert Scrub	Shadescale Scrub Alkali Scrub	Chenopod Scrub Alkali Meadows and Seeps Alkali Meadow Alkali Playa

Species

Common Name	Scientific Name	CESA	ESA	California Special Concern	BLM Sensitive
ANIMALS					
Arizona myotis	Myotis occultus			X	
Arroyo toad	Anaxyrus californicus		Endangered		
Arroyo toad	Bufo californicus			X	
Bald eagle	Haliaeetus leucocephalus	Endangered	Delisted		
Barefoot gecko	Coleonyx switaki	Threatened			
Bendire's thrasher	Toxostoma bendirei				X
Bewick's wren	Thryomanes bewickii			X	
Big free-tailed bat	Nyctinomops macrotis			X	
Bighorn sheep	Ovis canadensis	Threatened	Endangered		
Burrowing owl	Athene cunicularia			X	X
Cactus wren	Campylorhynchus brunneicapillus			X	
California black rail	Laterallus jamaicensis coturniculus	Threatened			
California condor	Gymnogyps californianus	Endangered	Endangered		
California leaf-nosed bat	Macrotus californicus			X	X
California pocket mouse	Chaetodipus californicus			X	
Cave myotis	Myotis velifer			X	X
Coachella valley fringe-toed lizard	Uma inornata	Endangered	Threatened		
Coachwhip	Masticophis flagellum			X	
Colorado desert fringe-toed lizard	Uma notata			X	X
Common ensatina	Ensatina eschscholtzii			X	X
Common yellowthroat	Geothlypis trichas			X	
Crissal Thrasher	Toxostoma crissale			X	
Desert night lizard	Xantusia vigilis			X	
Desert tortoise	Gopherus agassizii	Threatened	Threatened		
Desert woodrat	Neotoma lepida			X	
Ferruginous hawk	Buteo regalis				X
Flat-tail horned lizard	Phrynosoma mcallii			X	X
Fringed myotis	Myotis thysanodes				X
Gila monster	Heloderma suspectum			X	X
Gila woodpecker	Melanerpes uropygialis	Endangered			
Gilded flicker	Colaptes chrysoides	Endangered			
Golden eagle	Aquila chrysaetos				X
Gray vireo	Vireo vicinior			X	X
Inyo Mountains salamander	Batrachoseps campi			X	X
Least bell's vireo	Vireo bellii pusillus	Endangered	Endangered		
Le Conte's Thrasher	Toxostoma lecontei			X	
Little pocket mouse	Perognathus longimembris			X	X
Loggerhead shrike	Lanius ludovicianus			X	
Long-eared myotis	Myotis evotis				X
Long-eared owl	Asio otus			X	
Lucy's Warbler	Vermivora luciae			X	
Merriam's kangaroo rat	Dipodomys merriami			X	

Common Name	Scientific Name	CESA	ESA	California Special Concern	BLM Sensitive
Mohave ground squirrel	Spermophilus mohavensis	Threatened			
Mojave fringe-toed lizard	Uma scoparia			X	X
Mountain Plover	Charadrius montanus			X	
Nelson's antelope squirrel	Ammospermophilus nelsoni	Threatened			
Orange-throated whiptail	Aspidoscelis hyperytha			X	
Pallid bat	Antrozous pallidus			X	X
Palm springs round-tailed ground squirrel	Spermophilus tereticaudus chlorus		Candidate		
Panamint alligator lizard	Elgaria panamintina			X	X
Pocketed free-tailed bat	Nyctinomops femorosaccus			X	
Quino checkerspot butterfly	Euphydryas editha quino		Endangered		
Rosy boa	Charina trivirgata				X
Round-tailed ground squirrel	Spermophilus tereticaudus			X	
Rufous-crowned sparrow	Aimophila ruficeps			X	
Sage sparrow	Amphispiza belli			X	
Snowy plover	Charadrius alexandrinus		Threatened	X	
Southern rubber boa	Charina umbratica			X	
Spotted bat	Euderma maculatum			X	X
Summer Tanager	Piranga rubra			X	
Swainson's hawk	Buteo swainsoni	Threatened			
Tehachapi slender salamander	Batrachoseps stebbinsi	Threatened			
Townsend's big-eared bat	Corynorhinus townsendii			X	
Vermilion Flycatcher	Pyrocephalus rubinus			X	
Western mastiff bat	Eumops perotis			X	X
Western patchnose snake	Salvadora hexalepis			X	
Western pond turtle	Actinemys marmorata			X	X
Western red bat	Lasiurus blossevillii			X	
Western skink	Eumeces skiltonianus			X	X
Western small-footed myotis	Myotis ciliolabrum				X
Western yellow-billed cuckoo	Coccyzus americanus occidentalis	Endangered	Candidate		
Willow flycatcher	Empidonax traillii	Endangered			
Yellow warbler	Dendroica petechia			X	
Yellow-breasted chat	Icteria virens			X	
Yuma clapper rail	Rallus longirostris yumanensis	Threatened	Endangered		
Yuma myotis	Myotis yumanensis				X
PLANTS					
Bird-foot checkerbloom	Sidalcea pedata	Endangered	Endangered		
Coachella valley milk-vetch	Astragalus lentiginosus var. coachellae		Endandered		
Cushenbury buckwheat	Eriogonum ovalifolium var. vineum		Endangered		
Cushenbury milk-vetch	Astragalus albens		Endangered		
Cushenbury oxytheca	Acanthoscyphus parishii var. goodmanian		Endangered		
Cuyamaca larkspur	Delphinium hesperium ssp. cuyamacae	Rare			

Common Name	Scientific Name	CESA	ESA	California Special Concern	BLM Sensitive
Lane mountain milk-vetch	Astragalus jaegerianus		Endangered		
Mojave tarplant	Deinandra mohavensis	Endangered			
Owens valley checkerbloom	Sidalcea covillei	Endangered			
Red rock tarplant	Deinandra arida	Rare			
Santa Ana river woollystar	Eriastrum densifolium ssp. sanctorum	Endangered	Endangered		
Slender-petaled thelypodium	Thelypodium stenopetalum	Endangered	Endangered		
Southern mountain buckwheat	Eriogonum kennedyi var. austromontanum		Threatened		
Triple-ribbed milk-vetch	Astragalus tricarinatus		Endandered		

Exhibit C: Preliminary List of Covered Activities

Covered Activities may include, but are not necessarily limited to, existing or new activities related to:

Transmission

* New foundation, delivery, and connector transmission lines required for accessing renewable energy;
* Transmission Upgrades -i.e., reconductoring or rebuilding;
* New Transmission lines to connect renewable energy projects to the grid;
* Tower or Pole replacements; and
* Substations and switchyards.

Solar Projects (PV and Thermal)

* New facility/substation installation;
* Project expansion;
* Upgrades to existing solar facilities; and
* Project related facilities like roads, utility connects - transmission, water, gas, etc.

Wind Projects

* Installation of anemometers;
* New turbine installation;
* Project expansion;
* Upgrades to existing facilities; and
* Project related facilities like roads, utility connects - transmission, water, gas, etc.

Geothermal Projects

* New facility installation;
* Upgrades to existing facilities;
* Project expansion; and
* Project related facilities like roads, utility connects - transmission, water, gas, wells, steam lines wastewater injection lines, etc.

RPS Biomass Projects

* New facility installation;
* Upgrades to existing facilities;
* Project expansion; and
* Project related facilities like roads, utility connects - transmission, water, gas, etc.

DRECP Conservation Actions

* Habitat restoration, enhancement, creation;
* Adaptive management, monitoring, surveys, and research; and

* Maintenance of preserve areas.

The following describes implementation actions that are likely to be associated with the project types described above:

Pre-project activities:
geotechnical borings, general site reconnaissance (including species-specific surveys), drilling for heat sources (geothermal), installation of anemometers (wind), site access for various activities.

Site preparation and construction:
ground-disturbance activities including grading and clearing vegetation on the project site and associated staging and equipment storage areas, installation of fencing along the project perimeter, site access.

Related infrastructure requirements:
access roads, flood control structures, evaporation ponds, new transmission lines, new substations, transmission line and substation upgrades, and other utility connections including communications, gas, water, wastewater and sewage.

Operations and maintenance:
weed control, hazardous materials treatment and disposal, road and fence maintenance activities, transmission line tower replacements, upgrades to existing facilities, flood control maintenance activities, eliminating the attraction of wildlife to potentially harmful evaporation ponds.

Monitoring:
fencing quality (checking for and repairing breaks), tortoise activity in the project site requiring relocation, presence and control of ravens and other avian predators, presence and removal of trash, wildlife attracted to harmful evaporation ponds, pressure testing for geothermal plants (extreme short-term noise and vibrations).

Decommissioning:
impacts associated with restoration of topographical and hydrological features and vegetation, impacts associated with the removal of the facility, continued weed control if necessary until the site reverts back to a native state or a new project is proposed for the site, disposal of hazardous materials, long-term monitoring of site to ensure any success criteria are met.

Activities/effects that may be associated with all of the categories above include:
generation of dust, nuisance lighting, installation of fencing (both security fencing and wildlife fencing), trash disposal or lack thereof, attraction of predators to project areas, noise, access to the site.