



California Wind Energy Association

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September 20, 2010

Karen Douglas, Chair
California Energy Commission
1516 Ninth Street, MS-33
Sacramento, CA 95814

Re: Item #14 on September 22 Business Meeting Agenda: Possible Approval of Best Management Practices and Guidance Manual - Desert Renewable Energy Projects

Dear Chair Douglas:

The California Wind Energy Association (“CalWEA”) requests that the Energy Commission not approve the proposed “Best Management Practices and Guidance Manual” (“Proposed BMP Report”) for desert renewable energy projects at its September 22 Business Meeting (Item #14) and that it (and the other REAT agencies) provide sufficient opportunity for public comment before such action is taken. Nine months after the draft Proposed BMP Report was issued, the public has been provided little more than a week to react to the final report before its scheduled adoption. No opportunity to comment has been provided, despite important sections of the report that are wholly new.

CalWEA previously submitted comments (see attachment) which made suggestions about how the BMPs could achieve the goal of streamlining multi-agency permitting and to address our concerns about the BMPs making an already complex process even more difficult. Given the voluminous document and the limited available time for review, we have not yet had an opportunity to determine whether any of our concerns have been sufficiently addressed. For this reason alone, we request a delay in the Commission’s adoption of the report.

CalWEA is, however, able to identify three major concerns with the proposed guidance that warrant a pause before the Commission (and the other REAT agencies) acts:

1. Suggested pre-application consultations with utilities and/or agencies as much as two years prior to filing, which could extend the permitting process by these time frames,
2. Statements encouraging use of the California Guidelines for federal-land DRECP-area projects, which will be counterproductive, cause delays and confusion, and increase costs unnecessarily, and
3. Proposed standards for protecting the California condor that are impractical, vague, and undefined and could therefore create serious issues for the financing of wind projects.

1. Specified Time Frames for Early Consultation

CalWEA remains concerned about the section on Pre-Application Filing Guidance which does not reflect the reality that complex permitting processes require all agencies involved to operate roughly in parallel. We had suggested that the Revised Manual be modified to eliminate its procedural requirements and focus exclusively on field-based best management practices, which suggestion was not taken. We therefore highlight one specific concern within this section.

The section on Initiating Permitting Processes in Chapter 2 suggests (p. 13-14) that project developers initiate consultations with regulatory agencies very early in the process. This is clearly good practice and we endorse it. However, the timeframes for early consultation are not realistic. For example, the proposed BMP suggests consultation as follows (emphasis added) —

“at least 24 months prior to filing applications with transmission owning utilities.”

“at least 18 months . . . with CalISO”

“at least 12 months . . . with the CEC”

“at least 12 months . . . with the BLM

“at least 12 months . . . with local lead agencies”

“at least 12 months . . . with FWS and DFG.”

“at least 12 months . . . with local water districts”

“at least 12 months . . . with the ACOE.”

Providing specified minimum pre-application initiation timeframes may give the agencies tacit permission to extend the permitting process by these timeframes if, as is frequently the case, an applicant initiates consultation 2-6 months in advance of formal filing. Given the uncertainties of land control negotiations, this 2-6 month time frame is more typical for a wind developer to be able to initiate meaningful consultation with agencies about where a project might be developed.

Further, in our experience, very early consultations rarely in fact accelerate the permitting process. Instead, our members find that most agencies do not respond and actually begin work until applications are actually filed and complete.

While we appreciate the effort in the beginning of Chapter 2 to encourage agency discretion to ‘balance the added benefit of the guidance with timely permit application processing,’ it is nevertheless important that either the specified minimum time frames be omitted or a statement be added in this section saying that these suggested early timeframes are not intended to be construed as extending the timeframes within which agencies are expected to act after complete applications are filed.”

2. Reference to Conflicting Guidelines

In CalWEA’s previous comments, we requested that the BMP not recommend use of both the CEC/CDFG Wind-Avian Guidelines and the USFWS Wind-Wildlife Guidelines now being developed because these documents differ in their approaches and recommendations such that recommending that both be followed would create delay and confusion. We appreciate that the

references to these two sets of guidelines have been modified to read that state and local agencies “may find” the federal voluntary guidelines applicable to projects within their jurisdictions and, vice versa, that federal agencies may find the California guidelines applicable to projects located within their jurisdictions.

However, in the past seven months we have seen BLM issue multiple detailed Instruction Memoranda and USFWS issue policy guidance and final rules on multiple wildlife topics, many of which do not agree with California’s guidelines. Further, USFWS is finalizing its comprehensive Wind Turbine Guidelines this year, and expects to issue them by this December. All of these federal documents will govern how wind energy is managed on federal land, and they are very comprehensive. Consequently, including the statement in the BMP encouraging use of the California Guidelines for DRECP-area projects, many of which will be on federal lands, will be counterproductive, cause delays and confusion, increase costs unnecessarily, and further burden wildlife agency staff as they attempt to sort out how to address different recommendations for policies and protocols on federal lands.

Therefore, the statement on page 71 that “Federal agencies may find the California Guidelines applicable to projects located within their jurisdictions” should be removed. In addition, for State and local agencies, there needs to be an acknowledgement of the conflicting recommendations. This could be done by replacing the last sentence in the section on p. 71 with “State and local agencies may find the [federal] voluntary guidelines applicable when both federal and local jurisdictions apply to a project. Where conflicting or different recommendations exist between the state and federal guidelines, and no federal jurisdiction applies, state and local agencies should consider the California Guidelines as preferred.”

4. California Condor

A new section has been added to the guidance since it was last circulated in 2009 to address the California condor. (See p. 73.) To reduce confusion and potential disputes later, we request that the “historic range” of the condor be shown as in the attached map, which was developed by National Audubon. The “historic range” without definition is vague and thus subject to dispute.

We also request that the last two sentences of the condor discussion -- suggesting that standards such as “non-lethal means of harvesting the wind” and “non-operation of turbines” to demonstrate that “the project will not result in the take of condors” -- be removed until further assessment of the risk to condors is documented. First, there have been no documented instances of condor mortality associated with any wind project in California. That said, to our knowledge, no commercially practical standards or conditions currently exist to guarantee an avoidance of take. Despite the absence of any mortality data, where projects are being sited close to the historic range, significant measures to avoid and minimize the risk of take have been imposed by permitting agencies. These have included funding for further monitoring of condor activity, installation of bird diverters on guy wires, use of non-guyed structures, micro trash programs, control of glycol ethylene, limits on grazing, and carcass monitoring and removal. In contrast, using “non-lethal means of harvesting the wind energy” is commercially impractical. No economically viable means of harvesting wind energy on a utility scale exists that does not

involve turbines, which involves spinning blades. The second proposal, that turbines not be operated “when condors are active,” is too vague to implement. Active where? Anywhere in the range? How far from the project? Within the project area? How long are condors “active?”

Until there is more discussion and agreement about the potential for take and the commercially practical measures that could be implemented to address it, the document should not suggest that the wind industry implement a wholesale change to its technology or vague undefined shutdowns as “standards” or “best management practices.” Such “standards” could create serious issues for the financing of wind projects before the efficacy of such measures have even been tested. At this early stage of research about wind turbine/condor interactions, it is enough to advise developers that projects sited in the existing or historic range will subject a project to “intense review and possibly an extended permit review process.”

Again, we request that the Proposed BMP Report not be approved at the September 22 Business Meeting and that the Commission (and the other REAT agencies) provide sufficient opportunity for public comment before such action is taken.

Respectfully submitted,



Nancy Rader

2 Attachments

Cc: Vice Chair James Boyd
Commissioner Jeffrey Byron
Commissioner Anthony Eggert
Commissioner Robert Weisenmiller
Michael Picker, Governor’s Office
Manal Yamout, Governor’s Office
Janea Scott, Department of Interior
Jim Abbott, Bureau of Land Management - California
Kevin Hunting, Cal Fish & Game Department
David Harlow, Director, California Desert Renewable Energy Conservation Plan
Michael Valentine, Asst. Director, California Desert Renewable Energy Conservation Plan



FIGURE 3-2
Historical Range of California Condor

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

Renewable Energy)	Docket No.
Executive Order)	09-Renew EO-01

**COMMENTS OF THE
CALIFORNIA WIND ENERGY ASSOCIATION
ON REVISED DRAFT BEST MANAGEMENT PRACTICES AND GUIDANCE MANUAL**

On November 20, 2009, the California Wind Energy Association (“CalWEA”) submitted comments (attached) on the October, 2009 draft *Best Management Practices & Guidance Manual* (“BMP Manual”) published by the Renewable Energy Action Team (“REAT”). In December, 2009, the REAT published a revised version of the BMP Manual (“Revised Manual”) in response to comments submitted on the original manual. This submittal consists of CalWEA’s comments on the Revised Manual. **In general, we remain concerned that various aspects of the Revised Manual would undermine the very permit streamlining that the REAT was charged to advance.**

Since we submitted our original comments on the BMP Manual, Senator Feinstein introduced into the U.S. Senate a bill (Feinstein Bill) to create two additional national monuments and establish new statutory provisions for the permitting of private and public renewable energy projects in the desert. The permitting provisions of the bill (Title II) are intended to facilitate renewable energy permitting, and cover many of the same procedural issues that are addressed by the Revised Manual. For example, Section 202 of the Feinstein Bill would establish a process for the submittal of information required for applications to BLM, and deadlines for BLM and USFWS to review and process those applications, as well as deadlines for applicant responses to informational requests. Moreover, Section 201 of the bill would require BLM Renewable Energy Coordination Offices (RECOs) to serve as the lead agency in a multi-agency joint process for the review and approval of renewable energy projects.

In our earlier comments, we objected to the “Pre-Application Filing Guidance” contained in the BMP Manual, and which has been retained in the Revised Manual. That guidance recommends a sequential permitting process pursuant to which an applicant would engage in one to two years of consultations with other agencies prior to submitting applications to BLM. These and other procedural provisions of the Revised Manual do not reflect the reality that complex permitting processes require all agencies involved to operate roughly in parallel. Although seldom neat, multi-agency processes are best accomplished when all agencies are involved in the early stages, and the requirements of all such

agencies can be understood and balanced. Where one agency takes the position that it cannot act until commitments have been made by or to the other agencies, there is a high probability of regulatory conflict that cannot easily be resolved. **Therefore, we strongly suggest that the Revised Manual be modified to eliminate its procedural requirements and focus exclusively on field-based best management practices intended to address the potential impacts of renewable development.** Such measures are themselves helpful because they can be incorporated into local environmental review processes and into state and federal application proposals. Given that both the Desert Renewable Energy Conservation Plan (“DRECP”) and possibly the Feinstein Bill will address – and essentially supersede -- the procedural provisions of the Revised Manual, it is unclear to us why the BMP Manual addresses those issues at all.

Our comments on the October 2009 BMP Manual, which are attached hereto for reference, are summarized below in bold print. In plain text we have identified whether and the extent to which the Revised Manual has addressed our concerns, as follows:

1. **The geographic boundaries covered by the DRECP and the BMP Manual should be the congressionally-designated California Desert Conservation Area.** The Revised Manual does not address this concern.
2. **Neither the DRECP nor the BMP manual should use CREZ “boundaries” as the basis for any mapping effort. No such “boundaries” exist, as the CREZ process merely approximated locations for pre-identified projects and hypothetical proxy projects.** The Revised Manual does not address this concern.
3. **By recommending that renewable energy developers complete a broad variety of “recommended critical actions” before submitting applications, and discouraging the concurrent processing of applications, the BMP Manual undermines the very permit streamlining it is intended to advance.** As noted above, these provisions should be deleted from the Revised Manual. One example is the recommendation that incidental take and streambed alteration applications be submitted prior to initiating BLM processes. With respect to the former, in those cases in which endangered species coverage is secured through a Section 7 consultation, the submittal of incidental take “application” (i.e., presumably meaning the initiation of formal consultation) cannot occur until BLM itself initiates the process following the submittal of applications to BLM. In those cases in which Section 10 coverage is required, this recommendation would require potentially years of work with USFWS – i.e., to develop a draft HCP -- before BLM involvement would even be initiated. With respect to streambed alteration agreements, the Section 1602 process results in the issuance of management agreements in just over a month or two. Why would the Revised Manual require these agreements to be entered into when the BLM may not reach a conclusion for more than a year, at which time the streambed alteration agreement

may have already expired? Similar issues arise by calling for lead agency approved archaeological reports prior to submission of an application. These types of recommendations undermine the very streamlining objectives upon which the REAT and the DRECP process are based.

Finally, the paragraph at the beginning of Chapter 2, p.15, implies that the pre-application filing guidance would apply not only to projects not yet filed, but also to those that have not yet been accepted or deemed “complete”, even if that is due purely to delays and lack of staffing on the part of the regulatory agencies, such as BLM. This paragraph should be rewritten to clarify that projects with existing applications are not necessarily expected to conduct the pre-application filing guidance.

4. **The BMP Manual should identify specific measures to streamline the approval of certain types of wind applications, particularly meteorological towers. It could also recommend that BLM expeditiously incorporate wind energy resource development in its Resource Management Plans.** The Revised Manual does not address this comment.
5. **The BMP Manual should eliminate reference to the Interim USFWS Wind-Wildlife Guidelines, and reference only the final, implemented USFWS Guidelines.** We appreciate that the Revised Manual eliminates this reference.
6. **The BPM Manual should not recommend use of both the CEC/CDFG Wind-Avian Guidelines and the USFWS Wind-Wildlife Guidelines now being developed. These documents differ in their approaches and recommendations; recommending that both be followed would create delay while determining how to address the different recommendations and conflicting advice, cause confusion, and add unnecessary costs. The BMP Manual should recognize that the new federal guidelines will be phased in over a period of two years, following adoption in 2010 and implementation by USFWS in 2011 and 2012. Upon implementation, the new federal guidelines will be the appropriate document to guide wind project development, particularly on federal lands.** The language in the Revised Manual on this topic is should be clarified (see p. 69-70), because it could be interpreted as a recommendation that the CEC/CDFG guidelines be used in all cases.

Certain additional specific changes should be made to the BMP Manual:

7. **Voluntary Nature of the Guidelines.** We appreciate the inclusion of language clarifying that the Revised Manual provides only voluntary guidance, and does not reflect policy or regulation. It should, however, be supplemented with language affirmatively directing agency staffs that no permit process should be terminated, delayed or assigned lower priority due to any inconsistency with the Revised Manual.

8. **Williamson Act Compatibility.** Language should be added to the Revised Manual to clarify that wind energy development activities are deemed compatible uses under the Williamson Act. *See, e.g., Cal. Gov't Code § 51238, 58 Cal.Opps. Atty.Gen 729 (1975).* The Revised Manual still seems to suggest that compatibility must be adjudged based upon the language in the contract itself.
9. **Electricity Transmission Guidance.** The guidance provided on this topic (p. 46) is entirely inappropriate. First, it is unreasonable to require a completed interconnection study prior to initiation of BLM permitting. Second, studying impacts beyond the first point of interconnection could require going through the transmission CPCN process before applying to BLM for a generator right-of-way (ROW), where the CPUC would be unable to make a finding of need because BLM hasn't yet granted site control to the generator. Moreover, mitigation measures for transmission impacts beyond the first point of interconnection will be subject to change due to other generation projects withdrawing from the interconnection process. Transmission mitigation measures are not agreed upon, nor is the finalized set of measures identified, until a LGIA is executed, which takes several years from the time an interconnection request is filed. After the LGIA is executed, then the transmission owner files a CPCN application with the CPUC to implement required high voltage transmission upgrades, which is where the CEQA process for these upgrades begins. If BLM considers an interconnection study to be a critical action for its Record of Decision (ROD), the completion of an interconnection study should be required only prior to the ROD, not prior to the ROW application being deemed complete.

At a big picture level, the guideline related to progress on transmission should be the *filing of an interconnection request* and the *initiation* of an interconnection study by the transmission operator; otherwise the process will not be concurrent and could create a situation where neither agency will move forward because each is waiting for the other to proceed first. The manual should acknowledge that the REAT agencies do not possess CEQA jurisdiction for transmission system impacts beyond the first point of interconnection. This resides with the California Public Utilities Commission (CPUC).

10. **Guy Wires.** While the manual says “permanent meteorological towers should not be guyed,” it is silent on temporary meteorological towers. Since temporary towers tend to use guy wires, and as they have smaller footprints and use fewer guy wires than guyed permanent towers, a statement should be included that it is permissible for temporary meteorological towers to use guy wires.
11. **DOD Compatibility.** The Department of Defense rarely is willing to provide letters stating that a project would not conflict with military operations, and then only after significant analysis that requires long lead times. This is another item that should be removed from “pre-application guidance.”

12. **Trail Viewsheds.** There are hundreds of existing wind turbines operating along the Pacific Crest Trail in both the Tehachapi and San Gorgonio wind resource areas; indeed, groups such as the Sierra Club have led hikes specifically to view the wind farms. Wind energy development should not be considered to be incompatible with trails, nor should the total elimination or avoidance of visibility in trail viewsheds be required.

13. **Local Planning.** The Revised Manual continues to over-emphasize the need for compliance with current local land use planning documents. For example, it continues to carry language requiring local agencies to certify consistency with local zoning laws and suggesting that projects requiring zoning changes will be delayed. Such language does not acknowledge that renewable developers often undertake permitting processes at the local level that result in revisions to existing land use plans following the completion of environmental review, and that these processes can be carried out in parallel with BLM permitting processes.

There are two new significant quasi-regulatory, regulatory or statutory structures under parallel development to govern renewable energy development in the desert: the DRECP and its BMP Manual, and Title II of the Feinstein bill, respectively. At this early date there has been little coordination between these efforts, particularly with respect to the Feinstein Bill. It is therefore quite likely that the DRECP and the Feinstein Bill, if adopted, will contain procedural requirements that differ substantially from those proposed in the BMP Manual. Unless these proposals result in a consistent set of guidance in all respects (e.g., covered geographic areas, conservation measures, inter-agency coordination), the State of California's ability to meet its RPS goals may seriously be undermined. Therefore, we again recommend that the procedural aspects of the Revised Manual be deleted for the present time, and that all parties focus their efforts on ensuring that the pending federal legislation and the DRECP be crafted in a way that presents true streamlining benefits balanced with sound environmental principles. Although CalWEA has not yet taken a position on the Feinstein Bill, and has expressed significant concerns regarding the DRECP process, we remain engaged with all parties to ensure that renewable energy permitting is streamlined. As currently written, the Revised Manual would appear to undermine this very significant goal.

We would be pleased to meet with the REAT agencies to discuss these. In the meantime, if you have any questions, please feel free to contact me directly.

Sincerely,



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January 27, 2010