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**Scoping Comments of BrightSource Energy, Inc. on the Notice of Intent for the Desert Renewable Energy Conservation Plan, Habitat Conservation Plan and Possible Land Use Plan Amendment, Southern California: Environmental Impact Statement**

BrightSource Energy, Inc. ("BrightSource") is pleased to have this opportunity to provide its comments on the Notice of Intent/Notice of Preparation to prepare an Environmental Impact Report / Environmental Impact Statement for the Desert Renewable Energy Conservation Plan, Habitat Conservation Plan and Possible Land Use Plan Amendment, Southern California (the "NOI/NOP"). BrightSource commends the federal and state agencies, including the Bureau of Land Management ("BLM"), the California Energy Commission ("CEC"), the California Department of Fish & Game ("CDFG") and the U.S. Fish & Wildlife Service ("FWS"), that are working on the Desert Renewable Energy Conservation Plan ("DRECP"). As noted by the NOI/NOP, the Secretary of the Interior and the former Governor of California issued orders intended to attain national and state renewable energy goals, reduce barriers to renewable energy development, and simultaneously protect the precious natural resources threatened by climate change. For the DRECP to be successful as an essential element of the work to fulfill those orders, it—and the agencies responsible for it—must enhance, rather than complicate or obstruct, the development of renewable energy and associated energy within the nearly 23 million acre planning area. BrightSource stands ready to assist the federal and state agencies to achieve the DRECP's important goals, and to realize the promise of the federal and state orders underlying it.

BrightSource generally supports the structure for the DRECP and the approach to conducting an environmental review for it that the BLM, CDFG, CEC, FWS and BLM have described in the NOI/NOP. To achieve the laudable goals set forth in the policies cited in the NOI/NOP, the DRECP must take into account a wider range of concerns. Among the most critical elements to success of the DRECP is the necessary flexibility to allow for sound siting decisions that can reasonably satisfy development needs, conservation and environmental concerns, and other stakeholder interests.

## A. Flexibility Is Essential to Adapt to Evolving Information & Needs

Our understanding of the best locations for solar energy generation will continue to evolve as renewable energy generation and transmission technology, as well as environmental science and cultural assessments, are further refined. The accuracy of our data regarding technical and environmental conditions will develop over time as we gather new information, as new infrastructure is developed, and as conditions on the ground respond to climate change and other environmental factors. To serve as the durable and reliable regulatory tool it is intended to provide, the DRECP must have built-in flexibility that will allow adaptive management and enable development and conservation activities to be fine-tuned to meet changed circumstances while retaining the essential "no surprises"

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characteristic of Habitat Conservation Plans ("HCPs") and Natural Community Conservation Plans ("NCCPs").

The numerous changes and events that have significantly impacted our understanding of best practices for renewable energy siting over the past few years, while this industry is still in its infancy, further illustrate that flexibility will be a critical component of any renewable energy planning tool—with respect to siting for generation and transmission, as well as to projected system needs.

1. Flexibility is Required for Generation & Transmission Project Siting

Generation and transmission siting needs cannot be fully assessed without site-specific information, which is too resource-intensive and expensive to reasonably accommodate within the DRECP process. Satellite insolation data, for example, is regularly off by as much as 30%. Development projects are commonly reconfigured to adjust to site-specific technical and environmental data, at the developers' initiative or in response to stakeholder concerns. Transmission projects, including their configurations and timelines, are often subject to change. And, of course, habitat and migration patterns are subject to change, and are increasingly expected to do so with changes in climate. Any presumption that we can neatly plan exactly where renewable energy generation and associated transmission can and should go is certain to need significant adjustment based on the facts on the ground. Any plan intended to provide for the renewable energy generation and transmission needed to accomplish California's and the nation's goals must therefore allow such adjustment.

2. Flexibility is Required to Meet Evolving System Needs

System needs for a renewable energy-based infrastructure also require great flexibility. Recent experiences demonstrate that system reliability will require increased grid redundancy as well as significant geographical and generation diversity. The extensive blackouts in Southern California in early September of this year, which resulted from a simple error that cascaded due to insufficient redundancy; the system emergencies faced by Texas over recent years, including this summer, resulting from unanticipated under-generation due to insufficient geographical and resource diversity; and the curtailments of wind power in the Northwest in Spring 2011, which could also have been minimized with increased transmission and resource diversity, are clear indicators that we have much to learn about how to build out our future energy system. Simply put, we cannot definitively plan now for everything we will need in the future, and any "hard-line" limits will build in assumptions that will need correction. As we learn more about the operations of the grid under changing conditions and with a changing generation fleet, we will again need to make adjustments to attain the environmental, reliability and cost objectives of the California Renewables Portfolio Standard and national clean energy goals.

3. Early Designation of Priority Areas While Allowing Activities in Other Areas

We do believe that existing data, augmented by ongoing assessments, may allow early designation of initial priority areas for development and conservation, provided that those areas are not exclusive and that other areas appropriate for development or conservation can be put to use to achieve the DRECP goals as data is developed and needs are determined. For example, where transmission capacity exists in close proximity to areas that appear to provide strong development potential, or where critical habitat and identified migration pathways may be located, areas may be appropriately designated by the plan for development or conservation, respectively. However, such "hard-line" designations cannot be expected to provide the sole opportunity for development or conservation, in part due to the vast expanse of the 23 million acre planning area and the relative lack of data within it, as well as for the reasons discussed above with respect to the flexibility required to meet changing system and project-specific needs. Development and conservation needs can and should be expected to evolve, and even within "hard-line" areas some need for flexibility should be anticipated. To ensure a robust plan that will remain relevant throughout its intended time horizon, the DRECP must take a flexible approach and allow site specific determinations as circumstances arise, enabling development where it is environmentally appropriate, and providing protection in parallel for evolving conservation priorities.

Again, building flexibility into the DRECP will allow its usefulness to survive any number of changes in circumstances, some of which were already identified above. From the developer's perspective, we cannot say with certainty where transmission lines will be located in the future and how congestion on transmission will constrain, or create incentives for, siting decisions. In addition, as more renewable energy generation comes on line, our understanding of where to site new projects to ensure that facilities are geographically diverse enough to allow the system to respond to changes in availability of renewable energy— due to weather, grid conditions, or other factors—will also change. Finally, we simply cannot study the entire Plan Area in sufficient detail before issuing the DRECP. Areas that lack sufficient studies should not shelved; rather, as data is developed and needs determined, they should be made available for development or conservation as appropriate. The most sensible approach to these areas would be to allow for the flexibility discussed above, providing incentive for stakeholders to contribute to the evolving knowledgebase and fill in the gaps of our understanding of both development and conservation needs.

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**B. ESA Considerations**

1. General Considerations with "Third Party" HCPs/NCCPs

For purposes of future ESA compliance, the use of the DRCEP to meet the requirements of a section 10 HCP, the California ESA ("CESA"), and the National Communities Conservation Planning Act ("NCPPA") holds great promise to provide an effective and efficient mechanism to conserve affected species and promote the timely development of renewable energy resources. We commend BLM, the CDFG, CEC and FWS for developing this innovative approach under the ESA, CESA and NCPPA. To be successful, however, several important threshold issues need to be addressed as part of this effort. In addition, it is essential that BLM, FWS, CEC, and CDFG work very closely with the solar industry and its individual member companies whose proposed plans would be affected by the DRCEP to ensure that the HCP in fact meets the needs of the companies implementing the projects that will make it possible to achieve the Administration's renewable energy goals.

The NOI/NOP appears to adopt a correct approach for defining the affected geographic area and the covered species, with some modifications. We agree that the DRECP should address a broad list of species so as to give greatest effect to the DRECP's renewable energy and conservation goals. Similarly, as another means of "provid[ing] durable and reliable regulatory assurances" in accordance with the goals of the DRECP, the plan should include an expansive list of Covered Activities. The DRECP should also identify mitigation priorities and enable landscape-level, coordinated mitigation measures that complement each other. Lastly, the DRECP should consider the potential conservation and development use of military lands, other federal (Bureau of Reclamation, Department of Energy, etc.) lands and state lands. Expanding the process to include these additional agencies and lands will serve to enhance development and conservation opportunities and increase the range of available conservation resources. These approaches will enhance benefits to renewable energy development and to species, and should result in more expedited and successful renewable energy deployment and species recovery efforts, relative to no action.

In addition, the DRCEP, EIR/EIS, and HCP/NCCP should take into account both conservation and solar project developments occurring outside of the plan area. Doing so is not only important for environmental compliance purposes, but to ensure that the effect of conservation activities outside the plan area are considered, and that solar projects in such areas are not in some way precluded or made subject to unanticipated restrictions due to actions undertaken through the DRCEP. In other words, the DRECP should be viewed within the larger context of conservation activities and solar energy development within the ranges of the covered species. In addition, the DRCEP and the HCP/NCCP should be developed so as to allow the list of covered species to be amended over time. During the

course of a 40-year plan, it may be appropriate to add or remove species from the scope of the HCP, and a mechanism should be available for that purpose.

While the NOI/NOP is sufficient for the area and species covered, it remains to be determined whether the scope of the DRECP and its ESA/CESA/NCCPA coverage will address the needs of project developers. For this reason, close coordination with industry and individual companies like BSE will be needed.

HCP/NCCPs are voluntary, applicant-driven processes. The resulting incidental take permit ("ITP") and implementing agreement must be tailored to meet the needs of the applicants and their development interests. When a third-party HCP/NCCP such as the one envisioned by the DRECP is involved, where individual project proponents are to be covered by a comprehensive plan and ITP, care must be taken to ensure that those parties are integrally involved in plan development. The HCP and ITP will not meet their goals if site-specific development needs, and species considerations, are not taken into account and made the focal point of the planning process, permit issuance, and subsequent implementation.

To address this concern, the federal and state agencies involved in the DRECP need to acknowledge that the ultimate recipients of the incidental take authorizations will be considered partners in the HCP and NCCP. An MOU or similar agreement should be developed with such parties to define how they will be involved in plan development, and ultimate recognition must be given to the fundamental principles underlying ESA Section 10 that HCPs are completely voluntary administrative tools designed to ensure species conservation within the context of private and nonfederal resource development activities.

2. HCP/NCCP Applicant & Authorizations

With these general principles in mind, there are several specific issues that need to be addressed to ensure that the ESA compliance mechanism implemented through the DRECP will be effective. The current proposal is for the CEC to be the HCP applicant. Careful consideration should be given to whether other entities need to be identified as the ITP holder, such as an industry association, a nonprofit established for that purpose, or other governmental entities. Related to this question is the need to define the mechanism that will be used to allocate the incidental authorizations to the parties involved in the covered activities. This mechanism should be efficient in application, but also equitable in scope and usage so that all parties to be covered are treated fairly. Finally, a procedure is needed to guarantee that the regulatory assurances that have become the hallmark of the HCP/NCCP processes remain intact and fully extended to the parties that will ultimately be conducting the covered activities. For example, "no surprises" assurances need to be applied at the site-specific level so that individual solar energy project developers and those implementing conservation activities can be assured the HCP/NCCP measures they adopt are not changed without consent and in accordance, with respect to the HCP, with

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the requirements of 50 C.F.R. § 17.32(b)(5). If these general concerns are addressed through a planning and decision-making framework for the DRECP that incorporates participation from affected stakeholders, the proposal discussed in the NOI/NOP will be a very effective and successful means for promoting properly-sited solar energy projects while also advancing species conservation.

### C. Recognition of the Positive Impacts of Renewable Energy on the Human and Natural Environment

As a final matter, BrightSource requests that future notices about activities related to the preparation of the DRECP recognize that renewable energy, unlike many other development activities, provides positive environmental impacts with respect to climate, air and water emissions, and reduction of other negative environmental impacts associated with the conventional energy infrastructure. An important goal of the DRECP is to promote biological resource conservation—something that we will achieve through traditional conservation measures *and* through the development of new renewable energy resources. Without significant change in our energy infrastructure, the status quo—the "no action alternative"—will lead to a worsening of the quality of the human and natural environment. Statements that suggest that the environmental impact of development under the DRECP will have only negative environmental impacts that must be minimized or mitigated are therefore misleading. *See, e.g.*, 76 Fed. Reg. 45,606, 45,609 (July 29, 2011) ("The Service and the BLM will use all practicable means, consistent with [National Environmental Policy Act (NEPA)] and other essential considerations of national policy, to avoid or minimize significant effects of their actions upon the quality of the human environment."). In this instance, the FWS and BLM must *take* action to have a positive effect, and must seek to *enhance*, rather than minimize, the positive environmental impacts of renewable energy development.

We again appreciate the opportunity to provide comments on the DRECP NOI/NOP. Please let us know if you have any questions about the points made in this letter or require further information or explanation.

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