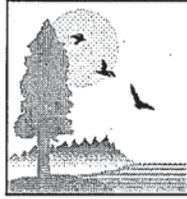


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Established in 1938

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March 9, 2015

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California Energy Commission
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 Docket No. 09-RENEW EO-01
 1516 Ninth Street
 Sacramento, CA 95814-5512

California Energy Commission

DOCKETED

09-RENEW EO-01

TN # 75393

MAR 12 2015

**Subject: Draft Desert Renewable Energy Conservation Plan (DRECP) and
 Environmental Impact Report /Environmental Impact Statement (EIR/EIS)**

Dear Sir or Madam:

The California State Lands Commission (CSLC) staff has reviewed the Draft DRECP and EIR/EIS, which is being prepared jointly by the California Energy Commission (CEC), the U.S. Bureau of Land Management (BLM) and the U.S. Fish and Wildlife Service (USFWS). The CEC, as a public agency proposing to carry out a project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), and the BLM and USFWS are the co-lead agencies under the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.). The CSLC is a DRECP cooperating agency and expects to receive incidental take authorizations under section 10 of the federal endangered species act (ESA) and section 2835 of the Natural Community Conservation Planning Act (NCCP Act).

The CSLC has prepared these comments as a responsible and trustee agency because of its leasing jurisdiction over portions of the Project area located on state school lands as well as its trust responsibility for any and all projects that could directly or indirectly affect state owned sovereign land and/or school lands, and their resources or uses (pursuant to State CEQA Guidelines, §§ 15381, 15386, subd. (b)). The CSLC also supports environmentally responsible use of school lands for renewable energy projects (see the *Resolution By The California State Lands Commission Supporting The Environmentally Responsible Development Of School Lands Under The Commission's Jurisdiction For Renewable Energy Related Projects* [Resolution] adopted by the CSLC on October 16, 2008, at www.slc.ca.gov/Renewable_Energy/Documents/Resolution.pdf).

CSLC Jurisdiction

School Lands

In 1853, the United States Congress granted to California nearly 5.5 million acres of land for the specific purpose of supporting public schools. In 1984, the State Legislature passed the School Land Bank Act (Act), which established the School Land Bank Fund and appointed the CSLC as its trustee (Pub. Resources Code, § 8700 et seq.). The Act directed the CSLC to develop school lands into a permanent and productive resource base for revenue generating purposes. The CSLC manages approximately 462,831 +/- acres of school lands still held in fee ownership by the State and the reserved mineral interests for an additional 790,000± acres where the surfaces estates have been sold. Revenue from school lands is deposited in the State Treasury for the benefit of the Teachers' Retirement Fund (Pub. Resources Code, § 6217.5). Approximately 335,674 acres of fee-owned school lands are located within the DRECP boundary.

Sovereign Lands

The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The CSLC also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6301, 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the Common Law Public Trust.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On navigable non-tidal waterways, including lakes, the State holds fee ownership of the bed of the waterway landward to the ordinary low water mark and a Public Trust easement landward to the ordinary high water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections. Sovereign lands within or near the Plan Area include the Colorado River and Owens Lake.

History and Background

Because of its significant landholdings in the Plan Area, as well as its interest in furthering its revenue generation responsibilities, in 2011, the CSLC entered into a Memorandum of Understanding with the Renewable Energy Action Team (REAT) agencies, which include the CEC, USFWS, BLM, and the California Department of Fish and Wildlife (CDFW), for the purposes of forming a cooperative relationship to effectively plan for and promote renewable energy development in California in a way that advances the CSLC's renewable energy development initiatives and statutory directives applicable to school lands managed by the CSLC. The CSLC's direct

participation will enhance the development and implementation of the DRECP, through acquisition and sharing of comprehensive environmental baseline data, environmental analyses, impact assessments, renewable energy development, and conservation and mitigation opportunities throughout the Plan Area. The CSLC's participation in the DRECP is in anticipation of the identification of renewable energy and transmission development opportunities on school lands under the CSLC's jurisdiction and is recognition of the CSLC's interest in being an Implementing Agency of the DRECP upon Plan completion.

Also in 2011, the Governor signed into law Assembly Bill (AB) 982 (Skinner), enacted as Chapter 2 of the School Land Bank Act, Land Exchanges for Renewable Energy-Related Projects (Pub. Resources Code, §§ 8720-8723). AB 982 directs the CSLC to consolidate school lands through exchanges with the Department of Interior, represented by the BLM, in the California desert area, which includes the Plan Area. The bill's purpose was to facilitate and prioritize land exchanges such that the resulting contiguous school land holdings would be suitable for large-scale renewable energy projects on CSLC school lands. These exchanges are particularly important because the majority of the school land parcels within the Plan Area are fragmented, isolated inholdings within federally protected areas or would be designated for conservation under the DRECP reserve strategy; as a result, development and revenue generation potential of these parcels is minimal. By exchanging these parcels to BLM in return for BLM parcels located in DRECP Development Focus Areas (DFAs),¹ the CSLC could meet its responsibilities under the Act and contribute to DRECP conservation goals.

While the land exchange process with BLM is not itself part of the DRECP, section 8723 directs the CSLC to consult with the CDFW and ensure that any exchanges are consistent with the DRECP. Through its participation as a cooperating agency, CSLC staff has been engaged in discussions with the BLM, CDFW, and other state and federal agencies that will assist in developing a successful land exchange proposal.

Project Description

The DRECP and EIR/EIS is a combined programmatic document intended to comprehensively address how participating entities with jurisdiction over renewable energy and transmission projects and related facilities in the Mojave and Colorado Desert regions of California will conserve natural communities and species pursuant to the NCCP Act and the ESA, while also facilitating the timely permitting of renewable energy projects to help meet the State's renewable energy goals and the Federal government's goal of increasing renewable energy generation on public land. The DRECP is intended to serve as a NCCP under section 2800 et seq. of the California Fish and Game Code and a multi-species Habitat Conservation Plan (HCP) pursuant to section 10 of the ESA.

¹ DFAs are areas within the DRECP where development of solar, wind, and geothermal projects would be designated for streamlined permitting.

As proposed, approval of the DRECP and associated permits would provide renewable energy developers and entities undertaking DRECP conservation efforts with authorization for the incidental take of certain endangered, threatened and special-status plant and animal species for covered activities (as defined in the DRECP). Broadly defined, covered activities include: exploration, construction, operation, maintenance and decommissioning of public and private utility-scale renewable energy generation and transmission. The DRECP will also plan for conservation of 37 covered species and 31 natural communities, and protection of recreation, cultural and other desert resources.

The EIR/EIS analyzes six alternatives: the no action alternative, the preferred alternative, and alternatives 1-4. Generally speaking, each of the action alternatives presents a different configuration of DFAs across the landscape, each with a different balance between development flexibility and resource conflict potential. CSLC staff has determined that the preferred alternative represents the alternative that would allow the CSLC to maximize the revenue generating potential on its existing school lands while providing for the conservation of covered species and habitats.

Environmental Review

CSLC staff offers the following comments on the Draft DRECP and EIR/EIS.

CSLC Permit Area

1. The last sentence on page 1.0-17 of the Introduction states: "The proposed CSLC Permit Area consists of CSLC school lands and sovereign lands." As noted above, sovereign lands are impressed with the Public Trust, and as such, renewable energy projects proposed on these lands must be considered on a case-by-case basis for Public Trust consistency. As a result, the CSLC application for incidental take authorization from the USFWS applies only to state school lands and does not include state sovereign lands, although sovereign lands also occur within the boundaries of the DRECP. CSLC staff recommends revising the "Permit Area" discussion to clarify that while the landscape may include both sovereign and school lands, the incidental take permit would only be issued for school lands.

School Land Ownership

2. The California Department of Parks and Recreation (State Parks) purchased three full sections and two partial sections from the CSLC in 2014 for inclusion in Ocotillo Wells State Vehicular Area. These are Sections 20, 22 and 26, and portions of Sections 14 and 18, in Township 10 South, Range 9 East. Because of this sale, which reduced CSLC ownership by 5,759 acres (2,868 acres of which are within the DRECP boundary), several items in the EIR/EIS require updating.
 - a. Figure I.0-1 on page I.0-3 of the Introduction, showing ownership, should be updated to illustrate State Parks' ownership of the above-identified parcels.
 - b. The CSLC Plan Area acreage total listed in Section I.1.4.3 on page I.1-13 should be revised from 340,500 acres to the revised total of 335,674 acres.

- This number should be updated throughout the document in each place where it occurs, and calculations should be updated accordingly.
- c. As a result of the sale of 5,759 acres of school lands to State Parks, the total CSLC school land surface ownership listed in Section I.2.5.1, page I.2-34 should be updated to the current figure of 462,831 acres.
3. In reviewing available CSLC records and Geographic Information System (GIS) data provided by the lead agencies, CSLC staff discovered errors and discrepancies related to the CSLC's own data which, upon review, affected the reported total acres provided in the DRECP and EIR/EIS. These errors have been corrected; CSLC staff has developed an updated school lands school land layer, and is working with CEC staff to ensure the corrected GIS data are incorporated into the Final EIR/EIS.
 4. The DRECP boundary intersects several parcels owned by the CSLC. Comparisons of the boundary with other GIS data such as county parcels and State and Federal lands indicate property ownership does not appear to be a primary determining factor in the positioning of the boundary. This raises questions about the boundary and its implications once the DRECP is finalized. CSLC staff recommends the lead agencies clarify the following in the Final DRECP and EIR/EIS:
 - a. The process/methodology undertaken for defining the boundary;
 - b. The significance of the boundary (i.e., is it simply outlining a study area, or once the DRECP is finalized will it serve as a policy boundary?); and
 - c. If the lands within the boundary are subject to regulation, whether the land owner would be subject to multiple requirements or regulations for a single parcel.

Mineral Resources

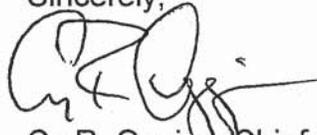
5. Existing mineral resources are discussed in Volume III, Chapter 15 and impacts to mineral resources are in Volume IV, Chapter 15 of the EIR/EIS. Much of the State's land within the Plan Area consists of school lands making up the 16th and 36th sections of each township, along with indemnity lands obtained by the federal government. As noted above, many of these parcels are inholdings entirely surrounded by federal lands subject to proposed conservation actions that are a part of the DRECP. Implementation of the DRECP may, therefore, have an indirect significant impact on mineral exploration by limiting the ability of parties to develop or improve road access, across federal land, to mineralized state inholding parcels as a result of the disturbance caps, reserve design, or other conservation actions. If the ability to improve existing roads or to potentially construct new roads across federal land sufficient for commercial mineral development is limited or unavailable then the impact will be to prevent the current or future development of mineral resources on State parcels. Although access to federal mineral resources is discussed briefly, CSLC staff requests that indirect impacts to private and State mineral resources as a result of access constraints (arising from proposed conservation actions on federally owned property) be discussed and acknowledged more extensively.

6. In Section III.15, Table III.15-4, the total acres of high potential minerals are listed as 835,000. CSLC GIS data, however, which rely in part on the BLM G.E.M. database, indicate approximately 1,594,606 acres of high potential mineral lands, and 2,294,925 acres of moderate potential mineral lands within the Plan Area. CSLC staff requests clarification/verification regarding the 835,000 figure listed in Table III.15-4. Please contact Greg Pelka, Senior Mineral Resources Engineer (see contact information below), for assistance and additional information.
7. In Section III.15, page III.15-19, please change "The California State Lands Commission is currently processing a mineral prospecting permit to explore for rare earth elements on a State school land section in Music Valley" to "The California State Lands Commission issued a mineral prospecting permit (CSLC Lease No. PRC 9138.2) to Green Materials International, LLC, effective July 1, 2014, to explore for rare earth elements on a State school land section in Music Valley."

Thank you for the opportunity to comment on the EIR/EIS for the Project. As a cooperating agency and potential permittee under the DRECP, and a potential lead or responsible agency for future project-level CEQA documents tiered from the EIR/EIS, the CSLC will need to rely on the Final EIR/EIS; therefore, we request that you consider our comments prior to certification of the EIR/EIS and approval of the DRECP. CSLC staff looks forward to continuing to participate in the success of the DRECP and development of the ESA and NCCP incidental take permits by which the CSLC would formalize its implementation obligations.

Please refer questions concerning environmental review to Mara Noelle, Senior Environmental Scientist, at (916) 574-2388 or via e-mail at Mara.Noelle@slc.ca.gov. For questions concerning minerals jurisdiction, please contact Greg Pelka, Senior Mineral Resources Engineer, at (562) 590-5227, or via email at Greg.Pelka@slc.ca.gov. For questions concerning CSLC leasing jurisdiction, please contact Jim Porter, Public Land Management Specialist, at (916) 574-1865, or via email at Jim.Porter@slc.ca.gov.

Sincerely,



Cy R. Oggins, Chief
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cc: Office of Planning and Research
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Ren Lohofener, USFWS
James Kenna, BLM