MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
THE BUREAU OF LAND MANAGEMENT AND THE CALIFORNIA DEPARTMENT
OF FISH AND GAME

A. STATEMENT OF PURPOSE

The Bureau of Land Management (BLM) and the California Department of Fish and Game (CDFG) agree to work with each other and with the United States Fish and Wildlife Service, and the California Energy Commission in an effort to streamline renewable energy project permitting while conserving biological and natural resources within the Desert Renewable Energy Conservation Plan (DRECP) area. The BLM and CDFG have developed this memorandum of understanding (MOU) for the purpose of memorializing and making specific their cooperation and coordination to protect and conserve fish, wildlife, plants and their habitat in the DRECP area.

This MOU is a framework that describes general agency cooperation and coordination commitments. The DRECP will contain the specific implementation strategies and actions to achieve land use goals including conservation of wildlife and natural communities within the plan area, based on factors unique to the particular area and its natural resources, species, geography and other appropriate considerations.

B. STATEMENT OF AUTHORITIES

The BLM and CDFG each have specific administrative responsibility or regulatory authority under Federal and state statutes. These statutes direct them, in part, to take into consideration biological and natural resources within the state, including certain species of concern and their habitats, and adverse effects resulting from public, private, and state land use and development actions. These statutes include but are not limited to:


2. **CDFG.** The California Endangered Species Act, Fish and Game Code § 2050, et seq. (CESA); the Natural Community Conservation Plan Act, Fish and Game Code § 2800, et seq. (NCCPA); Fish and Game Code § 1600, et seq., the Native Plant Protection Act, Fish and Game Code § 1900, et seq. (NPPA); Fish and Game Code §§ 3511, 4700, 5050, and 5515; Fish and Game Code §§ 3503, 3503.5, and 3513; Fish and Game Regulations, Title 14, Cal. Code Regs.; Fish and Game Code § 1802; and the California Environmental Quality Act, Public Resources Code § 21000, et seq. (CEQA).
C. COOPERATION AND COORDINATION

To the maximum extent possible consistent with Federal and state law, the BLM and CDFG will coordinate and cooperate with one another regarding: (i) the development of the DRECP and its subsequent implementation; (ii) the identification of goals and objectives for public land use planning and BLM Land areas for renewable energy project development and for conservation; and (iii) any other significant and relevant policy, planning, and implementation decisions that have the potential to affect fish, wildlife, and plant resources, or the habitat upon which they depend, in the DRECP area.

D. PROCEDURES AND RESPONSIBILITIES OF THE PARTIES


a. BLM’s Conservation Lands. The BLM currently manages public land within the DRECP area under some form of conservation protection, including lands: (i) incorporated into the National Land Conservation System (NLCS) as a nationally significant landscape; (ii) designated as an Area of Critical Environmental Concern (ACEC) with special management provisions; or (iii) nominated for another formal resource protection status (e.g., wilderness, wild and scenic rivers, etc.). The BLM may identify additional public land within the DRECP area for conservation protection through the above or other planning actions, or site-specific actions including Sikes Act Agreements and Cooperative Agreements for Management. Some lands may be appropriate for overlapping designations. These conservation designations and their management will be described through the Record of Decision for the DRECP.

b. Habitat Reserves. If CDFG approves the DRECP as a natural community conservation plan (NCCP), it must create habitat reserves and other equivalent conservation and mitigation measures that provide for long-term management and protection as needed for the conservation of the covered species. CDFG will identify habitat reserves within the DRECP area, which will include privately owned land, state-owned land, and Federally owned land, including BLM Lands. The configuration of the habitat reserves will be based on the best available scientific data for covered species, which include Federally listed, state-listed, jointly listed, and non-listed species. CDFG will, to the maximum extent possible consistent with the NCCPA, recognize the conservation benefit of BLM’s land use planning designations and management of these protected conservation lands in satisfying the conservation requirements of the NCCPA for the DRECP area.

c. BLM’s Continuing Land Use Authority. The BLM retains discretion in accordance with Federal law, regulations, and policy to manage lands identified by CDFG as part of a habitat reserve. Consistent with the goals of this agreement, the BLM will work with CDFG to identify and evaluate tools and actions, consistent with BLM’s land use authority as defined by Federal law, regulations, and policy, to manage the lands identified by CDFG as part of a habitat reserve to meet NCCPA requirements.

2. Compensatory Mitigation.

a. Cooperative Management of BLM Lands. The BLM and CDFG agree to consider the use of site-specific Sikes Act Agreements and Cooperative Agreements for
Management to cooperatively manage lands within the DRECP area on which compensatory mitigation projects are located.

b. Mitigation for Impacts to Privately Owned Land or State-Owned Land. In many cases, CDFG and the BLM anticipate that impacts from renewable energy projects located on privately owned land or state-owned land will be mitigated on privately owned land or state-owned land. However, BLM may agree to authorize mitigation on BLM Lands for impacts caused by development on privately owned land or state-owned land on BLM Lands. In all cases, mitigation on BLM Lands will be managed consistent with Federal law, regulations, and policy, including any applicable site-specific Sikes Act Agreements and Cooperative Agreements for Management.

c. Nesting of Compensatory Mitigation. To the maximum extent possible consistent with Federal and state law, the BLM and CDFG will seek to avoid duplicative mitigation and may each credit compensatory mitigation measures required by the other agency as part of the compensatory mitigation required under its own laws.

d. State Mitigation on BLM Lands. California law typically requires compensatory mitigation above and beyond that required by Federal law. Project proponents or CDFG may seek to locate such additional compensatory mitigation measures for renewable energy projects on BLM Lands. Allowing the mitigation measures to be constructed or implemented on BLM Lands is within the discretion of the BLM consistent with Federal law, regulations, and policy and subject to site-specific analysis and approval by BLM. For mitigation required under state law that exceeds or is different than mitigation required by the BLM, the BLM will coordinate and consult with CDFG regarding the compensatory mitigation and applicable land use designations and will consider, where appropriate, authorizing certain mitigation actions or land use requirements to satisfy state law requirements. Under FLPMA, BLM may authorize compensatory mitigation actions required by CDFG under the NCCPA on BLM Lands which may include, but are not limited to:

i. fencing highways, freeways, and primary county roads;

ii. removing, restoring, or rehabilitating closed roads;

iii. removing of illegal dumps;

iv. removing or controlling invasive or exotic plant infestations;

v. predator control actions;

vi. improving habitat connectivity by increasing the size of existing culverts, increasing the number of culverts, or constructing alternative means of crossings;

vii. additional law enforcement patrols;

viii. restoration of habitat and corridors;
acceptance of the relinquishment of grazing permits or leases to make the land available for mitigation by allocating the forage to wildlife use pursuant to the Consolidated Appropriations Act of 2012;

x. creating artificial nest or burrow sites;

xi. fencing between grazing lands and wildlife habitat lands;

xii. developing water sources for bighorn sheep; and

xiii. increasing educational outreach (e.g., interpreters, handouts, kiosks, signage, etc.);

e. Land Use Authorizations for State Mitigation on BLM Lands. The following land use authorizations are available and may be approved and granted by the BLM to authorize state-required compensatory mitigation actions described above on BLM Lands:

i. rights-of-way pursuant to 43 U.S.C. § 1761, et seq.;

ii. permits, leases, or easements pursuant to 43 C.F.R. § 2920;

iii. withdrawals pursuant to 43 U.S.C. § 1714; and

iv. leases pursuant to the Recreation and Public Purposes Act, 43 U.S.C. § 869, et seq. (RPPA)

3. Projects Proposed on Mitigation Lands. If a project is proposed on BLM Lands previously approved for compensatory mitigation purposes, both the BLM and CDFG will inform the applicant proposing to develop those mitigation lands of the extent of the existing use as mitigation, both temporally and spatially, prior to receiving an application for a right-of-way or other permit or approval for development. The BLM and CDFG will confer to discuss whether and to what extent granting the application would impair or be inconsistent with the mitigation value of the lands. The BLM, in its discretion and considering the mitigation value of the lands, will consider appropriate means of limiting impairment or inconsistency with the mitigation values and will determine whether to approve or deny any such application. In the event the BLM approves an application on mitigation land, the BLM and CDFG will further confer to identify actions to offset any impacts to previously approved compensatory mitigation from the subsequently proposed project. Prior to the BLM’s approval of a subsequently proposed project, the BLM and CDFG will cooperate and coordinate to the maximum extent possible to achieve the goals of this MOU and the DRECP.


a. Notice to Holders of Land Use Authorizations for Mitigation Actions. The BLM and CDFG will provide written notification to the holder of any land use authorization for any compensatory mitigation action, as described in Sections 2.e. above, upon the BLM’s receipt of an application for a right-of-way or other permit or approval, CDFG’s receipt of an application for any permit or approval, or the initiation of any activity by the BLM or CDFG
themselves if the application received or activity initiated has the potential to affect the BLM Lands on which the compensatory mitigation action is located. Both the BLM and CDFG agree to meet in a timely manner with the holder of the land use authorization, if a meeting is requested by any of those three parties, to discuss the application or activity and its potential impact to the compensatory mitigation action.

b. **Annual Report on Project Approvals within the DRECP Area.** Provide each other, on or before January 1 of each calendar year, with a written account of all rights-of-way, permits, authorizations, and other approvals issued by the BLM or CDFG for projects and activities occurring on, or potentially affecting BLM Lands within the boundaries of CDFG’s habitat reserve designated under the DRECP.

E. **ADMINISTRATIVE PROVISIONS**

1. **Effective Date.** This MOU is made and entered into as of the last date of signature by and between the BLM and CDFG.

2. **Unilateral Termination.** Either Agency may withdraw from this MOU by delivering to the other Agency a written notice of intent to withdraw at least thirty days prior to the proposed withdrawal date. After the withdrawal date, the withdrawing Agency shall have no further obligations under this MOU.

3. **Amendment or Modification.** This MOU may be amended with the written agreement of the BLM and CDFG.

4. **Applicability of State and Federal Law.** Notwithstanding any other provision in this MOU, nothing in this MOU is intended to be nor shall it be interpreted to be inconsistent with any applicable Federal or state law or regulation.

5. **Funding.** This MOU does not obligate any funds from either Agency. Subject to the availability of funds, the BLM and CDFG each agrees to fund its own expenses associated with this MOU. Nothing contained in this MOU shall be construed as obligating any Federal agency to any expenditure or obligation of funds in excess or advance of appropriations, in accordance with the Anti-Deficiency Act, 31 U.S.C. §1341.

6. **Elected Officials Not to Benefit.** No member of or delegate to Congress shall be entitled to any share or part of this MOU, or to any benefit that may arise from it.

7. **FACA.** The parties will comply with the Federal Advisory Committee Act to the extent it applies.
U.S. BUREAU OF LAND MANAGEMENT

Signature

Title

11/27/2012

Date

CALIFORNIA DEPARTMENT OF FISH AND GAME

Signature

Title

11/27/12

Date