

IMPLEMENTING AGREEMENT  
FOR  
THE DESERT RENEWABLE ENERGY CONSERVATION PLAN

BY AND AMONG

THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

THE CALIFORNIA ENERGY COMMISSION

THE CALIFORNIA STATE LANDS COMMISSION

THE BUREAU OF LAND MANAGEMENT

AND

THE UNITED STATES FISH AND WILDLIFE SERVICE

## 1. INTRODUCTION

- 1.1. PARTIES TO THE AGREEMENT. This Implementing Agreement (Agreement) is made and entered into by and among the State of California, acting through the California Department of Fish and Wildlife (CDFW), the California Energy Commission (CEC), and the California State Lands Commission (CSLC) of the State of California Natural Resources Agency, and the United States, acting through the Bureau of Land Management (BLM) and the Fish and Wildlife Service (USFWS) of the United States Department of the Interior. This Agreement addresses the implementation of the natural community conservation plan (NCCP) in coordination with the General Conservation Plan (GCP) and the land use plan amendment (LUPA) that collectively constitute the Desert Renewable Energy Conservation Plan (DRECP).
- 1.2. RECITALS. The DRECP Agencies have entered into this Agreement in consideration of the following facts:
  - 1.2.1. California Department of Fish and Wildlife. CDFW is the state agency charged with responsibility for administering the Natural Community Conservation Planning Act (NCCPA). CDFW is authorized to issue permits under Section 2835 of the Fish and Game Code to authorize the take of any species, whether or not it is listed as an endangered, threatened, candidate, or fully protected species under state law, where the conservation and management of the species is provided for in an NCCP approved by CDFW.
  - 1.2.2. California Energy Commission. CEC is the state's primary energy policy and planning agency. Created by the Legislature in 1974, 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, CEC has the exclusive power to certify all sites and related facilities for power plants within its jurisdiction. CEC has authority to authorize take in conformity with the terms of an approved NCCP without separate Section 2835 take authorization from CDFW.
  - 1.2.3. California State Lands Commission. CSLC is a state agency that has jurisdiction and management control over certain public lands of the State of California that were received from the United States. These lands are of two distinct types: sovereign lands and school lands. Sovereign lands include the beds of California's navigable rivers, lakes and streams, as well as the State's tide and submerged lands along the State's more than 1,100 miles of coastline and offshore islands from the mean high tide line to three nautical miles offshore. School lands were originally granted to California by Congress in 1853 to benefit public education. The State retains fee ownership of approximately 470,000 acres of school lands and also retains the mineral rights to an

additional 790,000 acres. CSLC is responsible for the leasing of school lands for various mining activities and geothermal, oil and gas development, and renewable energy development.

1.2.4. Bureau of Land Management. BLM is a federal agency authorized by Congress to manage and regulate multiple-use activities on federal public lands located within the DRECP Plan Area under the Federal Land Policy and Management Act of 1976 (FLPMA). 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. In addition to land-use planning authorities, BLM regulates public land use and occupancy through promulgated rules and regulations. BLM has exclusive authority to permit the use of federal public land through its FLPMA authorities.

1.2.5. United States Fish and Wildlife Service. USFWS is a federal agency charged with responsibility for administering the federal Endangered Species Act (ESA) and providing for the conservation of federally listed fresh water aquatic and terrestrial species and their habitat. USFWS is authorized to issue take permits under Section 10(a)(1)(B) of ESA for the incidental take of federally listed species within its jurisdiction provided that applicants for such permits submit a habitat conservation plan that meets permit issuance criteria set forth in Section 10 of ESA and its implementing regulations.

1.2.6. Planning Agreement. In May 2010, CDFW, CEC, BLM, and USFWS entered into a Planning Agreement (Planning Agreement) that identified the goals, objectives, guidelines, criteria, and procedures for the preparation of the DRECP, including an NCCP and one or more HCPs. The DRECP and this Agreement have been prepared in accordance with the Planning Agreement.

1.2.7. Goals. The overall goal of the DRECP is to provide a streamlined process for the development of utility-scale renewable energy generation and transmission consistent with federal and state renewable energy targets and policies, while simultaneously providing for the long-term conservation and management of Covered Species as well as other physical, cultural, scenic and social resources within the Plan Area with durable and reliable Regulatory Assurances.

1.3. STRUCTURE OF THIS AGREEMENT. This Agreement is intended to govern the implementation of the NCCP component of the DRECP. The Agreement is structured in four parts: (a) Part 1 – Introduction; (b) Part 2 – Obligations of the DRECP Agencies; (c) Part 3 – Obligations of CDFW, CEC, and Permittees under the NCCP; and (d) Part 4 – Miscellaneous Provisions. Because the roles and duties of each party differ, not all parties will approve all parts of this Agreement. The following explains the capacity in which each agency and

permittee shall execute the Agreement and which parts of the Agreement it will be approving:

- 1.3.1.CDFW is executing this Agreement approving all four parts in its capacity as the regulatory and implementing agency for the NCCP component of the DRECP. CDFW shall also execute all NCCP Project Implementing Agreements.
- 1.3.2.CEC is executing this Agreement approving all four parts in its capacity as an additional regulatory and implementing agency for the NCCP component of the DRECP with respect to projects within its jurisdiction. CEC shall also execute all NCCP Project Implementing Agreements for projects within its jurisdiction.
- 1.3.3.BLM is executing this Agreement approving Parts 1, 2, and 4 in its capacity as the agency with regulatory and land use authority under FLPMA over (federal) Public Lands within the DRECP Area and as the regulatory and implementing agency for the LUPA component of the DRECP. BLM is neither an NCCP plan participant nor a permittee under the NCCP and is not subject to the NCCPA. BLM's obligation to implement the DRECP derives from its Record of Decision, and BLM is executing this Agreement exclusively for the purpose of assisting CDFW in the implementation of its NCCP. For purposes of BLM, in the event of any conflict between the terms of the Record of Decision and this Agreement, the terms of the Record of Decision shall control.
- 1.3.4.USFWS is executing this Agreement approving Parts 1, 2, and 4 in its capacity as the regulatory and implementing agency for the GCP component of the DRECP. USFWS is neither an NCCP plan participant nor a permittee under the NCCP and is not subject to the NCCPA. USFWS's obligation to implement the DRECP derives from the GCP, and USFWS is executing this Agreement exclusively for the purpose of assisting CDFW in the implementation of its NCCP. For purposes of USFWS, in the event of any conflict between the terms of the GCP and this Agreement, the terms of the GCP shall control.
- 1.3.5.CSLC is executing this Agreement approving all four parts in its capacity as a permittee under the NCCP component of the DRECP.
- 1.3.6.Each state or local government agency that subsequently obtains take authorizations that can be extended to Covered Activities within its discretionary authority will execute this Agreement approving all four parts in its capacity as permittee under the NCCP component of the DRECP.
- 1.3.7.Each individual project permittee, including state and local government agencies that pursue individual project permitting, will execute the NCCP Project Implementing Agreement attached to this Agreement as **Exhibit A** and incorporated by reference into this Agreement.

- 1.4. RELATIONSHIP OF THIS AGREEMENT TO THE DRECP. Nothing in this Agreement is intended to or shall be construed to conflict with the Final Desert Renewable Energy Conservation Plan or the [Include final title of master implementation MOU between CDFW, CEC, BLM, and USFWS]. In the event of any conflict between the substantive terms of this Agreement and those of the Final Desert Renewable Energy Conservation Plan the [Include final title of master implementation MOU between CDFW, CEC, BLM, and USFWS], the terms of the Final Desert Renewable Energy Conservation Plan and the [Include final title of master implementation MOU between CDFW, CEC, BLM, and USFWS] shall control and shall be incorporated by reference into this Agreement.
- 1.5. DEFINITIONS. The following terms, as used in this Agreement, will have the meanings set forth below. Terms specifically defined in federal or state statutes, including ESA or the NCCPA, or the regulations adopted under those statutes, shall have the same meaning when used in this Agreement. Terms specifically defined in the DRECP shall have the same meaning when used in this Agreement.
- 1.5.1. “Appendix” means an appendix to the DRECP.
- 1.5.2. “Approval Agency” means the DRECP Agency with permitting or other approval authority over a DRECP plan component or a DRECP Covered Activity. BLM is the Approval Agency for the LUPA and Covered Activities that have received a BLM right-of-way. USFWS is the Approval Agency for the GCP and Covered Activities that have received an ESA incidental take permit. CDFW is the Approval Agency for the NCCP and Covered Activities that have received an NCCP take authorization. CEC is the Approval Agency for Covered Activities that have received a CEC license. CSLC is the Approval Agency for Covered Activities that have received a CSLC lease. A Covered Activity may have more than one Approval Agency, in which case the role of an Approval Agency under this Agreement will apply to all Approval Agencies.
- 1.5.3. “Regulatory Assurances” means the assurances provided to Permittees by CDFW and CEC pursuant to Fish and Game Code Section 2820(f).
- 1.5.4. “Changed Circumstances” means, in the context of the NCCPA, reasonably foreseeable circumstances that could affect a Covered Species or Plan Area covered by the NCCP. (Fish & G. Code, § 2805, subd. (c).)
- 1.5.5. “Chapter” means a chapter, subchapter, or section of the DRECP.
- 1.5.6. “DRECP” means the landscape-level plan to provide a streamlined process for the development of utility-scale renewable energy generation and transmission while simultaneously providing for the long-term conservation and management of Covered Species as well as other physical, cultural, scenic and social resources within the Plan

Area. The DRECP consists of a LUPA adopted by BLM pursuant to FLPMA; a GCP approved by USFWS pursuant to ESA; and an NCCP approved by CDFW pursuant to the NCCPA.

- 1.5.7. “DRECP Agencies” means the federal, state, and local agencies that have signed this Agreement and are cooperating to implement the LUPA, NCCP, and GCP. As of the Effective Date of this Agreement, DRECP Agencies include BLM, USFWS, CDFW, CEC, and CSLC. Other state or local agencies obtaining take authorizations that can be extended to Covered Activities within their discretionary authority may be included as DRECP Agencies by signing this Agreement.
- 1.5.8. “DRECP Implementation Fees” means the fees that permittees and Right-of-Way Holders must pay as conditions of their NCCP take authorizations, ESA incidental take permits, or BLM rights-of-way to fund implementation of CMAs for impacts to Covered Species. DRECP implementation fees are referred to as “mitigation fees” in the GCP.
- 1.5.9. “NCCP Reserve” means the lands within the DRECP Plan-Wide Reserve Design Envelope that are added to the NCCP Reserve as provided in **Section X** of this Agreement. All lands in the NCCP Reserve will be managed for Covered Species and will be protected from incompatible land uses. The NCCP Reserve will be assembled primarily from lands within the Interagency Plan-Wide Conservation Priority Area. Most compensatory mitigation CMAs will be implemented within the NCCP Reserve.
- 1.5.10. “Party” and “Parties” means the signatories to this Agreement, individually and collectively.
- 1.5.11. “Project Proposal” means a project proposal submitted for the integrated project proposal review process.
- 1.5.12. “Right-of-Way Holder” or “ROW Holder” means a qualified individual, business or government agency that receives a grant of right-of-way from BLM for a Covered Activity.
- 1.5.13. “Rough Proportionality” means implementation of the DRECP Conservation and Management Actions that is roughly proportional in time and extent to the impact on habitat or Covered Species authorized under the DRECP and as required by Fish and Game Code Section 2820(b)(9).
- 1.5.14. “Unforeseen Circumstances” means, in the context of the NCCPA, changes affecting one or more species, habitats, natural communities, or the geographic area covered by a conservation plan that could not reasonably have been anticipated at the time of Plan development and that result in a substantial adverse change in the status of one or more Covered Species (Fish & G. Code, § 2805(k).)

1.6. EFFECTIVE DATE.

1.6.1. This Agreement shall be effective upon its execution by all DRECP Agencies and CSLC and issuance to CSLC of an incidental take authorization pursuant to the NCCP.

1.6.2. This Agreement shall be effective with respect to each future state and local government permittee and upon issuance to the permittee of an incidental take authorization pursuant to the NCCP.

1.7. TERM. This Agreement shall remain in effect for twenty-five years after the Effective Date unless terminated earlier in writing by mutual agreement of all DRECP Agencies.

**2. OBLIGATIONS OF THE DRECP AGENCIES**

2.1. IMPLEMENTATION. The DRECP consists of distinct plan components, the LUPA, the NCCP, and the GCP, each of which has its own geographic scope, applies to a particular range of projects, and has distinct implementation responsibilities. Implementation responsibilities that are specific to a particular DRECP plan component reside with the agency with primary legal responsibility for implementation or oversight of that plan component: BLM for the LUPA; CDFW and CEC for the NCCP; and USFWS for the GCP. The LUPA, NCCP and GCP will be implemented in a coordinated manner, as part of the integrated DRECP. Plan-wide aspects of the DRECP, which are not specific to a DRECP plan component, or are included in their entirety only in the NCCP, are intended to be implemented through a collaboration of the DRECP Agencies and will not solely be the responsibility of an individual DRECP Agency. Notwithstanding this collaboration, all four agencies retain complete decision making authority under their respective laws and regulations.

2.1.1. Implementation of the LUPA. The BLM LUPA is a comprehensive land use plan amendment that applies to activities on public land administered by BLM within the DRECP Plan Area, including, but not limited to, renewable energy projects. It addresses a full range of impacts, including, but not limited to, impacts to plant, wildlife, natural community, recreation, and cultural resources. Under federal law, BLM is solely responsible for implementation of the LUPA, and all activities that take place on BLM-administered public lands will ultimately require BLM authorization. BLM will continue to implement its land use plans, as amended by the DRECP LUPA, according to applicable federal laws, regulations and policies.

This Agreement does not have any affect or bearing on BLM's decision-making authority or implementation of its land use plans. BLM's DRECP responsibilities are set forth in the [Insert date of signing] Record of Decision on DRECP LUPA, [Insert date of execution] Memorandum of Understanding Between the BLM, USFWS, CEC, and CDFW Regarding Collaboration and Partnership in Implementing the DRECP

(Principal MOU), the November 27, 2012 Memorandum of Understanding between BLM and CDFW (Durability MOU), and the [Insert date of execution for final version of September 12, 2014 draft agreement] Agreement between BLM and CDFW (Durability Agreement).

2.1.2. Implementation of the GCP. The GCP will provide a framework for streamlining permit decisions for Covered Activities under section 10 of ESA. The GCP is an “umbrella” or programmatic HCP that USFWS developed to provide a detailed framework and guidance that local governments, state agencies, and private entities can use to apply for project-level incidental take permits for take resulting from Covered Activities. In addition, if issued a permit under the GCP, a state agency or local government will be able to extend its incidental take authorization to qualified third-party project proponents for Covered Activities over which the agency or local government has jurisdiction. CEC and CSLC have applied for incidental take permits under the GCP that will enable them to extend incidental take authorization to Covered Activities over which they have jurisdiction. The GCP does not apply to projects that will be carried out on federal lands. However, it is based on the DRECP Plan-Wide Conservation Strategy and will implement the strategy within the GCP Permit Area.

USFWS’ participation in the DRECP implementation structure will inform its permitting decisions and regulatory actions under the GCP, ensure that implementation of the GCP is coordinated with implementation of the LUPA and NCCP, build collaborative and synergistic on-the-ground implementation strategies, and support and participate in implementation of DRECP Plan-wide programs.

2.1.3. Implementation of the NCCP. The NCCP will provide a detailed framework and guidance that public and private entities can use to apply for incidental take authorizations for Covered Activities pursuant to Section 2835 of the California Fish and Game Code. If issued a permit under the NCCP, a state agency or local government will be able to extend its take authorization to qualified third-party project proponents for Covered Activities over which the agency or local government has jurisdiction. CSLC has applied for a take authorization under the NCCP that will enable it to extend take authorization to qualified third-party project proponents for Covered Activities on CSLC lands. Unlike the GCP, the NCCP can cover projects that will be carried out on federal land. The NCCP is the only planning component of the DRECP that encompasses the entire Plan Area and all Covered Activities.

The NCCP conservation strategy is intended to provide for the conservation and management of Covered Species and to conserve habitat necessary to maintain the continued viability of biological communities impacted by human changes to the landscape. Under the NCCPA, CDFW has sole responsibility for approving the NCCP and any future NCCP amendments, and sole authority and responsibility for



permitting decisions based on the NCCP, except for permitting decisions by CEC, as explained below, in **Section X**. The NCCP also establishes plan-wide programs intended to conserve Covered Species and natural communities at the ecosystem scale, while accommodating Covered Activities and other compatible land uses. All plan-wide DRECP programs are elements of the NCCP.

CDFW and CEC's participation in the DRECP implementation structure, as it applies to the NCCP component, will be for the purpose of informing its permitting decisions and regulatory actions under the Plan-wide NCCP, ensuring that implementation of any tiered NCCPs developed under the DRECP and any project-specific Section 2835 take authorizations under the plan-wide NCCP are coordinated with implementation of the LUPA and GCP, and supporting, participating in, and overseeing implementation of plan-wide programs.

#### 2.1.4. Implementation Structure.

- 2.1.4.1. DRECP Executive Policy Group. The California Governor's Office and the U.S. Department of the Interior will form an Executive Policy Group through a written agreement upon approval of the DRECP. The Executive Policy Group will ensure coordination among DRECP Agencies regarding implementation of each of the planning components of the DRECP, oversee coordination among federal, state, and local governments for all DRECP matters, and provide policy-level support and oversight of implementation of Plan-wide programs. The Executive Policy Group is further described in **Chapter X**.
- 2.1.4.2. DRECP Coordination Group. The Executive Policy Group will form a Coordination Group within six (6) months after the DRECP is approved. The DRECP Coordination Group will be responsible for the day-to-day implementation of Plan-wide programs, coordination among DRECP Agencies regarding implementation of each DRECP planning component (LUPA, GCP, and NCCP), coordination with public agencies and stakeholders, and public outreach. The Coordination Group is further described in **Chapter X**.
- 2.1.4.3. Program Manager. The Executive Policy Group will select a Program Manager, who will report to the Coordination Group and act under the Coordination Group's direction. The Program Manager will oversee the work of Coordination Group staff and will manage, coordinate, oversee and report on all aspects of implementation of DRECP Plan-wide program elements. The role of the Program Manager is further described in **Chapter X**.
- 2.1.4.4. Adaptive Management Team. The Coordination Group will implement the Monitoring and Adaptive Management Plan (MAMP) after receiving and considering the advice and recommendations of the Adaptive Management

Team, which will have primary responsibility for developing and recommending to the Coordination Group MAMP monitoring protocols and standards and for reviewing and analyzing MAMP monitoring data and reports, including effectiveness monitoring and validation monitoring. The Adaptive Management Team is further described in [Chapter X](#).

2.1.4.5. Working Groups. The Coordination Group will form working groups as needed to inform DRECP implementation, including but not limited to the following working groups: (a) Public Agency Working group; (b) Stakeholder Working Group; and (c) Stakeholder Science Subgroup.

2.1.5. Partnerships with Local Governments. The Executive Policy Group and the Coordination Group will encourage counties and other local governments to refer to the DRECP to inform local land use planning and to rely on the NCCP and GCP for state and federal take authorizations. The Executive Policy Group and Coordination group will also welcome coordination among federal, state, and local permitting agencies regarding renewable energy and transmission projects covered by the DRECP and actions to conserve DRECP Covered Species. .

2.1.5.1. Informal Participation. The Executive Policy Group and the Coordination Group will welcome informal collaboration with local governments regarding DRECP implementation, local land use planning, and permitting for renewable energy projects.

2.1.5.2. Formal Coordination Role. The DRECP will establish the Public Agency Working Group to create established roles for government agencies to provide input into, and to coordinate their efforts with, DRECP implementation. Local governments can become a member of the Public Agency Working Group.

2.1.5.3. Permittee under the DRECP. Local governments can apply for take authorizations under the GCP and NCCP for DRECP Covered Activities within the local government's jurisdiction. Local government(s) would apply to CDFW for a take authorization under the NCCP and to USFWS for a take authorization under the GCP. By adopting the NCCP's and GCP's terms and conditions, local governments would benefit from a significantly streamlined permitting process for obtaining take authorizations. The NCCP and GCP take authorizations would allow the local government itself to extend take authorization to Covered Activities under the terms of the NCCP and GCP when the local government approves such activities.

2.1.5.4. Permittee under an NCCP or HCP that Tiers from the DRECP. After the DRECP is finalized, a local government could elect to prepare its own NCCP and HCP that tiers from the DRECP. The local government would have flexibility to

prepare a plan that covers not just renewable energy projects, but also other private development and public infrastructure projects. The local government would also have flexibility to define appropriate development areas for renewable energy projects and appropriate conservation areas for species covered by the NCCP and GCP, provided the local government's plan is consistent with the NCCP's and GCP's biological goals and objectives and mitigation requirements (i.e., that it tiers from the NCCP and GCP.) This form of tiered NCCP and HCP would likely require an amendment to the DRECP NCCP and GCP.

2.2. ASSEMBLY OF THE NCCP RESERVE. The NCCP Reserve is the assembly of lands that will be acquired or managed by the DRECP Agencies to provide compensatory mitigation for the impacts of Covered Activities and to provide for the conservation and management of Covered Species. Assembly of the NCCP Reserve is a key element of the DRECP's Plan-Wide Conservation Strategy and is necessary to achieve the DRECP's Step-Down BGOs. The DRECP Agencies will assemble the NCCP Reserve through their existing authorities and roles in the Coordination Group.

2.2.1. The NCCP Reserve. On private lands, the NCCP Reserve will be assembled through the purchase of land or conservation easements from willing sellers. Only lands that will significantly contribute to the assembly of the NCCP Reserve, both with regard to protection of existing important resources and the ability to manage the resources in perpetuity, will be acquired. The process for identifying conservation priorities, including the use of Conservation Priority Areas and criteria to be used by the Coordination Group for land acquisition during plan implementation, is further described in Chapter X and Appendix X. Assembly of the NCCP Reserve on BLM-administered lands will be accomplished with the BLM Record of Decision and implementation of the non-acquisition compensation approach described in Appendix X and the November 27, 2012 Memorandum of Understanding between BLM and CDFW (Durability MOU) and the [Insert date of execution for final version of September 12, 2014 draft agreement] Agreement between BLM and CDFW (Durability Agreement). Both the Durability MOU and the Durability Agreement are incorporated by reference into this Agreement.

2.2.2. Rough Proportionality. Assembly of the NCCP Reserve, as well as implementation of other CMAs, will occur at or faster than the pace at which Covered Activities impact Covered Species' habitat. The DRECP Agencies will ensure that the rate at which Covered Activities are implemented does not outpace the rate at which the NCCP Reserve is assembled or the rate at which non-acquisition CMAs are implemented; the DRECP Agencies will ensure that the assembly of the NCCP Reserve and implementation of CMAs "stays even" with Permittee impacts. All compensatory mitigation actions, including but not limited to land acquisition, will be initiated or completed within twelve (12) months after the date on which the impact being mitigated occurs (e.g., the date of ground disturbance for construction activities or

direct mortality from operations). With the approval of the applicable Approval Agency, a six (6) month extension period will be allowed if necessary to complete a CMA.

2.2.2.1. Application of Rough Proportionality Requirements. Rough Proportionality requirements will vary for different types of CMAs, as follows:

2.2.2.1.1. For land acquisition forms of compensatory mitigation, the transfer of the land or conservation easement must be completed within the prescribed time period.

2.2.2.1.2. For habitat restoration and enhancement forms of compensatory mitigation, plant materials must be installed, and initial success criteria must be met within the prescribed time period. Satisfaction of long-term (greater than one (1) year) success criteria may occur later, according to biologically appropriate time periods established by the agency issuing the take authorization on a project-by-project basis, as conditions of the take authorization.

2.2.2.1.3. For non-acquisition forms of compensatory mitigation, time considerations may vary depending on whether the activity is action oriented (e.g., installation of fencing) or non-action oriented (e.g., a durability tool). For these forms of compensatory mitigation, the Approval Agency will establish the appropriate time period for implementation on a project-by-project basis, as conditions of the take authorization.

2.2.2.2. Failure to Stay Even or Maintain Rough Proportionality. If an Approval Agency determines that the requirements of this Section have not been fulfilled, it will notify the Coordination Group in writing, and the Coordination Group will meet to develop a plan of action that will fulfill such requirements. The DRECP Agencies acknowledge that failure to fulfill the requirements of this Section would constitute a violation of the NCCP take authorization(s) or ESA incidental take permit(s) for the Covered Activities whose impacts are not mitigated in accordance with this Section. To the extent failure to maintain Rough Proportionality is a failure by a Permittee, CDFW and USFWS may suspend or revoke the Permittee's incidental take authorization under the NCCP or incidental take permit under the GCP. To the extent failure to maintain Rough Proportionality constitutes a failure by one or more DRECP Agencies, CDFW and USFWS may suspend issuance of further incidental take authorizations or incidental take permits until the failure is remedied and Rough Proportionality is reestablished.

2.3. INTEGRATED PROJECT PROPOSAL REVIEW PROCESS. The DRECP is designed to provide a comprehensive conservation and mitigation program for Covered Species and a permitting program for state and federal take authorizations for Covered Activities that integrates the requirements of the LUPA, the GCP and the NCCP. The DRECP does not supplant existing statutory requirements or regulatory permitting processes. For activities proposed on BLM lands, the regulatory ROW grant process will continue to apply; for activities under CEC's licensing authority, CEC's licensing process will continue to apply; and for activities proposed on CSLC lands, CSLC's leasing process will continue to apply. Likewise, for Covered Activities that are within the land use authority or other discretionary authority of local governments or state or federal agencies, existing review and approval processes and requirements will remain in effect.

The DRECP is designed to provide an integrated federal and state permitting process for take authorizations for Covered Species from Covered Activities that can be integrated with existing federal, state, and local project review and approval and permitting process. The integrated project proposal review process is described in [Chapter X](#).

2.3.1. Agency Coordination. The DRECP Agencies will coordinate their environmental review of individual Covered Activities to make the process of obtaining federal and state take authorizations for individual Covered Activities more efficient and to ensure that the requirements for such take authorizations are consistent and predictable. Participating in the integrated project proposal review process will not diminish the discretionary authority of any participating agency; each agency will retain its statutory responsibilities and authorities. However, to provide an integrated process for federal and state take authorizations for individual Covered Activities, the DRECP Agencies must coordinate their environmental review and regulatory actions (i.e., CEC licensing, CSLC leasing, etc.).

2.3.2. Coordination with Local Governments. For Covered Activities within the land use authority of a local government, the local government will retain its full discretionary authority. Proponents of Covered Activities within the land use authority of a local government may apply for federal take authorizations from USFWS, and for state take authorizations from CDFW, during and in coordination with the local environmental review and land use approval process.

2.3.3. Role of the Coordination Group. The DRECP Agencies, and any other federal, state, or local agencies that become DRECP Agencies, will coordinate the environmental review and regulatory actions for Covered Activities by engaging the Coordination Group. The DRECP Agencies will require proponents of Covered Activities under each Agency's authority to complete a DRECP integrated project proposal. Requirements for integrated project proposals are described in [Chapter X](#).

2.3.4. Role of DRECP Agencies. Each DRECP Agency will determine independently, and in accordance with the agency's statutory authorities and responsibilities, what regulatory action to take with regard to a proposed Covered Activity under its authority. However, each DRECP Agency will consider the Coordination Group's input during the agency's environmental review of the proposed Covered Activity and will coordinate directly with any other participating agency with authority over the Activity to ensure that the requirements for federal and state take authorizations are consistent and are not duplicative.

2.3.5. Streamlined Review of Covered Activities.

2.3.5.1. To facilitate streamlining under the NCCP and GCP, applicants may submit a Project Proposal to the DRECP Coordination Group for an early, informal review for consistency with DRECP requirements. The Project Proposal will identify all relevant project information and review requirements, recognizing that not all project information can be assembled and not all review requirements can be met at the Project Proposal stage.

2.3.5.2. The DRECP Coordination Group will provide an initial assessment regarding the Project Proposal's consistency and, if necessary, identify any revisions or additions needed for consistency with DRECP requirements. The Coordination Group will also work with applicants to ensure they have access to the most current, available DRECP data resources. Where the Coordination Group has initially assessed a Project Proposal and concluded that it is consistent with DRECP requirements, an application submitted to the appropriate DRECP Agency(ies) that is consistent with the Project Proposal will benefit from specific DRECP streamlining timeframes. Each DRECP Agency will review and take action with regard to submitted applications that are consistent with such Project Proposals within one (1) year following the determination by the agency that the application is complete. Any additional project-level studies or the California Environmental Quality Act, Public Resources Code § 21000, et seq. (CEQA) or the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq. (NEPA) environmental review would have to be completed within this one-year period. Projects initially found to be consistent with the DRECP but requiring technical studies extending for more than one year (e.g., 2-year golden eagle studies) would have an extended review period as needed to complete the study(ies). The informal Project Proposal Review process is described in detail in **Chapter X**.

2.4. FUNDING. ESA and the NCCPA each require that adequate funding will be ensured to implement an HCP and an NCCP respectively. However, such assurances do not require that all necessary funds be secured at the time of permit issuance, but rather establish that such funding is reasonably certain to occur during the course of HCP and/or NCCP implementation. The DRECP Agencies agree that the accounting of the estimated costs

associated with the various components of the DRECP, as set out in **Chapter X** and **Appendix X** reflect best efforts to determine the level of funding necessary to implement the DRECP, including the NCCP and the GCP.

#### 2.4.1. DRECP Implementation Fees.

2.4.1.1. The DRECP Agencies will require payment of a DRECP implementation fee for all Covered Activities. Revenues from DRECP implementation fees will be used to fund implementation of CMAs that provide compensatory mitigation for the impacts of the Covered Activities and provide for the conservation and management of Covered Species. The Coordination Group will determine the appropriate implementation fee amount for each Covered Activity based on the cost of implementing the DRECP CMAs required for the Covered Activity, taking into consideration the estimated costs for implementation in **Chapter X** and **Appendix X**, and any other relevant and reliable cost information available at the time the implementation fee is determined. A description of the amount of the implementation fee, and the calculation used to determine the fee, will be provided to the proponent of the Covered Activity before the Approval Agency takes final action on the application for the Covered Activity. Payment of the implementation fee will be a condition of approval for each Covered Activity.

2.4.1.2. For Covered Activities that receive a take authorization issued under the NCCP or an incidental take permit issued under the GCP, the amount of the implementation fee will be included in and covered by the Regulatory Assurances provided in connection with the take authorization or incidental take permit, such that the amount of the fee will not be increased once the take authorization or incidental take permit is issued.

2.4.1.3. Permittees and ROW Holders will be directly responsible for implementing all CMAs that must be implemented on the site of a Covered Activity, including but not limited to CMAs intended to avoid or minimize the impacts of Covered Activities. The cost of implementing on-site CMAs will therefore not be included in the DRECP implementation fee.

2.4.1.4. Where the proponent of the Covered Activity elects to participate in the voluntary informal review of Project Proposals described in **Section X**, the Coordination Group will provide a preliminary estimate of the amount of the DRECP implementation fee that would apply to the proposed Covered Activity.

2.4.2. Components of DRECP Implementation Fees. The DRECP implementation fee for each Covered Activity will reflect the actual cost of implementing all off-site CMAs required for the Covered Activity, including the cost of the following, as applicable: (a) land acquisition; (b) long-term land management and maintenance fund; (c) habitat



restoration and enhancement; (d) monitoring and adaptive management; and (e) administrative costs. These components of the DRECP Implementation Fee are further described in [Chapter X](#).

- 2.4.3. Permittee/ROW Holder Implementation of CMAs In-Lieu of Fee. With approval of the DRECP Coordination Group and the Approval Agency, a Permittee or ROW Holder may implement off-site CMAs that apply to the Permittee/ROW Holder's Covered Activity in lieu of paying a portion of the DRECP implementation fee. This process is further described in [Chapter X](#).
- 2.4.4. Permittee Funding Assurances. The Permittees agree to provide such funds as may be necessary to carry out their obligations under the NCCP and the GCP. Each Permittee must provide financial assurances that it can fund implementation of the terms and conditions of its take authorization(s), including implementing CMAs on the site of Covered Activities included in such take authorizations, monitoring and reporting on compliance with on-site permit terms and conditions, on-site adaptive management responses, and costs associated with permit administration. Each Permittee must also pay the DRECP implementation fee, as determined by the Coordination Group on a project-by-project basis. The DRECP implementation fee must be paid before initiating ground-disturbance associated with the permitted Covered Activity. The Coordination Group will manage implementation fee revenues, as described in [Chapter X](#).
- 2.4.5. DRECP Agency Funding Commitments. The DRECP Agencies agree to require the payment of appropriate DRECP implementation fees for Covered Activities and, through their roles in the Coordination Group, to seek to secure such other funds as may be needed to implement the DRECP.
- 2.4.6. Inadequate Funding. CDFW may determine that the NCCP is not being adequately funded, and USFWS may determine that the GCP is not being adequately funded, if the applicable Wildlife Agency determines that a funding shortfall exists and that such shortfall either: (a) prevents a specific action or actions from being implemented in a timely manner, as defined by the Rough Proportionality criteria set out in [Chapter X](#); or (b) prevents a specific action or actions from being properly and fully implemented, as described in the relevant provisions of the NCCP or GCP. If CDFW or USFWS determines that adequate funding is not being provided, it will evaluate the impact of the shortfall on implementation and determine whether the funding deficiency will affect the scope or ongoing viability of take authorizations that have been issued. The DRECP and this Agreement contain provisions that provide for Rough Proportionality and that are intended to ensure there would be no mitigation debt in the event of inadequate funding.



To the extent the funding shortfall is due to a failure by a Permittee, CDFW and USFWS may suspend or revoke the Permittee’s incidental take authorization under the NCCP or incidental take permit under the GCP. To the extent the funding shortfall is due to a failure by one or more DRECP Agencies, CDFW and USFWS may suspend or revoke the Permittee’s incidental take authorization under the NCCP or incidental take permit under the GCP and may also suspend issuance of further incidental take authorizations or incidental take permits until the funding shortfall is addressed and remedied. In the event of a shortfall in state or federal funding, CDFW and USFWS will not suspend or revoke a take authorization if the shortfall in funding is determined to be likely to have no more than a minimal effect on the capacity of the NCCP and the GCP to implement CMAs as necessary to maintain Rough Proportionality and “stay even,” as provided in **Section X**.

2.4.7. Long-Term Land Management and Maintenance Fund. To the extent the long-term land management and maintenance fund established pursuant to the DRECP constitutes an “endowment” within the meaning of California Government Code Sections 65965-65968, the fund is exempt from the provisions of Section 65968(b) pursuant to the exception set forth in Section 65968(b)(2)(B). In compliance with Section 65968(b)(2)(B), the holder(s) of the fund shall be **[Identify endowment holder(s)]**, those holders are qualified to hold endowments because **[state qualifications of endowment holders under Government Code Sections 65965-65968]**, the capitalization rate shall be **[identify capitalization rate]**, the return objectives are **[state return objectives]**, and the spending and disbursement policies are **[state spending and disbursement policies]**.

2.5. **MONITORING, REPORTING, AND ADAPTIVE MANAGEMENT.** The Coordination Group will be responsible for implementing the MAMP. The purpose of the MAMP is to provide the overarching programmatic framework for long-term monitoring of the progress of implementation of conservation actions, and monitoring overall implementation of plan objectives. The Coordination Group will use the MAMP to help ensure: (1) overall progress and compliance with the provisions of the DRECP, including the BLM LUPA, the NCCP and the GCP; and (2) the most effective use of DRECP program funds. The MAMP encompasses monitoring for compliance with permit conditions (i.e., compliance monitoring), monitoring to determine achievement of BGOs (i.e., effectiveness monitoring), project-level monitoring, land use plan monitoring, and monitoring for validation of management actions. The Coordination Group, through implementation of the MAMP, will use monitoring results and other sources of information to inform implementation of management actions, including adaptive management actions.

2.5.1. **Adaptive Management.** The Coordination Group’s responsibility for implementing the MAMP within the NCCP Reserve encompasses lands acquired with DRECP implementation fees, non-acquisition CMAs funded with DRECP implementation fees, and CMAs implemented using other public and private sources of funding, based on

the advice and recommendations of the DRECP Adaptive Management Team, as described in [Section X](#) and [Chapter X](#). For expected future conditions within the NCCP Reserve, the Adaptive Management Team will prepare a risk assessment to predict the probability of change over the life of the NCCP and GCP, and the Coordination Group will determine whether any preventive measures are available that Permittees can implement on project sites and/or that the Coordination Group can implement within the NCCP Reserve to prevent or reduce adverse effects to Covered Species. The Coordination Group and Adaptive Management Team will also develop a longer-term planned response for adaptive management that includes an impact assessment report, recommended actions to reduce impacts to Covered Species, and additional adaptive strategies such as experimental research or modeling that may be necessary to address uncertainty or lack of information.

2.5.2. Compliance Monitoring. Compliance monitoring will be used to track DRECP implementation with regard to the administrative duties of each the DRECP Agencies and to verify that the Permittees are carrying out the terms and conditions of the NCCP and GCP and take authorizations issued under the NCCP and GCP. The DRECP Coordination Group will be responsible for overall monitoring of Permittees' implementation of Covered Activities and the terms and conditions of take authorizations. Permittees will monitor the implementation of Covered Activities and CMAs on their project sites and annually report the results to CDFW and USFWS. Compliance Monitoring requirements are described further in [Chapter X](#).

2.5.3. Effectiveness Monitoring. Effectiveness monitoring will be used to inform the adaptive management of biological resources and to evaluate the overall effectiveness of the DRECP conservation strategy. The effectiveness monitoring component of the MAMP will also assess progress toward achievement of the Step-Down BGOs and the contribution of Plan implementation to achieving the Plan-Wide BGOs. The Coordination Group is responsible for overall effectiveness monitoring. CDFW and USFWS will use effectiveness monitoring to determine whether take authorizations issued under the NCCP or GCP are contributing toward achieving the Step-Down BGOs and Plan-Wide BGOs. Permittees, with the assistance of CDFW and USFWS, will be responsible for verifying the effectiveness of CMAs implemented on their project sites. Effectiveness monitoring is further described in [Chapter X](#).

2.5.4. Reporting. The Coordination Group will be responsible for issuing an annual report, as described in [Chapter X](#). CDFW and USFWS will use the annual report to document the effectiveness of the NCCP and the GCP overall and to evaluate the effectiveness of contributions toward achieving the Step-Down BGOs from Permittees' fulfillment of the terms and conditions of take authorizations. To document compliance with the terms and conditions of take authorizations issued under the NCCP or GCP, each Permittee will prepare and submit to CDFW and to USFWS an annual report by March

31 for the preceding calendar year. Permittee reporting requirements are described further in **Chapter X**.

2.6. **MODIFICATIONS AND AMENDMENTS.** The DRECP may be modified during implementation in accordance with CDFW, CEC, BLM, and USFWS regulations, the Plan, and the terms of this Agreement. Plan changes fall within three broad categories: administrative changes, minor modifications, and formal amendments. Certain changes to the DRECP will also require an amendment to permits.

2.6.1. **Administrative Changes.** Administrative changes are non-substantive changes or corrections that do not change the purpose, intent, or terms of the DRECP. Administrative changes will not require modification or amendment of the LUPA, NCCP, or GCP or approval by BLM, CDFW, or USFWS. These changes will be tracked by the Coordination Group and reported in the annual reports. Administrative changes are described further in **Chapter X**.

2.6.2. **Modifications.** Modifications are changes that may be substantive, but do not significantly change the purpose, intent, or terms of the DRECP. Modifications can occur administratively by the Coordination Group and do not require formal amendment of the LUPA, the NCCP or the GCP. However, modifications must be approved by the relevant Approval Agency: BLM must approve any modifications to the LUPA; USFWS must approve any modifications to the GCP; and CDFW must approve any modifications of the NCCP. Minor modifications must not result in net loss of habitat value in the reserve or otherwise reduce the effectiveness of the conservation program. In most cases, a minor modification should improve the effectiveness of the program. The Coordination Group will maintain an appropriate record of all modifications to the DRECP and permit(s). Modifications are described further in **Chapter X**.

2.6.2.1. Procedure for Modifications.

2.6.2.1.1. Any DRECP Agency may propose a modification of the LUPA, NCCP or GCP by providing written notice to the Coordination Group. Such notice will include a description of the proposed modification, an explanation of the reason for the proposed modification, an analysis of any environmental effects including any impacts on Covered Species, and an explanation of why the effects of the proposed modification will have the following characteristics: (a) they will not significantly differ from, and will be biologically equivalent or superior to, the effects described in the LUPA, NCCPA, or GCP; (b) they will not conflict with the terms and conditions of the LUPA, NCCP, or GCP; and (c) they will not significantly impair implementation of the LUPA, NCCP, or GCP conservation strategy.

2.6.2.1.2. Any DRECP Agency may submit comments on the proposed minor modification in writing within sixty (60) days of receipt of notice.

2.6.2.1.3. If the relevant Approval Agency(ies) do not concur that the proposed modification meets the requirements for a modification, the proposal must be processed as a formal amendment as described in **Section X**.

2.6.2.1.4. If the Approval Agency(ies) concur that the requirements for a modification have been met and the modification should be incorporated into the LUPA, NCCP or GCP, the Coordination Group will modify the DRECP accordingly. If the Approval Agency(ies) fail to respond to the written notice within the 60-day period, it will be deemed to have approved the proposed modification.

2.6.3. **Amendments.** Significant, substantive changes to the DRECP will require a formal amendment. Any proposed changes to the DRECP that do not meet the criteria described for administrative changes or modifications would require an amendment of the LUPA, GCP, the NCCP, or all three. The LUPA, GCP, and NCCP may be amended in accordance with the applicable legal requirements of the FLPMA, ESA, the NCCPA, NEPA, and CEQA. An amendment would require a formal review and approval process, including public review, NEPA and CEQA compliance, federal Section 7 consultation, and revised CDFW NCCP findings, as appropriate. Amendments are described further in **Chapter X**.

### **3. OBLIGATIONS OF CDFW, CEC, AND PERMITTEES UNDER THE NCCP**

3.1. **APPLICATION.** This Part 3 applies only to obligations under the NCCP component of the DRECP. The application and approval processes for obtaining authorizations under the GCP and the LUPA components of the DRECP are described in the DRECP, and the obligations of GCP permittees and LUPA ROW Holders will be governed, respectively, by the applicable ESA permits and ROW grants. As described in **Section X** and **Chapter X**, implementation of the NCCP, GCP, and LUPA components of the DRECP by the DRECP Agencies will be coordinated through the Coordination Group.

3.2. **COVERED SPECIES.** For NCCP purposes, the Covered Species are those species, listed and non-listed, whose conservation and management are provided for by the NCCP and for which limited take may be authorized by CDFW pursuant to Section 2835 permits. Covered Species are listed in **Exhibit B**, which is attached to this Agreement and incorporated by reference into this Agreement. Covered Species are described further in **Chapter X**.

3.3. **TAKE AUTHORIZATIONS.** The DRECP NCCP provides a basis for the issuance of take authorizations under the NCCPA for the take of Covered Species resulting from Covered

Activities. Proponents of proposed renewable energy generation and transmission projects that fall within the description of Covered Activities may apply for take authorizations under the NCCP. Covered Activities proposed on private lands and non-federal public lands are eligible to obtain both a federal incidental take permit under the GCP and a state take authorization under the NCCP. Covered Activities proposed on federal lands are eligible to obtain a state take authorization under the NCCP from CDFW or CEC as applicable.

3.3.1. Conditions of Coverage. To obtain a take authorization, proponents of proposed Covered Activities must follow the applicable (i.e., NCCP, GCP, CSLC, or CEC) application process and must comply with all applicable DRECP requirements, including incorporation of appropriate CMAs. CMAs include avoidance, minimization and mitigation measures for Covered Species. The DRECP's substantive requirements (e.g., CMAs) for take authorizations for Covered Activities are the same regardless of whether a Covered Activity is proposed on CSLC lands or other public or private land. However, the procedure for obtaining take authorizations will vary somewhat depending on the ownership of the land on which a Covered Activity is proposed and whether the Covered Activity is subject to CEC jurisdiction. The process for obtaining project-specific federal and state take authorizations under the NCCP and GCP, including the application process that must be followed and the substantive requirements that apply, are further described in **Chapter X**.

3.3.2. CSLC Take Authorization. As a Permittee under Section 2835 of the Fish and Game Code, CSLC will be responsible for complying with the terms and conditions of the NCCP take authorization, which will include a requirement to implement actions consistent with the NCCP, and a requirement that any extension of incidental take authority for take resulting from project-level, site-specific Covered Activities on CSLC lands must be consistent with the NCCP. CDFW or CEC, as appropriate, will enforce the terms and conditions of each take authorization. CSLC's participation in the implementation of the NCCP will be to inform its leasing decisions under its incidental take authorization, and to support and participate in implementation of DRECP Plan-wide programs. CSLC's take authorization will be "severable," such that CSLC will be in compliance with its NCCP take authorization as long as it remains in compliance with the terms of the take authorization, regardless of whether other Permittees remain in compliance with their take authorizations.

3.3.2.1. Take Authorization. CSLC has applied for a state take authorization from CDFW based on the NCCP. The state take authorization will cover Covered Activities on CSLC lands. For Covered Activities proposed on CSLC lands, an applicant may obtain coverage under CSLC's state take authorization through CSLC's leasing process. CSLC's leasing process will ensure that proposed Covered Activities comply with NCCP requirements and will require applicable DRECP CMAs as terms and conditions of leases for Covered Activities. Project

proponents may obtain coverage under CSLC's state take authorization by complying with these requirements and including applicable avoidance, minimization, and mitigation measures, and other applicable DRECP standards and measures in proposed Covered Activities, as described in [Section X](#). For Covered Activities proposed on CSLC lands that are within CEC's jurisdiction (thermal power plants with the capacity to generate 50 megawatts or more), state take authorization will be provided by CEC, in accordance with [Section X](#).

3.3.2.2. CSLC Responsibilities as Permittee. CSLC will fulfill its obligations under this Agreement, the NCCP and the state take authorization. CSLC's general obligations include:

3.3.2.2.1. Ensuring that each Covered Activity on CSLC lands that is covered under CSLC's state take authorization complies with all applicable NCCP requirements, including payment of the appropriate mitigation fee;

3.3.2.2.2. Participating in the Executive Policy Group and the Coordination Group as described in [Section X](#) and the DRECP;

3.3.2.2.3. Participating in the integrated project proposal review process under [Section X](#) of this Agreement and the DRECP; and

3.3.2.2.4. Participating in the MAMP.

3.3.2.3. Timing of Compensatory Mitigation. CSLC will ensure that compensatory mitigation for Covered Activities covered under CSLC's NCCP take authorization is provided as required under [Section X](#) and the DRECP.

3.3.2.4. Take Allocation. CSLC's state take authorization will each specify a take allocation—an amount of take of applicable Covered Species that is authorized. CSLC will adhere to its take allocations. CSLC will have an allocation “bank account” at the ecoregion subarea level with an initial take allocation and the ability to withdraw additional take from the ecoregion subarea bank as needed unless and until the bank account is empty. CSLC's initial take allocation will be ensured for ten (10) years, after which time any remaining take may be allocated by CDFW, in coordination with USFWS, to other Permittees. Take allocations under the NCCP are further described in [Chapter X](#).

3.3.3. Take Authorization for Covered Activities under CEC Jurisdiction.

3.3.3.1. Role as Permitting Agency under NCCP. Under the Warren-Alquist Act, CEC has exclusive authority under California law to approve (license) energy facilities that are thermal power plants with a generating capacity of 50 MW or more,



related facilities (e.g., natural gas pipelines, water lines, tanks, etc.), and certain electric transmission lines. This exclusive authority gives CEC sole authority and responsibility for licensing decisions under California law, including the authority to authorize take in conformity with the terms of an approved NCCP without separate Section 2835 take authorization from CDFW.

- 3.3.3.2. Take Authorization under the NCCP. As part of its exclusive jurisdiction under state law over thermal generation projects with the capacity to generate 50 megawatts or more, CEC has the authority to issue take authorizations based on the NCCP. CEC will incorporate applicable CMAs as conditions of approval in its licensing process for Covered Activities in the Plan Area. Covered Activities within CEC jurisdiction may thereby obtain NCCP take authorizations through CEC's licensing process. CEC will confer with CDFW to ensure that each such Covered Activity complies with the NCCP. For Covered Activities that are within CEC jurisdiction and are proposed on BLM lands, CEC and BLM will coordinate CEC's licensing process with BLM's ROW process, such that BLM and CEC review of proposals for Covered Activities will occur concurrently, information requirements regarding impacts to Covered Species will be consistent, and project conditions and requirements regarding CMAs will be consistent.

For any Covered Activities proposed on BLM land that are not within CEC jurisdiction, project proponents may apply to CDFW for a take authorization under the NCCP using the integrated project proposal review process described in [Section X](#). CDFW and BLM will coordinate CDFW's application process and BLM's ROW process, such that BLM and CDFW review of project proposals will occur concurrently, information requirements regarding impacts to Covered Species will be consistent, and project conditions and requirements regarding DRECP CMAs will be consistent.

- 3.3.4. Take Authorization for Other Covered Activities. State agencies, local governments, individual landowners, and project proponents may apply for take authorizations for individual projects under the NCCP by submitting applications directly to CDFW using the application process described in [Chapter X](#).

- 3.3.4.1. Local and State Agencies. As described in [Section X](#), state and local agencies with discretionary approval authority over Covered Activities may apply for state take authorizations that can be extended to Covered Activities within their discretionary authority. Local and state agencies can do so either by applying for take authorization based on the NCCP or by developing a tiered NCCP with additional Covered Activities and receiving take authorizations pursuant to that plan. Where Covered Activities are within the discretionary authority of a local or state agency that has received a state take authorization under the NCCP,

proponents of Covered Activities must apply to that local or state Permittee for coverage under its take authorization.

3.3.4.2. Individual Project Permittees. Private entities and individuals may apply for state take authorizations based on the NCCP for their proposed Covered Activities, including owners or operators of existing renewable energy facilities that are located in DFAs and fall within the description of Covered Activities in the NCCP. Owners or operators of such existing facilities may apply for take authorizations under the NCCP only for operational impacts to Covered Species and must agree to implement appropriate CMAs to avoid, minimize and compensate for operational impacts. CMAs required for operational impacts are further described in **Chapter X**. State and local agencies that elect not to obtain take coverage pursuant to **Section X** may nonetheless apply for take coverage as individual project Permittees on a project-by-project basis.

3.3.5. Timing of Compensatory Mitigation. All Permittees must ensure that compensatory mitigation for Covered Activities covered under NCCP take authorizations is provided as required under **Section X** of this Agreement and in **Chapter X**.

3.3.6. Compliance with NCCP Take Authorizations.

3.3.6.1. Suspension or Revocation of Take Authorizations. CDFW may suspend or revoke, in whole or in part, an NCCP take authorization issued under the NCCP if it determines that the affected Permittee has failed to fulfill its obligations under the NCCP, this Agreement, or the NCCP take authorization. Such failure may take the form of: (a) the Permittee's failure to provide adequate funding; (b) the Permittee's failure to maintain rough proportionality; (c) the adoption, amendment, or approval of any plan or project that is inconsistent with the objectives and requirements of the approved NCCP for the DRECP without the concurrence of CDFW and CEC, if applicable; or (d) any action that exceeds the level of take authorized. Unless an immediate suspension is necessary to avoid jeopardy, CDFW will not suspend or revoke an NCCP take authorization issued under the NCCP without first notifying in writing the affected Permittee of the basis for its determination and the proposed action to revoke or suspend and meeting and conferring with the Permittee regarding the matter. CDFW and the Permittee will meet and confer within fifteen (15) days of issuance of such notice to assess the action or inaction that warranted CDFW's determination and to identify any appropriate responsive measures that may be taken. Within forty-five (45) days of receiving notice from CDFW, the Permittee will either satisfy CDFW that they are in compliance with the NCCP take authorization or reach an agreement with CDFW to expeditiously obtain compliance.



3.3.6.2. Suspension or Revocation of Take Authorizations to Avoid Jeopardy. Section 2823 of the NCCPA provides that CDFW must suspend or revoke any permit, in whole or in part, issued for the take of a species subject to Section 2835 of the NCCPA if the continued take of the species would jeopardize the continued existence of the species. Absent extraordinary circumstances, CDFW agrees it will not revoke a take authorization issued under the NCCP pursuant to Section 2823 without first (a) requesting that the affected Permittee take appropriate remedial action, and (b) providing the Permittee with notice in writing of the facts or conduct which warrant the revocation and a reasonable opportunity (but not less than forty-five (45) days) to take remedial action. CDFW will meet and confer with the Permittee within fifteen (15) days of such notice to identify potential actions that may be available to forestall the revocation. If no such remedies are identified, and CDFW determines that continued take of a Covered Species would result in jeopardizing the continued existence of the species, CDFW will suspend or revoke the NCCP take authorization, in whole or in part, Section 2823 of the NCCPA.

3.3.7. Permittee Obligations in the Event of Suspension or Revocation. In the event of suspension or revocation of a take authorization issued under the NCCP, the affected Permittee will remain obligated to fulfill any existing and outstanding minimization and mitigation measures required of them under the NCCP or this Agreement related to any take that occurs prior to such suspension, revocation, or termination. Such obligations would include the obligation to pay DRECP implementation fees and to implement applicable CMAs required under the NCCP for impacts of the Permittee's Covered Activity.

#### 3.4. REGULATORY ASSURANCES UNDER THE NCCP.

3.4.1. Within the context of the NCCPA, the purpose of the DRECP is to provide for the conservation of the Covered Species and the avoidance, mitigation, minimization, and compensatory measures required in connection with the incidental taking of Covered Species in the course of otherwise lawful and permitted activities within the DRECP Plan Area. The NCCPA provides that CDFW "may provide assurances for plan participants commensurate with long-term conservation assurances and associated implementation measures pursuant to the approved plan." (Fish & G. Code, § 2820, subd. (f).) These Regulatory Assurances are intended to provide both a degree of certainty regarding the overall costs associated with species mitigation and other conservation measures and durability and reliability to agreements reached between Permittees and CDFW.

3.4.2. Under the NCCPA, CDFW may provide Regulatory Assurances to Permittees commensurate with the long-term conservation Regulatory Assurances and associated

implementation measures of the DRECP. In determining the level of Regulatory Assurances, if any, to provide, CDFW shall consider all of the following factors:

- 3.4.2.1. The level of knowledge of the status of the covered species and natural communities;
- 3.4.2.2. The adequacy of analysis of the impact of take on covered species;
- 3.4.2.3. The use of the best available science to make assessments about the impacts of take, the reliability of mitigation strategies, and the appropriateness of monitoring techniques;
- 3.4.2.4. The appropriateness of the size and duration of the plan with respect to quality and amount of data;
- 3.4.2.5. The sufficiency of mechanisms for long-term funding of all components of the plan and contingencies;
- 3.4.2.6. The degree of coordination and accessibility of centralized data for analysis and evaluation of the effectiveness of the plan;
- 3.4.2.7. The degree to which a thorough range of foreseeable circumstances are considered and provided for under the adaptive management program; and
- 3.4.2.8. The size and duration of the plan.

3.4.3. Based on an evaluation of these factors, CDFW will determine whether to provide Regulatory Assurances and, if so, the proper scope and duration of such Regulatory Assurances.

3.4.4. Notwithstanding Regulatory Assurances, however, the NCCPA requires that CDFW suspend or revoke any permit, in whole or in part, if the continued take of a Covered Species would jeopardize its continued existence. The Regulatory Assurances provided under the NCCPA also do not prohibit or restrain CDFW, or any other public agency, from taking additional actions to protect or conserve Covered Species. CDFW and other public agencies may use the variety of tools at their disposal and take actions to reduce adverse impacts to ensure the needs of the Covered Species affected by unforeseen circumstances are adequately addressed.

3.4.5. Changed Circumstances.

- 3.4.5.1. Identification of Changed Circumstances: The DRECP identifies the specific Changed Circumstances that can reasonably be expected to occur in the Plan

Area during the course of Plan Implementation and that may compromise the effectiveness of the implementation actions set out in **Chapter X**. Changed Circumstances under the DRECP include: (a) prolonged drought; (b) fire (frequency, intensity, extent); (c) non-native species; (d) changes to hydrology and groundwater resources; (e) renewable energy technologies; (f) population declines of Covered Species; and (g) new listings of species not covered by the NCCP. In the event one of those specific Changed Circumstances occurs, the DRECP Agencies shall implement the remedial conservation measures identified in **Chapter X** for the specific Changed Circumstance. As long as the NCCP is being properly implemented, CDFW or CEC, as applicable, shall not require any Permittee to implement any conservation measures that are not listed in **Chapter X** to respond to Changed Circumstances. The Parties agree that the DRECP addresses all reasonably foreseeable Changed Circumstances and describes specific responses for them; other changes not identified as Changed Circumstances shall be treated as Unforeseen Circumstances.

3.4.5.2. Responses to Changed Circumstances: If the DRECP Agencies determine that Changed Circumstances have occurred and that the applicable Permittees have not responded in accordance with the DRECP, CDFW or CEC, as applicable, shall notify the Permittees specifically what changes must be made. The Permittees shall make the required changes expeditiously. Within thirty (30) days after receiving CDFW or CEC's notice, the Permittee shall report on its actions. Such changes are provided for in the NCCP and thus do not constitute Unforeseen Circumstances or require amendment of the state take authorizations or NCCP.

3.4.5.3. No Increases in Take: This **Section X** does not authorize any modifications that would result in an increase in the amount, nature, or impacts of take of Covered Species beyond that analyzed under the DRECP and any amendments thereto. Any such modification must be reviewed as an amendment under **Section X** of this Agreement.

### 3.5. WITHDRAWAL.

3.5.1. Withdrawal by Permittee. Upon ninety (90) days written notice to the DRECP Agencies, any Permittee may unilaterally withdraw from the DRECP and this Agreement. Such withdrawal of a Permittee will be deemed to constitute a surrender of the Permittee's take authorizations. In the event of withdrawal, the remaining Permittees remain obligated to meet all Permittee requirements under the NCCP the GCP, as applicable, and this Agreement.

3.5.2. Permittee's Obligations in the Event of Withdrawal. As a condition of withdrawal, the withdrawing Permittee shall remain obligated to ensure implementation of all existing

and outstanding CMAs required under this Agreement, the DRECP, and the NCCP take authorization to address all impacts of any take caused by the withdrawing Permittee that occurred prior to such withdrawal. Such obligations would include long-term management of the NCCP Reserve established prior to withdrawal.

3.5.3. Mitigation Credit in the Event of Withdrawal. In the event of withdrawal, the withdrawing Permittee will receive mitigation credit for any mitigation attributable to the withdrawing Permittee that occurs prior to withdrawal and that is not required to offset take that occurred prior to withdrawal.

#### **4. MISCELLANEOUS PROVISIONS**

- 4.1. NO DELEGATION OF AUTHORITY. Nothing in this Agreement shall cause, or shall be deemed to cause, any delegation of authority from any DRECP Agency to this Agreement to any other DRECP Agency.
- 4.2. RELATIONSHIP TO OTHER REGULATORY REQUIREMENTS. The terms of this Agreement are consistent with and will be governed by and construed in accordance with the NCCPA and other applicable state and federal laws. In particular, nothing in this Agreement is intended to limit the authority of or to limit or diminish the legal obligations and responsibilities of the DRECP Agencies.
- 4.3. REFERENCES TO REGULATIONS. Any reference in this Agreement, the DRECP, or any take authorizations issued under the NCCP or GCP or other approvals issued under the DRECP to any regulation or rule will be deemed to be a reference to such regulation or rule in existence at the time an action is taken.
- 4.4. APPLICABLE LAWS. All activities undertaken pursuant to this Agreement, the DRECP, or take authorizations issued under the NCCP must be in compliance with all applicable local, state and federal laws and regulations.
- 4.5. NOTICES. The DRECP Agencies, through their role in the Coordination Group, will maintain a list of individuals responsible for DRECP implementation for each of the DRECP Agencies, along with addresses at which those individuals may be notified (Notice List). The Notice List as of the Effective Date is provided in **Exhibit C**, which is incorporated by reference into this Agreement. Each DRECP Agency will report any changes of names or addresses to the Coordination Group and the other DRECP Agencies in writing. Any notice permitted or required by this Agreement will be in writing, and delivered personally, by overnight mail, or by United States mail, postage prepaid. Notices may be delivered by facsimile or electronic mail, provided they are also delivered by one of the means listed above. Delivery will be to the name and address of the individual responsible for each of the DRECP Agencies, as stated on the most current Notice List. Notices will be transmitted so that they are received within deadlines specified in this Agreement, where any such deadlines are

specified. Notices delivered personally will be deemed received on the date they are delivered. Notices delivered via overnight delivery will be deemed received on the next business day after deposit with the overnight mail delivery service. Notices delivered via non-certified mail will be deemed received seven (7) days after deposit in the United States mail. Notices delivered by facsimile or other electronic means will be deemed received on the date they are received.

- 4.6. INDEPENDENT STATE AND FEDERAL PERMITS. Take authorizations issued under the NCCP or the GCP are independent, such that revocation of one such take authorization does not automatically cause revocation of any other take authorization.
- 4.7. ASSIGNMENT OR TRANSFER. This Agreement is not assignable or transferable.
- 4.8. AMENDMENTS. This Agreement may be amended only by written agreement of all of the DRECP Agencies.
- 4.9. NO PARTNERSHIP. Neither this Agreement nor the DRECP will make or be deemed to make any DRECP Agency to this Agreement the agent for or the partner of any other DRECP Agency.
- 4.10. NO THIRD-PARTY BENEFICIARIES. Without limiting the applicability of rights granted to the public pursuant to the California Endangered Species Act, Fish and Game Code § 2050, et seq. (CESA), the NCCPA, or other applicable law, this Agreement will not create any right or interest in the public, or any member thereof, as a third-party beneficiary thereof, nor will it authorize anyone to maintain a suit for personal injuries or property damages under the provisions of this Agreement. The duties, obligations, and responsibilities of the DRECP Agencies with respect to third-party beneficiaries will remain as imposed under existing state and federal law.
- 4.11. ELECTED OFFICIALS NOT TO BENEFIT. No member of, or delegate to, the California State Legislature or the United States Congress will be entitled to any share or part of this Agreement or to any benefit that may arise from it.
- 4.12. AVAILABILITY OF FUNDS.
  - 4.12.1. Implementation of this Agreement and the DRECP by the United States or its agencies is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the DRECP Agencies to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The DRECP Agencies acknowledge and agree that the United States or its agencies will not be required under this Agreement to expend any appropriated funds unless and until an authorized agency official affirmatively acts to commit to such expenditure as evidenced in writing.

- 4.12.2. Implementation of this Agreement and the DRECP by CDFW, CEC, and CSLC is subject to the availability of appropriated funds. Nothing in this Agreement will be construed by the DRECP Agencies to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of California. The DRECP Agencies acknowledge and agree that CDFW, CEC and CSLC will not be required under this Agreement to expend any state-appropriated funds unless and until an authorized official of that agency affirmatively acts to commit such expenditure as evidenced in writing.
- 4.13. DUPLICATE OF ORIGINALS. This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement will be maintained in the official records of each of the DRECP Agencies.
- 4.14. CALENDAR DAYS. Throughout this Agreement and the DRECP, the use of the term “day” or “days” means calendar days, unless otherwise specified.
- 4.15. RESPONSE TIMES. Except as otherwise set forth herein or as statutorily required by CEQA, NEPA, CESA, ESA, the NCCPA or any other laws or regulations, the DRECP Agencies will use reasonable efforts to respond to written requests from any DRECP Agency within a forty-five (45) day time period.
- 4.16. GOVERNING LAW. This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California, as applicable.
- 4.17. HEADINGS. Headings are used in this Agreement for convenience only and do not affect or define the Agreement’s terms and conditions.
- 4.18. DEFENSE. Upon request by any DRECP Agency, other DRECP Agencies hereto will reasonably cooperate in defending lawsuits regarding the DRECP, this Agreement, or take authorizations issued under the NCCP or GCP. Such cooperation may include, but is not limited to, entering into a joint defense agreement and cooperation in the preparation of an administrative record.
- 4.19. DUE AUTHORIZATION. Each DRECP Agency represents and warrants that (1) the execution and delivery of this Agreement has been duly authorized and approved by all requisite action, and (2) no other authorization or approval, whether of governmental bodies or otherwise, will be necessary in order to enable it to enter into and comply with the terms of this Agreement.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date last signed below.

Dated: \_\_\_\_\_, 20\_\_

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

By: \_\_\_\_\_  
Name, Title

Dated: \_\_\_\_\_, 20\_\_

CALIFORNIA ENERGY COMMISSION

By: \_\_\_\_\_  
Name, Title

Dated: \_\_\_\_\_, 20\_\_

CALIFORNIA STATE LANDS COMMISSION

By: \_\_\_\_\_  
Name, Title

Dated: \_\_\_\_\_, 20\_\_

UNITED STATES FISH AND WILDLIFE SERVICE

By: \_\_\_\_\_  
Name, Title

IN WITNESS WHEREOF, THE PARTY HERETO agrees to implement the DRECP consistent with the Land Use Plan Amendment Record of Decision and in cooperation with the Parties above as described in the [Include the final title of master implementation MOU between CDFW, CEC, BLM, and USFWS] and applicable sections of this Agreement.

Dated: \_\_\_\_\_, 20\_\_

BUREAU OF LAND MANAGEMENT

By: \_\_\_\_\_  
Name, Title

EXHIBITS:

Exhibit A: NCCP PROJECT IMPLEMENTING AGREEMENT

Exhibit B: COVERED SPECIES LIST

Exhibit C: NOTICE LIST



**EXHIBIT A**

**NCCP PROJECT IMPLEMENTING AGREEMENT**

## NCCP PROJECT IMPLEMENTING AGREEMENT

For

### THE DESERT RENEWABLE ENERGY CONSERVATION PLAN

This NCCP Project Implementing Agreement (Agreement) is made and entered into by and among the California Department of Fish and Wildlife (CDFW) [If CEC jurisdiction applies, add: “, the California Energy Commission (CEC),”], and [PROJECT PROPONENT], a [TYPE OF ENTITY] (Permittee). This Agreement addresses the Permittee’s obligations with respect to implementation of the natural community conservation plan (NCCP) that, along with the General Conservation Plan (GCP) and the Land Use Plan Amendment adopted by the Bureau of Land Management (BLM), collectively constitute the Desert Renewable Energy Conservation Plan (DRECP).

WHEREAS, Permittee is the owner of the [PROJECT NAME] project (Project), located in [NAME OF COUNTY] County and within the DRECP plan area;

WHEREAS, the Project is a [TYPE OF RENEWABLE TECHNOLOGY – E.G., SOLAR PV, SOLAR THERMAL, WIND, GEOTHERMAL] and the Project activities constitute Covered Activities under the DRECP;

WHEREAS, [Insert either “CDFW” or “CEC” depending on which agency has jurisdiction] is the state agency with authority to authorize incidental take of Covered Species under the NCCP component of the DRECP; and

WHEREAS, Permittee has applied for take authorization under the DRECP.

NOW, THEREFORE, in consideration of the mutual promises made herein, the Parties hereby agree as follows:

1. Permittee and [Insert either “CDFW” or “CEC” depending on which agency has jurisdiction] agree to fully implement and comply with all terms and conditions of the take authorizations for the Project issued by [Insert either “CDFW” or “CEC” depending on which agency has jurisdiction].
2. With respect to development of the Project, Permittee agree to be bound by the following parts and sections of the DRECP Implementing Agreement:
  - 2.1. Part 1, in its entirety;
  - 2.2. Section 2.4 of Part 2;

2.3. Sections 3.2.1, [If CEC jurisdiction applies, add: "3.2.3,"] [If Project is on BLM land, add: "3.2.4,"] [If Project is on private land and CEC jurisdiction does not apply, add: "3.2.5,"] 3.2.6, 3.2.7, 3.3, and 3.4 of Part 3; and

2.4. Part 4, in its entirety.

3. With respect to the development of the Project, [Insert either "CDFW" or "CEC" depending on which agency has jurisdiction] agrees to be bound by all terms and conditions of the DRECP Implementing Agreement.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this NCCP Project Implementing Agreement to be in effect as of the date last signed below.

Dated: \_\_\_\_\_, 20\_\_ [Insert either "CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE" or "CALIFORNIA ENERGY COMMISSION"]

By: \_\_\_\_\_  
Name, Title

Dated: \_\_\_\_\_, 20\_\_ [NAME OF PROJECT PROPONENT]

By: \_\_\_\_\_  
Name, Title

**EXHIBIT B**  
**COVERED SPECIES LIST**

X

**EXHIBIT C**  
**NOTICE LIST**

X