

VI. MITIGATION MONITORING AND REPORTING PLAN

The information, issues, and mitigation strategies developed during the EIR/EIS process will be used, considered, evaluated, and disclosed in any subsequent environmental documents that are prepared to implement the DRECP and in the review and approve of individual projects within the Plan Area. Mitigation measures and strategies developed in the EIR/EIS would be considered and specific mitigation measures proposed for significant adverse impacts identified in the environmental documents tiering from the EIR/EIS.

Implementation of the DRECP would result in portions of the Plan Area being designated for various levels of management and conservation, with incentives to encourage renewable energy projects to locate in areas designated for focused development. Mitigation measures, as such, are not required to establish land classifications and specify their geographic extent as these do not themselves introduce changes in the environment. However, renewable energy and transmission projects would introduce changes in the environment.

Environmental reviews of individual future renewable energy and transmission projects in the Plan Area would tier from the DRECP PEIR/EIS, as appropriate. A project would be evaluated with regard to environmental impacts based on the project's specific characteristics, the resources it would affect, the nature of those effects, and its location within the Plan Area. Project approval would require inclusion and adoption of a mitigation monitoring program to ensure that mitigation measures identified in the PEIR/EIS and any subsequent environmental documents are implemented.

Projects, activities, and decisions implemented under the DRECP would be overseen by the agencies having jurisdiction over affected lands and resources. Lead, Responsible, and Cooperating Agencies having approval or oversight responsibilities for some aspect of a project would consider each applicable measure identified in the PEIR/EIS at a project level, making any necessary adjustments in the measures to account for the specific nature and location of the project and its impacts. The agencies would ensure that issues identified in this PEIR/EIS are adequately considered and addressed as part of DRECP implementation. This responsibility would apply to all projects within the scope of this PEIR/EIS that are subject to further CEQA or NEPA review.

VI.1 Authority for Mitigation Monitoring, Compliance, and Reporting

VI.1.1 California Public Agencies

Section 21081.6 of the Public Resources Code requires a California public agency to adopt a program for mitigation monitoring or reporting. Such programs are known variously as Mitigation Monitoring and Reporting Programs (MMRPs), Mitigation Monitoring, Compli-

ance, and Reporting Programs (MMCRPs), or Compliance Monitoring and Closure Plans (Compliance Plan). The program is adopted by the agency when it approves a project that is subject to preparation of an EIR and where the EIR for the project identifies significant adverse environmental effects. Section 15097 of the CEQA Guidelines further clarifies agency requirements for mitigation monitoring or reporting.

Section 21081.6(b) requires that mitigation measures be “fully enforceable through permit conditions, agreements, or other measures.” Incorporating the mitigation measures into the conditions of approval for a project would meet this requirement.

VI.1.2 Bureau of Land Management and Other Federal Agencies

BLM is the federal Lead Agency for the preparation of this PEIR/EIS in compliance with NEPA, the Council on Environmental Quality’s (CEQ) regulations for implementing NEPA (40 Code of Federal Regulations [CFR] 1500-1508), and the BLM’s NEPA guidance handbook (H-1790-1). As the Lead Agency, BLM also is responsible for ensuring that conditions of approval, including mitigation measures, are implemented for projects on lands it administers. Under NEPA, other agencies with jurisdiction over some aspect of a project, including affected resources, are considered cooperating agencies. These can be federal agencies, such as the U.S Fish and Wildlife Service (USFWS), or state agencies. Under the DRECP, because it is the manager for much of the federal land directly affected by the DRECP, the BLM would be the lead agency for project review and approval. The BLM’s authority extends only to federal lands under its jurisdiction. Other federal agencies, such as the National Park Service (NPS) and USDA National Forest Service (USFS) have authority over lands under their separate jurisdiction.

VI.2 Administration of the MMCRP

Under CEQA, as part of approval of a proposed project or an alternative to a proposed project subject to an EIR or Mitigated Negative Declaration, the lead agency must adopt an MMCRP, which is to be implemented during project execution. Agencies have considerable leeway in how they go about this. Some agencies deploy field staff to monitor and report regularly on activities observed and the implementation of mitigation measures; others rely on various levels of self-reporting and certification by the project proponent with some level of agency oversight or inspection.

The DRECP PEIR/EIS does not identify significant adverse environmental effects that would result from establishing the various land use classifications, per se. Mitigation for adoption of the DRECP consist of imposing mitigation measures identified in the PEIR/EIS and any future identified mitigation measures on all projects implemented under the DRECP.

Significant adverse environmental effects have been identified that would result from constructing and operating renewable energy projects within the Plan Area. An MMCRP would be required for every project introducing environmental impacts, if these are found to be significant and require mitigation.

The purpose of an MMCRP is to ensure that measures adopted to mitigate or avoid significant project impacts are implemented. The MMCRP includes mitigation measures adopted by the lead agency as well as any measures proposed by the project proponent and incorporated as part of the project description. Besides ensuring implementation of mitigation measures, a monitoring or reporting program may provide feedback to staff and decision makers regarding the effectiveness of mitigating actions. This information can be used by staff and decision makers to shape future mitigation measures.

The nature and size of a project and its location determine what California agency has Lead Agency jurisdiction under CEQA. In the case of the DRECP, the Lead Agency could be the California Energy Commission (CEC), the California Public Utilities Commission (CPUC), the California State Lands Commission (CSLC), or a local county or municipal government. The CEQA Lead Agency would have principal responsibility for carrying out or approving a project and for implementing the MMCRP. There also could be co-lead agencies. Agencies with jurisdiction over a particular aspect of the project or resource affected by the project would be responsible agencies. Responsible agencies include agencies, such as the California Department of Fish and Wildlife (CDFW), with jurisdiction over lands or resources affected by the project. However, implementation of the MMCRP itself rests with the lead agency.

At the federal level, neither NEPA nor BLM's NEPA guidance require monitoring of a particular type. BLM's NEPA Handbook H-1790-1, Chapter 10, specifies the record of decision (ROD) documenting the agency's decision following NEPA review is to include a monitoring and enforcement program where applicable for any mitigation specified in the EIS (20 CFR 1505.2). The ROD must identify the mitigation measures and monitoring and enforcement programs that have been selected and indicate that they are adopted as part of the agency's decision.

In situations where a state agency is implementing an MMCRP under CEQA, BLM may establish a cooperative agreement with that agency for conducting monitoring in ways that ensure BLM requirements are being monitored as well, or conduct periodic inspections of its own, or do both. Project proponents also may be required to submit specific status and issue reports to BLM; these requirements are established during the approval process.

VI.3 Mitigation Compliance Responsibility

The project proponent is responsible for successfully implementing all of the adopted mitigation measures in the MMCRP. The MMCRP guides implementation of mitigation measures

and specifies the type of compliance, monitoring, and reporting required with regard to those measures.

Lead Agencies are responsible to ensure that the MMRCPP is adequate and that appropriate monitoring and reporting occurs during construction and subsequent operation of projects.

VI.4 Organization of the MMRCPP

A typical program for monitoring the implementation of mitigation measures would contain the following components:

1. A list of the mitigation measures and related conditions of approval that have been adopted for the project by the agency.
2. A schedule or plan for regularly checking on the project's compliance with the mitigation measures and related conditions of approval, including progress toward meeting specified standards, if any. The program should set out the stages of the project at which each mitigation measure must be implemented.
3. A means of recording compliance at the time of each check.
4. A statement assigning responsibility for monitoring implementation of the mitigation measures and related conditions of approval to specific persons or agencies.
5. If monitoring duties are contracted to private individuals or firms, provisions for ensuring that monitoring reflects the independent judgment of the public agency. Regardless of whether monitoring is performed by the agency or a contractor, the agency retains the ultimate legal responsibility for satisfying the requirements of section 21081.6.
6. Provisions for funding monitoring activities.
7. Provisions for responding to a failure to comply with any required mitigation measure (including conditions of approval). This might include "stop work" authority, permit revocation proceedings, or civil enforcement procedures.

VI.5 Enforcement

CEQA and NEPA do not provide Lead Agencies authority to take action, including ordering an immediate temporary suspension of activities, if the requirements of an MMRCPP are not met.

However, agencies have this authority under other laws. For example, BLM has legal authority to enforce the terms and conditions of its ROW Grant as specified in 43 CFR 2807.16 to 2807.19.

The Energy Commission's legal authority to enforce the terms and conditions of its decision is found in PRC Sections 25534 and 25900.

The CPUC has broad regulatory authority under Article XII of the California Constitution and Section 702 of the Public Utilities Code (PU Code) mandates that every public utility obey and comply with every order, decision, direction or rule made by the commission. Public utilities are subject to enforcement action and fines pursuant to PU Code Sections 2102-1015, 2017, 2108, and 2114. In 2013, the CPUC established a CEQA Citation Program authorizing Staff to fine public utilities for noncompliance with Permits to Construct (PTCs) and Certificates of Public Convenience and Necessity (CPCNs). MMRCs are adopted as part of PTCs and CPCNs and enforced as such.

Local county and municipal jurisdictions have enforcement authority under the various local ordinances that apply to the project and permits required.

INTENTIONALLY LEFT BLANK