

California Energy Commission
Dockets Unit, MS-4
Re: Docket No. 09-Renew EO-01
1516 Ninth Street
Sacramento, CA 95814-5512

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09-RENEW EO-1	
DATE	
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To: California Energy Commissions- Attention Dockets Unit

Subject: Draft Planning Agreement, Desert Renewable Energy Conservation Plan

The proposed planning agreement for the Desert Renewable Energy Conservation Plan raises several significant issues that SB 107 resolved. The issues include how management and monitoring is addressed in state and federal permits and differing standards between CESA and NCCPA for permitting the take of species. The wording in the planning agreement reopens these issues and by doing so, creates significant problems for future permittees, the public and the Department of Fish and Game (and possibly the CEC) as the state permittees(s).

As the lead DFG negotiator of SB 107, I had the opportunity to develop wording for SB107 that took into account my extensive experience in negotiating and implementing NCCPs. These NCCPs are achieving the State's goals of protecting species and ecosystems while at the same time providing for efficient ways to move appropriate development projects forward.

One of our primary goals with SB 107 was to make plan development and implementation simpler. The proposed planning agreement takes major steps backward in that regard.

By defining incidental take as:

“Incidental Take Permit” or “ITP” means a permit authorizing take of listed species incidental to otherwise lawful activities pursuant to section 10 of the FESA (16 U.S.C. 1539(a)(2)(B)), or section 2080.1, 2081, and/or section 2835 of the California Fish and Game Code.”;

the planning agreement does two things.

1. By defining is as incidental to otherwise lawful activities, it creates a definition more narrow than that in FG Code 2835. There were significant discussions during the negotiations of the wording codified in section 2835. The term incidental was intentionally left out so that take associated with an NCCP plan could include any take associated with the monitoring and adaptive management programs associated with the plan. The monitoring associated with an NCCP often includes the capture (take which is the purpose of the activity and not

incidental to) of covered activities. As a result of the definition in the draft planning agreement, all consultants, state employees, etc. tasked implementing the monitoring program will have to obtain individual permits to handle species during their monitoring activities. This is very inefficient and will result in significant workload for DFG to process all the required permits. The Western Riverside MSHCP was the first plan approved after SB107 became law and its 2835 permit provides take coverage its monitoring program. In contrast, the San Diego MSCP was pre SB107 and every biologist doing monitoring that results in take has to be covered on separate permits.

2. By including references to FGC Code Sections 2081.1 and 2081 in the definitions of incidental take and in other locations in the planning agreement, two decidedly different permitting standards for take pursuant to state statues are brought into the planning process. Under FGC Section 2081, the mitigation standard is “fully mitigate the impacts of the taking”. Under FGC Section 2835, the standard is “conservation of the species” These are two distinctly different permit issuance standards and based on what the planning agreement says, issuance of permits for any species will have to be evaluated based on both standards. This is neither efficient nor necessary. There is no need to bring Sections 2081 or 2081.1 into the process of developing and NCCP plan. FGC Section 2835 provides all the authority for permitting take of species regardless of the species listing status and it was intentionally done to avoid the above double standard evaluation trap. The reference to 2081 and 2080.1 appears to be a throwback to what some drafters of the planning agreement may have remembered from working in San Diego. That was pre SB 107

Why the potential parties to the planning agreement have substantially deviated from the DFG template developed by the DFG Office of General Counsel is unclear, but clearly it has not been for the better and ultimately will make it harder to develop an NCCP plan that is consistent with the planning agreement and will result in greater costs for developing and implementing the plan. It may also result in future lawsuits that could have been fairly easily avoided.

To make it easier for comment reviewers, I have included specific comments (in red) on the planning agreement into the text of the draft planning agreement.

Specific Comments Incorporated into Draft Planning Agreement

Desert Renewable Energy Conservation Plan Draft Planning Agreement

This Planning Agreement regarding the Desert Renewable Energy Conservation Plan (“Planning Agreement”) is entered into as of the Effective Date by and among the California Department of Fish and Game (“DFG”), the California Energy Commission

(“CEC”), the United States Bureau of Land Management (“BLM”), and the United States Fish and Wildlife Service (“USFWS”).

1.0 Definitions

A. Terms used in this Planning Agreement that are defined in the Natural Community Conservation Planning Act have the meanings set forth in California Fish and Game Code section 2805, except as otherwise expressly provided in this Planning Agreement.

The Planning Agreement should identify where definitions that are identical to their definition in FGC section 2805 are utilized and where they have been modified, provide an explanation as to why the definition was modified. Lacking a compelling and acknowledged reason to change a statutorily defined definition, definitions should be identical to the NCCPA.

B. The following terms as used in this Planning Agreement will have the meanings set forth below.

1.1. “Action Area” means all areas that will be affected directly or indirectly by the Covered Activities and not merely the immediate area involved in the action.

1.2. “Applicant” means any person, individual, corporation, partnership, trust, association, State, or Local Government entity that seeks Incidental Take Authorization from one or both of the Wildlife Agencies for the purposes of facilitating the implementation of Covered Activities. The CEC is an Applicant only to the USFWS for purposes of the FESA. The BLM is not an Applicant to either of the Wildlife Agencies. Based on this section it is unclear who the NCCP permit applicant will be and what their obligations are during the development of the plan. All know potential entities that might utilize the NCCP permit should be signatories to the planning agreement and it should be binding upon them as specified in FGC Code Section 2810 (b)(1).

1.3. “Biological Assessment” or “BA” means the information prepared by or under the direction of a Federal Action Agency for the purpose of evaluating the potential effects of the action within the Action Area on species which are listed or proposed to be listed as threatened or endangered under the FESA, and on critical habitat which has been designated or proposed for designation under the FESA, and submitted to the USFWS pursuant to section 7(c)(1) of the FESA.

1.4. “Biological Opinion” means a document prepared by the USFWS pursuant to 50 C.F.R 402.14 at the conclusion of formal consultation under section 7(a)(2) of the FESA.

1.5. “Certification” means the issuance of a certificate by the California Energy Commission pursuant to its exclusive power to certify all sites and related

facilities in the state under the California Public Resources Code section 25500.

1.6. "CEQA" means the California Environmental Quality Act, Public Resources Code, section 21000, *et seq.*

1.7. "CESA" means the California Endangered Species Act, California Fish and Game Code, section 2050, *et seq.*

1.8. "Competitive Renewable Energy Zone" or "CREZ" means a geographic area that can be developed in the most cost effective and environmentally benign manner to produce between 250 megawatts (MW) and 10,000 MW of renewable energy.

1.9. "Covered Activities" means those certain activities that will be addressed in the DRECP and for which Incidental Take Authorization may be issued by the Wildlife Agencies pursuant to the California Fish and Game Code (section 2835) (Section 2835 does not provide for the Department to authorize **Incidental Take- the term Incidental in association with Take should be deleted throughout the document except where is specifically refers to Section 10 of the ESA**) and/or the FESA, and/or by the CEC pursuant to the Warren-Alquist Act.

1.10. "Covered Species" means those plant and animal species, whether or not they are Listed Species, which are identified as such in the DRECP, the conservation and management of which are provided for in the DRECP, and the take of which may be authorized in accordance with the NCCPA and/or the Warren-Alquist Act, and/or the FESA. **The issuance standard identified in the first part of the sentence (... conservation and management ..) is not the issuance standard for FESA.**

1.11. "DRECP" means the Desert Renewable Energy Conservation Plan. The DRECP is an NCCP, which will embody the balancing of renewable energy project assurances with ecosystem protection. **(It is unclear where the parties to the agreement believe the statutory authority exists to conclude that they have the authority to balance energy project assurances with ecosystem protection. The legal authority for this should be cited. Furthermore, why is this concept even incorporated into the definition of the DRECP. The DRECP should be defined as the plan being prepared to support the issuance of a FESA 10(a)(1)(B) permit and a NCCPA 2835 permit). The final DRECP will provide long-term endangered species permit assurances, facilitate the California Renewables Portfolio Standard, and provide a process for conservation funding to implement the DRECP. The DRECP will also serve as the basis for one or more HCPs under the FESA, and provide biological information necessary for consultation under section 7 of the FESA.**

1.12. "Effective Date" means the date on which this Planning Agreement has

been executed by BLM, CEC, DFG, and USFWS.

1.13. “Executive Order” means Executive Order S-14-08 of the Governor of the State of California.

1.14. “Federal Action Agency” means a federal agency that authorizes, funds, or carries out actions that may require consultation with the USFWS pursuant to the FESA section 7(a)(2). The BLM is a Federal Action Agency for purposes of the FESA section 7. Other federal agencies may serve as Federal Action Agencies.

1.15. “FESA” means the federal Endangered Species Act, 16 United States Code section 1530, *et seq.*

1.16. “FLPMA” means the Federal Land Policy and Management Act, 43 United States Code section 1701, *et seq.*

1.17. “Habitat Conservation Plan” or “HCP” means a plan prepared pursuant to section 10(a)(2)(A) of the FESA.

1.18. “Implementing Agreement” or “IA” means the agreement required pursuant to Fish and Game Code section 2820(b) and authorized under 16 U.S.C. section 1539(a)(2)(B).

1.19. “Incidental Take” refers to takings that result from, but are not the purpose of, carrying out an otherwise lawful activity. **While this is a definition applicable to the ESA, it is not applicable to the NCCPA. The NCCPA does not include the term incidental. As the lead negotiator of SB 107 for DFG, utilizing the term incidental was discussed and discarded because the intent of Section 2835 was to allow the Department to authorize the take of any species for whose conservation and management was provided for by the plan. This includes take associated with management and monitoring activities wherein the “take” may not be incidental to an otherwise lawful activity but is actually the purpose of the activity. By utilizing the term Incidental Take throughout the document and thence in the plan you have created a situation wherein future 2081 and Scientific Collection Permits will have to be obtained for management and monitoring activities. The proposed wording utilizes an old concept from the pre SB107 NCCPs. You might want to look at the Western Riverside NCCP (a post SB107 plan) and compare it to the San Diego NCCP (a pre SB107 Plan). You may also want to ask the entities responsible for implementing the management and monitoring for those two plans their opinions regarding having to obtain separate permits for management and monitoring vs. having the NCCP permit authorize the take associated with management and monitoring.**

1.20. “Incidental Take Authorization” means authorization issued by the USFWS and/or DFG to take listed species incidental to otherwise lawful activities, pursuant to the FESA and/or the California Fish and Game Code, and/or the CEC for incidental take of State-listed species under State law in accordance with the DRECP for activities that are under its exclusive

jurisdiction pursuant to the Warren-Alquist Act. This section is confusing, see comment above. Incidental take authorized by DFG would be pursuant to Fish and Game Code Section 2050 et seq. and not 2835. DFG OGC attorneys and federal solicitors have previously developed wording to deal with the difference between the NCCPA and FESA and that wording is in the NCCP template planning agreement normally utilized as the basis for specific NCCP planning agreements. Why isn't this planning agreement based on the template already developed by DFG attorney's (attached to the e-mail transmitting these comments). To fix the problems this definition creates, it is suggested that the above definition of take is deleted and the following included in the list of definitions:

“Take Authorization” means authorization issued by the USFWS to take listed species incidental to otherwise lawful activities, pursuant to the FESA, and/or take authorized by the DFG pursuant to the NCCPA, and/or the CEC for incidental take of State-listed species under State law in accordance with the DRECP for activities that are under its exclusive jurisdiction pursuant to the Warren-Alquist Act.

1.21. “Incidental Take Permit” or “ITP” means a permit authorizing take of listed species incidental to otherwise lawful activities pursuant to section 10 of the FESA (16 U.S.C. 1539(a)(2)(B)), or section 2080.1, 2081, and/or section 2835 of the California Fish and Game Code. **By including references to Fish and Game Code Sections 2081 and 2080.1, this planning agreement is bring in a third set of permit issuance standards that will have to be met for all species covered by future permits issued by the state and federal wildlife agencies. It will greatly confuse permittees, the public and make it very difficult to analyze the effects of permit issuance in the environmental documents.**

The FESA 10 (a)(1)(A) permit issuance standard is in general stated as “minimize and mitigate to the maximum extent practicable”

The Fish and Game Code Section 2081 permit issuance standard is “The impacts of the authorized take shall be minimized and fully mitigated”

And the Fish and Game Code Section 2835 permit issuance standard is “whose conservation and management is provided for in a natural community conservation plan”

If the parties to the planning agreement intended to develop a conservation plan that would allow future and still unidentified parties to the plan to pick and choose which permit issuance standard they intend to utilize then the planning agreement should state that specifically and any references to state assurances should be deleted until such time as the plan is completed since the DFG does not have any authority to provide assurances pursuant to CESA nor does it have any authority to authorize take for unlisted species pursuant to CESA. Once again, these issues can be avoided by utilizing the wording in the template planning agreement developed by DFG. If reference to FGC Sections 2080.1 and 2081 are going to remain in the plan, there should be a column added to the list of potential covered species identifying which species are being considered for 2081 permits

and which are being considered for 2835 permits. In addition, since there appears to be no identified permittees in the planning agreement, will all species be on all permits issued?

1.22. “Incidental Take Statement” means a written statement provided with a Biological Opinion that specifies the impact of incidental taking on the species, specifies those reasonable and prudent measures that the USFWS considers necessary or appropriate to minimize such impact, and sets forth the terms and conditions that must be complied with by the Federal Action Agency to implement the reasonable and prudent measures pursuant to section 7 of the FESA (16 U.S.C. 1536(b)(4)).

1.23. “Listed Species” means those species designated as candidate, threatened or endangered pursuant to the CESA and/or listed as threatened or endangered under the FESA.

1.24. “Local Governments” means cities, counties, cities and counties, and special districts vested with certain jurisdiction to permit energy and transmission projects.

1.25. “Natural Community Conservation Plan” or “NCCP” means a plan prepared pursuant to the NCCPA.

1.26. “NCCPA” means the Natural Community Conservation Planning Act, California Fish and Game Code, section 2800, *et seq.*

1.27. “NEPA” means the National Environmental Policy Act, 42 United States Code section 4321, *et seq.*

1.28. “Planning Area” means the geographic area that the DRECP proposes to cover, as described in Section 4 and depicted in Exhibit A.

1.29. “Party” means the DFG, CEC, BLM, and USFWS; additional parties will be identified in an exhibit to the Planning Agreement.

1.30. “Project Proponent” means an entity that, as part of developing Renewables Portfolio Standards projects, seeks to engage in Covered Activities.

1.31. “REAT” means the Renewable Energy Action Team, which consists of the DFG, CEC, BLM and USFWS, and which was established pursuant to MOUs between State agencies, and between State and federal agencies and recognized in Executive Order S-14-08, issued by the Governor of California in November 2008. The duties of the REAT were further addressed in the MOU signed by the Secretary of the U.S. Department of the Interior and the Governor of California in October 2009.

1.32. “RETI” means the Renewable Energy Transmission Initiative, a statewide initiative to identify transmission projects to accommodate renewable energy goals, facilitate transmission corridor designation, facilitate transmission and generation siting and permitting, and support future energy policy.

1.33. “Renewables Portfolio Standard” or “RPS” means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to procure pursuant to California Public Utilities Code, section 387 (California Public Utilities Code, section 399.11, *et seq.*).

1.34. “Section 6” means 16 United States Code section 1535 of the FESA.

1.35. “Section 7” means 16 United States Code section 1536 of the FESA.

1.36. “Section 10” means 16 United States Code section 1539 of the FESA.

1.37. “Section 2835” means California Fish and Game Code, section 2835.

1.38. “Take” is defined in the CESA and the FESA. Under FESA, section 3(18), take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Harm and harass are further defined in federal regulation (50 CFR 17.3).

Under the CESA, “Take” means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill (California Fish and Game Code, section 86). **While this is the definition of take in the Fish and Game Code, several court decisions (ACID. Etc.) have provided important clarification of how the definition of take applies to non-hunting activities and lacking that explanation, this definition of take could be misleading to the public.**

1.39. “Utility-Scale Renewable Energy Facility” has an electricity-generating capacity of 20 MW or larger.

1.40. “Warren-Alquist Act” refers to California Public Resources Code, section 25000, *et seq.*

1.41. “Wildlife Agencies” means the United States Fish and Wildlife Service and the California Department of Fish and Game.

2.0 Scope and Goals of the DRECP

2.1 Desert Renewable Energy Conservation Plan

Today, only 12 percent of California's retail electric load is served by renewable energy sources. The RPS, established by State law, requires all retail energy sellers to obtain 20 percent of their delivered electricity from renewable energy sources by 2010. In November 2008, the Governor of California increased the RPS target to 33 percent by 2020, through Executive Order S-14-08. To meet both the 2010 RPS requirement and the 2020 RPS target, new utility-scale renewable energy facilities must be developed.

In addition to the California effort, in 2005 the federal Energy Security Policy Act renewed interest in developing utility-scale renewable energy facilities on federal public land. It established a target of approving 10,000 MW of non-hydropower renewable energy generation on public lands within 10 years of the Act. The United States Congress also intensified the need for accelerated development of such projects with passage in early 2009 of the American Recovery and Reinvestment Act, which confers economic benefits on renewable energy projects that begin construction before the end of 2010.

While the State and federal governments are committed to developing compatible renewable energy generation facilities and related transmission infrastructure to achieve these requirements and goals, they are also committed to conserving biological and natural resources within the state. The desert regions of California provide extensive renewable energy resource potential. They also support extraordinary biological and other natural resources of great value, including numerous threatened and endangered plant and animal species. The DRECP is intended to advance state and federal conservation goals in these desert regions while also facilitating the timely permitting of renewable energy projects under applicable State and federal laws.

Executive Order S-14-08 and associated Memoranda of Understanding by and among several State and federal agencies established the joint State-federal REAT, which consists of the Parties to this Planning Agreement. The USFWS and BLM are voluntary participants in the REAT. Federal participation in the REAT is supported by the Secretary of the Interior's Secretarial Order 3285 (March 2009) directing all Department of the Interior agencies and departments (which include the BLM and USFWS) to encourage the timely and responsible development of renewable energy, while protecting and enhancing the nation's water, wildlife, and other natural resources. In October 2009, Governor Schwarzenegger and Secretary Salazar signed a Memorandum of Understanding on Renewable Energy between the State of California and the Department of Interior that merges the work efforts of both orders.

The REAT's primary mission is to streamline and expedite the permitting processes for renewable energy projects, while conserving endangered species and natural communities at the ecosystem scale. Executive Order S-14-08 directs the REAT to achieve these twin goals in the Mojave and Colorado Desert regions through the DRECP. The REAT is directed to develop a conservation strategy that identifies and maps areas for RPS-project development and areas for long-term natural resource conservation. This conservation strategy will form the foundation of the DRECP. This approach is supported by the State's NCCPA, and the section 10 habitat conservation

planning provisions and section 7 consultation provisions of the FESA, as appropriate. This Planning Agreement is intended to explain generally the DRECP process and its purpose, and identify the responsibilities of the Parties in the DRECP process.

2.2 Purposes of the DRECP Planning Agreement

- The purposes of this Planning Agreement include:
- Defining the Parties' goals and commitments with regard to development of the DRECP;
- Defining the geographic scope of the Planning Area;
- Identifying a preliminary list of natural communities and species known or reasonably expected to be found in those communities that are intended to be the initial focus of the DRECP;
- Identifying preliminary conservation objectives for the Planning Area;
- Establishing a process for the inclusion of independent scientific input into the DRECP development process;
- Ensuring coordination between the Wildlife Agencies, CEC and BLM;
- Establishing an interim process to be used during DRECP development to review and act on project proposals within the Planning Area in a manner that is consistent with achieving the preliminary conservation objectives and maintaining viable conservation opportunities and alternatives for the DRECP; **(The interim process help achieve the preliminary conservation objectives and preserve options for establishing a viable reserve system (not viable conservation opportunities) as is stated above). There is a significant difference between the two concepts.**
and
- Ensuring public participation and outreach throughout the DRECP development process.

2.3 Planning Goals

The goal of the DRECP is to “provide for the conservation and management of Covered Species,” which means that the DRECP will ensure the implementation of measures that will contribute to the survival and recovery of Covered Species, taking into consideration the scope of the DRECP Planning Area in relation to the geographic range of the Covered Species, and the effect of Covered Activities on these species in relation to other activities not addressed by the DRECP **(This is not consistent with the NCCPA nor contemplated by the NCCPA- the requirement is to provide for the conservation of the species in the plan area. Any plan developed based on trying to segregate out the effect on covered species utilizing this standard would not meet the requirements of the NCCPA for the issuance of a Section 2835 permit. In addition, the geographic range of covered species is not an appropriate standard. A species could have a geographic range significantly larger than the DRECP planning area but also be entirely dependent of the planning area for its conservation. The geographic range is not the appropriate metric to address this issue and the issuance standard is to provide for the conservation of the species in the plan area.**

Specifically, the planning goals for the DRECP include the following:

- Provide for the long-term (since the term long-term has been used, does this imply that the goal of the plan is not to provide for the short-term conservation and management of covered species) conservation and management of Covered Species within the Planning Area;
- Preserve, restore, and enhance natural communities and ecosystems that support Covered Species within the Planning Area (this is only part of the definition of conservation in the Fish and Game code and should not be separated from the other portions of the definition- it will cause confusion in developing and permitting DRECP);
- Build on the Competitive Renewable Energy Zones identified by RETI;
- Further identify the most appropriate locations within the Planning Area for the development of utility-scale renewable energy projects, taking into account potential impacts to threatened and endangered species and sensitive natural communities; This goal appears to be inconsistent with the NCCPA and should be revised to read: “Further identify appropriate locations within the planning area for the development of utility-scale renewable energy projects consistent with providing for the conservation and management of Covered Species.” All covered species and the natural communities associated with them must be part of the objectives of the plan not just threatened and endangered species and sensitive natural communities if the plan being developed has any hope of being approved as a NCCP plan.
- Provide a means to implement Covered Activities in a manner that complies with the NCCPA, FESA, NEPA, CEQA, and other relevant laws (the NCCP does not provide for compliance with CEQA nor NEPA for Covered Activities- each project will have to comply with CEQA and NEPA- Neither the NCCP nor its accompanying CEQA document can serve as a programmatic document for yet to be determined specific project);
- Provide a basis for the issuance of Incidental Take Authorizations allowing the lawful take of Covered Species incidental to Covered Activities (see comment above- utilizing the term incidental to covered activities is problematic for the management and monitoring program components of the NCCP);
- Provide for issuance of take permits for other species that are not currently listed but which may be listed in the future;
- Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements for Covered Activities within the Planning Area;
- Provide a framework for a more efficient process by which proposed renewable energy projects within the Planning Area may obtain regulatory authorizations and which results in greater conservation values than a project-by-project, species-by-species review would have;
 - Provide durable and reliable regulatory assurances, as appropriate, under the NCCPA and the FESA for Covered Activities that occur within the Planning Area- This should not be considered a planning goal but rather an outcome of a plan – appropriate terminology in regards to this issue

would be “Provide clear expectations and regulatory predictability for persons carrying out Covered Activities within the Planning Area. ; and

- Identify and incorporate climate change adaptation research, management objectives, and/or policies into the final plan document.

The Parties recognize that, until conservation strategies are developed for the Covered Species and their habitats, and conservation partnerships are formed, the cost and feasibility of achieving these goals will not be known. During the development of the DRECP, the DRECP goals, preliminary conservation objectives, Covered Species, Covered Activities, and Planning Area may be modified to ensure that implementation of the DRECP will be practicable. **How will loss of practicability be measured/analyzed?**

2.4 Compliance with Federal and State Laws

The Planning Area contains valuable biological resources, including native species of wildlife and their habitats. Among the species within the Planning Area are certain species that are protected, or may be protected in the future, under the CESA and/or the FESA. The Parties intend for the DRECP to satisfy the requirements for an NCCP under the NCCPA, and to serve as the basis for Incidental **(delete incidental)**Take Authorizations that will be issued to Applicants **(How will DFG ensure that monitoring of covered species across the planning area will be achieved when there are multiple permittees? Is it even possible since it cannot be delegated to the permittees since each will only have responsibility for their project areas? Will the wildlife agencies be taking on the plan-wide monitoring responsibilities? How will they demonstrate their ability to accomplish the required effectiveness, regional and preserve level monitoring across such a large geographic area when they have not demonstrated their ability to carryout similar obligations on smaller NCCPs?)** and Federal Action Agencies under these Acts, as applicable, for Covered Activities to the extent allowed by and consistent with federal and State law.

Under State law, take of species listed pursuant to the CESA may be authorized under Fish and Game Code section 2080.1, section 2081 (both provisions of the CESA), Fish and Game Code section 2835 (a provision of the NCCPA), or Public Resources Code section 25500 (a provision of the Warren-Alquist Act). The NCCPA provides that upon approval of an NCCP, DFG may permit the taking of any identified species, listed or non-listed, whose conservation and management are provided for in the NCCP. For projects under its exclusive jurisdiction, the CEC may also authorize the Incidental Take of State-listed species pursuant to the Warren-Alquist Act **(Do the parties to this agreement anticipate that DFG and the CEC will be authorizing the take of state-listed species pursuant to 2080.1, 2081 and the Warren-Alquist Act and if so, what are the issuance standards each would use and how would the CEC share in providing for any of the potential assurance the applicants would anticipate receiving under the NCCPA.** and in accordance with the CESA and any Incidental Take Authorization the CEC receives from USFWS pursuant to the FESA. Given its exclusive permitting jurisdiction, the CEC will not and need not apply to DFG for a permit pursuant to Fish and Game Code section

2835. Will the CEC be an administrator of the NCCPA? It would seem that if the CEC took on the responsibility of administrating the NCCPA, many of the potential implementation problems associated with dispersed covered projects could be reduced or eliminated.

To the extent allowed under federal laws and regulations, the Parties also intend that the DRECP will serve as the basis for one or more HCPs that meets the requirements of section 10(a)(2)(A) of the FESA, and further serve as the basis for the Biological Assessments that support consultations between Federal Action Agencies and the USFWS under section 7(a)(2) of the FESA, and the issuance of take authorizations for Covered Activities. The Parties acknowledge that the DRECP may be used to address compliance with other applicable federal and State statutes.

The FESA provides that USFWS may permit the Incidental Taking of fish and wildlife species covered in an HCP if the HCP and permit application meet the requirements of section 10(a)(2)(A) and (B) of the FESA. Incidental Take Authorization for the FESA-listed fish and wildlife species covered in the HCP is generally effective upon issuance of an Incidental Take Permit. Incidental Take Authorization for any non-listed species covered in the HCP becomes effective if and when the species is listed pursuant to the FESA.

For actions authorized, funded, or carried out by a Federal Action Agency, Take of listed species may be exempted under section 7 of the FESA based on a Biological Opinion issued by the USFWS.

2.4.1 Natural Community Conservation Planning Act

The NCCPA was enacted to encourage broad-based planning to provide for effective protection and conservation of the state's wildlife resources while continuing to allow appropriate development and growth. The purpose of the NCCPA is to provide for the conservation of biological diversity by protecting biological communities at the ecosystem and landscape scale. Conservation of biological diversity includes protecting sensitive and more common species, natural communities, and the ecological processes necessary to sustain the ecosystem over time. An NCCP identifies and provides for the measures necessary to conserve and manage natural biological diversity within the Planning Area, while allowing compatible and appropriate economic development, growth, and other human uses.

2.4.2 Habitat Conservation Planning under the FESA

Under Section 10 of the FESA, HCPs may be developed to provide the basis for meeting the criteria for issuance of Incidental Take Permits authorizing the Incidental Take of threatened and endangered species. HCPs must ensure that the impacts of any Take of species covered by the plan are minimized and mitigated to the maximum extent practicable. Applicants may also seek Take authorization for unlisted species that are covered in the HCP.

2.4.3 Section 7 Consultation under the FESA

Under section 7(a)(2) of the FESA, a Federal Action Agency is required to consult with the USFWS if its action may affect listed species or designated critical habitat. If an action is likely to adversely affect listed species or critical habitat, consultation under section 7(a)(2) will result in a Biological Opinion issued by USFWS to a Federal Action Agency, such as BLM, which analyzes the effects of a proposed action on listed species and designated critical habitat and provides an Incidental Take Statement, as appropriate. The BLM has exclusive jurisdiction to authorize use and occupancy of federal public lands and a primary mechanism that BLM uses to authorize such use and occupancy is through Title V of FLPMA, the right-of-way grant. If consultation under section 7(a)(2) of the FESA is required, such consultation must be completed, and a Biological Opinion issued by the USFWS, as appropriate, before the BLM issues such a grant to a Project Proponent. Through the right-of-way grant, the Project Proponent is required to comply with the terms and conditions of the Incidental Take Statement. So long as the BLM and the Project Proponent carry out the action in compliance with the terms and conditions of the Incidental Take Statement, they receive an exemption from FESA section 9 take prohibitions for incidental take of federally listed species.

2.4.4 Energy Commission's Licensing under the Warren-Alquist Act

Pursuant to Public Resources Code section 25500, the CEC has exclusive authority to certify (license) energy facilities that are thermal power plants with a generating capacity of 50 MW or more, their appurtenant facilities (e.g., natural gas pipelines, water lines, tanks, etc.), and certain electric transmission lines. The CEC's certificate is in lieu of any permit or similar document required by any State, local, or regional agency (Pub. Resources Code, § 25500), including an Incidental Take Permit that would otherwise be issued by DFG. Although the CEC's authority to allow its permittees to engage in activities that may result in incidental take is separate and independent from DFG's authority to allow incidental take, the CEC must consult with DFG on the permittee's proposed activities, required mitigation measures and conditions of CEC certification to ensure the protection of all biological resources that may be significantly affected by a project under the CEC's jurisdiction.

2.5 Goals and Expectations

2.5.1 Participation by CEC and BLM

The CEC voluntarily seeks to develop the DRECP in order to streamline and expedite permitting of jurisdictional renewable energy facilities. The Parties intend that the DRECP will in no way abrogate, abridge, or modify the CEC's duty to ensure its permittees' compliance with State or federal endangered species laws. The Parties intend that the DRECP and the CEC's execution of an Implementing Agreement will require the CEC to certify jurisdictional power facilities located in the Planning Area in accordance with the terms of the DRECP and Implementing Agreement.

The CEC is an Applicant only to USFWS for the purposes of applying for Incidental Take Authorization in accordance with Section 10 of the FESA. Upon approval of the DRECP through one or more HCPs under Section 10, the USFWS will issue the CEC one or more ITPs in accordance with the FESA.

The BLM is not an Applicant for any purpose to any of the other Parties to this Planning Agreement. The BLM will be a Federal Action Agency pursuant to section 7 of the FESA with respect to certain activities that will be covered by the DRECP. BLM must follow and meet the requirements of NEPA, FLPMA, FESA, and other applicable federal law. To the extent allowed under federal laws and regulations, BLM intends to incorporate the NCCP public-input process for the DRECP into the public-review process for the preparation of an environmental impact statement and land use plan amendment, if necessary, in order to be consistent with the DRECP.

2.5.2 Future Participation of Other Entities in the DRECP

The Parties to this agreement acknowledge that Local Governments and other entities may choose to participate in the DRECP, joining with Parties or other plan participants, or collaborating with the Parties and plan participants, to achieve the DRECP goals and objectives. As such, the Parties intend for the DRECP to be developed in a manner that anticipates and accommodates future participation of these entities and provides the basis for regulatory authorizations for the full range of RPS projects that are likely to occur within the Planning Area. **How will the planning agreement be modified over time to incorporate the participation of new entities or at what point would they be precluded from participating in the DRECP since they would not have been exercising their authorities regarding interim project approvals during the development of DRECP. It seem that it would be inappropriate for them to utilize the DRECP if they had been approving other projects that has resulted in the conservation anticipated by the DRECP from being practicable.** To facilitate such an outcome, the Parties will explore with Local Governments the feasibility of integrating existing NCCPs, HCPs, and other relevant plans into the DRECP and, in instances where no such plans exist, will work with Local Governments and incorporate them into the DRECP.

2.5.3 Transmission Line Permitting Agencies' Participation in the DRECP

It is the intent of the Parties for the DRECP to include as Covered Activities the construction, retrofit, operation, and maintenance of RPS-associated transmission infrastructure necessary to deliver renewable power to the state's power grid and load centers. The recommendations of the RETI stakeholder process regarding transmission planning will be used to inform the development of the DRECP.

With respect to transmission-related activities that may be covered under the DRECP, the Parties will coordinate with the California Public Utilities Commission, the California Independent System Operator, and Local Governments that have permitting or other regulatory-approval authority related to the siting of transmission facilities. The Parties

will also encourage these entities to participate in the DRECP process. **Since habitat fragmentation is an extremely significant issue for conserving many of the identified species, would it not be appropriate for the CPUC and ISO to be parties to this agreement so that transmission lines are fully integrated and appropriate siting of them is addressed in the DRECP rather than just seeking their participation in the DRECP process or having their information inform the DRECP process. If this is going to be an efficient process for developing renewable energy resources, the key players need to be full partners in the process.**

2.6 Future FESA Section 7 Consultations

To the extent allowed under federal laws and regulations, the Parties intend that the conservation measures included in the DRECP, once approved by the USFWS, will meet FESA Section 7 regulatory standards, and will, the extent appropriate, be incorporated into future Section 7 consultations between the USFWS and the BLM (if consistent with BLM's land use plans) or other applicable Federal Action Agencies regarding Covered Species that may adversely affect federally listed Covered Species or designated critical habitat for such species.

2.7 Other Fish and Wildlife Protection Laws

Based on the DRECP, an Applicant may seek approval or authorization under other State and federal wildlife protection laws, including, but not necessarily limited to, the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, and various provisions of the California Water Code and California Fish and Game Code. The Parties agree to collaborate to explore the feasibility of developing the DRECP to serve as the means by which Covered Activities may comply with these additional laws.

2.8 Concurrent Planning for Wetlands and Waters

Based on the DRECP, an Applicant may seek future programmatic permits or other forms of authorization under the federal Clean Water Act, Section 1600 *et seq.* of the California Fish and Game Code, and the Porter-Cologne Water Quality Control Act, as necessary for Covered Activities. The Parties agree to work together to explore the feasibility of undertaking concurrent, but separate, planning regarding these permits. However, such programmatic permits or other forms of authorization are not necessary for approval of the DRECP or for issuance of the FESA and NCCPA Incidental Take Authorizations. **While this is encouraged by the NCCP, it is suggested that experience over the past several years indicates that little to no effort should be expended to do this. It just hasn't been possible in the time frames in which an NCCP can be produced and often only delays the completion of the NCCP.**

3.0 Regulatory Assurances

3.1 Regulatory Assurances under the FESA

Upon approval of the DRECP and issuance of the FESA section 10(a)(1)(B) Incidental Take Permits for Covered Species, USFWS will provide regulatory assurances pursuant to Title 50 C.F.R. §§ 17.22(b)(5) and 17.32(b)(5) to those Project Proponents that receive coverage under such Incidental Take Permits.

3.2 Regulatory Assurances under the NCCPA

Upon approval of the DRECP and pursuant to the NCCPA, DFG and CEC will issue Incidental Take Authorization and may provide assurances consistent with their statutory authority. Under Section 2820(f) of the Fish and Game Code, DFG may provide assurances commensurate with the level of long-term conservation and associated implementation measures provided in the DRECP. **This section should note that it is optional for DFG to provide regulatory assurances for and NCCP and that any regulatory assurances provided are in exchange for providing for the conservation of species and ecosystems in the plan area- not contributing to the conservation of species and ecosystems or recovery in the plan area. That would be the Plan Area as defined below**

4.0 Planning Area

The DRECP Planning Area encompasses the Mojave and Colorado Desert Ecoregions as identified in California. The western boundary of the Planning Area has been modified using the CREZ boundaries, so that the Planning Area boundary has expanded slightly to the west, to ensure incorporation of complete RETI CREZs. The Planning Area includes all or a portion of the following counties: Kern, Los Angeles, San Bernardino, Inyo, Riverside, Imperial, San Diego, and Tulare. A map of the DRECP Planning Boundary is provided as Exhibit A. **How will the DRECP analyze what is needed to accomplish the conservation and management of covered species in this very large planning area. What data will be collected to initiate this analysis?**

The Parties intend to evaluate and analyze information regarding biological resources and anticipated Covered Activities in the Desert. Based on this analysis, the Parties anticipate the Planning Area boundaries will be further modified and refined to reflect where the locations of these activities are likely to be implemented.

The Parties acknowledge the DRECP Planning Area overlaps, in whole or in part, with several existing NCCPs, HCPs, and other conservation and land-use plans involving one or more of the Parties. The Parties shall seek to maintain compatibility between the DRECP and these other plans, and any other such plans that may be approved before the DRECP is finalized, by adapting the DRECP to be compatible with existing plans, by amending existing plans, or by some combination of these methods. **This planning agreement should acknowledge that if the DRECP is inconsistent with an already approved NCCP that it's CEQA document would have to acknowledge that the approval of the DRECP would be a significant impact that would have to be fully mitigated by the DRECP so as to not result in loss of assurances for the affected NCCP or the suspension or termination of its 2835 permit. Also, since none of the parties to this agreement have**

the ability to amend any existing NCCPs, the planning agreement should be modified to eliminate this as a consideration.

5.0 Plan Participants' Roles and Responsibilities in Developing the DRECP

5.1 California Energy Commission

The CEC is the State's primary energy policy and planning agency. Created by the Legislature in 1974, the 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, the CEC has the exclusive power to certify all sites and related facilities for power plants within its jurisdiction.

During the planning process for the DRECP, the CEC will, among other things:

- Attend all relevant REAT operational meetings and all REAT managers' meetings;
- Attend meetings with local partners and agencies, presenting information as necessary; and
- Collaborate with the Parties, as well as other public agencies such as the California Natural Resources Agency, in the development of the DRECP.

5.2 California Department of Fish and Game

DFG is the agency of the State of California authorized to act as trustee for the state's wildlife, designated rare and endangered plants, game refuges, ecological reserves, and other areas administered by the Department. DFG also administers and enforces the provisions of the Fish and Game Code and is authorized to enter into agreements with federal and local governments and other entities for the conservation of species and habitats. DFG may authorize, pursuant to the CESA, the take of species listed as threatened or endangered which is incidental to an otherwise lawful activity. DFG may also permit such take and provide regulatory assurances under the NCCPA for identified species whose conservation and management is provided for in a DFG-approved NCCP.

During the planning process for the DRECP, the DFG will, among other things:

Attend all relevant REAT operational meetings and all REAT managers'

Meetings (what additional funding and PYs will be provided to DFG for this effort?

Currently, the DRECP process is taking critical personnel away from implementing already approved NCCPs and is having an adverse affect on achieving the conservation required as part of those plans.);

- Provide field- and state-level data and information to support the development of the DRECP;
- Attend meetings with local partners and agencies, presenting information as

- necessary; Advise State agencies and local entities on measures necessary to comply with the NPPA and other relevant laws; and
- Work with the CEC and the federal REAT Partners, leading the development of the biological portions of the DRECP, establishing a conservation strategy, and arranging for independent science input.

5.3 U.S. Bureau of Land Management

The BLM is an agency of the United States Department of the Interior authorized by Congress to manage and regulate multiple-use activities on federal public lands located within the Planning Area under the Federal Land Policy and Management Act of 1976. The 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. Any changes to existing or proposed land-use planning documents within the Planning Area as a result of the DRECP or the DRECP planning process may require complete and independent review under the NEPA, FLPMA, and FESA authorities. In addition to land-use planning authorities, the BLM regulates public land use and occupancy through promulgated rules and regulations. Project permitting of Utility-Scale Renewable Energy Facilities on federal public land is a function of the BLM. BLM has exclusive authority to permit the use of federal public land through its FLPMA authorities.

During the DRECP planning process, the BLM will, among other things:
Attend all relevant REAT operational meetings and all REAT managers' meetings;
Provide field- and state-level data and information to support the development of the DRECP;

- Attend meetings with local partners and agencies, presenting information
- as necessary; and
- Use the findings of the Solar Programmatic Environmental Impact Statement and other relevant BLM studies and analyses to help inform the development of the DRECP.

5.4 U.S. Fish and Wildlife Service

The USFWS is an agency of the United States Department of the Interior authorized by Congress to administer and enforce the FESA with respect to terrestrial wildlife, non-anadromous fish species, insects and plants, and to enter into agreements with states, local governments, and other entities to conserve threatened, endangered, and other species of concern, to authorize incidental take under the FESA, and to provide regulatory assurances in accordance with 50 C.F.R. section 17.22(b)(5) and section 17.32(b)(5).

During the DRECP planning process, the USFWS will, among other things:
Attend all relevant REAT operational meetings and all REAT managers' meetings;

- Provide field- and state-level data and information to support the development of

- the DRECP;
- Attend meetings with local partners and agencies, presenting information when necessary; and
- Advise State agencies and local entities on measures necessary to comply with the FESA and other relevant laws.

6.0 NCCPA Preliminary Conservation Objectives

Pursuant to the NCCPA, California Fish and Game Code section 2810(b)(4), the preliminary conservation objectives the Parties intend to achieve through the DRECP are to:

- Provide for the conservation of Covered Species and associated natural communities and ecosystems that occur within the Planning Area **(this should be revised to read “Provide for the protection of species, natural communities, and ecosystems on a landscape level;**
- Preserve the diversity of fish, wildlife, plant and natural communities within **(change within to throughout otherwise it implies that within the DRECP area the parties are proposing to eliminate the diversity of fish, wildlife etc. in portions of the plan area. This is inconsistent with the NCCPA, especially considering the geographic size of the proposed plan area)** the Planning Area;
- Identify biologically sensitive habitat areas;
- **(Add “Protect” to the start of this phrase, an NCCP Plan requires much more than just minimizing and mitigating the take of covered species)** Minimize and mitigate, as appropriate, the take of Covered Species;
- Preserve and restore habitat and contribute to the recovery of Covered Species;
- Reduce the need to list additional species as being threatened or Endangered (Rare should be added to the phrase- its still and NPPA listing option);
- Set forth species-specific goals and objectives;
- Set forth specific habitat-based goals and objectives **(add “expressed in terms of amount, quality and connectivity of habitat” to this phrase;**
- Implement an adaptive management and monitoring program to respond to changing ecological conditions;
- Avoid actions that are likely to jeopardize the continued existence of Covered Species or result in the destruction or adverse modification of designated critical habitat for such species; and
- Address climate change adaptation through reserve design **(this phrase is too limiting, climate change will have to be addressed through multiple venues in addition to reserve design- e.g. adaptive management etc.**

7.0 Conservation Elements

7.1 Ecosystems, Natural Communities, and Covered Species List

The DRECP will employ a strategy that focuses on the conservation of ecosystems, natural communities, and ecological processes in the Planning Area. In addition, the

DRECP will establish species-specific minimization, mitigation, conservation, and management measures where appropriate. For federal public lands under BLM administrative jurisdiction, the DRECP will likewise focus on and take into consideration public land resource values and protections afforded and determined by existing, modified, and/or proposed land use planning documents and processes (on federal lands, this is may accomplish little unless the protections afforded are based on more than just existing plans which have proven to not provide much protection if the executive branch of the federal government decides internally that they have a higher priority for the lands even those lands that were intended to be mitigation lands for various projects. For lands to be consider as affording some protections, at a minimum they need to be lands withdrawn from multiple use management.

Natural communities that are likely to be addressed by the DRECP include, but are not limited to: creosote brush scrub, desert saltbush, Joshua tree scrub, desert wash, alkali scrub, juniper-pinyon woodlands, springs, and seeps.

The DRECP Covered Species list will be developed through the planning process with input from the public and other stakeholders. The Parties anticipate that species may be added or removed from the list based upon input from independent scientists (see section 8.3 below) and as additional information is revealed that informs the nature of the Covered Activities and the impact of Covered Activities on native (or should it be covered) species within the Planning Area.

A preliminary list of natural communities, and the endangered, threatened, candidate, and other species known, or reasonably expected to be found, in those communities, that are intended to be the initial focus of the DRECP is attached as Exhibit B.

7.2 Conservation Areas and Viable Habitat Linkages

As an NCCP, the DRECP will protect, enhance, or restore natural communities, and habitats within the Planning Area and provide (delete “provide” and substitute in “protect, restore”) or enhance habitat linkages, where appropriate (delete where appropriate or define how appropriateness will be determined) within the Planning Area. The DRECP will also identify where linkages between important habitat areas inside and outside the Planning Area should occur (you might want to consider moving this sentence before the previous one since before linkages can be protected, enhanced or restored they need to be identified.) The Parties intend the (delete “the parties intend the” since the DRECP has to address these to be an NCCP) DRECP conservation strategy (add the “will” and drop the “to”) to address, among other things, a range of environmental gradients and ecological functions, and will address appropriate principles of ecosystem management, ecosystem restoration, and population biology.

7.3 Climate Change

The Parties intend that the DRECP and its conservation strategy will explicitly

incorporate climate change adaptation research and establish climate change adaptation goals. Conservation actions within the climate change adaptation context will consider retention of representative natural communities and habitat types in a matrix with sufficient flexibility to accommodate anticipated climate change outcomes. (Why will it only consider?- Do the parties believe that climate change isn't going to affect the covered species and their ecosystems? If natural communities and habitats (not just representative thereof) are not incorporated into the DRECP wouldn't it result in a plan that is inconsistent with the NCCPA and the State's climate change adaptation strategy?)

7.4 Project Design

The Parties intend that the DRECP will ensure that each Covered Activity is appropriately designed to avoid and/or minimize direct and indirect impacts to Covered Species and their habitats. (how will this be accomplished if none of the parties will be an NCCP permittee?)

8.0 Process for Preparing the DRECP

The Parties intend that this Planning Agreement will establish a mutually agreeable process for preparing the DRECP that meets the procedural requirements of the NCCPA and FESA. The process used to develop the DRECP will incorporate independent scientific input and analysis and include extensive public participation with ample opportunity for comment from the general public and from groups of key stakeholders, as described below.

8.1 Best Available Scientific Information

The DRECP will be based on the best available scientific information, including, but not limited to:

- Principles of conservation biology, community ecology, landscape ecology, individual species ecology, climate change, and other appropriate scientific data and information;
- Thorough information about all natural communities and proposed Covered Species within the Planning Area;
- Input from well-qualified, independent scientists; and
- Integration of relevant scientific and ecological research results from efforts currently underway in the Planning Area (why only with the planning area? If its relevant what difference does it make as to where the research was done or is underway?).

8.2 Data Collection

The Parties agree that the DRECP will be based on the best available scientific information, and that the Parties will collaborate to ensure that such information is obtained through a range of credible governmental and non-governmental sources.

Data collection efforts for preparation of the DRECP will be coordinated with existing efforts. Preference should be given to collecting data essential to address conservation requirements of natural communities and proposed Covered Species for purposes of developing conservation measures and strategies for the DRECP. Data will be gathered and compiled to establish baseline conditions, evaluate impacts of Covered Activities on Covered Species, and develop conservation strategies and measures for Covered Species. Data needed to accomplish these tasks may include, but will not necessarily be limited to: species' life histories, species' occurrence, population abundance and distribution, population trends, population genetics, habitat locations and conditions, habitat connectivity, and ecological threats and stressors.

The science advisory process and analysis of existing information may reveal gaps in data that are necessary for the full and accurate development of the DRECP. Data needed for preparation of the DRECP may not be known at this time or identified herein. Therefore, the Parties anticipate that data-collection priorities may be adjusted from time to time during the planning process. All data collected for the preparation and implementation of the DRECP will be made available to the Wildlife Agencies in hard and digital formats, as requested (this data should also be made available to the public concurrent with it be made available to the Wildlife Agencies- How and when the data collected during the implementation of the DRECP is made available should be specified in the DRECP not the planning agreement) .

8.3 Types of Data

Data will be gathered to establish baseline conditions, evaluate impacts of Covered Activities on Covered Species, and develop conservation strategies and measures for Covered Species. Data needed to accomplish these tasks may include, but will not necessarily be limited to: species' life histories, species' occurrence, population abundance and distribution, population trends, population genetics, habitat locations and conditions, barrier and hazard types and locations, habitat connectivity, and ecological threats and stressors.

8.4 Independent Scientific Input

The Parties intend to include independent scientific input and analysis to assist in the preparation of the DRECP. For that purpose, independent scientists representing a broad range of disciplines, including conservation biology and locally-relevant ecological knowledge, convened by the State will, at a minimum:

- Recommend scientifically sound conservation strategies for species and natural communities proposed to be covered by the DRECP;
- Recommend a range of conservation actions that would address the needs of species, ecosystems, and ecological processes in the Planning Area proposed to be addressed by the DRECP;
- Recommend reserve design principles and processes that are adaptable to changing climate conditions and the needs of species, landscapes, ecosystems, and ecological processes; (The focus of the reserve design principles must be the

- needs of species, landscapes etc. not changing climate conditions although they must take into consideration changing climatic conditions. Reword this bullet to read “ Recommend a set of reserve design principles that address the needs of species, landscapes, ecosystems, and ecological processes taking into account changing climatic conditions likely to occur in the planning area proposed to be addressed by the plan;
- Recommend management principles and conservation goals that can be used in developing a framework for the monitoring and adaptive management component of the DRECP; and
 - Identify data gaps and uncertainties so that risk factors can be evaluated.

The Parties will design and implement the science advisory process, in consultation with the Executive Steering Committee (see section 8.5 below). The Parties will develop a detailed scope of work for the independent science process and establish funding and payment procedures. The independent science advisory process will include the use of a professional facilitator, input from technical experts, and production of a report by the scientists. The Parties will make the report available to the public during the planning process. (How will scientists with potential conflicts of interest be precluded from being selected as an independent scientist for the planning effort?)

8.5 Executive Steering Committee

To assist in the development of the DRECP, the Parties have formed an Executive Steering Committee that consists of designated representatives of the Parties. The Parties expect that the Executive Steering Committee will be the principal forum in which the efforts of the participating federal and State agencies are adequately coordinated and that policy matters are fully discussed and considered. (The Executive Steering Committee meetings should be open to the public, publically noticed and provide reasonable opportunities for public input throughout the meeting as various issues are discussed. Any correspondence amongst the Members of the Executive Steering Committee should be posted on a publically accessible internet site within 24 hours of the correspondence being transmitted from one member to another and sending drafts through legal counsels in the hopes of keeping them from being subject to the California Records Act should be precluded. In addition, no Executive Steering Committee member should have the sole authority to determine what data, information, species and habitat goals, etc. can be submitted to the Executive Steering Committee for consideration. The process needs to be transparent, open and beyond the control on any particular agency or attorney representing any of the parties, other agencies, potential permittees etc.

8.6 Reserved Authority

The Parties further recognize that several Parties have statutory or legal responsibilities that cannot be delegated, and that no action of the Executive Steering Committee or provision of this Planning Agreement or the DRECP and its Implementing Agreement shall be construed to delegate or abrogate any of those responsibilities.

8.7 Public Participation

The Parties will ensure an open and transparent process with an emphasis on obtaining input from a balanced variety of public and private interests. The DRECP planning process will also provide for thorough public review and comment and will be supported by applicable environmental review under CEQA and NEPA. (Why is there no public advisory group being proposed for this NCCP as recommended by DFG and as identified in the NCCPA Section 2815. Public workshops are a poor substitute for a public advisory group that can play an active role in helping develop and effective and publically supported NCCP.

8.7.1 Solicitation of Public Input

The CEC in collaboration with and in participation with the Parties will conduct regular workshops to provide an opportunity for public participation and input in the development of the DRECP. Public workshops regarding development of the DRECP will be planned and conducted in a manner that satisfies the requirements of the NCCPA, FESA, CEQA, NEPA, and any other applicable State or federal laws.

8.7.2 Outreach

The Parties will provide access to information for all persons or entities interested in the DRECP, including interested tribes and people of diverse races, cultures and socio-economic status. The Parties expect and intend that public outreach regarding preparation of the DRECP will be conducted largely by and through public notices of document availability, review and comment periods on those documents, and scheduled workshops, meetings, and hearings, as appropriate. The Parties will hold public workshops to present proposed approaches regarding the preparation of the DRECP to allow the public the opportunity to comment on and inquire about the proposed approaches.

A key element of early outreach will be with Local Governments to introduce the DRECP process, engage their input on potential participation in the process and outline approaches for effective interface between the federal, State, and local agencies. Other outreach efforts will include the creation of a DRECP website and the compilation of a list of public and private interests to serve informational mailings.

8.7.3 Availability of Public Review Drafts

The Parties will make available for public review in a reasonable and timely manner, and in accordance with applicable statutory and regulatory deadlines, “public review drafts” of pertinent planning documents, including but not limited to plans, memoranda of understanding, maps, conservation guidelines, and species coverage lists. Such documents will be made available by the Parties prior to any public workshop conducted by a Party to address these documents. (This is inconsistent with the NCCPA. The

NCCPA states in section 2815 (b) “A requirement to make available in a reasonable and timely manner all draft plans, memoranda of understanding, maps, conservation guidelines, species coverage lists, and other planning documents associated with a natural community conservation plan that are subject to public review”. In a timely manner is more frequently than just prior to a public workshop at which the documents will be addressed. In general, since any document transmitted from one agency to another agency is subject to the California Records Act, it would be appropriate to provide for posting of any such documents when they are transmitted. This will greatly improve the public’s understanding and support for the process and eliminate the public’s concern about what goes on behind closed doors in public agencies. The Bay Delta Conservation Planning effort is currently suffering from this perception due to documents being accidentally released which clearly have shown that certain attorneys and consultants have been preparing unrequested documents seeking to set agency policies behind closed doors. The need for renewable energy projects is too critical to risk the potential for plan delaying or halting legal actions just because the process was not transparent.

The Parties agree that the Internet will be the principal means of making documents available for public review, but that more traditional means such as distribution and display of hard copies of such documents will be used where practicable and/or required. While utilizing the internet for making documents available to the public can work, it will only work if the posting site is kept regularly updated (with an update date posted) and the documents can be easily downloaded by the public. That is often difficult with maps, especially ones with multiple details displayed. To help reduce this problem, a highly experienced cartographer/GIS specialist needs to review and modify maps to ensure that they are understandable to the public, even if more complex maps might be appropriate for agency personnel. Please remember that the public only sees the maps in whole in a computer screen size format whereas the agencies generally get to see large format hard copy versions of maps. For the public to see the same level of detail may require multiple maps and different color schemes to depict the same information.

8.7.4 Public Review and Comment Period Prior to Adoption

The Parties will concurrently release the draft DRECP, Implementing Agreement, and draft environmental documents and make them available for public review and comment for a minimum of 90 days before adoption.

8.8 Covered Activities

The DRECP will identify and address the Covered Activities that may result in the incidental (~~delete the term incidental~~) take of Covered Species within the Planning Area. The Parties intend for the DRECP to provide a means by which Covered Activities in the Planning Area can proceed in a manner that meets the requirements of the NCCPA and

FESA, and potentially other laws as described in Section 2.3. A list of proposed Covered Activities is attached as Exhibit C. The list of Covered Activities in this Planning Agreement is intended to establish an initial set of actions that the Parties anticipate could result in take of listed species and for which Incidental Take Authorization is sought under the DRECP. The Parties acknowledge additional Covered Activities may be identified and others removed from the list as part of the DRECP Planning process.

8.9 Interim Project Processing

The Parties recognize that certain renewable energy projects and activities may be proposed within the Planning Area prior to completion of the DRECP. The Parties agree to the following interim project process to: (1) help ensure that new renewable energy projects approved or initiated in the Planning Area before completion of the DRECP are consistent with the preliminary conservation objectives (Section 6) and do not compromise successful completion and implementation of the DRECP; (2) facilitate FESA, CESA, NEPA, CEQA compliance for such interim projects that require such compliance; and (3) ensure that processing of such interim projects is not unduly delayed during preparation of the DRECP.

8.9.1 Notification Process for Interim Projects

The Parties will request and encourage a Project Proponent whose renewable energy project within the Planning Area is proposed to begin construction prior to completion of the DRECP, to notify the Parties prior to the time, or as soon as possible after, the project description or application for such project is deemed complete. The Parties intend to request that the Project Proponent submit the following information in its request for notification (1) a depiction of the project location either using geographic coordinates or on a United States Geological Survey 7.5 minute quadrangle map with the quadrangle name and section, township, and range identified; (2) copy of the project description or application, including a description of the project along with the land cover types present on the project site using the most current land cover data available; and (3) any other biological information available to the developer about the project area. Once any Party receives a notification regarding a proposed interim project, it will ensure that every other Party has also received or will receive the same information in a timely manner.

8.9.2 Wildlife Agency and Energy Commission Review of Interim Projects

The Parties intend that Project Proponents proposing interim projects will present all required information to the Wildlife Agencies and additionally, for projects under the CEC's exclusive State jurisdiction, the CEC in a complete and timely manner. The Wildlife Agencies and the CEC will use reasonable efforts to review and provide any comments on the projects within any legally prescribed comment periods. The Wildlife Agencies intend to recommend mitigation measures or project alternatives that will help achieve the preliminary conservation objectives of the DRECP and that will not preclude

important conservation planning options or connectivity between areas of high habitat values. (The wildlife agencies and CEC comments on interim projects should be posted on the DRECP website.)

The DRECP process will involve extensive input from and discussion among the Parties, other public agencies, Project Proponents, industry groups, environmental organizations, other public, private, and nonprofit organizations, and individual members of the public. The Planning Area, the conservation goals, and other key elements of the DRECP may be amended or altered during the planning process. For these reasons, among others, the Parties recognize and agree that certain approaches to mitigation and project alternatives that may be recommended or required by the Wildlife Agencies or proposed by project proponents to ensure that interim projects comply with the FESA, CESA, Warren-Alquist Act, NEPA and CEQA may not be appropriate for, transferable to, or consistent with the approaches that are ultimately reflected in the DRECP. As such, regulatory conditions and requirements established for projects covered under the DRECP may differ from those of projects approved pending completion of the DRECP.

8.9.3 Coordinating Interim Process with DRECP Preparation

The Parties will meet as needed to discuss interim projects of which they have been notified, and to coordinate the consideration of such interim projects with development of the DRECP. Independent scientific input will be considered by the Parties during interim project review.

8.10 Protection of Habitat and Other Resources during Planning Process

8.10.1 Conservation Actions

To further the purposes of the DRECP, and prior to the completion and approval of the DRECP, Applicants, Parties, and other entities may elect to preserve, enhance or restore, either by acquisition or other means, habitat in the Planning Area that supports Covered Species or natural communities. The Wildlife Agencies agree to credit such resources, in accordance with their biological value, toward the habitat protection, enhancement, and restoration requirements of the DRECP, as appropriate, provided these resources support Covered Species and natural communities; are appropriately conserved, restored or enhanced; and contribute to the DRECP conservation strategy. (No credit should be give for mitigation associated with interim projects unless one of the parties to this agreement is going to have the responsibility to fully implement the DRECP regardless of what projects are approved in the future. This is consistent with other NCCPs. The counties and cities (generally the parties to the planning agreements and the eventual permittees) can utilize the mitigation for interim projects to help implement their NCCPs but they are also taking on the obligation of assembling their reserve system regardless of which specific projects are approved in the future. The planning agreement does not indicate that the CEC or any other agency will be accepting

this obligation and therefore this provision in the planning agreement is inappropriate.

8.10.2 Other Planning Processes within Planning Area

The Parties will also closely coordinate with the planning and implementing authorities for existing and in-process conservation planning efforts including, but not limited to, the Western Riverside NCCP/HCP, the West Mojave Plan HCP, and the Coachella Valley NCCP/HCP. In addition, the DRECP Plan participants intend to fully consider and integrate, to the extent feasible, conservation elements of public land management plans and associated Biological Opinions. (How will the public land management agencies assure that their conservation elements will exist in perpetuity as required by the NCCPA?)

8.10.3 Mitigation for Specific Projects

Actions to protect, enhance, or restore habitat that are undertaken solely to mitigate the impacts of specific projects, actions, or activities approved prior to DRECP approval and within the DRECP Plan area will only be considered as mitigation for those projects, actions or activities. Such measures will be considered during the DRECP analysis, but will not count toward future mitigation requirements established under the DRECP (To be an NCCP, the DRECP must be more than a mitigation plan it has to be a conservation plan which can partly be implemented by project specific mitigation actions. The current wording in the last sentence seems to imply that the DRECP's primary focus is establishing mitigation requirements, this is not consistent with the NCCPA).

8.11 Implementing Agreement

An Implementing Agreement that includes specific provisions and procedures for the implementation, monitoring and funding of the DRECP will be developed for the DRECP. A draft of the Implementing Agreement will be made available for public review and comment with the final public review draft of the DRECP. The Implementing Agreement will contain provisions for:

- Conditions of species coverage;
- The long-term protection of any habitat reserves or other measures that provide equivalent conservation;
- Implementation of mitigation and conservation measures;
- Adequate funding to implement the plan (this appears to be a basic requirement of the plan and an issuance requirement for state and federal permits as opposed to primarily an IA element as are the other provisions identified in the plan and therefore should not be listed provision of the IA, the IA would merely be incorporating what the plan requires in this regard);
- Terms for suspension or revocation of take permits (should this be take authorizations? Does the plan anticipate more than two take authorizations, one NCCPA and one FESA 10(a)(1)(B)?);
- Procedures for amendment of the DRECP , Implementing Agreement, and take authorizations;

- Implementation of monitoring and adaptive management;
- Oversight of DRECP effectiveness and funding; and
- Periodic reporting.

9.0 Commitment of Resources

9.1 Funding

The Parties agree that they will work together to bring available funding to the DRECP planning effort.

9.2 DFG and CEC Assistance with Funding

DFG and CEC agree to cooperate with the other Parties in identifying and securing, where appropriate, federal and State funds that may be used to support the development and implementation of the DRECP. DFG's and CEC's commitments and obligations under this Planning Agreement are subject to the availability of appropriated and other funds and the written commitment of funds by an authorized DFG or CEC representative.

9.3 USFWS and BLM Assistance with Funding

The USFWS and BLM agree to cooperate with the other Parties in identifying and securing, where appropriate, federal and State funds that may be used to support the development and implementation of the DRECP. Potential federal funding sources may include: the USFWS' Cooperative Endangered Species Conservation Fund, Land and Water Conservation Fund, and land acquisition grants or loans through other federal agencies such as the Environmental Protection Agency, the Army Corps of Engineers, or the Departments of Agriculture, or Transportation or Energy. Implementation of this Planning Agreement by the USFWS and BLM is subject to the requirements of the Anti-Deficiency Act (31 U.S.C. section 1341) and the availability of appropriated funds. Nothing in this Planning Agreement is intended or shall be construed by the Parties to require the obligation, appropriation, or expenditure of money from the U.S Treasury.

9.4 Expertise of the Parties

Subject to funding and staffing constraints, the Parties agree to provide technical and scientific information, analyses and advice to assist with the timely and efficient development of the DRECP.

10.0 Miscellaneous Provisions

10.1 Public Officials Not to Benefit

No member of or delegate to Congress will be entitled to any share or part of this Planning Agreement, or to any benefit that may arise from it.

10.2 Statutory Authority

The Planning Agreement is not intended, nor will it be construed, to modify any authority granted by statute, rule or regulation. The Parties will not construe this Planning Agreement to require any Party to act beyond, or inconsistent with, its statutory authority.

10.3 Multiple Originals

This Planning Agreement may be executed by the Parties in multiple originals, each of which will be deemed to be an official original copy.

10.4 Effective Date

The Effective Date of this Planning Agreement will be the date on which it is fully executed by the Parties.

10.5 Duration

This Planning Agreement will be in effect until the DRECP is finalized and take authorizations or exemptions have been issued by the Wildlife Agencies, but shall not be in effect for more than three years following the Effective Date, unless extended by amendment. This Planning Agreement may be terminated pursuant to Section 10.7 below.

10.6 Amendments

This Planning Agreement can be amended only by written agreement of all Parties.

10.7 Termination and Withdrawal

Subject to the requirement in Section 10.8 of the Planning Agreement, any Party may withdraw from this Planning Agreement upon 30 days' written notice to the other Parties, after which time the withdrawing Party shall no longer be a Party. The Planning Agreement will remain in effect as to all non-withdrawing Parties unless the remaining Parties determine that the withdrawal requires termination of the Planning Agreement. This Planning Agreement can be terminated only by written agreement of all non-withdrawing Parties. The withdrawing Party or Parties shall make all relevant data and materials available to the remaining Parties; provided, however, that no Party shall be required to release data and/or other materials that are the intellectual property of any entity other than the withdrawing party or that is subject to a legally cognizable privilege.

10.8 Funding

In the event that federal, State or local funds have been provided to assist with DRECP

preparation or implementation, any Party withdrawing from this Planning Agreement shall return to the granting agency unspent funds awarded to that Party prior to withdrawal, likewise, the remaining Parties shall return to the withdrawing Party any unspent funding it may have provided. A withdrawing Party shall also provide the remaining Parties with a complete accounting of the use of any federal, State or local funds it received regardless of whether unspent funds remain at the time of withdrawal. In the event of termination of this Planning Agreement, all Parties who received funds shall return any unspent funds to the grantor prior to termination.

10.9 No Precedence

This Planning Agreement is not intended, and shall not be construed, to modify any existing or subsequently amended law, rule, regulation or other legal authority, or requirements established thereunder.

The Parties' execution of this Planning Agreement and participation in the development of the DRECP is voluntary and does not ensure that any of said Parties will participate in later planning phases of the DRECP or related agreements or actions. As provided in Section 10.7, above, any Party may withdraw from this Planning Agreement. In addition, as provided in Section 2.5.1 above, the Parties understand that this Planning Agreement, the DRECP, and the Implementing Agreement cannot and shall not in any way abrogate, abridge, modify the CEC's exclusive authority under State law to permit jurisdictional power facilities, or in any way abrogate, abridge, modify the BLM's exclusive authority under federal law to permit use and occupancy of the public lands.

Sincerely

Ronald D. Rempel