

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

Renewable Energy)	Docket No.
Executive Order)	09-Renew EO-01

**COMMENTS OF THE
CALIFORNIA WIND ENERGY ASSOCIATION
ON EXECUTIVE ORDER
ON RENEWABLE ENERGY SITING & PERMITTING ISSUES**

The California Wind Energy Association (“CalWEA”) is pleased to comment on issues related to Governor Schwarzenegger’s Executive Order on renewable energy,¹ specifically, the topics addressed in the Scoping Meetings held on March 12 and 17, 2009. CalWEA is a trade association representing over 20 companies engaged in wind energy, including 14 developers that are actively pursuing project developments for the California Renewables Portfolio Standard (RPS) market. Collectively, CalWEA members have developed and/or own California wind operating projects totaling 1,250 MW and have secured RPS contracts for some 2,300 MW of wind energy capacity.

I. INTRODUCTION & SUMMARY

The CEC and CDFG have provided an opportunity to comment on various issues related to the scoping of the Governor’s Executive Order on Renewable Energy, including the following:

- how siting agencies can improve their current review and regulatory processes related to the siting of renewable energy infrastructure;
- what attributes specific areas should possess in order to be identified/designated as renewable development areas where development would be encouraged and preferred;
- how permitting times can be reduced for projects located in designated renewable development areas (or in any location, as stated by an official at the meeting), apart from Natural Communities Conservation Plan (NCCP) areas;

¹ Executive Order S-14-08, November 2008.

- how written guidelines could help developers prepare siting applications, which guidelines would identify both the data needed up-front by the agencies to facilitate timely application review, and, more importantly, the potential issues that need to be addressed and resolved prior to filing an application in order to significantly expedite the review of a project; and
- what other areas, in addition to the Colorado/Mohave desert, would benefit from a renewable energy-focused NCCP.

In summary, CalWEA's views on these issues are as follows, discussed in greater detail in Section II, below:

- 1. The limited terrestrial impacts of wind projects, and the manageable challenges of wind project siting and permitting, do not warrant expansive new planning efforts.** While siting and permitting a wind project in California is far more expensive and time-consuming than it should be, the problems are not so intractable that they cannot be addressed with relatively focused measures targeted to specific problems.
- 2. CalWEA recommends specific measures to address problems faced by wind project developers.**
 - a. Ensure that California BLM Field Offices follow national BLM policy.
 - b. Simplify the CEQA process for certain qualifying wind energy projects whose impacts are expected to be below CEQA's "significant impact" threshold.
 - c. Address the deficiencies in the CEC/CDFG wind-avian/bat Guidelines. The CEC and CDFG should eliminate any recommendations that are not supported by evidence, and should revisit the Guidelines after further research is conducted and in view of federal wind siting guidelines now being developed.
 - d. Clarify that the CEC/CDFG Guidelines are indeed voluntary and may not be used by project opponents as the basis for a challenge to the CEQA process.
- 3. We offer a few brief additional thoughts on several topics:** (a) the importance of avoiding the state's very limited wind resource areas when selecting areas to be conserved under a solar-focused NCCP; (b) the merit of considering a single PEIS/PEIR and developing generic mitigation for all of the transmission projects identified in the RETI process; (c) the merit of immediately designating corridors based on the RETI Transmission Plan; (d) the need for the Independent Science Panel to base its decisions on an open, evidentiary process; and (e) the importance of fully considering the potential of out-of-state renewable energy resources, delivered to California, which can help relieve the pressure on the state's environmental resources.

II. COMMENTS ON FACILITATING SITING AND PERMITTING OF WIND ENERGY PROJECTS

A. The Limited Terrestrial Impacts of Wind Projects, and the Manageable Challenges of Wind Project Siting and Permitting, Do Not Warrant Expansive New Planning Efforts

State and federal agencies should consider specific, targeted measures to reduce project permitting times for wind energy, rather than developing additional multi-agency plans and processes to achieve that end. While siting and permitting a wind project in California is far more expensive and time-consuming than it should be, the problems are not so intractable that they cannot be addressed with relatively focused measures targeted to the specific problems that the wind industry is facing (outlined in section II.B, below).²

At the Sacramento Scoping Meeting, central-station solar developers described severe mitigation-related development roadblocks that they are facing due to the substantial ground-based impacts of these land-intensive projects. Wind energy developers, whose projects disturb just 2-5% of the development area,³ are not in this situation. Wind projects can and are being sited and permitted under California's very strict environmental laws, albeit with higher costs and longer timelines than are necessary to protect the environment or desirable for achieving California's RPS and greenhouse-gas reduction goals.

In part because of the smaller ground footprint of wind projects, wind development avoids a number of the concerns associated with solar development, such as:

- Wind projects can be compatibly developed on Williamson Act agricultural lands;
- Wind projects do not place demands on California's limited and valuable water resources;

² One exception is the Altamont Pass Wind Resource Area, which is unique nationwide in its impacts on birds and the associated level of controversy and litigation. An NCCP is currently being developed for this area.

³ See *20% Wind by 2030; Increasing Wind Energy's Contribution to U.S. Electric Supply*, U.S. DOE (May 2008) at p. 110 (available at www.20percentwind.org/20percent_wind_energy_report_05-11-08_wk.pdf). Some of these impacts are temporary; on a recent tour for RETI participants of existing wind farms in the desert ecosystem near Palm Springs (organized by local environmental advocates and the BLM), participants observed that disturbed areas around wind turbines, where staging had once occurred for installation, were host to creosote bushes, similar to undisturbed areas nearby.

- Wind projects do not pose large habitat impacts or corridor blockage risks for two key species of concern in California's southern desert regions, in particular the Mojave Ground Squirrel and the Desert Tortoise⁴;
- Based on environmental studies conducted at proposed sites in the Lassen wind resource area, CalWEA members have not identified any potential issues that would rise to the level of warranting an NCCP (indeed, this area is attractive in part due to the lack of such issues).
- There is some flexibility in the placement of wind turbines within a wind resource area; frequently, sensitive plant and habitat areas can be avoided.

Further, the State has recently addressed the primary issue of concern for wind projects with the CEC/CDFG's 2007 *Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development* ("Guidelines"). The CEC has embarked on additional research that is necessary to improve upon the Guidelines, which will take several years to complete, as discussed below. While aesthetic issues may be a concern, it is our understanding that these issues are not included within the scope of an NCCP.

Generally, the potential for wind energy development in California is far more limited than for solar development, thus the total potential environmental impact of wind development is far more limited. As indicated by the RETI Phase 1B report, there is roughly six times greater potential for solar than wind capacity in California desert areas, which would translate to roughly 30 times the acreage disturbed.⁵

Because the permitting barriers associated with wind are not as severe as with solar, reflective of the lower environmental impacts associated with wind development (assuming projects are sited to avoid significant avian and bat impacts), CalWEA does not believe that wind resource areas merit inclusion in the NCCP process envisioned for the California Mohave and Colorado Desert regions or the Modoc Plateau. Moreover, efforts to accelerate renewable energy permitting through NCCPs and

⁴ Modern utility-scale wind turbines are spaced far apart -- typically no more than four turbines per square mile due to wake effects. Therefore, passage of these species through wind facilities would not be significantly impeded, particularly in contrast to a large contiguous block of solar facilities.

⁵ For example, the RETI Phase 1B Report estimated the most cost competitive of legally permissible resources in San Bernardino, Riverside, and Imperial counties to be 36,000 MW for solar and 5,702 MW for wind. This would translate to 230,400 acres of land disturbed for solar (assuming 100% footprint and 100 MW per 640 acres) and 7,603 acres of land disturbed for wind (assuming a 2.5% footprint; four 3-MW turbines per square mile, or 12 MW per 16 acres of footprint). Portions of Inyo, Kern, and Los Angeles counties east of State Route 14 may also be included in the NCCP. Most of the wind in these counties is located west of Route 14 and most of the solar east of Route 14, so the results would be comparable.

identification of areas where permitting can be accelerated are likely to be more effective and efficient if focused on the unique challenges associated with large-scale solar development.

B. Specific Measures Would Best Address The Problems Faced By Wind Project Developers

CalWEA has identified several specific measures that we believe would best achieve the Executive Order's goal of addressing the substantial barriers to generation siting in the case of wind energy.

1. Ensure that California BLM Field Offices Follow National Policy

Over the past year, CalWEA has had productive discussions with California BLM officials regarding the significant problems that wind energy developers have encountered on BLM lands. Especially with the priority that the Obama Administration and Interior Secretary Salazar are placing on renewable energy development on federal lands, we expect to see significant improvements this year on the problems we have identified. Most of the problems will be resolved if the California BLM Field Offices simply adhere to the national BLM wind energy policy.⁶ For example:

- **Customer Service.** BLM national customer service standards are not being followed. For example, responses to submitted applications are not timely, applications are stalled with no feedback, and established timelines for processing applications are not being met.
- **Lack of Consistency.** Because BLM national policies are not being followed, responses to wind energy applications vary from office to office. National policy provides, for example, that (i) Categorical Exclusions be allowed where surface disturbance is minimal, as with Level 2 wind energy right-of-way applications for site testing and monitoring of a project area, (ii) Environmental Assessments (EA) be permitted (versus an EIS) for the site-specific analysis of a wind energy project that could tier off of the BLM's wind PEIS.
- **Land Use Planning.** Many of the existing Resource Management Plans (RMPs) do not adequately address wind energy; silence in an RMP does not mean that wind is inconsistent with the RMP, and should not be interpreted as such. For example, depending on the purpose of an Area of Critical Environmental Concern (ACEC), wind development may not present a conflict. We have asked the California BLM Director to make clear to Field Offices that, where there is no specific management direction regarding wind energy in RMPs, exploration and development of wind-energy-related right-of-way projects do not necessarily conflict with the uses of the area, and should be evaluated as part of the EIS process.

The BLM's Land Use Planning Handbook (H-1601-1) requires that land use efforts address existing and potential development areas for renewable energy projects. More recently, the national BLM director issued an Instructional Memorandum ("IM") reiterating that Field Offices must incorporate wind energy resource development potential in their planning efforts to

⁶ BLM Wind Energy Development Program Policies and Best Management Practices (BMPs), December 2005.

facilitate the processing of future wind energy applications.⁷ The IM also provides that RMPs that have not yet addressed wind energy development can be amended concurrently in an EIS process for a wind development.

2. Simplify The CEQA Process for Certain Qualifying Projects

For certain types of qualifying wind projects whose impacts are expected to be below CEQA's "significant impact" threshold, the Legislature can shorten and simplify the CEQA process without avoiding environmental mitigation where it is needed. This can be done by either amending CEQA itself or directing the Office of Planning and Research to amend its CEQA guidelines.

The projects that would be eligible would be temporary meteorological towers, and new or repowered wind projects in areas that have been well-studied and where substantial wind development has already occurred, such as in Kern and Solano Counties. In these cases, wind projects could go through a simpler CEQA review process – a categorical exemption, negative declaration, or focused EIR – rather than a full-blown Environmental Impact Review process.

Developers in these areas would need to apply for this simpler process, and eligibility for the simpler process could be challenged, but if no objections are raised, the difference would be six months to a year's time, several hundred thousand dollars in costs and about a foot of paperwork per project. The environmental studies and resulting mitigation measures would be administratively reviewed by the agencies rather than in publicly circulated EIRs.

3. Address the Deficiencies in the CEC/CDFG Wind-Avian/Bat Guidelines

In late 2007, the Energy Commission and Department of Fish & Game jointly issued *California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development* ("CEC/CDFG Guidelines"). The CEC later recognized that a significant amount of research is needed to sufficiently develop the state-of-the-science to support particular methods and approaches for uniform application to all wind energy projects.⁸ Despite this recognition, the CEC/CDFG Guidelines are not scheduled to be reviewed and revised until they are five years old. It would be useful for the CEC and CDFG to go through this process sooner, and eliminate any recommendations that are not supported by evidence as being superior or otherwise preferable to other methods that may be more suitable at a particular site. The CEC/CDFG Guidelines can then be revisited and made more specific when further research is

⁷ BLM Instruction Memorandum No. 2009-043 (December 19, 2008).

⁸ See "A Roadmap for Pier Research on Methods to Assess and Mitigate Impacts of Wind Energy Development on Birds And Bats In California," CEC-500-2008-076 (October 2008).

conducted and particular methods or approaches have been shown to be most accurate or effective in some or all settings. At this later time, the CEC and CDFG can also take into account federal wind siting guidelines now being developed under the auspices of the U.S. Fish & Wildlife Service to ensure that state and federal guidelines are consistent.

While we wait for further research to be conducted, it is important that biologists studying a particular site be able to determine which methods and approaches are necessary and appropriate to assess environmental impacts in view of site-specific characteristics and in compliance with CEQA. The developer should not have to pay and wait for additional methods and approaches simply because they are listed in the CEC/CDFG Guidelines, which can add a year or more, and hundreds of thousands of dollars, to the permitting process.

Although the CEC and CDFG appropriately characterized the document as being voluntary, it is not being treated as such because it carries the seal of the State of California, and so counties that want to avoid litigation over their permitting decisions are requiring developers to follow them. It would be very helpful for the Legislature to clarify that the CEC/CDFG Guidelines are indeed voluntary and may not be used by project opponents as the basis for a challenge to the CEQA process.

III. MISCELLANEOUS ADDITIONAL COMMENTS

We offer the following brief additional thoughts:

- a. If an NCCP is conducted for solar, the agencies should take care to avoid the state's very limited wind resource areas when selecting areas to be conserved. For this reason, and to address other potential indirect impacts on wind developments from a solar-focused NCCP, CalWEA would like to participate on the Steering Committee.
- b. Regarding transmission, we are intrigued by the suggestion made by SMUD at the scoping workshop to conduct a PEIS/PEIR and develop generic mitigation for all of the transmission projects identified in the RETI process (not those already planned) to accelerate the permitting process, appointing one agency as the lead.
- c. Also regarding transmission, we support PG&E's suggestion that available tools to immediately designate corridors based on the RETI Transmission Plan should be used.
- d. Regarding the Independent Science Panel, we urge that the panel base its decisions on an open, evidentiary process so that decisions are made based on factual information.
- e. In its planning processes, we urge the State to fully consider the potential of out-of-state renewable energy resources, delivered to California, which can help relieve the pressure on the state's environmental resources. Out-of-state resources were not sufficiently considered in the RETI process: Numerous areas with rich renewable resource

potential, such as Montana, New Mexico, and Wyoming, were not evaluated at all, even though direct current (DC) transmission projects are being proposed that could bring the power toward California at competitive costs. Hence, in addition to RETI Competitive Renewable Energy Zones (CREZ), California should consider the Western Renewable Energy Zones (WREZ) in its planning process.

We look forward continued engagement in the implementation of the Governor's Executive Order to identify and carry out the most promising means of expediting renewable energy development to achieve California's ambitious goals in an environmentally sound fashion.

Respectfully submitted,



Nancy Rader
Executive Director
California Wind Energy Association
2560 Ninth Street, Suite 213-A
Berkeley, CA 94710
(510) 845-5077
nrader@calwea.org

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