

**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 REVISED DRAFT BEST MANAGEMENT PRACTICES AND GUIDANCE MANUAL**

On November 20, 2009, the California Wind Energy Association (“CalWEA”) submitted comments (attached) on the October, 2009 draft *Best Management Practices & Guidance Manual* (“BMP Manual”) published by the Renewable Energy Action Team (“REAT”). In December, 2009, the REAT published a revised version of the BMP Manual (“Revised Manual”) in response to comments submitted on the original manual. This submittal consists of CalWEA’s comments on the Revised Manual. **In general, we remain concerned that various aspects of the Revised Manual would undermine the very permit streamlining that the REAT was charged to advance.**

Since we submitted our original comments on the BMP Manual, Senator Feinstein introduced into the U.S. Senate a bill (Feinstein Bill) to create two additional national monuments and establish new statutory provisions for the permitting of private and public renewable energy projects in the desert. The permitting provisions of the bill (Title II) are intended to facilitate renewable energy permitting, and cover many of the same procedural issues that are addressed by the Revised Manual. For example, Section 202 of the Feinstein Bill would establish a process for the submittal of information required for applications to BLM, and deadlines for BLM and USFWS to review and process those applications, as well as deadlines for applicant responses to informational requests. Moreover, Section 201 of the bill would require BLM Renewable Energy Coordination Offices (RECOs) to serve as the lead agency in a multi-agency joint process for the review and approval of renewable energy projects.

In our earlier comments, we objected to the “Pre-Application Filing Guidance” contained in the BMP Manual, and which has been retained in the Revised Manual. That guidance recommends a sequential permitting process pursuant to which an applicant would engage in one to two years of consultations with other agencies prior to submitting applications to BLM. These and other procedural provisions of the Revised Manual do not reflect the reality that complex permitting processes require all agencies involved to operate roughly in parallel. Although seldom neat, multi-agency processes are best accomplished when all agencies are involved in the early stages, and the requirements of all such

agencies can be understood and balanced. Where one agency takes the position that it cannot act until commitments have been made by or to the other agencies, there is a high probability of regulatory conflict that cannot easily be resolved. **Therefore, we strongly suggest that the Revised Manual be modified to eliminate its procedural requirements and focus exclusively on field-based best management practices intended to address the potential impacts of renewable development.** Such measures are themselves helpful because they can be incorporated into local environmental review processes and into state and federal application proposals. Given that both the Desert Renewable Energy Conservation Plan (“DRECP”) and possibly the Feinstein Bill will address – and essentially supersede -- the procedural provisions of the Revised Manual, it is unclear to us why the BMP Manual addresses those issues at all.

Our comments on the October 2009 BMP Manual, which are attached hereto for reference, are summarized below in bold print. In plain text we have identified whether and the extent to which the Revised Manual has addressed our concerns, as follows:

1. **The geographic boundaries covered by the DRECP and the BMP Manual should be the congressionally-designated California Desert Conservation Area.** The Revised Manual does not address this concern.
2. **Neither the DRECP nor the BMP manual should use CREZ “boundaries” as the basis for any mapping effort. No such “boundaries” exist, as the CREZ process merely approximated locations for pre-identified projects and hypothetical proxy projects.** The Revised Manual does not address this concern.
3. **By recommending that renewable energy developers complete a broad variety of “recommended critical actions” before submitting applications, and discouraging the concurrent processing of applications, the BMP Manual undermines the very permit streamlining it is intended to advance.** As noted above, these provisions should be deleted from the Revised Manual. One example is the recommendation that incidental take and streambed alteration applications be submitted prior to initiating BLM processes. With respect to the former, in those cases in which endangered species coverage is secured through a Section 7 consultation, the submittal of incidental take “application” (i.e., presumably meaning the initiation of formal consultation) cannot occur until BLM itself initiates the process following the submittal of applications to BLM. In those cases in which Section 10 coverage is required, this recommendation would require potentially years of work with USFWS – i.e., to develop a draft HCP -- before BLM involvement would even be initiated. With respect to streambed alteration agreements, the Section 1602 process results in the issuance of management agreements in just over a month or two. Why would the Revised Manual require these agreements to be entered into when the BLM may not reach a conclusion for more than a year, at which time the streambed alteration agreement

may have already expired? Similar issues arise by calling for lead agency approved archaeological reports prior to submission of an application. These types of recommendations undermine the very streamlining objectives upon which the REAT and the DRECP process are based.

Finally, the paragraph at the beginning of Chapter 2, p.15, implies that the pre-application filing guidance would apply not only to projects not yet filed, but also to those that have not yet been accepted or deemed “complete”, even if that is due purely to delays and lack of staffing on the part of the regulatory agencies, such as BLM. This paragraph should be rewritten to clarify that projects with existing applications are not necessarily expected to conduct the pre-application filing guidance.

4. **The BMP Manual should identify specific measures to streamline the approval of certain types of wind applications, particularly meteorological towers. It could also recommend that BLM expeditiously incorporate wind energy resource development in its Resource Management Plans.** The Revised Manual does not address this comment.
5. **The BMP Manual should eliminate reference to the Interim USFWS Wind-Wildlife Guidelines, and reference only the final, implemented USFWS Guidelines.** We appreciate that the Revised Manual eliminates this reference.
6. **The BPM Manual should not recommend use of both the CEC/CDFG Wind-Avian Guidelines and the USFWS Wind-Wildlife Guidelines now being developed. These documents differ in their approaches and recommendations; recommending that both be followed would create delay while determining how to address the different recommendations and conflicting advice, cause confusion, and add unnecessary costs. The BMP Manual should recognize that the new federal guidelines will be phased in over a period of two years, following adoption in 2010 and implementation by USFWS in 2011 and 2012. Upon implementation, the new federal guidelines will be the appropriate document to guide wind project development, particularly on federal lands.** The language in the Revised Manual on this topic is should be clarified (see p. 69-70), because it could be interpreted as a recommendation that the CEC/CDFG guidelines be used in all cases.

Certain additional specific changes should be made to the BMP Manual:

7. **Voluntary Nature of the Guidelines.** We appreciate the inclusion of language clarifying that the Revised Manual provides only voluntary guidance, and does not reflect policy or regulation. It should, however, be supplemented with language affirmatively directing agency staffs that no permit process should be terminated, delayed or assigned lower priority due to any inconsistency with the Revised Manual.

8. **Williamson Act Compatibility.** Language should be added to the Revised Manual to clarify that wind energy development activities are deemed compatible uses under the Williamson Act. *See, e.g., Cal. Gov't Code § 51238, 58 Cal.Opps. Atty.Gen 729 (1975).* The Revised Manual still seems to suggest that compatibility must be adjudged based upon the language in the contract itself.
9. **Electricity Transmission Guidance.** The guidance provided on this topic (p. 46) is entirely inappropriate. First, it is unreasonable to require a completed interconnection study prior to initiation of BLM permitting. Second, studying impacts beyond the first point of interconnection could require going through the transmission CPCN process before applying to BLM for a generator right-of-way (ROW), where the CPUC would be unable to make a finding of need because BLM hasn't yet granted site control to the generator. Moreover, mitigation measures for transmission impacts beyond the first point of interconnection will be subject to change due to other generation projects withdrawing from the interconnection process. Transmission mitigation measures are not agreed upon, nor is the finalized set of measures identified, until a LGIA is executed, which takes several years from the time an interconnection request is filed. After the LGIA is executed, then the transmission owner files a CPCN application with the CPUC to implement required high voltage transmission upgrades, which is where the CEQA process for these upgrades begins. If BLM considers an interconnection study to be a critical action for its Record of Decision (ROD), the completion of an interconnection study should be required only prior to the ROD, not prior to the ROW application being deemed complete.

At a big picture level, the guideline related to progress on transmission should be the *filing of an interconnection request* and the *initiation* of an interconnection study by the transmission operator; otherwise the process will not be concurrent and could create a situation where neither agency will move forward because each is waiting for the other to proceed first. The manual should acknowledge that the REAT agencies do not possess CEQA jurisdiction for transmission system impacts beyond the first point of interconnection. This resides with the California Public Utilities Commission (CPUC).

10. **Guy Wires.** While the manual says “permanent meteorological towers should not be guyed,” it is silent on temporary meteorological towers. Since temporary towers tend to use guy wires, and as they have smaller footprints and use fewer guy wires than guyed permanent towers, a statement should be included that it is permissible for temporary meteorological towers to use guy wires.
11. **DOD Compatibility.** The Department of Defense rarely is willing to provide letters stating that a project would not conflict with military operations, and then only after significant analysis that requires long lead times. This is another item that should be removed from “pre-application guidance.”

12. **Trail Viewsheds.** There are hundreds of existing wind turbines operating along the Pacific Crest Trail in both the Tehachapi and San Gorgonio wind resource areas; indeed, groups such as the Sierra Club have led hikes specifically to view the wind farms. Wind energy development should not be considered to be incompatible with trails, nor should the total elimination or avoidance of visibility in trail viewsheds be required.

13. **Local Planning.** The Revised Manual continues to over-emphasize the need for compliance with current local land use planning documents. For example, it continues to carry language requiring local agencies to certify consistency with local zoning laws and suggesting that projects requiring zoning changes will be delayed. Such language does not acknowledge that renewable developers often undertake permitting processes at the local level that result in revisions to existing land use plans following the completion of environmental review, and that these processes can be carried out in parallel with BLM permitting processes.

There are two new significant quasi-regulatory, regulatory or statutory structures under parallel development to govern renewable energy development in the desert: the DRECP and its BMP Manual, and Title II of the Feinstein bill, respectively. At this early date there has been little coordination between these efforts, particularly with respect to the Feinstein Bill. It is therefore quite likely that the DRECP and the Feinstein Bill, if adopted, will contain procedural requirements that differ substantially from those proposed in the BMP Manual. Unless these proposals result in a consistent set of guidance in all respects (e.g., covered geographic areas, conservation measures, inter-agency coordination), the State of California's ability to meet its RPS goals may seriously be undermined. Therefore, we again recommend that the procedural aspects of the Revised Manual be deleted for the present time, and that all parties focus their efforts on ensuring that the pending federal legislation and the DRECP be crafted in a way that presents true streamlining benefits balanced with sound environmental principles. Although CalWEA has not yet taken a position on the Feinstein Bill, and has expressed significant concerns regarding the DRECP process, we remain engaged with all parties to ensure that renewable energy permitting is streamlined. As currently written, the Revised Manual would appear to undermine this very significant goal.

We would be pleased to meet with the REAT agencies to discuss these. In the meantime, if you have any questions, please feel free to contact me directly.

Sincerely,



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January 27, 2010

**STATE OF CALIFORNIA
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**COMMENTS OF THE
CALIFORNIA WIND ENERGY ASSOCIATION
ON DRAFT BEST MANAGEMENT PRACTICES & GUIDANCE MANUAL**

The California Wind Energy Association (CalWEA) is a trade association comprised of over 20 wind energy companies, including wind project developers and operators, manufacturers and related vendors. CalWEA has reviewed the draft *Best Management Practices & Guidance Manual* (BMP Manual) proposed to guide the development and implementation of the *Desert Renewable Energy Conservation Plan* (DRECP), and respectfully submits the comments set forth below.

CalWEA has been following the activities of the Renewable Energy Action Team (REAT) since it was established in 2008. On March 31, 2009, CalWEA submitted comments explaining why we do not see a great advantage to our membership in securing coverage in the DRECP for wind development activities. Our letter of November 17, 2009, on the DRECP Draft Planning Agreement discusses this view and related concerns in more detail. CalWEA's letter of October 29, 2009, expresses concerns regarding the DRECP mapping process; the data and methodology for mapping should be discussed publicly prior to drafting maps. Finally, in response to statements made by REAT officials at the Victorville meeting that they are eager to meet with parties to discuss the issues, we have repeatedly requested such a meeting, with no response to date.¹

Within this background, we offer the following specific comments on the draft BMP Manual.

¹¹ Requests for a meeting were sent by email from Nancy Rader to Scott Flint, Paul Richens and others on October 29th, November 3rd, and November 17th, with a phone message left with Scott Flint on November 17th.

1. The geographic boundaries of the DRECP planning area should be the Congressionally designated California Desert Conservation Area (CDCA).

In Figure 1 of the draft BMP Manual, the geographic boundaries of the DRECP planning area have been drawn inconsistently, excluding the San Geronio Wilderness Area, the western part of Joshua Tree National Park and certain desert portions of Inyo County, while including portions of several national forests and other areas not generally considered to be part of the desert nor containing the types of species, such as desert tortoise, that are described in the draft BMP Manual. The geographic boundaries of the DRECP planning area should be the BLM California Desert Conservation Area (CDCA), especially since the BLM and USFWS are parties to the DRECP.² The CDCA Plan boundary is a Congressionally designated distinct boundary that, with several amendments, has long been managed as a single land management unit since 1976.

Finally, in several locations, the draft BMP Manual references Competitive Renewable Energy Zone (CREZ) boundaries. In the California Renewable Energy Transmission Initiative (RETI), no explicit CREZ “boundaries” exist; rather, locations are approximated for pre-identified projects and hypothetical for proxy projects. Hence, DRECP should not refer to CREZ “boundaries,” nor base any specific mapping decisions on approximated and hypothetical RETI depictions of project boundaries, which were not intended to serve such a purpose, only to serve as a general indication of location.³

2. The DRECP identifies as one of its goals the creation of a “more efficient process for timely permitting” but, upon review of the draft BMP Manual, significant streamlining is not apparent.

In order to expedite application processing, renewable energy developers are encouraged to complete several “recommended critical actions” before they file applications with lead agencies. But most of these actions are self-evident. Developers know, for example, that they will have an easier time with sites that do not require a change to land-use plans, and developers place a priority on identifying such sites because it is in their interest to do so. So the draft BMP Manual doesn’t streamline anything by simply stating the obvious.

Nor does the draft BMP Manual streamline anything by suggesting that developers obtain interconnection agreements and power purchase agreements, or work out conflicts with the military, prior to filing a permit application. The problem there is that developers reasonably pursue these items concurrently with the application process because any one of them can influence the decision of whether to proceed with the project. Further, the California ISO and utilities want to see progress in the site permits before they want to proceed with a project – so

² In CalWEA’s November 17, 2009, letter regarding the DRECP Planning Agreement, we inadvertently identified the BLM’s California Desert District (CDD) instead of the CDCA as we intended.

³ See, e.g., pages 5 and 6 of the draft BMP Manual.

there is a chicken-and-egg problem in requiring everything other than the permit to be put in place first. By making these tasks sequential instead of concurrent, the BMP Manual would actually cause projects to be delayed, rather than expedited.

In addition, it is beneficial for all stakeholders, including environmental advocates, that the permitting process be able to have an exchange of information with the interconnection process, and for that exchange not to occur only after interconnection studies are completed: for example, a project that may be initially envisioned as 100 MW may need to be reduced to 50 MW in order to address habitat requirements. That in turn affects the electrical studies the utilities have to conduct for interconnection.

Both from an environmental as well as an industry perspective, having the access route, transmission path, and turbine locations set prior to the evaluation of environmental impacts is a recipe for risk. Indeed, one of the goals of environmental analysis is to find ways to eliminate or minimize these impacts, but if key aspects of the project configuration are already locked in through other processes, such as interconnection studies and power purchase agreements, the environmental impacts may become unavoidable. In order to prevent such a dilemma, CalWEA recommends allowing a project proponent to propose a basic set of preliminary project attributes, such as the access route(s), transmission path, substation and turbine locations, that would be sufficient to initiate environmental review for a Plan of Development, while giving both the project proponent and regulatory agencies the flexibility to propose modification of project attributes to minimize any potential environmental impacts that may be discovered.

The BMPs for completion of power purchase agreements and interconnection studies prior to initiation of the permitting process should be removed, and more generally, the BMP Manual should emphasize how the REAT agencies should expedite project permitting through concurrent rather than sequential processes. In project management, a synonym for making processes run concurrently is “fast tracking,” which is what we understood to be the goal of the Executive Order.

In addition, under the new CAISO cluster study process, mitigation measures of indirect project impacts are not finalized until after the Phase II study process. If developers have to wait until that time to file a permit application, it would be impossible to finish the permitting process prior to the deadline of executing an interconnection agreement under federal rules. As stated by CalEnergy in its October 27, 2009, comment letter, “[s]ystem improvements determined as being necessary beyond the first point of interconnection are beyond the regulatory authority of the [Energy] Commission. Therefore, the requirement to perform and submit a CEQA analysis for system improvements required beyond the first point of interconnection prior to submitting an initial application to a lead agency should be omitted.”

- 3. Examples of actions that could streamline siting would be: (a) the BLM could recognize the difference between applications for meteorological towers and site development, (b) the BLM could expeditiously incorporate wind energy resource development in its Resource Management Plans, as described by Instruction Memorandum No. 2009-043, and (c) the state could amend its CEQA guidelines to facilitate certain qualifying projects.**

The document refers to project permitting without clearly distinguishing permits for resource assessment. The document should clearly state that its recommendations apply only to applications for project development and not for resource assessment.

CalWEA has repeatedly complained to the BLM that applications for resource assessment (“Type II”) permits are routinely and severely delayed because Field Offices are improperly treating them as if they were destined to be wind farms. This treatment is inconsistent with national BLM policy. Type II ROWs generally disturb a tiny amount of land on a temporary basis. Moreover, a plan of development is based on the results of a meteorological study of the wind resource; the steps are sequential. The more sites that are evaluated, the more flexibility developers will have in choosing sites with the fewest conflicts, which is in everyone’s interest.

The BLM could facilitate placement of resource assessment equipment by establishing criteria under which categorical exclusions under NEPA would be appropriate. These Type II applications should be reviewed and processed within the context of a short-term, temporary land-use permit framework that does not result in cumulative impacts.

Similarly, to make more efficient compliance with CEQA for resource measurement equipment and low-impact wind projects, California could establish criteria (such as project location, type, size, proximity to existing wind development, and similarity of site characteristics) under which, based on a site-specific evaluation, projects could qualify for efficiencies such as categorical exemptions and focused EIRs.

Another action that would streamline permitting of wind energy projects is for the BLM to evaluate the potential impacts of wind energy development in all Resource Management Plans (RMPs) and revisions. Through the land use planning process, areas compatible for wind energy development will be defined for future use. This process would have extensive public involvement and will allow for a broad consideration of wind energy development balanced with the demands of other public land values and uses. Once this is done, future applications for wind energy development within the defined areas will not require a land use plan amendment and will allow for opportunities to “tier off” of the Environmental Impact Statement (EIS) that was prepared for the RMP or revision thus streamlining the process.

4. The BMP Manual should eliminate reference to the Interim USFWS wind-wildlife guidelines, and reference only the final, implemented USFWS Guidelines.

The USFWS has effectively withdrawn its Interim Guidelines and, in acknowledgement of their deficiencies, the Secretary of Interior convened a thorough, multi-stakeholder, collaborative process by the Wind Turbine Guidelines Advisory Committee to prepare new guidelines. Currently, Fish & Wildlife Service does not recommend that wind projects follow the Interim Guidelines. Further, the CEC/CDFG Guidelines do not agree in many places with the recommendations in the Guidelines, so recommending both be followed would create delay, confusion, and added unnecessary costs.

We understand that new guidelines will be finalized next year between May and July, but will require training and implementation steps that will delay their implementation until 2012. Consequently, the Renewable Energy Action Team should remove recommendations to follow the Interim Guidelines.

The BMP Manual should recognize that the new federal guidelines will be phased in over a period of two years, following adoption in 2010. Upon implementation, the new federal guidelines will be the appropriate document to guide wind project development, particularly on federal lands.

5. In addition to addressing the broader comments above, the REAT agencies should make various specific changes to the draft BMP Manual.

We recommend several specific changes to the draft, including changes on the following points. We intend to further discuss these points and identify additional issues in a follow-up letter. In particular, we highlight these issues:

- Clarify that the manual should not be interpreted or administered as policy or regulation.
- Distinguish the compatibility of wind projects with Williamson Act contracts.⁴
- Acknowledge the lack of CEQA jurisdiction for REAT agencies regarding possible transmission system impacts beyond the first point of interconnection.
- Allow use of guy wires for meteorological towers.
- Modify BMPs to account for local permitting processes.

Several of these general issues were raised in the letters submitted by CalEnergy and Inyo County in this docket (on October 27 and October 20, 2009, respectively). In addition, CalWEA

⁴ The correction should be made on BMP Manual pages 2, 8, and 17.

concur with CalEnergy that the draft BMP Manual “implies that all potential impacts must be reduced to ‘net zero’. While this is an admirable goal, impacts can seldom be economically reduced to this level.” The BMP Manual should state that reduction of impacts should be reduced to acceptable levels, not necessarily to “net zero.”

We are happy to meet with you further to discuss these and other concerns. In the meantime, if you have any questions, please feel free to contact me directly.

Sincerely,



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November 20, 2009