



California Wind Energy Association

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California Energy Commission
Dockets Office, MS-4
Docket No. 09-RENEW E0-01
Scoping Comments
1516 Ninth St., Sacramento CA 95814-5512
Via email to: docket@energy.state.ca.us

Re: Notice of Intent and Notice of Preparation for Joint Environmental Impact Statement / Environmental Impact Report for the Desert Renewable Energy Conservation Plan

To Whom It May Concern:

The California Wind Energy Association (“CalWEA”) is a trade association supported by 30 member companies actively developing wind projects both within and outside of California to help meet California’s statutory renewable energy goals. CalWEA continues to appreciate the opportunity to participate in the development of the Desert Renewable Energy Conservation Plan (“DRECP”) as an active member of its Stakeholder Committee. This letter includes CalWEA’s comments in response to the Notice of Intent and Notice of Preparation for Joint Environmental Impact Statement/Environmental Impact Report (“EIS/EIR”) for the DRECP, for inclusion in the public record.

To meet its ambitious goal of reducing greenhouse gas emissions 80 percent below 1990 levels by 2050, California must develop its renewable energy resources. The DRECP provides a means for developing these resources in a comprehensive, environmentally responsible manner while expediting and reducing the cost of obtaining necessary environmental permits. We provide suggestions on the scope of topics and alternatives to be addressed in the DRECP’s EIS/EIR that will contribute toward the success of the DRECP in its dual objectives of protecting the desert environment and facilitating conscientious renewable energy development in the southern California desert region.

CalWEA’s comments present views shared by many members of the California wind energy community, whose efforts are integral to the successful implementation of the DRECP and to California’s renewable energy future. These comments make specific suggestions about ways in which the EIS/EIR should address the regulatory

challenges faced by the wind energy community in renewable energy development, for example by streamlining permit issuance under the DRECP. CalWEA has previously made many of these recommendations in Stakeholder Committee meetings, through participation in DRECP working groups, and through written comments.

1. Preserve high-quality wind resource areas for development, with appropriate mitigation

CalWEA has provided to the DRECP agencies and stakeholders a Priority Wind Resource Area (“PWRA”) map indicating development areas that are or will be commercially feasible well within the expected 2050 timeframe of the DRECP. That analysis shows that, unconstrained, about 70% of the DRECP area contains commercially viable wind resources. After removing physical and administrative constraints (such as military bases and National Park Service managed lands), only 43% of the DRECP area remains with good quality wind resources. Once additional factors are taken into consideration, the commercially viable area will be further reduced. CalWEA therefore recommends that the EIS/EIR preserve as much of the PWRA as possible to ensure that wind resources are available to meet renewable energy goals while balancing natural resource conservation.

Several site-specific factors are not under consideration in the DRECP process that will reduce the wind resources indicated as commercially viable within the PWRA. These factors include: (1) confirmation of local wind resources. Wind resource maps are based on models for area blocks, rather than meteorological measurements at specific points, and thus are not always precise. It is not uncommon to find differences of 1 to 2 meters/second between the estimates of wind speed on a general map and actual measurements by instruments at specific locations on met towers; (2) interference with military radar and flight patterns. In many cases, discussion and mitigation on a site-specific basis is required to determine potential compatibility and mitigation; (3) the ability to lease land rights, including rights to land providing transmission access; and (4) geotechnical studies to determine feasibility of construction.

The land remaining available for development under the DRECP should reflect the fact that it will not be possible, in a planning process that covers tens of thousands of square miles, to understand these and other site-specific factors that will determine the ability to develop an energy project at a particular site.

Within the PWRA area, the desert renewable energy plan should indicate areas of lesser and greater environmental sensitivity (including wind-specific concerns), along with associated conservation/mitigation ratios. Such a plan will provide incentives for developers to focus on the areas of lesser concern. If a developer should choose to pursue a higher-impact area, the higher mitigation requirements would be warranted by superior site characteristics (e.g., resource quality, proximity to transmission lines, avoidance of military radar interference, and willing land owners). Preserving the entire PWRA for potential development will avoid arbitrary restrictions on project development sites, foster competition and enable Renewables Portfolio Standard (“RPS”) goals to be met at least cost.

Conversely, if the EIS/EIR alternatives remove portions of the PWRA (and likewise for other forms of renewable energy), each alternative should be analyzed for its impact on the market, as it can be expected that shrinking the available resource would eliminate promising renewable energy development areas, reduce competition, and thus raise renewable energy prices. Increased prices will, in turn, raise the cost of achieving California’s renewable energy and greenhouse-gas reduction goals.

2. Revise DRECP Boundary to Exclude Small Portion of Condor Historic Range

CalWEA recommends the reduction of the DRECP area to exclude the region that overlaps the California condor (*Gymnogyps californianus*) historic range for several important reasons.

First, the overlap between the DRECP planning area and the condor historic range is very small: the 707,812 acres of the DRECP area that overlaps the historic range of the condor constitutes just 4.3% of the 16,555,000 acres of the known historic range where the species is currently being managed (see map shown in Appendix). Conversely, more than 97% of the DRECP area is not within the historical range of the California condor. The development of a comprehensive or effective conservation plan for the condor through the DRECP, therefore, will not be possible because the overwhelming majority of the historic condor range falls outside the DRECP. Moreover, because DRECP-area renewable energy projects developed outside of the condor historic range will not affect the species (or at least the likelihood of impact is greatly reduced), requiring these projects to contribute to a condor conservation plan would be unwarranted and burdensome.

Second, the state of knowledge regarding condor mortality risk from wind turbines is currently poor. The condor-wind-risk science occurring under the auspices of the California Condor Wind Energy Work Group (a subgroup of the California Condor Recovery Team) is not complete and will not be ready until late in the DRECP timeframe at best. Addressing condor avoidance and mitigation techniques will be more appropriate and effective when the science has improved.

Third, the inclusion of mountainous regions is not consistent with the DRECP. The overlap between the DRECP area and the condor historic range consists entirely of ridges and elevated areas of the Tehachapi Mountains. Elevations rise to as much as 7,000 feet above sea level. This area is not “desert” land. The DRECP, by design, is intended to address desert regions, not mountains, thus inclusion of this overlap with the condor historic range is not consistent with DRECP aims.

For these reasons, CalWEA recommends that the western boundary of the DRECP be realigned to exclude the historic range of the California condor. The resources and focus of the DRECP should concentrate on the immense California desert region. Scaling back the range of the DRECP to exclude the California condor’s historic range will enable the DRECP to focus limited resources on achieving otherwise still-very-ambitious goals and to complete the plan within the intended timeline.

3. Calculate Wind Energy Impacts by Area Actually Disturbed

The EIS/EIR should calculate the terrestrial impacts of wind energy projects based on the area of ground actually disturbed by wind energy projects, rather than the entire leased area. Typically, 40 acres per MW (0.025 MW/acre) must be leased in order to preserve the wind resources supplying the project’s wind turbines. Only a small fraction of the lease area –generally only 2%-5% -- represents the area actually disturbed.¹ This disturbance area includes all Covered Activities such as roads, turbine pads, maintenance and storage facilities, and electrical substations.

¹ See, e.g., *20% Wind by 2030; Increasing Wind Energy’s Contribution to U.S. Electric Supply*, U.S. DOE (May 2008) at p. 110 (available at http://www.20percentwind.org/20percent_wind_energy_report_05-11-08_wk.pdf).

The EIS/EIR should also distinguish between major, long-term surface disturbance and less extensive, short-term surface disturbances that can be restored. Wind energy developments include both relatively permanent surface disturbance (e.g., turbine pads and roads) and temporary disturbances (e.g., temporary staging areas, widening of existing roads) that, depending on the geological conditions and restoration methods used at the site, can be successfully restored to recreate habitat that is suitable for the species historically present at the site.

4. Recognize that Wind Projects are Potentially Compatible with Planning Goals

The EIS/EIR should take into account the fact that wind energy projects are potentially compatible in some reserve, corridor and buffer areas, and project areas can support viable populations of many sensitive taxa, as well as wildlife movement, presuming careful siting, mitigation and monitoring. This stems from wind energy's small ground disturbance footprint and the ability to carefully micro-site turbines. Compared to many other types of development, wind energy projects offer considerably lesser impacts, and positive population growth may be possible for sensitive species in project areas. The co-location of wind energy projects and sensitive species or ecological communities could facilitate the ability to identify and secure large, contiguous reserve areas while simultaneously preserving high quality wind resource areas for development.

5. Plan for All Realistic Renewable Energy Development Scenarios through 2050

The EIS/EIR should plan for a wide range of realistic desert renewable energy development scenarios through 2050, the time frame for achieving California's ambitious greenhouse gas reduction goals. It is impossible to predict the many factors that will influence the need to draw upon California's desert renewable energy resources over such a long period. Renewable energy policies that the state and federal government may adopt, technology advancements, raw materials prices, growth in demand for electricity, and the degree to which the electric sector is electrified, for example, cannot be predicted over a period of 40 years.

Therefore, the DRECP should plan for the possible development of a reasonable upper bound estimate of the amount of renewables that may be needed, including a variety of possible technology mixes within that total. In planning for these scenarios, the EIS/EIR should not assume technology-specific estimates that could translate into technology-specific caps under the final plan. The EIS/EIS should also make clear that, in planning for an upper-bound scenario, it is in no way mandating such an outcome; rather, a variety of policy, technology, market and other factors will determine the extent to which renewable energy resources in the desert are needed to achieve the state's broader environmental and energy goals.

6. Achieve Permit Streamlining: Regulatory Context

Along with providing effective conservation strategies for covered species, the EIS/EIR should adequately address the regulatory assurances to be provided to the wind energy industry regarding development impacts on avian and bat species in order to achieve the DRECP's goal of streamlining the permit process. CalWEA recommends the following permitting structure for wind energy projects in the DRECP area:

- a. Develop an Appropriate and Manageable Set of Covered Species.** CalWEA has provided DRECP officials with a list of 17 covered species that are relevant to wind projects within the proposed permit area boundaries. Per discussion of the California condor, above, CalWEA recommends that this species not

be addressed as part of the DRECP by means of a limited change to the DRECP boundary lines. It is expected that wind energy project impacts on other species currently being considered for inclusion as covered under the DRECP would be avoided through careful micro-siting or otherwise addressed through minimization and compensatory mitigation measures. For the DRECP overall, the EIS/EIR should provide coverage for an appropriate suite of sensitive species without burdening the plan with an overly expansive list of species for which adequate data do not exist or which would unduly complicate, or increase the cost of implementing, the conservation strategy. Attempting to cover too many species will jeopardize successful completion of the DRECP altogether and frustrate the goal of permit streamlining.

- b. Establish predictable avoidance and minimization strategies specific to wind energy.** These should include management practices tailored for the region to limit impacts on covered species including avian species. Scientifically defensible limitations on the need for extensive on-site species-specific protocol surveys should be considered in the interest of keeping wind energy development compliant with wildlife rules and regulations while streamlining the development process. The DRECP should strive to minimize or eliminate the need for presence-absence surveys and to limit pre-construction surveys.
- c. Establish an in-lieu-fee-based mitigation strategy** to address avian and other impacts, reflecting the low-density terrestrial impact footprint of wind (see comment numbers 3 and 4 above). Credit against fees should be given where on-site conservation can be accomplished consistent with wind development. In-lieu fee mitigation programs should be available to projects that are permitted during the development of the DRECP, particularly those requiring timely completion in order to qualify for federal tax benefits.
- d. Provide for county permitting with “no surprises.”** The permit structure should provide for permit issuance through the desert counties, rather than the California Energy Commission or directly from the wildlife agencies, and “no surprises” assurances should be provided at the local, state and federal levels.
- e. Provide permit terms consistent with wind project life, and consistent with the state’s long-term greenhouse-gas-reduction targets.** The timeframe of the overall plan should be consistent with California’s statute for greenhouse gas reductions through the year 2050. The term of permits for wind projects that are permitted during the timeframe of the DRECP should cover the construction of wind projects and extend for the operational life of the project (i.e., 25-30 years from construction), and through repowering (if any) or decommissioning.
- f. Provide permit streamlining under other natural resource laws as follows:**
 - i. Provisions for take of state fully protected covered species should be provided as part of the NCCP permit (requiring a state-law change);
 - ii. The DRECP should provide programmatic compliance for streambed alteration agreements under Fish and Game Code Section 1602 and Regional Water Quality Control Board permits (Porter-Cologne);

- iii. An Avian and Bat Protection Plan (“ABPP”) or other negotiated framework should provide coverage under the Bald and Golden Eagle Protection Act (“BGEPA”), Migratory Bird Treaty Act (“MBTA”) and state-level requirements for raptors and other avian species. These requirements should constitute implementation of the elements of the national BGEPA Guidelines now under development, as applicable to the DRECP region. Avian take coverage should be retroactive for *existing or interim projects* (i.e., projects permitted while the DRECP is being developed) that meet specified standards.

g. Address the golden eagle as follows: While it is possible to address population level impacts on a project-specific basis, the DRECP provides a unique opportunity to address local eagle populations on a more comprehensive regional level. The DRECP also provides an opportunity for the development of a strategy to address golden eagle issues in a manner tailored effectively for the California desert regions. The regulatory components of this strategy should include:

- As indicated above in comment 6.e for application more generally, the DRECP should establish a permit term for eagle take that covers the operational life of any wind project permitted within the initial term of the DRECP, and the DRECP should provide regulatory assurances relative to golden eagle consistent with USFWS’s “No Surprises” policies, which assurances should not be undermined by an unnecessarily open-ended adaptive management program;
- The DRECP should provide programmatic golden eagle permit coverage for all projects within the permit area, requiring only that applicants submit project-tailored avian and bat protection plans consistent with the conservation strategy established for the DRECP;
- Consistent with comment 1 above, the DRECP should allow project developers the choice of where to site projects and should require minimization and mitigation tailored to the project area and activities;
- Given the information currently available and being collected regarding region-wide population trends on golden eagles, the DRECP should not require individual project developers to perform duplicative surveys or risk analyses in connection with their projects; and
- When an existing project has complied with the DRECP and coordinated with USFWS, the potential for requirements to modify operations or shutdown should be limited.

CalWEA looks forward to continued engagement in this important planning process.

Sincerely,



Nancy Rader
Executive Director



FIGURE 3-1
California Condor Historical Range and
Desert Renewable Energy Conservation Plan Area