

A Step Toward Expediting California Clean Energy Permits



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Law360, New York (October 02, 2014, 12:16 PM ET) -- On Sept. 23, 2014, the California Energy Commission, California Department of Fish and Wildlife, U.S. Bureau of Land Management, and U.S. Fish and Wildlife Service released the Draft Environmental Impact Report/Environmental Impact Statement for the Desert Renewable Energy Conservation Plan (DRECP). The DRECP would create a framework to streamline permitting for up to 20,000 megawatts of renewable energy projects on more than 22 million acres in the California Mojave and Colorado/Sonoran desert region.

The DRECP will be of particular interest to renewable energy project developers and lenders. The DRECP seeks to provide more efficient regulatory assurances under various environmental laws, including the federal and state Endangered Species Acts. The DRECP provides for the streamlined review of renewable energy facility development over the next 25 years, identifying a planning goal of 20,000 megawatts of new renewable energy by 2040. Renewable energy development activities covered by the DRECP will include solar, wind and geothermal projects, as well as transmission facilities that service renewable energy projects.

The DRECP, which has been in development since early 2009, recommends locations for siting renewable energy projects and conserving desert habitat. The DRECP consists of four major components:

- (1) a federal BLM Land Use Plan Amendment, covering 10 million acres of BLM-administered lands;
- (2) a General Conservation Plan, developed by FWS, covering nearly 5.5 million acres of nonfederal lands, which would provide a programmatic framework to streamline the incidental take permitting process under the federal Endangered Species Act;
- (3) a Conceptual Plan-Wide Natural Community Conservation Plan, to be approved by CDFW, which would

encompass the entire DRECP plan area and would describe a regional strategy for the protection of plants, animals and desert habitat to simplify compliance with the California Endangered Species Act; and

(4) Programmatic environmental review under the California Environmental Quality Act and the National Environmental Policy Act.

The DRECP is expected to change the way that renewable energy projects in the California desert are approved. However, it is important to note that the DRECP does not supplant existing permitting processes.

To facilitate streamlining, the DRECP proposes a process where applicants may submit a “project proposal” to the DRECP Coordination Group for an early review for consistency with DRECP requirements. Upon completion of review by the Coordination Group, the project applicant would prepare and submit an application to the agency or agencies responsible for issuing the permit or authorization. A project that has been approved by the Coordination Group will be eligible for expedited review from DRECP participating agencies (BLM, FWS, CDFW, CEC, and the California State Lands Commission) under their incidental take permits, as applicable.

The DRECP intends that most projects would be approved within one year following the determination by the approving agency that the application is complete, including the preparation of project-level review under CEQA and NEPA. Projects would, however, be required to comply with DRECP avoidance, minimization and mitigation requirements, and would be required to pay for compensatory mitigation determined on a project-by-project basis.

The EIR/EIS for the DRECP would be “programmatic” EIR/EIS, to be followed by targeted, project-specific environmental review that can rely upon the analysis and mitigation strategies developed by the programmatic EIR/EIS. The document analyzes the potential environmental, economic and social effects of the DRECP and evaluates four “action alternatives” to the proposed DRECP, which are intended to illustrate the trade-offs between development focused in different parts of the desert, and to show the differences among various conservation strategies.

The draft EIR/EIS for the DRECP is currently available for public review and comment. All comments must be submitted by Friday, Jan. 9, 2015. In addition, the CEC, BLM, FWS, and CDFW will hold a variety of informational and formal public meetings in and around the plan area, as well as in Sacramento.

If approved, the DRECP should help streamline permitting for renewable energy generation projects and transmission projects in the Colorado and Mojave desert areas of California, but it would not be a panacea. Additional state and federal efforts may be needed to further expedite siting and permitting for renewable projects. Various interests groups may oppose or seek to materially alter the DRECP, including via judicial challenge, which could lead to further delays or uncertainty.

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