

MEMORANDUM OF AGREEMENT
RELATING TO LAND EXCHANGES TO CONSOLIDATE LAND PARCELS
BETWEEN THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF
LAND MANAGEMENT, AND THE CALIFORNIA STATE LANDS COMMISSION

INTRODUCTION

This Memorandum of Agreement (“MOA”) is between the United States Department of the Interior (“DOI”), Bureau of Land Management (“BLM”), and the California State Lands Commission (“CSLC”) (collectively referred to as “Parties”, and each individually as a “Party”). The purpose of this MOA is to facilitate the exchange of selected California School Lands under the jurisdiction of the CSLC for selected federal lands under the jurisdiction of the DOI, BLM consistent with each Party’s land tenure objectives, including, but not limited to, consolidating lands held by the State of California into contiguous parcels suitable for developing renewable energy projects.

I. PARTIES

The following officials are executing this MOA as representatives of their respective agencies:

- A. James G. Kenna, California State Director, Bureau of Land Management
- B. Curtis L. Fossum, Executive Officer, California State Lands Commission

II. AUTHORITY

- A. BLM’s authority to enter into this MOA is section 307b of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1737). Exchanges contemplated in this MOA would be completed under the authority of section 206 of the FLPMA (43 U.S.C. 1716) and/or section 707(a) of the California Desert Protection Act of 1994 (16 U.S.C. 410aaa-77).
- B. California State Lands Commission: Chapter 2 of Division 7.7 of the Public Resources Code.

III. DEFINITIONS

“School Lands” means lands, or interests in lands, granted to the state of California by an Act of Congress, March 3, 1853 (Ch. 145, 10 Stat. 244), for the specific purpose of providing support for the public schools, and acts related thereto.

IV. BACKGROUND

In 1994, Congress passed the California Desert Protection Act of 1994 (Public Law 103-433) (CDPA). The following sections of the CDPA direct the Secretary of the Interior to:

1. Section 702 (16 U.S.C. 410aaa-72): “In preparing land tenure adjustment decisions with the California Desert Conservation Area, of the Bureau of Land Management, the Secretary shall give priority to consolidating Federal ownership within the national park units and wilderness areas designated by this Act.”
2. Section 707(a) (16 U.S.C. 410aaa-77a): “Upon request of the California State Lands Commission the Secretary shall enter into negotiations for an agreement to exchange Federal lands or interests therein on the list referred to in subsection (b)(2) of this section for California State School lands or interests therein which are located within the boundaries of one or more of the wilderness areas or park system units designated by this Act. The Secretary shall negotiate in good faith to reach a land exchange agreement consistent with the requirements of section 206 of the Federal Land Policy and Management Act of 1976”

The Governor of the State of California issued Executive Order S-14-08 (November 17, 2008), establishing a state policy goal of producing thirty-three percent of California’s electrical needs with renewable energy resources by 2020. In 2011, the California Legislature enacted and the Governor signed legislation (SBX2-Simitian, Chapter 1, Statutes of 2011) adopting the thirty-three percent by 2020 standard. A substantial number of renewable energy projects are required for California to meet this directive, as well as to achieve the state’s climate change goals of reducing greenhouse gases in the atmosphere.

The Secretary of the Interior’s Secretary’s Order 3285A1, amended February 22, 2010, establishes a policy encouraging the production, development and delivery of renewable energy as one of the Department’s highest priorities. The Secretary directed agencies and bureaus within the Department to work collaboratively with each other, and with other Federal agencies, departments, states, local communities, and private landowners to encourage the timely and reasonable development of renewable energy and associated transmission while protecting and enhancing the nation’s water, wildlife, and other natural resources. On January 27, 2012, the Secretary of the Interior and the Governor of the State of California entered into a Memorandum of Understanding which directs California agencies and Department of the Interior agencies to take the necessary actions to further the implementation of Assembly Bill 32 and SBX2 and the Secretary’s Order 3285A1 in a cooperative, collaborative, and timely manner.

Concurrent with the Governor’s Executive Order S-14-08, The California Department of Fish and Game (“CDFG”) and the California Energy Commission (“CEC”) created the Renewable

Energy Action Team (“REAT”) through the “Memorandum of Understanding Between the California Energy Commission and the California Department of Fish and Game Regarding the Establishment of the Renewable Energy Action Team” (November 17, 2008). Additionally, CDFG, CEC, BLM, and the United States Fish and Wildlife Service (“USFWS”) (collectively, “REAT Agencies”) have committed to a cooperative relationship to achieve shared energy policy goals through the “Memorandum of Understanding Between the California Department of Fish and Game, the California Energy Commission, the Bureau of Land Management, and the U.S. Fish and Wildlife Service Regarding the Establishment of the California Renewable Energy Action Team (November 17, 2008). In signing the second Memorandum of Understanding, the state and federal agencies sought, among other things, to develop renewable energy projects in an environmentally responsible manner within the Mojave and Colorado Desert Regions, and to establish the Desert Renewable Energy Conservation Plan (“DRECP”). The DRECP is scheduled to be completed in 2013, and will guide renewable energy project siting in the DRECP Planning Area to ensure the optimum development of renewable energy resources while providing maximum protection of California’s environment.

The CSLC has management jurisdiction of approximately 322,000 acres of School Lands within the DRECP Planning Area; therefore, the CSLC’s extensive holdings in the DRECP Planning Area provide unique opportunities for the REAT Agencies to simplify land acquisitions for both renewable energy projects, as well as mitigation efforts. Recognizing that the renewable energy development and environmental protection goals of the REAT Agencies and the DRECP were compatible with, and furthered the management objectives of the CSLC for School Lands within the DRECP Planning Area, the CSLC signed a Memorandum of Understanding with the REAT Agencies in September 2011 (Memorandum of Understanding Between the California Department of Fish and Game, The California Energy Commission, The Bureau of Land Management, The U.S. Fish and Wildlife Service, and The California State Lands Commission Regarding Participation and Engagement in The California Renewable Energy Action Team and The Desert Renewable Energy Conservation Plan).

In October, 2011, the California Legislature enacted, and the Governor signed working legislation (Ch. 485 Statutes of 2011, AB 982-Skinner (commencing with Public Resources Code Section 8700)). This legislation directs the CSLC to engage in a cooperative effort with the DOI through the BLM to exchange fragmented School Lands with existing federal lands in the state of California to consolidate School Land parcels into contiguous holdings suitable for the development of renewable energy-related projects. The majority of the approximately 322,000 acres under the jurisdiction of the CSLC in the DRECP Planning Area are fragmented and isolated such that the size of the individual parcels is insufficient for development of renewable energy projects. In addition, a significant portion of these parcels are located within national parks, preserves, monuments, and forests. Although such lands retain significant conservation value, their location limits development potential.

V. PURPOSE AND AGENCY OBJECTIVES

The purposes of this MOA are to:

1. Describe each Party's objective(s) in completing land tenure adjustments.
2. Describe a process to develop, process and complete land exchanges which accomplish the Parties' objectives.
3. Assist the federal and state agencies in meeting AB 32 and SBX2 and the Secretary's Order 3285A1 in a cooperative collaborative manner.

Generally, the CLSC's objective, as provided in AB 982, is to consolidate School Lands into contiguous holdings suitable for renewable energy related projects. To accomplish this, the CSLC desires to acquire federal lands which are suitable for siting large-scale renewable energy projects, or suitable for mitigation efforts linked to large-scale renewable energy projects or which otherwise have potential to generate revenue for the State Teachers' Retirement System. In exchange for the federal lands described above, the CSLC general objective is to convey School Lands which have limited potential to produce revenue.

The BLM's objective is to acquire School Lands within the national park units and wilderness areas designated by the CDPA and within other designated areas identified for acquisition based on BLM's approved land use plans and plan amendments. In exchange for the School Lands described above, the BLM's general objective is to convey federal lands which are not considered suitable for long term management as public lands.

In addition to using the exchange process described in this MOA, the Parties may also, at their sole discretion, use their respective authority under state and federal law to process sales and acquisitions to accomplish the land tenure objectives described above.

VI. PRINCIPLES OF AGREEMENT

The Parties mutually agree:

- A. To work together to develop exchange proposals which meet each Party's respective exchange objectives.
- B. Either Party may develop and submit exchange proposals for further consideration.
- C. That, generally, future conveyances under this agreement would include all of the Parties' respective interests in the lands, including the mineral estates.
- D. To make available for review and inspection any record relating to conditions which may affect the value or desirability of lands to be exchanged. Such conditions include, but are not limited to: mineral potential, hazardous materials or conditions,

unexploded ordinance, and existing leases or other known encumbrances on lands to be exchanged.

- E. To cooperate to the highest degree practical to streamline the land exchange process pursuant to this agreement. In so doing the Parties agree to share information including, but not limited to School Land mapping, information concerning areas with high conservation value, information concerning land with strong potential for development of alternative energy projects. The Parties may also utilize existing data promulgated by the REAT Agencies in connection with the DRECP where necessary or useful for the purposes of this MOA.

- F. The CSLC agrees to prepare and submit to the BLM, within 240 days of the execution of this MOA, a proposal for one or more land exchanges consistent with the objectives of this MOA and Chapter 2 of Division 7.7 of the Public Resources Code, and that further the policies and directives of the CSLC. The BLM agrees to give priority to this proposal and streamline the exchange process to the extent practical and reasonable. The BLM, to the extent practical, will provide CSLC with a list of federal lands (consistent with the list identified in 16 U.S.C. 410aaa-77(b)) under BLM's jurisdiction offered for exchange to facilitate the CSLC's proposal. Such list may be populated with parcels selected by the BLM which may otherwise further federal policies, directives, or similar agendas. Although the CSLC will not be obligated to choose parcels only from such a list, it is understood and agreed the purpose of such a list is to offer federal lands which BLM has made a preliminary determination are suitable for exchange to the CSLC.

- G. Although AB 982 directs the CLSC to propose acre-for-acre exchanges the BLM currently has no legal authority to exchange lands on an acre-for-acre basis. Therefore, the Parties agree to propose and process exchanges consistent with section 206 of the FLPMA (43 U.S.C. 1716), and, if applicable, consistent with section 707 of the CDPA (16 U.S.C. 410aaa-77(a)), unless future federal legislation allows otherwise. BLM is required by section 206 of FLPMA (43 U.S.C. 1716(b)) to ensure that: "... values of the lands exchanged ... shall be equal, or if they are not equal, the values shall be equalized by the payment of money so long as payment does not exceed 25 per centum of the total value of the lands or interests transferred out of Federal ownership. When appraising the values of the lands in any exchange, the Parties shall comply with applicable state and federal appraisal standards, including those found at 43 Code of Federal Regulations 2201.3. The Parties shall cooperate in the preparation of appraisal instructions and review of contract appraisals. The completion of any specific exchange is dependent on the Parties reaching an

agreement on the value of the lands to be exchanged based on appraisals of the lands involved.

- H. The Parties agree to use the DRECP and any other additional pertinent data sources including other planning documents to identify federal lands suitable for exchange to the CSLC.

VII. PROCESSING OF MUTUALLY ACCEPTABLE EXCHANGE PROPOSALS (THE DESCRIPTION BELOW IS SHORT SUMMARY OF THE EXCHANGE PROCESS AND IS NOT INTENDED TO SUPERSEDE SPECIFIC PROCESSING REQUIRMENTS UNDER APPLICABLE STATE AND FEDERAL LAW OR REGULATION)

- A. If, after due consideration, the Parties mutually agree to proceed with a specific exchange proposal, they shall enter into a nonbinding agreement to initiate a land exchange, as required and described at 43 Code of Federal Regulations (CFR) 2201.1. The agreement shall include a description of the lands being considered for exchange, a description of the appurtenant rights, authorized uses, title defects or encumbrances, a time schedule for completing the exchange, an assignment of responsibilities and costs for processing the exchange, and a notice of any known hazardous substances on the lands and any commitments for remedial actions. Exchanges which would involve the acquisition of School Lands by the U.S. which are within an area under the administrative jurisdiction of a federal agency other than the BLM (National Park Service, the U.S. Fish and Wildlife Service or the U.S. Forest Service), would be subject to the consent and agreement of the other federal agency.
- B. Upon completion of all exchange processing steps, including but not limited to environmental analyses, appraisals, and all other supporting studies and requirements to determine if a proposed exchange is in the public interest and in compliance with applicable law and regulations, the Parties shall have full discretion to decide whether to approve an exchange proposal. CSLC staff will present the proposed exchange, along with the staff's recommendation, to the CSLC for its consideration at a properly noticed public meeting. If BLM approves an exchange, a notice of the availability of the decision approving the exchange must be published and distributed consistent with 43 CFR 2201.7.
- C. After the CSLC and BLM approve an exchange, the Parties may enter into a legally binding exchange agreement as provided by 43 CFR 2201.7-2. The binding exchange agreement shall include, but not be limited to the following items:

1. A description of the lands and interests to be exchanged and all reserved and outstanding interests, the amount of any necessary cash equalization, and other terms and conditions of the exchange;
2. Responsibility for removal, indemnification (“hold harmless” agreement), or other remedial actions concerning any hazardous substances on the involved lands and with regard to the federal lands, the applicable language required by 42 U.S.C. 9620(h):
3. A description of the costs, if any, which the noncomplying party is liable in the event of failure to perform or to comply with the terms of the exchange agreement; and
4. The agreed upon values of the involved lands.

VIII. GENERAL PROVISIONS

- A. Nothing in this MOA is intended to, or shall be construed to limit or affect in any way the authority or legal responsibilities of BLM or CSLC. Specifically, nothing in this MOA shall imply that any signatory is in any way abrogating or ceding any responsibility or authority inherent in its control or trusteeship over land or natural resources. CSLC’s approval authority or discretion over any proposal or development affecting its School Lands shall not be limited by this MOA.
- B. Nothing in this MOA binds BLM or CSLC to perform beyond their respective authorities.
- C. Nothing in this MOA requires BLM or CSLC to assume or expend any funds in excess of available appropriations authorized by law.
- D. The mission requirements, funding, personnel, and other priorities of BLM or CSLC may affect their respective abilities to fully implement all of the provisions identified in this MOA.
- E. Nothing in this MOA is intended to or shall be construed to restrict BLM, or the State of California, whether through CSLC or other agencies or departments, from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
- F. Any information furnished between the Parties under this MOA is potentially subject to the Freedom of Information Act, 5 U.S.C § 552, *et seq.* (“FOIA”) and the California Public Records Act, Gov. Code §6250, *et seq.* (“CPRA”). The Parties agree to consult one another prior to releasing potentially privileged or exempt

documents and to cooperate in good faith to assert all such privileges and exemptions permitted by FOIA and CPRA.

- G. Each and every provision in this MOA is subject to the laws of the State of California, the laws of the United States of America, and to the delegated authority assigned in each instance.
- H. All cooperative work under the provisions of the MOA will be accomplished without discrimination against any employee because of race, sex, creed, color, or national origin.
- I. Amendments or supplements to the MOA may be proposed by any Party to this MOA, and shall become effective upon written approval of all Parties.
- J. This MOA shall become effective upon signature by the Parties. This MOA may be executed in one or more counterparts, each of which will be considered an original document. The effective date shall be the date of the last signature as shown below, excepting subsequent amendments and addition of counterparts.
- K. This MOA shall be in effect from the date of execution until terminated by one or both of the Parties. If one of the Parties terminates the agreement, that Party shall give the other Party at least 30 days advance written notice of termination. At any time that the Parties determine that the purposes set forth in this MOA have been satisfied, the MOA may be terminated. In the event either Party withdraws from the MOA, such withdrawal will result in termination of the agreement.
- L. This MOA is intended to facilitate cooperation among the Parties. It is not a contract for acquisition of supplies or services; it is not legally enforceable; and it does not create any legal obligation of or between any of the Parties or create any private right or cause of action for by any person or entity.
- M. Nothing in this MOA may be the basis of any third party challenges or appeals. Nothing in this MOA creates any rights or causes of action in persons not parties to this agreement.

This MOA supersedes and replaces in their entirety, the following, and only the following agreements between the BLM and the CSLC executed following passage of the CDPA in 1994:

1. Agreement to exchange lands (10/26/95)
2. Memorandum of Understanding (MOU) re: appraisal (10/26/95)

IX. CONTACTS

The primary points of contact for carrying out of the provisions of this MOA are:

- A. United States Department of the Interior, Bureau of Land Management:
Karen Montgomery
- B. California State Lands Commission: Jennifer DeLeon,

X. APPROVALS

BUREAU OF LAND MANAGEMENT
CALIFORNIA STATE OFFICE

CALIFORNIA STATE LANDS COMMISSION


MAY 21 2012
James G. Kenna
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