

BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of the Best Management Practices
and Guidance Manual: Desert Renewable
Energy Projects

Docket No. 09-RENEW EO-01

**COMMENTS OF THE LARGE SCALE SOLAR ASSOCIATION
ON THE BEST MANAGEMENT PRACTICES AND GUIDANCE MANUAL:
DESERT RENEWABLE ENERGY PROJECTS**

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The Large Scale Solar Association (LSA)¹ submits these Comments on the Best Management Practice and Guidance Manual: Desert Renewable Energy Projects (Revised Draft Manual²) in accordance with the September 13, 2010 notice of the California Energy Commission's (Commission) Discussion and Approval of the Revised Draft Manual and the September 21, 2010 Commission's notice extending the deadline for comments.

I. INTRODUCTION

California has been on the forefront of developing policies to promote renewable energy and to facilitate the siting of renewable generation facilities in an environmentally sound manner. California's work on renewable siting issues

¹ LSA represents 12 of the nation's largest developers and providers of utility-scale solar generating resources. Collectively, LSA's members have contracted with utilities in California and the West to provide more than 6.5 gigawatts ("GW") of clean, sustainable solar power. Our members develop, own and operate various types of utility-scale solar technologies, including photovoltaic and solar thermal system designs. LSA and its individual member companies are leaders in the renewable energy industry, advancing solar generation technologies and advocating for policies that ensure environmentally appropriate solar generation facilities to meet the state's renewable and greenhouse gas goals.

² In these comments, we also use the term "Manual" to refer to the document generally. The substantive comments provided herein focus on recommendations and text in the Revised Draft Manual, while the procedural comments discuss different versions of the Manual. Citations refer to the text of the Revised Draft Manual.

is guided by Executive Order S-14-08, signed by Governor Schwarzenegger on November 17, 2008, Secretarial Order 3285, issued by United States Department of the Interior Secretary Kenneth Salazar in March 2009, and the related memorandum of understanding (MOU) signed by the Governor and the Secretary on October 12, 2009. These orders and the MOU commit state and federal agencies to work collaboratively to prepare best management practices (BMPs) and interim guidance for renewable energy projects.

Based on these commitments, the Renewable Energy Action Team (REAT) agencies - the Commission, California Department of Fish and Game (DFG), U.S. Bureau of Land Management (BLM), and U.S. Fish and Wildlife Service (FWS) – undertook a joint effort to prepare this Revised Draft Manual. The Revised Draft Manual also incorporates extensive contributions from the Desert Managers Group and some feedback from stakeholders. However, the last stakeholder feedback on the Manual was provided nearly nine months ago. In order to provide the guidance necessary to ensure the efficient and responsible development of renewable energy, the Revised Draft Manual needs to be fully vetted by the stakeholders to incorporate the lessons learned as renewable projects moved through the permitting process this year.

LSA appreciates the work of the REAT agencies and others in preparing this Revised Draft Manual. Such a Manual has the potential to be a helpful resource for developers of renewable energy projects to provide guidance to renewable energy developers. However, this Revised Draft Manual is not ready for prime time; adoption by the Commission of the Revised Draft Manual would

likely inhibit responsible development of renewable energy. LSA remains concerned that these guidelines and BMPs severely frontload the process in a manner that is simply not workable. Moreover, elements of the Revised Draft Manual could lead to permitting delays for projects that are not consistent with the Revised Draft Manual's recommendations and the Revised Draft Manual's voluntary recommendations could become de facto requirements for timely permit processing. To alleviate these concerns, LSA asks the Commission and other REAT agencies to consider the comments we provide herein.

II. The Commission Should Provide a Full and Transparent Process for Further Development of the Manual, in Conjunction with the Commission's Lessons Learned Process.

LSA recommends that the Commission integrate its consideration of the Manual with its review of renewable permitting lessons learned. In this manner, the Commission could hold a series of workshops to fully consider the permitting experiences of renewable developers over the previous year and determine how these permitting experiences can inform the guidance in the Manual, taking into account the views and needs of both the stakeholders and the permitting agencies. Integrating the lessons learned and the development of guidance for future projects is critical to developing a final Manual that is a workable resource that promotes responsible development of the renewable energy projects necessary to meet California's ambitious RPS and GHG goals.

Given the crucial importance of the Manual to future renewable development, LSA encourages the Commission and the REAT agencies to take advantage of the recent permitting experiences and the stakeholder and agency

perspectives on those processes. As noted above, the last opportunity for stakeholder comment on the Manual was nine months ago. Since then, renewable developers, in particular solar developers, gained a great deal of experience with the permitting process. During that time, the Manual sat dormant, until the Commission issued the Revised Draft Manual on September 13th and announced its intention to adopt the document less than two weeks later.

LSA encourages the Commission to take a step back to allow the recent experiences of the stakeholders within the permitting process to inform the guidance in the Manual. Adopting or finalizing the Revised Draft Manual after this set of comments would be premature. Whether formally adopted or simply issued as “voluntary” guidelines, the Manual stands to become a hallmark of renewable project development for years to come. The Commission and REAT agencies would be well served by a document that fully reflects the considered views of stakeholders and the permitting experiences to date; the in-depth evaluation of this guidance in light of recent permitting experiences simply cannot be accommodated in a single set of comments. This is particularly true at a time when, as the Commission recognized in its September 21 Notice, “[t]he Commission and many of the stakeholders in the development of this document have been pre-occupied with the Presiding Members Proposed Decisions for the American Recovery and Reinvestment Act (ARRA) projects.”

LSA recommends that the Commission and REAT agencies conduct a robust stakeholder review process, including a series of workshops, on the

Manual in conjunction with consideration of the lessons learned on renewable permitting to date, with the goal of ensuring that the Manual will promote the efficient and responsible development of renewable energy.

III. The Commission Should Consider the Manual as an Informational Item, Rather than Approving or Endorsing the Final Draft.

LSA is concerned that the Commission's official approval or ratification of the guidance and recommendations in the Manual could lead to confusion. The Manual states that use of its recommendations is voluntary. (Revised Draft Manual, p. 2). However, the current language of the Manual sends mixed messages regarding the voluntariness of the Manual's guidance and recommendations by, for instance, labeling certain recommendations "critical actions." (Revised Draft Manual, p. 11-12). Moreover, the Manual's recommendations include both legal requirements and policy determinations without identifying whether an individual recommendation is law or simply a policy preference (discussed in more detail in Section V). The combination of these factors makes it difficult to determine how this "voluntary" guidance will be applied to renewable generation projects and whether the Manual's recommendations will become de facto requirements for renewable energy projects.

Although the approval page indicates that the BMPs and guidance "are voluntary and do not duplicate or supersede" other applicable legal requirements, the Manual's official approval by the Commission and potentially by other REAT

agencies³ certainly has the potential to transform the nominally voluntary guidelines and policy preferences into effectively mandatory requirements for projects. This, in turn, could impair the ability of renewable energy projects that do not or cannot comply with all of the recommendations to get permitted in a timely manner, if at all.

IV. The Manual Inappropriately Condoned Application of Purported Best Management Practices in Situations Where the Practices Could Interfere with Timely Permit Processing.

LSA is concerned by the Manual's implicit suggestion that the guidance or recommendations in the document could be applied in situations where it could interfere with timely permit processing. Specifically, for projects whose submitted applications have not yet been deemed complete by the agencies, the Manual states that "project developer and agency considerations would likely balance the benefits of using the guidance with timely permit processing." (Revised Draft Manual, p. 2). As the Manual represents voluntary requirements, compliance with these requirements should not be deemed necessary to ensure permit processing occurs in an expeditious manner, based on the applicable legal requirements.⁴ In particular, for projects that are far along in the planning phases, incorporating all of the critical actions may be difficult, if not possible. For projects which comply with all legal requirements, noncompliance with the Manual's "critical actions" does not justify delays in permitting.

³ The Manual contains a page entitled Renewable Energy Action Team Approvals. The intent appears that each of the REAT agencies will approve this document.

⁴ Specifically, Public Resource Code section 25522 and Energy Commission guidance prescribe a one year siting process for projects.

V. The Manual Should Clearly Distinguish the Guidance and Recommendations that are Legal Requirements Versus Those that are Policy Preferences.

The Manual represents a substantial effort to synthesize guidance, recommendations, and legal requirements applicable to renewable energy generation facilities into a single document. However, in the effort to compile all of these disparate requirements and recommendations, the Revised Draft Manual fails to identify which of the guidance are legal requirements as opposed to simply policy preferences.

This law versus policy distinction is critical information for both renewable project developers and to regulatory agencies. Thus, providing this distinction is necessary to ensure that the Manual achieves its goals of helping desert renewable energy project developers understand and meet federal, state, and local renewable energy and environmental requirements and assisting regulatory agencies when reviewing and permitting renewable energy project applications. (See Revised Draft Manual, p. 2, 5-6). Combining legal requirements, policy recommendations, and other suggested practices into a single list of actions can and will lead to confusion about which actions are truly voluntary versus which recommendations are legal requirements. Therefore, LSA recommends that the legal requirements be clearly identified in the Manual.

VI. Certain Recommendations in the Manual are Inappropriate or Too Vague to Provide Needed Guidance.

In addition to the overarching policy concerns identified in these comments, LSA is also concerned with the substance of the Revised Draft

Manual's guidance and the identified critical actions. In some cases, the critical action or recommendation is inappropriate or infeasible, as it relies upon the action of someone other than the project developer. While in other cases, the critical action or recommendation is so general that it fails to provide needed guidance and clarity on how a project developer can comply. Specific examples of these troubling recommendations are listed below:

A. The Manual Inappropriately Recommends Renewable Energy Projects Be Sited in Development Areas Identified by the REAT or BLM in the Absence of Final REAT and BLM Maps.

One of the critical actions identified in the Manual is that projects be located on "land identified by the REAT and/or BLM as suitable for renewable energy development." (Revised Draft Manual, p. 3). LSA requests that the Manual include more definitive guidance on how lands can be identified as suitable for development. For instance, it is unclear whether lands identified as suitable for development is intended to refer only to the study areas identified in the REAT's Starting Point Maps⁵ or if suitable lands can be identified on a case-by-case basis moving forward.

At the very least, it seems that the suitable lands will include both BLM Solar Study Areas and REAT Study Areas for renewable development identified in the Starting Point Maps. However, in their current form, these maps are expressly intended to be preliminary and do not represent "an interim or final

⁵ REAT Starting Point Maps (March 23, 2010) are available at http://www.drecp.org/maps/Starting_Point_Maps.pdf.

designation by the REAT agencies.”⁶ The fact that the study areas identified in these maps do not account for insolation or proximity to electrical infrastructure suggests that the identified study areas might not be the best locations for renewable generation – either for power production or to minimize impacts from infrastructure. Furthermore, in the absence of final maps, LSA is concerned that the REAT agencies could revise these study areas later, leaving renewable developers to contend with a moving target as they select sites for their projects. And, to the extent that the suitable areas could be reclassified in the future, LSA is concerned that developers proceeding in good faith could be subject to delays in permit processing if the maps are revised to exclude their selected sites from the study areas.

Finally, any zone or map based system will likely provide for both recommended exclusion (red) areas and areas recommended for development (green). The Commission must ensure that areas that fall into neither of these categories (yellow) are not precluded from development. That is, adoption of zones that are most suitable for development should not render all other areas off limits. Rather, such a system should provide benefits for projects proposed for recommended zones (such as expedited processing), while remaining open to projects proposed for areas that are outside of both recommended development and exclusion zones. The Revised Draft Manual gets this issue wrong.

⁶ *Id.*

B. Identifying the Use of Air-Cooling Technologies as a Critical Action is Inappropriate.

The Revised Draft Manual recommends use of dry cooling technologies. (Revised Draft Manual, p. 66). This recommendation is new in the most recent version of the Manual.⁷ In previous drafts, the Manual recommended that projects not use fresh groundwater or surface water for cooling, but placed recycled or impaired water cooling on equal footing with dry cooling. However, the REAT agencies found the dry cooling recommendation so important as to label it one of the critical actions in the Revised Draft Manual. (Revised Draft Manual, p. 3).

This recommendation against fresh water cooling is consistent with the Commission's 2003 *Integrated Energy Policy Report*, which summarizes the State Water Resources Control Board and Energy Commission policies on cooling of power plants. (See Revised Draft Manual, p. 65-66). Specifically, this document states that "the Energy Commission will approve the use of fresh water for cooling purposes by power plants which it licenses only where alternative water supply sources and alternative cooling technologies are shown to be 'environmentally undesirable' or 'economically unsound.'" (Revised Draft Manual, p. 65-66). However, this guidance does not speak to the use of recycled or impaired water for cooling.

The Revised Draft Manual recognizes that there are significant trade-offs associated with the use of dry cooling, including reduced electricity efficiency and

⁷ Compare Revised Draft Manual at 3 with Best Management Practice & Guidance Manual: Desert Renewable Energy Projects, Draft Staff Report (CEC-700-2009-016-SD, October 2009) at 2, line 19.

increased land use, noise, and visual impacts. (Revised Draft Manual, p. B-1).
In light of these trade-offs, LSA recommends that the Manual be revised to provide for either dry cooling, or use of recycled or reclaimed water for cooling.

C. The Manual Fails to Provide Sufficient Guidance on Identifying the Appropriate Biological Resource Surveys that Must Be Conducted.

As stated in our previous comments, LSA believes that the Manual should identify a single, agreed-to set of survey protocols for applicable species. This would provide project developers with the necessary information to complete the appropriate surveys. In addition, a uniform set of survey protocols would provide greater transparency by identifying the number, nature, timing and scope of survey requirements. Without this guidance, survey development must proceed on a case-by-case basis, contributing to uncertainty and delays in the permitting process.

Moreover, recent practice demonstrates that the agencies often require new and different protocols over time. The final Manual should provide that a developer who uses agency-recommended or published protocols for surveys will not later be required to conduct additional surveys, if the agencies later adopt new or different protocols.

D. The Manual Should Not Include Actions of Other Agencies as Critical Actions, As These Are Beyond the Control of the Developer.

The critical actions identified in the Manual as necessary to ensure timely permit processing should only include actions undertaken by the developer. (See Revised Draft Manual, p. 3). To the extent that the developer makes a good faith effort to complete the critical actions, the developer's permit processing should not be delayed due to the non-action of another party.

1. Ensuring that the Project Will Not Conflict with Military Operations Relies on Action of the Department of Defense, as Opposed to the Project Developer.

Although consultation with the Department of Defense is necessary and appropriate, projects should not be delayed on the basis of potential inaction by the Department of Defense. One of the critical actions identified in the Manual is addressing Department of Defense and nearby military installation requirements to ensure that the project will not conflict with military operations. Ensuring that the project will not conflict with military operations relies on the Department of Defense's action as opposed to the developer.

Unless Department of Defense action is required (and, thus, not a voluntary critical action), the developer's permit should not be delayed based on the Department of Defense's decision not to comment on the project. Without further guidance on how project developers could demonstrate non-conflict with military operations in the absence of affirmative action by the Department of Defense, this recommendation should be removed from the Manual.

2. Identifying Completion of an Interconnection Study as a Critical Action is Inappropriate, as Completion of the Study is Outside the Control of the Developer.

In its previous comments, LSA summarized the process for the California Independent System Operator's (CAISO) interconnection procedures and how completion of such a study is in the hands of the CAISO. Although the procedures are in the process of being revised, the overall comment remains the same. Interconnection procedures are both unpredictable in terms of timing and beyond the control of project developers. For this reason, LSA requests that this critical action be revised to direct developers to file an interconnection request, but not require a completed system impact study and final approval for the CAISO.⁸

VII. The Manual Should Be Explicitly Identified as Interim.

The REAT agencies were tasked with “completing best management practices (BMPs) and other appropriate interim guidelines.” (Revised Draft Manual, p. A-7). However, rather than explicitly identifying the BMPs and guidance as interim, the Manual suggests that these could become permanent requirements. The Revised Draft Manual states “[t]he REAT will revisit the applicability of the BMPs and guidance during development of the DRECP.” (Revised Draft Manual, p. 6). To clarify the intent, LSA recommends that the Manual and its recommendations be explicitly identified as interim until the

⁸ Although the Manual offers this approach as an alternative, the Manual suggests that this approach could delay environmental review and permit processing. (Manual, p. 46-47).

DRECP is finalized. The REAT agencies can then consider whether the Manual's BMPs and guidance should be adopted as part of the DRECP.

VIII. CONCLUSION

LSA appreciates the opportunity to comment on the Revised Draft Manual. We encourage the Commission and the REAT Agencies to take these comments into account before taking official action on the Manual. Specifically, LSA urges the Commission and the REAT agencies to conduct a more robust stakeholder process in conjunction with the review of lessons learned from recent renewable permitting decisions before finalizing the Manual and deciding the appropriate next steps for the agencies to take on the Manual. LSA looks forward to continuing work with the REAT Agencies and the stakeholders in the DRECP to ensure that renewable energy projects are developed efficiently, in an environmentally sound manner to meet California's renewable energy and greenhouse gas goals.

Respectfully submitted,

/s/ Shannon Eddy

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