MEMORANDUM OF UNDERSTANDING BETWEEN THE
U.S. DEPARTMENT OF ENERGY LOAN GUARANTEE PROGRAM OFFICE AND
U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT
CALIFORNIA STATE OFFICE CONCERNING COOPERATING AGENCY STATUS
ON NATIONAL ENVIRONMENTAL POLICY ACT REVIEWS FOR RENEWABLE
ENERGY PROJECTS IN CALIFORNIA

A. PURPOSE

This Memorandum of Understanding (MOU) documents the relative roles, responsibilities and procedures that will be followed pursuant to National Environmental Policy Act (NEPA) cooperating agency status for renewable energy projects by the U.S. Department of the Interior (DOI) Bureau of Land Management (BLM) California State Office and the U.S. Department of Energy (DOE), Loan Guarantee Program (LGP). The parties to this MOU, the DOE LGP and the BLM California, will collectively be referred to herein as "the Parties."

B. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

CEQ regulations (40 CFR 1501.6) emphasize agency cooperation early in the NEPA Process and set out procedures for cooperating agency arrangements to develop Environmental Impact Statements (EISs) in order to reduce delay (40 CFR 1500.5(b)). Agencies may also be cooperating agencies on Environmental Assessments (EAs).

A number of large renewable energy projects (Projects) are proposed to be built on BLM lands within California. BLM is responsible for processing requests for rights-of-way for projects and associated transmission lines and other appurtenant facilities to be constructed and operated on land it manages. In processing the applications, BLM must comply with NEPA requirements that federal agencies reviewing projects under their jurisdiction consider the environmental impacts associated with their construction and operation. In the case of renewable energy projects being considered by BLM, this will be accomplished through preparation of Draft and Final EISs and EAs; these are frequently done in coordination with the California Energy Commission (CEC), which must develop Preliminary and Final Staff Analyses pursuant to California state requirements.

DOE is responsible for processing applications for federal loan guarantees pursuant to Title XVII of the Energy Policy Act of 2005. DOE is required to comply with NEPA in its decision process for such loan guarantees. Both BLM and the DOE LGP have a mutual interest in reducing delays and duplication in carrying out the NEPA reviews for these projects and have determined that this interest would be facilitated by an MOU setting out a cooperating agency agreement for projects involving actions by both agencies.

The environmental analyses carried out pursuant to this MOU will assess the environmental impacts of proposed projects, a no action alternative, and address other

alternatives as appropriate. The analyses will serve to inform the decision-making officials and the public.

C. IT IS MUTUALLY AGREED AND UNDERSTOOD BY ALL PARTIES THAT:

1. Agency Representatives. For the purpose of coordinating the responsibilities of the Parties for the preparation of the environmental document on the Project, the persons named as Contacts listed below are the designated Agency Representatives of the Parties. Actual delivery of written notice to the following representatives, or such substitute representatives as the respective Parties may hereinafter designate, shall constitute notice to that organization.

2. Communication. Each Party will provide the other with information on renewable energy projects in California that are being considered for action by the Party, including information on scheduling, milestones and progress on environmental and other relevant program reviews. Periodic conference calls will be held between the Parties to exchange information.

3. Scheduling. Parties will agree on schedules for: (1) development of language for EAs, EISs, and decision documents; (2) review of draft documents and (3) participation in public and interagency meetings. Both Parties will endeavor to develop schedules that are consistent with both Parties' deadlines to the maximum extent possible.

4. Cooperating Agency. Establishing cooperating agency status for specific projects will be made on a case-by-case basis. Each Agency Representative will be responsible for informing the other Party through emails in a timely manner of the Party's request to establish cooperating agency status for a specific project pursuant to this MOU.

For projects undergoing BLM NEPA review where there is reason to believe that an applicant may apply for a loan guarantee but it is not yet known whether DOE will have to make a decision on a loan application, DOE may participate as a cooperating agency based on its special expertise. Alternatively, in this situation DOE may include language in the DEIS indicating that DOE may be a cooperating agency in the FEIS should an applicant apply, and if DOE decides to proceed with a loan guarantee negotiation.

5. Privileged and Confidential Information. Each Party will, upon request, provide the other Party with procedures and underlying data used in developing language for EAs, DEISs and FEISs, including, but not limited to, final reports, subcontractor reports, and interviews with concerned private and public parties, whether or not such information is contained in the working papers or the NEPA documents. The Parties intend that information that is otherwise protected from disclosure under the attorney-client privilege, work-product privilege, and deliberative process privilege and for any other applicable privilege may be exchanged without compromising such privileges or doctrines. The Parties agree that privileged information received from the other party shall be treated and maintained as confidential to the extent allowed by federal and state

laws, regulations and policies. Parties agree to label as "Confidential" documents they believe are privileged and should not be disclosed.

6. Freedom of Information Act. Any information furnished to BLM under this Memorandum of Understanding is subject to the Freedom of Information Act (5 U.S.C. 552), unless clearly marked as "Deliberative Draft" and dated.

7. Effective Dates. This MOU is executed as of the date of the last signature and is effective through December 31, 2012, or the date on which all appeals and litigation filed in connection with approval of a Project have been resolved, whichever date is earlier, at which time the MOU will expire unless extended.

8. Modification. Modifications to this MOU shall be made by mutual consent of the Parties through the issuance of a written instrument signed and dated by both Parties.

9. Termination. Either Party, in writing, may terminate this MOU in whole or in part at any time before the date of expiration upon 30 days' written notice to the other Party. Either Party may terminate application of this MOU to a specific project in whole or in part at any time before the date of expiration upon 30 days' written notice to the other Party. During any such 30-day waiting period, the Parties will actively attempt to resolve any disagreement between them. In the event of termination of this MOU, both Parties shall have access to all documentation, reports, analyses, and data developed by the Contractor.

D. LEAD AGENCY:

1. The lead agency for the NEPA review for a project will be responsible for ensuring compliance with the requirements of NEPA and CEQ regulations, along with all applicable federal laws, executive orders, regulations and direction, and shall be responsible for the scope and content of the NEPA document, for complying with NEPA procedures and implementing regulations including document contents, administrative record, public review of the environmental document, and required decision documentation.

2. The lead agency will review and, if acceptable, approve the draft Notice of Availability of the EIS (as applicable) and EAs, prior to publishing such notices in the Federal Register or other appropriate media, and provide the cooperating agency Party with notice of such pending publication.

3. The lead agency will review and, if acceptable, approve public notices before sending out letter(s) to stakeholders on BLM's and DOE's mailing list and provide the cooperating agency advance notice of such mailings.

4. The lead agency will reserve the right to prepare, at its option, selected NEPA sections of the Draft and Final EIS, and provide the cooperating agency Party with an opportunity

to review drafts of these sections as soon as they are prepared, with advance notice of review schedules.

5. The lead agency will file Draft and Final EISs with the Environmental Protection Agency (EPA) as required and provide the cooperating agency Party with advance notice of such filings.

6. The lead agency will be responsible for government to government consultation with all affected Tribes, Section 7 Consultation with the United States Fish and Wildlife Service, and Section 106 Consultation with the California State Historic Preservation Officer regarding proposed federal action(s), and will provide the cooperating agency Party with notice of any major issues regarding these consultations.

7. The lead agency is responsible for all costs associated with the preparation, reproduction and mailing of any published NEPA documents it creates for the Project.

E. COOPERATING AGENCY:

1. The cooperating agency will provide the lead agency language related to its federal action, jurisdiction and expertise that is required for inclusion in an EA, DEIS, FEIS, or for response to comments.

2. The cooperating agency will review draft EAs and sections of DEISs and FEISs and provide the lead agency with comment and/or suggested text, as appropriate, related to the cooperating agency's expertise and jurisdiction.

3. The cooperating agency will participate, as resources permit, in any public meetings, hearings or similar events related to the EA, DEIS, or FEIS.

4. The cooperating agency Party will participate in conference calls or meetings, as resources permit, related to the EA, EIS, FEIS, response to comments or issues where the cooperating agency Party has jurisdiction or expertise.

F. CONTACTS

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This consultation agreement is entered into by:

James Wesley Abbott — Date: 1/26/10
Acting State Director
Bureau of Land Management

Matt McMillen — Date: 1/28/10
Environmental Compliance Division Director
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