

ASSEMBLY BILL

No. 284

Introduced by Assembly Member Nestande
(Principal coauthor: Senator Emmerson)

February 8, 2011

An act to amend Section 2069 of, and to add Section 2836 to, the Fish and Game Code, relating to the Natural Community Conservation Planning Act.

LEGISLATIVE COUNSEL'S DIGEST

AB 284, as introduced, Nestande. Desert Renewable Energy Conservation Plan: Coachella Valley: exclusion.

The Natural Community Conservation Planning Act authorizes the Department of Fish and Game to enter into agreements with any person or public entity for the purpose of preparing a natural community conservation plan, in cooperation with a local agency that has land use permit authority over the activities proposed to be addressed in the plan, to provide comprehensive management and conservation of multiple wildlife species. The California Endangered Species Act authorizes the department, in consultation with the State Energy Resources Conservation and Development Commission (Energy Commission) and, to the extent practicable, the United States Fish and Wildlife Service and the United States Bureau of Land Management, to design and implement actions to protect, restore, or enhance the habitat of plants and wildlife that can be used to fully mitigate the impacts of the take of endangered, threatened, or candidate species resulting from certain solar thermal and photovoltaic powerplants in the planning area of the Desert Renewable Energy Conservation Plan, a natural community conservation plan in the Mojave and Colorado Desert regions.

This bill would exclude any area covered by the Coachella Valley Multiple Species Habitat Conservation Plan from the Desert Renewable Energy Conservation Plan.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2069 of the Fish and Game Code is
2 amended to read:

3 2069. (a) For purposes of this section, the following terms
4 have the following meanings:

5 (1) (A) “Desert Renewable Energy Conservation Plan” means,
6 *except as provided in subparagraph (B)*, the completed
7 conservation plan in the Mojave and Colorado Desert regions
8 adopted pursuant to the Natural Community Conservation Planning
9 Act (Chapter 10 (commencing with Section 2800)), and covers
10 the geographical area described in Section 4 of, and depicted in
11 Exhibit A to, the “Draft Planning Agreement by and among
12 California Department of Fish and Game, California Energy
13 Commission, United States Bureau of Land Management, and
14 United States Fish and Wildlife Service for the Desert Renewable
15 Energy Conservation Plan,” document REAT-1000-2009-034,
16 dated October 2009.

17 (B) “Desert Renewable Energy Conservation Plan” *does not*
18 *include any area covered by the Coachella Valley Multiple Species*
19 *Habitat Conservation Plan.*

20 (2) “Energy Commission” means the State Energy Resources
21 Conservation and Development Commission.

22 (b) The department, in consultation with the Energy Commission
23 and, to the extent practicable, the United States Fish and Wildlife
24 Service and the United States Bureau of Land Management, may
25 design and implement actions, including the purchase of land and
26 conservation easements, to protect, restore, or enhance the habitat
27 of plants and wildlife that can be used to fully mitigate the impacts
28 of the take of endangered species, threatened species, or candidate
29 species, for purposes of paragraph (2) of subdivision (b) of Section
30 2081 and Chapter 6 (commencing with Section 25500) of Division
31 15 of the Public Resources Code, resulting from solar thermal and
32 photovoltaic powerplants in the Desert Renewable Energy

1 Conservation Plan planning area that meet each of the following
2 requirements:

3 (1) Either the Energy Commission determines that the
4 application for certification was complete by February 1, 2010, or
5 the local government in which the project is located has determined
6 the project permit application is complete or has issued a notice
7 of preparation of an environmental impact statement pursuant to
8 Division 13 (commencing with Section 21000) of the Public
9 Resources Code by February 1, 2010.

10 (2) The developer or owner of the proposed powerplant or
11 generation facility has applied for, and would qualify for, funding
12 under the federal American Recovery and Reinvestment Act of
13 2009 (Public Law 111-5). For purposes of this ~~subparagraph~~
14 *paragraph*, “funding” means a loan guarantee made pursuant to
15 Section 406 of the act (42 U.S.C. Sec. 16516) or a grant for
16 specified energy property in lieu of a tax credit provided pursuant
17 to Section 1603 of Division B of the act, which division is titled
18 the American Recovery and Reinvestment Tax Act of 2009.

19 (c) A mitigation action may only be used for the mitigation
20 purposes described in subdivision (b) if it meets one of the
21 following conditions:

22 (1) The department has implemented the mitigation action and
23 determined that the action has resulted in the protection, restoration,
24 or enhancement of the habitat of one or more species that are
25 proposed to be covered by the Desert Renewable Energy
26 Conservation Plan, and that are located in the planning area, and,
27 based upon that determination, can be used, for purposes of
28 paragraph (2) of subdivision (b) of Section 2081, to fully mitigate
29 the impacts of the take of the species from one or more projects
30 identified in subdivision (b).

31 (2) The mitigation action is included in an interim mitigation
32 strategy for projects identified in subdivision (b). An interim
33 mitigation strategy pursuant to this paragraph shall be developed
34 by the department, in consultation with the Energy Commission
35 and, to the extent practicable, the United States Fish and Wildlife
36 Service and the United States Bureau of Land Management, and
37 shall include all of the following:

38 (A) A description of specific mitigation areas and specific
39 actions on public or private land within the Desert Renewable
40 Energy Conservation Plan planning area that are to be

1 implemented, including a focus on habitat preservation, while also
2 including enhancement or restoration actions that will do all of the
3 following:

4 (i) Contribute to the conservation of each candidate species,
5 threatened species, or endangered species for which a permit is
6 issued.

7 (ii) Adopt a regional planning perspective that provides a
8 foundation for, or that will complement, any conservation strategy
9 to be developed for the Desert Renewable Energy Conservation
10 Plan.

11 (iii) Implement mitigation actions within a reasonable period
12 of time relative to the impact to the affected candidate species,
13 threatened species, or endangered species, including, where
14 feasible, advance mitigation. For purposes of this clause, “advance
15 mitigation” means mitigation implemented before, and in
16 anticipation of, future impacts to natural resources.

17 (iv) Include a description of the species that would be benefited
18 by each mitigation action and how it would be benefited.

19 (B) A cost estimate for each action, whether on public or private
20 land, using total cost accounting, including, as applicable, land
21 acquisition costs, conservation easement costs, monitoring costs,
22 transaction costs, restoration costs, the amount of a nonwasting
23 endowment account for land management or easement stewardship
24 costs by the department or other management entity, and
25 administrative costs.

26 (d) The interim mitigation strategy shall be based on best
27 available science and shall be reviewed by the Desert Renewable
28 Energy Conservation Plan independent science advisors. The
29 department shall seek and consider comments from the Desert
30 Renewable Energy Conservation Plan independent science advisors
31 in the design and location of each mitigation action implemented
32 pursuant to this section. If the department elects to not incorporate
33 comments of the independent science advisors into mitigation
34 actions, the department shall explain the reasons for that decision
35 in writing.

36 (e) The interim mitigation strategy shall be completed by the
37 department no later than 60 days following the operative date of
38 the act adding this section.

39 (f) (1) ~~Nothing in this~~ This section shall *not* modify the
40 requirements of Section 2081, including the requirement to, where

feasible, avoid and minimize impacts, the requirements of Division 13 (commencing with Section 21000) of, or the requirements of Chapter 6 (commencing with Section 25500) of Division 15 of, the Public Resources Code, or affect the existing authority of the department to authorize mitigation actions to comply with this chapter.

(2) With respect to the Energy Commission, in the case of an applicant seeking certification for a solar thermal power plant pursuant to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code, or a lead agency, as defined in Section 21067 of the Public Resources Code, in the case of an applicant seeking approval of a photovoltaic powerplant, the sole effect of a mitigation action described in subdivision (c), and paid for through the deposit of fees as described in Section 2099, is to relieve an applicant of the obligation to directly take actions which are taken instead by the department or its contractor or designee pursuant to subdivision (b) to meet the applicant's obligations with respect to the powerplant's impacts to species and habitat. The mitigation action and deposit of fees shall not relieve the applicant of any other obligation, or the Energy Commission or the lead agency of any of its existing requirements of Division 13 (commencing with Section 21000) of, or the requirements of Chapter 6 (commencing with Section 25500) of Division 15 of, the Public Resources Code to analyze, avoid, minimize, or mitigate impacts to species and habitat, or make the findings required by those statutes.

(g) The mitigation actions implemented pursuant to this section shall be incorporated into the Desert Renewable Energy Conservation Plan upon the finalization of the plan, to the extent the mitigation actions are consistent with the plan's conservation strategy.

SEC. 2. Section 2836 is added to the Fish and Game Code, to read:

2836. The Desert Renewable Energy Conservation Plan, as defined in Section 2069, shall not include any area covered by the Coachella Valley Multiple Species Habitat Conservation Plan.