



## **4 Worries For Wind, Solar In Calif. Conservation Plan**

By Andrew McIntyre  
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California's massive effort to coordinate environmental and development oversight by state and federal agencies of some 22.5 million desert acres could place severe restrictions on wind and solar development in the state, and will face major hurdles in getting passed, lawyers say.

The draft of the so-called Desert Renewable Energy Conservation Plan calls for deeming only about 2 million acres in a 22.5 million-acre swath of Southern California desert as environmentally suitable for development.

That will make it difficult for solar and wind developers to find land for projects in a state that has aggressive renewable energy mandates, lawyers say.

Here, in part one of a two-part series exploring the challenges facing the sweeping proposal, Law360 examines hurdles solar and wind developers would encounter if the draft proposal — which is in the comment period until January 2015 — is implemented. Look for part two of the series later this week.

### The Land Squeeze

With just a fraction of the unprecedented 22.5 million acres covered by the proposal designated for development, developers are deeply concerned, lawyers say.

"In the industry, [the view is] generally negative," said Andrew C. Bell of Marten Law PLLC. "There are some entities that perhaps take a sanguine view. I haven't met them. ... It's going to take a lot of wind and solar energy off the table."

While not impossible to do projects in the other 90 percent of the 22.5 million acres of desert in question, "it will be extremely difficult for projects to go forward if they aren't within one of these areas," said Bradley B. Brownlow of Holland & Knight LLP.

Up until now, there hasn't been a coordinated state and federal system of oversight and permitting for the area, and the DRECP has been in the works for roughly six years.

Despite the draft proposal being more than half a decade in the making, some companies may still not be aware of the proposal's implications, lawyers say.

“The gestation period has been so long. A lot of folks may have been caught by surprise,” Bell said. “There may be solar developers that simply may not be aware of the potential problems ... [it] may create for their plans. It’s going to take a lot of wind and solar energy off the table.”

#### Tax-Credit Clock Is Ticking For Solar Cos.

Matters are further complicated for solar companies. In order to qualify for the federal Investor Tax Credit, or ITC, solar companies need to complete their projects and have begun operations by the end of 2016.

That means companies need to begin construction long before that time.

And in California, gaining entitlements for such projects takes a significant amount of time, further complicating matters for solar companies.

“Everyone’s scrambling,” Bell said, of solar companies, which are faced with both the looming ITC deadline and the uncertainty of the impact of the desert plan on their future developments.

“It’s going to shape the future of solar development in the southern quarter of the state for the next 25 years,” he said.

#### Finding Wind Will Get Harder

Much talk in the industry centers around the fact that roughly 90 percent of the 22.5 million-acre desert area in the draft proposal is designated as unsuitable for development. But the question of the suitability of the remaining 10 percent is yet another question, one that's more complex for wind than for solar projects.

While most of the 2 million desert acres may be suitable for solar projects, wind patterns and strength vary considerably across the desert, and some of that land won't be suitable for wind at all, lawyers say.

“Wind is concerned because there are very few areas,” said Clark Morrison of Cox Castle & Nicholson LLP. “There’s sort of this fantasy — that we’ll fill up those areas with wind projects — that will probably not materialize.”

#### The Comment Period Is Key

Lawyers say wind and solar have a lot to lose or gain during the comment period.

“If wind and solar don’t engage constructively and aggressively ... they could run the risk of losing a lot of good wind and solar land in the southern quarter of the state,” Bell said.

The development lines demarcating which of the 22.5 million acres are suitable for development are not exactly black and white. Developers can attempt to build in other areas of the desert, attorneys say. But they do face an uphill battle in doing so.

“If [the projects] are going to impact a protected species, the project developers would have to go to the resources agencies ... and seek take authorization,” Brownlow said. “Those agencies may be reluctant to authorize.”

Given that, lawyers say the comment period is the crucial time for wind and solar industries to voice their opinions.

“They need to file comments ... before January. That should be just the beginning,” Bell said. “If you write a note, even a good scholarly one, and send it into the ether, you still need to be the squeaky wheel to be heard.”

--Editing by John Quinn and Philip Shea.