

ADDENDUM NO. 5 TO
THE MASTER MEMORANDUM OF UNDERSTANDING
BETWEEN THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
AND THE BUREAU OF LAND MANAGEMENT
U.S. DEPARTMENT OF THE INTERIOR
CALIFORNIA STATE OFFICE

FOR
SIKES ACT IMPLEMENTATION
OF THE PORTION OF THE RUDNICK COMMON ALLOTMENT RELINQUISHED
PURSUANT TO PUBLIC LAW 112-74

I. Purpose

- A. The Bureau of Land Management (BLM) and the California Department of Fish and Wildlife (CDFW) agree to cooperate with each other in an effort to develop, maintain, and coordinate conservation, enhancement, restoration, and rehabilitation of wildlife, plants, and their habitat, to address BLM habitat improvement and protection and CDFW management and conservation of fish, wildlife, plants, and their habitat with regard to public land forage units (AUMs) relinquished from grazing use to wildlife use under Public Law 112-74, Section 122 (b).
- B. This Addendum No. 5 (Addendum) is supplemental to the 1983 BLM-State Master Memorandum of Understanding (Master MOU). BLM and CDFW have developed this Addendum to memorialize how they will cooperate and coordinate with one another to implement measures under the Sikes Act to protect and conserve fish, wildlife, plants and their habitat within the Implementation Area (see Section IV., Definitions) as set forth in this Addendum and its Rudnick Common Allotment Management Plan (Rudnick Plan).
- C. This Addendum will be used to continue the implementation of the 1982 Sikes Act Management Plan for the Jawbone-Butterbrecht ACEC, as amended by the West Mojave (WEMO) and the Desert Renewable Energy Conservation Plan (DRECP) Land Use Plan Amendments to the California Desert Conservation Area (Jawbone Plan). The Rudnick Plan and the Jawbone Plan will collectively be referred to as the "Management Plans".
- D. Although the United States Fish and Wildlife Service (USFWS) is not a party to the Master MOU or this Addendum, it is the intent of BLM and CDFW to coordinate and cooperate with USFWS in implementation of the measures addressed in this Addendum and the Management Plans.

II. Objectives

- A. Sikes Act Activities: The Management Plans will guide the management of the Implementation Area and conservation of wildlife, plants, and their habitat within it.

1. The following specific activities (Implementation Activities), which are addressed in greater detail in the Rudnick Plan, are contemplated to be undertaken within the Implementation Area in furtherance of the Management Plans:
 - a. Biological and plant surveys, for both baseline and ongoing informational needs;
 - b. Habitat maintenance through passive management techniques;
 - c. OHV boundary sign installation;
 - d. Maintenance of existing fence, barriers, signage and gates;
 - e. Maintenance of constructed fence, signage, and barriers;
 - f. Site inspections;
 - g. Construction of fencing;
 - h. Installation of OHV barriers for closure of non-designated routes (e.g., unauthorized incursions);
 - i. Installation of protective barriers for telephone poles; and
 - j. Invasive plant species control through spraying or other physical means (if baseline and/or ongoing surveys warrant).
2. Implementation Activities that do not fall under Casual Use will require site-specific analysis and BLM approval prior to implementation (see Section VI., Definitions). BLM will determine whether an Implementation Activity is or is not casual use and the level of NEPA compliance that is required. All Implementation Activities, both casual and non-casual, will be undertaken as determined or approved by BLM, tracked, and included in an annual, end of the calendar year report from CDFW to BLM (see Section V., Points of Agreement).

B. General Objectives:

1. This Addendum, the Management Plans, and the proposed Implementation Activities will conform to and not be inconsistent with:
 - a. The land use goals and objectives of BLM's operative land use plan, as it may be amended over time, and the provisions of the Jawbone-Butterbredt ACEC designated through BLM's land use planning processes; and
 - b. The Consolidated Appropriations Act of 2012, Section 122(b) (Public Law 112-74) and its intent that the land be made available for mitigation and the forage be allocated to wildlife consistent with any applicable section 7 consultation or section 10(a)(1)(B) permit under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

- c. BLM planning documents identified on page 2 of the BLM letter re: Receipt of Donation Letter for the Rudnick Common Allotment #05008, June 4, 2020, and the provisions of the letter itself.
 2. The Implementation Activities will conform to and not be inconsistent with the requirements of the Federal Land Policy and Management Act of 1976 (FLPMA), National Environmental Policy Act of 1969 (NEPA), the Endangered Species Act of 1973 (ESA), and any other applicable federal law or regulation, or any applicable State law or regulation.
 3. In the case of apparent inconsistency between an Implementation Activity and one or more of the plans, designations, permits, regulations, or laws listed in Sections II.B.1.a-c above, BLM and CDFW will meet and confer to discuss the apparent inconsistency and seek to resolve any disagreement. In the event BLM and CDFW determine there is an actual inconsistency, the terms and conditions of the plans, designations, permits, regulations, or laws listed in Sections II.B.1.a-c shall control. Also, in any instances of inconsistency between a discretionary land use and land and forage being managed for wildlife consistent with the section 7 consultation or section 10(a)(1)(B) permit pursuant to the Consolidated Appropriations Act of 2012, Section 122(b) (Public Law 112-74), the latter purpose will control.
- C. CDFW-Specific Objectives: It is the objective of CDFW to use this Addendum and the activities proposed in the Implementation Area as mitigation for impacts to habitat and State Waters resulting from the following projects, each of which is located on private land:
1. Eland Solar Project;
 2. Kudu Solar Farm;
 3. Aratina Solar Farm;
 4. Bellefield Solar Farm; and
 5. Glenfeliz Solar Farm.
- Mitigation for these projects is intended to be accomplished through long-term implementation and protection of specifically approved public land habitat development projects and related improvements to provide adequate protection for species designated as threatened or endangered under State law and to address impacts to State Waters. Funding to complete management activities within the Implementation Area will be ensured by the permittee. An account will be established with the National Fish and Wildlife Foundation (NFWF) to hold such funding. Specific implementation activities will be undertaken by CDFW, non-profit organizations, or others. However, responsibility for all objectives in this Addendum and/or the Management Plans remains between BLM and CDFW.
- D. BLM-Specific Objectives: It is the objective of BLM within the Implementation Area to consider and approve, as appropriate, the implementation of specific habitat development projects and related improvements to provide adequate

protection for federally listed threatened or endangered species habitat, and to manage the Implementation Area for compatible multiple use as required by federal law, but in any instances of inconsistency between a discretionary land use and land and forage being managed for wildlife consistent with the ESA consultation pursuant to the Consolidated Appropriations Act of 2012, Section 122(b) (Public Law 112-74), the latter purpose will control.

III. Authority

A. BLM

1. Sikes Act of 1974, 16 U.S.C. § 670g-o;
2. Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 et seq. (FLPMA);
3. Consolidated Appropriations Act of 2012, Pub. L. 112-74, December 23, 2011;
4. Endangered Species Act of 1973, Sec. 2 (c)(1) and Sec. 7(a)(1) and (2) (ESA);
5. National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq. (NEPA);
6. Wilderness Act of 1964, 16 U.S. C. § 1131 et seq.;
7. 43 C.F.R. Part 24, Department of the Interior Fish and Wildlife Policy: State-Federal Relationships;
8. California Desert Conservation Area Plan of 1980, as amended by the Desert Renewable Energy Conservation Plan (2016) and West Mojave Route Network Project (2019);
9. Public Land Order 2594; and
10. Instruction Memorandum No. CA-2015-009 (“Renewal of Instruction Memorandum (IM) implementing provisions within the Consolidated Appropriations Act of 2012, Section 122(b) (Public Law 112-74) related to livestock grazing authorizations in the California Desert Conservation Area”).

B. CDFW

1. California Endangered Species Act (Fish & G. Code, § 2050, et seq.) (CESA);
2. Fish and Game Code § 1600, et seq.;
3. Native Plant Protection Act (Fish & G. Code, § 1900, et seq.);
4. Fish and Game Regulations, Title 14, Cal. Code Regs.;
5. Fish and Game Code § 1802; and
6. California Environmental Quality Act (Pub. Res. Code, §21000, et seq.) (CEQA).

C. BOTH BLM and CDFW

1. BLM-State Master MOU, May 10, 1983;
2. BLM-State Sikes Act Agreement for the Jawbone-Butterbrecht ACEC and the Sierra-Mojave-Tehachapi Ecotone Wildlife Habitat Management Area Plan, 1982;
3. Memorandum of Understanding by and between the Bureau of Land Management and the California Department of Fish and Game, November 27, 2012 (DRECP Durability Agreement); and
4. Agreement by and between the United States Bureau of Land Management and the California Department of Fish and Wildlife, October 10, 2015 (Statewide Durability Agreement) (Sec. C(4)(a)(ix)).

IV. Definitions

- A. Implementation Area. Implementation Area means the BLM-managed public land within the Rudnick Allotment on which Implementation Activities will be undertaken pursuant to this Addendum and the Management Plans. A legal description of the Implementation Area is attached hereto as **Exhibit A**, and a map of the Implementation Area, entitled "Rudnick Mitigation Lands MOU Area Map" is attached hereto as **Exhibit B**.
- B. Special Designations. Special Designations mean the special management areas and other designations on BLM lands that have been established through statute, regulation, and administrative action such as resource management plans or their amendments. Special Designations include, but are not limited to, National Conservation Lands, Wilderness Areas, and Areas of Critical Environmental Concern.

The following Special Designations affect the Implementation Area, either in whole or in part:

1. Jawbone Butterbrecht Area of Critical Environmental Concern – approximately 169,470 acres.
2. California National Desert Conservation Lands – approximately 64,341 acres.
3. Kiavah Wilderness and Bright Star Wilderness Area - approximately 22,264 acres.

These Special Designations affecting the Implementation Area are identified in **Exhibit B**.

- C. Casual Use. Casual use means activities ordinarily resulting in no or negligible disturbance of the public lands, resources, or improvements. Casual use activities do not require approval by BLM. See 43 C.F.R. §§ 2801.5, 2881.5, and 2920.0-5.
- D. Conservation and Rehabilitation. Conservation and Rehabilitation has the same definition as in the Sikes Act, section 205 (16 U.S.C. 670k). It includes those methods and procedures which are necessary to protect, conserve, and enhance

wildlife, fish and game resources to the maximum extent practicable on public lands consistent with overall land use and management plans for the lands involved.

V. Points of Agreement

A. In implementing the BLM-Specific Objectives stated in Section II., BLM agrees as follows:

1. The Consolidated Appropriations Act of 2012, Section 122(b) (Public Law 112-74) states, in relevant part: “With respect to each permit or lease donated under this paragraph, the Secretary shall terminate the grazing permit or lease, ensure a permanent end (except as provided in paragraph (2)), to grazing on the land covered by the permit or lease, and make the land available for mitigation by allocating the forage to wildlife use consistent with any applicable Habitat Conservation Plan, section 10(a)(1)(B) permit, or section 7 consultation under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).”
2. Upon becoming aware of any proposed changes to the Management Plans, or any other land use or management plans for the Implementation Area, the BLM Authorized Officer will provide written notification (or an acknowledgement of receipt, if proposed by CDFW) to CDFW within thirty (30) days.
3. Upon receipt of a proposal for the initiation of any activity (non-casual use) within the Implementation Area, the BLM Authorized Officer will provide written notification (or an acknowledgement of receipt, if proposed by CDFW) to CDFW within thirty (30) days.
4. BLM will meet and confer with CDFW with regard to any proposal of the type encompassed by subsection V.A.2. or V.A.3., above respecting the Implementation Area that is not initiated by CDFW or any non-governmental organization authorized pursuant to the Management Plans or by CDFW to perform activities within the Implementation Area. BLM and CDFW shall follow the meet and confer and decision-making processes set forth in Section C(6)(g) of the Statewide Durability Agreement.
5. On or before January 30 of each calendar year, BLM will provide CDFW with a written account of all rights-of-way, permits, authorizations, and other approvals issued by BLM the previous year for activities occurring within the Implementation Area. BLM will also maintain and provide a list of casual use activity within the Implementation Area that is brought to the attention of the BLM Authorized Officer.

BLM will note the Management Plans, this Addendum, and a legal description of the Implementation Area on the BLM Master Title Plats and Historical Indices.

B. In implementing the CDFW-Specific Objectives stated in Section II., CDFW agrees as follows:

1. If CDFW proposes to undertake any activity within the Implementation Area that is not initially identified in the Management Plans or this Addendum, CDFW will first consult with BLM. Depending on the newly proposed non-listed activity (casual or non-casual), specific authorization from BLM may or may not be required.
 - a. Specific authorization for any proposal (whether initially identified in the Management Plans or this Addendum, or a new non-listed proposed activity) may be authorized through the Management Plans or this Addendum or may take the form of a FLPMA Title III or Title V authorization, or a Recreation and Public Purposes authorization, or other land use authorization as applicable.
 - b. Any proposed activity that is not identified in the Management Plans or this Addendum must be incorporated into and made a part of this Addendum.
 2. CDFW will provide BLM all corresponding map features for activities as ArcMap shapefiles with complete metadata in acceptable BLM standards.
 3. CDFW will provide an annual report to BLM on all implementation activities that have occurred in the previous year, whether casual use or otherwise.
- C. In implementing the Objectives stated in Section II., both BLM and CDFW agree to:
1. Jointly and cooperatively draft and implement a Public Outreach Communications Plan for this Addendum which may include but is not limited to public outreach through publications and/or announcements in newspapers of general circulation, the Internet, public meetings, etc.
 2. Revisit this Addendum once approved on an annual basis or more frequently if necessary to determine amendments, if any, to support its implementation.
 3. Develop and amend, as appropriate, the Management Plans consistent with any overall land use and management plans for the public lands involved.

VI. Constraints and General Guidelines.

- A. Applicability of State and Federal Law. Notwithstanding any provision in this Addendum, nothing in this Addendum is intended to be nor shall be interpreted to be inconsistent with any applicable Federal or State law or regulation.
- B. Funding. This Addendum does not obligate any funds from either agency. Subject to the availability of funds, BLM and CDFW each agrees to ensure funding for its own expenses associated with this Addendum. Nothing contained in this Addendum shall be construed as obligating any Federal agency to any expenditure or obligation of funds in excess or advance of appropriations, in accordance with the Anti-Deficiency Act, 31 U.S.C. §1341.

- C. Elected Officials Not to Benefit. No member of or delegate to Congress shall be entitled to any share or part of this Addendum, or to any benefit that may arise from it.
- D. FACA. BLM and CDFW will comply with the Federal Advisory Committee Act to the extent it applies.

VII. Provisions for Review, Modification, and/or Termination.

- A. Review. This Addendum shall be reviewed annually by both parties to ensure its legality, validity, and applicability to the Sikes Act program.
- B. Modification. This Addendum may only be modified by the mutual written agreement of both BLM and CDFW.
- C. Termination. Termination of this Addendum may occur under any of the following circumstances with thirty (30) days written notice from either agency to the other:
 - 1. When all of the objectives in this Addendum are met and satisfied by mutual written agreement of both CDFW and BLM;
 - 2. When the objectives in this Addendum become inconsistent with the Special Designations or land use management plans for the Implementation Area lands involved;
 - 3. When either BLM or CDFW concludes the other agency has failed to conform to the objectives of this Addendum and the agencies are unable to resolve their differences after pursuing the Resolution of Differences process set forth in Section VIII; or
 - 4. When termination for good cause is determined by the BLM State Director and the CDFW Director. "Good Cause" may include but is not limited to such occurrences as destruction of habitat in the Implementation Area by wildfire, future legislative actions removing either agencies authority for such agreements, and inability to reach a Finding of No Significant Impact for implementation actions.

VIII. Resolution of Differences

In accordance with Section C(9) of the Statewide Durability Agreement, BLM and CDFW recognize that disagreements concerning implementation or interpretation of this Addendum may arise from time to time and agree to work together in good faith. In the event that agency staff disagree how to implement this Addendum, it is in the best interest of each agency to resolve the issue at the lowest possible level of each organization. The first level will involve the BLM Field Office Manager and the CDFW Environmental Program Manager. If resolution cannot be reached at that level, the next level will involve the BLM District Manager and CDFW Regional Manager. If resolution cannot be reached at that level, the next level will involve the BLM State Director and CDFW Director. Both agencies agree to make the appropriate individual or their representatives available within a reasonable timeframe to discuss the disagreement.

IX. Approvals

We, the undersigned designated officials do hereby approve this Addendum to the BLM-State Master MOU for Sikes Act Implementation as authorized representatives for our respective agencies. This Addendum shall become effective on the date when last signed and shall remain in effect until mutually modified or terminated as set forth under Section VII., above.

U.S. BUREAU OF LAND MANAGEMENT

Karen E. Mouritzen 2-25-22
Signature Date
State Director
Title

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

CM Bonham 3/16/2022
Signature Date
Director
Title