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June 10, 2009

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DOCKET
08-AFC-9

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|-------|--------------|
| DATE | June 10 2009 |
| RECD. | June 10 2009 |

Subject: Comments on the Palmdale Hybrid Power Plant Request for Incidental Take Permit for Mohave Ground Squirrel and Additional Comments Regarding Impacts to Biological Resources. CEC Docket 08-AFC-09

Dear Ms. Head:

The Department of Fish and Game (Department) has reviewed the State Incidental Take Permit Application (AMEC 2009 [Application]), submitted for the Palmdale Hybrid Power Plant Project (Project) proposed by the City of Palmdale (Applicant). This Application was submitted in draft form for Department feedback in anticipation of meeting the requirements pursuant to the California Endangered Species Act (CESA) Incidental Take Permit application process, as described in the California Code of Regulations (CCR), Title 14, Section 783.2. Incidental take of State-listed species in association with the Project will ultimately be permitted by the California Energy Commission (CEC), pursuant to the Warren Alquist Act. Although CEC will serve as the permitting agency, the substantive criteria in CESA must still be met. The Department is assisting CEC in determining the scope and nature of incidental take coverage and will be providing CEC with recommendations to this effect. This letter serves to identify informational gaps that must be remedied prior to securing incidental take coverage. It is important to note that incidental take of fully protected and unlisted species cannot be authorized under CESA.

In addition, the Department had reviewed the Biological Resources Technical Report (AMEC 2008) and associated follow-up reports. The Department offers the Applicant comments on the proposed project's impacts to sensitive biological resources not covered under CESA, for which the Department is trustee (Fish and Game Code Section 1802). The Department additionally provided the Commission with comments on the Biological Resources Technical Report (Department 2008).

Comments on Applicant's Incidental Take Application

The Application is not sufficiently responsive to some of the required elements of the application process (Title 14, Section 783.2) and is lacking some critical information. We therefore would deem this Application as incomplete were it to be formally submitted to the Department. Because the information required by the application process is necessary for the permitting agency's "take" analysis and compliance with CESA, incidental take coverage cannot be

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 ORIGINAL MAILED FROM SACRAMENTO ON 6/11/09

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conferred absent this information. We offer the following comments on specific elements in your Application, as well as suggestions on how to correct deficient items. We anticipate that when the items deemed incomplete are corrected in the suggested manner, the Department will be able to indicate to CEC that all the information required to deem an application as complete has been submitted. We are happy to evaluate a draft of your new Application prior to formal submission if so desired. Our specific comments follow, in order of the application requirements as presented in Title 14, Section 783.2.

783.2(a)(1): This section is complete.

783.2(a)(2): This section is complete.

783.2(a)(3): This section is complete.

783.2(a)(4): The Section requires "The location where the project or activity is to occur or to be conducted." The Department understands from the Commission, that the transmission line proposed by the applicant has not been approved by Southern California Edison. Therefore, it seems pre-decisional to request take for the transmission line, if the alignment could change. If "take" is authorized for the transmission line, and it subsequently changes, it would become necessary to reevaluate the Incidental Take Permit for the project.

783.2(a)(5), 782.2(a)(6): These Sections require "An analysis of whether and to what extent the project or activity for which the permit is sought could result in the taking of species to be covered by the permit" and "an analysis of the impacts of the proposed taking". Identifying the extent and impacts of the take is necessary to identify what constitutes full mitigation.

Page 7 of the application states "...of the total 416.11 acres of disturbance (not clear if this includes all transmission line impacts) "approximately 271.84 acres may include vegetation potentially suitable for Mohave ground squirrel (Table 2)." However, Table 2 and in the text on Page 8, states 321.54 acres are identified as suitable habitat for Mohave ground squirrel (*Spermophilus mohavensis*). The applicant should clarify the discrepancy in acres. A more clear identification of total project impacts might clarify this issue. In addition, the Application should include a habitat assessment and map of suitable habitat for Mohave ground squirrel to allow the Department and Commission to evaluate "take".

783.2(a)(7): This section is complete.

783.2(a)(8): This section requires a description of the measures to minimize and fully mitigate the impacts of the proposed taking. The application proposes a mitigation package that includes \$1,300 per acre for a management endowment, \$250 per acre for habitat enhancement for Habitat Management Lands, and \$1,000 per acre for acquisition of Habitat Management Lands. The amount and location of lands proposed for conservation within those Sections is unspecified. It is not clear how the Applicant came to the dollar amounts that are identified; furthermore, the Applicant does not quantify dollar amounts based on total acres of impacts. It is not clear how the Applicant can guarantee preservation of 365.22 acres of habitat in perpetuity with the funds described. The application should demonstrate how preservation of existing land maintains existing population levels and ecological functions despite the net loss of habitat area and connectivity that would result from project implementation. The selection of the mitigation lands must consider that the Project's permanent footprint, and the other proposed projects in the area, may compromise the mitigation lands' potential to fully mitigate the impacts.

All lands proposed for CESA mitigation would need to be protected in perpetuity for conservation purposes. This often is accomplished by transferring fee title on the mitigation

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lands to the Department under terms approved by the Department. Alternatively, a Department-approved non-profit organization qualified pursuant to California Government Code section 65965 may hold fee title or a conservation easement over the mitigation lands. In the event an approved non-profit holds title, a conservation easement must be recorded in favor of the Department, in a form approved by the Department; in the event an approved non-profit holds a conservation easement over the mitigation lands, the Department must be named third party beneficiary. In addition, in the case of a conservation easement, the Department would need to have periodic access to the mitigation lands to insure that the terms and conditions of the conservation easement are being met.

Funding to manage mitigation lands in perpetuity is accomplished by establishment of a non-wasting endowment to be held by the Department or a Department approved non-profit organization qualified to hold endowment funds. The endowment must be of an amount sufficient to generate annual interest in the amount necessary to meet expected annual maintenance and monitoring costs of the mitigation lands. The amount of the endowment should be determined by using a Property Analysis Record (PAR) or PAR-like analysis once the mitigation lands are identified. If project implementation is anticipated in advance of conveying the mitigation lands and endowment and enhancement funding, security in the form of a pledged savings account or an irrevocable letter of credit would need to be provided prior to ground-disturbing activities.

Section 783.2(a)(9): This section is complete.

783.2(a)(10): This Section requires a description of the funding source and the level of funding available for implementation of the minimization and mitigation measures. For this project, that would include the cost of acquisition, enhancement, and endowment. The security amount would need to be sufficient to purchase acreage equal to the amount to be set aside for mitigation, and would also need to take into account current land values and inflation. In addition to covering land costs, the security would need to include endowment and enhancement costs determined for the mitigation acreage. The Department will conservatively estimate the required endowment amount if specific mitigation lands and a PAR or PAR-like analysis has not yet been conducted at the time that permitting details must be specified by the Department.

The Department has determined, based on both the Project description, as well as our familiarity with the biological resources present on the Project site and that the Project may result in "take" of State-listed species, that it is appropriate to obtain a State incidental take authorization for this Project prior to commencing any ground-disturbing activities. Thus, any "take" that occurs prior to the issuance of a permit is not authorized. We look forward to working with you towards permit finalization.

General Biological Resources Comments

Burrowing Owl – The Biological Resources Technical Report indicates evidence of burrowing owl (*Athene cunicularia*) within the project site and survey results indicate owls do occur within the project area. Since the Project site could support owls, the Department requires that a qualified biologist conduct a survey no more than 30 days before the onset of any ground-disturbing activities. The Department recommends four separate site visits each conducted on separate days to maximize detection of burrowing owls within appropriate habitat during preconstruction surveys. If burrowing owls occupy the site during the non-breeding season, a passive relocation effort may be instituted. Otherwise, the Department recommends

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that projects avoid occupied burrows with a minimum 250-foot no-construction buffer zone, unless a Department-approved biologist verifies through non-invasive methods that either: 1) the birds have not begun egg-laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival. Failure to implement this buffer zone could cause adult burrowing owls to abandon the nest, cause eggs or young to be directly impacted (crushed), and/or result in reproductive failure. Impacts of this nature violate Fish and Game Code Sections 3503, 3503.5, 3513, and the International Migratory Bird Treaty Act.

Desert Tortoise – The proposed project is located within suitable desert tortoise (*Gopherus agassizii*) habitat. Desert tortoise surveys were conducted at the power plant site by AMEC Earth in 2006, 2008, and 2009. The transmission lines were surveyed in 2008, with additional surveys along re-alignment sections in 2009. Based on these survey results, and confirmed in a conference call on May 26th, the Department has determined additional desert tortoise protocol surveys would not be required for the project. However, for areas that supported suitable tortoise habitat, construction surveys, restrictive fencing and monitoring would still be required. In addition, any changes in the transmission line alignment would require subsequent protocol level surveys. The applicant agreed to provide the Department with detailed alignment maps delineating all suitable desert tortoise habitat.

Rare Plants – The Department provided written response to the Commission (Department, 2009) on the Biological Resources Technical Report. The Department provided detailed comments within the report on the deficiencies of the plant surveys for the proposed project. To properly substantiate the lack of sensitive plant species within the project site, plant surveys need to occur throughout the entire alignment and should be completed within the appropriate time of year for each flowering plant. In addition, plant surveys should not be conducted at the same time as other focused surveys (see Attachment 1).

Joshua Tree Woodlands – The project will impact approximately 189.28 acres of Joshua tree woodland. The continual loss of Joshua tree woodland in the Antelope Valley is a concern to the Department as these communities support a high biological diversity. The Department considers Joshua tree woodlands as a threatened vegetative community. Any impacts to Joshua tree woodlands are considered significant. The loss of Joshua tree woodlands as the result of the proposed project should be mitigated below a significant level.

If avoidance of Joshua tree woodland is not feasible, efforts should be made to acquire and protect habitat of equal or superior value and/or acquire and protect areas to be enhanced and/or restored, which will result in fully functional Joshua tree woodland habitat. Mitigation for Joshua tree woodland should be mitigated at a ratio of no less than 1:1 for low quality habitat. Higher mitigation ratios would be required for higher quality habitat. The Department does not acknowledge salvaging and transplanting Joshua trees as a viable mitigation option as there have been no scientifically documented successful cases of transplantation for this species. To adequately mitigate for the loss of Joshua tree woodlands, the Department requires compensatory mitigation in the form of land acquisition. If funding for acquisition of mitigation property is proposed, a property value analysis should be undertaken to quantify acquisition costs sufficient to secure the required acreage of Joshua tree woodland, as well as ensure funding for fencing, maintenance, and monitoring of this property in perpetuity. The applicant should document specific areas where mitigation monies will be spent to mitigate for loss of Joshua tree woodland.

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Arroyo Toad – Arroyo toad (*Bufo californicus*) is known to occur within Little Rock Wash. Although it is more likely they will occur above the dam, the Department is concerned toad may be present within the transmission line corridor. At Little Rock Wash, the transmission line access road runs perpendicular across the creek. Two towers are identified on either side of the wash. Because of the potential for toad to occur within the wash and in upland habitat adjacent to the wash, the Department recommends U.S. Fish and Wildlife protocol surveys for arroyo toad occur prior to commencement of construction activities. In addition, a biological monitor knowledgeable in arroyo toad should be present during all ground disturbing activities within 500 feet of the wash.

Questions regarding this letter and further coordination regarding these issues should be directed to Erinn Wilson, Staff Environmental Scientist, at (714) 968-0953.

Sincerely,



Edmund J. Pert
Regional Manager
South Coast Region

Attachment

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Guidelines for Assessing the Effects of Proposed Projects on Rare, Threatened, and Endangered Plants and Natural Communities

State of California
THE RESOURCES AGENCY
Department of Fish and Game
December 9, 1983
Revised May 8, 2000

The following recommendations are intended to help those who prepare and review environmental documents determine **when** a botanical survey is needed, **who** should be considered qualified to conduct such surveys, **how** field surveys should be conducted, and **what** information should be contained in the survey report. The Department may recommend that lead agencies not accept the results of surveys that are not conducted according to these guidelines.

1. Botanical surveys are conducted in order to determine the environmental effects of proposed projects on all rare, threatened, and endangered plants and plant communities. Rare, threatened, and endangered plants are not necessarily limited to those species which have been "listed" by state and federal agencies but should include any species that, based on all available data, can be shown to be rare, threatened, and/or endangered under the following definitions:

A species, subspecies, or variety of plant is "endangered" when the prospects of its survival and reproduction are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, over-exploitation, predation, competition, or disease. A plant is "threatened" when it is likely to become endangered in the foreseeable future in the absence of protection measures. A plant is "rare" when, although not presently threatened with extinction, the species, subspecies, or variety is found in such small numbers throughout its range that it may be endangered if its environment worsens.

Rare natural communities are those communities that are of highly limited distribution. These communities may or may not contain rare, threatened, or endangered species. The most current version of the California Natural Diversity Database's List of California Terrestrial Natural Communities may be used as a guide to the names and status of communities.

2. It is appropriate to conduct a botanical field survey to determine if, or to the extent that, rare, threatened, or endangered plants will be affected by a proposed project when:
 - a. Natural vegetation occurs on the site, it is unknown if rare, threatened, or endangered plants or habitats occur on the site, and the project has the potential for direct or indirect effects on vegetation; or
 - b. Rare plants have historically been identified on the project site, but adequate information for impact assessment is lacking.
3. Botanical consultants should possess the following qualifications:
 - a. Experience conducting floristic field surveys;
 - b. Knowledge of plant taxonomy and plant community ecology;
 - c. Familiarity with the plants of the area, including rare, threatened, and endangered species;
 - d. Familiarity with the appropriate state and federal statutes related to plants and plant collecting; and,
 - e. Experience with analyzing impacts of development on native plant species and communities.
4. Field surveys should be conducted in a manner that will locate any rare, threatened, or endangered species that may be present. Specifically, rare, threatened, or endangered plant surveys should be:
 - a. Conducted in the field at the proper time of year when rare, threatened, or endangered species are both evident and identifiable. Usually, this is when the plants are flowering.

When rare, threatened, or endangered plants are known to occur in the type(s) of habitat present in the project area, nearby accessible occurrences of the plants (reference sites) should be observed to determine that the species are identifiable at the time of the survey.

- b. Floristic in nature. A floristic survey requires that every plant observed be identified to the extent necessary to determine its rarity and listing status. In addition, a sufficient number of visits spaced throughout the growing season are necessary to accurately determine what plants exist on the site. In order to properly characterize the site and document the completeness of the survey, a complete list of plants observed on the site should be included in every botanical survey report.
 - c. Conducted in a manner that is consistent with conservation ethics. Collections (voucher specimens) of rare, threatened, or endangered species, or suspected rare, threatened, or endangered species should be made only when such actions would not jeopardize the continued existence of the population and in accordance with applicable state and federal permit requirements. A collecting permit from the Habitat Conservation Planning Branch of DFG is required for collection of state-listed plant species. Voucher specimens should be deposited at recognized public herbaria for future reference. Photography should be used to document plant identification and habitat whenever possible, but especially when the population cannot withstand collection of voucher specimens.
 - d. Conducted using systematic field techniques in all habitats of the site to ensure a thorough coverage of potential impact areas.
 - e. Well documented. When a rare, threatened, or endangered plant (or rare plant community) is located, a California Native Species (or Community) Field Survey Form or equivalent written form, accompanied by a copy of the appropriate portion of a 7.5 minute topographic map with the occurrence mapped, should be completed and submitted to the Natural Diversity Database. Locations may be best documented using global positioning systems (GPS) and presented in map and digital forms as these tools become more accessible.
5. Reports of botanical field surveys should be included in or with environmental assessments, negative declarations and mitigated negative declarations, Timber Harvesting Plans (THPs), EIR's, and EIS's, and should contain the following information:
- a. Project description, including a detailed map of the project location and study area.
 - b. A written description of biological setting referencing the community nomenclature used and a vegetation map.
 - c. Detailed description of survey methodology.
 - d. Dates of field surveys and total person-hours spent on field surveys.
 - e. Results of field survey including detailed maps and specific location data for each plant population found. Investigators are encouraged to provide GPS data and maps documenting population boundaries.
 - f. An assessment of potential impacts. This should include a map showing the distribution of plants in relation to proposed activities.
 - g. Discussion of the significance of rare, threatened, or endangered plant populations in the project area considering nearby populations and total species distribution.
 - h. Recommended measures to avoid impacts.
 - i. A list of all plants observed on the project area. Plants should be identified to the taxonomic level necessary to determine whether or not they are rare, threatened or endangered.
 - j. Description of reference site(s) visited and phenological development of rare, threatened, or endangered plant(s).
 - k. Copies of all California Native Species Field Survey Forms or Natural Community Field Survey Forms.
 - l. Name of field investigator(s).
 - j. References cited, persons contacted, herbaria visited, and the location of voucher specimens.

STATE OF CALIFORNIA-THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER Governor

DEPARTMENT OF FISH AND GAME

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TIME: _____
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COMMENTS:

Attached are the Departments Comments on the Palmdale Hybrid Power Plant Request for Incidental Take Permit for Mohave Ground Squirrel and Additional Comments Regarding Impacts to Biological Resources. CEC Docket 08-AFC-09

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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
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**APPLICATION FOR CERTIFICATION
For the *PALMDALE HYBRID
POWER PROJECT***

Docket No. 08-AFC-9

**PROOF OF SERVICE
(Revised 4/30/2009)**

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DECLARATION OF SERVICE

I, Teraja` Golston, declare that on June 11, 2009, I served and filed copies of the attached Palmdale Hybrid (08-AFC-9) CDFG Comments: PHPP Incidental Take Request. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: **[<http://www.energy.ca.gov/sitingcases/palmdale/index.html>]**. The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

For service to all other parties:

sent electronically to all email addresses on the Proof of Service list;

by personal delivery or by depositing in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

For filing with the Energy Commission:

sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (preferred method);

OR

depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

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I declare under penalty of perjury that the foregoing is true and correct.

Original Signature in Dockets
Teraja` Golston