



October 1, 2010

California Energy Commission
Docket Unit
1516 Ninth Street
Sacramento, CA 95814-5512

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| DOCKET | |
| 09-AFC-7 | |
| DATE | OCT 01 2010 |
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Subject: Intervenor Center for Biological Diversity's Suggested Changes on Conditions of Certification in the Proposed Revised Staff Assessment Palen Solar Power Plant (09-AFC-7) for Workshop Discussion on 10/4/10.

Dear Energy Commission Staff,

While some of these issues were discussed at the Workshop on September 27, 2010, the Center for Biological Diversity wants to reiterate the need for additional impact analysis and mitigation as follows below. We may have additional issues to include on Monday, pending further review of the Revised Staff Assessment.

Overarching Issues:

We agree that acquired mitigation lands must be habitat for the species that are impacted by the project. However, because those lands are already inhabited by the same species for which mitigation is sought, this proposed mitigation strategy ensures a *net decrease* in habitat for impacted species. To actually provide mitigation that staunches species' habitat losses, the ratio must be higher than 1:1¹. A minimum 2:1 mitigation is appropriate to assure, not only that the project impacts are mitigated appropriately but that the net losses of habitat for rare species are stopped. This conservative measure is essential to prevent future listings under Endangered Species Acts. While enhancement of habitat may be necessary in the future, the "low-hanging fruit" of habitat acquisition is essential now, while habitat still remains available.

Many of the plans that are proposed by staff to adequately mitigate impacts are not provided in the RSA or anywhere else. Therefore it is impossible for us to evaluate this conclusion or determine the efficacy of proposed mitigation to actually adequately mitigate impacts. While we recognize that the regulatory agencies have the responsibility of assuring that mitigation meets all the LORS and conditions, we have not always found that to be the case. Making these plans available as part of the public process is important to assure the public that their public resources are being protected – without public disclosure of these plans during the process there is no way to evaluate whether the Commission has put in place adequate plans to prevent degradation of our natural heritage, clean air and water.

¹ Moilan et al. 2008
Arizona • California • Nevada • New Mexico • Alaska • Oregon • Montana • Illinois • Minnesota • Vermont • Washington, DC

Conditions of Certification Specific Issues

Bio-9 (1) Desert Tortoise Fencing along Interstate 10 – clarification of “regularly inspected” needs to occur. We suggest that language as found in Bio-9 (2)(d) for desert tortoise exclusion fencing be incorporated here: “fencing shall be inspected monthly and during and within 24 hours following all major rainfall events”. We also request in order for this mitigation measure to achieve the goal of keeping tortoise off of the interstate, that an additional inspection and repair occur after any vehicle accident, where the fence is compromised. Lastly we request that this fence be erected prior to any desert tortoise relocation or translocation occurs because relocation/translocation can induce long-distance movement of desert tortoises and endanger tortoises that are wandering to get back home.

Bio-12. While the RSA recognizes that the proposed project and reconfigured alternatives fall within a Northern and Eastern Colorado Plan (NECO) designated Wildlife Habitat Management Area (WHMA), it does not discuss that the area is specified for Desert Wildlife Management Area (DWMA) connectivity. Because the propose project and reconfigured alternatives are not only in desert tortoise habitat, but within a WHMA and WHMA for DWMA connectivity (NECO Map 2-21), the proposed 1:1 mitigation is inadequate. A 1:1 mitigation ratio may be appropriate for impacts to largely unoccupied desert tortoise habitat, but it does not take into consideration the importance of this specific location in the WHMA for DWMA connectivity. Therefore a 2:1 mitigation ratio needs to be implemented.

Bio 18 – The remaining stronghold for burrowing owls in California – the Imperial Valley – has had a recently documented decline of 27% in the past 2 years, resulting in an even more dire state for burrowing owls in California. Because burrowing owls are in decline throughout California, and now their “stronghold” is documented to be declining severely, the burrowing owls on this proposed project site and reconfigured alternatives (and on other renewable energy projects) become even more important to species conservation efforts. While we support the acquisition of habitat specifically for burrowing owls as identified in the RSA, we think the mitigation of only 78 acres for 4 owls is too low, especially in the Colorado desert. Mean burrowing owl foraging territories are 242 hectares in size, although foraging territories for owl in heavily cultivated areas is only 35 hectares². Regardless, the acquisition of only 78 acres (31.5 hectares) fails to mitigate for one bird even if it was relying on a heavily cultivated area. Therefore, we request that additional mitigation acreage be required – calculated using the mean foraging territory size times the number of owls. This calculation results in 968 hectares (2,391 acres). We note that using the average foraging territory size for mitigation calculations may not accurately predict the carrying capacity and may *overestimate* the carrying capacity of the impacted site, since the proposed project site at 4,024 acres only support 4 birds – it may be that in this area 4,000+ acres is necessary to support 4 burrowing owls. Lastly, because the carrying capacity is tied to habitat quality, we request that language be included that mitigation lands that are acquired for burrowing owl be native habitats on undisturbed lands, not cultivated lands, which are subject to the whims of land use changes. We believe the long-term persistence of burrowing owls lie in their ability to utilize natural landscapes, not human-created ones.

² USFWS 2003

Bio-20 – We appreciate the effort to avoid the sand transport corridor and some of the Mojave fringe-toed lizard (MFTL) habitat in the reconfigured alternatives, however, impacts will still occur. It is very confusing and unclear how Bio-20 in the RSA relates to the information provided in the Data Requests of July 9, 2010. It is unclear if “high quality MFTL habitat” equates to “Zone 2 MFTL habitat” or how that relates to the *occupancy* of the lizards identified during surveys in those areas or the areas identified in the RSA as “stabilized and partially stabilized sand dunes”, “non-dune Mojave fringe-toed lizard habitat. Because the focus of impact analysis and subsequent mitigation is on the MFTL, how the habitat is affected by the impact of the project and the impact to the sand transport corridor are all direct impact to MFTL habitat and should be mitigated as such.

At least one aspect of impacts to the remaining habitat remains unanalyzed and unmitigated. Anthropogenic habitat modifications have been documented to induce predation increases especially by native avian predators (including for example loggerhead shrikes) on lizards. We are concerned that the miles of security fencing around the proposed project site will provide new perching opportunities for avian predators that will have enhanced abilities to prey on Mojave fringe-toed lizards (and other species). This may cause significant “edge effects” that impact the MFTL far outside the footprint of the project. We request that this impact be analyzed and mitigated by acquisition of additional mitigation lands. Because it is a direct impact to the MFTL (and other species) the mitigation ratio should be 3:1. The area affected should be based on the average foraging ranges of the resident and migratory predatory species from the fence line.

Bio-23 – the Center supports Bio-23 as an essential tool in maintaining the groundwater dependent vegetation, which in the desert includes rare plant communities.

Other issues

Recent science indicates that canid predation affects both resident, control and translocated desert tortoises. While we appreciate the minimization measures that are proposed for reducing some predators on the proposed project site and reconfigured alternatives, the new and best available science needs to be incorporated into the Conditions of Certification for this (and other projects). Ravens, another human subsidized predator in the desert, have also been identified as predators on desert tortoises. The Conditions of Certification require that payment be made to support the USFWS Regional Raven Management Program (Bio 13(2)). We request that a similar program be set up to address the regional canid management in support of reducing predation of desert tortoises and that payments in support of that program also be required as a Condition of Certification.

With regards to desert tortoise relocation/translocation, we hope that given the survey data for the site no desert tortoises will be in harms way and therefore no relocation/translocation will be needed. We support the recommendations in the Independent Science Advisors’ Report to the Desert Renewable Energy Conservation planning group that no animals should be moved, and that projects should be sited on disturbed lands to avoid impacts to intact ecologically

functioning desert landscapes. That said, the generalized nature of the relocation/translocation plan, in particular the lack of identification of the “recipient” and “control” sites are not identified, make it impossible to provide useful comments. We do recommend that the latest guidance for desert tortoise re/translocation be included in the future plan.

Cumulative impacts to MFTL and sand habitat in the Chuckwalla also need to be more carefully considered and mitigated. At present three large solar projects are proposed in the valley with new gen-tie powerlines, roads and fencing that will all disrupt the natural surface water flows and aeolian sand transport. These impacts should be mitigated at a ratio proportionate to the contribution of each of the projects to the impacts perhaps through additional land acquisition or other actions to remove other barriers to sand transport in this area.

Cumulative impacts to water resources, especially groundwater overdraft also needs to be more carefully considered *and mitigated*. The cumulative analysis simply looks at three large solar projects. However, additional applications for solar development are also proposed that could affect this groundwater basin. Additionally the indirect cumulative impacts to adjacent basins also need to be more comprehensively analyzed.

In representing the Center, I look forward to discussing these issues at the workshop on October 4, 2010.

Sincerely,



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Biologist/Public Lands Desert Director
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**APPLICATION FOR CERTIFICATION
FOR THE PALEN SOLAR POWER
PLANT PROJECT**

Docket No. 09-AFC-7

**PROOF OF SERVICE
(Revised 8/27/10)**

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DECLARATION OF SERVICE

I, Terre Anderson declare that on 10/11, 2010, I served and filed copies of the attached letter, dated 10/11, 2010. 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:
[\[http://www.energy.ca.gov/eitincases/solar_millennium_2010\]](http://www.energy.ca.gov/eitincases/solar_millennium_2010)

The documents have 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:

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Attn: Docket No. 09-AFC-7
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I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

