State Of California

The Resources Agency of California

Memorandum

Date: March 28, 2008
Telephone: (916) 654-4679

To: Vice Chair James Boyd, Presiding Member
Chairman Jackalyne Pfannenstiel, Associate Member

From: California Energy Commission – John S. Kessler, Project Manager
1516 Ninth Street
Sacramento, CA 95814-5512

Subject: **Victorville 2 Hybrid Power Project (07-AFC-1) – Additional Testimony and Addendum to Final Staff Assessment Filed by Energy Commission Staff**

Enclosed please find additional testimony and an Addendum to the Final Staff Assessment (FSA) filed by Energy Commission staff for the Victorville 2 Hybrid Power Project (07-AFC-1). The testimony and addendum has been prepared in response to comments received from the applicant. The topics of the additional testimony/addendum and supporting witnesses are as follows:

Air Quality: Tuan Ngo

Biological Resources: Rick York

Cultural Resources: Beverly Bastian

Noise: Steve Baker

Traffic and Transportation: Jim Adams

Visual Resources: David Flores

Alternatives: John Kessler

DOCKET
07-AFC-1
DATE MAR 28 2008
RECD. MAR 28 2008

Proof of Service (Revised 9/6/07) filed with original
Mailed from Sacramento on 3/28/08

AIR QUALITY – TESTIMONY OF TUAN NGO

Staff provides the following responses to comments by the applicant filed by the applicant January 2, 2008 on the Air Quality PSA for the Victorville 2 Hybrid Power Project (Victorville 2). Those staff responses that should have been incorporated into Final Staff Assessment are identified, while those areas where staff and the applicant still disagree are noted. Staff's responses are listed in the same order as provided by the applicant in their PSA comments. Staff has also provided a brief discussion on Air Quality and the litigation status of two sources of air district emission reduction credits (ERCs) for the Victorville2 project – South Coast's Priority Reserve and the Mojave Desert road paving programs.

South Coast's Priority Reserve and the Mojave Desert's road paving programs: Staff agrees with the applicant that the proposed ERCs reduce impacts to a level that is not significant, and that ongoing legal challenges to the ERC programs might affect the mitigation available to the Victorville 2 project. However, staff agrees with the applicant that the rules are valid during litigation. Therefore, we rely on them in making our conclusions, but understand that if litigation should affect the rules, the applicant may need to make amendments to ensure compliance with the rules that are ultimately in effect.

Bullet 1. Page 4.1-2, Air Quality Table 1: Staff agrees with the applicant's comment and recommends that FSA Air Quality Table 1 be replaced with the following table:

Air Quality Table 1
Laws, Ordinances, Regulations, and Standards

Applicable LORS	Description
Federal	New Source Review: Best Available Control Technology (BACT) and Offset requirements
	Title V: Federal permit
	New Source Performance Standard: 15 ppm NOx @15% oxygen (O_2) and 0.06 lbs SO_2 per MMBTU heat input.
State	California Health and Safety Code: Permitting of source needs to be consistent with approved Clean Air Plan.
Local	Regulation IV: Particulate Matter and Visible Emissions: Emissions shall not be darker than Ringelmann No. 1 for a continuous three-minutes, and no more than 0.01 grains PM per standard dry cubic foot.
	Regulation XI: Standards for Electric Utility Operations and Stationary Gas Turbines: NOx emissions from these sources shall not exceed 42 ppm@15%O_2

	Regulation XII: Federal Operating Permits: Acid Rain: Requires continuous emission monitoring system
	Regulation XIII: New Source Review: BACT, offsets, and new sources shall not cause or make worse a violation of an Ambient Air Quality Standard.

Bullet 2. Page 4.1-4, Air Quality Table 2: Staff agrees with the applicant's comment and recommends that the entire row with the "Ann. Arit. Mean" for Particulate Matter (PM10) in FSA Air Quality Table 2 be deleted.

Bullet 3. Page 4.1-9, Air Quality Table 4: The applicant believes that Air Quality Table 4 contains daily emission limits. Staff disagrees. The table provides staff estimated emissions of the facility on the hourly, daily and annual bases. The facility emission limits are provided in Condition of Certification AQT-6, and are consistent with the Mojave Desert Air Quality Management District (District).

Bullet 4. Page 4.1-11, Air Quality Table 5: The applicant asked for a clarification of the background ambient air quality data of 98 $\mu g/m^3$ used in the table, and suggests that a lower PM10 background value of 57 $\mu g/m^3$, recorded in 2005, should be used. Staff disagrees. The 98 $\mu g/m^3$ values were measured at the Victorville air quality monitoring station in 2002, and staff has used this value in the analysis.

Bullet 5. Page 4.1-11: Staff does not agree with the applicant's comment, but does provide the following clarifying language to indicate that the recommended start and stop times for construction is a staff, not city, recommendation. This requirement is based on the applicant provided modeling results in the July 23, 2007 data response. Please revise last sentence of bottom paragraph to read: "Because of this, staff recommends that ~~limit~~ the construction activities be limited to the period ...".

Bullet 6. Page 4.1-13: The applicant states the ambient air quality standard in Victorville is not exceeded, thus staff's statement that the project emissions would contribute to violations of the standard is not correct. Staff disagrees. The 24-hour PM2.5 concentration was measured and recorded as high as 38 $\mu g/m^3$, in 2002, at the Victorville air quality monitoring station, and this value exceeds the standard, which is 35 $\mu g/m^3$.

Bullet 7. Page 4.1-14, Air Quality Table 6: Staff agrees with the applicant's comment and recommends that the two rows of Air Quality Table 6 showing CO emissions impacts be replaced with:

CO	1-hour	635.7	3,680	4,315.7	23,000 [1]	19%
	8-hour	301	2,178	2,480	10,000 [1]	25%

Bullet 8. Page 4.1-14, Air Quality Table 6: The applicant raised two issues in this bullet. One, they suggested that staff analysis should be based only in the last three years of available air quality data, and two, they do not believe that the project would cause significant impacts on the ambient PM2.5 air quality, thus no mitigation is needed. Staff disagrees. To see the trend of ambient air quality in an area, staff reviewed the data as far back as 10 years. If staff used the applicant suggested method of analysis, which uses ambient air quality data recorded in 2004 to 2006, the background concentration data for PM2.5 would be 34 $\mu g/m^3$. Thus, if the project PM2.5 emission impacts are added to the background, the project would still cause a new violation of the federal 24-hour PM2.5 standard. According to the District Rule 213 "Standards for Permits to Construct Air Quality Impact", and the federal New Source Review, no project can be constructed if its emissions would cause a new violation of the ambient air quality standard. Additionally, the area is non-attainment for the state annual PM2.5 standard, thus staff believes that staff analysis and conclusions are proper, and that the project would cause significant impacts to the area PM2.5 standard. Thus, PM mitigation is needed.

Bullet 9. Page 4.1-16 and Condition of Certification AQ-SC9: Again, the applicant believes that the project would not cause a significant impact to the area PM2.5 standard; therefore, no mitigation is needed. Staff does not agree for the reasons provided in responses to Bullet 8 above.

Bullet 10. Condition of Certification AQ-SC3 (g) and AQ-SC4 Step 3: Staff agrees with the applicant's comment and recommends that AQ-SC3 (g) and AQ-SC4 Step 3 be modified by replacing all reference to "District" with "CPM" (also see response to Bullet 12 below).

Bullet 11. Condition of Certification AQ-SC3 (j): Staff agrees with the applicant's comment and recommends that AQ-SC3 (j) be modified as follows "At least ...(or less during periods of precipitation or on other days with the concurrence of the CPM) on days ...".

Bullet 12. Condition of Certification AQ-SC4, Step 3: Staff agrees with the applicant's comment and recommends that AQ-SC4, Step 4 be modified as follows:

" Step 3: The AQCMM or Delegate shall direct a temporary shutdown of the activity causing the emissions if step 2, specified above, fails to ~~result in effective mitigation~~ eliminate visible dust plume at any location 200 feet or more off the project construction fence line within one hour of the original determination. The activity shall not restart until the AQCMM or Delegate is satisfied that appropriate additional mitigation or other site conditions have changed so that visual dust plumes will not result upon restarting the shutdown source. The owner/operator may appeal to the ~~District~~ CPM any

directive from the AQCMM or Delegate to shut down an activity, provided that the shutdown shall go into effect within one hour of the original determination, unless overruled by the ~~District~~ CPM before that time."

Bullet 13. Condition of Certification AQ-SC6: Staff does not agree with the applicant's comment, but provided the clarifying language above (Bullet 5) that indicates that recommended start and stop times for construction is a staff, not city, recommendation.

Bullet 14. Condition of Certification AQ-SC9, Verification: Staff agrees with the applicant's comment, and recommends that the verification read as follows:

"At least ~~one year~~ three months prior to start construction, the project owner shall ...".

Bullet 15. Condition of Certification AQ-SC11, GHG Reporting: Staff does not agree with the applicant that it is appropriate to reference draft regulations in a staff assessment or Energy Commission Decision. The greenhouse gas reporting regulations referred to by the applicant were issued as draft in 2007. The Air Board asked that changes be made, requiring ARB staff to revise the regulations. ARB staff has not yet issued those changes for comment. ARB staff is hopeful the regulations could be submitted to the Office of Administrative Law (OAL) by the summer of 2008.

Staff believes that our condition of certification is clear - "until AB 32 is implemented" the applicant shall report emissions. Further we believe that our reporting methodologies are standard. Staff is confused about the applicant's concern about our reference to "flares" in our condition of certification. Staff agrees that Victorville 2 does not contain any flares and would not expect Victorville 2 to report GHG emissions from flares.

Bullet 16. Condition of Certification AQT-3, Verification: Staff agrees with the applicant's comment, and recommends that the verification read as follows:

"~~At least 90 days prior to construction of the project, the~~The project owner shall provide ~~the District, the ARB and~~ the CEC CPM copies of the federal PSD and Acid Rain permits no later than 30 days of their issuances."

Bullet 17. Condition of Certification AQT-5, Sections i and ii: Staff agrees with the applicant's comment, and recommends that the Committee incorporate the changes into the Decision upon receipt of a letter from the Mojave District modifying the FDOC to allow 110 minutes for cold starts and 80 minutes for other starts.

Bullet 18. Condition of Certification AQT-13, Verification: Staff agrees with the applicant's comment, and recommends the verification read as follows:

"The project owner shall notify the District and the CPM within ~~seven (7)~~ ten (10) working days before ...".

Bullet 19. Verifications of Conditions of Certification AQT-9, AQT-11, AQT-16, AQEG-5, AQEG-7, AQFP-5 and AQFP-7: Staff agrees with the applicant's comment, and recommends that the verification references be changed from 120 days to 60 days.

Declaration of Rick York
Victorville 2 Hybrid Power Project

Docket 07-AFC-1

I, Rick York, declare as follows:

1) I have been employed by the Energy Commission as a biologist since 1989, and currently serve as a Planner III in the Environmental Protection Office, where I supervise the staff of the biological resources and cultural resources unit. A copy of my resume is included in the Final Staff Assessment, filed March 19, 2008.

2) On March 25, 2008, I took photographs of the habitat on and near the project site. The photographs show 1) the presence of creosote rings on the project site; 2) the proximity of the boundary of the project site to the location where a Mohave ground squirrel was trapped in 2007; and 3) the high quality of the habitat for the three special-status species that are found at or near the project site. The photographs, which are included as attachments to this declaration, are labeled by the location at which each photograph was taken. (Attachments A-1 – A-5)

3) For purposes of taking the photographs, staff obtained from the California Department of Fish and Game a map showing the location of the Mohave ground squirrel trapping in 2007, and from Dr. Philip Leitner, an expert in Mohave ground squirrel habitat, Universal Transverse Mercator coordinates for the same trapping. Dr. Leitner's declaration and resume were attached to Staff's Prehearing Conference Statement, filed March 21, 2008. The UTM coordinates matched the location identified on the map.

4) The habitat in the area where the Mohave ground squirrel was trapped is not different in any significant way from the habitat at the project site.

5) The applicant filed a Second Addendum to its Biological Assessment on March 17, 2008. As stated in the Final Staff Assessment (FSA), staff did not have the opportunity to read the Second Addendum prior to publication of the FSA.

6) The Second Addendum includes several references to horizontal directional drilling as a feature of the project.

7) Although the Application for Certification contains a single reference to a single planned instance of horizontal directional drilling, the Second Addendum identifies a second instance and provides a map showing the location of the proposed drilling. This information was not provided previously.

8) In past licensing proceedings, staff has discussed horizontal directional drilling with the Army Corps of Engineers, the Regional Water Quality Control Board, and the California Department of Fish and Game prior to completion of the Final Staff Assessment.

9) In past licensing cases, staff has proposed, and the Commission has required, Conditions of Certification to address possible significant adverse impacts associated with horizontal directional drilling. These Conditions of Certification require the project developer to provide a plan containing standard contingency measures to the Compliance Project Manager for review and approval.

10) Staff believes that a Condition of Certification requiring consultation with the Army Corps of Engineers, the Regional Water Quality Control Board, and the California Department of Fish and Game, and development of a contingency plan prior to conducting horizontal directional boring is necessary to address this aspect of the project. Such a condition is included as an attachment to this declaration. (Attachment B)

11) Staff's assessment under the California Environmental Quality Act of impacts to special-status species is case-specific, and involves evaluation of the project site and the surrounding area. Based on my familiarity with the review conducted by the California Department of Fish and Game for projects under the Commission's jurisdiction, I understand the staff process to be similar to the process used by the California Department of Fish and Game (the Department) for the review it conducts under the California Endangered Species Act.

12) An e-mail from the Department to the applicant, dated July 11, 2007, is attached to this declaration (Attachment C). In addition, a recent letter from the Department to the applicant for the Carrizo Energy Solar Farm

project, dated March 26, 2008, is attached to this declaration. (Attachment D) I understand this correspondence to be an example of the project specific review conducted by the California Department of Fish and Game pursuant to the California Endangered Species Act. Similarly, an e-mail from Larry LaPre of the Bureau of Land Management, dated January 24, 2008 is also attached. (Attachment E) I understand this e-mail to be an explanation of the relationship between the project-specific review conducted by the Department pursuant to the California Endangered Species Act and the California Environmental Quality Act, and the approached used for land management purposes by the Bureau of Land Management, which is referenced by the applicant.

13) I am personally familiar with the data included in the documents identified above, and if called as a witness, could testify competently thereto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

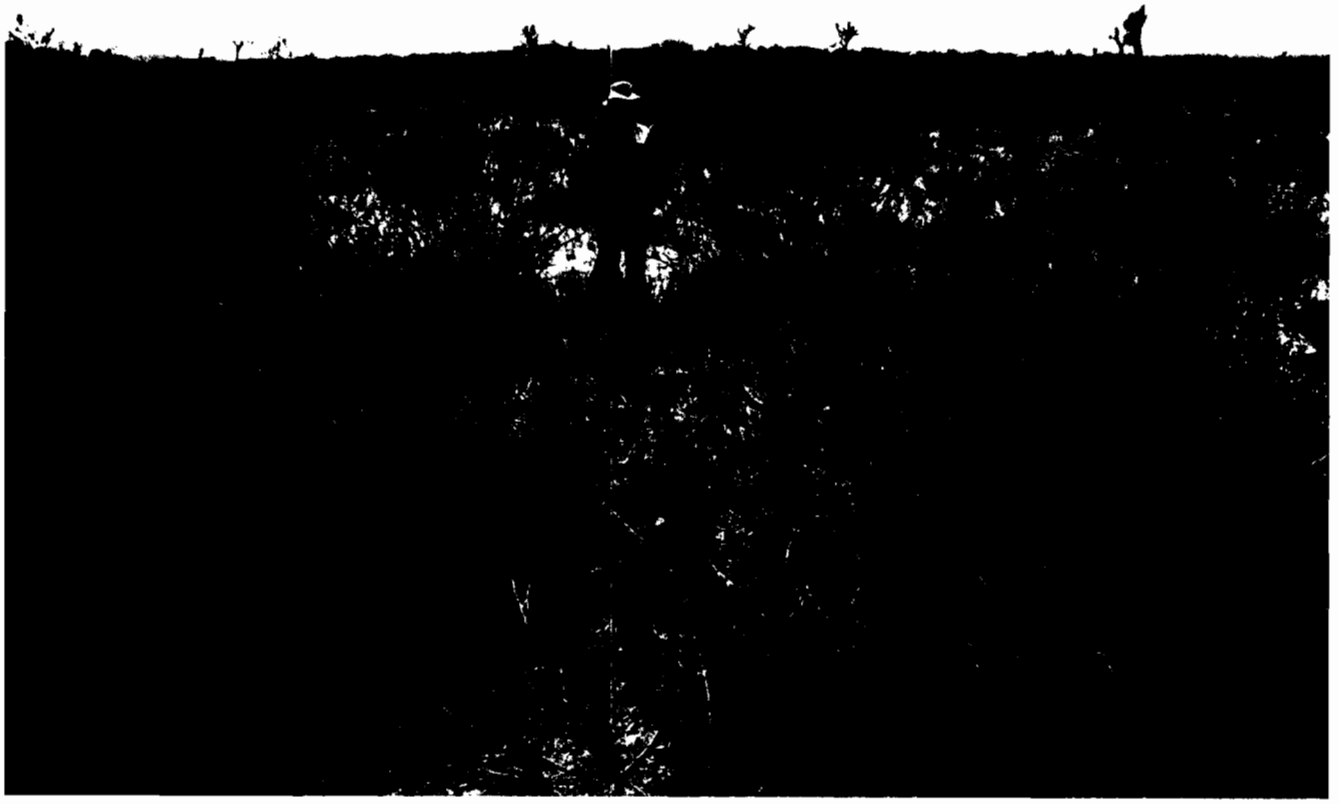
Dated: March 28, 2008 Signed: Rick York

At: Sacramento, CA

ATTACHMENT A

View to southeast across project site toward laydown area
March 25, 2008

New Victorville homes and habitat interface - March 25, 2008



Creosote ring on project site - March 25, 2008

Looking south from laydown area toward location of MGS collection
March 25, 2008

Mohave ground squirrel trapped in 2007 at location in center of photo, approximately 700 feet south of SE corner of project laydown area

ATTACHMENT B

Attachment B – Proposed Condition of Certification

BIO-19: The project owner shall develop and implement a Horizontal Directional Drilling Plan (HDD Plan) for the underground crossing of ephemeral streams associated with the construction of the Victorville 2 sanitary sewer line. The plan shall be developed in consultation with the Army Corps of Engineers, Lahontan Regional Water Quality Control Board, and CDFG. The project owner shall provide documentation that either it has obtained all necessary federal permits from the Army Corps of Engineers and complied with all conditions that would be required for permits and approvals from the Lahontan Regional Water Quality Control Board and CDFG were they to issue such permits or approvals, or that the proposed HDD will not require permits and approvals. The project owner shall submit its HDD Plan for review and comment to these agencies and to the CPM for review and approval. The HDD plan shall include the following:

1. A plan and profile of the sewer line at the crossings showing the setback from the ephemeral stream banks and the depth and cover of the sewer line;
2. A description of the geologic conditions including results of subsurface testing or borings for the HDD, and any special provisions for performing the HDD in consideration of the geologic conditions;
3. A contingency plan (or frac.-out plan) in the event of the release of drilling materials into the ephemeral stream, and safeguards for preventing a release;
4. A plan and description of the HDD laydown, setup and procedures for conducting the HDD at both ends of the crossings including the area needed for equipment setup and pipeline coupling, and plans for access; and
5. Design considerations to address any potential hydraulic performance issues (such as solids accumulation) associated with the gravity sewer line having a low spot at the underground crossings;

Verification: At least 180 days prior to constructing the sanitary sewer line, the project owner shall submit its HDD Plan to the Army Corps of Engineers, Lahontan Regional Water Quality Control Board, and CDFG for review and comment, and to the CPM for preliminary review and approval. At least 30 days prior to constructing the sanitary sewer line, the project owner shall:

1. Provide copies of all necessary permits and approvals from the Army Corps of Engineers, and documentation from the Lahontan Regional Water Quality Control Board, and CDFG that it has complied with all conditions that would be required for permits and approvals from the Lahontan Regional Water Quality Control Board and CDFG were they to issue such permits or approvals, or otherwise provide documentation that no permits or approvals are necessary; and

2. Provide copies of all agency comments on the HDD Plan, update the plan accordingly, and provide the updated HDD Plan to the CPM for final review and approval.

ATTACHMENT C

From: Tonya Moore
To: tom.egan@amec.com
Date: 7/11/2006 7:30:01 AM
Subject: Proposed mitigation ratio for Victorville 2 Hybrid Solar Plant

Howdy Tom,

The mitigation ratio for this project to obtain an Incidental Take Permit for both desert tortoise and MGS would be 3:1. As was discussed, the mitigation lands will also support BUOW, if they do then the lands obtained for the 2081 will suffice for the burrowing owl. If the lands do not support burrowing owl then additional lands may be required for that species. Please subtract the lands that do not support desert tortoise and Mohave ground squirrel habitat. On this project that would be where the pipeline was put in, the area where people are currently living and any existing roads that were included in the calculation. Also, remember that this ratio does not reflect the transmission line impacts in critical habitat.

Although, it is not required of me to explain why I believe that the project should mitigate at 3:1, I have included it here so that you can understand my position:

First, let me make clear that when I was discussing the desert tortoise mitigation alone, I was using the fact that BLM had Categorize this area as Category III, which when used with the CAGED formula is always 1:1. However, this was an error on my part. The Department has stated in the California Statewide Tortoise Management Policy that "The Bureau categorization applies only to Bureau administrated lands." This proposed project is on private lands thus it requires a habitat and species evaluation according to CEQA and CESA. So, the automatic 1:1 ratio does not apply for desert tortoise.

The Department must continue to evaluate habitats and species on a project by project basis irrespective of what is outlined in WEMO, since it is not approved. In order to issue an Incidental Take Permit the Department is required to adopt findings that the impact of the taking has been fully mitigated. We use a variety of factors to determine full mitigation on a project by project basis. Projects impacting MGS in the Victor Valley portion of the desert are often mitigated at 1:1, but higher ratios sometimes occur based on the quality of habitat being impacted, potential impacts to core populations, connectivity issues, the quality/location of the mitigation lands being offered and modification to existing science or knowledge of the species. Historically, the entire Victor Valley was mitigating 1:1 for MGS because of the knowledge then was that MGS had not been found in the Valley for decades, and because most projects were adjacent to existing development and/or contained degraded habitat. Although, the Department could not state that there weren't MGS it was assumed the low numbers did not warranty higher protection. However, with the development of the Victor Valley more surveys have be performed and additional information has surfaced.

Limited numbers of MGS trapping has occurred within the location that this project is proposed. However, from the surveys and sightings that been reported this area still contains a population no matter how small of MGS. This is to be expected because the location is not under the high development that the rest of the Valley is and is located adjacent to very large areas of undeveloped habitat. The 2005 survey that found a Juvenile MGS and the petition to Federally list the species, has required the Department to reevaluate how it handles the MGS in the Victor Valley.

If you compare this proposed project habitat with others in the Victor Valley, I believe that a mitigation is warranted. The land is practicably undisturbed, with little trash and very low OHV use. The quality of the land can be seen in the fact that the site and adjacent habitat support desert tortoise, Mohave ground squirrel and burrowing owl as well as large numbers of animal species that are not listed as protected (Kit fox, rabbits and other ground squirrels). The land is uniquely situated with no barrier for species near the Mojave River and large open undisturbed desert. There is currently no known mass development north of this project that would leave the me to believe that in future if this project wasn't built the land would still be disturbed. The current land south of the project is slated for complete development with no open space or corridors for the upland desert species.

Then why is the project requiring larger ratios then the developer near Air Expressway? The project foot print is much larger then this one with less desert tortoise(s) sign and historically occurrences of MGS in the area are only north of Air Expressway expect of the one found last year, which is miles away and many developments to the south. The land is "locked" in by development around it and has started to show heavy disturbance on the edges due to the developments. With all of these differences, I believe it warranted being mitigated at a 2:1 ratio.

Even though I have other reasons I believe that these are the major ones. Each project is evaluated on the impacts that it will directly impact the area and how those direct and indirect impacts cumulatively effect the regions species.

Since, I believe that the impacts to the desert tortoise and it's habitat are less significant then MGS (since they have a wider range and aren't as generalized as MGS). If the project proponent decides to trap the site and the spring prior to construction and there are negative results then a 1.5:1 ratio shall apply just for desert tortoise.

Of course if the site is trapped and a MGS is found, the project proponent will be held to the 3:1 ratio.

If you have any questions or would like to discuss this issue further please feel free to call mat at (760) 955-8139.

Tonya Moore, CDFG
Environmental Scientist

CC: Racine, Denyse

ATTACHMENT D

From: Misa Ward
To: Docket Optical System
CC: Caryn Holmes; John Kessler; Rick York
Date: 3/24/2008 4:55 PM
Subject: BLM and CDFG 2002 MOU Background and Current Approach

Dear Dockets, Please docket this email for Victorville 07-AFC-1. Thanks, Misa

N. Misa Ward, Senior Biologist
California Energy Commission
1516 Ninth Street - MS 40
Sacramento, CA 95814
P: 916.651.9010; F: 916.651.8868

>>> <Larry_LaPre@ca.blm.gov> 1/24/2008 4:34 PM >>>

Misa,

Alan Stein forwarded me your e-mail regarding BLM and CDFG agreement on a 1:1 ratio. We have nothing that specific. However, we have a MOU with the Department regarding mitigation for projects on both private and federal lands. It was written to address the Mohave ground squirrel and the desert tortoise. That may be what he referenced.

In most cases (where the project is predominantly on federal lands), BLM gets a biological opinion from FWS. In the project description section of the BO are conservation measures to be taken, such as replacement habitat at a 1:1 ratio. FWS is not supposed to impose a mitigation ratio, since they don't really have that authority. The CDFG then isssues a consistency determination under 2080.1 Recently they have not agreed that the BO measures are consistent and have asked for individual 2081 permits.

For many years, we used a formula based on recommendations of hte Desert Tortoise Management Oversight Group, which resulted in ratios of 1:1 to about 6:1. A guidance document called the California Statewide Desert Tortoise Management Policy, written by CDFG and BLM, provided the details. After adoption of the land use plan amendments to the California Desert Conservation Area Plan (NECO, NEMO and WEMO), BLM started using the compensation specified in those documents, which is generally 1:1 and 5:1. After passage of amendments to the California Endangered Species Act in about 2002(?), CDDG started negotiating individual compensation deals as part of their 2081 permits, and the guidance was "fully mitigate".

NEMO = Northern and Eastern Mojave Desert Management Plan

NECO = Northern and Eastern colorado Desert Coordinated Management Plan
WEMO = West Mojave Plan

Dr. Larry LaPre
District Wildlife Biologist
California Desert District
Bureau of Land Management
22835 Calle San Juan de los Lagos
Moreno Valley, CA 92553
Phone: (951) 697-5218
Fax: (951) 697-5299
E-mail: llapre@ca.blm.gov

ATTACHMENT E

State of California
Department of Fish and Game

Memorandum

DOCKET
07-AFC-8
DATE MAR 26 2008
RECD. MAR 26 2008

Flex your POWER

To: Mary Dyas
California Energy Commission
Environmental Office, Siting Division
1516 Ninth Street, MS-40
Sacramento, California 95814

Date: March 26, 2008

From: W. E. Loudermilk, Regional Manager **Original initialed by Jeff Single for W. E. Loudermilk**
Department of Fish and Game – Central Region

Subject: Review of Carrizo Energy Solar Farm Project Application for Certification

The Department of Fish and Game has reviewed the information provided by Ausra CA II, LLC (applicant) in support of the Carrizo Energy Solar Farm (CESF) Project's Application for Certification. The Department reviewed the application contents to assist in the California Energy Commission's (Commission) Preliminary Assessment for the Project and to determine whether the application contains sufficient information to proceed with impact analysis. This memorandum further intends to identify the requirements of applicable State laws and regulations that the Department administers. It is our understanding that the Warren-Alquist Act (Public Resources Code Section 25000 et seq.) may exempt the Project from State permits which would normally be required, however, if this exemption does in fact apply, the Commission will include enforceable conditions of approval such that the Project will conform to the requirements of applicable State laws. It is important to note that the Department is currently evaluating the applicability of the Warren-Alquist Act and the Department's regulatory authority under the California Endangered Species Act (CESA); a decision and guidance is forthcoming. Similarly, it is our understanding that the Preliminary Assessment process is a California Environmental Quality Act (CEQA) equivalent. As such, this letter approaches the Project from the Department's CEQA Trustee and Responsible Agency perspective, while recognizing that a parallel process may actually occur.

Project implementation would result in construction of approximately 195 Compact Linear Fresnel Reflector solar concentrating lines and associated steam drums, steam turbine generators, air-cooled condensers, and infrastructure, producing up to a nominal 177 megawatts net. The CESF site would encompass approximately 640 acres in Section 28, Township 29 South, Range 18 East, in the California Valley and La Panza NE United States Geological Survey (USGS) 7.5 minute quadrangle maps (Quad), adjacent to California State Route 58 (SR-58). The 640-acre site would be fenced. An additional 380-acre "construction laydown area" would be located entirely in Section 33, Township 29 South, Range 18 East, in the California Valley Quad, which is directly south of the solar farm site, and across SR-58. It is our understanding that Section 33 would also be utilized as an employee parking area during construction and operation of the facility.

PROOF OF SERVICE (REVISED 2/5/08) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 3/27/08
CF

CEQA and Department of Fish and Game (DFG) Code

The Department is a Trustee Agency with the responsibility under CEQA for commenting on projects that could impact plant and wildlife resources. Pursuant to Fish and Game Code Section 1802, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, the Department is responsible for providing, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities, as those terms are used under CEQA.

The Department is a Responsible Agency when a subsequent permit or other type of discretionary approval is required from the Department, such as an Incidental Take Permit, pursuant to CESA, or a Streambed Alteration Agreement issued under Fish and Game Code Section 1600 et seq. Both actions by the Department would be considered "projects" (CEQA Guidelines Section15378) and would be subject to CEQA.

Pursuant to Fish and Game Code Section 1600 et seq., the Department has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource. Placing temporary crossings in the creek present in Section 33 would normally be conducted under a 1600 Agreement, and the Project proponent would be required to submit a Stream Alteration Notification to the Department for this Project. We encourage the applicant to avoid impacting the streambed in this area by reconfiguring the laydown area to avoid use of the area south and west of the drainage; or, alternatively, by placing temporary structures, such as railroad flatcars, to span the small creek channel and avoid impacts to aquatic and semi-aquatic species which may utilize the creek, including western spadefoot toad (*Spea hammondii*), which is a State Species of Special Concern.

The biological studies found that this Project would likely result in "take" of the State threatened and Federally endangered San Joaquin kit fox (*Vulpes macrotic mutica*), and depending on the outcome of other studies, may affect other listed species. Pursuant to Fish and Game Code Section 2081 (CESA), an Incidental Take Permit is required for any otherwise lawful activities which could result in "take" (as defined by Section 86 of the Fish and Game Code) of any species listed under CESA. The Department typically relies on the Lead Agency's CEQA compliance to make our own findings. For the Lead Agency's CEQA document to suffice for permit/agreement issuance, it must fully describe the potential Project-related impacts to stream/riparian resources and listed species, as well as commit to measures to avoid, minimize, and mitigate impacts to these resources. Impacts to State-listed species must be "fully mitigated" in order to comply with CESA, which is a much more stringent standard than the "mitigate to less than significant level" criteria of CEQA. If a CEQA document does not contain this information, the Department may need to act as a Lead CEQA Agency and complete a subsequent CEQA document. This could significantly delay permit issuance and, subsequently, Project implementation. In addition, CEQA grants Responsible Agencies authority to require changes in a project to lessen or avoid effects of that part of the project which the agency will be called on to approve, such as the proposed bridge and channel widening (CEQA Guidelines Section 15041).

California Endangered Species Act Compliance: The Department has regulatory authority over projects that could result in the "take" of any species listed by the State as threatened or endangered, pursuant to Fish and Game Code Section 2081. If the Project could result in the "take" of any species listed as threatened or endangered under CESA, the Department may need to issue an Incidental Take Permit for the Project. CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (Sections 21001{c}, 21083, Guidelines Sections 15380, 15064, 15065). Significant impacts must be avoided or mitigated to less than significant levels, unless the CEQA Lead Agency makes and supports a Statement of Overriding Considerations (SOC). Be advised that CESA does not allow issuance of "take" authorization if there are significant unmitigated impacts to listed species or utilization of an SOC regarding listed species.

The CEQA Lead Agency's SOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code Section 2081, under which impacts to State threatened and endangered species must be minimized and fully mitigated. In other words, compliance with CESA does not automatically occur based on local agency project approvals or CEQA compliance; consultation with the Department is warranted to ensure that Project implementation does not result in unauthorized "take" of a State-listed species.

Incidental "take" authority is required prior to engaging in "take" of any plant or animal species listed under CESA. Plants listed as threatened or endangered under CESA cannot be addressed by methods described in the Native Plant Protection Act. No direct or indirect disturbance, including transplantation, may legally occur to State-listed species prior to the applicant obtaining incidental "take" authority in the form of an Incidental Take Permit.

The Project applicant will need to 1) provide an analysis of the impact of the proposed taking; 2) provide an analysis of whether issuance of an Incidental Take Permit would jeopardize the continued existence of kit fox and any other State-listed species for which "take" coverage is being sought; 3) propose measures that minimize and fully mitigate the impacts of the proposed taking; 4) provide a proposed plan to monitor compliance with the minimization and mitigation measures; and 5) provide a description of the funding source and level of funding available for implementation of the minimization and mitigation measures. The Department can provide a complete list of required Incidental Take Permit application components upon request.

Analysis

The Project is proposed in an area which supports one of the highest concentrations of special status species in California, as well as uncommon native game populations for which the State has committed considerable effort and public funds to re-establish and manage. The site is also in an area identified as critical for the recovery of Federally listed species and is a crucial wildlife movement corridor. The biological studies do not adequately consider this setting. In summary, the Department has determined that the biological inventory work is incomplete and provides insufficient information to determine the impacts, the significance of the impacts, and the mitigation required to fully mitigate the impacts. Following are the primary reasons why we have determined the application information is incomplete:

- A botanical inventory was not completed.
- The blunt-nosed leopard lizard survey was incomplete and did not follow protocol.
- No conclusive surveys were performed to identify small mammal species occupying the site.
- The biological impact analysis lacks a correct assessment of effects on wildlife movement.
- The cumulative impacts analysis does not consider impacts from specific, known, probable future projects.
- At least ten special status species that are known to utilize the site or that most likely utilize the site were not addressed.
- Project details which are mentioned in the text are not sited on maps, and/or impacts of those portions of the project are not analyzed in the document, in particular, parking areas and detention basins.

The following paragraphs discuss these items and several other essential details which are lacking.

Botanical Inventory: Botanical surveys should follow guidelines developed by the Department (CDFG, 2000) and the United States Fish and Wildlife Service (USFWS) (USFWS, 2000). Botanical surveys should cover the entire property and should be timed appropriately to detect all species which may occur on the property before impact analysis occurs. Use of reference sites is recommended, particularly for seasonably variable, often difficult to detect species. A site's disturbed nature does not preclude it from supporting special status plant species. This is especially true of areas such as this, where intensive agriculture has historically been inconsistent, allowing native plant and animal species to persist in a dryland grain crop and grazing lands matrix.

The botanical surveys did not follow either protocol referenced above. These protocols are the standard for impact assessment in California and were recommended to the applicant in May 2007 by Deborah Hillyard of the Department; the applicant was further advised that surveys conducted in 2007 would not likely not be sufficient to determine the presence or absence of special status plant species, given the below-average rainfall that occurred during 2007; many areas had little to no germination of annual plant species. In addition, surveys completed thus far were conducted on two consecutive days in April, which even in a good rainfall year would not capture the blooming seasons of many special-status plant species which occur in the vicinity. In addition, plants were not identified to species and subspecies levels. *Eriogonum sp., Plagiobothrys sp.,* and *Cryptantha sp.* were all identified only to the generic level. All of these genera contain special status taxa which could occur on-site. No reference sites were used for any rare plants to ensure that they were detectable during the survey period, which would be especially important in 2007 since it was an especially poor year for plant surveys in this area.

Blunt-Nosed Leopard Lizard (BNLL): Volume 1 of the application states that eight surveys for the State endangered and Fully Protected and Federally Endangered blunt-nosed leopard lizard (*Gambelia sila*) were completed in Section 28 and five in Section 33. Based on the data sheets

provided by URS, ten adult surveys were performed in Section 28 and five were performed in Section 33. Table 5.6.2 is misleading because it lists 14 adult survey days but does not communicate that each day apparently covered only portions of the Project site. The table also lists surveys on June 12, 18, and 20, which do not have supporting data sheets. The discrepancies between the application's discussion, Table 5.6.2, and the data sheets should be clarified. Regardless of which is correct, it appears that the survey protocol was not followed. The surveys deviated from the protocol (CDFG 2004) in the following manner:

1. The required 12 adult surveys were not completed for any portion of the site.
2. The required Elkhorn Plain voucher/reference site was not used to determine whether lizards were detectable during surveys.
3. Level II survey personnel were not present on June 27, 2007, and August 20, 2007
4. The adult season surveys exceeded the protocol limit of ten surveys per 30-day period and four surveys per 7-day period

The application generally relies more on characterizing the site as highly disturbed, rather than providing defensible survey data, to rule out species' presence. According to the data sheets, BNLL adult surveys were completed in Section 28 between June 15 and July 5, and in Section 28 between July 9 and July 13. These surveys were performed at the end of the adult survey season when lizards in the Carrizo Plain area are typically the least detectable, even in good survey years. Information provided to the applicant by Dr. David Germano indicated that the dry winter of 2006-2007 resulted in poor survey results elsewhere in 2007 and that surveys in 2007 may not detect the species (letter to Wesley Rhodehamel, Live Oak Associates, June 9 2007).

Whiptails (*Aspidoscelis tigris*) were observed during the surveys. This species is usually found inhabiting the same habitat types as BNLL in the California Valley/Carrizo Plain area. This observation indicates that historic land uses have not precluded those species which have similar habitat requirements to BNLL (e.g., open foraging ground, underground refugia, and invertebrate and smaller lizard prey base).

Based on the limited survey effort, poor survey conditions, and deviation from Department survey protocol, the Department does not concur that the survey effort was adequate to detect presence of this species within the Project area for the previously stated reasons. Because the BNLL is Fully Protected and therefore no "take," incidental or otherwise, can be authorized by the Department (or any other entity), protocol-level surveys must be conducted prior to any ground-disturbing activities, in all areas of suitable habitat. Suitable habitat includes all grassland and shrub scrub habitat that contains required habitat elements, such as small mammal burrows. These surveys, the parameters of which were designed to optimize detectability, must be conducted to reasonably assure the Department that "take" of this Fully Protected species will not occur as a result of disturbance associated with Project implementation. In the event that this species is detected during protocol-level surveys or during incidental observations, consultation with the Department is warranted to discuss how to implement the Project and avoid "take." Ground-disturbing activities must be avoided in all areas occupied by BNLL.

Birds: The application lacks discussion of potential impacts to avifauna within the facility. Specifically, the Department recommends an analysis of whether the extensive guy wire system, which supports the water lines above the reflectors, presents a threat to raptors and other large birds which are likely to fly into the site below the 56-foot tall water lines. The impact analysis should also determine whether the concentrated light and heat poses a risk to birds that would fly between the reflectors and water lines. If monitoring data are not available from similar facilities, then we recommend a predictive analysis that quantifies the light and heat levels that birds would encounter. If it appears that this could result in an adverse impact, then we recommend developing an adaptive management program, designed to avoid impacts to birds, to be approved by the Department. It is important to note that the Fish and Game Code protects birds, their eggs, and nests including: Sections 3503 (regarding unlawful "take," possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the "take," possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful "take" of any migratory nongame bird). These Fish and Game Code Sections do not allow for "take" nor is there a mechanism (permitting process) to allow for "take" unless a species is also listed under CESA. As a result, the Project and associated conditions of approval must include measures that prevent "take" of birds.

San Joaquin Kit Fox: The Project is at the south end of the corridor linking the Carrizo Plains Natural Area (now Carrizo Plains National Monument) to the satellite populations in the Salinas River and Pajaro River watersheds. The recovery plan identifies this corridor as essential to maintaining and recovering those populations and the species. The specified recovery action which applies to this site is as follows:

> *Protect and enhance corridors for movement of kit foxes through the Salinas-Pajaro Region and from the Salinas Valley to the Carrizo Plain and San Joaquin Valley.* (USFWS 1998).

The impact analysis and mitigation must consider the potential impacts to the corridor and corridor functions. The "Wildlife Corridors" section in the application does not recognize the kit fox corridor and mischaracterizes the site as an east-west corridor connecting the Temblor and Caliente mountain ranges. Potential corridor impacts to be evaluated should include, but not be limited to, loss of prey base and refugia for immigrating, emigrating, and dispersing individuals, reduced capacity for individuals to reside in the corridor, reduced genetic flow, increased predation resulting from impermeable fences (blocked escape routes), increased exposure to predation due to night lighting, increased exposure to traffic on the highway due to the impermeable fence, reduced corridor width, and increased animal/vehicle traffic collisions due to traffic increases.

The application characterizes the kit fox habitat as low-quality and recommends a 1:1 mitigation ratio. Based on past habitat evaluations prepared for the County of San Luis Obispo in this vicinity, the County and the Department have concluded that projects of *less than 40 acres* in this area require a 4:1 ratio. Due to the potential for substantial direct impacts (over 1,000 acres), indirect impacts, habitat fragmentation, and the critical location identified as essential to the species' recovery, the mitigation ratio would likely be higher than 4:1 to fully mitigate the habitat loss. Habitat of equal or greater biological value would be required for off-site mitigation.

Preservation or conservation bank credits may offset the direct habitat loss, but would not likely mitigate the habitat connectivity impacts (or offset similar impacts to the other species discussed in this letter). All opportunities to maintain habitat connectivity though the site should be explored. Analysis may find that on-site actions are infeasible or do not address the impacts. Actions which preserve and enhance the corridor, such as purchase and management of adjacent parcels, might be required to fully mitigate the corridor degradation. To comply with CESA permitting standards, the Department would have to conclude that kit fox impacts are fully mitigated. Corridor impacts and mitigation would have to be evaluated in a cumulative impact context, including quantified effects of the photovoltaic solar power installation proposed for the same vicinity.

Pronghorn: The application characterizes the pronghorn (*Antilocapra americana*) habitat losses and habitat connectivity effects as insignificant. It is the Department's opinion that the Project has the potential to substantially restrict pronghorn movement, reduce pronghorn habitat, and threaten this population's viability.

The Department's bi-annual aerial counts have established that the specific pronghorn group which inhabits the northern California Valley, where the Project is proposed, frequently utilizes the Project site and crosses SR-58 at or near the Project site. This area has the fewest buildings and cross-fences near the highway, making it the most likely highway crossing area within this group's range. For this group to remain viable, free movement across the highway and within its range is essential to access seasonably variable water and food sources. Maintaining connectivity between this group, the Carrizo Plain National Monument groups, and the Cholame Valley group will be essential to maintaining the overall San Luis Obispo County pronghorn population. The fact that the affected group so regularly crosses the highway and its associated fences speaks to its requirement to access all of its territory to obtain necessary resources; pronghorn road avoidance behaviors and difficulties in crossing fences are well documented in the literature. The Project would create a substantial, permanent, impermeable barrier for pronghorn at the highway and within the core of one group's home range. It would further degrade connectivity between all of the pronghorn groups in San Luis Obispo County.

Loss of foraging area and habitat connectivity would extend well beyond the Project footprint. Pronghorn are inherently wary of human activity and structures. Light, noise, buildings, reflectors, and human activity would likely cause pronghorn to avoid the Project area during and after construction by a wide margin, rendering much of the area surrounding the site unusable. Increased traffic on SR-58 would also reduce the crossing opportunities and increase the road kill risk for this diurnal species.

The proposed impermeable fencing is also likely to inhibit fawns and adults during pursuits, thereby increasing coyote predation. This is a known effect on pronghorn of livestock fencing and would be even greater with the proposed chain-link fence.

We recommend that the impact analysis consider an additional buffer, supported by literature on pronghorn behavior, around the Project site as permanently unusable for pronghorn. Then the impact analysis should assess the viability of this population considering the population size, recruitment rates, existing and proposed land uses (cumulative effects), forage and fawning

opportunities, watering sites, traffic increases, and the Project's direct and indirect habitat impacts. The Department can provide bi-annual herd counts, Global Positioning System (GPS) locations, sex ratios, and fawn count data.

Tule Elk: The application characterizes the tule elk (*Cervus elaphus*) habitat losses and habitat connectivity effects as insignificant. The Project would permanently displace a square mile of habitat, reducing the area's capacity to support tule elk. Direct impacts, cumulative habitat losses, and habitat connectivity impacts should be addressed as discussed above for pronghorn.

Pallid Bat: The application states that no pallid bat (*Antrozous pallidus)* a State Species of Special Concern roost sites were found on-site. The application and impact assessment should also address the permanent loss of one square mile of foraging habitat. Pallid bats forage mostly in grasslands and agricultural areas, such as those which occur within the Project site.

Water Use: The application documents a proposed substantial increase in ground water use compared to existing conditions. The impact analysis should address how this substantial increase would affect the ground water basin and biological resources. For example, would this affect watering sites for pronghorn and tule elk? Would drawdown increase percolation/infiltration rates and therefore decrease runoff, which could affect the hydroperiod of surface water bodies such as nearby vernal pools and Soda Lake? Is there a risk of subsidence on- or off-site?

Western Spadefoot Toad: The applicant notes that the California Natural Diversity Database (CNDDB) contains a record of this species breeding in a small drainage near the Project and states that the Project site is unsuitable habitat. The CNDDB record is from the same creek which crosses the construction laydown area. In the Project area, that creek appears to provide seasonal pools suitable for breeding, and the affected uplands are suitable for burrowing. Surveys for spadefoot toad should be completed for this Project. At a minimum, the applicant should search for spadefoot larvae during the appropriate season to determine potential impacts to breeding sites. The impact analysis should also evaluate the permanent effects on burrowing opportunities on Section 28. Soil compaction in the proposed construction laydown area and/or future use as a parking area may reduce future burrowing potential and directly affect toads which are already burrowed on-site.

Small Mammals: The application states that the site is unlikely to support Tulare grassphopper mouse (*Onychomus torridus tularensis)*, a State Species of Special Concern; the State and Federally endangered Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*); the State and Federally endangered giant kangaroo rat (*D.ingens*); and the State threatened San Joaquin antelope squirrel (*Ammospermophilus nelsoni*). With the exception of Tipton kangaroo rat, the site is suitable habitat for all of these species, as well as for short-nosed kangaroo rat (*Dipodomys nitratoides brevinasus)* which is a State Species of Special Concern, which was not addressed. "Mice" burrows were observed on-site, but no trapping was performed to determine which small mammal species were present. Due to the potential for several special status small mammal species to occur on-site, the Department recommends small mammal trapping and focused San Joaquin antelope squirrel surveys. This will determine which species are using the

burrows observed on-site. The applicant should prepare a small mammal trapping proposal for Department approval. The proposal should include at least four consecutive nights of trapping by permitted individuals, and trap density and placement should be sufficient to detect presence of all nocturnal species discussed herein across the entire Project site, including the temporary impact areas. Focused surveys for San Joaquin antelope squirrel should coincide with their most active season, April 1 to September 30, and should be conducted only when air temperatures are between 20-30° C (68-86° F). Surveys should be conducted using daytime line transects with 10 to 30 meter spacing.

Pesticides, Herbicides, and Other Constituents of Concern: The application provides no information about how vegetation and burrowing animals would be controlled on-site. The impact analysis should disclose the anticipated use of herbicides and pesticides, compare the use to current levels on-site, assess the potential for these to affect native species (including all species discussed in this letter and the application), and assess the potential for such materials to migrate off-site via runoff, wind, and animals.

Information about the chemicals which will be used to clean the reflectors should also be included. The impact analysis should include the parameters mentioned above.

California Condor: The Project site lies within the State and Federally endangered and Fully Protected California condor (*Gymnogyps californianus*) range. The application states that the Project would not affect foraging habitat or roost sites. Condors foraged in California Valley following releases in the 1990s (Jesse Grantham, US Fish and Wildlife Service Condor Recovery Program, personal communication). Therefore, California Valley, with its herds of cattle, pronghorn, and elk as carrion sources, should be considered foraging habitat. Condors are likely to resume foraging in this vicinity in the future when their feeding sites are less controlled through the recovery program. Like the BNLL, this species is Fully Protected and "take" must be avoided.

Vernal Pool Branchiopods: The Project should address potential indirect impacts to vernal pool branchiopods off-site. Would the Project change hydrology with the watersheds of vernal pools or other occupied habitats that are off-site? The supplemental application information provided to the CEC predicts that the Project would result in a 36% runoff increase from the site. This runoff increase, and the potential contaminants in the runoff (e.g., vehicle contaminants and herbicides), should be discussed in the context of biological impacts. The effects of storm water flows exiting the detention basins are unclear.

Construction Laydown Area: The construction laydown area is intended to accommodate a fueling station adjacent to the intermittent creek in Section 33. We recommend that this facility be relocated in order to minimize the potential for spills or leakage to adversely affect the adjacent stream, and downstream resources. As noted above, relocating this facility away from that area would have the added advantage of obviating the need for crossings that may require permits, pursuant to Fish and Game Code Section1600 et seq.

We could not locate any discussion about the construction laydown area following construction. The impact analysis should disclose site restoration, planned uses, and ownership of that site following construction.

Storm Water Management: The application indicates that stormwater, which is considered a wastewater stream, will be collected and directed to locations away from the facility. It further indicates that stormwater will be detained in a series of catch basins, swales, and detention basins. However, even though the application references a storm water drainage system, we did not note a plan, schematics or specifications in the application. Although the application characterizes the 50-year, 24-hour storm event as a "low intensity rainfall", such an event could overwhelm the storm water management facilities; the application indicates that such runoff would be subsequently released from the detention basins to "established water courses in the area". Please note that Fish and Game Code Section 5650 prohibits the discharge of specific materials and substances into "Waters of the State," including those which are deleterious to fish and wildlife resources. The Department recommends that the applicant more fully characterize the storm water management system.

Avoidable Wildlife Impacts from Erosion Control Mesh Products: Due to this Project site's extensive wildlife habitat interface, the Department recommends that erosion control and landscaping specifications allow only natural-fiber, biodegradable meshes and coir rolls. "Photodegradable" and other plastic mesh products have been found to persist in the environment, ensnaring and killing terrestrial wildlife. Herpetofauna kills are well-documented (Barton and Kinkead 2005, Walley et al. 2005, Washington State Department of Transportation 2005). Plastic mesh erosion control products would likely cause unanticipated, avoidable impacts and potential "take" of listed species.

Indirect Land Conversion Effects: The impact analysis should explore whether permanently removing one land section from agricultural production would lead to converting another section to agricultural production, which would lead to more indirect effects on plants and wildlife. When assessed cumulatively, the two proposed solar installations in California Valley would remove nine sections from agricultural production. This is a substantial portion of the actively farmed lands in California Valley. If this leads to existing grazing lands being put into crop production, then the Project would further, indirectly, degrade wildlife habitat.

Similar land pressures resulting from conversions to biofuel crops have been demonstrated. Two studies recently found that market pressure to convert croplands and uncultivated areas to biofuel crops results in a net increase in atmospheric carbon due to the initial carbon release from plowing soils and the long-term loss of carbon sequestration provided by plant communities, despite the reduced emissions from using the biofuels (Fargione et al. 2008, Searchinger et al. 2008). Similarly, the proposed solar energy production may not offset the loss of carbon sequestration from displaced grasslands and dryland crops. This should be assessed in terms of cost versus public benefit, where costs are the carbon sequestration losses, wildlife impacts, and other environmental impacts, and the public benefits are reduction of carbon emissions and increased energy supply. In an Environmental Impact Report, this analysis would be in a Statement of Overriding Considerations, which documents why the potentially significant impacts cannot be avoided and how the "identified expected benefits from the Project outweigh the policy of reducing or avoiding significant environmental impacts of the project" (CEQA Guidelines Section 15043).

Species Not Addressed in the Application: The following species are known to occur on-site or nearby in California Valley and would likely be affected by the Project. The applicant's biological studies did not consider impacts to these species. The impact analysis and mitigation should address these species in addition to those already discussed:

Table 1. Additional Species Not Addressed in Applicant's Information

Species	Status*	Notes on Species Presence
short-nosed kangaroo rat	SSC	suitable habitat, species known from vicinity
bald eagle (nesting and wintering)	SE, FP	observed near site February 2008 by DFG
ferruginous hawk (wintering)	WL,	known to hunt on-site
golden eagle (nesting and wintering)	BCC,	known to be on-site
loggerhead shrike (breeding)	SSC,	known to hunt on-site, suitable nesting sites in
mountain plover (wintering)	BCC,	suitable habitat, species known from vicinity
San Joaquin whipsnake	SSC	suitable habitat, species known from vicinity
Kern primrose sphinx moth	FT	host plants (*Camissonia spp.*) likely on-site
coast (California) horned lizard	SSC	suitable habitat, species known from vicinity
Oregon vesper sparrow (wintering)	SSC	suitable habitat, species known from vicinity

*BCC: USFWS Birds of Conservation Concern. SSC: DFG Species of Special Concern. WL: DFG Watch List. FP: DFG Fully Protected. FT: Federal Threatened. FE: Federal Endangered. SE: State Endangered. ST: State Threatened.

Cumulative Biological Impacts: The application makes no statement about cumulative biological impacts. In addition, it considers only "permitted" projects and no other probable future projects, such as other solar power facilities proposed for the area. Further, the analysis does not describe the impacts of any of the projects identified, which makes it impossible to determine if there is a cumulative impact. Cumulative impact analyses should be species and habitat specific and should be quantified. This includes all the species and habitats discussed above and any others which the Project's biological inventories may reveal. CEQA requires that the cumulative impacts analysis identify past, present, and probable future projects which would affect the same resources (CEQA Guidelines Section 15130). The cumulative effects analysis should also identify the potential for increasing the area's greenhouse gas (GHG) emissions as it applies to the proposed Project's construction and operation, including worker's vehicle trips, and potential offsets in order to be consistent with AB 32, which commits to monitoring and reduction of GHG in the State.

Conclusions

In summary, the biological inventory work is incomplete to support a sufficient impact analysis. Inventory work should include complete surveys for BNLL, a botanical inventory, focused San Joaquin antelope squirrel surveys, a spadefoot toad breeding survey, and small mammal trapping to determine which species are present. The impact analysis should be based on complete inventory work and should expand on the other potential impacts discussed in this letter.

Thank you for the opportunity to comment on the Application for Certification. Depending upon the results of the described biological surveys, actual Project configuration, and other details which will be disclosed in the Preliminary Analysis, we may have additional comments and recommendations during the public comment period regarding avoidance, minimization, and mitigation of Project impacts to habitat and special status species. If you have any questions regarding these comments, please contact Dave Hacker, Environmental Scientist, at 3196 Higuera Street, Suite A, San Luis Obispo, California 93401, by telephone at (805) 594-6152, or email at dhacker@dfg.ca.gov.

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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION *For the CARRIZO ENERGY SOLAR FARM* **PROJECT**	**Docket No. 07-AFC-8** **PROOF OF SERVICE** (Revised 2/5/2008)

INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

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DECLARATION OF SERVICE

I, Christina Flores, declare that on March 27, 2008, I deposited copies of the attached Agency Comments – Department of Fish and Game in the United States mail at Sacramento, CA with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

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

[Original Signed in Dockets]

Christina Flores

CULTURAL RESOURCES – TESTIMONY OF MICHAEL K. LERCH, JULIE A. MINOR, AND BEVERLY E. BASTIAN

Staff has reduced the applicant's lead times for submitting documents to the Energy Commission associated with the recommended Conditions of Certification. The revised lead times are in recognition of the applicant's plans to begin construction during summer 2008 if the project is certified. In addition, some minor clarifications have been made to the proposed conditions including: a) in **CUL-6** to recognize the proposed boring under watercourses for installation of the sanitary sewer line; and b) in **CUL-8** to clarify that the project owner's need to obtain the services of an architectural historian would be prior to the dismantling of the towers of the Kramer-to-Victor 115-kV transmission line, and not prior to any ground disturbance related to the project as a whole.

CONDITIONS OF CERTIFICATION

CUL-1 (No change to condition)

Verification:

1. At least 45~~180~~ days prior to the start of ground disturbance, the project owner shall submit the resume for the CRS, and alternate(s) if desired, to the CPM for review and approval.

2. At least 10 days prior to a termination or release of the CRS, or within 10 days after the resignation of a CRS, the project owner shall submit the resume of the proposed new CRS to the CPM for review and approval. At the same time, the project owner shall also provide to the proposed new CRS the AFC and all cultural resources documents, field notes, photographs, and other cultural resources materials generated by the project. If there is no alternate CRS in place to conduct the duties of the CRS, a previously approved monitor may serve in place of a CRS so that construction may continue up to a maximum of three days without a CRS. If cultural resources are discovered then construction will remain halted until there is a CRS or alternate CRS to make a recommendation regarding significance.

3. At least 20~~90~~ days prior to ground disturbance, the CRS shall provide a letter naming anticipated CRMs for the project and stating that the identified CRMs meet the minimum qualifications for cultural resource monitoring required by this Condition. If additional CRMs are obtained during the project, the CRS shall provide additional letters to the CPM identifying the CRMs and attesting to the qualifications of the CRMs, at least five days prior to the CRMs beginning on-site duties.

4. At least 10 days prior to beginning specialist tasks, the resume(s) of any additional technical specialists shall be provided to the CPM for review and approval.

5. At least 10~~120~~ days prior to the start of ground disturbance, the project owner shall confirm in writing to the CPM that the approved CRS will be available for onsite work and is prepared to implement the cultural resources Conditions.

CUL-2 (No change to condition)

Verification:

1. At least 40~~135~~ days prior to the start of ground disturbance, the project owner shall provide the AFC, data responses, and confidential cultural resource documents to the CRS, if needed, and the subject maps and drawings to the CRS and CPM. The CPM will review submittals in consultation with the CRS and approve maps and drawings suitable for cultural resources planning activities.

2. If there are changes to any project-related footprint, revised maps and drawings shall be provided at least 15 days prior to start of ground disturbance for those changes.

3. If project construction is phased, if not previously provided, the project owner shall submit the subject maps and drawings 15 days prior to each phase.

4. On a weekly basis during ground disturbance, a current schedule of anticipated project activity shall be provided to the CRS and CPM by letter, e-mail, or fax.

5. Within five days of identifying changes, the project owner shall provide written notice of any changes to scheduling of construction phase.

CUL-3 (No change to condition)

Verification:

1. At least 30~~90~~ days prior to the start of ground disturbance, the project owner shall submit the subject CRMMP to the CPM for review and approval. Ground disturbance may not commence until the CRMMP is approved, unless specifically approved by the CPM.

2. At least 30 days prior to the start of ground disturbance, a letter shall be provided to the CPM indicating that the project owner agrees to pay curation fees for any materials collected as a result of the archaeological investigations (survey, testing, data recovery).

CUL-6 The project owner shall ensure that the CRS, alternate CRS, or CRMs monitor full time all ground disturbance full time at the project site, along the routes of the linear facilities, and at laydown areas or other ancillary areas, to ensure there are no impacts to undiscovered resources and to ensure that known resources are not impacted in an unanticipated manner. The project owner shall ensure that archaeological monitors observe with particular care the wastewater pipeline trench excavation in the vicinity of site VV2 Site 23, particularly the boring under the watercourses in two locations, and the foundation excavations of steel monopoles on Segment 1 in the vicinity of known significant site CA-SBR-72 and along Segment 1 where it runs along the river terrace.

Full-time archaeological monitoring for this project shall be the archaeological monitoring of all earth-moving activities on the construction site or along the linear facility routes for as long as the activities are ongoing. Full-time archaeological monitoring shall require at least one monitor per excavation area where machines are actively moving earth. If an excavation area is too large for one monitor to effectively observe the earth-moving, one or more additional monitors shall be retained to observe the area.

In the event that the CRS believes that the current level of monitoring is not appropriate in certain locations, a letter or e-mail detailing the justification for changing the level of monitoring shall be provided to the CPM for review and approval prior to any change in the level of monitoring.

The research design in the CRMMP shall govern the collection, treatment, retention/disposal, and curation of any archaeological materials encountered.

On forms provided by the CPM, CRMs shall keep a daily log of any monitoring and other cultural resources activities and any instances of non-compliance with the Conditions and/or applicable LORS. Copies of the daily monitoring logs shall be provided by the CRS to the CPM, if requested by the CPM. From these logs, the CRS shall compile a monthly monitoring summary report to be included in the MCR. If there are no monitoring activities, the summary report shall specify why monitoring has been suspended. The CRS or alternate CRS shall report daily to the CPM on the status of cultural resources-related activities at the construction site, unless reducing or ending daily reporting is requested by the CRS and approved by the CPM.

The CRS, at his or her discretion, or at the request of the CPM, may informally discuss cultural resource monitoring and mitigation activities with Energy Commission technical staff (Staff).

Cultural resources monitoring activities are the responsibility of the CRS. Any interference with monitoring activities, removal of a monitor from duties assigned by the CRS, or direction to a monitor to relocate monitoring activities by anyone other than the CRS shall be considered non-compliance with these Conditions.

Upon becoming aware of any incidents of non-compliance with the Conditions and/or applicable LORS, the CRS and/or the project owner shall notify the CPM by telephone or e-mail within 24 hours. The CRS shall also recommend corrective action to resolve the problem or achieve compliance with the Conditions. When the issue is resolved, the CRS shall write a report describing the issue, the resolution of the issue, and the effectiveness of the resolution measures. This report shall be provided in the next MCR for the review of the CPM.

The project owner shall obtain a Native American monitor to monitor ground disturbance in any areas where Native American artifacts are discovered. The project owner shall ensure that a Native American monitor observes the wastewater pipeline trench excavation where the pipeline runs along the Mojave River terrace in the vicinity of VV2 Site 23 and the foundation excavations of steel monopoles on Segment 1 in the vicinity of known significant site CA-SBR-72 and along Segment 1 where it runs along the river terrace. Contact lists of concerned Native Americans and guidelines for monitoring shall be obtained from the Native American Heritage Commission. Preference in selecting a monitor shall be given to Native Americans with traditional ties to the area that shall be monitored. If efforts to obtain the services of a qualified Native American monitor are unsuccessful, the project owner shall immediately inform the CPM. The CPM will either identify potential monitors or will allow ground disturbance to proceed without a Native American monitor.

During and after construction, the project owner shall fulfill the requests received from Native American tribes or groups to be notified if artifacts are found and to receive copies of all archaeological records and reports resulting from the project.

1. At least 30 days prior to the start of preconstruction site mobilization, the CPM will provide to the CRS an electronic copy of a form to be used as a daily monitoring log. While monitoring is on-going, the project owner shall include in each MCR a copy of the monthly summary report of cultural resources-related monitoring prepared by the CRS.

2. Daily, as long as no cultural resources are found, the CRS shall provide a statement that "no cultural resources over 50 years of age were discovered" to the CPM as an e-mail, or in some other form acceptable to

the CPM. If the CRS concludes that daily reporting is no longer necessary, a letter or e-mail providing a detailed justification for the decision to reduce or end daily reporting shall be provided to the CPM for review and approval at least 24 hours prior to reducing or ending daily reporting.

3. At least 24 hours prior to implementing a proposed change in monitoring level, documentation justifying the change shall be submitted to the CPM for review and approval.

4. No later than 30 days following the discovery of any Native American cultural materials, the project owner shall submit to the CPM copies of letters of transmittal of requested information to the Chairperson(s) of those Native American tribes or groups who requested it. Additionally, the project owner shall submit to the CPM copies of letters of transmittal for all subsequent responses to Native American requests for notification, consultation, and reports and records.

CUL-8 Prior to the dismantling of the towers of the Kramer-to-Victor 115-kV transmission line, the project owner shall obtain the services of an architectural historian. The project owner shall provide the CPM with the name and resume of the architectural historian. No dismantling of the towers ~~ground disturbance~~ shall occur prior to CPM approval of the architectural historian, unless specifically approved by the CPM.

The resume for the architectural historian shall include names and telephone numbers of contacts familiar with the architectural historian's work and all information needed to demonstrate that the architectural historian has the following qualifications:

1. meets the Secretary of Interior's Professional Standards for architectural history;

2. has at least three years experience in recording twentieth-century industrial structures;

3. has completed at least one recordation project within the past five years involving coordination with the National Park Service's Heritage Documentation Program (HDP);

Verification: (no changes)

NOISE – TESTIMONY OF STEVE BAKER

Condition of Certification **NOISE-4** is being revised to clarify that staff's recommended project noise restriction is applicable only to what would be contributed from the project, and is not the combination of project and ambient noise effects.

NOISE RESTRICTIONS

NOISE-4 The project design and implementation shall include noise mitigation measures adequate to ensure that operation of the project will not cause noise levels due solely to plant operation to exceed an average of 39 dBA L_{eq} measured at monitoring location ML2, the residence one mile west of the project site. No new pure tone components may be caused by the project. No single piece of equipment shall be allowed to stand out as a source of noise that draws legitimate complaints.

The measurement of power plant noise for the purposes of demonstrating compliance with this condition of certification may alternatively be made at a location, acceptable to the CPM, closer to the plant (for example, 400 feet from the plant boundary) and this measured level then mathematically extrapolated to determine the plant noise contribution at the affected residence. The character of the plant noise shall be evaluated at the affected residential locations to determine the presence of pure tones or other dominant sources of plant noise.

A. When the project first achieves a sustained output of 80% or greater of rated capacity, the project owner shall conduct a community noise survey at monitoring location ML2, or at closer locations acceptable to the CPM. This survey shall be performed during power plant operation and shall also include the measurement of one-third octave band sound pressure levels to determine whether new pure tone noise components have been caused by the project.

B. If the results from the noise survey indicate that the power plant average noise level (Leq) at ML2 exceeds the above value, mitigation measures shall be implemented to reduce noise to a level of compliance with this limit.

C. If the results from the noise survey indicate that pure tones are present, mitigation measures shall be implemented to eliminate those pure tones.

Verification: (No changes).

TRAFFIC AND TRANSPORTATION – TESTIMONY OF JAMES ADAMS

Staff is proposing the following Condition of Certification **TRANS-5**, and reference to this Condition of Certification within its analysis, to provide the Energy Commission with verification before initiating project construction that the Federal Aviation Administration has determined the Heat Recovery Steam Generators would not pose a hazard to navigable air space related to aircraft operations of the Southern California Logistics Airport.

Operation Impacts and Mitigation

Airport Operations (page 4.10-9)

As noted earlier, the closest major airport is Southern California Logistics Airport (SCLA) which is 1.5 miles southwest of the Victorville 2 project site. The existing flight pattern does bring aircraft at low altitude (1,500 feet above ground level) near the northern boundary of the project site. Aircraft approaching from the northeast on landing approach to RY-17 could fly over the northwest corner of the project site over the solar field. Almost all of the aircraft using the SCLA are two or four engine cargo jets and staff has been advised that most of the small single engine aircraft (eight) will transfer to the Apple Valley Airport (SCLA 2007a). Those that remain would not be impacted by the projects operation (see below for discussion of Condition of Certification **TRANS-3**).

The FAA requires that anyone proposing to construct or alter any navigable airspace within 20,000 lineal feet of a public use (or military) airport which exceeds a 100:1 vertical surface from any point on the runway of an airport, with at least one runway more than 3,200 feet long, must file a 7460-1 form (Notice of Construction/Alteration of Navigable Airspace) with the FAA (FAA 2007) for determination of a potential aviation hazard. The Victorville 2 site is about 8,000 lineal feet from the end of RY 17 of the SCLA, which has two runways that exceed 3,200 feet long. Therefore, the applicant must file the 7460-1 form. Using the 100:1 vertical ratio designated by the FAA, staff has concluded that there are three project structures that would exceed the 80 feet AGL threshold: 1) the two heat recovery steam generator stacks (HRSGs) that would be 145 feet high; and 2) the construction crane that would be 205 feet high. The ten cell cooling tower would be 62 feet high (Aspen 2007, Table 1, pg. 2) and the solar array would be 29 feet high, and neither would exceed the FAA threshold.

The applicant has filed, and staff has reviewed, five 7460-1 forms that identify the HRSGs, construction crane, cooling tower, and solar array. The FAA has released a Determination of No Hazard to Air Navigation for the cooling tower, construction crane and the solar array, but has not made a determination regarding the HRSGs. Staff will need to review these additional determinations in

order to have verification that the Victorville 2 project is consistent with the FAA LOR (Title 14, CFR, Part 77.13) identified in **Traffic and Transportation Table 1**. Staff has proposed Condition of Certification **TRANS-5** that would require the project owner to provide verification to the Energy Commission prior to initiating construction that the FAA has determined the HRSGs would not pose a hazard to navigable air space related to aircraft operations of the SCLA.

PROPOSED CONDITIONS OF CERTIFICATION

TRANS-5 Prior to initiating construction of the project, the project owner shall provide verification to the CPM that the FAA has determined the HRSGs would not pose a hazard to navigable air space related to aircraft operations of the SCLA.

Verification: At least 30 days prior to initiating construction of the project, the project owner shall provide verification to the CPM that the FAA has determined the HRSGs would not pose a hazard to navigable air space related to aircraft operations of the SCLA.

VISUAL RESOURCES – TESTIMONY OF DAVID FLORES

PROPOSED CONDITIONS OF CERTIFICATION

Surface Treatment of Project Structures and Buildings

VIS-1 The project owner shall color and finish the surfaces of all project structures and buildings visible to the public to ensure that they: (1) minimize visual intrusion and contrast by blending with the landscape; (2) minimize glare; and (3) comply with local design policies and ordinances. The transmission line conductors shall be non-specular and non-reflective, and the insulators shall be non-reflective and non-refractive.

The project owner shall submit a Surface Treatment Plan to the Compliance Project Manager (CPM) for review and approval. The treatment plan shall include:

A. A description of the overall rationale for the proposed surface treatment, including the selection of the proposed color(s) and finishes;

B. A list of each major project structure, building, tank, pipe, and wall; transmission line towers and/or poles; and fencing, specifying the color(s) and finish proposed for each. Colors must be identified by vendor, name, and number; or according to a universal designation system;

C. One set of color brochures or color chips showing each proposed color and finish;

~~D. One set of 11" x 17" color photo simulations at life size scale of the proposed treatment for project structures, including structures treated during manufacture, from the Key Observation Points;~~

E. A specific schedule for completing the treatment; and

F. A procedure to ensure proper treatment maintenance for the life of the project.

The project owner shall not request vendor treatment of any buildings or structures during their manufacture, or perform final field treatment on any buildings or structures, until the project owner has received Surface Treatment Plan approval by the CPM.

Verification: (no changes)

ALTERNATIVES – TESTIMONY OF JOHN KESSLER

Staff proposes the following change to reflect that compensatory lands for mitigation of lost habitat are not limited to, or required to be in the same county as the project.

Potential Significant Environmental Impacts – Page 6-5

- **Biological Resources:** Staff recognizes that the construction of the Victorville 2 project may cause permanent, temporary, and possible cumulative impacts to state and federally listed animal species (i.e., Desert tortoise, Mojave ground squirrel). Impacts to these species could be mitigated to less than significant levels by the purchase of suitable offsite compensatory credits ~~in San Bernardino County~~ and through the implementation of avoidance mitigation measures presented in the **BIOLOGICAL RESOURCES** section.

Victorville 2/Hearings/Addendum to FSA (3-27-08)

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION FOR THE VICTORVILLE 2 *HYBRID POWER PROJECT*	**Docket No. 07-AFC-1** **PROOF OF SERVICE** ***(Revised 9/6/07)***

INSTRUCTIONS: All parties shall 1) send an original signed document plus 12 copies OR 2) mail one original signed copy AND e-mail the document to the web address below, AND 3) all parties shall also send a printed OR electronic copy of the documents that shall include a proof of service declaration to each of the individuals on the proof of service:

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Attn: Docket No. 07-AFC-1
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DECLARATION OF SERVICE

I, **Chester Hong**, declare that on **March 28, 2008,** I deposited copies of the attached:

ADDITIONAL TESTIMONY AND ADDENDUM TO FINAL STAFF ASSESSMENT FILED BY ENERGY COMMISSION STAFF

AND

SUPPLEMENT TO STAFF'S PREHEARING CONFERENCE STATEMENT

in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

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

CHESTER HONG