STATE OF CALIFORNIA

Energy Resources Conservation
And Development Commission

DOCKET
07-AFC-1
DATE MAR 21 2008
RECD. MAR 21 2008

In the Matter of:	)	Docket No. 07-AFC-1
	)	
Application for Certification for the	)	
Victorville 2 Hybrid Power Project	)	March 21, 2008
	)	

Staff's Prehearing Conference Statement

On March 13, 2008 the Committee overseeing the application for certification for the Victorville 2 Hybrid Power Project issued a Notice of Prehearing Conference and Evidentiary Hearing. In the Notice, the Committee directed the parties to file Prehearing Conference Statements addressing eight issues no later than March 28, 2008. This is staff's Prehearing Conference Statement.

1) Complete Topic Areas: All topic areas are complete and ready to proceed to evidentiary hearings.

2) Incomplete Topic Areas: There are no incomplete topic areas.

3) Disputed Areas: The applicant disputes some of the staff's conclusions and recommendations regarding biological resources. Specifically, staff, in consultation with the California Department of Fish and Game (CDFG), has identified mitigation measures, many of which are those that would be required were CDFG to issue an Incidental Take Permit for the project. These include a proposed a habitat compensation ratio and requirements for the suitability of the habitat compensation land to which the applicant objects. In addition, there may be issues associated with the requirements for the desert tortoise translocation plan and need for rare plant spring surveys that may be contested. Staff will be able to identify the disputed areas in more detail at the Prehearing Conference, after we have thoroughly reviewed the applicant's testimony. Staff cannot ascertain whether there are disputes between staff and other parties, because they have not yet filed testimony.

Proof of Service (Revised 9/6/07) filed with original.
Mailed from Sacramento on 3/21/08.
C. Hong

4) Identity of Witnesses, etc.: The staff witnesses sponsoring testimony, a summary of that testimony, and the qualifications of those witnesses are presented in the Final Staff Assessment (FSA), filed March 19, 2008. Staff plans to present direct testimony in the area of Biological Resources. This testimony will require no more than 15 minutes. In addition, staff and the Mojave Desert Air Quality Management District will present the Final Determination of Compliance. Staff reserves the right to request time for direct testimony in other areas, depending on the testimony of other parties, their Prehearing Conference Statements, or their comments at the Prehearing Conference.

   Staff has been working closely with staff of the California Department of Fish and Game (CDFG) since the inception of this project and more recently with its management, and they have indicated that several individuals from CDFG will appear at the hearing to testify in support of the staff's analysis and mitigation recommendations for biological resources. Those appearing will include:

   - Bruce Kinney, Deputy Regional Manager, Inland Deserts Region,
   - Denyse Racine, Senior Environmental Scientist, Inland Deserts Region,
   - Tonya Moore, Senior Environmental Scientist, Inland Deserts Region, and
   - Scott Flint, Acting Branch Chief, Habitat Conservation Branch, CDFG Headquarters.

   All will be available to answer any questions from the Committee, other parties, and members of the public.

5) Cross Examination Estimates: Staff estimates that it will need one hour to conduct cross examination of the applicant in the area of biological resources. Our questions will focus on a variety of issues associated with biological resources, including but not limited to, the appropriate habitat compensation ratio and habitat requirements for the land used as compensation. In addition, staff may conduct cross-examination on the requirements for the desert tortoise translocation plan and need for rare plant spring surveys. Staff reserves the right to request cross-examination in other areas, depending on the testimony filed by parties, their Prehearing Conference Statements, and the comments at the Prehearing Conference.

6) Exhibit List: Staff recommends that the FSA be entered as a single exhibit into the record. The FSA addresses all technical areas analyzed as part of staff's review of the project. The declarations of all staff who prepared the FSA are included in that document. The FSA will be Exhibit 200.

   In addition, staff offers the attached declaration of Dr. Philip Leitner, a professor of biology at St. Mary's College of California and an expert on Mojave ground squirrel habitat. In the biological resources section of the FSA -- the only area that is disputed between staff and the applicant -- staff has included a number of references to personal communications with various biological resources experts. Most of those references are to conversations with employees of CDFG, who will be present at the hearing. However, Dr. Leitner is not able to attend the hearing, and as the statements he made to staff are relevant to one of the contested issues, staff is including his declaration so that the Committee and the parties are apprised of the exact nature of the information he provided to us. His declaration, which includes his resume, should be marked as Exhibit 201.

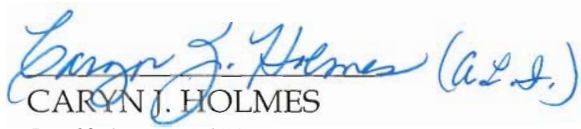
   Finally, staff will offer, in conjunction with the Mojave Desert Air Quality Management District, the Final Determination of Compliance, dated January 10, 2008.

7) Schedule Proposal: Assuming that the transcript will be available seven days after the hearing, staff proposes that opening briefs be filed April 18, 2008, and that reply briefs be filed April 25, 2008.

8) Conditions of Certification: Staff believes that the Conditions of Certification identified in the Final Staff Assessment are complete, enforceable, and consistent with the evidence that will be presented at the hearings.

Date: March 21, 2008

Respectfully submitted,



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Declaration of Dr. Philip Leitner
Victorville 2 Hybrid Power Project

Docket 07-AFC-1

I, Dr. Philip Leitner, declare as follows:

1) I have been a professor of biology at St. Mary's College of California since 1962.

2) A copy of my resume, focusing on my recent work, is attached.

3) Since 1979, I have studies all aspects of the distribution, abundance, and habitat requirements of the Mohave ground squirrel.

4) Since 1995, I have made 7 professional presentations on Mohave ground squirrel, and prepared 15 papers and reports on the Mohave ground squirrel. I have also been an environmental consultant on more than 25 projects, on more than 10 of which I was responsible for conducting field surveys of Mohave ground squirrel.

5) Since 2000, I have been a member of the Mohave Ground Squirrel Technical Advisory Group established by the California Department of Fish and Game. The Committee's responsibilities include gathering information on life history, habitat, and distribution, identifying research needs and management considerations, evaluating appropriate mitigation measures and habitat compensation land for Mohave ground squirrel.

6) On March 11, 2008, staff of the California Energy Commission contacted me to discuss the suitability of the land proposed by the applicant for the Victorville 2 Hybrid Power Project for compensation required as a result of the project's impacts to Mohave ground squirrel.

7) I informed staff that there is no evidence that Mohave ground squirrels occur on the Kern County land proposed by the Victorville 2 Hybrid Power Project applicant. I further informed staff that although there was a 1994 occurrence (CNDDB EO# 296 in CDFG 2007a) on the north slope of the Rosamond Hills ~5 miles SW of the proposed mitigation lands, there have been no subsequent records in the western portion of Edwards Air Force Base despite active recent trapping efforts. Therefore, there is no current evidence of any Mohave ground squirrel population in the area.

8) As a result, sufficient evidence that conservation of this area would benefit Mohave ground squirrel is lacking.

9) I recommended that the applicant investigate land purchases in one of two areas which are known to support both desert tortoise and Mohave ground squirrel: (1)

near Highway 395, north of Kramer Junction or (2) in the eastern expansion area of the Desert Tortoise Natural Area located northeast of California City and west of Highway 395. Based on information from Commission staff that 1315.5 acres is needed for compensation, there is sufficient private land acreage available in both areas. The area around the Desert Tortoise Natural Area is mostly privately owned, especially to the east, and it is designated as an area for acquisition for conservation purposes by the Desert Tortoise Preserve Committee, which manages the Desert Tortoise Natural Area. The area north of Kramer Junction is a checker board of private and BLM parcels, with at least eight or nine sections designated as private ownership on a BLM map.

10) 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: Mar. 18, 2008 Signed: Philip Leitner

At: Orinda, California

PHILIP LEITNER
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Orinda, CA 94563
(925) 253-8400
E-mail: pleitner@pacbell.net

Consultant in Wildlife Biology

Professional Interests

- Ecology and environmental physiology of birds and mammals
- Field surveys of terrestrial biological resources
- Environmental impact assessment under CEQA and NEPA
- Mitigation planning to meet requirements of CEQA and NEPA
- Biological studies of threatened and endangered wildlife

Education

B.S.	Zoology	1958	Saint Mary's College of California
M.A.	Zoology	1960	University of California, Los Angeles
Ph.D.	Zoology	1961	University of California, Los Angeles

Professional Experience: Teaching and Academic Administration

1962-present Professor of Biology, Saint Mary's College of California.

1969-1985 Chairperson, Biology Department, Saint Mary's College of California.

1985-1992 Dean, School of Science, Saint Mary's College of California.

1992-1994 Assistant to Academic Vice President, Saint Mary's College of California.

2002-present Adjunct Professor, California State University, Stanislaus

Professional Experience: Environmental Consulting

2007-08 Subcontractor to Tetra Tech, Inc. Prepared report on current status of the Mohave ground squirrel for Edwards Air Force Base. Assembled and analyzed database of all available records for the period 1998-2007.

2007 Project Director for Endangered Species Recovery Program, California State University, Stanislaus. Conducted field surveys to document the status of the Mohave ground squirrel at Red Rock Canyon State Park.

2006-07 Project Director for Endangered Species Recovery Program, California State University, Stanislaus. Directed intensive surveys for the Mohave ground squirrel on the Western Expansion Area of Fort Irwin.

2003 Subcontractor to TYBRIN Corporation. Carried out field surveys for Mohave ground squirrel on Edwards Air Force Base, California.

2002-2005 Contractor to Desert Tortoise Preserve Committee. Conducted field research to determine distribution, abundance, and habitat requirements of state-listed Mohave ground squirrel at several sites in Kern and San Bernardino counties.

2002-2004 Subcontractor to Anteon Corporation. Responsible for field surveys of the El Mirage Off-Highway Vehicle Open Area to determine the status of Mohave ground squirrel. Studies conducted on behalf of US Department of Interior Bureau of Land Management.

2001-present Project Director, Mohave Ground Squirrel Research and Monitoring Program. Managing multi-year research effort for Endangered Species Recovery Program, California State University, Stanislaus. Studies designed to support comprehensive conservation strategy for this state-listed species.

2001 & 2006 Contractor to Coso Operating Company, LLC. Responsible for monitoring study of Mohave ground squirrel populations in satisfaction of California Energy Commission mitigation requirements.

2001 Conducted protocol surveys for state-listed Mohave ground squirrel on behalf of Endangered Species Recovery Program for proposed Caltrans construction project along 10 miles of U.S. Highway 395 in Inyo County.

2001 Subcontractor to Environmental Science Associates. Carried out habitat assessment for Mohave ground squirrel on 1200-acre proposed expansion area for Lancaster Waste Water Treatment Plant, Los Angeles County.

2001 Subcontractor to Environmental Science Associates. Participated in protocol-level salt marsh harvest mouse survey along proposed transportation corridor at Oakland International Airport, Alameda County.

2000-2001 Subcontractor to Jones & Stokes Associates in evaluating the suitability of mitigation sites for the San Francisco International Airport Airfield Reconfiguration Project. Analyzed potential sites throughout the San Francisco Bay Area for salt marsh harvest mouse and other special status mammals.

2000-2001 Contractor to Conservation Partners, Inc. Responsible for field reconnaissance and evaluation of habitat potential for special status wildlife species on 29

public land parcels in Sonoma, Lake, and Mendocino counties. Work conducted in support of Bureau of Land Management Cache Creek Land Exchange, Phase III.

2000 Subcontractor to LSA Associates. Carried out protocol trapping surveys for Mohave ground squirrel in connection with proposed Caltrans highway improvement project on State Route 138 in San Bernardino County.

2000 Subcontractor to Monk & Associates. Conducted extensive trapping and translocation of endangered salt marsh harvest mice on Caltrans construction site at Sonoma Creek Bridge, Sonoma County.

2000 Contractor to Wildlife Research Associates. Conducted surveys for bat colonies in 650 abandoned housing units at Hamilton Field, Marin County.

1999 Subcontractor to Environmental Science Associates. Carried out habitat assessment for San Joaquin kit fox on proposed State Route 4 Bypass route, Contra Costa County.

1998-2001 Contractor to Desert Tortoise Preserve Committee with funding from California Energy Commission. Conducted field research to determine distribution, abundance, and habitat requirements of state-listed Mohave ground squirrel in Inyo, Kern, and San Bernardino counties.

1998 Subcontractor responsible for Mohave ground squirrel field surveys along proposed route of 32-mile natural gas pipeline to supply High Desert Power Plant in San Bernardino County.

1997-1999 Subcontractor to Environmental Science Associates. Carried out live-trapping study of the endangered salt marsh harvest mouse in restored tidal marsh environment at San Leandro Shoreline, Alameda County.

1997 Consultant to CalEnergy Exploration Company. Prepared technical report on wildlife resources of proposed Telephone Flat Geothermal Project area, Siskiyou and Modoc counties. Analyzed existing data sources and conducted reconnaissance-level field surveys to produce a report used in preparation of the project EIS/EIR.

1996-1998 Subcontractor to MHA Environmental Consulting. Prepared wildlife resource sections of EIS/EIR for proposed Fourmile Hill Geothermal Project, Siskiyou and Modoc counties. Conducted analysis of impacts to sensitive wildlife resources and designed appropriate mitigation measures.

1988-1996 Chief Scientist for Coso Grazing Exclosure Monitoring Program, Inyo County. Designed and conducted long-term ecological study to assess the effects of a 43,500-acre livestock grazing exclosure on populations of the threatened Mohave ground squirrel.

Permits

U.S. Fish and Wildlife Service

Federal Fish and Wildlife Permit No. TE820805-2 (Amendment) for Salt Marsh Harvest Mouse (*Reithrodontomys raviventris* – both northern and southern subspecies)

California Department of Fish and Game

Memorandum of Understanding regarding studies of the Salt Marsh Harvest Mouse (*Reithrodontomys raviventris*).

Memorandum of Understanding regarding studies of the Mohave Ground Squirrel (*Spermophilus mohavensis*). Effective Mar. 31, 2000; formally amended on Mar. 11, 2005 and extended to Oct. 31, 2009.

Recent Papers and Reports

Leitner, Philip. 2008. Mohave ground squirrel surveys at Red Rock Canyon State Park, California. Prepared for California Department of Parks and Recreation, Tehachapi District, Lancaster, CA. Endangered Species Recovery Program, California State University, Stanislaus, Fresno, CA. 26 pp. + appendices.

Leitner, Philip. 2008. Exploratory trapping surveys for the Mohave ground squirrel in three regions of the western Mojave Desert 2002. Prepared for California Department of Fish and Game, Habitat Conservation Planning Branch, Sacramento, CA and Eastern Sierra and Inland Deserts Region, Ontario, CA. Endangered Species Recovery Program, California State University, Stanislaus, Fresno, CA.

Leitner, Philip. 2008. Mohave ground squirrel trapping surveys in the Spangler Hills OHV Open Area and the Western Rand Mountains ACEC. Prepared for California Department of Fish and Game, Habitat Conservation Planning Branch, Sacramento, CA and Eastern Sierra and Inland Deserts Region, Ontario, CA. Endangered Species Recovery Program, California State University, Stanislaus, Fresno, CA. 20 pp.

Leitner, Philip. 2008. Monitoring Mohave ground squirrel populations in the Coso region, 2002-2005. Prepared for California Department of Fish and Game, Habitat Conservation Planning Branch, Sacramento, CA and Eastern Sierra and Inland Deserts Region, Ontario, CA. Endangered Species Recovery Program, California State University, Stanislaus, Fresno, CA. 20 pp + appendices.

Leitner, Philip. 2007. Mohave ground squirrel survey, El Mirage Off-Highway Vehicle Open Area, 2002 and 2004. Prepared for USDI Bureau of Land Management, California Desert District, Moreno Valley, CA. 17 pp.

Leitner, Philip. 2007. Mohave ground squirrel surveys at the Western Expansion Area of the National Training Center and Fort Irwin, California. Prepared for ITS Corporation, San Bernardino, CA. Endangered Species Recovery Program, California State University, Stanislaus, Fresno, CA. 26 pp. + appendices.

Leitner, Philip. 2006. Mohave ground squirrel monitoring, Coso geothermal power generation facility, 2006. Prepared for Coso Operating Company, LLC, Inyokern, CA. 11 pp. + appendix.

Harris, John H. and Philip Leitner. 2005. Long distance movements of juvenile Mohave ground squirrels, *Spermophilus mohavensis*. Southwestern Naturalist, 50:188-196.

Leitner, Philip. 2005. Mohave ground squirrel trapping survey in the region between U.S. Highway 395 and the Mojave River, San Bernardino County, 2004. Prepared for Desert Tortoise Preserve Committee, Inc., Riverside, CA. 16 pp.

Leitner, Philip. 2005. Trapping survey for the Mohave ground squirrel in the DTNA Eastern Expansion Area, 2003. Prepared for Desert Tortoise Preserve Committee, Inc., Riverside, CA. 19 pp.

Harris, John H. and Philip Leitner. 2004. Home-range size and use of space by adult Mohave ground squirrels, *Spermophilus mohavensis*. Journal of Mammalogy, 85:517-523.

Leitner, Philip. 2003. Inventory for presence of Mohave ground squirrels at Edwards AFB, California. Prepared for TYBRIN Corporation, Fort Walton Beach, FL. 13 pp. plus appendices.

Leitner, Philip. 2001. California Energy Commission and Desert Tortoise Preserve Committee Mohave ground squirrel study. Final report 1998-2000. Prepared for Desert Tortoise Preserve Committee, Inc., Riverside, CA. 33 pp. + appendix.

Leitner, Philip. 2001. Report on Mohave ground squirrel monitoring, Coso geothermal power generation facility, 2001. Prepared for Coso Operating Company, LLC, Inyokern, CA. 16 pp. + appendix.

Leitner, Philip and Barbara Malloch Leitner. 1998. Coso Grazing Exclosure Monitoring Study. Mohave ground squirrel study, Coso Known Geothermal Resource Area, major findings, 1988-1996. Final Report. Prepared for CalEnergy Company, Inc., Ridgecrest, CA. 42 pp. plus appendix.

Leitner, Philip. 1998. San Leandro Shoreline Marshlands Enhancement Project. Salt marsh harvest mouse trapping, August 20-September 8, 1998. Prepared for Environmental Science Associates, Inc., San Francisco, CA. 15 pp. plus appendix.

Leitner, Philip and Barbara Malloch Leitner. 1997. Biological resources of the Telephone Flat Geothermal Project study area. Prepared for CalEnergy Exploration Company, Omaha, NE. 59 pp. plus maps and appendixes.

Professional Presentations

Bell, Kayce C., Philip Leitner, and Marjorie D. Matocq. Population structure and genetic diversity of the Mohave ground squirrel, *Spermophilus mohavensis*. Presented at the Annual Meeting of the American Society of Mammalogists, Springfield, MO, June 15-19, 2005.

Bell, Kayce C., Philip Leitner, and Marjorie D. Matocq. Phylogeographic analysis of the Mohave ground squirrel (*Spermophilus mohavensis*). Presented at the Annual Meeting of the American Society of Mammalogists, Arcata, CA, June 12-16, 2004.

Leitner, Philip and John R. Gustafson. Current status of the Mohave ground squirrel (*Spermophilus mohavensis*). Presented at the 2001 Annual Conference of The Wildlife Society Western Section, Sacramento, California, Feb. 22-24, 2001.

Harris, John H. and Philip Leitner. Movements and home range of adult Mohave ground squirrels (*Spermophilus mohavensis*). Presented at the Annual Meeting of the American Society of Mammalogists, Seattle, WA, June 20-24, 1999.

Harris, John H., Philip Leitner, and Alison Tschohl. Juvenile dispersal in Mohave ground squirrels. Presented at the 1998 Annual Conference of The Wildlife Society Western Section, Sacramento, California, Feb. 11-14, 1998.

Leitner, Philip and Barbara Malloch Leitner. Extinction and persistence of local populations of the Mohave ground squirrel during severe drought. Presented at the Second Annual Conference of The Wildlife Society, Portland, Oregon, Sept. 12-17, 1995.

Leitner, Philip. Rainfall and reproduction in the Mohave ground squirrel. Presented at the 1995 Annual Conference of The Wildlife Society Western Section, Rohnert Park, California, Feb. 1-4, 1995.

Professional Societies

American Association for the Advancement of Science
American Society of Mammalogists
Ecological Society of America
Society for Conservation Biology
The Wildlife Society

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:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-AFC-1
1516 Ninth Street, MS-4
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DECLARATION OF SERVICE

I, **Chester Hong**, declare that on **March 21, 2008**, I deposited copies of the attached **"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
CHESTER HONG