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STAFF'S SUPPLEMENTAL TESTIMONY COVERING LAND USE, BIOLOGICAL RESOURCES AND SOIL AND WATER

MODIFICATION TO WILLOW ROCK COC LAND-1

In its Opening Testimony and Evidence, the applicant raised an issue with COC **LAND-1**, which requires the applicant to obtain permits from Kern County for use of any temporary laydown and parking areas, and for construction of the potential permanent architectural berm for the project (TN 265170). Upon further evaluation of the applicant's position and review of detail project site maps, staff concurs that the CEC retains jurisdiction over the laydown and parking areas P1, P2 N, and P2 S, as well as the architectural berm located in area P1. If the project is approved, the CEC's certification would authorize the use of these areas for laydown, parking, and berm construction. Kern County would retain jurisdiction over the offsite temporary laydown or parking area referred to as VH which is not part of the project site and some distance away.

The CEC has the exclusive authority to certify all sites and thermal powerplants, defined as "any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities *appurtenant thereto*." (Emphasis added, Pub. Resources Code, §§ 25500 and 25120.)

As indicated in the Supplemental Application for Certification, Figure 5.0-1: *Project Defined Areas*, the laydown and parking areas P1, P2 N, and P2 S are situated within the project boundary and are directly adjacent to the WRESC portion of the project site. Furthermore, the architectural berm is considered a permanent structure. In contrast, the laydown or parking area VH is located outside the project boundary, to the west across CA-14, and is intended for temporary use.

Therefore, staff accepts the applicant's proposed changes to COC LAND -1 in-part, as it relates to the laydown and parking areas P1, P2 N, and P2 S. Staff recommends amending COC **LAND-1** as follows:

LAND-1 Prior to the commencement of construction, the project owner shall provide the Kern County Planning and Natural Resources Department with the location of all properties accepting excavated rock from the project in unincorporated Kern County, including quantity of rock to be accepted. All appropriate permits shall be obtained for the locations identified to stockpile or otherwise utilize the excavated rock.

Prior to the commencement of construction, the project owner shall obtain any necessary permits from the Kern County Planning and Natural Resources

Department, or other relevant departments, for development of temporary laydown and parking areas **referred to as VH. The project owner shall pay Kern County fees for review and comment and demonstrate compliance with requirements for development of the laydown and parking areas referred to as P1, P2 N, and P2 S.**

The project owner shall ensure that local regulations are complied with during construction, operation, and restoration of laydown and parking areas.

Verification: At least 30 days prior to development of any temporary laydown and parking areas, the project owner shall provide to the CPM the required approved permits from **for the temporary laydown or parking area VH and provide documentation showing payment of Kern County fees for review and comment of the laydown and parking areas P1, P2 N, and P2 S and demonstrating compliance with requirements of** the Kern County Planning and Natural Resources Department, or any other relevant departments.

On page 5.8-17 of the FSA's Land Use section staff stated:

"With removal of the potential architectural berm comprised from excavated materials, as recommended by the Kern County Planning and Natural Resources Department due to potential flooding and drainage issues (KCPNRD 2024r), and approval of the hydrostatic compensation reservoir berm design by the Division of Safety of Dams (DSOD) (as required by Conditions of Certification WATER-6 and WATER-7), the proposed use would not be detrimental to the health, safety, and welfare of the public or to the property and residents in the vicinity."

This statement implies that the berm is not a potential option, and the berm would result in offsite flooding, however neither are the case.

As staff noted in the Water Resources section of the FSA on page 5.16-10, the impact of on or off-site flooding due to surface water runoff from construction activities would be addressed by the Drainage, Erosion, and Sedimentation Control Plan (DESCP) prepared per COC WATER-1. During operations the onsite stormwater runoff would drain internally into a retention basin and offsite stormwater runoff diverted around the facility would be further addressed by the project DESCP prepared per COC WATER-1.

With implementation of proposed mitigation, the project would not be expected to cause on- or off-site flooding due to surface water runoff during construction or operation. Thus, with or without the berm, the project is not expected to result in off-site flooding, as detailed in the Water Resources analysis.

The paragraph on page 5.8-17 of the FSA's Land Use section should reflect this and be changed to read:

"With approval of the hydrostatic compensation reservoir berm design by the Division of Safety of Dams (DSOD) (as required by Conditions of Certification WATER-6 and WATER-7), the proposed use would not be detrimental to the health, safety, and welfare of the public or to the property and residents in the vicinity."

MODIFICATION TO WILLOW ROCK COC **BIO-7**

Staff proposes modifying Subsection (7) of **BIO-7** to simplify the language regarding the Reservoir Management Plan and the actions the CPM will take if wildlife mortality occurs in the reservoir.

BIO-7 General Impact Avoidance and Minimization Measures. The project owner shall ensure implementation of the following measures during site mobilization, construction, operation, and closure to manage their project site and related facilities in a manner to avoid or minimize impacts to biological resources:

1. Avoid Controlled Detonations at Night. Controlled detonations shall be limited to daylight hours and shall terminate 30 minutes before sunset and shall not resume until 30 minutes after sunrise, unless authorized by the CPM. Sunrise and sunset times are established by the U.S. Naval Observatory Astronomical Applications Department for the geographic area where the project is located. The schedule of controlled detonations shall be provided to the Designated Biologist and/or Biological Monitors. The Designated Biologist and/or Biological ~~m~~**M**onitors shall monitor, observe, and record wildlife reactions during the controlled detonations to assess animal behavior and to determine how species in adjacent habitat are affected, unless approved by the CPM to discontinue monitoring.
2. Limit Disturbance Areas. The boundaries of all areas to be temporarily or permanently disturbed (including staging areas, access roads generation tie-line pole locations, etc.) shall be delineated with stakes and flagging prior to any site mobilization, vegetation clearing, ground disturbance, or construction activities in consultation with the Designated Biologist. All construction sites, laydown areas, and parking locations shall be fenced to prevent potential access to the site by small animals including but not limited to desert tortoise. Fencing shall not be required around generation tie-line line pole locations. Any deviations of the fencing requirements shall be approved by the CPM. Spoils shall be stockpiled away from the edges of drainages and stabilized to ensure sediment laded water does not enter the drainage. All disturbances, vehicles, and equipment shall be confined to the flagged areas.
3. Minimize Road Impacts. New and existing roads that are planned for construction, widening, or other improvements shall not extend beyond the flagged impact area as described above. All vehicles passing or turning around would do so within the planned impact area or in previously disturbed areas. Where new access is required outside of existing roads or the

construction zone, the route shall be clearly marked (i.e., flagged and/or staked) prior to the onset of construction.

4. Minimize Traffic Impacts. Vehicular traffic during project site mobilization, construction and operation shall be confined to existing routes of travel to and from the project site, and cross-country vehicle and equipment use outside designated work areas shall be prohibited. The speed limit shall not exceed 25 miles per hour on paved or stabilized unpaved roads within the project area, on maintenance roads for linear facilities, or on access roads to the project site. No vehicle shall exceed 10 miles per hour on unpaved areas within the project site, except on stabilized unpaved roads. Project vehicles shall abide by posted speed limits on paved public roads outside the project site.
5. Inspect Pipes and Trenches. At the end of each workday, the Designated Biologist, Biological Monitor, and/or site personnel (approved and trained by the Designated Biologist, as described under **BIO-2**) shall ensure that all potential wildlife pitfalls (trenches, bores, and other excavations) have been backfilled. If site personnel are inspecting trenches, bores, and other excavations and wildlife is trapped, they shall immediately notify the Designated Biologist and/or Biological Monitor. If backfilling is not feasible, all trenches, bores, and other excavations shall be covered to prevent wildlife entrapment or sloped at a 3:1 ratio at the ends to provide wildlife escape ramps. Should wildlife become trapped, the Designated Biologist or Biological Monitor shall remove and relocate the animal to a safe location. Any wildlife encountered during construction shall be allowed to leave the construction area unharmed.
6. Prevent Wildlife Entrapment. All pipes, tubes, ducting, or other cavities shall be capped to prevent wildlife entrapment. Portable toilets shall require vent pipes to be screened to prevent cavity using birds from becoming trapped in the pipe.
7. Reservoir Management Plan. The project owner shall submit a Reservoir Management Plan to the CPM for review and approval, in consultation with CDFW, prior to construction of the reservoir. The Plan shall include information on how wildlife entrapment shall be minimized at the reservoir. This shall include fencing height, type of fencing material (e.g., privacy slats, mesh size) number and location of wildlife escape ramps, inspection and reporting procedures, annual reporting of the number and type of species entrapped, injured, or killed. Fencing shall be designed to serve as a visual

barrier and effectively deter wildlife from entering the enclosed reservoir area.

The Plan shall include details of the design of the floating interlocking reservoir cover, including features that minimize wildlife impacts, and identify additional wildlife deterrent measures as needed to prevent access and contact with reservoir water. Measures shall address both the installation and operation phases of the reservoir to avoid and minimize impacts to wildlife.

In addition, the Plan shall include a process for evaluating the efficacy of the cover, ramps, and other wildlife protection features with monthly reporting during the first year of reservoir operation and annual reporting thereafter for the life of the project, unless an alternative reporting schedule is approved by the CPM. **Monthly reports during Year 1 shall include inspection dates, status of all exclusion features, and a log of observed or reported wildlife interactions. Annual reports shall summarize all wildlife incidents, deterrent maintenance actions, and recommendations for improvements.**

If any state or federally listed species are found to be injured or killed as a result of reservoir operations, the project owner shall notify the CPM and CDFW and shall implement appropriate remedial actions as directed by the CPM, in consultation with CDFW. The Plan shall outline potential remedial measures, including modifications to exclusion features, installation of wildlife deterrents, operational changes, or habitat protection actions, subject to CPM review and approval. ~~If more than five non-listed wildlife mortalities or one mortality of a state or federally listed species occurs within any 12-month period, the project owner shall be required to submit a Corrective Action Plan to the CPM within 7 calendar days of reaching the threshold and implement all approved corrective measures. The CPM, in consultation with CDFW, may require amendments to the Reservoir Management Plan based on wildlife mortality trends, species affected, or recurring deficiencies in deterrent infrastructure. The goal of the Plan shall be to ensure that wildlife mortality is avoided minimized to a level of fewer than two incidents per quarter (non-listed species), and zero listed species mortality annually.~~

8. Unexpected Wildlife. The Designated Biologist or Biological Monitor shall ensure that any unexpected special-status wildlife species such as California

condor, desert tortoise, Mohave ground squirrel, or other species are fully avoided during construction. Should an unexpected wildlife species be detected a non-disturbance buffer shall be implemented based on the species ecology or species-specific condition of certification, and work shall be suspended in that area until the animal leaves on its own volition. Any observations of unexpected wildlife should comply with notification requirements provided in **BIO-2**, Item 6.

9. Bat Roost Protection and Mitigation

- a) Active Bat Maternity or Hibernacula. If active maternity roosts or hibernacula are found during surveys by an approved bat biologist, submitted for approval under **BIO-3**, the structure, tree or feature occupied by the roost shall be avoided (i.e., not removed) until the young have matured or the hibernacula period is over. When an active maternity roost or hibernacula is present within 500 feet of a construction site an approved bat biologist shall conduct an initial assessment of the roost's response to construction activities including controlled detonations and recommend buffer expansion if there are signs of disturbance from the roost. The buffer may be adjusted based on site conditions, topography, type of work activity, or other ecological evidence, with the approval of the CPM.
- b) Avoid Removing or Disturbing Bat Roosts. Active bat roosts shall not be disturbed and shall be provided a minimum buffer of 300 feet where pre-existing disturbance is moderate or 500 feet where preexisting disturbance is minimal. Moderate disturbance may include areas subject to regular human activity or traffic noise up to 60 dBA and limited artificial lighting. Minimal disturbance refers to areas with little or no recent human activity, low ambient noise levels (typically below 45 dBA), no artificial lighting, and a generally undisturbed natural setting. All buffer distances and need for monitoring active maternity roosts or hibernacula shall be approved by the CPM.

If suitable roost sites are to be removed, or otherwise impacted by the project, the approved bat biologist shall conduct targeted roost surveys of all identified sites. A minimum of two separate survey visits shall be conducted at each potential roost site, unless fewer surveys are approved by the CPM. Surveys shall be timed to capture variation in bat use and environmental conditions. If initial results are inconclusive or as

recommended by the bat biologist, additional survey visits may be required by the CPM.

- c) Roost Site Removal. A qualified bat biologist shall survey potential roost sites prior to their disturbance or removal, per Item 8b. Any structures (natural or artificial) that show evidence of significant bat use within the past year should be retained whenever feasible. If such a structure must be removed or disturbed, the project owner shall create alternative roost sites in coordination with the CPM and CDFW. If removal or disturbance of trees or other identified roost sites cannot be avoided, removal of active roost sites shall be conducted outside the maternity season to avoid mortality of maternity colonies.
10. Prepare a Wildlife Protection and Relocation Plan. The project owner, in coordination with the Designated Biologist, shall prepare a Wildlife Protection and Relocation Plan (WPRP) to provide guidance and protocols when avoiding or handling common and sensitive species that are located within the project area. The WPRP shall include measures for handling rattlesnakes or other snakes found in or near work areas and access roads and provide these guidelines to all Biological Monitors, safety staff, and other personnel. Killing or harming rattlesnakes or other wildlife is not authorized, unless there is an immediate and unavoidable threat to human safety and relocation is not feasible. The WPRP shall include methods to salvage or relocate common and sensitive wildlife during ground disturbance activities including clearing, grubbing, and grading operations when feasible to off-site habitat or out of harm's way. The species shall be salvaged or relocated when conditions will not jeopardize the health and safety of the Designated Biologist or Biological Monitor;
11. Minimize Lighting Impacts. To minimize adverse effects of artificial light on wildlife, exterior lighting fixtures associated with project construction shall be downward facing, fully shielded, and designed and installed to minimize backscatter, reflection, minimize skyward illumination, minimize spillover onto adjacent wildlife habitat. Lights used shall be lower on the light spectrum (lower Kelvins with fewer short-wavelength blue light emissions);
12. Use Non-toxic Soil Binders. Soil bonding and weighting agents used on unpaved surfaces shall be non-toxic to wildlife and plants and shall be approved by the CPM prior to use;
13. Minimize Impacts from Pest Control. Anticoagulants shall not be used for rodent control. Pre-emergent and other herbicides with documented residual

toxicity shall not be used. Herbicides shall be applied in conformance with federal, State, and local laws and according to the guidelines for wildlife-safe use of herbicides in **BIO-9** (Integrated Weed Management Plan);

14. Minimize Standing Water. Water applied to dirt roads and construction areas (trenches or spoil piles) for dust abatement shall use the minimal amount needed to meet safety and air quality standards to prevent the formation of puddles, which could attract predators of special-status species to construction sites. During construction, site personnel shall patrol these areas to ensure water does not puddle and attract crows and other wildlife to the site, and shall take appropriate action to reduce water application rates where necessary;
15. Handling of Road-killed Animals. Report all inadvertent deaths of special-status species to the appropriate project representative, including roadkill. Species name, identifiable physical characteristics of the animal (sex, age class, length, weight), and other pertinent information shall be noted and reported in the Monthly Compliance Reports. During construction, injured or dead animals detected by personnel in the project area shall be reported immediately to the Designated Biologist and/or Biological Monitor, who shall remove the carcass or injured animal promptly. During operations, the Environmental Compliance Monitor for the project owner shall be notified and they shall contact the Designated Biologist and/or Biological Monitor for further instructions. The Designated Biologist shall notify the project owner, the CPM, and CDFW directly of any special-status species injury or mortality. Notifications shall occur immediately and no later than the following morning, or Monday morning in the case of a weekend, or the next business day in the case of a state or federal holiday per **BIO-2**. Additionally, the Designated Biologist shall contact the CPM, CDFW and/or USFWS within 1 working day of receipt of the carcass for guidance on disposal or storage of the carcass. The project owner shall follow instructions that are provided by the appropriate agency contact. The veterinary fees for the treatment of injured wildlife shall be covered by the project owner for project-related injuries or wildlife found injured on the project site.
16. Minimize Spills of Hazardous Materials. All vehicles and equipment shall be maintained in proper working conditions to minimize the potential for fugitive emissions of motor oil, antifreeze, hydraulic fluid, grease, or other hazardous materials or wastes. The Designated Biologist and/or Biological Monitor shall be informed immediately of any hazardous spills. Any on-site servicing of

- vehicles or construction equipment shall take place only at a designated area approved by the Designated Biologist. Service/maintenance vehicles shall carry a bucket and pads to absorb leaks or spills;
17. Remove Trash Weekly. During construction all trash and food-related waste including micro-trash shall be placed in secure, self-closing containers to prevent access by wildlife and removed weekly or more frequently from the site. Workers shall not feed wildlife or bring pets to the project site;
 18. No Firearms. Except for law enforcement or security personnel, no workers or visitors to the site shall bring firearms or weapons to the project site;
 19. Avoid Use of Toxic Substances. Soil bonding and weighting agents used on unpaved surfaces shall be non-toxic to wildlife and plants;
 20. Minimize Disturbance Areas. Limit the size of any vegetation and/or ground disturbance to the minimum area needed for safe completion of project activities, and limit ingress and egress to defined routes;
 21. Weed and Monofilament Free Wattles. Use only weed-free straw, hay bales, and seed for erosion control and sediment barrier installations. Monofilament plastic shall not be used for erosion control. In addition, non-native species shall not be used in landscaping plans and erosion control;
 22. Conform to APLIC Guidelines. The generation tie-line and all associated components shall be designed, installed, and maintained in accordance with the Avian Power Line Interaction Committee's (APLIC's) *Suggested Practices for Avian Protection on Power Lines* (APLIC 2006) and *Reducing Avian Collisions with Power Lines* (APLIC 2012), or most recent APLIC guidance, to reduce the likelihood of large bird electrocutions and collisions;
 23. Aviation Lighting. If required, to the extent feasible, any aviation warning lighting shall employ only strobed, strobe-like or blinking incandescent or LED lights, preferably with all lights illuminating simultaneously. Minimum intensity, maximum "off-phased" dual strobes are preferred, and no steady burning lights (e.g., L-810s) shall be used;
 24. Herbicide Use. During construction and operation, the project owner shall conduct pesticide management in accordance with standard BMPs. The BMPs shall include non-point source pollution control measures. The project owner shall use a licensed herbicide applicator and obtain recommendations for herbicide use from a licensed Pest Control Advisor. Herbicide applications must follow EPA label instructions. Minimize use of rodenticides and herbicides in the project area and prohibit the use of chemicals and pesticides

known to cause harm to non-target plants and wildlife. The project owner shall only use pesticides for which a "no effect" determination has been issued by the EPA's Endangered Species Protection Program for any species likely to occur within the project area, per **BIO-13** If rodent control must be conducted, zinc phosphide or an equivalent product shall be used; and

25. Minimize Stormwater Impacts. Standard best management practices (BMPs) from the project Storm Water Pollution Prevention Plan shall be implemented during all phases of the project (construction, operation, and decommissioning) where storm water run-off from the site could enter adjacent drainages. Sediment and other flow-restricting materials shall be moved to a location where they shall not be washed back into the jurisdictional waters. All disturbed soils within the project site shall be stabilized to reduce erosion potential, both during and following construction.

Verification: All general impact avoidance and minimization measures shall be included in the BRMIMP and implemented. Implementation of the measures shall be reported by Designated Biologist in the Monthly Compliance Reports during construction and reported in Annual Compliance Reports during operation, including but not limited to the requirements cited above and in **BIO-2**.

The project owner shall submit the draft Reservoir Management Plan to the CPM for review and comment, in coordination with CDFW, at least 45 days prior to the start of any construction-related activities associated with the reservoir. The project owner shall provide the final Reservoir Management Plan to the CPM at least 10 days prior to any construction-related activities associated with the reservoir.

The project owner shall submit the draft WPRP to the CPM for review and comment at least 45 days prior to the start of project site mobilization. The project owner shall provide the final WPRP to the CPM at least 10 days prior to project site mobilization.

Within 30 days after completion of project construction, the project owner shall provide to the CPM, for review and approval, a written construction termination report identifying how measures have been completed.

MODIFICATION TO WILLOW ROCK COC **BIO-12**

Staff proposes modifications to BIO-12 subsection (1)(h) to clarify the implementation of this portion of the condition.

BIO-12 Western Joshua Tree Avoidance, Minimization, and Mitigation

Measures. To avoid, minimize, and mitigate impacts to western Joshua tree (WJT), the project owner shall ensure the following are implemented:

1. Western Joshua Tree Census, Relocation Plan, and Conservation

Fund Fees. The project owner shall submit an updated Western Joshua Tree Census and Western Joshua Tree Relocation Plan to the CPM for review and approval, and to CDFW for review and comment, prior to any site mobilization or ground-disturbing activities within **50** feet of any WJT. **The updated census shall confirm the location of previously mapped WJTs, survey the portions of the project area that were not previously surveyed by the project owner due to site access constraints, and incorporate any new WJT stems or trunks that have arisen since completion of the prior surveys. The updated census shall include all WJT within the project area and a 50-foot buffer around the project area, including but not limited to, the generation tie-line, new access roads, laydown areas, staging areas, and other facilities. Additionally, the project owner shall update the Western Joshua Tree Relocation Plan if necessary to account for any newly identified or previously unmapped WJTs.** The **Western Joshua Tree Relocation Plan** shall include, at a minimum, the following:

- a. Name and contact information for the project owner;
- b. APNs for locations where trees are proposed for removal (with maps at an approved scale);
- c. Name and qualifications of the desert native plant specialist overseeing relocation efforts;
- d. Details of the locations where trees will be transplanted, including landowner name(s), address(es), APN(s), maps, approximate distance from original tree location, approximate difference in elevation from original tree location; site description including habitat and previous impacts;
- e. A calculation of the number of trees to be relocated based on the CDFW Relocation Guidelines and Protocols

(<https://wildlife.ca.gov/Conservation/Environmental-Review/WJT/Permitting/WJTCA-ITP#apply>) or most recent guidelines. The total number of relocated trees shall be a percentage of the number of trees lethally taken for the project and must at least meet or exceed the CDFW calculation for each size class depending on the method used (i.e., tree spade removal, bare root, or a combination of both).

- f. A Tree Relocation Spreadsheet that includes a unique identifier (tree ID), size class, original location and recipient site locations (lat/long), relocation area name, anticipated removal and transplanting dates, the relocation method used, storage information (if applicable), overall tree health assessment, photos, and any other pertinent information for each tree proposed for relocation;
- g. A signed statement from the landowner from each relocation site granting the project owner permission to relocate trees to their land, provide access to implement the maintenance and monitoring measures, and allow staff to access the property to conduct compliance inspections (if trees will be relocated outside of the project area).
- h. **In addition, the project owner shall conduct an updated Joshua Tree census prior to site mobilization for any areas that have not been disturbed such as the generation tie line, new access roads, laydown, staging, or other project components. In addition, to submitting an updated Western Joshua Tree Census prior to site mobilization as specified in BIO-12, Item 1, the project owner shall conduct an updated Western Joshua Tree census prior to site mobilization for each phase of construction in any areas that were surveyed more than 12 months ago but have remained undisturbed, as confirmed in consultation with CDFW. This requirement applies to all project components that will be disturbed, including, but not limited to, the generation tie line, new access roads, laydown areas, staging areas, and other facilities. The project owner shall update the Western Joshua Tree Relocation Plan to account for any newly identified trees and provide this prior to site mobilization for each phase of the project. The survey methods and schedule shall be included in the Western Joshua Tree Relocation Plan.**

Upon review and approval by the CPM of the Final Western Joshua Tree Relocation Plan, the CPM will provide an invoice for the required mitigation

fee. Based on preliminary data submitted by the applicant, this is estimated to be \$319,580.00 for Option 1 – Without Berm and \$457,394.75 for the Option 2 - With Berm (see **Table 5.2-6**); however, the total fee shall be dependent on the final number of trees and class sizes that are authorized for take. The project owner shall submit the mitigation fee payment to the CDFW Region 4 office by check or money order with a copy of the invoice attached. No impacts to WJT shall be authorized until confirmation by CDFW that the mitigation fee has been received from the project owner. The check shall be submitted to the following address, or most current Region 4 office location:

California Department of Fish and Wildlife Region 4
1234 E. Shaw Avenue
Fresno, CA 93710
reg4assistant@wildlife.ca.gov
(559) 243 – 4005 ext. 151

2. **Western Joshua Tree Relocation Post-Relocation Reporting and Annual Reporting.** The project owner shall have a Designated Biologist approved by the CPM oversee all Western Joshua Tree Relocation activities. At the completion of relocation, the project owner shall submit a post-relocation report, consistent with current CDFW Western Joshua Tree Relocation Guidelines and Protocols (April 2025), no more than 30 days after relocation is completed and shall conduct annual monitoring of each relocated tree for a period of 3 years, or as required by current CDFW guidelines. An annual status report shall be submitted to the CPM for review and approval, and CDFW for review and comment. Each report shall include a health assessment of each relocated tree (with unique identifiers), a description of current habitat conditions (including any new disturbances), and representative photos and maps. The content of the reports shall be detailed in the Western Joshua Tree Relocation Plan.
3. **Notification of New Stem or Trunk: If a new WJT stem or trunk is identified prior to or** during construction **or operation**, regardless of whether it germinates from seed, a trunk re-sprout occurs, or otherwise, project owner shall prepare a Notification of New Stem or Trunk and submit it to the CPM before conducting or resuming project activities that will impact any WJT individual that was not included in the census and included in the invoice, including any new WJT stem or trunk that arises from the ground (e.g., new sprouts or resprouts) [that are size class A or B]. The Notification of New Stem or Trunk shall include the following about any new WJT:

- A unique identifier for each WJT (i.e., WJT ID);
 - GPS location for each WJT (latitude and longitude);
 - At least one color photo of each WJT identified;
 - Size class for each WJT (size class A is any WJT less than one meter in height, size class B is any WJT one meter or greater but less than five meters in height, size class C is any WJT greater than five meters in height);
 - Anticipated impact for each WJT (i.e., removal, relocation, trimming, or encroachment, or no impact);
 - If the WJT will be encroached upon (individual will not be removed and project activities will take place within 15 meters of the base of the WJT) indicate the distance from the base where project activities will take place;
 - A map showing the location of new WJT in relation to WJT for which take is authorized by the license.
 - The project owner shall submit the Notification of New Stem or Trunk prior to conducting activities that may result in take of or impacts to the new stem or trunk (i.e., removal, trimming, relocation, or encroachment). After the CPM has confirmed the number and size class of individual WJT to be impacted, an invoice for the mitigation fees pursuant to Fish and Game Code section 1927.3, subdivisions (d)-(e) shall be issued to the project owner by the CPM as required under Item 1.
 - The Notification of New Stem or Trunk and invoice shall be submitted to the CPM and serve as the basis for CPM authorization of additional take coverage for the new WJT individual(s) provided that the Notification of New Stem or Trunk the project owner submits is complete and mitigation fees are received prior to any impacts to any new WJT individuals identified in the Notification of New Stem or Trunk.
- 4. WJT Stockpiles:** If dead and or removed WJT are stockpiled on site, they shall not be placed within 50-feet (approximately 15 meters) of a WJT that are being preserved on site, relocated on site, or encroached upon.
- 5. Recurring Assessment:** The project owner shall conduct a Recurring Assessment of the project site to determine whether any new WJT individuals have emerged. The Recurring Assessments shall begin six months after the completion of ground-disturbing activities **for each phase of project**

construction and be repeated annually for the duration of construction activities following the initial assessment, then every five years for the life of the project, unless approved by the CPM. If a new WJT is found, the project owner shall prepare and submit a Notification of New Stem or Trunk and submit it to the CPM before conducting project activities that will impact it. The project owner shall submit the results of the Recurring Assessment as part of Annual Status Report and during operation the results shall be submitted as part of the Annual Compliance Report.

6. No-Work Buffers: The project owner shall ensure no work is conducted within the no-work buffers for WJT that will be preserved on site. Prior to beginning relocation, the project owner shall minimize work within the buffer of WJT that will be relocated to the maximum extent possible. After relocation, the project owner shall ensure no work is conducted within the no-work buffer for relocated WJT. The no-work buffers are as follows:

- 50 feet (approximately 15 meters) surrounding any WJT individual that is five meters or greater in height
- 25 feet (approximately 7.5 meters) surrounding any WJT individual is one meter or greater but less than 5 meters in height
- 10 feet (approximately 3 meters) surrounding any WJT individual less than one meter in height

The project owner shall mark no-work buffers using fencing, stakes and ropes, or stakes and flagging of a different color than the color used to identify WJT individuals authorized to be taken. If WJT individuals occur in groups, the project owner may mark a single 50-foot (approximately 15-meter) buffer around the entire group, measured from the base of the trunk of the outer-most WJTs. Any adjustments to the buffer size shall be approved by the CPM, in coordination with CDFW. The project owner shall maintain the no-work buffer markings for the duration of project construction. After all construction activities are completed, the project owner must remove all materials used to mark no-work buffers.

7. Trenching: During storm events, the project owner shall not perform trenching activities within 50 feet (approximately 15 meters) of WJT preserved on site or relocated on site, as soils around the root zone of WJT may be more susceptible to erosion during such events. The project owner shall only perform trenching activities during periods of dry weather (with less than a 40 percent chance of rain), unless approved by the PM. Within at least

12 hours prior to the onset of predicted rain (40 percent chance of rain or more based on the National Weather Service) or immediately upon the onset of unpredicted rain, the project owner shall ensure that all trenching activities are ceased, all associated erosion control measures shall be in place, and all motorized equipment and fueling materials shall be removed from areas where runoff from these items can be reasonably foreseen to come into contact with WJT preserved on site, or relocated on site, or encroached upon. Trenching halted due to rain may resume when rain ceases. The project owner shall monitor the National Weather Service 72-hour forecast for the project site. Weather forecasts shall be documented and shall be provided upon request by the CPM.

Verification: The project owner shall submit the draft Western Joshua Tree Relocation Plan to the CPM review and approval, in consultation with CDFW, no less than 45 days prior to commencing any project activities that will impact western Joshua trees, including site mobilization and/or construction. The project owner shall submit the final Western Joshua Tree Relocation Plan and pay the WJTCA mitigation fees prior to any project activities that will impact western Joshua trees.

The annual status report for the relocated western Joshua tree shall be submitted to the CPM for review and approval, in consultation with CDFW, by January 31 of the following year.

If a new WJT stem or trunk is detected, the project owner shall submit a Notification of New Stem or Trunk to the CPM and to CDFW for review and comment prior to any project activities that may impact the new WJT. No impacts may occur until the CPM approves the notification and CDFW has received applicable mitigation fees.

MODIFICATION TO WILLOW ROCK COC **WATER-2**

To correct an error in the verification staff proposes the following edit replacing "SWRCB order" with "WDR."

WASTE DISCHARGE REQUIREMENTS ~~FOR DRILL CUTTINGS PONDS~~

WATER-2 The project owner shall comply with the Waste Discharge Requirements (WDRs) established in Attachment A. These requirements relate to discharges, or potential discharges, of waste that could affect the quality of waters of the state, and were developed in consultation with the State Water Resources Control Board and/or the applicable California Regional Water Quality Control Board (hereafter "Water Boards"). The WDRs established in Attachment A serve as if they were prescribed under Water Code section 13263 by the Water Boards. These requirements are enforceable by both the Commission and the Water Boards. The Water Boards are authorized to verify compliance of these WDRs, including conducting investigations and inspections and requiring technical and monitoring reports. The Water Boards are also authorized, in coordination with the Commission, to enforce the WDRs pursuant but not limited to Water Code sections 13300, 13301, 13304, and 13350. The Commission and the Water Boards shall confer with each other and coordinate, as needed, in the enforcement of the requirements, consistent with Public Resources Code section 25532. The project owner shall pay the annual waste discharge permit fee associated with this facility to the Water Boards. The project owner shall make payments to the State Water Resources Control Board, based upon a fee schedule in California Code of Regulations, Title 23, section 2200 for a Discharge to Land with a Threat to Water Quality Rating of 2 and Complexity Rating of C.

Verification: At least sixty (60) days prior to construction, the project owner shall submit to LRWQCB all necessary information and applicable fees, submitting copies of all ~~application~~ submittals to the CPM. At least thirty (30) days prior to construction of the Gen-tie line, the project owner shall submit to the CPM and LRWQCB for review and approval all plans to control the potential **impacts to ephemeral streams from fill and excavation activities** ~~for fill and excavation discharges of wastewater~~ associated with construction of the Gen-tie line. Within ten (10) days of its mailing or receipt, the project owner shall submit to the CPM any correspondence with the SWRCB or the LRWQCB regarding ~~discharge of wastewater associated with~~ this activity. The project owner shall notify the CPM in writing of any violations and include these in the annual compliance report. Any monitoring documentation associated with the SWRCB Order **WDR** shall **also** be included in the annual compliance report.