

DOCKETED

Docket Number:	15-AFC-01
Project Title:	Puente Power Project
TN #:	215617
Document Title:	Prehearing Conference Statement on Behalf of Sierra Club Los Padres Chapter, Environmental Coalition of Ventura County, & EDC
Description:	Intervenors Sierra Club Los Padres Chapter, Environmental Coalition of Ventura County and Environmental Defense Center Prehearing Conference Statement
Filer:	Matthew A. Smith
Organization:	Environmental Defense Center
Submitter Role:	Intervenor
Submission Date:	1/27/2017 2:36:43 PM
Docketed Date:	1/27/2017

**PREHEARING CONFERENCE STATEMENT ON BEHALF OF INTERVENORS
SIERRA CLUB LOS PADRES CHAPTER, ENVIRONMENTAL COALITION OF
VENTURA COUNTY, AND ENVIRONMENTAL DEFENSE CENTER**

Pursuant to the Commission's January 20, 2017 Notice of Prehearing Conference, Scheduling Conference, and Further Orders, Intervenor Sierra Club Los Padres Chapter, Environmental Coalition of Ventura County, and Environmental Defense Center (collectively, Intervenor) submit the following Prehearing Conference Statement.

**1) SUBJECT AREAS THAT ARE COMPLETE AND READY TO PROCEED TO
EVIDENTIARY HEARING**

Numerous deficiencies in the Final Staff Assessment ("FSA") for the Puente Power Project ("Project"), as described in detail in Intervenor's comments on the Preliminary Staff Assessment ("PSA"), remain unaddressed. (Ex. 4029) In addition to unresolved issues identified in Intervenor's PSA comments, the FSA's Biological Resources section suffers from a glaring lack of protocol level surveys for environmentally sensitive habitat areas ("ESHA"). New evidence from the California Coastal Commission's ("CCC") staff biologist Dr. Jonna Engel corroborates the Opening Testimony by local biologist Lawrence Hunt (Ex. 4017) that: 1) the CCC, FSA and the Applicant did not conduct any focused, protocol level on-site biological surveys to identify ESHA for the Project; and, 2) according to Dr. Engel, **"the site likely supports an array of sensitive species,"** including a .53 acre **"dune swale wetland [that] is ESHA."** (Ex. 4030). The California Department of Fish and Wildlife ("CDFW") also submitted a letter that supports Lawrence Hunt's testimony and the CCC's new evidence. (Ex. 4025)

As a result of this new information from Hunt and the CCC, the FSA's conclusions and analysis regarding the Project's impacts to onsite ESHA, as well as its description of the Project's Environmental Setting, are inadequate due to this significant omission of information. Moreover, the Commission cannot, based on this new information, sustain findings that the

Project's impacts to Biological Resources have been mitigated to the maximum extent feasible as required by CEQA. This new evidence also affects the FSA's Sections on Alternatives and Land Use, and the veracity of any LORS Consistency and Override Findings. As such, those subject areas are *not* ready to proceed to adjudication and require further factual development. At a minimum, the CCC should be given the opportunity to carry out protocol level surveys of the Project site to make an informed determination as to the presence of ESHA on site, and the FSA should be revised to disclose this new information revealing the Project's significant and unmitigated impacts to ESHA and wetlands. These impacts have the potential to further constrain the site and range of Alternatives considered, and will affect the FSA's related conclusions and analysis regarding Land Use impacts and LORS Consistency and Override Findings.

Additionally, Opening Testimony and evidence submitted by the Environmental Defense Center and by the Center for Biological Diversity attest that the Project may affect the federally listed endangered California Least Tern, Tidewater Goby, and Western Snowy Plover and its designated Critical Habitat. *E.g.*, Exs. 4017 & 4027. Yet, the U.S. Army Corps, which must approve a permit for the Project, has failed to initiate consultation pursuant to the Endangered Species Act, resulting in another dearth of information necessary to assess the impacts analysis in the FSA.

If, despite this new evidence, the Commission decides to proceed with evidentiary hearings, Intervenors can be prepared to address **Biological Resources** and **Alternatives** at the Evidentiary Hearings.

2) SUBJECT AREAS UPON WHICH INTERVENORS PROPOSE TO INTRODUCE TESTIMONY IN WRITING RATHER THAN THROUGH ORAL TESTIMONY

Intervenors intend to introduce as written testimony and evidence all of the exhibits listed on the exhibit list identified herein, which includes the Opening Testimony by Matthew Vespa, the Opening and Rebuttal Testimony of Lawrence E. Hunt, and Intervenors' Comments on the PSA. In addition to the written testimony of both witnesses, on which Intervenors will rely, Intervenors will present oral testimony by Mr. Hunt on Biological Resources and Mr. Vespa on Alternatives.

3) SUBJECT AREAS IN DISPUTE THAT REQUIRE ADJUDICATION, AND THE PRECISE NATURE OF THE DISPUTE

Intervenors intend to submit testimony and evidence for purposes of adjudication on the following issue areas at the Evidentiary Hearings: Alternatives and Biological Resources.

A. Biological Resources:

(1) Failure to adequately describe the environmental setting onsite and disclose the presence of ESHA on site and surrounding the Project area, such as habitat for the following federally- and/or state-listed endangered species, state fully protected species, California Species of Special Concern, and other special-status species:

- Tidewater goby (*Eucyclogobius newberryi*)
- Globose dune beetle (*Coelus globus*)
- California legless Lizard (*Aniella*)
- Blainville's Horned Lizard (*Phrynosoma blainvillii*)
- Two-Striped Garter Snake (*Thamnophis hammondi*)
- California Black Rail (*Laterallus jamaicensis*)
- Burrowing Owl (*Athene cunicularia*)
- Western Snow Plover (*Charadrius alexandrinus nivosus*)
- California Least Tern (*Sternula antillarum browni*)

- White-Tailed Kite (*Elanus leucurus*)
 - Northern Harrier (*Circus cyaneus*)
 - Least Bell's Vireo (*Vireo bellii pusillus*)
- (2) Failure to adequately disclose the impacts to onsite ESHA
 - (3) Failure to adequately analyze the significance and presence of the dune swale wetland on site
 - (4) Failure to avoid project impacts to on-site ESHA
 - (5) Failure to avoid impacts to on-site dune swale wetlands
 - (6) Failure to disclose and avoid impacts to offsite ESHA, including habitat for California Least Tern, Western Snowy Plovers, and the Tidewater Goby
 - (7) All of the Applicants' proposed changes to weaken mitigation measures

B. Alternatives:

Intervenors dispute the FSA's:

- (1) Inadequate range of alternatives
- (2) Failure to adequately consider whether preferred resources or a combination of preferred resources and a much smaller gas powered plant would meet the identified need for the Project
- (3) Elimination of feasible Project alternatives
- (4) Failure to analyze a site that would significantly decrease impacts to biological resources, wetlands and flood hazards

Intervenors reserve the right to brief any and all issues disputed by the parties after the conclusion of the Evidentiary Hearings, and to cross-examine witnesses as described below.

4) SUBJECT AREAS THAT ARE NOT YET COMPLETE AND NOT YET READY TO PROCEED TO EVIDENTIARY HEARING, AND THE REASONS THEREFORE

See response to issue #1 above, which describes new evidence and information from Dr. Engel of the CCC and Lawrence Hunt that reveals a startling omission of critical information necessary to assess the Project's impacts to Biological Resources. As such, the FSA's assessment of Biological Resources is inadequate because, as the FSA concedes,¹ no protocol surveys have been conducted on the Project site for special-status wildlife other than the one performed by Intervenor's expert, who has **identified numerous special-status species and Environmentally Sensitive Habitat Areas (ESHA) on the Project site.** (Ex. 4017, Hunt Opening Testimony at 7-15) After reviewing Mr. Hunt's testimony, **Dr. Engel of the California Coastal Commission agrees that the site likely contains ESHA.** (Ex. 4030) This new evidence also affects the FSA's Sections on Alternatives, Land Use and the LORS Consistency and Override Findings. As such, Intervenor contends that those subject areas are not ready to proceed to adjudication and require further factual development in order to comply with CEQA.

5) IDENTIFICATION OF SPONSORED WITNESSES

A. Identity of Each Sponsored Witness

Intervenor intend to sponsor two witnesses: Matthew Vespa and Lawrence E. Hunt.

B. Subject Areas on Which Sponsored Witnesses Will Testify

Mr. Vespa will testify on Alternatives. Mr. Hunt will testify on Biological Resources.

¹ FSA 4.2-22.

C. Whether the Testimony Will be Oral or in Writing

Intervenors reserve the right to rely on the written testimony submitted in this proceeding by Messrs. Vespa and Hunt. Subject to that reservation, Intervenors also intend to present oral testimony by Mr. Hunt and Mr. Vespa.

D. Brief Summary of the Witnesses' Testimony

(1) Summary of Mr. Vespa

Mr. Vespa summarizes his testimony at pages 1-2 of his Opening Testimony, which Intervenors re-state and incorporate by reference herein (Ex. 4000 at 1-2). Intervenors further reserve the right for Mr. Vespa to testify to any issues contained in his written testimony.

(2) Summary of Mr. Hunt

The Project site contains a 2.03-acre wetland feature and a .52 acre dune swale wetland. Both features are located on the Project site and ESHA and suitable habitat for special-status species. Both features are also wetlands. The Project will destroy the existing wetlands and ESHA located on the site of the Project. The outfall removal feature of the Project will likely affect critical habitat for federally endangered species and individual populations of these species. Moreover, the Project is likely to cause significant impacts to rare and sensitive habitats and species located both onsite and in the surrounding area. The mitigation measures imposed by the FSA do not address on-site impacts to ESHA and the dune swale wetland feature, and therefore do not adequately avoid these effects. The mitigation measures imposed by the FSA also are unlikely to reduce the Project's impacts on surrounding rare and sensitive habitats and species below significant levels. Mr. Hunt will also address the Applicant's suggested changes to the mitigation measures and defects in the Staff and Applicant's methodology, rendering their

conclusions unreliable. Intervenor further reserve the right for Mr. Hunt to testify to any issues contained in his written testimony.

E. Time Required for Each Witness

Intervenor request thirty minutes to present the oral testimony of Mr. Hunt and fifteen minutes to present the testimony of Mr. Vespa.

F. Telephonic Appearance

Both Mr. Hunt and Mr. Vespa will appear in person.

6) EXAMINATION OF OTHER PARTIES' WITNESSES

A. Subject Areas of Examination

Intervenor intend to question other parties' witness on the following subject areas:
Alternatives and Biological Resources.

B. Summary of the Scope of the Questions and Issues Pertaining to Each Questioning Topic

Intervenor intend to question other parties' witnesses on the following topics:

- (1) The qualifications of witnesses opining on behalf of the Staff and Applicant regarding Biological Resources. This topic relates to all of the issues listed in Part 3.A, *supra*.
- (2) The scope of work performed, methodologies, and opinions given to Biological Resources. This topic relates to all of the issues listed in Part 3.A, *supra*.
- (3) The presence of wetlands, ESHA, and special status species on and adjacent to the Project site. This topic relates to all of the issues listed in Part 3.A, *supra*.
- (4) Impacts to wetlands, ESHA, and special status species on and adjacent to the Project site. This topic relates to all of the issues listed in Part 3.A, *supra*.

(5) Statements made by Ms. Love in the Expert Declaration of Julie Love Regarding Biology and in Ms. Love's Rebuttal Declaration regarding topics 1-4. This topic relates to all of the issues listed in Part 3.A, *supra*.

(6) Statements made by Ms. Watson and Mr. Hilliard in the Biological Resources Section of the Final Staff Assessment and in Staff's Rebuttal Testimony regarding topics 1-4. This topic relates to all of the issues listed in Part 3.A, *supra*.

(7) Statements made by CEC staff Jeanine Hinde/David Vidaver regarding elimination of Project Alternatives. This topic relates to all of the issues listed in Part 3.B, *supra*.

C. Time Desired to Question Each Witness

Intervenors reserve thirty minutes for each of the following witnesses:

- Carol Watson
- John Hilliard
- Julie Love

Intervenors reserve fifteen minutes for each of the following witnesses:

- Jeanine Hinde
- David Vidaver

Intervenors reserve the right to request additional time to question any witness put on by Staff or the Applicant who has not previously submitted written testimony. Intervenors also reserve the right to question for no more than twenty minutes any person who participates in the Evidentiary Hearings on behalf of the California Coastal Commission, the United States Fish and Wildlife Service, or the California Department of Fish and Wildlife.

7) EXHIBIT LIST

Exhibit Number	TN #	Title	Subject Areas
4000	215432-1	Opening Testimony of Matthew Vespa	Alternatives
4001	21543-2	Exhibit - Transcript on Behalf of Intervenors SC, ECVC, and EDC	Alternatives
4002	215432-3	Exhibit - Announcements on behalf of Intervenors SC, ECVC, and EDC	Alternatives
4003	215432-4	Exhibit - Data Request Set - on Behalf of Intervenors SC, ECVC, and EDC	Alternatives
4004	215432-5	Exhibit - Data Request Set - on Behalf of Intervenors SC, ECVC, and EDC	Alternatives
4005	215432-6	Exhibit - SCE's Phase 2 Testimony on Behalf of Intervenors SC, ECVC, and EDC	Alternatives
4006	215433-1	Exhibit - Transcript on Behalf of Intervenors SC, ECVC, and EDC	Alternatives
4007	215433-2	Exhibit - SCE Testimony on Behalf of Intervenors SC, ECVC, and EDC	Alternatives
4008	215433-3	Exhibit - Data Request Set on Behalf of Intervenors SC, ECVC, and EDC	Alternatives
4009	215433-4	Exhibit - SCE Testimony on Behalf of Intervenors SC, ECVC, and EDC	Alternatives
4010	215433-5	Exhibit - Appendix D on Behalf of Intervenors SC, ECVC, and EDC	Alternatives
4011	215433-6	Exhibit - Appendix E	Alternatives

		on Behalf of Intervenors SC, ECVC, and EDC	
4012	215435-1	Exhibit - PUC Resolution on Behalf of Intervenors SC, ECVC, and EDC	Alternatives
4013	215435-2	Exhibit - SCE Advice Letter on behalf of Intervenors SC, ECVC, and EDC	Alternatives
4014	215435-3	Exhibit - SCE Advice Letter on Behalf of Intervenors SC, ECVC, and EDC	Alternatives
4015	215435-4	Exhibit - SCE Advice Letter on behalf of Intervenors SC, ECVC, and EDC	Alternatives
4016	215435-5	Exhibit SCE Assigned Commissioner's Ruling on Behalf of Intervenors SC, ECVC, and EDC	Alternatives
4017	215434	Opening Testimony of Lawrence E. Hunt	Biological Resources
4018	215436-2	Exhibit - on Behalf of Intervenors SC, ECVC, and EDC	Biological Resources
4019	215436-1	Transmittal Letter and Opening Testimony Exhibit List on Behalf of Intervenors SC, ECVC, and EDC	Biological Resources
4020	215436-3	Exhibit - on Behalf of Intervenors SC, ECVC, and EDC	Biological Resources
4021	215436-4	Exhibit - on Behalf of Intervenors SC, ECVC, and EDC	Biological Resources
4022	215436-5	Exhibit - on Behalf of Intervenors SC, ECVC, and EDC	Biological Resources
4023	215436-6	Exhibit - on Behalf of Intervenors SC, ECVC, and EDC	Biological Resources

INTERVENORS' PREHEARING CONFERENCE STATEMENT

4024	215436-7	Exhibit - on Behalf of Intervenor SC, ECVC, and EDC	Biological Resources
4025	215436-8	Exhibit - on Behalf of Intervenor SC, ECVC, and EDC	Biological Resources
4026	215436-9	Exhibit - on Behalf of Intervenor SC, ECVC, and EDC	Biological Resources
4027	215543	Rebuttal Testimony of Lawrence E. Hunt	Biological Resources
4028	215542	Exhibit on Behalf of Intervenor SC, ECVC, and EDC	Biological Resources
4029	213635	Comments on PSA-- Environmental Coalition, Sierra Club, Environmental Defense Center (intervenor)	Air Quality; Alternatives; Biological Resources; Environmental Justice; Land Use; Compliance Conditions & Compliance Monitoring Plan
4030	215607	Email from Jonna Engel, Ph.D., California Coastal Commission, to Brian Trautwein, Staff Biologist, Environmental Defense Center re: Biological Resources	Biological Resources; Alternatives
4031	214303	Applicant's Responses to Robert Sarvey's Data Requests, Set 2	Alternatives
4032	215441	Applicant's Opening Testimony	Biological Resources, Alternatives
4033	215553	Applicant's Rebuttal Testimony	Biological Resources; Alternatives
4034	215571	Staff's Rebuttal Testimony and Responses to Hearing Officer's	Biological Resources; Alternatives
4035	215606	Intervenor's Rebuttal Testimony -	Biological Resources

INTERVENORS' PREHEARING CONFERENCE STATEMENT

		Attachment to Rebuttal Testimony of Lawrence E. Hunt	
--	--	------------------------------------------------------------	--

8) PROPOSALS FOR BRIEFING SCHEDULES

Intervenors propose that each party should submit one (1) opening brief per party on the same date, and one (1) rebuttal brief per party on the same date. To allow adequate time to address the complex and factually sensitive issues raised in this proceeding, Intervenors propose that all opening briefs should be due thirty (30) days after the publication of a complete and final transcript of the Evidentiary Hearings, and all rebuttal briefs should be due fourteen (14) days after the deadline to file opening briefs.

Date: January 27, 2017

Respectfully submitted,

/s/ Matthew A. Smith
Matthew A. Smith
Alicia Roessler

*Attorneys for the Sierra Club Los Padres Chapter,
the Environmental Coalition of Ventura County,
and the Environmental Defense Center*

Alison Seel

Attorney for the Sierra Club Los Padres Chapter