

April 12, 2013

Mr. Hunter Kunkel
San Joaquin Valley Division
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2065
Sacramento, CA 95825-1846

Re: Response to USFWS Comments on the Biological Assessment for the Hydrogen Energy California Project in Kern County, California.

Dear Mr. Kunkel:

This letter provides responses to comments that you provided to HECA's biological consultant, Steve Leach, on March 27, 2013. The comments addressed specific items in the Biological Assessment (BA) for the Hydrogen Energy California (HECA) Integrated Gasification Combined-Cycle Polygeneration Project in western Kern County, California that was submitted to the U.S. Fish and Wildlife Service on March 1, 2013. HECA and the United States Department of Energy (DOE) have reviewed these comments and addressed them as described below.

Comment 1

The BA makes the determination that the project may affect, but is not likely to adversely affect, the Buena Vista Lake ornate shrew. However, the species is presumed to be present, creating potential for mortality of individuals.

Based on the low likelihood of encountering a Buena Vista Lake ornate shrew, as well as the implementation of the proposed Avoidance, Minimization, and Compensation measures, HECA and DOE believes that there is no potential for mortality of individual shrews.

The last paragraph on Page 6-1 of the BA is revised as follows:

The proposed action may affect, but is not likely to adversely affect the Buena Vista Lake shrew. No Buena Vista Lake shrews were observed in the Action Area during 2008, 2009, 2010, 2011, or 2012 surveys; however, this species is presumed to be present because Buena Vista Lake shrews have been previously documented in the greater biological region. Potential effects could include temporary loss of habitat during construction, ~~and mortality of individuals caused by construction activities.~~ The avoidance and conservation measures BIO 4, BIO 7, BIO 8, BIO 15, and BIO 16 described in Section 2.3 would *avoid potential*

~~mortality of Buena Vista Lake ornate shrews. substantially reduce the potential for direct effects on the Buena Vista Lake shrews.~~ Also, habitat compensation, as described by conservation measure BIO 18, will provide additional benefits for long-term survival and recovery of the Buena Vista Lake shrew.

Comment 2

The BA states that HECA will compensate for the permanent and temporary loss of habitats by acquiring mitigation credits from the Kern Water Bank. Will these credits be purchased prior to initiation of project disturbance?

HECA will purchase mitigation credits prior to initiation of project disturbance.

The description for Avoidance, Minimization, and Compensation Measure BIO-18 on the bottom of Page 2-16 of the BA is revised as follows:

HECA will compensate for the permanent and temporary loss of habitats potentially used by federally and state-listed species by acquiring credits from the USFWS-approved Kern Water Bank Authority mitigation bank. Mitigation credits will be acquired prior to the start of ground disturbing activities.

Comment 3

The BA states that plants will be avoided to the greatest extent possible. If federally-listed plant species cannot be avoided, USFWS recommends re-initiation of formal consultation to include federally-listed plant species.

No impacts to federally-listed plant species (including San Joaquin woolly-threads and California jewelflower) are anticipated to occur as a result of the proposed action based on available occurrence data.

The proposed Avoidance, Minimization, and Compensation Measure BIO-2 at the top of Page 2-12 of the BA is revised to include the following text:

If any federally-listed plant species cannot be avoided, DOE will reinitiate formal consultation with USFWS.

Comment 4

The BA states pre-construction surveys will be conducted in affected areas that have potentially suitable habitat for blunt-nosed leopard lizard, San Joaquin kit fox, giant kangaroo rats, and Tipton's kangaroo rats. Please clarify the areas that will be surveyed by habitat or existing land use type as identified in the BA.

All habitat identified in Table 6 of the BA as “Natural/Ruderal” would be surveyed during pre-construction surveys for blunt-nosed leopard lizard, San Joaquin kit fox, giant kangaroo rats, and Tipton’s kangaroo rats.

The description of Avoidance, Minimization, and Compensation Measure BIO-4 (page 2-13) is revised to include the following text:

Affected areas containing potentially suitable habitat that will be surveyed are those habitats defined as “Natural/Ruderal” in Table 6, which are depicted in Figure 7 as the “2012 Survey Area” for blunt-nosed leopard lizard.

The description of Avoidance, Minimization, and Compensation Measures BIO-5 (page 2-13), and BIO-15 (page 2-15) is revised to include the following text:

Affected areas containing potentially suitable habitat described in this measure are those habitats defined as “Natural/Ruderal” in Table 6, which are depicted in Figure 7 as the “2012 Survey Area” for blunt-nosed leopard lizard.

The description of the Avoidance, Minimization, and Compensation Measure BIO-16 (pages 2-16) is revised to include the following text:

Ground disturbance monitoring will be conducted in portions of the action area with habitats defined as “Natural/Ruderal” in Table 6 and depicted in Figure 7 as the “2012 Survey Area” for blunt-nosed leopard lizard.

Comment 5

The BA states that small mammal trapping and relocation will be performed by a qualified biologist(s) who is approved by the California Energy Commission (CEC) and who holds the necessary permits. The USFWS recommends the biologist(s) also be USFWS-approved. The USFWS would also like more details on the criteria and/or qualifications used by the CEC in their approval process for biologists.

The text of Avoidance, Minimization, and Compensation Measure BIO-16 (page 2-16) is modified as follows:

Construction activities in areas with habitat value for listed species will be monitored by a qualified biologist(s) while the top 18 inches of soil are initially disturbed. *The qualified biologist will be approved by the CEC and USFWS as specified in Measure BIO-17.* The biologist(s) will watch for any special-status animals and will have the authority to stop work if a listed wildlife species is encountered in the construction area. If authorized to remove and/or relocate the species, biologists will relocate the animal to the nearest safe location. If the species cannot be legally relocated, work at that location will be shut down and all personnel will be required to leave the area. The approved biologist will watch

the wildlife in question from a distance until the individual has left the area. The results of all construction monitoring will be documented, and submitted to the CEC, USFWS, and CDFG (see Mitigation Measure BIO-17).

The text of Avoidance, Minimization, and Compensation Measures BIO-17 (page 2-16) is modified as follows:

During construction at the HECA Project Site, a ~~CEC-approved~~ *qualified* biologist *approved by the CEC and the USFWS* will examine active work areas every day prior to the onset of activities to ensure that no special-status species are in the area, and that all wildlife barriers are still in place. Biologists will inform the construction crews when areas are clear, and report significant observations of wildlife to the agencies, as required in the BRMIMP.

CEC-approved biologists must meet the following minimum criteria:

- 1. Hold a bachelor's degree in biological sciences, zoology, botany, ecology, or a closely related field*
- 2. Have at least three years of experience in field biology or current certification of a nationally recognized biological society, such as The Ecological Society of America or The Wildlife Society*
- 3. Have at least one year of field experience with biological resources found in or near the Project area*
- 4. Meet any additional USFWS requirements for approved biological monitor.*

In lieu of requirements 1-3 above, the biologist's resume shall demonstrate to the satisfaction of the CEC, in consultation with CDFW and USFWS, that the proposed biological monitor has the appropriate training and background to effectively implement the requirements specified in the applicable Avoidance, Minimization, and Compensation measures.

Comment 6

Please reference the most up to date version of the *U.S. Fish and Wildlife Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance* (USFWS 2011).

Reference to the 1999 guidelines are replaced with the 2011 guidelines, which are cited as:

USFWS (U.S. Fish and Wildlife Service), 2011. U.S. Fish and Wildlife Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance. URL:

http://www.fws.gov/sacramento/es/Survey-Protocols-Guidelines/Documents/kitfox_standard_rec_2011.pdf

Comment 7

The USFWS recommends the removal of all reference to the draft Elk Hills Habitat Conservation Plan within the BA.

The OEHI Project will be implemented in accordance with the terms and conditions of the 1995 Biological Opinion for the EHOFF. References to the draft Elk Hills Habitat Conservation Plan are provided in the BA as background for this Section 7 consultation but OEHI would continue to rely on the terms and conditions of the existing 1995 Biological Opinion. Future submittals to the USFWS regarding the proposed action will not reference the draft Elk Hills Habitat Conservation Plan.

Comment 8

The BA states that small mammal trapping and relocation will be conducted for 5 consecutive nights. Where will small mammal individuals be relocated to?

Small mammals would be relocated to the nearest suitable habitat. The text of Avoidance, Minimization, and Compensation Measure BIO-15 is revised as follows:

Small mammal trapping and relocation will be conducted for 5 consecutive nights, or until no animals are caught on 2 consecutive nights per area. The small mammal trapping surveys would occur within the construction work areas in potentially suitable habitat (alkali desert scrub, pasture, annual grassland, and barren) that contains evidence of small mammals. Traps will be set according to “sign” (burrows, trails, scat, etc.) and/or in areas of high habitat quality. Small mammal trapping and relocation will be performed by a qualified biologist(s) approved by the CEC with the necessary permits. To minimize mortality associated with relocation, trapped individuals would be relocated to the nearest suitable habitat where property access is available. The results of the small mammal trapping and area clearance will be documented, and submitted to the CEC, USFWS, and CDFG (see Mitigation Measure BIO-17).

Please let us know if you concur with the revisions to the BA described above in response to your comments. The revisions presented in this letter replace the referenced sections in the BA. Unless requested by USFWS, DOE and HECA do not plan to submit a revised version of the BA.

HECA and DOE appreciate the USFWS’ timely review of the Biological Assessment. We look forward to working with you to complete the formal consultation based on the responses to your

comments presented in this letter. Should you have any questions or additional concerns, please contact Steve Leach at (510) 874-3205 or steve.leach@urs.com.

Sincerely,

URS CORPORATION



Dale Shileikis
Project Manager

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**AMENDED APPLICATION FOR CERTIFICATION
FOR THE HYDROGEN ENERGY
CALIFORNIA PROJECT**

**Docket No. 08-AFC-08A
PROOF OF SERVICE
(Revised 3/4/13)**

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DECLARATION OF SERVICE

I, Dale Shileikis, declare that on April 15, 2013, I served and filed copies of the attached Response to USFWS Comments on the Biological Assessment, dated April 12, 2013. This document is accompanied by the most recent Proof of Service, which I copied from the web page for this project at: http://www.energy.ca.gov/sitingcases/hydrogen_energy/.

The document has been sent to the other persons on the Service List above in the following manner:

(Check one)

For service to all other parties and filing with the Docket Unit at the Energy Commission:

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Instead of e-mailing the document, I personally delivered it or deposited it in the US mail with first class postage to all of the persons on the Service List for whom a mailing address is given.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am over the age of 18 years.

Dated: 4/15/13


