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**DOCKET**

**11-AFC-04**

DATE APR 05 2012

RECD. APR 05 2012

April 5, 2012

Pierre Martinez, Project Manager for Rio Mesa Solar Project  
California Energy Commission  
1516 Ninth Street,  
Sacramento, CA 95814-5512

Subject: Elf owl survey relevancy and protocols.

Dear Mr. Martinez,

BrightSource is providing this letter to express our concern about the scientific relevance of elf owl surveys at the proposed Rio Mesa Solar Project and their associated costs. These concerns are based on a lack of suitable habitat and lack of evidence of habitat occupancy by the species. Previously, BrightSource has provided evidence that the proposed Rio Mesa project site contains a small percentage of lands containing potentially marginal elf owl habitat. In addition, at the March 19, 2012 Scheduling Conference, BrightSource asserted that no elf owls have been observed in the vicinity of the Rio Mesa project in 25 years. This lack of species occupancy was based on the California Natural Diversity Database (CNDDDB) information, on-site surveys conducted throughout 2011, and assertions provided earlier by Staff. Staff has now asserted, contrary to earlier statements, that habitat at the site may be occupied. However, BrightSource maintains that this lack of habitat and lack of evidence of habitat occupancy remains an accurate statement.

Staff's new assertions are based on a document prepared by Robert McKernan describing a variety of elf owl sightings from the early 2000's in the vicinity of the project site (Docket # 64395) (the "McKernan Report"). Based on the data in provided in the McKernan Report, BrightSource's consultant, URS, has mapped the elf owl sightings, which extend from Nevada to Mexico. The map produced demonstrates that all of the elf owl sightings are consistent with Applicant's previous statements, thus demonstrating that none of the elf owl sightings occur in the open desert habitat that comprises the Rio Mesa project area. In fact, the McKernan Report demonstrates that past elf owl sightings occurred immediately adjacent to the Colorado River and associated riparian habitat (Figure 1), a habitat type that is not found at the project site. As the map shows, sightings have not occurred at Rio Mesa project site. Therefore,



this evidence supports BrightSource's assertions that the Rio Mesa Site lacks suitable habitat and the site is not occupied by the species.

However, the Renewable Energy Action Team (REAT) agencies have requested a substantial level of effort to survey for elf owls throughout microphyll woodland habitat in the Rio Mesa project area and within a 1 mile buffer of the project site. In light of the lack of evidence demonstrating the presence of elf owl or its habitat on the project site, the cost and effort required to perform three separate surveys is extremely burdensome for the Applicant, and that Applicant be relieved of the surveying requirement for elf owl. The REAT agencies have suggested generally following the protocol for cactus ferruginous pygmy owl, in part because there is no established standard survey protocol for elf owl. Following a strict protocol for cactus ferruginous pygmy owl over a survey area this large presents issues of cost (approximately \$400,000) and time (approximately 275-300 person-days). Because of protocol requirements and necessary logistics, it is difficult to complete the three requested surveys per protocol and within the available survey window. The timing issue cannot be solved by adding additional qualified biologists to shorten the timeline of surveys, because in order to avoid false positive identifications (i.e. surveyors mistaking other surveyors' broadcasts as actual elf owl individuals), surveyors need to remain at least one mile apart while surveying. Accordingly, this protocol does not allow for many surveyors. In order to alleviate the timing issues, the Applicant proposed the following revisions to the cactus ferruginous pygmy owl protocol for purposes of the elf owl surveys.

### **Proposed Revisions to Pygmy Elf Survey Protocol for Purposes of Elf Owl Surveys**

*Without waiving Applicant's objection to the relevancy of the elf owl surveys in total, if the surveys are required, Applicant proposes the following changes to existing protocol for practicality and logistics.* The proposed changes are based on the experience of JP Charpentier, personal communications with John Boone, and an elf owl protocol developed by Clint Boals and Brent Bibles from the University of Arizona. Jean Paul Charpentier is a URS Biologist with 10 years of pygmy-owl survey experience in southeastern Arizona. John Boone is an elf owl biologist who recently completed surveys on the Colorado River for the Lower Colorado Multi-Species Conservation Plan. Mr. Boals and Mr. Bibles survey protocol for elf owls is presented in the Journal of Field Ornithology (72(1): 66-71).

#### Current protocol

Conduct surveys in suitable habitat from 1 hour before sunrise to 2 hours after sunrise, or from 1 hour before sunset to 1 hour after sunset (use an official sunrise table for correct times). Surveys may also be conducted at night during a full moon or nearly full moon (two days either side of a full moon) while the moon is visible. If the moon sets or is obscured by clouds, surveys must not be conducted.



## Proposed Revision

Conduct surveys in suitable habitat from 1 hour before sunrise to 2 hours after sunrise, or from 1 hour before sunset to **2 hours after sunset** (use an official sunrise table for correct times). Surveys may also be conducted at night during a full moon or nearly full moon (two days either side of a full moon) while the moon is visible. If the moon sets or is obscured by clouds, surveys must not be conducted.

## Current Protocol

Call stations located in urban areas, sites with high noise disturbance (such as along roads or highways), or in riparian areas (due to tree density and noise) must be no more than 150 m (500 ft) apart. In more remote areas that do not have the above types of disturbance, the distance between call stations may be extended up to 0.25 mile (mi) (400 m), if complete coverage can be maintained.

## Proposed Revision

While the surveys are being conducted for a project clearance, the survey area possesses relatively flat topography, riparian areas with low to moderately-low vegetation density, and is a remote location with few noise disturbance factors. Given these survey area characteristics, the distance between **call stations is proposed at 400 meters**.

The 400 meter call station interval distance is consistent with USFWS pygmy owl guidance, surveys completed for the Lower Colorado Multi-Species Conservation Plan (300 meter call station intervals), and the Boals & Bibles (200 meter call station intervals).

## Current Protocol

Conduct a 2-minute listening period at each call station prior to broadcasting a taped call. Following the initial listening period, broadcast calls for 30 seconds, followed by a 90-second listening and observation period. Repeat this calling/listening sequence for at least 10 minutes. After completing the 10-minute survey/listening sequence, observe and listen for an additional 3 minutes before proceeding to the next call station. Combined with the initial 2-minute listening period, the total time spent at each call station must be a minimum of 15 minutes.

## Proposed Revision

Conduct a **1-minute** listening period at each call station prior to broadcasting a taped call. Following the initial listening period, broadcast calls for 30 seconds, followed by a 90-second listening and observation period. Repeat this calling/listening sequence **3 times for a total of 6 minutes**. After completing the **6-minute survey/listening sequence**, observe and listen for an



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additional **1 minute** before proceeding to the next call station. The total time spent at each call station must be a minimum of **8 minutes**.

Current Protocol

Conduct elf owl surveys within a 1-mile buffer around proposed project site.

Proposed Revision

**Conduct elf owl surveys within a 1/4-mile buffer around proposed project site.**

Research conducted by Gamel and Brush (j. Raptor Res. 35(3):214-220) of elf owl home range size in Texas found that home range size ranged from 0.24-2.60 ha ( $X = 1.05 + 0.33$  ha). This research suggests that a 1/4-mile buffer around proposed project site is sufficient to verify elf owl occupancy.

References:

Boal, C.W. and B.D. Bibles. 2001. Responsiveness of elf owls to conspecific and great horned owl calls. *Journal of Field Ornithology* 72(1):66-71.

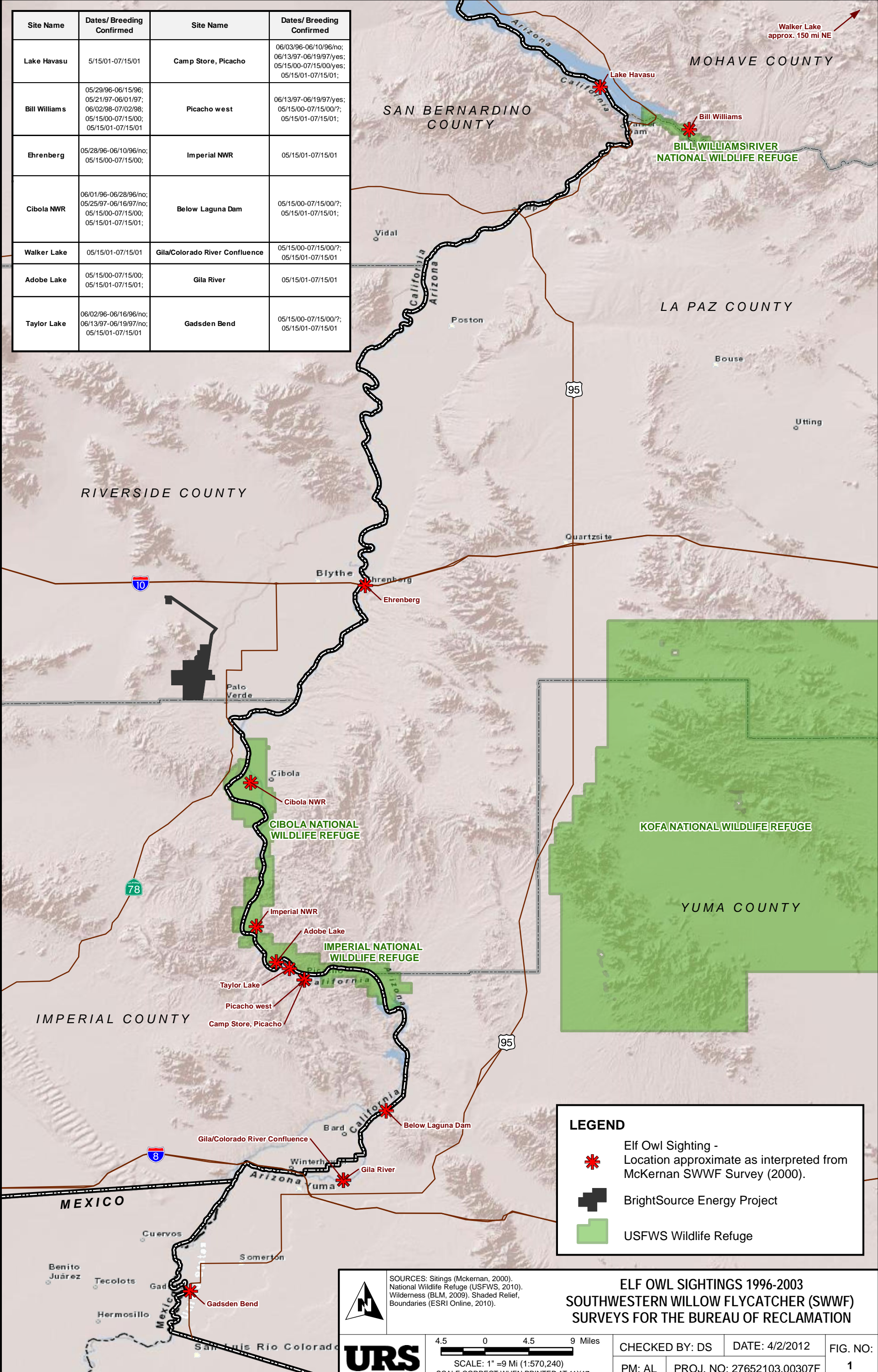
Gamel, C.M. and T. Brush. 2001. Habitat use, population density, and home range of elf owls (*Micrathene whitneyi*) at Santa Ana National Wildlife Refuge, Texas. *Journal of Raptor Research* 35(3):214-220

Regards,

Todd Stewart  
Program Manager

Attachment: Elf Owl Sightings 1996-2003, Southwestern Willow Flycatcher (SWWF) Surveys for the Bureau of Reclamation

Site Name	Dates/ Breeding Confirmed	Site Name	Dates/ Breeding Confirmed
Lake Havasu	5/15/01-07/15/01	Camp Store, Picacho	06/03/96-06/10/96/no; 06/13/97-06/19/97/yes; 05/15/00-07/15/00/yes; 05/15/01-07/15/01;
Bill Williams	05/29/96-06/15/96; 05/21/97-06/01/97; 06/02/98-07/02/98; 05/15/00-07/15/00; 05/15/01-07/15/01	Picacho west	06/13/97-06/19/97/yes; 05/15/00-07/15/00/?; 05/15/01-07/15/01;
Ehrenberg	05/28/96-06/10/96/no; 05/15/00-07/15/00;	Imperial NWR	05/15/01-07/15/01
Cibola NWR	06/01/96-06/28/96/no; 05/25/97-06/16/97/no; 05/15/00-07/15/00; 05/15/01-07/15/01;	Below Laguna Dam	05/15/00-07/15/00/?; 05/15/01-07/15/01;
Walker Lake	05/15/01-07/15/01	Gila/Colorado River Confluence	05/15/00-07/15/00/?; 05/15/01-07/15/01
Adobe Lake	05/15/00-07/15/00; 05/15/01-07/15/01;	Gila River	05/15/01-07/15/01
Taylor Lake	06/02/96-06/16/96/no; 06/13/97-06/19/97/no; 05/15/01-07/15/01	Gadsden Bend	05/15/00-07/15/00/?; 05/15/01-07/15/01



**LEGEND**

- Elf Owl Sighting - Location approximate as interpreted from McKernan SWWF Survey (2000).
- BrightSource Energy Project
- USFWS Wildlife Refuge

**ELF OWL SIGHTINGS 1996-2003  
SOUTHWESTERN WILLOW FLYCATCHER (SWWF)  
SURVEYS FOR THE BUREAU OF RECLAMATION**

SOURCES: Sitings (Mckernan, 2000). National Wildlife Refuge (USFWS, 2010). Wilderness (BLM, 2009). Shaded Relief, Boundaries (ESRI Online, 2010).

**URS**

4.5 0 4.5 9 Miles  
SCALE: 1" = 9 Mi (1:570,240)  
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**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
1-800-822-6228 – WWW.ENERGY.CA.GOV**

**APPLICATION FOR CERTIFICATION  
FOR THE *RIO MESA SOLAR*  
*ELECTRIC GENERATING FACILITY***

DOCKET NO. 11-AFC-04  
PROOF OF SERVICE  
(Revised 2/27/12)

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DECLARATION OF SERVICE

I, Michelle L. Farley, declare that on April 5, 2012, I served and filed copies of the attached Elf Owl Survey Relevancy and Protocols, dated April 5, 2012. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at: [<http://www.energy.ca.gov/sitingcases/riomesa/index.html>].

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

*(Check all that Apply)*

**For service to all other parties:**

- Served electronically to all e-mail addresses on the Proof of Service list;
- Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "e-mail preferred."

**AND**

**For filing with the Docket Unit at the Energy Commission:**

- by sending electronic copies to the e-mail address below (preferred method); **OR**
- by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

**CALIFORNIA ENERGY COMMISSION – DOCKET UNIT**  
Attn: Docket No. 11-AFC-4  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

**OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:**

- Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission  
Michael J. Levy, Chief Counsel  
1516 Ninth Street MS-14  
Sacramento, CA 95814  
[mlevy@energy.state.ca.us](mailto:mlevy@energy.state.ca.us)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.



\_\_\_\_\_  
Michelle L. Farley