

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062

lmiles@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4715

TEL: (916) 444-6201
FAX: (916) 444-6209

DANIEL L. CARDOZO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
MARC D. JOSEPH
ELIZABETH KLEBANER
RACHAEL E. KOSS
LOULENA A. MILES
ROBYN C. PURCHIA

OF COUNSEL
THOMAS R. ADAMS
ANN BROADWELL
GLORIA D. SMITH

November 2, 2009

Felicia Bellows,
Vice President of Development
Tessera Solar
4800 North Scottsdale Road,
Ste. 5500
Scottsdale, AZ 85251
felicia.bellows@tesseractosolar.com

Camille Champion
Project Manager
Tessera Solar
4800 North Scottsdale Road,
Suite 5500
Scottsdale, AZ 85251
camille.champion@tesseractosolar.com

Re: CALICO - SES SOLAR ONE PROJECT (08-AFC-13)
CURE Data Requests, Set 4 (Nos. 378-402)

Dear Ms. Bellows and Ms. Champion:

California Unions for Reliable Energy (CURE) submits this fourth set of data requests concerning the biological impacts associated with the Lugo-Pisgah No. 2 500 KV Transmission Line and Pisgah Substation expansion, as described in AFC Appendix EE, to Tessera Solar for the Calico - SES Solar One Project, pursuant to Title 20, section 1716(b), of the California Code of Regulations. The requested information is necessary to: (1) more fully understand the project; (2) assess whether the project will be constructed and operated in compliance with all laws, ordinances, regulations and standards; (3) assess whether the project will result in significant environmental impacts; and (4) assess potential mitigation measures.

2309-025a

DOCKET	
08-AFC-13	
DATE	NOV 02 2009
RECD	NOV 02 2009

November 2, 2009

Page 2

CURE reserves the right to submit additional data requests on any topic that requires further information.

Pursuant to section 1716(f) of the Energy Commission's regulations, written responses to these requests are due within 30 days. If you are unable to provide or object to providing the requested information by the due date, you must send a written notice of your objection(s) and/or inability to respond, together with a statement of reasons, to Commissioners James Boyd and Jeffrey Byron and to CURE within 20 days.

Please contact us if you have any questions. Thank you for your cooperation with these requests.

Sincerely,

/s/

Loulena A. Miles

LAM:bh
Attachment

**SES Solar One Power Plant
CUREs Data Requests, Set Four (No. 378-402)**

BIOLOGICAL RESOURCES

Background: ENVIRONMENTAL IMPACTS ASSOCIATED WITH THE LUGO-PISGAH NO. 2 500KV TRANSMISSION LINE AND PISGAH SUBSTATION EXPANSION

The SES Solar One Project requires construction of approximately 67 miles of 500kV transmission line between the existing Pisgah and Lugo substations.¹ In addition, the existing Pisgah Substation would require expansion from approximately 5 acres to approximately 40 acres to accommodate new electrical and communication facilities.² Appendix EE of the AFC provides a summary report that describes the environmental resources in these two project areas, as well as their potential environmental impacts. For clarity, we hereafter refer to construction of the new 500kV transmission line and substation upgrades collectively as the “Project,” and the associated environmental summary report as the “report.”

In 2007 and 2008, URS biologists conducted a habitat assessment to characterize the vegetation within the Project area and to determine potential habitats for sensitive species.³ The Project area was surveyed by vehicle and on foot.⁴ Seventeen native and 3 non-native (or disturbance-related) vegetation types were observed during the surveys, and 10 special-status species were detected.⁵ However, the report provides very little information on where these biological resources occurred, including whether any of them were within the Project footprint. It also provides very little information on how the surveys were conducted, including whether established survey guidelines were followed.

Data Requests

378. Please provide a map that depicts the locations of the 20 vegetation types that occur within the Project area and the locations where special-status species were detected, including:
- a. A map at a sufficient scale to enable precise identification of species location in relation to Project features.
 - b. Geographic coordinates of the various special-status species that were detected.

¹ See AFC, Appendix EE: Environmental Summary Report for the Proposed Lugo-Pisgah 500kV Transmission Line and Substation Upgrades.

² *Id.*

³ *Id.*: p. 13.

⁴ *Id.*

⁵ *Id.*

379. Please provide information on the abundance of each special-status species that was detected. For the special-status plant species that were detected, please indicate whether each reported occurrence represents an individual plant or multiple plants.
380. Please provide the survey dates. For each date, indicate the portion(s) of the Project area surveyed, the resources surveyed, and the corresponding surveyors.
381. Please indicate whether the surveys adhered to any established survey guidelines. If the answer is yes, please cite the guidelines and indicate whether the surveys deviated from the guidelines in any way.

Background: ASSESSMENT OF POTENTIALLY OCCURRING SPECIAL-STATUS SPECIES AND OTHER SENSITIVE BIOLOGICAL RESOURCES

Table 2 of the report identifies federally listed fish and wildlife species known to occur in San Bernardino County. Table 3 identifies species discussed in the West Mojave Plan that are listed as sensitive by the BLM. Both tables present the author's assessment of each species' potential to occur in the Project area. However, the report does not indicate whether other special-status species may be impacted by the Project (e.g., State of California listed species), and Table 3 omits many of the plant and animal species covered by the West Mojave Plan.⁶ These include Emory's crucifixion thorn, Mojave fringe-toed lizard, San Diego horned lizard, burrowing owl, ferruginous hawk, and Le Conte's thrasher (among others).

The report indicates the Project area is "outside of the species' known range" for most of the species considered.⁷ Such a statement does not provide a clear assessment of each species' potential to occur in the Project area.⁸ Furthermore, California Natural Diversity Database (CNDDDB) records directly contradict the report by indicating the Project area is within the range of many of the species considered, not outside of it as indicated by the report.⁹ For the southwestern willow flycatcher and arroyo toad, the report indicates the location of designated Critical Habitat in relation to the Project area, but it does not discuss the potential for either species to occur in the Project area.¹⁰

Data Requests

382. Please provide a list of any other special-status species that may be affected by the Project, provide an assessment of Project impacts on these species, and

⁶ See Appendix Y of U.S. Dept. of the Interior, Bureau of Land Management. 2005. Final Environmental Impact Report and Statement for the West Mojave Plan: a habitat conservation plan and California desert conservation area plan amendment. Moreno Valley (CA): U.S. Dept. of the Interior, Bureau of Land Management, California Desert District.

⁷ See AFC, Appendix EE: Tables 2 and 3.

⁸ E.g., Range expansion is not uncommon when new populations of a plant species are detected.

⁹ California Natural Diversity Database. 2009. Rarefind [computer program]. Version 3.1.0. Oct 3, 2009. Sacramento (CA): Wildlife & Habitat Data Analysis Branch. California Department of Fish and Game.

¹⁰ AFC, Appendix EE: Table 2.

discuss whether any additional species-specific mitigation will be implemented to offset Project impacts.

383. Please indicate why numerous species discussed in the West Mojave Plan that are listed as sensitive by the BLM were omitted from Table 3 of the report.
384. Please provide justification for, and cite the sources used, to conclude the Project area is outside the known range of the following species:
 - a. Least Bell's vireo
 - b. Yellow-billed cuckoo
 - c. California leaf-nosed bat
 - d. Pallid bat
 - e. Spotted bat
 - f. Townsend's big-eared bat
 - g. Western mastiff bat
 - h. Mojave tarplant
385. Please discuss the potential for the following species to occur in the Project area:
 - a. Southwestern willow flycatcher
 - b. Arroyo toad
386. Please provide information on aquatic resources in the Project area and discuss potential Project impacts on these resources (including number of acres potentially impacted).
387. Please discuss potential Project impacts on natural communities listed as rare by the California Department of Fish and Game, and discuss the mitigation that will be implemented to offset Project impacts to these communities.

Background: MOHAVE GROUND SQUIRREL

The report states “[t]he closest documented location of the Mojave ground squirrel is greater than five miles from the project area which precludes the requirement for protocol surveys for this species.”¹¹ The CNDDDB has several records of Mohave ground squirrel occurrence within 5 miles of the Project area (Figure 1). Although the records are relatively old, the Mohave ground squirrel is presumed extant at these locations.¹²

¹¹ AFC, Appendix EE: p. 19.

¹² California Natural Diversity Database. 2009. Rarefind [computer program]. Version 3.1.0. Oct 3, 2009. Sacramento (CA): Wildlife & Habitat Data Analysis Branch. California Department of Fish and Game.

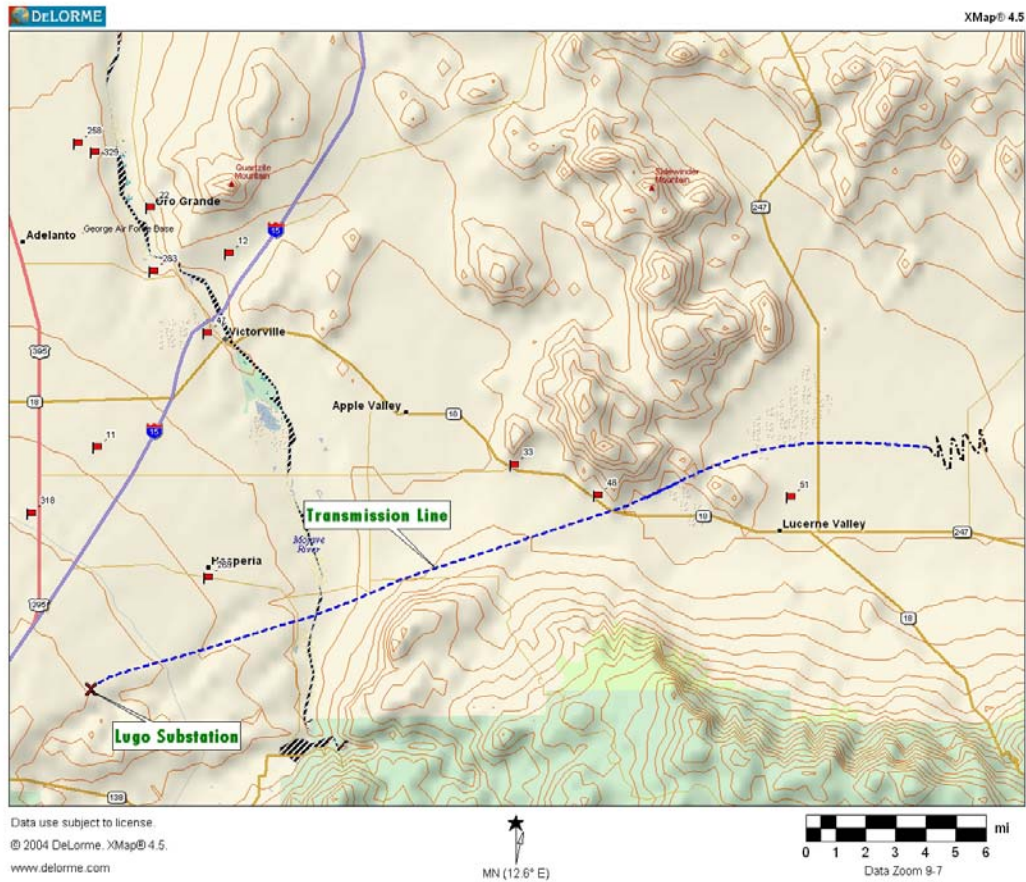


Figure 1. Documented Mohave ground squirrel occurrences in the vicinity of the Project area. Numbers with flags correspond to CNDDDB occurrence numbers.

Data Requests

- 388. Please clarify the report’s statement that the closest documented occurrence of Mohave ground squirrel is greater than 5 miles from the Project area.
- 389. Please provide a copy of the CDFG guidance that waives the requirement for protocol surveys for projects greater than 5 miles from documented Mohave ground squirrel locations.
- 390. Please clarify the need to conduct surveys for the Mohave ground squirrel in the area covered by the West Mojave Plan.

Background: PROJECT DESCRIPTION AND ANALYSIS OF ENVIRONMENTAL IMPACTS

The Project would require: (a) expansion of the Pisgah Substation;¹³ (b) two new transmission line loops in the vicinity of the existing Pisgah Substation;¹⁴ (c) 9.8 miles of new right-of-way;¹⁵ and, (d) grading and construction of new roads.¹⁶ Although the report indicates more detailed environmental analysis of the proposed project will be completed in the future,¹⁷ it lacks sufficient information to attain even a general understanding of environmental impacts associated with Project features.

Data Requests

391. Please provide sufficiently detailed maps that show:
- a. areas where ground disturbance will occur when the Pisgah Substation is expanded.
 - b. the two new transmission line loops in the vicinity of the Pisgah Substation.
 - c. a distinction between existing and new right-of-ways.
 - d. areas where grading will occur.
 - e. areas where ground disturbance will occur to construct new access road or redevelop existing roads.
 - f. the location of the transmission line in relation to the Mojave River and any associated riparian vegetation.
392. Please provide Plat Maps 1 through 58 referenced in the report.¹⁸
393. Please discuss the status of additional environmental analysis conducted for the Project and provide any environmental documents that have been prepared for the new transmission lines and substation upgrades (i.e., besides Appendix EE).

Background: PROJECT COMPLIANCE WITH THE WEST MOJAVE PLAN

The Project is within the West Mojave Plan (Plan) area. However, the report does not provide sufficient information to determine whether the Project will comply with the Plan's requirements. The Plan establishes a "one percent" threshold for new ground disturbance within the Habitat Conservation Area, which includes the DWMA's (Desert Wildlife Management Areas) and the conservation areas bearing the name of the species

¹³ AFC, Appendix EE: p. 5.

¹⁴ *Id.*

¹⁵ AFC, Appendix EE: p. 6.

¹⁶ *Id.*

¹⁷ AFC, Appendix EE: p. 5.

¹⁸ *Id.*

being protected (e.g., Mojave Monkeyflower Conservation Area).¹⁹ The Plan suggests the Pisgah ACEC (Area Critical Environmental Concern) is also subject to the 1% limitation on new allowable ground disturbance.²⁰ The Project will impact the Ord-Rodman DWMA, the Pisgah ACEC, and the Upper Johnson Valley Yucca Rings ACEC.²¹ The report does not specify the extent of impacts (i.e., acreage and linear distance) to the Ord-Rodman DWMA, and with respect to the Upper Johnson Valley Yucca Rings ACEC, it states the existing right-of-way corridor “is presumed to be included in the ACEC management plan.”²²

In addition to meeting the cumulative limitation on ground disturbance, activities on lands covered by the Plan are required to pay a mitigation fee.²³ Mitigation proposed in the report does not specifically address this requirement.

Under the Plan, incidental take of white-margined beardtongue is limited to 50 acres of occupied and potential habitat.²⁴ In addition, take as a result of utility construction is only allowed where avoidance is infeasible.²⁵ It’s not clear that the Project will comply with these requirements of the Plan.

It appears that the Project transmission line will go directly through the Upper Johnson Valley Yucca Rings ACEC.²⁶ The report does not discuss the impacts of the Project on protected resources within this ACEC, or whether the Project will comply with the California Desert Conservation Area Plan Amendment that protects the ACEC.

Data Requests

394. Please clarify the amount of new ground disturbance that will occur within the Pisgah ACEC.
395. Please indicate how much ground disturbance will occur in the Ord-Rodman DWMA and clarify whether any Project activities will occur in the Juniper Flats ACEC.
396. Please discuss the Project’s contribution to the 1% cumulative limitation on new ground disturbance.

¹⁹ See p. 2-32 of U.S. Dept. of the Interior, Bureau of Land Management. 2005. Final Environmental Impact Report and Statement for the West Mojave Plan: a habitat conservation plan and California desert conservation area plan amendment. Moreno Valley (CA): U.S. Dept. of the Interior, Bureau of Land Management, California Desert District.

²⁰ See Appendix D of *Id.*

²¹ AFC, Appendix EE: p. 31.

²² *Id.*

²³ See p. 2-34 of U.S. Dept. of the Interior, Bureau of Land Management. 2005. Final Environmental Impact Report and Statement for the West Mojave Plan: a habitat conservation plan and California desert conservation area plan amendment. Moreno Valley (CA): U.S. Dept. of the Interior, Bureau of Land Management, California Desert District.

²⁴ See p. 2-116 of *Id.*

²⁵ See p. 4-79 of *Id.*

²⁶ AFC, Appendix EE: Figure 7.

397. Please indicate the mitigation fee that will be provided for Project impacts to areas covered by the Plan and demonstrate that the compensation ratios used comply with provisions of the Plan.
398. Please provide additional information on potential Project impacts to the white-margined beardtongue. Specifically, please
 - a. discuss the anticipated level of take on the species and its habitat.
 - b. provide the amount of incidental take that has already occurred under the Plan.
 - c. discuss the avoidance measures that have been (or will be) implemented.
399. Please discuss Project impacts on the Upper Johnson Valley Yucca Rings ACEC and the Project's compliance with the California Desert Conservation Area Plan Amendment that protects it.
400. Please provide a definitive statement on whether the right-of-way corridor is included in the Upper Johnson Valley Yucca Rings ACEC Management Plan and discuss whether the Project will adhere to the conservation strategy of the Management Plan.
401. Please clarify whether an existing transmission line currently passes through the Upper Johnson Valley Yucca Rings ACEC.

Background: ELECTROCUTION AND COLLISION HAZARDS TO BIRDS

The Project transmission line will present an electrocution and collision hazard to raptors and other birds.²⁷ The report indicates design and construction standards such as those outlined by the Avian Power Line Interaction Committee (APLIC) would minimize the risk of bird electrocution.²⁸ However, mitigation measures proposed in the report do not include raptor safe transmission lines, nor does the report specify whether the Project will actually adhere to APLIC standards. The West Mojave Plan requires raptor-safe electrical distribution lines for all new construction.²⁹

Data Request

402. Please clarify whether the Project will adhere to the guidelines established by APLIC.

²⁷ AFC, Appendix EE: p. 21.

²⁸ *Id.*

²⁹ See Table 2-1 of U.S. Dept. of the Interior, Bureau of Land Management. 2005. Final Environmental Impact Report and Statement for the West Mojave Plan: a habitat conservation plan and California desert conservation area plan amendment. Moreno Valley (CA): U.S. Dept. of the Interior, Bureau of Land Management, California Desert District.

DECLARATION OF SERVICE

I, Bonnie Heeley, declare that on November 2, 2009, I served and filed copies of the attached CURE’s Data Requests Set Four (No. 378-402) dated November 2, 2009. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at www.energy.ca.gov/sitingcases/solarone. The document has been sent to both the other parties in this proceeding as shown on the Proof of Service list and to the Commission’s Docket Unit electronically to all email addresses on the Proof of Service list; and by depositing in the U.S. mail at South San Francisco, CA, with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list to those addresses NOT marked “email preferred.”

AND

By sending an original paper copy and one electronic copy, mailed and emailed respectively to:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 08-AFC-13
1516 Ninth Street, MS 4
Sacramento, CA 95814-5512
docket@energy.state.us.ca.

I declare under penalty of perjury that the foregoing is true and correct. Executed at South San Francisco, CA, on November 2, 2009.

_____/s/_____
Bonnie Heeley

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 08AFC13
1516 Ninth Street, MS-4
Sacramento, CA 95184
docket@energy.state.ca.us

Felicia Bellows
Vice President, Development
Tessera Solar
4800 North Scottsdale Road
Suite 5500
Scottsdale, AZ 85251
Felicia.bellows@tesseractosolar.com

Camille Champion
Project Manager
Tessera Solar
4800 North Scottsdale Road
Suite 5500
Scottsdale, AZ 85251
Camille.champion@tesseractosolar.com

Bill Magdych
AFC Project Manager
URS Corporation
1615 Murray Canyon Rd., #1000
San Diego, CA 92108
Bill_magdych@urscorp.com

Allan J. Thompson
Attorney at Law
21 C Orinda Way #214
Orinda, CA 94563
allanori@comcast.net

Jim Stobaugh
BLM-Nevada State Office
PO Box 12000
Reno, NV 89520
Jim_stobaugh@blm.gov

Rich Rotte, Project Mgr.
Bureau of Land Management
Barstow Field Office
2601 Barstow Road
Barstow, CA 92311
Richard_Rotte@blm.gov

James D. Boyd
Vice Chair & Presiding Member
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
jboyd@energy.state.ca.us

Jeffrey D. Byron
Commissioner & Associate Member
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
jbyron@energy.state.ca.us

Paul Kramer
Hearing Officer
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
pkramer@energy.state.ca.us

Caryn Holmes/Galen Lemei
Staff Counsels
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
cholmes@energy.state.ca.us
glemei@energy.state.ca.us

Christopher Meyer
Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
cmeyer@energy.state.ca.us

Public Adviser
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
publicadviser@energy.state.ca.us

Loulena Miles
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
lmiles@adamsbroadwell.com

Becky Jones
California Department of Fish &
Game
36431 41st Street East
Palmdale, CA 93552
dfgpalm@adelphia.net

Basin & Range Watch
Laura Cunningham
Kevin Emmerich
PO Box 70
Beatty, NV 89003
atmoictoadranch@netzero.net

Patrick C. Jackson
600 N. Darwood Avenue
San Dimas, CA 91773
E-MAIL PREFERRED
ochsjack@earthlink.net

California ISO
e-recipient@caiso.com