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08-AFC-13

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California Energy Commission
Attn: Docket Office, 08-AFC-13
1516 Ninth Street
Sacramento, CA 95814

Re: Calico Solar; Docket No. 08-AFC-13

Dear Docket Clerk:

Please process the enclosed Comments of the California Unions for Reliable Energy on Staff Assessment for the Calico Solar Project, conform the copy and return the copy in the envelope provided.

Thank you.

Sincerely,

/s/

Loulena A. Miles

LAM:bh
Enclosures

2309-063a

COMMENTS
of the
CALIFORNIA UNIONS FOR RELIABLE ENERGY

on

Staff Assessment for the
Calico Solar Project

Application for Certification (08-AFC-13)

June 4, 2010

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On behalf of California Unions for Reliable Energy (“CURE”), this letter provides comments on the Staff Assessment/Draft Environmental Impact Statement (“SA”) for the Calico Solar Project (“Project”). This SA has two insurmountable legal problems. First, the Applicant failed to provide sufficient information about the environmental setting upon which Staff can provide a legally adequate analysis. Second, the Applicant has changed the Project continually since the Application for Certification (“AFC”) was accepted as “data adequate,” and months after Staff published the SA. Both of these problems present a difficult task for the Commission: complete a legally defensible CEQA analysis without accurate or adequate baseline information, with a constantly changing project description, and do it more quickly than feasibly possible; all so that the Applicant can qualify for federal stimulus dollars.

It is also obvious that Staff has invested enormous time and effort in attempting to work around the inadequacies in the AFC and technical reports submitted by the Applicant. Staff has developed complex mitigation options and plans in an attempt to anticipate and mitigate for unidentified project impacts. Unfortunately the environment isn’t predictable (especially the relatively unstudied and fragile desert ecosystem). This is exactly why, in the California legislature’s infinite wisdom, CEQA was drafted to require a description of the physical environment as it exists at the time CEQA review is commenced, so as to provide a baseline from which to measure environmental impacts. That baseline data is utterly deficient in this SA.

In fact, the SA allows much of the baseline data, which ordinarily is the starting point for developing an environmental analysis, to be submitted later, pursuant to conditions of certification. Therefore the Applicant is only required to gather this baseline data post-project approval. This novel theory turns CEQA on its head.

Staff has been honest and forthcoming about WHY the Energy Commission is willing to entertain this backwards methodology – because the Applicant claims that the success of this Project is dependent upon stimulus funding:

Because the applicant intends to apply for stimulus funding under the American Recovery and Reinvestment Act (ARRA), and must begin construction by the end of the year to qualify, biological surveys for a variety of species will be conducted concurrently with the review of this document. These survey activities include, but are not limited to, preconstruction surveys for specific resources (i.e., rare plants, nesting birds, desert tortoise, etc.).¹

¹ SA, p. C.2-1.

However, the ARRA rules have since changed. It is no longer necessary for the Applicant to begin construction by the end of the year to obtain ARRA funding. The ARRA requirements now include a “safe harbor provision” to provide just the sort of breathing room that this Project desperately needs and CEQA demands. The recently published Program Guidance for ARRA² eliminates the Applicant’s need to begin physical on-site construction by the end of the year.³

According to the Program Guidance, “[c]onstruction begins when physical work of a significant nature begins,” and “physical work of a significant nature” may be “when more than 5 percent of the total cost of the property has been paid or incurred.”⁴ The five percent can be spent solely on *purchasing equipment* without *any* site disturbance, and thus there is no need to rush the environmental review process to allow construction prior to the end of the year.

Therefore, in light of the Applicant’s failure to provide an enormous amount of information necessary for Staff’s analysis of the Project, Staff should require all of the baseline information at the time it is needed most – during the environmental review process – while mitigation and alternatives are being developed and analyzed, as is required by CEQA. Moreover, this analysis must be circulated for public review and comment.

Now the Applicant’s fallback argument is that their contract with the utility to purchase power has a set deadline. Neither ARRA funding nor a utility contract provides a CEQA override. The Commission has enough experience with power plant siting proceedings to know that contracts can be renegotiated.

Staff has clearly made tremendous efforts to identify and attempt to create mitigation for significant environmental impacts posed by the Project. In fact, we agree with many of Staff’s analyses and conclusions that led Staff to require the Applicant to conduct additional survey efforts. Much of Staff’s work on this Project is to be commended. But no amount of Staff problem-solving can get around CEQA’s requirement that an environmental review must begin with adequate baseline data and a stable project description. Thus, until these legal requirements are met, the SA does not satisfy the requirements of the California Environmental Quality Act (“CEQA”)⁵ or the Warren-Alquist Act.⁶

Moreover, the anticipated process for preparing a Revised Staff Assessment that is not circulated for public review, and only provides the parties a limited amount of time to prepare testimony, would fail to provide meaningful review as

² <http://www.ustreas.gov/recovery/docs/guidance.pdf>, revised March, 2010.

³ *Id.* pp. 6-7.

⁴ *Id.* pp. 6-7.

⁵ Pub. Resources Code, § 21000 et seq.

⁶ *Id.*, § 25500 et seq.

required by these statutes and their implementing regulations. Accordingly, an adequate, revised SA must be prepared and circulated for public review and comment.

I. THE SA MUST BE REVISED AND RECIRCULATED FOR PUBLIC COMMENT

In the approval process for an application for certification of a power plant project, the Energy Commission acts as lead agency under CEQA.⁷ In all essential respects, its process is functionally equivalent to that of all other CEQA proceedings.⁸ Specifically, the SA is the functional equivalent to a draft environmental impact report (“EIR”),⁹ the draft environmental document prepared by Staff to inform decision-makers and the public of a project’s environmental impacts.

CEQA has two basic purposes. Unfortunately, the SA falls short of satisfying either of them. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.¹⁰ The SA, like an EIR, is the “heart” of this requirement.¹¹ The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”¹² CEQA mandates that an EIR, or EIR equivalent, be prepared “with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences.”¹³ Further, in preparing an environmental document, “an agency must use its best efforts to find out and disclose all that it reasonably can.”¹⁴ Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures.¹⁵

⁷ *Id.*, § 25519(c).

⁸ *Id.*, § 21080.5.

⁹ See Memorandum of Understanding Between the U.S. Department of the Interior, Bureau of Land Management California Desert District and the California Energy Commission Staff, Concerning Joint Environmental Review For Solar Thermal Power Plant Projects, p. 4, available at http://www.energy.ca.gov/siting/solar/BLM_CEC_MOU.PDF (“[t]he assessments provided by the Parties must be sufficient to meet all federal and state requirements for NEPA and CEQA and shall be included as part of the joint Preliminary Staff Assessment/Draft Environmental Impact Statement and the joint Final Staff Assessment/Final Environmental Impact Statement.”)

¹⁰ 14 Cal. Code Regs. (“CEQA Guidelines”), § 15002(a)(1).)

¹¹ *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

¹² *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795.

¹³ CEQA Guidelines, § 15151.

¹⁴ *Id.*, § 15144.

¹⁵ *Id.*, § 15002(a)(2) and (3). See also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; *Laurel Heights Improvement Ass’n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400.

The SA could not have satisfied these purposes because the Applicant failed to provide Staff with the information necessary to draft a CEQA-compliant document. Although Staff indicate that the “SA, the result of the Energy Commission staff’s environmental evaluation process, is functionally equivalent to the preparation of an [EIR],”¹⁶ this statement is incorrect. The SA simply does not contain the information and analyses required by CEQA and its implementing guidelines to be functionally equivalent to an EIR.¹⁷ Because the Applicant neglected to provide Staff with sufficient information, Staff issued a SA that is incomplete with respect to potentially significant impacts and mitigation measures for several resource areas.

Further, the SA’s deficiencies violate the Energy Commission’s own regulations for power plant site certification (“Regulations”).¹⁸ The Commission’s regulations state that the Applicant “shall have the burden of presenting sufficient substantial evidence to support the findings and conclusions required for certification of the site and related facility.”¹⁹ The Regulations require Staff to “present the results of its environmental assessments in a report” which “shall be written to inform interested persons and the commission of the environmental consequences of the proposal.”²⁰ Staff shall “ensure a complete consideration of significant environmental issues in the proceeding.”²¹ As shown below, the SA lacks a considerable amount of information regarding potentially significant impacts and mitigation measures for several resource areas. Thus, the SA has not completely considered all “significant environmental issues” related to the Project, nor does the SA notify the public or decision-makers of the “environmental consequences” of the Project.

It appears that Staff’s goal is to include additional and new analyses and mitigation measures in two or more documents that together constitute a Revised Staff Assessment (“Revised SA”). As contemplated in scheduling conferences, the various portions of the Revised SA would not be circulated for public review and comment, or provide a process for responding to comments, all of which is required by CEQA. Instead, the schedule that has been discussed but not officially adopted provides for no public comment and only provides the parties a very limited time to prepare testimony prior to evidentiary hearings, a process that clearly fails to provide meaningful review as required by CEQA, the Warren-Alquist Act and their implementing regulations.

¹⁶ SA, p. A-1.

¹⁷ Pub. Resources Code, § 21100; CEQA Guidelines, §§ 15120(c), 15122-15131.

¹⁸ Cal. Code Regs., §§1001-2557.

¹⁹ 20 Cal. Code Reg., § 1748(d).

²⁰ *Id.*, § 1742.5(b) and (c).

²¹ *Id.*, § 1742.5(d).

CEQA requires renote and recirculation of an EIR, or EIR equivalent, for public review and comment when significant new information is added to the EIR following public review but before certification.²² The CEQA Guidelines clarify that new information is significant if “the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect.”²³

Here, the Revised SA will contain many new analyses and mitigation measures for significant, unresolved issues. Indeed, that is the very purpose of the Revised SA. For example, the Revised SA will include wholly new mitigation measures for cultural resources never seen before by the public. In addition, the Revised SA will contain never before disclosed mitigation measures for admittedly significant impacts to federally listed desert tortoise and rare plants. The Revised SA will also provide an analysis of groundwater use, as the sole water supply in the groundwater basin. The Revised SA will also provide a new analysis of potentially significant impacts to the golden eagle, a California fully protected species and federal sensitive species. The Revised SA may also include numerous new analyses and/or mitigation measures as a result of forthcoming information from the Applicant regarding impacts to the Mojave fringe-toed lizard, special status plants, and desert tortoise. The addition of this significant new information, which has not yet been analyzed and disclosed in a report by Staff, requires that the Revised SA be recirculated for public review and comment.

The purpose of recirculation is to give the public and other agencies an opportunity to evaluate the new data and the validity of conclusions drawn from it.²⁴ Consequently, the plan to include numerous additional analyses and mitigation measures in the Revised SA without renoticing and recirculating the revised document for public review and comment violates CEQA. The SA is being revised to inform the public and decision makers of the Project’s significant impacts, and to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. Thus, Staff, after receiving the necessary information from the Applicant, must draft and circulate a complete SA for public review and comment. The Committee must revise the schedule to incorporate this legally mandated procedure.

²² Pub. Resources Code, § 21092.1.

²³ CEQA Guidelines, § 15088.5.

²⁴ *Sutter Sensible Planning, Inc. v. Bd. of Supervisors* (1981) 122 Cal.App.3d 813, 822.

II. THE SA MUST PROVIDE SUFFICIENT DETAIL TO ANALYZE THE PROJECT'S IMPACTS

The SA must provide sufficient information to allow decision-makers and the public to understand the environmental consequences of the Project.²⁵ Because the Applicant failed to meet its burden to provide Staff with necessary information, the SA falls short of CEQA's requirements. Instead, Staff was compelled to release an incomplete SA, with the intention of providing additional information and analyses in a Revised SA. In turn, the public was denied an adequate opportunity to evaluate the environmental impacts of the Project and proposed mitigation measures to reduce significant impacts.

Preparing an environmental review document and considering comments on it from the public enables the agencies that will consider the project to have the information necessary to weigh competing policies and interests.²⁶ Further, if significant new information is added to an environmental review document, the lead agency must recirculate the document for further review and comment.²⁷

The following statements contained in the SA demonstrate that, because the Applicant failed to meet its "burden of presenting sufficient substantial evidence to support the findings and conclusions required for certification of the site and related facility,"²⁸ the SA is deficient under CEQA:

- Several outstanding issues remain, and **the applicant needs to provide additional information in order for staff to be able to complete the staff analysis.** The needed information includes: vegetation mapping of the jurisdictional drainages; botanical surveys of the entire project area; desert tortoise surveys of the entire project area; and an assessment of the breeding status of burrowing owl on the project site. **Staff requires these items,** as the information collected during these additional studies/surveys would be included in the Supplemental Staff Assessment (SSA) for this project.²⁹
- Staff considers the [as yet unidentified] translocation effort for desert tortoise to **be the critical path for commencement of construction activities.**³⁰ Currently the location(s) of the translocation sites remain under development; however, the applicant continues to work with staff, USFWS, and CDFG to identify these

²⁵ *Napa Citizens for Honest Gov't v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 356.

²⁶ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 576.

²⁷ Pub Resources Code, § 21092.1; CEQA Guidelines, § 15088.5.

²⁸ 20 Cal. Code Reg. § 1748(d).

²⁹ SA, p. C.2-6.

³⁰ *Id.*

areas. **Staff will provide additional information about the relocation/ translocation plan in the SSA.**³¹

- Currently the applicant is conducting one hundred percent surveys of the project site **in order to accurately assess the potential for desert tortoise.**³²
- **The applicant has not yet proposed specific mitigation to reduce impacts to State waters during construction of the proposed project.** However, it is expected that the applicant will submit a formal application to the CDFG that contains Best Management Practices designed to minimize the potential effects to State waters.³³
- **Currently the location of the proposed mitigation lands** [for biological resources impacts] **has not been identified... Prior to the release of the SSA,** staff, CDFG, and USFWS will identify the proposed mitigation lands that comply with CDFG and USFWS requirements.³⁴
- Requirements for discharges of brine waters to evaporation ponds, dredge and fill in waters of the state, and sanitary septic systems, are **pending receipt of information to be submitted by the applicant.** Once this information has been submitted, requirements will be developed and included in the SSA.³⁵
- [S]taff has determined that the impacts of the SunCatchers may present a hazard to motorists; workers; visitors; and train crews and passengers and **is in the process of obtaining additional information to determine the impact of the SunCatcher mirrors.**³⁶
- To evaluate the potential cumulative impacts of the Cadiz Water Conservation and Storage Project and existing agricultural uses, **additional information is needed** on how the project and groundwater basin would be managed.³⁷ Soil and Water Resources staff is currently evaluating the feasibility of this source. Thus, at this

³¹ SA, p. C.2-65.

³² *Id.*

³³ *Id.*

³⁴ SA, p. C.2-72.

³⁵ SA, p. C.7-68.

³⁶ SA, p. C.11-15.

³⁷ SA, p. C.7-60.

time, staff cannot conclude that the proposed source of water would represent a reliable supply of water for the project.³⁸

- **[I]t is unknown to what extent [burrowing] owls currently use the existing site** and whether owls would use the site post-construction.³⁹
- A Draft Drainage, Erosion, and Sedimentation Control Plan mitigates the potential project-related storm water and sediment impacts. However, the calculations and assumptions used to evaluate potential storm water and sedimentation impacts are imprecise and have limitations and uncertainties associated with them such that **the magnitude of potential impacts that could occur cannot be determined precisely.**⁴⁰

Clearly, the SA lacks a tremendous amount of information that is necessary to analyze the Project's potentially significant impacts. Thus, the SA does not satisfy CEQA. Once the Applicant satisfies its burden to provide Staff with the pertinent information regarding its proposed Project, a revised SA containing additional analyses and mitigation measures must be drafted and circulated for public review and comment.

III. THE SA MUST ESTABLISH AN ACCURATE ENVIRONMENTAL SETTING

The baseline refers to the existing environmental setting and is a starting point to measure whether a proposed project may cause a significant environmental impact.⁴¹ CEQA defines "baseline" as the physical environment as it exists at the time CEQA review is commenced.⁴²

Describing the environmental setting is critical to an accurate, meaningful evaluation of environmental impacts. The importance of having a stable, finite, fixed environmental setting for purposes of an environmental analysis was recognized decades ago.⁴³ Today, the courts are clear that, "[b]efore the impacts of a project can be assessed and mitigation measures considered, an [environmental review document] must describe the existing environment. It is only against this

³⁸ SA, p. D.4-4.

³⁹ SA, p. C.2-83.

⁴⁰ SA, p. C.7-1.

⁴¹ See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management District* (March 15, 2010) 48 Cal.4th 310, 316; *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1278 ("*Fat*"), citing Remy, et al., Guide to the Calif. Environmental Quality Act (1999) p. 165.

⁴² CEQA Guidelines, § 15125(a) (emphasis added); *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1453 ("*Riverwatch*").

⁴³ *County of Inyo, supra*, 71 Cal.App.3d 185.

baseline that any significant environmental effects can be determined.”⁴⁴ In fact, it is

a central concept of CEQA, widely accepted by the courts, that the significance of a project’s impacts cannot be measured unless the EIR first establishes the actual physical conditions on the property. In other words, baseline determination is the first rather than the last step in the environmental review process.⁴⁵

The SA’s baseline method, in some instances, blatantly violates the requirements of CEQA. By relying upon incomplete data, the SA did not adequately establish the environmental setting for biological resources in the Project area, a necessary prerequisite to conducting an adequate impact analysis under CEQA.

A. The SA Fails to Set Forth the Baseline for Rare Plants

The SA failed to establish an accurate environmental setting for determining impacts to a host of rare plant species, including small-flowered androstephium, Emory’s crucifixion thorn, foxtail cactus, winged cryptantha, Utah vine milkweed, crowned muilla, white-margined beardtongue, Coves’ cassia, and small-flowered sand-verbena. The SA explains that the Applicant did not map, quantify or address impacts to these species in the Application for Certification or the Biological technical reports.⁴⁶ Thus, the Applicant’s rare plant survey effort does not provide an adequate basis for determining impacts to rare plants on the Project’s impact area. The SA requires that the Applicant complete focused botanical surveys in the spring of 2010 and submit updated vegetation and rare plant occurrence maps.⁴⁷ These maps and reports are needed in order to establish the environmental baseline for the Project site.

Although the SA attempts to analyze the impacts and formulate mitigation measures for these species, this analysis may bear little resemblance to the analysis and mitigation that will be required after significant impacts to rare plants are actually identified through an adequate survey effort. Hence, the SA fails to provide an adequate description of the environmental setting, analysis and identification of mitigation for these rare plants. Once the Applicant submits the results of the spring 2010 rare plant surveys and all parties have an opportunity to review this analysis, the SA must be revised and recirculated for public review and comment.

⁴⁴ *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.

⁴⁵ *Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 125.

⁴⁶ SA, p. C.2-2.

⁴⁷ *Id.*

B. The SA Fails to Set Forth a Baseline for Golden Eagles

The SA also failed to describe the environmental setting for determining impacts to the golden eagle, a BLM sensitive and California fully protected species. The Applicant neglected to provide sufficient information to enable Staff to determine consistency with LORS or potentially significant impacts under CEQA. Although the Applicant did not provide survey data for golden eagles in the Application for Certification or the Biological Technical Reports, Staff concludes that golden eagles “are known to nest within 5 miles of the project site and have been observed foraging over the project area.”⁴⁸ Under the Bald and Golden Eagle Protection Act, a project would result in a “take” of golden eagles if it causes substantial interference with normal breeding, feeding, or sheltering behavior. A “take” of golden eagles would require a permit from the U.S. Fish and Wildlife Service (“USFWS”), pursuant to the Bald and Golden Eagle Protection Act.

In response to agency prompting, the Applicant conducted surveys for golden eagles in March, 2010, but survey reports were not provided prior to the release of the SA.⁴⁹ Staff requires that the Project comply with the Bald and Golden Eagle Protection Act as a condition of certification, but acknowledges that the condition proposed in the SA will likely require substantial revision.⁵⁰ Therefore, the SA does not make a finding regarding the significance of the impacts from golden eagle or provide an analysis of the mitigation required to reduce the impact to less than significant. Finally, the SA does not (and cannot) make a finding regarding consistency with the Bald and Golden Eagle Protection Act, as required by the Warren-Alquist Act.⁵¹ Hence, the SA fails to provide an adequate description of the environmental setting, analysis and identification of mitigation for the golden eagle. Once the Applicant submits the results of its surveys and all parties have an opportunity to review this analysis, the SA must be revised and recirculated for public review and comment.

C. The SA Fails to Set Forth the Baseline for Mojave Fringe-Toed Lizard

The SA fails to establish an accurate baseline for impacts to Mojave fringe-toed lizard (MFTL). Although the Applicant surveyed portions of the 8,230 acre site from June 2, 2008 through June 6, 2008 and found 16.9 acres of MFTL habitat, “Staff believes the applicant has underestimated the amount of habitat that can be

⁴⁸ SA, p. C.2-4.

⁴⁹ Stirling Energy Systems, Status Report #6 to Calico Committee, March 11, 2010.

⁵⁰ US Fish and Wildlife Service, Division of Migratory Bird Management. 2009. Final Environmental Assessment, Proposal to Permit Take. Provided Under the Bald and Golden Eagle Protection Act. Washington: Dept. of Interior.

⁵¹ SA, p. C.2-5.

used by the species.”⁵² Staff bases this conclusion on Staff’s reconnaissance survey of the Project site in January 2010.

The Applicant’s inadequate survey of the site (based upon incorrect assumptions about what constitutes habitat available for use by MFTL) coupled with Staff’s one day reconnaissance survey of a nearly thirteen square mile site is not sufficient information to establish a baseline for project impacts under CEQA.

Thus, the SA is inadequate because it does not establish an adequate baseline to determine the level of mitigation for impacts to MFTL. The mitigation in the SA is arbitrary and is not based upon data due to the Applicant’s failure to provide sufficient data to establish a baseline. The Applicant must conduct additional surveys and circulate the results of those surveys so that all parties have an opportunity to review this analysis. Until that occurs, the Staff has not established a scientifically or legally defensible baseline and the SA fails as an informational document.

D. The SA Fails to Set Forth the Baseline for Nelson’s Bighorn Sheep

The SA fails to establish an accurate baseline for impacts to Nelson’s bighorn sheep because the Applicant failed to provide sufficient information on Nelson’s bighorn sheep in the area including the number of sheep and the extent of the use on the Project’s site for forage and movement. The Applicant detected 62 sheep within 10 miles of the proposed project site during golden eagle surveys. Surveys for bighorn sheep were reported after the SA was published. Although the SA attempts to minimize and mitigate impacts to Nelson’s bighorn sheep, this mitigation may not be adequate to mitigate impacts to Nelson’s bighorn sheep to a level that is less than significant. During the SA workshop, a member of the Society for the Conservation of Bighorn Sheep explained that the mitigation was inadequate and the Applicant offered that additional mitigation may be provided.

Thus, the SA is inadequate because it does not establish an adequate baseline to determine the level of mitigation for impacts to Nelson’s bighorn sheep. The mitigation in the SA is arbitrary and is not based upon data due to the Applicant’s failure to provide sufficient data to establish a baseline. Once the Applicant submits the results of the surveys and all parties have an opportunity to review this analysis, the SA must be revised and recirculated for public review and comment.

⁵² SA, p. C.2-29.

E. The SA Fails to Set Forth the Baseline for Desert Tortoise

The SA did not establish an accurate environmental setting for determining impacts to desert tortoise because the Applicant failed to provide sufficient information on desert tortoise on the plant site and potential relocation sites. Thus, the Applicant is conducting additional surveys to determine the density of tortoises on the Project site and the density of tortoises and the amount of forage at potential relocation sites.⁵³

Although the SA attempts to analyze the impacts and formulate mitigation measures for desert tortoise, this analysis may bear little resemblance to the analysis and mitigation that will be required after significant impacts to desert tortoise are actually identified through an adequate survey effort of the project site and potential relocation sites. Hence, the SA fails to provide an adequate description of the environmental setting, analysis and identification of mitigation for desert tortoise. Once the Applicant submits the results of the surveys and all parties have an opportunity to review this analysis, the SA must be revised and recirculated for public review and comment.

F. The SA Fails to Set Forth the Baseline for Burrowing Owl

Burrowing owls are designated as BLM sensitive and a California Species of Special Concern. According to CDFG burrowing owl guidelines, a site should be assumed occupied if at least one burrowing owl has been observed occupying a burrow within the last three years. Because a burrowing owl was detected on the Project site within the last three years, the Applicant is to implement CDFG mitigation guidelines. The Applicant initially chose to not conduct protocol burrowing owl surveys and claimed that this decision was approved by all the relevant agencies. During a workshop on biological resources it became clear that the BLM, CEC and Fish and Game had NOT approved the Applicant's decision to not conduct protocol surveys for burrowing owls. At the time the SA was released, the Applicant had begun survey work and Staff had not received a complete draft of the survey report

Hence, the SA fails to provide an adequate description of the environmental setting, analysis and identification of mitigation for impacts to burrowing owls. Once the Applicant submits the results of its surveys and all parties have an opportunity to review this analysis, the SA must be revised and recirculated for public review and comment.

⁵³ Stirling Energy Systems, Status Report #6 to Calico Committee, March 11, 2010.

G. The SA Fails to Set Forth the Environmental Setting for the Lugo to Pisgah Transmission Line

The Applicant has not yet informed the CEC where the new 500 kV transmission line that is required to enable the Project's power to enter the grid or the new 100-acre substation will be located. Neither has the Applicant provided biological or cultural surveys of the areas that will be impacted by this transmission line and substation, as requested by Staff.

Moreover, the Large Generator Interconnection Agreement ("LGIA") filed by the Applicant on February 26, 2010 explained that a full ten mile section of the transmission line will not be located in an existing Southern California Edison right of way and a new right of way must be established. Further, 100 acres may be needed for a new substation in an unknown location. Because the location and description of these transmission upgrades have not been provided by the Applicant, the environmental impacts of these facilities and the necessary mitigation cannot be determined.

Without this information about the Project's proposed (and required) transmission upgrades, Staff simply cannot provide an adequate basis for the Committee to make the findings required for certification of the Project (e.g., compliance with all laws and regulations, and adequate mitigation of impacts); nor can Staff issue a valid SA.

H. Conclusion

In sum, without adequate site surveys and information about the Project design, the SA does not and cannot contain accurate or reliable analyses of the Project's potentially significant impacts to biological resources. Surveys for rare plants, golden eagles, Mojave fringe-toed lizards, Nelson's bighorn sheep, desert tortoises and burrowing owls are required in order to establish a baseline for these existing biological resources in the Project area and to enable an adequate analysis of impacts on these resources. A thorough environmental review of the transmission line's affected environment also must be done, once it is known where the impacts will occur. Surveys must be conducted prior to the approval of the Project so that the public and decision-makers will have an accurate picture of the resources that will be impacted. Only after these surveys are complete can the SA be revised to include an adequate description of the environmental setting, analyses and identification of mitigation measures for these species. Once the SA is revised, it must be circulated for public review and comment.

IV. THE SA MUST DISCLOSE AND ANALYZE ALL POTENTIALLY SIGNIFICANT IMPACTS

CEQA requires the SA to disclose and analyze all of a project's potentially significant adverse environmental impacts.⁵⁴ Identification of a project's significant environmental effects is one of the primary purposes of an EIR and is necessary to implement the stated public policy that agencies should not approve projects if there are feasible mitigation measures or project alternatives available to reduce or avoid significant environmental impacts.⁵⁵ In addition, the Commission's Regulations require that Staff give "complete consideration of significant environmental issues in the proceeding."⁵⁶ Because the Applicant failed to provide necessary information, however, Staff could not effectively evaluate the Project's impacts in the SA. Several analyses pertaining to biological resources, cultural resources, and water resources are admittedly incomplete. In addition, the SA failed to provide complete analyses of impacts related to the Pisgah to Lugo transmission line and associated facilities. Thus, the SA does not satisfy CEQA or the Commission's Regulations. After the Applicant provides the outstanding information, the SA should be revised to address the impacts, and recirculated for public review and comment.

A. The SA Must Disclose and Analyze All Potentially Significant Impacts to Biological Resources

Staff recognizes that although it attempted to analyze impacts to the vegetation in the jurisdictional drainages, rare plants, desert tortoise and burrowing owl on the project site, results from upcoming surveys may alter its analysis.⁵⁷ Moreover, the SA could not fully analyze impacts to Nelson's bighorn sheep, golden eagle, and MFTL. Although the SA attempts to analyze the impacts and formulate mitigation measures for these species, this analysis may bear little resemblance to the analysis and mitigation that will be required after significant impacts are actually identified through an adequate survey effort. Hence, the SA fails to provide an adequate analysis and identification of mitigation for biological resources. Once the Applicant submits the results of the surveys and all parties have an opportunity to review this analysis, the SA must be revised and recirculated for public review and comment.

⁵⁴ Pub. Resources Code, § 21100(b)(1).

⁵⁵ *Id.*, §§ 21002, 21002.1(a).

⁵⁶ *Id.*, § 1742.5(d).

⁵⁷ SA, p. C.2-6.

B. The SA Must Disclose and Analyze All Potentially Significant Impacts to Cultural Resources

The SA identified significant impacts/effects to both prehistoric and historical surface archaeological resources based upon a 25% sample.⁵⁸ When a proposed project may adversely affect a historical resource, CEQA requires the lead agency to carefully consider the possible impacts before proceeding.⁵⁹ The Commission's environmental review must describe mitigation measures to minimize significant effects.⁶⁰ "Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way."⁶¹

The SA only discusses impacts to archaeological and historical artifacts and completely omits any analysis of impacts to traditional cultural properties (i.e. properties of significance to tribes today that may or may not be tied to specific artifacts). After the SA was published, tribal members expressed a desire to bring Tribal elders out to the site to identify potential traditional cultural properties.⁶² Local tribes have not had an opportunity to participate in the review of the technical data from the survey efforts and so they have not had an opportunity to identify significant impacts to traditional cultural properties.⁶³ Staff must give tribal members and knowledgeable individuals an opportunity to identify significant cultural resources on the Project site, and in areas near the site that would be impacted by Project development, as part of the analysis of the Project's potentially significant impacts under CEQA.

Moreover, some physical objects and locations have greater cultural resource value through associations with the surrounding resources. The SA must identify the traditional cultural properties on or around the Project site and analyze any associational value that may be attached to those resources through consultation with the tribes. It is improper for the SA to conclude that an adequate survey of cultural resources has been completed when a whole class of resources, traditional cultural properties, has not yet been studied.

The SA indicates that all impacts to cultural resources will be mitigated through the preparation of a Programmatic Agreement ("PA") pursuant to Section

⁵⁸ SA, p. C.2-1.

⁵⁹ Pub. Resources Code, §§ 21084 and 21084.1.

⁶⁰ CEQA Guidelines, § 15126.4(a).

⁶¹ *Id.*

⁶² Comments by Tribal Members at BLM meeting to discuss development of Programmatic Agreement, April 29, 2010.

⁶³ Comments by Tribal Members at BLM meeting to discuss development of Programmatic Agreement, April 29, 2010.

106 of the National Historic Preservation Act (“NHPA”).⁶⁴ The PA is an agreement that would be drafted prior to Project approval that would defer the resolution of Project impacts to after Project approval. This is contrary to the statutory requirements of Section 106 of NHPA.

Section 106 directs federal agencies to take into account the effects of their actions on historic properties PRIOR TO the issuance of any license.⁶⁵ While the Advisory Council’s regulations for carrying out consultation pursuant to Section 106 allow for “conducting or authorizing nondestructive project planning activities before completing compliance with section 106,”⁶⁶ this may only occur if no decisions are made that would “restrict the subsequent consideration of alternatives to avoid, minimize, or mitigate the undertaking’s adverse effects on historic properties.”⁶⁷ This PA would permit BLM and CEC to authorize far more than “nondestructive project planning activities,” the PA would allow the BLM and CEC to adopt an alternative and authorize Project development, thus restricting the consideration of all other alternatives.

The SA must be revised to identify, analyze and mitigate potentially significant impacts to all cultural resources on the Project site, including traditional cultural properties. The SA must also consider the associational value of cultural properties identified in the SA and those that are still to be identified. If a PA is developed to mitigate significant impacts to cultural resources, the PA must fully consider the impacts to cultural resources and propose mitigation for those impacts, PRIOR to the issuance of any license for the Project.

C. The SA Must Disclose and Analyze All Potentially Significant Impacts to Water Resources

On May 14, 2010, the Applicant filed an AFC Supplement with a change of the Project’s “primary water supply to onsite wells.”⁶⁸ The AFC includes “an environmental assessment of the use of groundwater and transport of water from the well to the Project via an underground waterline.”⁶⁹ The SA does not include an analysis of the environmental impacts associated with using groundwater from this site because the SA was released nearly two months before the Applicant informed the Commission of the new water supply. Because water is precious and scarce in the desert, there are likely to be a number of environmental impacts associated with its use for the Project site.

⁶⁴ *Id.*

⁶⁵ 16 U.S.C. 470f.

⁶⁶ 36 CFR 800.1(c).

⁶⁷ *Id.*

⁶⁸ Applicant’s Supplement to the AFC, dated May 14, 2010.

⁶⁹ *Id.*, at p. 1-1.

The SA must fully describe and evaluate all potentially significant impacts associated with the Project's newly proposed groundwater supply. Because the Revised SA will contain information about a wholly new groundwater source for the Project, this missing information must be circulated for public review and comment.

D. The SA Must Disclose and Analyze All Potentially Significant Impacts Associated with Power Plant Reliability

The SA concludes that “staff cannot predict what the actual availability might be, given the demonstration status of the SunCatcher technology and limited data on large-scaled deployments of SunCatchers. The availability factor of a power plant is the percentage of time it is available to generate power; both planned and unplanned outages subtract from this availability. Staff believes it possible that the project may face challenges from considerable maintenance demands, reducing its availability. No Conditions of Certification are proposed.”⁷⁰

The SA does not provide an analysis of the reliability of the Project and therefore its likelihood of operating profitably as projected for the life of the Project. At a status conference conducted on June 1, 2010, the Applicant clarified that the Applicant has additional information about the reliability of the SunCatcher units that may be provided to Staff. However, this information was not provided at the time the SA was published. The SA should be revised to include an analysis of the Project's reliability and recirculated for public review and comment.

E. The SA Must Disclose and Analyze All Potentially Significant Impacts Associated with Transmission Upgrades Needed for the Project

The 850 megawatt (“MW”) Calico Solar Project cannot deliver 575 MW of its power to market without the construction of a number of substantial transmission upgrades that include a 67-mile Pisgah to Lugo 500kV transmission line, an expansion of the Pisgah substation from 5 acres to 40 acres, and an additional substation in an undetermined location. CEQA requires that the SA include environmental review of the “whole of the action” which has the potential to result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.⁷¹ The “whole of the action” may include facilities not licensed by the Energy Commission. The transmission upgrades are an indispensable part of the Project and, therefore, there must be an accurate, stable and finite description of those parts of the Project. As such, the transmission upgrades must be described with Project-level specificity to enable adequate environmental review under CEQA. The primary harm caused by “the incessant shifts among different project descriptions” is that the inconsistency confuses the

⁷⁰ SA, p. ES-27.

⁷¹ CEQA Guidelines, § 15378.

public and commenting agencies, thus vitiating the usefulness of the process “as a vehicle for intelligent public participation.”⁷²

Roughly 80% (4,720 acres) of the area in the Pisgah to Lugo SCE ROW is suitable habitat for desert tortoise.⁷³ Besides desert tortoise, Mohave ground squirrel, short-joint beavertail cactus, white-margined beardtongue, Mojave fringe-toed lizard, western burrowing owl, golden eagle, American badger, horned lark, yellow warbler and loggerhead shrike are known to occur in the ROW.

Commission Staff understood that the Project could not proceed without the transmission upgrades and requested detailed Project-level information in a memo to the Applicant.⁷⁴ In that memo, Staff requested the Applicant “*complete special-status species surveys for both plants and animals done when the organisms are identifiable (meaning multiple trips out, especially for plants).*”⁷⁵ Since that time, no data has been filed that shows the distribution and abundance of special-status species within the areas impacted by the transmission line upgrades, as is required by Commission rules,⁷⁶ because the ultimate location of the transmission upgrades has not been determined.

Staff also requested the Applicant provide a “[b]reakdown of temporary vs. permanent impact acreage in the various habitat types, with acreage for each habitat type.”⁷⁷ The Applicant responded “*temporary vs. permanent potential transmission line impacts to habitat types cannot be assessed at this time because a final transmission line design has not been engineered and construction methods have not been described.*”⁷⁸ To date, the Applicant has failed to provide a location for an entire substation that will potentially impact one hundred acres at some undisclosed location. This one hundred acre substation is five times bigger than many entire power plant projects before the Commission. Additionally, the Applicant’s filings failed to include information about the location or impact intensity from a number of auxiliary transmission structures, including an as yet floating 100-acre substation, the transmission pole locations, new access roads, the 5-20 acre marshalling yards or the 1 to 3 acre material staging areas.⁷⁹

⁷² *County of Inyo, supra*, 71 Cal.App.3d at 197-198.

⁷³ *Id.*

⁷⁴ Letter from Christopher Meyer to Felicia Bellows, SES Solar One, LLC, October 21, 2009.

⁷⁵ *Id.*

⁷⁶ Commission siting regulations require that the Applicant conduct biological resources surveys using appropriate field survey protocols during the appropriate season(s), and that State and federal agencies with jurisdiction be consulted for field survey protocol guidance prior to surveys if a protocol exists. California Energy Commission (2007) Appendix B of Rules of Practice and Procedure and Power Plant Site Certification Regulations.

⁷⁷ Letter from Christopher Meyer to Felicia Bellows, SES Solar One, LLC, October 21, 2009.

⁷⁸ Applicant’s Responses to CEC Memo Regarding Transmission Line Upgrades, January 8, 2010.

⁷⁹ Southern California Edison Project Description for Full Interconnection of SES Solar One, Submitted by SCE on January 7, 2010, included as part of the Applicant’s January 8, 2010, Responses to the CEC Memo Regarding Transmission Line Upgrades.

The inadequacy of the Applicant’s submittals has resulted in an inadequate SA. The SA omits any description of the location of the 100 acre substation or the new access roads, the marshalling yards or the material staging areas. Instead, the SA only states that construction of the first phase of the Project would require an upgrade of the Pisgah substation⁸⁰ and the second phase would require expanding the Pisgah substation again, removing 65 miles of the existing Lugo-Pisgah No. 2 220 kV transmission line between the Lugo and Pisgah substations and constructing 55 miles of new 500 kV transmission line in the existing right of way and 10 miles through an unknown route.⁸¹

The “Proposed Project” chapter of the SA does not provide any discussion of the potential need for an additional substation near the Pisgah substation due to expansion constraints created by the proposed Mojave Trails National Monument or the location of additional disturbance areas associated with construction of the transmission line and substation. The SA does provide a short acknowledgment of a plan for a new substation buried in the biological resources chapter of the SA. Although the exact location is not yet known, construction of the expanded Pisgah Substation under the 850 MW Full Build-Out option would occur on 40 to 100 acres in the area nearby to the existing 5-acre Pisgah Substation, which would result in permanent loss of habitat.⁸² Thus, the SA does not fully describe these necessary transmission components.

It is not possible for the public to make informed comments on a project of unknown or ever-changing description. “A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental costs”⁸³ “A curtailed, enigmatic or unstable project description draws a red herring across the path of public input.”⁸⁴ Without a complete project description, the environmental analysis under CEQA is impermissibly narrow, thus minimizing the project’s impacts and undercutting public review.⁸⁵ The ever-changing, questionably accurate, description of the transmission upgrades, deprive both the public and governmental decision-makers of the ability to review the environmental impacts of the Project. Clearly, the Project design is not far enough along for the Project to be adequately defined and studied in a CEQA document.

⁸⁰ SA, p. B.1-17.

⁸¹ *Id.*

⁸² SA, p. C.2-117.

⁸³ *County of Inyo, supra*, 71 Cal.App.3d at 192-193.

⁸⁴ *Id.* at 197-198.

⁸⁵ See, e.g., *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376.

The SA fails to analyze many of the Project’s potentially significant impacts associated with these transmission facilities that are required for the Project to function. Therefore, the SA must be revised to include this analysis, and be circulated for public review and comment.

V. THE SA MUST INCORPORATE EFFECTIVE MEASURES TO MITIGATE ENVIRONMENTAL IMPACTS TO LESS THAN SIGNIFICANT

CEQA requires an environmental review document to describe mitigation measures sufficient to minimize the significant adverse environmental impacts.⁸⁶ Also, mitigation measures must be designed to minimize, reduce, or avoid an identified environmental impact or to rectify or compensate for that impact.⁸⁷ Where several mitigation measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified.⁸⁸

A public agency may not rely on mitigation measures of uncertain efficacy or feasibility.⁸⁹ “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.⁹⁰ Moreover, mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments.⁹¹ Finally, CEQA does not allow deferring the formulation of mitigation measures to post-approval studies;⁹² nor does CEQA permit the delegation of mitigation of significant impacts to responsible agencies or the Applicant.⁹³

As shown below, the SA lacks effective, feasible mitigation for numerous impacts it identifies as significant. By deferring the development of specific mitigation measures, the SA has effectively precluded public input into the “efficacy” or “feasibility” of those measures. Thus, additional mitigation measures must be included in a Revised SA that is circulated to the public and provides a meaningful opportunity for public review and comment.

⁸⁶ Pub. Resources Code, §§ 21002.1(a), 21100(b)(3).

⁸⁷ CEQA Guidelines, § 15370.

⁸⁸ *Id.*, § 15126.4(a)(2).

⁸⁹ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available).

⁹⁰ CEQA Guidelines, § 15364.

⁹¹ *Id.*, § 15126.4(a)(2).

⁹² *Id.*, § 15126.4(a)(1)(B); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309.

⁹³ *City of Marina v. Board of Trustees of the California State University*, (2006) 39 Cal.4th 341, 366.

A. Mitigation Measures for Impacts to Biological Resources Are Deferred

We agree with Staff that the Project's "overall effects to wildlife within the project perimeter are expected to be severe."⁹⁴ However, the SA improperly defers the development of mitigation measures to future plans that will identify measures to mitigate these significant impacts. The following conditions of certification are examples of improper deferral of mitigation that deprive the public of any opportunity to review and submit comments on feasibility:

- BIO-7 requires the Applicant to submit a biological resources mitigation implementation and monitoring plan ("BRMIMP") at least 30 days prior to any ground disturbance activities.⁹⁵ "The BRMIMP shall incorporate avoidance and minimization measures described in final versions of the Hazardous Materials Plan; the Revegetation Plan; the Weed Management Plan; the Special-Status Plant Protection and Monitoring Plan; the Special-Status Plant Remedial Action Plan; the Seed Collection Plan; the Protected Plant Salvage Plan; the Desert Tortoise Relocation/Translocation Plan; the Raven Monitoring, Management, and Control Plan; the Burrowing Owl Monitoring and Mitigation Plan; the Burrowing Owl Relocation Area Management Plan; the Bighorn Sheep Mitigation Plan; the Streambed Management Plan; and the Evaporation Pond Design, Monitoring, and Management Plan,"⁹⁶ none of which are complete to date.
- BIO-10 requires the Applicant to develop a revegetation plan and compensation for impacts to native vegetation communities. The revegetation plan and compensation have not even been proposed.⁹⁷
- BIO-11 requires the Applicant to implement a Weed Management Plan, which is currently incomplete.⁹⁸
- BIO-12 requires the Applicant to develop a Special-Status Plant Impact Avoidance and Minimization Plan, which is currently incomplete.⁹⁹

⁹⁴ SA, p. C.2-2.

⁹⁵ *Id.*, p. C.2-162.

⁹⁶ *Id.*, p. C.2-163.

⁹⁷ *Id.*, p. C.2-171.

⁹⁸ *Id.*, p. C.2-173.

⁹⁹ *Id.*, p. C.2-174.

- BIO-13 requires the Applicant to provide compensatory mitigation for impacts to Mojave Fringe-Toed Lizards. The identification of the land to be purchased has been deferred to post-project approval.¹⁰⁰
- BIO-16 requires the Applicant to develop a desert tortoise relocation/translocation plan, which has not been shared with Staff or the parties.¹⁰¹
- BIO-17 requires the Applicant to provide a plan for compensatory mitigation for impacts to desert tortoise, which has not been shared with Staff or parties.¹⁰²
- BIO-18 requires the Applicant to prepare and implement a Raven Monitoring, Management and Control Plan.¹⁰³ This plan has not been prepared.
- BIO-21 requires the Applicant to document compliance with the Bald and Golden Eagle Protection Act no more than 60 days after the publication of the Energy Commission License Decision.¹⁰⁴ The Applicant has not documented anything that would suggest compliance with this Act.
- BIO-22(b) requires the Applicant to prepare a Burrowing Owl Monitoring and Mitigation Plan including detailed measures to avoid and minimize impacts to burrowing owls in and near the construction areas.¹⁰⁵ This plan has not been prepared.
- BIO-27 requires the Applicant to identify special vegetation communities and draft a management plan for site specific enhancement measures on mitigation lands for special vegetation communities.¹⁰⁶ This plan has not been proposed.

The SA illegally defers identification of each of the above-listed mitigation measures until after certification of the Project. Before the Commission approves the Project, the Commission is required to make findings under CEQA and the Commission's regulations.

¹⁰⁰ *Id.*, p. C.2-180.

¹⁰¹ *Id.*, p. C.2-184.

¹⁰² *Id.*, p. C.2-185.

¹⁰³ *Id.*, p. C.2-189.

¹⁰⁴ *Id.*, pp. C.2-191-192.

¹⁰⁵ *Id.*, p. C.2-192.

¹⁰⁶ *Id.*, p. C.2-197.

Specifically, the Commission must find that either: (1) changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen each identified significant impact; (2) such changes or alterations are within the jurisdiction of another public agency and such changes have been adopted by such other agency or can and should be adopted by such other agency; or (3) specific economic, legal, social, technological, or other considerations make infeasible identified mitigation measures or project alternatives. These findings must be based on substantial evidence.¹⁰⁷

Until the above-listed mitigation measures are identified and evaluated, the Energy Commission lacks substantial evidence to make a finding that each of the mitigation measures listed above will reduce the particular impacts to a less than significant level. The Commission will also not know if it must consider making findings of overriding considerations.¹⁰⁸ Thus, these plans and measures must be developed now, during the environmental review process, and be included in the Revised SA that is circulated for public review and comment.

B. Mitigation Measures for Impacts to Biological Resources May Not Be Feasible

Several of the mitigation measures identified in the SA may not be feasible, which renders them unenforceable. Therefore, many of the significant impacts to biological resources remain unmitigated. For example, BIO-13 requires the Applicant to acquire compensation lands to mitigate for the direct and indirect impacts to Mojave fringe-toed lizard habitat. The compensation lands must be, among other things:

“sand dune or partially stabilized sand dune habitat with potential to contribute to Mojave fringe-toed lizard habitat connectivity and build linkages between known populations of Mojave fringe-toed lizards and preserve lands with suitable habitat; near larger blocks of lands that are either already protected or planned for protection, or which could feasibly be protected long-term by a public resource agency or a non-governmental organization dedicated to habitat preservation; not be characterized by high densities of invasive species, either on or immediately adjacent to the parcels under consideration, that might jeopardize habitat recovery and restoration.”¹⁰⁹

However, there is no evidence that qualifying lands exist. Thus, the mitigation measure may not be “capable of being accomplished in a successful

¹⁰⁷ Pub. Resources Code, § 21081; CEQA Guidelines, § 15091(a).

¹⁰⁸ CEQA Guidelines, § 15093.

¹⁰⁹ SA, p. C.2-180.

manner....”¹¹⁰ The compensation lands must be identified now in order to ensure that significant impacts to Mojave fringe-toed lizards are adequately mitigated.

Similarly, BIO-16 requires the Applicant to acquire compensation lands to mitigate for potential impacts to desert tortoise. Among other things, the lands must:

“be within the Western Mojave Recovery Unit, with potential to contribute to desert tortoise habitat connectivity and build linkages between desert tortoise designated critical habitat, known populations of desert tortoise, and/or other preserve lands; provide habitat for desert tortoise with capacity to regenerate naturally when disturbances are removed; be near larger blocks of lands that are either already protected or planned for protection, or which could feasibly be protected long-term by a public resource agency or a non-governmental organization dedicated to habitat preservation; be connected to lands currently occupied by desert tortoise, ideally with populations that are stable, recovering, or likely to recover.”¹¹¹

However, again there is no evidence that qualifying lands exist. Thus, the mitigation measure may not be “capable of being accomplished in a successful manner....”¹¹² The compensation lands must be identified now in order to ensure that significant impacts to desert tortoise are adequately mitigated.

C. Mitigation Measures for Impacts to Biological Resources Are Vague and Uncertain

Several of the mitigation measures required by the SA are worded ambiguously, which renders them unenforceable as a practical matter. For example, BIO-12 requires the Applicant to develop a plan for special status plant impact avoidance and minimization¹¹³ BIO-12 is vague and uncertain. It is vague and uncertain because it only requires avoidance and minimization of disturbance to rare plants “to the extent feasible.” Moreover, the condition requires that a qualified botanist delineate the boundaries of these special-status plant occurrences at least 30 days prior to the initiation of ground-disturbing activities.¹¹⁴ It may be impossible to delineate the boundaries of emergent plants during certain times of year. Recommend boundaries be delineated during time of year when each target species is most identifiable. There is no evidence that the measure will in fact

¹¹⁰ Pub. Resources Code, § 21061.1.

¹¹¹ SA, p. C.2-186.

¹¹² Pub. Resources Code, § 21061.1.

¹¹³ *Id.*, p. C.2-174.

¹¹⁴ *Id.*, p. C.2-175.

reduce impacts to biological resources to a less than significant level.¹¹⁵ Biologist Scott Cashen provided an independent assessment of the adequacy of the SA conditions for biological impacts. The comments of Scott Cashen are attached.

In sum, identification and analysis of feasible mitigation measures to reduce impacts to biological resources to a less than significant level must occur now, and be included in the Revised SA that is circulated for public review and comment so that the public has a meaningful opportunity to evaluate and comment on the proposed mitigation. As proposed, Project impacts on numerous biological resources remain significant and unmitigated.

D. The Mitigation Measures for Impacts to Cultural Resources Are Deferred

Although the SA concludes that the Project will pose significant impacts to cultural resources, the formulation of mitigation for impacts to cultural resources is wholly deferred. The SA proposes to rely upon a PA for the mitigation that is yet to be written:

Energy Commission staff here proposes that the Energy Commission fulfill the bulk of its obligation under CEQA to resolve any potentially significant effects that the project may have on cultural resources by requiring the applicant to comply with the terms of the BLM's programmatic agreement (PA) under Section 106 a condition of certification (CUL-1). The BLM proposes to use this cultural resources analysis and its consultation efforts under Section 106, which includes the negotiation and drafting of the PA, to comply with NEPA. The applicant's implementation of the terms of the PA would ensure compliance with applicable laws, ordinances, regulations, and standards (LORS), in addition to compliance with CEQA, NEPA, and Section 106.

This proposal defers all development of mitigation to after Project approval in violation of CEQA and NHPA. Thus, the SA fails to provide any analysis to substantiate that this measure would in any way mitigate impacts to cultural resources on the Project site. Significant impacts to cultural resources remain significant and unmitigated.

E. Mitigation Measures for Impacts From the Construction and Operation of the Transmission Line are Inadequate

The 65 mile Pisgah to Lugo transmission line upgrade will result in impacts to an area of land that rivals or possibly surpasses the size of the Project site (the

¹¹⁵ See comments of Scott Cashen on Biological Conditions of Certification, Attached,

Project as proposed is nearly 13 square miles). Following a generic description of the transmission upgrades needed for the Project to function (because many of the locations for the transmission components have not been chosen), the SA concludes in most resource areas that the transmission line will result in less than significant impacts with the employment of standard mitigation measures.

The analysis in the SA is cursory at best and is not based upon adequate baseline data. There is an obvious reason for this: the Applicant has not provided a clear project description of the upgrades necessary and, importantly, where these upgrades would be built. In particular the new 100-acre substation in an unknown location and large construction areas, ten miles of right of way, 55 miles of tower footings are also in undefined locations. However, all of the potential sites for these transmission components are on or near biologically sensitive areas.

The transmission portion of the Project simply isn't adequately defined to provide the baseline for more than a general or cursory analysis of environmental impacts, or for adequate mitigation. For example, in the cultural resources analysis, the SA admits that the analysis of the transmission line is "limited to broad generalities."¹¹⁶

Because the analysis is by necessity based on broad generalities rather than real data due to the Applicant's inability to provide a stable, finite and accurate project description, the mitigation measures that are "recommended" are inadequate. The SA attempts to explain the half-hearted attempt to mitigate impacts by stating repeatedly that the transmission line upgrades will be reviewed in a full EIS/EIR process with the CPUC and BLM.

The Calico Solar Project is entirely dependent on the transmission line and substation. It cannot function without these integral pieces of the Project. The SA must include a project-level analysis of the transmission line upgrades that includes adequate baseline data, a stable and accurate description of the Project and specific measures to mitigate all significant impacts. This must be included in the Revised SA that is circulated for public review and comment. Only by doing so will the public be afforded its right under CEQA to review and comment on proposed mitigation measures for the Project.

VI. CONCLUSION

We commend Staff for its efforts in identifying many potentially significant impacts posed by the Project, as well as proposing important and necessary mitigation measures for those impacts. However, as it stands, the Applicant failed to meet its burden of presenting sufficient substantial evidence to support the findings and conclusions required for certification of the site and related facility.

¹¹⁶ SA, C.2-129.

Consequently, the SA does not satisfy the requirements of CEQA or the Warren-Alquist Act, and impacts remain significant and unmitigated. Accordingly, an adequate, revised staff assessment must be prepared and circulated for public review and comment.

Sincerely,

/s/

Loulena A. Miles

LAM:bh
Attachment

**Comments of Scott Cashen
On the Calico Staff Assessment**

June 4, 2010

BIO-2:

1. Verification: *If actions may affect biological resources during operation a Designated Biologist shall be available for monitoring and reporting.*
 - a. Recommend defining “shall be available”.

BIO-7:

2. Verification: *Within 30 days after completion of project construction, the project owner shall provide to BLM’s Wildlife Biologist and the CPM, for review and approval, a written construction termination report identifying which items of the BRMIMP have been completed*
 - a. The Condition lacks an enforcement mechanism in the event the BLM’s Wildlife Biologist or the CPM do not approve the report.

BIO-8:

3. *The boundaries of all areas to be disturbed (including staging areas, access roads, and sites for temporary placement of spoils) shall be delineated with stakes and flagging prior to construction activities in consultation with the Designated Biologist.*
 - a. Recommend adding a mechanism for approval/verification.
4. *Vegetation shall be placed along the northern fence line to act as a screen for wildlife.*
 - a. Recommend performance and verification standards associated with the condition.
5. *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.*
 - a. Recommend adding a mechanism for approval/verification.
6. *Design the retention basins to facilitate the passage of tortoise. Retention/detention basins located at the northern fence line near the foothills of the Cady Mountains shall be designed to allow for the passage of tortoise.*
 - a. Recommend provision of standards (or guidelines) for tortoise passage.
 - b. Condition appears to lack means of verification.

BIO-9

7. *During operation of the project, fence inspections shall occur at least once per month throughout the life of the project, and more frequently after storms or other*

events that might affect the integrity and function of desert tortoise exclusion fences. Fence repairs shall occur within two days (48 hours) of detecting problems that affect the functioning of the desert tortoise exclusion fencing.

- a. Recommend defining “more frequently.”*
- b. The condition enables potentially multiple days or weeks of tortoise ingress (if something happens to the fence). Recommend adding a provision to the condition, whereby the applicant would notify the USFWS of any problems with the fence, and the USFWS would determine whether new clearance surveys are appropriate.*

BIO-10

- 8. all temporarily disturbed areas shall be restored to pre-project grade and conditions.*
 - a. Recommend specifying the “conditions” that must be restored. As written, it’s unclear what conditions would require restoration.*
- 9. The following measures shall be implemented for the revegetation areas not subject to the facility Landscape Plan.*
 - a. Recommend the SA cite the Landscape Plan being referenced.*
- 10. If the mitigation fails to meet the established performance criteria after the 10-year maintenance and monitoring period, monitoring and remedial activities shall extend beyond the 10-year period until the criteria are met or unless otherwise specified by the Energy Commission and BLM.*
 - a. Recommend the condition establish the circumstances under which the 10-year maintenance and monitoring period would need to be reset (or extended for an ecologically relevant duration). As currently written, the condition could be met even if the intent of the condition is not met. For example, new plantings at Year 10 could be used to satisfy the cover requirement, even though some of the plantings would likely die (and thus not satisfy the intent of the condition, which is to provide long-term cover).*
- 11. If a second fire occurs, no replanting is required, unless the fire is caused by the owner’s activity.*
 - a. Recommend specifying the mechanism for determining whether the fire is caused by the owner’s activity.*

BIO-11

- 12. The draft Noxious Weed Management Plan submitted by the applicant shall provide the basis for the final plan.*
 - a. Although the draft Plan discusses the need to meet success criteria, it does not provide the criteria, nor does it specify triggers for remedial actions. Recommend providing success criteria and triggers for remediation.*
- 13. Reestablish vegetation quickly on disturbed sites with native seed mixes.*

- a. Recommend specifying interpretation of “quickly.”
 - b. Recommend establishing success criteria for reestablishing vegetation.
14. *Monitoring and rapid implementation of control measures to ensure early detection and eradication for weed invasions.*
- a. Recommend specifying interpretation of “rapid.”
 - b. Recommend specifying areas that should be covered by the Weed Management Plan. If the Project results in weed infestations, nearby locations outside of the Project area may become subject to infestation. As a result, we recommend the Plan encompass any areas that may become infested by weeds as a result of the Project.
15. *Prohibit disposal of mulch or green waste from mown weed infestations around the solar generators to prevent inadvertent introduction and spread of invasive plants beyond the immediate vicinity of the project area and possibly into rare plant populations off-site.*
- a. Recommend specifying acceptable disposal methods for mulch or green waste.
16. *From the time construction begins until 5 years after construction is complete, surveying for new invasive weed populations and the monitoring of identified and treated populations shall be required within the project area. Surveying and monitoring for weed infestations shall occur annually. Treatment of all identified weed populations shall occur at a minimum of once annually. When no new seedlings or resprouts are observed at treated sites for three consecutive, normal rainfall years, the weed population can be considered eradicated and weed control efforts may cease for that impact site.*
- a. Recommend monitoring and treatment include a buffer zone around the Project area.
 - b. There appears to be a potential conflict between the requirement for monitoring (of identified and treated populations) for five years after construction is complete, and the requirement for monitoring for three consecutive, normal rainfall years.
 - c. Recommend defining interpretation of “normal.”
 - d. Recommend weed monitoring and treatment continue for the life of the Project given vectors for weed establishment (sources and periodic ground disturbance) will occur for the life of the Project.

BIO-12

17. *The project owner shall avoid and minimize disturbance to all white-margined beardtongue occurrences on the project site and within a 250 foot buffer area, and, to the extent feasible, shall avoid and minimize disturbance to 75% of all Emery’s crucifixion thorn, Coves’ cassia, small-flowered sand-verbena, and any other CNPS List 1B or List 2 taxa (excluding small-flowered androstephium) occurring on the site.*

- a. Recommend clarifying what is considered “feasible.”
 - b. Recommend defining how 75% will be calculated.
 - c. Recommend including small-flowered androstephium given most known occurrences are threatened.
18. *The purposes of the surveys shall be (1) to document biological resource values of the compensation lands.*
- a. Recommend specifying the biological resource values that should be documented.
19. *If these species are documented on compensation lands, then they [sic] occurrences may serve to replace requirements for on-site avoidance.*
- a. To conclude occurrences on compensation lands replace on-site avoidance, we recommend the condition incorporate measures of abundance, health, and threats.
20. *The project owner shall implement all feasible measures to protect 75% of the occupied habitat of white-margined beardtongue, Emery’s crucifixion thorn, Coves’ cassia, small-flowered sand verbena, and any other CNPS List 1B or List 2 taxa.*
- a. Recommend specifying how occupied habitat will be defined.
21. *A qualified botanist shall delineate the boundaries of these special-status plant occurrences at least 30 days prior to the initiation of ground-disturbing activities.*
- a. It may be impossible to delineate the boundaries of emergent plants during certain times of year. Recommend boundaries be delineated during time of year when each target species is most identifiable.
22. *Provide any available information about microhabitat preferences and fecundity.*
- a. Recommend clarification of what is considered “available” (e.g., extent of literature review).
23. *No more than 30 days following the publication of the Energy Commission Decision the project owner shall submit draft versions of the Special-Status Plant Protection and Monitoring Plan, the Special-Status Plant Remedial Action Plan, the Seed Collection Plan, and the Protected Plant Salvage Plan for review by the CPM, BLM’s Authorized Officer, and CDFG.*
- a. The condition appears to lack a mechanism for enforcement, given draft versions of the plans are not required until after the Energy Commission decision.
24. *Submittal of survey reports shall continue until the same number of occurrences and areal extent of occupied habitat impacted by the project for small-flowered androstephium, white-margined beard-tongue, and any other special-status plants identified on these off-site lands as were impacted by the project.*
- a. Recommend the condition be revised to clarify that Project impacts cannot occur to white-margined beardtongue (see BIO-12 #2).

- b. Recommend the condition be revised to clarify Project impacts to 75% of known occurrences of the specified species on the Project site cannot occur until compensation lands with documented occurrences of the species have been acquired.

BIO-13

- 25. *Be connected to lands currently occupied by Mojave fringe-toed lizard;*
 - a. Compensation lands should be occupied by Mojave fringe-toed, commensurate with Project impacts.
- 26. *Not have a history of intensive recreational use or other disturbance that might make habitat recovery and restoration infeasible*
 - a. Recommend clarifying the party responsible for restoration.
- 27. *Be on land for which long-term management is feasible.*
 - a. Recommend requiring compensation land have reliable and protected access to source sand.
- 28. *Within six months of the land or easement purchase, as determined by the date on the title, the project owner, or an approved third party, shall provide the CPM, BLM's Wildlife Biologist, and CDFG with a management plan for the compensation lands and associated funds. The CPM and BLM's Wildlife Biologist shall review and approve the management plan, in consultation with CDFG. Within 90 days after completion of project construction, the project owner shall provide to the CPM and BLM's Wildlife Biologist an analysis with the final accounting of the amount of sand dune/stabilized sand dune habitat disturbed during project construction.*
 - a. The condition appears to lack a mechanism for ensuring the management plan is scientifically valid, and implemented.
 - b. The condition appears to lack a mechanism for additional compensation if final accounting of disturbed sand dune exceeds projected disturbance.

BIO-14

- 29. CURE comment: The applicant should have at least a basic gila monster translocation plan so that it is prepared if any gila monsters are encountered during Project construction.

BIO-15

- 30. *A major rainfall event is defined as one for which flow is detectable within the fenced drainage.*
 - a. Recommend establishing a more reliable means of identifying what constitutes a "major" rainfall event.
- 31. *If a desert tortoise is located on the second survey, a third survey shall be conducted.*

- a. Recommend additional surveys until tortoises are no longer detected.
32. Verification: *Within 30 days after completion of desert tortoise clearance surveys the Designated Biologist shall submit a report to BLM's Authorized Officer, the CPM, USFWS, and CDFG describing implementation of each of the mitigation measures listed above.*
- a. The Condition allows ground disturbance prior to verification that surveys were implemented properly. Recommend verification occur before ground disturbance.

BIO-16

33. *The Plan... shall include...contingency planning.*
- a. Recommend specifying the contingencies for which planning should occur.
34. Verification: *Within 30 days after initiation of relocation and/or translocation activities, the Designated Biologist shall provide to BLM's Wildlife Biologist and the CPM for review and approval, a written report identifying which items of the Plan have been completed, and a summary of all modifications to measures made during implementation of the Plan. Written monthly progress reports shall be provided to the BLM's Wildlife Biologist and CPM for the duration of the Plan implementation.*
- a. Shouldn't all items of the Translocation Plan be completed within 30 days?
 - b. Recommend clarifying that written reports shall be provided to the BLM and CPM for the duration of the Plan implementation, including through duration of monitoring (of translocated tortoises).

BIO-17

35. *provide habitat for desert tortoise with capacity to regenerate naturally when disturbances are removed;*
- a. Recommend requiring disturbances to be removed if they limit desert tortoise habitat.
36. *not be characterized by high densities of invasive species.*
- a. Recommend clarifying what is considered "high densities" and providing the methods for which density should be assessed.
37. *costs of initial habitat improvements to compensation lands, calculated at \$250/acre.*
- a. Because compensatory mitigation is based on increases in carrying capacity that can be achieved on the acquired lands, enhancement costs should be based on costs needed to increase carrying capacity. Installation of an exclusion fence (for OHV) alone would likely cost more than \$250/acre.

38. *The project owner, or approved third party, shall provide...biological analysis...*
- a. Recommend specifying the type of biological analysis that should be provided.

BIO-18

39. *The project owner shall design and implement a Raven Monitoring, Management, and Control Plan (Raven Plan) that is consistent with the most current USFWS-approved raven management guidelines and that meets the approval of the USFWS, CDFG, and the CPM. The goal of the Raven Plan shall be to minimize predation on desert tortoises by minimizing project-related increases in raven abundance.*
- a. Recommend the Condition cite the most current USFWS-approved raven management guidelines.
 - b. Recommend establishing how baseline abundance and “project-related increases in raven abundance” will be established.
40. *For the first year of reporting*
- a. Recommend clarifying what constitutes the first year.

BIO-19

41. *The Designated Biologist or Biological Monitor conducting the surveys shall be experienced bird surveyors*
- a. Recommend the surveyors have demonstrated experience conducting nest searches, and that they are knowledgeable of the nesting habitats of the species that may nest on the site.
42. *Surveys shall cover all potential nesting habitat in the project site*
- a. The entire site constitutes potential nesting habitat. Therefore, surveys should cover the entire Project site.
43. *At least two pre-construction surveys shall be conducted, separated by a minimum 10-day interval. One of the surveys shall be conducted within the 10 days preceding initiation of construction activity. Additional follow-up surveys may be required if periods of construction inactivity exceed one week in any given area,*
- a. Recommend specifying techniques and minimum level of effort that should be dedicated to the surveys. Recommend report described in the verification measure include information on survey techniques and level of effort that were implemented.
 - b. Recommend specifying when follow-up surveys will be required.
 - c. The timing of the condition (i.e., within 10 days) conflicts with the verification measure (i.e., at least 10 days).

44. *Nest locations shall be mapped using GPS technology and submitted, along with a weekly report stating the survey results*

- a. It's unclear what would be surveyed (i.e., for which a weekly report is required).

45. *The Designated Biologist shall monitor the nest until he or she determines that nestlings have fledged and dispersed.*

- a. Recommend specifying that monitoring should be designed to avoid disturbing the nest, and to avoid actions that may lead to an increased predation risk.

BIO-20

46. The timing of the condition (i.e., within 10 days) conflicts with the verification measure (i.e., at least 10 days).

BIO-22

47. The timing of the condition (i.e., no more than 30 days) conflicts with the verification measure (i.e., at least 30 days).

48. Recommend clarifying whether the surveys need to be conducted in accordance with CDFG guidelines or CBOC guidelines.

49. Recommend adding the following excerpt from CDFG guidelines: "If owls must be moved away from the disturbance area, passive relocation techniques...should be used rather than trapping. At least one or more weeks will be necessary to accomplish this and allow the owls to acclimate to alternate burrows."

50. Recommend requiring artificial burrows be installed before owls are evicted from the Project site.

51. *If artificial burrows are required, the project owner shall obtain by purchase the land required to support the burrows or ensure the burrows are located in an area such as the transmission line easement where construction/development would not occur.*

- a. Recommend requiring artificial burrows be located on land that is permanently protected and acceptable to CDFG, as per CDFG guidelines.
- b. The transmission line is scheduled for upgrades. Maintenance vehicles along the transmission line easement pose a hazard to burrowing owls. Therefore, the transmission line easement is not a suitable location for artificial burrow installation.
- c. Recommend clarifying that amount of land that must be purchased per pair or unpaired owl impacted by the Project.

52. *The Burrowing Owl Relocation Area Management Plan shall include monitoring and maintenance requirements, details on methods for measuring compliance goals, and remedial actions to be taken if management goals are not met*

- a. Recommend specifying the compliance goals being referenced.

BIO-23

53. *The Bird Monitoring Study shall include detailed specifications on data and carcass collection protocol and a rationale justifying the proposed schedule of carcass searches. The study shall also include seasonal trials to assess bias from carcass removal by scavengers as well as searcher bias.*

- a. Recommend specifying the minimum frequency of carcass searches such that an effective monitoring program is implemented and enforceable.
- b. Recommend that the Bird Monitoring Study incorporate information obtained by the wind industry, including (a) monitoring strategies; and (b) carcass removal results.

54. Verification: *quarterly reports...describing the dates, durations, and results of monitoring.*

- a. Reports should also contain information on the monitoring methods.

55. Verification: *...analyzes any project-related bird fatalities or injuries*

- a. Recommend discussion of the actions that shall be taken (e.g., medical treatment) for any injured birds that are detected on the Project site.

BIO-24

56. Verification: *Within 60 days of publication of the Energy Commission Decision the project owner shall submit...a Draft Bighorn Sheep Mitigation Plan identifying a proposed location for the artificial water source and providing plans for its construction and management.*

- a. The likelihood that the proposed mitigation will offset impacts to bighorn sheep is highly contingent on the number and location(s) of artificial water sources. Consequently, the specific location(s) should be incorporated into the Condition of Certification.

57. Timing of the verification measure may preclude adequate review of the Mitigation Plan. As currently written, the BLM and CPM could be determining the Plan's acceptability on the day ground disturbance begins.

BIO-25

58. *If avoidance of a non-maternity den is not feasible, badgers shall be relocated by slowly excavating the burrow (either by hand or mechanized equipment under the direct supervision of the biologist, removing no more than 4 inches at a time) before or after the rearing season (15 February through 1 July).*

- a. Recommend indicating how badgers will be relocated (out of the impact

area) once a burrow is excavated.

BIO-26

59. *The project owner shall conduct a survey for roosting bats prior to any ground disturbance activities in all areas within 200 feet of rocky outcrops or the existing BNSF railroad trestles.*
- a. Recommend including surveys of any suitable roosting substrates.
60. *Surveys shall include a minimum of one day and one evening visit.*
- a. Recommend specifying acceptable survey techniques.
61. *If a maternity roost will be impacted by the project, and no alternative maternity roosts are in use near the site, substitute roosting habitat for the maternity colony shall be provided on, or in close proximity to, the project site no less than three months prior to the eviction of the colony.*
- a. Recommend defining “near” and “close.”
 - b. Recommend specifying timing for eviction of the colony.

BIO-27

62. CURE Comment: The information identified in BIO-27 #1 (i.e., description of activities that cross or have the potential to impact jurisdictional habitats; impacts to special natural communities; best management practices that would be employed) is needed to evaluate the extent of Project impacts, and should not be deferred to 30 days prior to commencement of work (i.e., the verification measure).
63. *When any activity requires moving of equipment across a flowing drainage, such operations shall be conducted without substantially increasing stream turbidity.*
- a. Recommend defining “substantially.”
64. *The project owner shall minimize road building, construction activities and vegetation clearing within ephemeral drainages to the extent feasible.*
- a. Recommend defining what is considered “feasible.”
65. *The owner shall remove any non-native vegetation (Consistent with the Weed Management Plan) from any drainage that requires the placement of a bridge, culvert or other structure. Removal shall be done at least twice annually (Spring/Summer) during implementation of the Project.*
- a. Recommend specifying whether non-native removal will be required for the entire drainage.
 - b. Recommend clarifying time period covered by “during implementation of the Project” (e.g., life of the Project).

BIO-29

66. *Verification: the project owner shall provide financial assurances to BLM's Wildlife Biologist and the CPM to guarantee that an adequate level of funding would be available to implement measures described in the Channel Decommissioning and Reclamation Plan.*

- a. Recommend specifying what is considered "adequate."

BIO-30

67. *Methods for restoring wildlife habitat and promoting the re-establishment of native plant and wildlife species.*

- a. The measure requires a monitoring component to ensure desired results.

68. *the project owner shall secure funding to ensure implementation of the plan.*

- a. Recommend specifying minimum amount of funding that is required.

Calico Solar – 08-AFC-13
DECLARATION OF SERVICE

I, Bonnie Heeley, declare that on June 4, 2010, I served and filed copies of the attached COMMENTS OF THE CALIFORNIA UNIONS FOR RELIABLE ENERGY ON STAFF ASSESSMENT FOR THE CALICO SOLAR PROJECT dated June 4, 2010. 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/calicosolar/CalicoSolar_POS.pdf. 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 June 4, 2010

_____/s/_____
Bonnie Heeley

CALIFORNIA ENERGY COMMISSION
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