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March 11, 2010

DOCKET
09-AFC-8
DATE <u>MAR 11 2010</u>
RECD. <u>MAR 11 2010</u>

California Energy Commission
Attn Docket No. 09-AFC-8
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

Re: Genesis Solar Energy Project; 09-AFC-8

Dear Docket Clerk:

Enclosed are an original and one copy of **CALIFORNIA UNIONS FOR RELIABLE ENERGY DATA REQUESTS, SET ONE**. Please docket the original, conform the copy and return the copy in the envelope provided.

Thank you for your assistance.

Sincerely,

/s/

Rachael E. Koss

REK:bh
Enc.

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March 11, 2010

Via Electronic Mail and U.S. Mail

Mr. Ryan O'Keefe, Vice President
Genesis Solar LLC
700 Universe Boulevard
Juno Beach, FL 33408
Ryan.okeefe@nexteraenergy.com

Re: Genesis Solar Energy Project (9-AFC-8)
CURE Data Requests Set One (Nos. 1-66)

Dear Mr. O'Keefe:

California Unions for Reliable Energy (CURE) submits this first set of data requests to Genesis Solar LLC for the Genesis Solar Energy Project, pursuant to Title 20, section 1716(b), of the California Code of Regulations. The requested information is necessary to: (1) more fully understand the project; (2) assess whether the project will be constructed and operated in compliance with all laws, ordinances, regulations and standards; (3) assess whether the project will result in significant environmental impacts; (4) assess whether the project will be constructed and operated in a safe, efficient and reliable manner; and (5) assess potential mitigation measures.

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

Mr. Ryan O'Keefe, Vice President
Genesis Solar LLC
March 11, 2010
Page 2

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

Sincerely,

/s/

Rachael E. Koss

REK:bh
Enclosure

cc: Docket (09-AFC-8)
Proof of Service List (09-AFC-8)

**STATE OF CALIFORNIA
California Energy Commission**

In the Matter of:

The Application for Certification
for the GENESIS SOLAR ENERGY
PROJECT

Docket No. 09-AFC-8

**CALIFORNIA UNIONS FOR RELIABLE ENERGY
DATA REQUESTS, SET ONE**

March 11, 2009

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Attorneys for the CALIFORNIA UNIONS
FOR RELIABLE ENERGY

The following data requests are submitted by California Unions for Reliable Energy. Please provide your responses via email (if available) by April 12, 2009 to each of the following people:

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Please identify the person who prepared your responses to each data request. If you have any questions concerning the meaning of any data requests, please let us know.

**GENESIS SOLAR ENERGY PROJECT
CURE Data Requests Set One (Nos. 1-66)**

Biological Resources

**Background: IMPACTS TO CONSERVED NATURAL
 COMMUNITIES AND WHMA**

The Northern and Eastern Colorado Desert Coordinated Management (NECO) Plan is a landscape-scale, multi-agency planning effort that protects and conserves natural resources while simultaneously balancing human uses of the California portion of the Sonoran Desert ecosystem. The NECO Plan established two types of Wildlife Habitat Management Areas (WHMA): one for bighorn sheep, and one for all other special status species and habitats.¹

In establishing WHMAs, the NECO Plan provides protection to sensitive natural communities. These include (a) Desert Dry Wash Woodland; (b) Desert Chenopod Scrub; and, (c) sand dune and playa communities.² The Applicant's latest assessment of Project impacts to vegetation communities estimates that the Project (including linear facilities) would impact 28.4 acres of "stabilized and partially stabilized sand dunes" and 37.6 acres of "playa and sand drifts over playa."³ The Applicant concludes that there will be no Project impacts to Chenopod Scrub or Desert Dry Wash Woodland communities.⁴ The information provided by the Applicant does not appear to be consistent with information provided by the BLM, and with information provided in the NECO Plan.⁵

¹ BLM and CDFG. 2002. Final Environmental Impact Statement. Proposed Northern & Eastern Colorado Desert Coordinated Management Plan. Bureau of Land Management, California Desert, Riverside, CA. p. 2-2.

² *Id.*, p. 2-56.

³ Monasmith M, California Energy Commission. 2002 Feb 22. Report of Conversation between Mike Monasmith and Tricia Bernhardt, Genesis Project Manager.

⁴ *Id.*

⁵ AFC, Volume 2, Appendix C. 2007. Massar M, Wildlife Biologist, BLM. Letter to PJ Eckert. Available at:

[http://www.energy.ca.gov/sitingcases/genesis_solar/documents/applicant/afc/volume_2/Appendix%20C%20-%20Biological%20Resources/C-](http://www.energy.ca.gov/sitingcases/genesis_solar/documents/applicant/afc/volume_2/Appendix%20C%20-%20Biological%20Resources/C-2/Species%20list%20request%20letters%20and%20responses/)

[2/Species%20list%20request%20letters%20and%20responses/](http://www.energy.ca.gov/sitingcases/genesis_solar/documents/applicant/afc/volume_2/Appendix%20C%20-%20Biological%20Resources/C-2/Species%20list%20request%20letters%20and%20responses/); BLM and CDFG. 2002. Final Environmental Impact Statement. Proposed Northern & Eastern Colorado Desert Coordinated Management Plan. Bureau of Land Management, California Desert, Riverside, CA. Appendix A, Map 3-3.

The Project site and portions of the linear facility routes are situated within a Multi-species WHMA.⁶ However, the AFC provides conflicting information on the area of the Project within the WHMA. AFC page 5.3-2 states that “[t]he entire requested ROW of the Project [4,640 acres] is located within a Multi-Species WHMA and the Project’s linear facilities overlap with portions of the same WHMA.” However, AFC Table 5.3-5 indicates that 885.5 acres of the WHMA would be disturbed, even though the Project is expected to directly impact a total of 1852.2 acres.⁷

The NECO Plan provides mitigation for specific species and habitats within WHMAs.⁸ Specifically, the NECO Plan states

[I]n the Multi-species WHMA, compensation for disturbance of Desert Dry Wash Woodland and Desert Chenopod Scrub communities as shown on Map 3-3 Appendix A would be required at 3 acres for each acre disturbed...In sand dune and playa communities (Map 3-3 Appendix A) that are closed to vehicle use, compensation for surface disturbance would be required at 3 acres for each acre disturbed.⁹

The small scale of Map 3-3 makes it difficult to depict the exact location of the Project, but the map appears to suggest considerably more Desert Dry Wash Woodland and sand dunes occur within the Project site than has been indicated by the Applicant. A more extensive distribution of these two communities on the Project site would be consistent with its designation as a Multi-species WHMA.

Appendix H of the NECO Plan discusses the methods that were used to establish Multi-species WHMAs. In short, a system of WHMAs was selected, that in conjunction with already protected areas and Desert Wildlife Management Areas (DWMA), would provide protection for 80 percent (generally) of a covered species or habitat distribution.¹⁰ Thus, by design, each Multi-species WHMA serves to protect one or more biological resource element of conservation concern. This is particularly important to the Project for two main reasons. First, the Applicant proposes to provide no

⁶ AFC, p. 5.3-2.

⁷ Monasmith M, California Energy Commission. 2002 Feb 22. Report of Conversation between Mike Monasmith and Tricia Bernhardt, Genesis Project Manager.

⁸ *Id.*

⁹ BLM and CDFG. 2002. Final Environmental Impact Statement. Proposed Northern & Eastern Colorado Desert Coordinated Management Plan. Bureau of Land Management, California Desert, Riverside, CA. p. 2-57.

¹⁰ BLM and CDFG. 2002. Final Environmental Impact Statement. Proposed Northern & Eastern Colorado Desert Coordinated Management Plan. Bureau of Land Management, California Desert, Riverside, CA. Appendix H.

compensation for impacts to at least 885.5 acres of the WHMA.¹¹ Second, despite the presence of at least 885.5 acres of WHMA, the AFC suggests the Project site contains almost no special-status plants, animals, or natural communities.

Data Requests

1. Please provide a map that shows the currently proposed Project boundaries (including linear facilities) in relation to the Multi-species WHMA and Conserved Natural Communities established by the NECO Plan.
2. Please identify the Project boundaries (including linear facilities) in relation to the vegetation communities depicted on Map 3-3 of the NECO Plan.
3. Please identify the criteria that the BLM used to delineate Desert Dry Wash Woodland, Desert Chenopod Scrub, and sand dune and playa communities.
4. Please identify the criteria that the Applicant used to delineate Desert Dry Wash Woodland, Desert Chenopod Scrub, and sand dune and playa communities.
5. Please identify the features being managed and conserved by the Multi-species WHMA at the Project site.
6. Please clarify the number of acres within the WHMA that would be impacted by the Project.
7. Please justify the Applicant's proposal to not provide compensation for Project impacts to at least 885.5 acres of land specifically designated for conservation (i.e., the WHMA).

Background: COMPLIANCE WITH THE NECO PLAN

The NECO Plan clearly states that projects that impact BLM lands outside of DWMA's are required to provide compensation (lands or equivalent fee) at a 1:1 ratio.¹² In addition, bridges and culverts for animal passage are

¹¹ AFC, p. 5.3-30.

¹² BLM and CDFG. 2002. Final Environmental Impact Statement. Proposed Northern & Eastern Colorado Desert Coordinated Management Plan. Bureau of Land Management, California Desert, Riverside, CA. Appendix D, p. D-2.

required for new linear projects (e.g., roads).¹³ The Applicant proposes that it need not provide compensation for some of the land impacted by the Project.¹⁴ In addition, although the Project will require construction of a 6.5-mile paved access road, the AFC does not discuss installation of bridges or culverts for animal passage.¹⁵

Data Requests

8. Please indicate the Project's compliance with the NECO Plan's requirement for 1:1 compensation for impacts to BLM lands outside of DWMAs.
9. Please indicate the Project's compliance with the NECO Plan's requirement for bridges and culverts enabling animal passage across new linear projects.

Background: IMPACTS TO FRINGE-TOED LIZARDS

The Applicant conducted surveys for fringe-toed lizards concurrent with desert tortoise surveys.¹⁶ The fringe-toed lizard is a California Species of Special Concern and a BLM Sensitive Species. The surveys were conducted from March 17-25 and April 6-13.¹⁷ The methods that were used to survey for fringe-toed lizards were identical to the methods used to survey for desert tortoises (i.e., 30-foot-wide belt transects).¹⁸

Although the resource agencies have not issued survey guidelines for fringe-toed lizards, Jones and Lovich (2009) indicate that fringe-toed lizards are most commonly detected from late spring (May) through early fall (into October).¹⁹ In addition, because fringe-toed lizards are generally difficult to detect, they are more easily detected by teams of at least two people.²⁰ Finally, the Habitat Conservation Plan (HCP) agreement between the Imperial Irrigation District, California Department of Fish and Game

¹³ BLM and CDFG. 2002. Final Environmental Impact Statement. Proposed Northern & Eastern Colorado Desert Coordinated Management Plan. Bureau of Land Management, California Desert, Riverside, CA. p. 2-30.

¹⁴ Genesis Solar LLC. 2010 Feb. Alternative Proposal for Desert Tortoise Mitigation: A Habitat-Based Approach. Available at: http://www.energy.ca.gov/sitingcases/genesis_solar/documents/index.html#applicant

¹⁵ AFC, Table 3.2-2.

¹⁶ AFC: Appendix C. (Tetra Tech EC, Inc. 2009 Aug. Biological Resources Technical Report: Genesis Solar Energy Project: Riverside County, CA), p. 26.

¹⁷ *Id.* p. 25.

¹⁸ *Id.* p. 25, 26.

¹⁹ Jones LC, RE Lovich, eds. 2009. Lizards of the American Southwest: A Photographic Field Guide. Rio Nuevo Publishers, Tucson (AZ). 567 pp.

²⁰ *Id.*

(CDFG), and U.S. Fish and Wildlife Service (USFWS) for the Water Conservation and Transfer Project requires both pitfall trapping and intensive area searches to effectively survey fringe-toed lizards.²¹ The HCP requires that these surveys be conducted once a month for each of March, April, May, June, October, and November.

Data Requests

10. Please clarify why the Applicant did not conduct fringe-toed lizard surveys at times when fringe-toed lizards are most commonly detected (i.e., from May through October).
11. Please clarify why the Applicant did not conduct both pitfall trapping and intensive area searches for the fringe-toed lizard.
12. Please provide evidence that the Applicant established the proper baseline for an impact analysis of the fringe-toed lizard.

Background: IMPACTS TO CACTI, YUCCA, AND TREES

Cacti, yucca, and native trees are protected by the California Desert Native Plant Act (CDNPA).²² The Applicant conducted sampling to identify the presence and abundance of plants protected by the CDNPA.²³ The samples consisted of 0.405-acre plots plus the quality control plots that were used for desert tortoise surveys.²⁴ The AFC provides conflicting information on whether four or six sampling plots were installed.²⁵ No cacti or trees were detected in sampling areas 4 and 6; the Applicant concluded this was likely an underestimate of the number that actually occurs in the areas.²⁶ Conversely, nine ironwood trees were found in sampling area 5; the Applicant concluded this was likely an overestimate of the number of trees that actually occur in the area.²⁷ The results of the sampling led the Applicant to conclude that stratified sampling may not always be an accurate indicator of how many cacti or trees occur.²⁸

²¹ CH2MHILL. 2002. Final Environmental Impact Report /Environmental Impact Statement. Imperial Irrigation District: Water Conservation and Transfer Project. Appendix F. Available at: iid.com/Media/Appendix-F-General.pdf.

²² AFC: Appendix C. (Tetra Tech EC, Inc. 2009 Aug. Biological Resources Technical Report: Genesis Solar Energy Project: Riverside County, CA), p. 25.

²³ *Id.*

²⁴ *Id.*

²⁵ See p. 25, Table 3, and Figure 6 of AFC: Appendix C. (Tetra Tech EC, Inc. 2009 Aug. Biological Resources Technical Report: Genesis Solar Energy Project: Riverside County, CA).

²⁶ AFC: Appendix C. (Tetra Tech EC, Inc. 2009 Aug. Biological Resources Technical Report: Genesis Solar Energy Project: Riverside County, CA), p. 34.

²⁷ *Id.*

²⁸ *Id.*

Only two of the sample plots and one and a half of the sampling transects were within the facility footprint.²⁹ Therefore, the sampling data are not only plagued with problems associated with variance, but they do not provide a robust estimate of impacts within the Project footprint.

The AFC concluded any tree or cacti overlapping the Project area would be directly and permanently affected by the Project.³⁰ However, the AFC does not discuss avoidance and minimization measures for plants protected by the CDNPA, nor does it discuss Project compliance with the CDNPA.

Data Requests

13. Please provide the number of cacti, yucca, and native trees that are on the Project site.
14. Please clarify whether the Applicant installed four or six sampling plots for cacti, yucca, and trees. If six plots were installed, please modify the map of the sampling areas such that it depicts the locations of all six sampling plots.
15. Please indicate the Project's compliance with the CDNPA and provide the measures that will be implemented to avoid and minimize impacts to protected plant species.

Background: EFFORT DEVOTED TO ESTABLISHING EXISTING CONDITIONS

The Project's surveys to document vegetation communities and all special-status species were done concurrently.³¹ Energy Commission Staff recently found that botanical survey results for the Imperial Valley Solar Project (formerly Solar Two) were not adequate to assess presence or absence of plant species within the project area because the plant surveys were conducted during wildlife surveys when the focus and methods may be different.³²

²⁹ AFC: Appendix C. (Tetra Tech EC, Inc. 2009 Aug. Biological Resources Technical Report: Genesis Solar Energy Project: Riverside County, CA), Figure 6.

³⁰ AFC, p. 5.3-26.

³¹ AFC, p. 5.3-12.

³² U.S. Bureau of Land Management and California Energy Commission. 2010. Staff Assessment and Draft Environmental Impact Statement and Draft California Desert Conservation Area Plan Amendment: SES Solar Two Project. Application For Certification (08-AFC-5). Available from CEC, Sacramento (CA). p. C.2-3, C.2-20.

CEC 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 to determine if a protocol exists.³³ Of the species identified as having potential to occur on the Project site, survey protocols (or guidelines) exist for the desert tortoise, burrowing owl, and sensitive botanical resources. The AFC states the Applicant adhered to the USFWS survey protocol for desert tortoise, the California Burrowing Owl Consortium (CBOC) survey guidelines for burrowing owls, and the California Native Plant Society (CNPS) and CDFG survey guidelines for special-status plant species.³⁴ Additionally, the AFC states the Applicant conducted avian point count surveys according to a protocol set forth by the BLM.³⁵

Although the AFC lists all of the biologists that participated in field surveys, it does not indicate the biologists responsible for conducting each of the various surveys, and the qualifications of those biologists. Furthermore, the AFC lacks information on the level of effort devoted to each survey task. Information on the man-hours dedicated to each survey is necessary to evaluate whether the Applicant adhered to the survey protocols, and thus if the description of existing biological resource conditions is accurate.³⁶

Data Requests

16. In light of Energy Commission Staff's recent finding that botanical survey results for the Imperial Valley Solar Project (formerly Solar Two) were not adequate to assess presence or absence of plant species within the project area because the plant surveys were conducted during wildlife surveys when the focus and methods may be different, please justify the validity of the Applicant's approach to conducting

³³ California Energy Commission. 2007. Appendix B of Rules of practice and procedure & power plant site certification regulations. Document No. CEC-140-2007-003. Also see the updated Appendix B from July 2008 at <http://www.energy.ca.gov/2008publications/CEC-140-2008-003/CEC-140-2008-003.PDF>

³⁴ AFC: Appendix C. (Tetra Tech EC, Inc. 2009 Aug. Biological Resources Technical Report: Genesis Solar Energy Project: Riverside County, CA), pp. 20, 25-26.

³⁵ *Id.*, p. 29.

³⁶ California Department of Fish and Game. 2000. Guidelines for Assessing the Effects of Proposed Projects on Rare, Threatened, and Endangered Plants and Natural Communities. (Revision of 1983 Guidelines.) Sacramento, CA; US Fish and Wildlife Service. 1992. Field survey protocol for any non-federal action that may occur within the range of the desert tortoise. Available from: Fish and Wildlife Service, Ventura (CA); The California Burrowing Owl Consortium. 1993. Burrowing Owl Survey Protocol and Mitigation Guidelines. Available online at: <http://www.dfg.ca.gov/wildlife/species/docs/boconsortium.pdf>.

surveys for multiple taxa concurrently.

17. Please provide resumes for each of the biologists that conducted Project surveys.
18. Please indicate the biologists that were responsible for each survey task.
19. Please provide the man-hours spent surveying, by date and biologist, for each of the following survey efforts:
 - a. Vegetation community, special-status plants, desert tortoise, burrowing owl Phase II, fringe-toed lizard, and other special-status wildlife surveys (all conducted concurrently);³⁷
 - b. Burrowing owl Phase III surveys;
 - c. Avian point count surveys;
 - d. Cacti, yucca, and tree sampling;
 - e. Small mammal trapping; and
 - f. Delineation of wetlands and jurisdictional waters.
20. As required by the CNPS and CDFG botanical survey protocols, please:
 - a. provide a description of the reference site(s) visited and phenological development of the target special-status plants, with an assessment of any conditions differing from the Project site that may affect their identification;
 - b. identify the local experts consulted and the herbaria that were visited for information on special-status plant species occurrence within the Project area and vicinity; and
 - c. provide the mean rainfall and temperature data obtained by the weather station(s) nearest the Project site preceding the 2009 botanical surveys.

Background: AVIAN SURVEYS

The locations of the transects used for the Applicant's avian point count surveys were "chosen based on habitat characteristics where highest density of avian species was likely to occur."³⁸ However, the AFC does not define the habitat characteristics that were used in transect selection, nor does it justify the method as a valid sampling approach. Additionally, the AFC does not explain why almost all of the point counts were located outside

³⁷ AFC: Appendix C. (Tetra Tech EC, Inc. 2009 Aug. Biological Resources Technical Report: Genesis Solar Energy Project: Riverside County, CA), p. ES-1.

³⁸ AFC, p. 5.3-14.

of the Project footprint.³⁹ Selectively choosing locations where species richness is believed to be highest (which appears to be what the Applicant means by “density of avian species”) may not provide an accurate estimate of species *composition* or *diversity*. This appears to be reflected by the Applicant’s survey results. Fifty-two cliff swallows, 18 northern rough-winged swallows, and 17 tree swallows were detected species during the Applicant’s surveys, resulting in cliff swallows being the third, and northern rough-winged swallows and tree swallows being the fourth most abundant species detected.⁴⁰ According to the California Department of Fish and Game, cliff swallows are restricted to areas with water (in deserts), northern rough-winged swallows usually nest near water, and tree swallows use areas near water during all seasons.⁴¹ Yet, the Applicant reports no surface waters in the vicinity of the Project.⁴² Among other things, this suggests the species detected were not representative of the Project site.

The avian survey protocol set forth by the BLM called for the point counts to be conducted between 0500 and 0900.⁴³ However, the Applicant’s point counts were conducted between 0730 and 0950, except for two transects, which were conducted between 1045 and 1145.⁴⁴ Research on the effect of time of day on bird activity suggests the Applicant’s surveys were likely too late in the day to accurately characterize avian communities. Skirvin (1981) reported a statistically significant decline in total bird detections from the first hour to the fourth hour after sunrise.⁴⁵ Robbins (1981) concluded that bird activity reaches a low point in midday, and may almost cease in desert habitats.⁴⁶ In desert-scrub communities, Grue et al. (1981) detected 51% to 68% less birds between 1200 and 1400 than between 0600 and 0800.⁴⁷

The Applicant conducted its bird surveys at a time when the bird community is in flux. Specifically, at the end of March and beginning of April, the Sonoran desert contains summer residents, winter residents, and

³⁹ AFC, Figure 5.3-5.

⁴⁰ AFC: Appendix C. (Tetra Tech EC, Inc. 2009 Aug. Biological Resources Technical Report: Genesis Solar Energy Project: Riverside County, CA), p. 48.

⁴¹ Zeiner DC, WF Laudenslayer Jr., KE Mayer, M White, eds. 1988-1990. California's Wildlife. Vol. I-III. California Depart. of Fish and Game, Sacramento, California.

⁴² AFC, p. 5.3-1.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Skirvin AA. 1981. Effect of time of day and time of season on the number of observations and density estimates of breeding birds. *Studies in Avian Biology* No. 6:271-274.

⁴⁶ Robbins CS. 1981. Effect of time of day on bird activity. *Studies in Avian Biology* No. 6:275-286.

⁴⁷ Grue CE, RP Balda, CD Johnson. 1981. Diurnal activity patterns and population estimates of breeding birds within a disturbed and undisturbed desert-scrub community. *Studies in Avian Biology* No. 6:287-291.

spring migrants.⁴⁸ The special-status listing associated with many bird species is applicable only during certain times of year (e.g., nesting, wintering). The AFC states the Applicant would be conducting additional point count surveys to identify wintering birds, but it does not specify whether the birds that were detected during the “spring” surveys were summer residents, winter residents, or spring migrants.⁴⁹

Data Requests

21. Please provide a copy of the protocol that the Applicant used for avian point-count surveys.
22. Please provide the Applicant’s objectives for the avian surveys (e.g., whether they were intended to characterize species richness, abundance, and composition of the birds that will be impacted by the Project).
23. Please identify the residency status of the bird species that were detected during the point count surveys.
24. Please provide the results of the winter point count surveys.
25. Please describe the habitat variables associated with each point count location.
26. Please clarify whether there was any surface water at the Project site during avian point count surveys.
27. Please indicate whether the BLM has approved the results of the avian surveys.
28. Please provide the transects that were surveyed after 0900.
29. Please indicate the number of minutes spent surveying each point count location.

Background: SMALL MAMMAL TRAPPING SURVEYS

The AFC indicates the Applicant conducted small mammal trapping

⁴⁸ Shuford WD, T Gardali, editors. 2008. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.

⁴⁹ AFC, p. 5.3-14.

for several nights at two locations on each side of the Project area.⁵⁰ However, the AFC does not provide information on the methods that were used to conduct the trapping, nor does it discuss the results.

Data Requests

30. Please provide the methods that were used for small mammal trapping, including personnel, trap hours, trap configuration, trap size, and bait used.
31. Please indicate if a survey protocol was used for the small mammal trapping surveys.
32. Please describe the habitat variables associated with each trap site.
33. Please provide the results of the small mammal trapping surveys, including a list of all wildlife species that were captured.

Background: SPECIAL-STATUS SPECIES ABSENT FROM THE AFC

The NECO Plan includes maps that suggest the Project area provides habitat for the California leaf-nosed bat, pallid bat, Townsend's big-eared bat, Colorado Valley woodrat, and desert rosy boa.⁵¹ The AFC concluded these species are unlikely to occur within the Project survey area because they were not observed during surveys and the Project area lacks their preferred habitat.⁵² However, it does not appear the Applicant conducted the specialized surveys necessary to identify the presence of any of these species, nor does the AFC sufficiently justify that their habitat is absent in the survey area.

California leaf-nosed bats occur in lowland desert habitat in California in close proximity to desert wash vegetation.⁵³ They forage primarily in desert washes, generally within one to three miles of the roost. The primary factors responsible for their population declines are roost disturbance, the closure of mines, and the destruction of foraging habitat.

⁵⁰ AFC: Appendix C. (Tetra Tech EC, Inc. 2009 Aug. Biological Resources Technical Report: Genesis Solar Energy Project: Riverside County, CA), p. 29.

⁵¹ BLM and CDFG. 2002. Final Environmental Impact Statement. Proposed Northern & Eastern Colorado Desert Coordinated Management Plan. Bureau of Land Management, California Desert, Riverside, CA.

⁵² AFC: Appendix C. (Tetra Tech EC, Inc. 2009 Aug. Biological Resources Technical Report: Genesis Solar Energy Project: Riverside County, CA), p. 50.

⁵³ BLM and CDFG. 2002. Final Environmental Impact Statement. Proposed Northern & Eastern Colorado Desert Coordinated Management Plan. Bureau of Land Management, California Desert, Riverside, CA.

Pallid bats occur in a number of habitats, including coniferous forests, non-coniferous woodlands, brushy terrain, rocky canyons, open farmland, and deserts.⁵⁴ They roost primarily in rock crevices, but commonly in old buildings, under bridges, in caves and old mines, and in hollow trees.

Townsend's big-eared bats occur in a wide range of habitats, but population concentrations occur in areas with substantial cavity forming rock (e.g., limestone, sandstone, gypsum or volcanic) and in old mining districts.⁵⁵ They will also roost in old buildings, in tunnels, and under bridges.

Colorado Valley woodrats are found in a variety of habitats including low desert, pinyon-juniper woodlands, and desert-transition chaparral.⁵⁶ They prefer a mixture of brushy cover and rocky soil, such as is found in desert canyons, washes, and mountains. Areas such as washes where organic debris gathers are particularly attractive. They are often found where prickly pear cactus and mesquite occur. The most important threats are the loss of habitat and reduction in habitat quality by removal of nest material such as cactus and woodland. The AFC indicates the presence of desert woodrat midden(s) at the Project site, but it provides no discussion of how the midden was determined to be that of a desert woodrat and not a Colorado Valley woodrat.⁵⁷

Rosy boas occupy habitats with a mixture of a brushy cover and rocky soil such as coastal canyons and hillsides, desert canyons, washes and mountains.⁵⁸ Until recently, nothing was known of their movement patterns or home range size, and generally very little is known about the natural history of this species.⁵⁹

Data Requests

34. Please provide information on the occurrence of bat roosts in the vicinity of the Project area and indicate whether the BLM was solicited for information on the occurrence of known roost sites.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ AFC: Appendix C. (Tetra Tech EC, Inc. 2009 Aug. Biological Resources Technical Report: Genesis Solar Energy Project: Riverside County, CA), Appendix D.

⁵⁸ Zeiner DC, WF Laudenslayer Jr., KE Mayer, M White, eds. 1988-1990. California's Wildlife. Vol. I-III. California Dept. of Fish and Game, Sacramento, California.

⁵⁹ USGS. 2003. Population Status and Conservation of the Rosy Boa (*Lichanura trivirgata*)[Internet]. Available at: <http://www.werc.usgs.gov/sandiego/boas.html>.

35. Please provide the methods that were used to survey for bats at the Project site.
36. Please provide the methods that were used to survey for rosy boas at the Project site.
37. Please provide the methods that were used to survey for woodrats at the Project site, and indicate the number of middens that were detected.
38. Please provide the criteria that were used to distinguish a desert woodrat midden from a Colorado Valley woodrat midden.

Background: IMPACTS TO WILDLIFE MOVEMENT CORRIDORS

The AFC states

[a] wildlife corridor study was not conducted as part of the Project biological resource surveys since extensive, long-term species ecology, movement patterns, and dispersal behavior would be required to conclusively demonstrate if a particular site or feature of a site served as an important movement corridor. This type of data is unavailable for most of the species occurring or potentially occurring in the survey area.⁶⁰

CEC siting guidelines require information on the distribution of wildlife corridors at the proposed project area and related facilities.⁶¹ Furthermore, the CEC's Best Management Practices and Guidance Manual for Desert Renewable Energy Projects states solar energy facilities should be located and/or designed to minimize or mitigate for disruptions to wildlife movement.⁶²

Literature exists on the ecology, movement patterns, and dispersal behavior of most of the special-status species that may be affected by the Project. This literature can be used to make inferences on Project impacts to

⁶⁰ AFC, p. 5.3-22.

⁶¹ California Energy Commission. 2007. Appendix B of Rules of practice and procedure & power plant site certification regulations. Document No. CEC-140-2007-003. Also see the updated Appendix B from July 2008 at <http://www.energy.ca.gov/2008publications/CEC-140-2008-003/CEC-140-2008-003.PDF>

⁶² California Energy Commission. 2009 Dec. Best Management Practices and Guidance Manual: Desert Renewable Energy Projects. Revised Draft Staff Report. CEC-700-2009-016-SDREV. Available at: <http://www.energy.ca.gov/publications/displayOneReport.php?pubNum=CEC-700-2009-016-SD-REV>

wildlife movement corridors. In addition, there are a variety of techniques that can be used to estimate movement patterns in addition to long-term study. These include use of remote cameras, modeling, and review of genetic differences among populations. For example, modeling was conducted for the previously proposed Carrizo Solar Energy Farm project to determine impacts on habitat connectivity for focal species.⁶³

Data Requests

39. Please provide information on the distribution of wildlife corridors at the proposed Project area and related facilities.
40. Please provide an assessment of Project impacts to wildlife corridors and identify the various species for which habitat connectivity would be impaired by the Project.
41. Please indicate how the Project and related facilities have been located and/or designed to minimize or mitigate for disruptions to wildlife movement.

Background: CUMULATIVE IMPACTS TO BIOLOGICAL RESOURCES

Sixteen solar energy facilities have been proposed for development within 30 miles of the Project site.⁶⁴ These projects would permanently impact a total of 110,251 acres.⁶⁵ As a result, the AFC identifies the potential for significant cumulative impacts at a regional scale.⁶⁶ In particular, development of the projects would result in large-scale habitat loss and fragmentation that could affect sensitive species such as the desert tortoise, Mojave fringe-toed lizard, and bighorn sheep.⁶⁷ Although the AFC identifies the potential for significant cumulative impacts to biological resources, it does not discuss the measures that will be implemented to avoid, minimize, and mitigate the impacts.

Data Requests

42. Please provide a map that identifies the projects considered in the Applicant's cumulative impact analysis that indicates their location with respect to the Project.

⁶³ 07-AFC-8.

⁶⁴ AFC, p. 5.3-33.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

43. Please provide the measures that will be implemented to avoid, minimize, and mitigate significant cumulative impacts to biological resources. In your response, please include the Project's mitigation for large-scale habitat loss and fragmentation affecting the (a) desert tortoise, (b) fringe-toed lizard, and (c) bighorn sheep.

Background: IMPACTS TO COUCH'S SPADEFOOT TOAD

The NECO Plan identifies the Project area as within the range of the Couch's spadefoot toad.⁶⁸ According to the AFC, the Applicant conducted surveys for any artificial or temporary water catchments that could serve as breeding pools for Couch's spadefoot toads, and no potential breeding pools were detected.⁶⁹ The AFC does not provide any information on the methods used to conduct the surveys, including the criteria that were used to identify potential breeding pools, or the areas that were examined during the surveys.

The breeding sites of Couch's spadefoots are potentially vulnerable to disturbance that alters the percolation characteristics of the substrate.⁷⁰ If Couch's spadefoots occur off-site, they may be indirectly impacted by the Applicant's proposed alterations to the local hydrology. The AFC lacks information on these potential indirect Project impacts on the species.

Data Requests

44. Please provide the methods that were used to identify "[a]ny artificial or temporary water catchments that could serve as breeding pools for Couch's spadefoot toad," including the criteria that were used to identify potential breeding pools.⁷¹
45. Please provide a map identifying the specific locations that were visually inspected for Couch's spadefoot breeding pools.
46. Please identify Project impacts on Couch's spadefoot toads.

⁶⁸ BLM and CDFG. 2002. Final Environmental Impact Statement. Proposed Northern & Eastern Colorado Desert Coordinated Management Plan. Bureau of Land Management, California Desert, Riverside, CA.

⁶⁹ AFC, p. 5.3-15, 21.

⁷⁰ Jennings MR, MP Hayes. 1994. Amphibian and reptile species of special concern in California. Rancho Cordova, CA: California Dept. of Fish and Game, Inland Fisheries Division.

⁷¹ AFC: Appendix C. (Tetra Tech EC, Inc. 2009 Aug. Biological Resources Technical Report: Genesis Solar Energy Project: Riverside County, CA), p. 29.

Background: IMPACTS TO SHORT-EARED OWLS

The California Species of Special Concern designation provided to short-eared owls applies to nesting individuals only. Although a short-eared owl was detected during the Applicant's point-count bird surveys, the AFC does not discuss Project impacts to the species.⁷² This appears to be a result of the Applicant's conclusion that in southern California, short-eared owls are winter residents only.⁷³ The Applicant's conclusion is unsupported and appears to be incorrect. Multiple short-eared owl nests have been detected at Harper Dry Lake, and nesting has been suspected in the Antelope Valley.⁷⁴ The breeding season for short-eared owls is reported to stretch from March through July.⁷⁵ The Applicant's point count surveys were conducted within this time frame.

Data Request

47. Please provide the methods used to identify potential short-eared owl nest sites within the Project survey area.
48. Please provide a citation for the AFC's statement that the short-eared owl is considered a winter resident in southern California.⁷⁶
49. Please provide the date and location of the short-eared owl detection.
50. Please identify Project impacts to short-eared owls.

Background: IMPACTS TO SWAINSON'S HAWKS

A Swainson's hawk was detected during the Applicant's point count surveys.⁷⁷ The AFC provides no discussion of this detection, nor does it provide any mitigation for potential impacts to Swainson's hawk foraging habitat.

⁷² *Id.*, p. 40.

⁷³ *Id.*

⁷⁴ Shuford WD, T Gardali, editors. 2008. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.

⁷⁵ Shuford WD, T Gardali, editors. 2008. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.

⁷⁶ AFC: Appendix C. (Tetra Tech EC, Inc. 2009 Aug. Biological Resources Technical Report: Genesis Solar Energy Project: Riverside County, CA), p. 40.

⁷⁷ *Id.*, p. 48.

Data Request

51. Please indicate whether there are any potential nesting substrates for Swainson's hawks within the Project survey area. If potential nesting substrates are present, please indicate if nesting surveys will be conducted, and the protocol that will be used to conduct the surveys.

Background: IMPACTS TO BREWER'S SPARROWS

The Applicant detected Brewer's sparrows on six of the seven avian survey transects.⁷⁸ Nest sites of Brewer's sparrows are of conservation concern to the U.S. Fish and Wildlife Service.⁷⁹ The AFC lacks information on Project impacts to Brewer's sparrows and the measures that will be implemented to mitigate the impacts.

Data Requests

52. Please indicate the Project's impacts to Brewer's sparrows.
53. Please indicate the measures that will be implemented to mitigate Project impacts to Brewer's sparrows.

Background: IMPACTS TO BATS

The AFC states that impacts to bats would be insignificant, as no roosting and foraging habitat exists on site, including agricultural fields and riparian areas.⁸⁰ However, the Applicant's response to Energy Commission Staff and BLM data request 63 indicates riparian scrub is present on (or in the vicinity of) the Project site.⁸¹ Additionally, the Applicant's Biological Resources Technical Report indicates several bat species may occur on the Project site.⁸²

Data Request

54. Please clarify the Project's direct and indirect impacts on the various bat species that potentially occur in the Project region.

⁷⁸ *Id.*

⁷⁹ Department of Fish and Game. 2009 July. Special Animals. Available at: <http://www.dfg.ca.gov/wildlife/nongame/list.html>

⁸⁰ AFC, p. 5.3-29.

⁸¹ Applicant's Data Requests Response Set 1A, Table BIO-DR 63.

⁸² AFC: Appendix C. (Tetra Tech EC, Inc. 2009 Aug. Biological Resources Technical Report: Genesis Solar Energy Project: Riverside County, CA), Table 2.

55. Please indicate whether the Applicant conducted any focused survey efforts for bats and bat roosts.

Background: IMPACTS TO RARE NATURAL COMMUNITIES

Energy Commission Staff and BLM data request 63 asked the Applicant to provide the following:

information on the presence or absence of the rare natural communities listed above within the proposed project footprint or adjacent to the footprint in areas that could be affected indirectly by construction or operation. If present, include a discussion of their distribution and extent and a map showing their location. If any such rare communities occur, please provide an analysis of the project direct and indirect impacts to these communities and any proposed mitigation measures to reduce the level of any significant impacts.

The Applicant responded to the CEC and BLM request by stating “[o]ccurrences on or in the Project area, impacts, and mitigation to these drainage and high groundwater/surface water-associated communities on or adjacent to the Project have been addressed in DRs 64-74.”⁸³ However, the Applicant’s responses to data requests 64-74 did not include the requested map, nor did they provide information on the occurrence, impacts, and mitigation for the various vegetation communities that were identified.⁸⁴

Energy Commission Staff and BLM data request 66 asked the Applicant to provide an assessment of the potential impact of water table drawdown on the ironwood forest in the Palen-McCoy Wilderness. The Applicant’s response presented the conclusion that water table drawdowns of 0.3 feet or less are similar to or less than expected normal climatic, seasonal or diurnal water table fluctuations and therefore would not be expected to adversely affect the ironwood trees north of the Project site. However, the Applicant’s response does not consider the Project’s cumulative effects on the ironwood forest from drought, existing groundwater depletion, future groundwater depletion, and the cumulative impacts on groundwater resources from the other solar projects in the I-10 corridor.

Ironwood trees in the Chuckwalla Valley have been declining for at least 30 years.⁸⁵ In some areas, more than three-quarters of them are now

⁸³ Applicant’s Data Requests Response Set 1A, BR-12.

⁸⁴ Applicant’s Data Requests Response Set 1A, Table BIO-DR 63.

⁸⁵ Hubbard T, Center for Sonoran Desert Studies, Arizona-Sonora Desert Museum. 2009. Natural History of the Desert Ironwood Tree (*Olneya tesota*). Available at: http://www.desertmuseum.org/programs/ifnm_ironwoodtree.php

dead.⁸⁶ Groundwater pumping and diversion of drainages have both been suggested as possible causes of the mortality.⁸⁷ In addition to causing mortality, the water supply may affect canopy development and density.⁸⁸

Data Requests

56. As requested in Energy Commission Staff and BLM data request 63, please indicate the distribution and extent of the rare natural communities present on the Project site or vicinity. Please include a map showing the locations of each of the rare natural communities present on the Project site or vicinity.⁸⁹
57. As requested in Energy Commission Staff and BLM data request 63, please provide an analysis of the Project's direct and indirect impacts to the rare natural communities and any proposed mitigation measures to reduce the level of any significant impacts.
58. Please provide the results of the Applicant's field visit to McCoy Spring referenced in its response to Energy Commission Staff and BLM data request 65.
59. Please explain the Project's potential effect on the canopy development and density of ironwood trees from the Project's proposed use of groundwater.
60. Please explain the impacts from the Project's proposed use of groundwater on stress to ironwood trees during times of drought, or in conjunction with existing groundwater pumping.

Background: BURROWING OWL SURVEYS

The Applicant's response to Energy Commission Staff and BLM data request 62 refers to Figure BIO-DR 62 for information on Burrowing Owl Phase III survey locations. However, Figure BIO-DR 62 is missing from the Applicant's data response.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ California Wildlife Habitat Relationships System. 2005. California Department of Fish and Game. California Interagency Wildlife Task Group. CWHR version 8.1 personal computer program. Sacramento (CA).

⁸⁹ Applicant's Data Requests Response Set 1A, Table BIO-DR 63.

Data Request

61. Please provide Figure BIO-DR 62 or another map that depicts the Burrowing Owl Phase III survey locations.

Background: DELINEATION OF STATE WATERS

Energy Commission Staff and BLM data request 69 asked the Applicant to revise the width and area columns on AFC Table 5.3-2 to reflect calculations based on a GIS measurement of drainage widths from the aerial photo signature that encompasses the width of the associated wash vegetation and interfluves of compound or braided features. The Applicant's response did not provide the requested information.

Data Request

62. Please provide the information requested in Energy Commission Staff and BLM data request 69.

Background: IMPACTS TO DESERT DRY WASH WOODLAND

Desert wash habitats are relatively rare, and they are extremely important to wildlife populations. For example, they support more bird species at greater densities than any other desert habitat, with the possible exception of some Palm Oasis habitats.⁹⁰ Energy Commission Staff and BLM data request 72 asked the Applicant to describe the Desert Dry Wash Woodland that could be directly and indirectly impacted by the Project. The Applicant responded that

[n]o Desert Dry Wash Woodland occurs within the project footprint as defined by Holland (1986), 'An open to dense, drought-deciduous, microphyllous riparian thorn scrub woodland to 30-60 feet tall, dominated by any of several fabaceous trees. Sandy or gravelly washes and arroyos of the lower Mojave and Colorado Deserts, largely in frost-free areas. These washes typically have braided channels that substantially rearrange with every surface flow event.'

However, the Applicant also stated "three of the delineated ephemeral drainages found along the Project linear corridor have dense stands of wash-associated trees such as ironwood, mesquite, and palo verde."⁹¹ The

⁹⁰ California Wildlife Habitat Relationships System. 2005. California Department of Fish and Game. California Interagency Wildlife Task Group. CWHR version 8.1 personal computer program. Sacramento (CA).

⁹¹ Applicant's Data Requests Response Set 1A, BR-21.

description provided by the Applicant appears consistent with the one provided by Holland (1986), and it suggests that the desert wash woodland community may be more widespread in the Project area than reported by the Applicant.

Data Requests

63. Please provide the specific criteria that were used to classify Desert Dry Wash Woodland.
64. Please clarify the direct and indirect impacts of the Project on Desert Dry Wash Woodland.

Background: IMPACTS TO CRISSAL THRASHER

The NECO Plan requires surveys for Crissal thrashers for projects in the NECO planning area.⁹² The AFC concludes the Crissal thrasher is “highly unlikely” to occur in the Project area due to the lack of habitat.⁹³ Crissal thrasher habitat includes dense stands of wash-associated trees.⁹⁴ These habitats are present in the Project area.⁹⁵ Crissal thrashers occupy several locations near the Project, including Palen Valley, McCoy Wash/Spring, and Chuckwalla Well. It does not appear that the Applicant has conducted focused surveys for Crissal thrashers, despite NECO Plan requirements, the presence of suitable habitat, and known occurrences of the species in the Project vicinity.

Data Requests

65. Please provide the Applicant’s strategy for mitigating direct and indirect Project impacts to Crissal thrashers.
66. Please justify the conclusion that the Project area lacks Crissal thrasher habitat.

⁹² AFC: Appendix C. (Tetra Tech EC, Inc. 2009 Aug. Biological Resources Technical Report: Genesis Solar Energy Project: Riverside County, CA), p. 14.

⁹³ AFC: Appendix C. (Tetra Tech EC, Inc. 2009 Aug. Biological Resources Technical Report: Genesis Solar Energy Project: Riverside County, CA), Table 2.

⁹⁴ Shuford WD, T Gardali, editors. 2008. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.

⁹⁵ Applicant’s Data Requests Response Set 1A, Table BIO-DR 63.

Declaration of Service

I, Bonnie Heeley, declare that on March 11, 2010 I served and filed copies of the attached California Unions for Reliable Energy Data Requests, Set One, dated March 11, 2010. The original document, filed with the Docket Office, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: http://www.energy.ca.gov/sitingcases/genesis_solar.

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 Office via email and U.S. mail.

I declare under penalty of perjury that the foregoing is true and correct. Executed at South San Francisco, CA on March 11, 2010.

_____/s/_____
Bonnie Heeley

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