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US Fish and Wildlife Service Response to CEC Subject Request from February 2022

Hello Lisa Worrall,

I am responding to the subject request received in our office on February 9, 2022. I based my response to the question in your request on the information received regarding the proposed project, as well as the California Energy Commission (CEC) Staff's Data Adequacy Recommendation for the Pecho Energy Storage Center (21-AFC-01) (Docket # 21-AFC-01, TN# 241075, dated December 22, 2021, accessed on March 28, 2022, at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=241075&DocumentContentId=74906>).

My responses to the questions in your request are provided below:

1) A discussion of those aspects of the proposed site and related facilities for which your agency would have jurisdiction but for the exclusive jurisdiction of the CEC to certify those sites and related facilities.

The U.S. Fish and Wildlife Service's (Service) responsibilities include administering the Endangered Species Act of 1973, as amended (Act), including sections 7, 9, and 10. Section 9 of the Act prohibits the taking of any federally listed endangered or threatened species. Section 3(19) of the Act defines "take" to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Service regulations (50 CFR 17.3) define "harm" to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. The Act provides for civil and criminal penalties for the unlawful taking of listed species. Exemptions to the prohibitions against take may be obtained through the Service in two ways: through interagency consultation for projects with Federal involvement pursuant to section 7, or through the issuance of an incidental take permit under section 10(a)(1)(B) of the Act.

From the information that is available to us, the sites for the proposed Pecho Energy Storage Center Project and related facilities are located within the proximity of known or potential occurrences of individual federally listed species and/or their habitat. Some of these species may include California red-legged frog (*Rana draytonii*), Morro Shoulderband snail (*Helminthoglypta walkeriana*), Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*), Morro manzanita (*Arctostaphylos morroensis*), and/or Chorro Creek bog thistle (*Cirsium fontinale* var. *obispoense*). Therefore, any impacts incurred by federally listed species as a result of the proposed project activities could be a violation of section 9 of the Act.

2) A determination of the completeness of the list in the Application for certification (AFC) of the laws, regulations, ordinances, or standards that your agency administers or enforces and would be applicable to the proposed site and related facilities but for the CEC's exclusive jurisdiction.

The Service did not review the AFC for completeness of the list of the laws, regulations, ordinances, or standards administered or enforced by the Service. However, the Service reviewed the California Energy Commission Staff's Data Adequacy Recommendation for the Pecho Energy Storage Center (21-AFC-01). That document described information needed by the Service to provide substantive review of the impacts of the proposed project on federally listed species and their habitats.

The proposed project could potentially adversely impact federally listed species and their habitats, which is a violation of section 9 of the Act. Therefore, an exemption from prohibition of take under section 7 or section 10(a)(1)(B) of the Act may be required for the proposed activities.

3) A description of the nature and scope of the requirements that the applicant would need to meet to satisfy the substantive requirements of your agency but for the CEC's exclusive jurisdiction, and an identification of any analyses that the CEC should perform to determine whether these substantive requirements can be met.

The CEC Staff's Data Adequacy Recommendation for the Pecho Energy Storage Center (21-AFC-01) contains information needed by the Service to satisfy requirements for initial analysis of potential impacts of the proposed project and alternatives. The lists of information needed are found on page 7 describing the need for a description of alternatives to the proposed project, and on pages 8-18 for biological resources and federally listed species. After the CEC reviews the deficient information on alternatives for the project and potential impacts to federally listed species, the CEC would make a determination of whether or not the project would result in adverse impacts to federally listed species and submit that determination to the Service for review. If, after receiving the project information and the CEC project impact determination, the Service determines additional deficiencies remain, the Service will request the necessary information to complete the analysis of the potential impacts of the proposed project and the CEC's impact determination.

4) An analysis of whether there is a reasonable likelihood that the proposed project will be able to comply with your agency's applicable substantive requirements.

The Service can not complete an analysis on the ability of the proposed project to comply with our substantive requirements without reviewing the deficient information on alternatives and potential impacts to federally listed species and their habitats.

We appreciate the opportunity to participate in the review process for the proposed Pecho Energy Storage Center Project. Please contact me via email should you have any questions regarding this response to your request.

Sincerely,

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