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STATE OF CALIFORNIA

State Energy Resources Conservation and
Development Commission

In the Matter of: WILLOW ROCK ENERGY STORAGE CENTER	Docket No. 21-AFC-02

INTERVENOR CENTER FOR BIOLOGICAL DIVERSITY ISSUES IDENTIFICATION REPORT

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INTERVENOR CENTER FOR BIOLOGICAL DIVERSITY
ISSUES IDENTIFICATION REPORT

Pursuant to the California Energy Commission's (the "CEC") Notice of Site Visit and Informational Hearing, and Committee Order - Corrected ("Order") (TN259528, docketed October 11, 2024), the Center for Biological Diversity ("Center"), as Intervenor, hereby submits this Issues Identification Report. As detailed in the Order, all parties are required to file a concise Issues Identification Report summarizing the major issues identified to date regarding the Supplemental Application for Certification ("Supplemental AFC") for the Willow Rock Energy Storage Center Project ("Willow Rock Project").

ISSUES IDENTIFICATION

The Center's analysis of the Willow Rock Project, as detailed in Gem A-CAES LLC's (the "Applicant") Supplemental AFC, is ongoing. At this stage, the Center has identified a number of issues related to biological resources. The Center's review of the Supplemental AFC and other docketed materials is still in progress, and additional issues may emerge across these and other resource areas including cultural resources, water resources, paleontological resources, among others.

1. Impacts to Western Joshua Trees, its Habitat, and Joshua Tree Woodlands

A major issue identified by the Center is the potential impact, lethal or otherwise, on the western Joshua tree—an iconic, tree-like plant protected by the Western Joshua Tree Conservation Act with interim protections as a candidate species under the California Endangered Species Act ("CESA")—its habitat, and Joshua tree woodlands. According to the Supplemental AFC, there are 3,449 western Joshua trees present in the surveyed areas. (TN254820 at 7 (documenting 3,196 trees); TN258311 at 7 (documenting 253 trees).)[1] 74.66 acres of Joshua tree woodland was also mapped in the project site. (TN 254816 at 28.)

The precise number of trees that will be impacted by the project, by lethal removal, relocation, or encroachment in established buffers, is yet to be determined. Additionally, the Supplemental AFC does not address potential impacts to Joshua tree woodlands, despite the woodland's status as a CDFW-recognized Sensitive Natural Community. (*See, e.g.*, TN254806 at 136–37).

Further, while the Applicant has committed to avoiding impacts to approximately 100 trees on the facility parcel east of the Sierra Highway (TN258311 at 8), it has a statutory obligation to avoid and minimize impacts to each potentially

[1] Pinpoint citations refer the page numbers of the docketed PDF.

impacted western Joshua tree "to the *maximum extent practicable*." *See* Cal. Fish & Game Code § 1927.3(a)(2) (emphasis added). To comply with this mandate, the Applicant should, at a minimum, be required to *avoid* impacts to and the take of western Joshua trees for components of the project unrelated to the project objectives, such as the construction of an optional aboveground architectural berm for onsite re-use of excavated cavern rock (*see* TN254806 at 37), as well as the project's construction laydown/staging and parking areas. Such avoidance would align with the Applicant's Supplemental AFC, which asserts that access routes, staging areas, and the total footprint of disturbance will be "selected/placed to *avoid* impacts to sensitive habitat/resource." (TN254806 at 186 (emphasis added).)

The Center looks forward to reviewing the Applicant's Western Joshua Tree Relocation Plan, which is required for this project.

2. Biological Resource Surveys

The Center's review of the biological resources surveys and associated reports submitted by the Applicant has revealed deficiencies concerning incomplete biological surveys within the project area and appropriate buffers for key species:

2.1. Western Burrowing Owl

In October 2024, the California Fish and Game Commission unanimously approved the western burrowing owl as a candidate for potential listing under CESA, granting the species interim protections. Generally, the primary threats to burrowing owls in California include permanent habitat loss and direct mortality. Here, the California Department of Fish and Wildlife has noted that potential significant impacts from project construction include burrow collapse, entrapment, nest abandonment, reduced reproductive success, diminished health and vigor of eggs or young, and direct mortality of individuals. (TN245782 at 18.) Given these risks and the species' current protected status, the Center is concerned with the adequacy of the protocol-level surveys conducted for the burrowing owl.

Specifically, the 2023 burrowing owl biological surveys detailed in the January 2024 Burrowing Owl Focused Survey Report, which included the action area and a 500-foot buffer, omitted certain key areas, including areas along the proposed transmission line's preferred route and route options, as well as areas within the Project Boundary, including areas identified as "Other Project Parcels." (TN254817 at 16–17). In these areas, binoculars were used to survey habitat where biologists could not safely survey or gain permission to access the land. However, this reliance on binoculars is inadequate, particularly when the proper straight-line transects (spaced 7 m to 20 m apart) were not used, as required under the Staff Report on Burrowing Owl Mitigation (CDFG 2012). The survey report indicates that biologists instead walked belt transects up to 30 meters apart, which falls outside the

recommended protocol. (TN254817 at 8, 16.) Similarly, the 2024 supplemental burrowing owl surveys show incomplete coverage in some portions of the survey area due to apparent access issues. (TN258315 at 8.)

At a minimum, the entire survey area, including the appropriate buffer, must be surveyed in accordance with applicable protocols. Complete surveys are essential to accurately assess the Willow Rock Project's impact on this species.

2.2. Desert Tortoise

The desert tortoise is listed as threatened under the Endangered Species Act and, following a recent uplisting in April 2024, endangered under CESA. Despite decades of state and federal protections, desert tortoise are on the decline throughout their range.[2] Desert tortoise populations in the Western Mojave Recovery Unit, which includes the Rosamond area, have experienced the steepest decline in abundance: data indicates a 54% decline from 2001 to 2020.[3] Here, the California Department of Fish and Wildlife has noted that potential significant impacts from project-related activities include loss of foraging habitat, habitat degradation and fragmentation, burrow destruction, and direct mortality. (TN245782 at 11.) Given these risks, the species' imperiled status, and the high occurrence probability within the project site, the Center is concerned with the adequacy of the protocol-level survey conducted for the desert tortoise.

Specifically, the Desert Tortoise Survey Report asserts that the initial desert tortoise surveys were conducted within the project site, including a 500-foot survey buffer (the "desert tortoise study area"). (TN254815 at 7, 15.) However, the report acknowledges that certain areas were not surveyed due to safety concerns or lack of access, *e.g.*, to private property. (*Id.* at 8.) Similarly, the 2024 desert tortoise focused survey show incomplete coverage in some portions of the survey area due to apparent access issues. (TN258309 at 7.) The reports lack further detail or data clarifying which portions of the desert tortoise study area were not surveyed according to protocol, raising concerns about the survey's comprehensiveness. Further detail is required to understand the extent of these omissions.

2.3. Mohave Ground Squirrel

The Mohave ground squirrel is listed as threatened under CESA. Range contraction, habitat loss, habitat fragmentation, and climate change are all major

[2] Allison, Linda J., & McLuckie, Ann M. (2018). Population Trends in Mojave Desert Tortoises (*Gopherus Agassizii). Herpetological Conservation and Biology*, 13(2), 433–452.

[3] California Department of Fish and Wildlife. (2024). Status Review for Mojave Desert Tortoise (*Gopherus agassizii*).

threats to Mohave ground squirrel recovery.[4] With one of the smallest geographic ranges of any ground squirrel in North America, habitat loss and increased severity and persistence of drought make the Mohave ground squirrel "inherently susceptible to overall population decline."[5] Protecting Mohave ground squirrel and their habitat from continued loss and fragmentation is critical to the species' survival, as it continue to decline despite state protections.

The Mohave Ground Squirrel Report reveals a number of disturbances to Grid 3 on the Ansel Properties, which may have impacted the integrity of the Mohave ground squirrel protocol-level survey and the accuracy of its results. Specifically, the report details increased human activity from the Applicant's geological testing that began within the grid's boarders in early June affecting placement of traps for the third session; human encampment moving into the grid on May 16th; and the unexpected mowing of the Sierra Highway ROW during the two-week break in early June. (TN254818 at 8.) Human presence and activity could alter the results of the survey by deterring wildlife activity, including that of the target species. Additionally, as the report acknowledges, the lack of vegetation along the highway may have deterred a potential colonizer.

2.4. Crotch's bumble bee

The Crotch's bumble bee is a candidate for listing under CESA, and therefore has interim protections under this important state statute. Given the species' imperiled status, the Center is concerned with the adequacy of the protocol-level surveys conducted for this species. Specifically, the protocol-level surveys for Crotch's bumble bee did not cover the entire survey area (TN254816 at 88), potentially resulting in incomplete data and an inaccurate assessment of the population size or distribution of this species.

2.5. Swainson's Hawk

As with other focused biological surveys, the Swainson's Hawk surveys failed to cover the entire survey area, including areas along the proposed transmission line's preferred route and route options, as well as areas within the Project Boundary (TN259424 at 16.) Adherence to established protocols and survey coverage is necessary to accurately evaluate the project's impacts.

[4] California Department of Fish and Wildlife. (2019). A Conservation Strategy for the Mohave Ground Squirrel (*Xerospermophilus mohavensis*).

[5] *Id.*

2.6. Other Special Status Species

Several special status species are either present, presumed present, or have a high likelihood of occurring in the project site, including the desert kit fox, American badger, le Conte's thrasher, loggerhead shrike, and Townsend's big-eared bat. The Applicant's adherence to standard avoidance, minimization, and mitigation measures, including compensatory mitigation for special status species remains an unresolved concern. The Center will be better positioned to assess the full scope of this issue once the Applicant finalizes the Project-specific Sensitive Species Management Plan. (TN254806 at 185.)

3. Impact of Surface Reservoir and Retention Ponds on Wildlife

As outlined in the Supplemental AFC, the Project includes a 21.5-acre, 577-acre-foot capacity hydrostatically compensating surface reservoir with a liner and an interlocking shape floating cover to minimize evaporative water loss. (TN254806 at 40, 56.) However, the Supplemental AFC does not evaluate the reservoir's potential impacts on wildlife. For instance, the reservoir could attract ravens, which prey on juvenile desert tortoises and already have numerous active nests in the project area (*See* TN254806 at 186.) Additional concerns include the risk of entrapment or entanglement for wildlife species. Similarly, the Supplemental AFC fails to specify the material composition of the floating cover, which is important for understanding the evaporation potential and the need for additional water supplies over time. Without this information the full environmental impacts cannot be assessed. The project also features retention ponds for stormwater management, yet their effects on wildlife similarly remain unevaluated.

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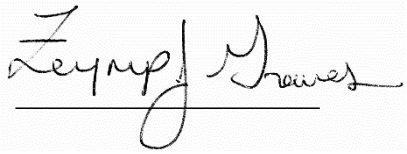
The Center will continue to assess these and other potential issues as part of its ongoing review of the Willow Rock Project and the associated Supplemental AFC.

October 23, 2024

Respectfully submitted,



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