

DOCKETED

Docket Number:	09-AFC-07C
Project Title:	Palen Solar Power Project - Compliance
TN #:	200085
Document Title:	PSH's Supplemental Comments on the 7/26/13 Version of Condition of Certification BIO-17
Description:	N/A
Filer:	Marie Fleming
Organization:	Galati Blek LLP
Submitter Role:	Applicant's Representative
Submission Date:	7/30/2013 11:15:31 AM
Docketed Date:	7/30/2013

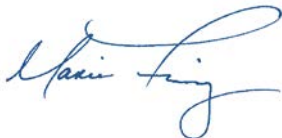
July 30, 2013

California Energy Commission
Dockets Unit
1516 Ninth Street
Sacramento, CA 95814-5512

**Subject: PALEN SOLAR HOLDINGS, LLC'S SUPPLEMENTAL COMMENTS ON
THE 7/26/13 VERSION OF CONDITION OF CERTIFICATION BIO-17
PALEN SOLAR ELECTRIC GENERATING SYSTEM
DOCKET NO. (09-AFC-7C)**

Enclosed for filing with the California Energy Commission is the electronic version of **PALEN SOLAR HOLDINGS, LLC'S SUPPLEMENTAL COMMENTS ON THE 7/26/13 VERSION OF CONDITION OF CERTIFICATION BIO-17**, for Palen Solar Electric Generating System (09-AFC-7C).

Sincerely,



Marie Fleming

AMERICAN BADGER AND DESERT KIT FOX IMPACT AVOIDANCE AND MINIMIZATION MEASURES

BIO-17 The project owner shall contract a qualified biologist to conduct a baseline, pre-construction desert kit fox census-survey and prepare and implement an American Badger and Desert Kit Fox Mitigation and Monitoring Plan (Plan). The purpose of the baseline survey will be to implement and refine as necessary the final Plan with the most recent data from the site.

The project owner shall conduct a baseline kit fox ~~census-survey~~ and submit a summary report that includes the following procedures:

1. A qualified biologist with demonstrated mammal experience shall complete a baseline, pre-construction study of desert kit fox populations on the project site and the anticipated dispersal areas for passive relocation at least approximately 30 to 60 days prior to initiation of construction activities. The anticipated dispersal areas shall be defined as all suitable desert kit fox habitat within 500 meters of the project boundaries where foxes would be likely to be displaced. The study shall characterize ~~the demographics (e.g., size, structure, and distribution) of the~~ the approximate number and distribution of kit foxes on the site and anticipated dispersal areas. Depending on the season of survey, other demographic data (e.g., fox pairs, number of young) may be collected. The baseline study shall include the following components:
 - a. An inventory and mapped locations of desert kit fox dens and burrows on the project site (all project disturbance areas) and in the anticipated dispersal areas, and an evaluation whether each burrow is occupied, and reproductive status of kit foxes (single animal, mated pair, or family group with young), if known. ~~See Pre-construction Surveys below.~~
 - b. Reporting: The project owner shall provide a draft Summary Report of the Baseline Kit Fox Survey Census to the CPM and BLM for review, in consultation with California Department of Fish and Wildlife (CDFW) and USFWS, and incorporate the data into the final Plan, as relevant. The CPM and BLM shall consult with the project owner and project owner's qualified biologist on any changes to the final Plan that would result from these data. ~~The project owner shall not implement the American Badger and Desert Kit Fox Mitigation and Monitoring Plan (below) until receiving the CPM and BLM's written approval of the Summary Report.~~

~~The project owner shall develop and implement an American Badger and Desert Kit Fox Mitigation and Monitoring Plan (plan).~~ The objective of the ~~P~~plan shall be to avoid direct impacts to the American badger and desert kit fox as a result of construction of the power plant and linear facilities, as well as during project operation and decommissioning. The final plan is subject to review and comment by (BLM) and revision and approval by the (CPM), in consultation with ~~California Department of Fish and Wildlife (CDFW)~~. The final plan shall include, but is not limited to, the following procedures and impact avoidance measures:

1. Describe pre-construction survey and clearance field protocol, to determine the number and locations of single or paired kit foxes or badgers on the project site that would need to be avoided or passively relocated and the number and locations of desert kit fox or badger burrows or burrow complexes that would need to be collapsed to prevent re-occupancy by the animals.
 - a. Pre-Construction Surveys. A baseline, pre-construction survey will be conducted as explained above. ~~Biological Monitors shall conduct pre-construction surveys for desert kit fox and American badger no more than 30 days prior to initiation of construction activities, including pre-construction site mobilization. Surveys shall identify and record the locations of all potential dens throughout the project site (or phase) and also address the potential presence of active dens within 100 feet of the project boundary (including utility corridors and access roads) Surveys may be concurrent with desert tortoise and/or burrowing owl surveys. and Depending on the timing of the project phases and the time between those phases, surveys may need to be conducted~~ shall be performed for each phase of construction. Options for timing will be detailed in the Plan. If dens are detected during the survey(s), each den shall be classified as inactive, potentially active, or definitely active den, and if it is a natal den.
 - b. Monitoring and Protection Measures, Passive Hazing, and Den Excavation: The plan will include details on monitoring requirements, types and methods of passive hazing, and methods and timing of den excavation, including, but not limited to the following:
 - i. Inactive dens. Inactive dens (e.g. inactive dens are dens that are mostly or entirely silted in and ones in which the back of the den can clearly be seen (e.g., the den isn't deep and doesn't curve) that would be directly impacted by construction activities shall be

excavated by hand and backfilled to prevent reuse by badger or kit fox.

- ii. Potentially and definitely active dens. Potentially and definitely active dens that would be directly impacted by construction activities shall be monitored by the Biological Monitor for three consecutive nights using a tracking medium (such as diatomaceous earth or fire clay) and/or infrared camera stations at the entrance. If no tracks are observed in the tracking medium or no photos of the target species are captured after three nights, the den shall be excavated and backfilled by hand. If tracks are observed, the den shall be progressively blocked with natural materials (rocks, dirt, sticks, and vegetation piled in front of the entrance) for the next three to five nights to discourage the badger or kit fox from continued use. After verification that the den is unoccupied it shall then be excavated and backfilled by hand to ensure that no badgers or kit fox are trapped in the den. If the den is proven inactive then den may be collapsed during whelping season. BLM approval may be required prior to release of badgers on public lands.
- iii. Active natal/pupping dens. If an active natal den (a den with pups) is detected on the site, the **project owner shall proceed to implement the approved Plan and also notify BLM CEC and CDFW within 24 hours. If the situation is unusual and not addressed by the approved Plan, then the project owner's biologist, BLM, CEC and CDFW shall collaborate** ~~shall be contacted within 24 hours~~ to determine the appropriate course of action to minimize the potential for animal harm or mortality. The course of action would depend on the age of the pups, location of the den on the site (e.g. is the den in a central area or in a perimeter location), status of the perimeter site fence (completed or not), and the pending construction activities proposed near the den. A 500-foot no-disturbance buffer shall be maintained around all active dens. The denning season for American badger is approximately March to August, and for desert kit fox the denning season is approximately Mid-January to pup independence (typically by June). If the den is active during the whelping season, even if pups are not seen,

disturbance is not allowed. Active natal/pupping dens will not be excavated or passively relocated.

- c. Exception for American badger.** In the event that passive relocation techniques fail for badgers, outside the denning season, or during the denning season if individual badgers can be verified to not have a litter, then live-trapping by a CDFW and CPM approved trapper is an option that may be employed to safely perform active removal. ~~with approval on a case by case basis by the CPM, BLM, and CDFW~~ **This technique would be discussed in detail as part of the approved Plan and implemented accordingly.** ~~In the event live-trapping would be employed as a last resort, a live-trapping plan would be submitted to the CPM for review and approval in consultation with BLM and CDFW.~~ The plan would at a minimum include timing, trapping methods, and location of release of the individual badger as well as the name and resume, including documentation of relevant handling permits of the proposed trapper. **The CPM, BLM and CDFW will be notified prior to live trapping of individual badgers taking place.**
2. Address other factors and procedures that may affect the success of kit fox and American badger relocation offsite, such as:

 - a. Qualitative discussion of availability of suitable habitat on off-site surrounding lands within 10 miles of the project boundary, and **evaluation of kit fox burrows within 500 m of the project, in areas where onsite foxes may disperse** ~~quantitative evaluation of unoccupied desert kit fox burrows available on surrounding lands within 1 mile of the project boundary~~ (e.g., by inventorying burrow numbers in selected representative sample areas) **as identified in the pre-construction survey above;**
 - b. Estimates of the distances kit foxes would need to travel across the project site and across adjacent lands to safely access suitable habitat (including burrows) off-site;
 - c. Proposed scheduling of the passive relocation effort;
 - d. Methods to minimize likelihood that the animals will return to the project site;
 - e. Descriptions of any proposed or potential ground disturbing activities related to kit fox relocation, and locations of those activities (e.g., artificial burrow construction);

- f. A monitoring and reporting plan to evaluate success of the relocation efforts and any subsequent re-occupation of the project site; and
 - g. A plan to subsequently relocate any animals that may return to the site (e.g., by digging beneath fences).
- 3. Address notification procedures for notifying the CPM, BLM and CDFW if injured, sick, or dead badger or kit fox are detected. Notify the CPM, BLM and CDFW if injured, sick, or dead American badger and desert kit fox are found. If an injured, sick, or dead animal is detected on any area associated with the solar project site or associated linear facilities, the CPM, BLM Palm Springs/ South Coast Field Office and the Ontario CDFW Office shall be notified immediately by phone. Written follow-up notification via FAX or electronic communication shall be submitted to the CPM, BLM and CDFW within 24 hours of the incident and shall include the following information as appropriate:
 - a. Injured animals. If an American badger or desert kit fox is injured because of any project-related activities, the Designated Biologist or approved Biological Monitor shall immediately notify the CPM, BLM and CDFW personnel regarding the capture and transport of the animal to CDFW-approved wildlife rehabilitation and/or veterinarian clinic. Following the phone notification, the CPM and CDFW shall determine the final disposition of the injured animal, if it recovers. A written notification of the incident shall be sent to the CPM, BLM and CDFW containing, at a minimum, the date, time, location, and circumstances of the incident.
 - b. Sick animals. If an American badger or desert kit fox is found sick and incapacitated on any area associated with the project site or associated linear facilities, the Designated Biologist or approved Biological Monitor shall immediately notify the CPM, BLM and CDFW personnel for immediate capture and transport of the animal to a CDFW-approved wildlife rehabilitation and/or veterinarian clinic. Following the phone notification, the CPM and CDFW shall determine the final disposition of the sick animal, if it recovers. If the animal dies, a necropsy shall be performed by a CDFW-approved facility to determine the cause of death. The project owner shall pay to have the animal transported and a necropsy performed. A written notification of the incident shall be sent to the CPM, BLM and CDFW and contain, at a minimum, the date, time, location, and circumstances of the incident.

- c. Fatalities. If an American badger or desert kit fox is killed because of any project-related activities during construction, operation, and decommissioning or is found dead on the project site or along associated linear facilities, the Designated Biologist or approved Biological Monitor shall immediately refrigerate the carcass and notify the CPM, BLM and CDFW personnel within 24 hours of the discovery to receive further instructions on the handling of the animal. Handling of a dead kit fox shall follow the Guidelines for Handling a Desert Kit Fox Carcass (CDFW WIL) or most recent guidance. If the animal is suspected of dying of unknown causes, a necropsy shall be performed by a CDFW-approved facility to determine the cause of death. The project owner shall pay to have the animal transported and a necropsy performed.
4. Additional protection measures to be included in the plan and implemented:
 - a. All pipes within the project disturbance area must be capped and/or covered every evening or when not in use to prevent desert kit foxes or other animals from accessing the pipes.
 - ~~b. All water sources shall be covered and secured when not in use to prevent drowning.~~
 - c. The project owner shall coordinate with CDFW to identify any additional fence design features to maximize the effectiveness of the fence to exclude kit foxes from the project.
 - d. Incorporate and implement the CDFW Veterinarian's guidance regarding impact avoidance measures including measures to prevent disease spread among desert kit foxes.
 - e. Include measures to reduce traffic impacts to wildlife if the project owner anticipates night-time construction. The plan must also include a discussion of what information will be provided to all night-time workers, including truck drivers, to educate them about the threats to kit fox, what they need to do to avoid impacts to kit fox, and what to report if they see a live, injured, or dead kit fox.
 - f. In order to reduce the likelihood of distemper transmission:
 - i. No pets shall be allowed on the site prior to or during construction, operation, and decommissioning, with the possible exception of vaccinated kit fox scat detection dogs during preconstruction surveys, and then only with prior CPM and CDFW approval;

- ii. Any hazing activities that include the use of chemical or other repellents (e.g. ultrasonic noise makers, or non-animal-based chemical repellents) must be cleared through the CPM and CDFW prior to use. The use of animal tissue or excretion based repellents (e.g. coyote urine, anal gland products) is not permitted.
- iii. Any sick or diseased kit fox, or documented kit fox mortality shall be reported to the CPM, CDFW, and the BLM within 8 hours of identification. If a dead kit fox is observed, it shall be collected and stored according to established protocols distributed by CDFW WIL, and the WIL shall be contacted to determine carcass suitability for necropsy.

Verification: No fewer than 90 days prior to the start of any ~~pre-construction~~ site mobilization **and construction**, the project owner shall provide the CPM, BLM, and CDFW with a draft American Badger and Desert Kit Fox Mitigation and Monitoring Plan for review and comment. **Comments will be provided by the agencies within 30 days of receipt of the draft Plan.**

~~At least~~ **Approximately 30**-60 days prior to initiation of construction activities a qualified biologist with demonstrated mammal experience shall complete a baseline, ~~pre-~~ **construction** study of desert kit fox populations on the project site and in the anticipated dispersal areas for passive relocation.

No fewer than ~~45~~ **30** days prior to start of any ~~pre-construction~~ site mobilization **and construction**, the project owner shall provide an electronic copy of the CPM-approved final plan to the CPM, BLM and CDFW and implement the plan.

The Project owner shall submit a ~~summary report~~ to the CPM, BLM and CDFW within ~~30~~ **15** days of completion of any badger and kit fox surveys. The report shall describe survey methods **and** results, **Any changes to the Plan that result from these data will be incorporated into the final Plan, upon approval from the CPM, BLM and CDFW.** ~~impact avoidance and minimization measures implemented, and the results of those measures.~~

Impact avoidance and minimization measures implemented, and the results of those measures will be described in monthly compliance reports.

No later than 2 days following a phone notification of an injured, sick, or dead American badger or desert kit fox, the project owner shall provide to the CPM, BLM and CDFW, via FAX or electronic communication, a written report from the Designated Biologist describing the incident of sickness, injury, or death of an American badger or desert kit fox, when the incident occurred, and who else was notified.

Beginning with the first month after start of construction and continuing every month until construction is completed, the Designated Biologist shall include a summary of events regarding the American badger and desert kit fox in each MCR.

No later than 45 days after initiation of project operation, the Designated Biologist shall provide the CPM and BLM a final American Badger and Desert Kit Fox Mitigation and Monitoring Plan Report that includes: 1) a discussion of all mitigation measures that were and currently are being implemented; 2) all information about project-related kit fox and badger injuries and/or deaths; 3) all information regarding sick kit fox and badger found within the project site and along related linear facilities; and 4) recommendations on how mitigation measures might be changed to more effectively minimize and mitigate the impacts of future projects on the American badger and desert kit fox.



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

**PALEN SOLAR ELECTRIC
GENERATING SYSTEM AMENDMENT**

**Docket No. 09-AFC-07C
PROOF OF SERVICE
(Revised 07/09/2013)**

SERVICE LIST:

APPLICANT

Palen Solar Holdings, LLC
Clay Jensen
Charlie Turlinski
Amanda McCoy
1999 Harrison Street, Suite 2150
Oakland, CA 94612
cjensen@brightsourceenergy.com
cturlinski@brightsourceenergy.com
amccoy@brightsourceenergy.com

APPLICANT'S CONSULTANT

Centerline
Andrea Grenier
1420 E. Roseville Parkway
Suite 140-377
Roseville, CA 95661
andrea@agrenier.com

APPLICANT'S COUNSEL

Scott Galati, Esq.
Marie Fleming
Galati/Blek, LLP
455 Capitol Mall, Suite 350
Sacramento, CA 95814
sgalati@gb-llp.com
mfleming@gb-llp.com

INTERESTED AGENCY

California ISO
e-recipient@caiso.com

County of Riverside
Office of Riverside County Counsel
Tiffany North
3960 Orange Street, Suite 500
Riverside, CA 92501
tnorth@co.riverside.ca.us

South Coast Air Quality
Management District
Mohsen Nazemi
21865 Copley Drive
Diamond Bar, CA 91765-4178
mnazemi1@aqmd.gov

INTERVENORS

Center for Biological Diversity
Lisa T. Belenky, Senior Attorney
351 California St., Suite 600
San Francisco, CA 94104
lbelenky@biologicaldiversity.org

Center for Biological Diversity
Ileene Anderson
Public Lands Desert Director
PMB 447, 8033 Sunset Boulevard
Los Angeles, CA 90046
ianderson@biologicaldiversity.org

Basin and Range Watch
Kevin Emmerich
Laura Cunningham
P.O. Box 153
Baker, CA 92309
atomictoadbranch@netzero.net
bluerockiguana@hughes.net

Californians for Renewable Energy
Alfredo Acosta Figueroa
424 North Carlton Avenue
Blythe, CA 92225
lacunadeaztlan@aol.com

California Unions for Reliable Energy
Tanya A. Gulesserian
Elizabeth Klebaner
Adams Broadwell Joseph & Cardoza
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
tgulesserian@adamsbroadwell.com
eklebaner@adamsbroadwell.com

Hildeberto Sanchez, Eddie Simmons,
and Laborers' International Union of
North America, Local Union No. 1184
c/o Richard T. Drury
Christina M. Caro
Lozeau|Drury LLP
410 12th Street, Suite 250
Oakland, CA 94607
richard@lozeaudrury.com
christina@lozeaudrury.com

ENERGY COMMISSION STAFF

Christine Stora
Project Manager
Siting, Transmission and
Environmental Protection Division
1516 Ninth Street, MS-2000
Sacramento, CA 95814-5512
christine.stora@energy.ca.gov

Jennifer Martin-Gallardo
Staff Counsel
Office of the Chief Counsel
1516 Ninth Street, MS-14
Sacramento, CA 95814-5512
jennifer.martin-gallardo@energy.ca.gov

*Indicates change

**ENERGY COMMISSION –
PUBLIC ADVISER**

*Alana Mathews
Public Adviser
1516 Ninth Street, MS-12
Sacramento, CA 95814-5512
publicadviser@energy.ca.gov

COMMISSION DOCKET UNIT

California Energy Commission
Docket Unit
Attn: Docket No. 09-AFC-07C
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.ca.gov

**OTHER ENERGY COMMISSION
PARTICIPANTS (LISTED FOR
CONVENIENCE ONLY):**

*After docketing, the Docket Unit will provide a copy to
the persons listed below. Do not send copies of
documents to these persons unless specifically
directed to do so.*

KAREN DOUGLAS
Commissioner and Presiding Member

DAVID HOCHSCHILD
Commissioner and Associate Member

Kenneth Celli
Hearing Adviser

Galen Lemei
Adviser to Presiding Member

Jennifer Nelson
Adviser to Presiding Member

Gabriel D. Taylor
Adviser to Associate Member

Eileen Allen
Commissioners' Technical
Adviser for Facility Siting

DECLARATION OF SERVICE

I, Marie Fleming, declare that on July 30, 2013, I served and filed copies of **PALEN SOLAR HOLDINGS, LLC'S SUPPLEMENTAL COMMENTS ON THE 7/26/13 VERSION OF CONDITION OF CERTIFICATION BIO-17** dated July 30, 2013. The most recent Proof of Service List, which I copied from the web page for this project at: <http://www.energy.ca.gov>, is attached to this Declaration.

(Check one)

For service to all other parties and filing with the Docket Unit at the Energy Commission:

I successfully uploaded the document to the Energy Commission's e-filing system and I personally delivered the document or deposited it in the US mail with first class postage to those persons for whom a physical mailing address but no e-mail address is shown on the attached Proof of Service List. [The e-filing system will serve the other parties and Committee via e-mail when the document is approved for filing.]

I e-mailed the document to docket@energy.ca.gov and I personally delivered the document or deposited it in the US mail with first class postage to those persons for whom a physical mailing address but no e-mail address is shown on the attached Proof of Service List. [The e-filing system will serve the other parties and Committee via e-mail when the document is approved for filing.]

Instead of e-filing or e-mailing the document, I personally delivered it or deposited it in the US mail with first class postage to all of the persons on the attached Proof of Service List for whom a mailing address is given and to the

California Energy Commission – Docket Unit
Attn: Docket No. 09-AFC-7C
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

[The e-filing system will serve the other parties and Committee via e-mail when the document is received, scanned, uploaded, and approved for filing. The electronic copy stored in the e-filing system is the official copy of the document.]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am over the age of 18 years.

Dated: July 30, 2013



Marie Fleming