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STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:

APPLICATION FOR CERTIFICATION
FOR THE PALEN SOLAR ENERGY
GENERATING SYSTEM

DOCKET NO. 09-AFC-7C

INTERVENOR CENTER FOR BIOLOGICAL DIVERSITY

Exhibit 3061

Rebuttal Testimony of Allan Muth

I submit this rebuttal testimony to address Staff’s statements regarding impacts to Mojave fringe-toed lizards from paved and unpaved roads and the proposed conditions of certification BIO-6 and BIO-8.

In the FSA, staff states:

“In addition, the PSEGS will have asphaltic roads within the project site fence that were not present for the PSPP project. Additional asphaltic pavement onsite may lead to increased road kill of Mojave fringe-toed lizard and other reptiles or amphibians that may use the asphalt roads as thermoregulation sites. Implementation of vegetation management activities could also result death or injury of Mojave fringe-toed lizard. In addition, Mojave fringe toed lizard may be injured or killed by vehicles on unpaved roads as they are difficult to detect as they hide under loose sand.

Condition of Certification BIO-20 requires acquisition, protection and enhancement of core populations of Mojave fringe-toed lizard habitat elsewhere in the Chuckwalla or Palen valleys. This compensatory mitigation would offset the impacts of the PSEGS project to less-than-significant levels.¹ In addition, staff has modified BIO-6 and BIO-8 to address the potential for vehicle strikes of Mojave fringe-toed lizard when lizards are using asphaltic and unpaved roads within the PSEGS site to thermoregulate.” (FSA 4.2-9)

¹ As I explained in my opening testimony, in my opinion the mitigation ratios are insufficient to compensate for the loss of habitat.

Staff is correct that mortality and injuries to the MFTL from vehicles on both asphalt and unpaved roads are likely to occur. However, the measures proposed by staff in modified BIO-6 (worker training - WEAP) and BIO-8 are not adequate to avoid or minimize the impacts of vehicles on the MFTL.

BIO-8 “Minimize Traffic Impacts” at (3) states “The speed limit shall not exceed 25 miles per hour on paved or stabilized unpaved roads within the Project area, on maintenance roads for linear facilities, or on access roads to the Project site. No vehicle shall exceed 10 miles per hour on unpaved areas within the project site, except on stabilized unpaved roads. Project vehicles shall abide by posted speed limits on public paved access roads outside the project site. Additional speed limit signs shall be posted within areas where Mojave fringe toed lizard are known to occur or have the potential to occur on site.” [staff’s modifications underlined]

I agree that vehicles should not *exceed* 10 miles per hour off of roads. As the recent monitoring done at the Colorado River substation showed (Helix, July 11, 2013, “*Summary of MFTL monitoring during DPV2 construction*”), vehicles traveling on paved roads at even moderate speeds (like 25 miles per hour suggested in BIO-8 measure) killed quite a lot of MFTL, workers did not always comply with the speed limits, and were unable to see and avoid MFTL.

Because vehicles travelling at 25 miles per hour on unpaved roads will likely kill or injure many MFTL, the conditions should be modified to reflect the recommendations from the recent Colorado River substation monitoring report including the following:

“We have several recommendations for future projects where exclusionary fencing cannot be employed to keep MFTL out of the construction zone:

- Speed limits in areas where MFTL are known to occur or have high potential to occur should be 15 mph or less. The species is extremely difficult to see when vehicle speeds exceed 15 mph.
- Road bumps are effective at slowing vehicles down. The design and placement of bumps should be evaluated critically prior to installation. Larger and more frequent speed bumps in the areas of greatest potential would help keep vehicle speeds lower in the areas of greatest concern.
- Initial WEAP trainings can have a greater emphasis on MFTL threats and project requirements.
- Refresher WEAP trainings (e.g., quarterly) can be held periodically during the construction phase to reiterate project requirements and importance of compliance with minimization measures. This will allow for reminders of project requirements and the reasoning behind the project restrictions.
- Triggers may need to be considered if MFTL mortalities during construction exceed the number of mortalities assumed in the environmental document as “less than significant.” In order to track and implement triggers during construction, a regular monitoring

program would need to be implemented to track effectiveness of the mitigation measure and to document mortalities. Examples of triggers could include installation of additional speed bumps in areas of high mortality, reduced speed limits in problematic areas, greater monitor presence, and enforcement actions against drivers who violate speed limits or escort requirements.” (Helix, July 11, 2013, “*Summary of MFTL monitoring during DPV2 construction*”).

In addition, vehicles traveling in the loose and semi-stabilized sand areas on the east side of the project site should be required to have escorts during construction. All of the roads on the perimeter of the project should be signed and enforced at 15 MPH during the life of the project.

DECLARATION OF Allan Muth

I, Allan Muth, declare as follows:

1. I am a biologist currently employed by the University of California, Riverside.
2. I do not represent the University of California nor do my comments represent a position of the University of California.
3. I am not under contract to any of the participants in these proceedings and I do not receive compensation from any of the participants.
4. My professional qualifications are given in my Curriculum Vitae filed with my opening testimony.
5. I prepared the attached rebuttal testimony relating to Biological Resources for the Petition for Amendment for the Palen Solar Electric Generating System (California Energy Commission Docket Number 09-AFC-7C).
6. It is my professional opinion that the attached prepared rebuttal testimony is valid and accurate with respect to issues that it addresses.
7. I am personally familiar with the facts and conclusions related in the attached prepared testimony and if called as a witness could testify competently thereto.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct to the best of my knowledge and that this declaration was executed on October 21, 2013.


