

DOCKETED

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PSH proposes the following modifications to the Biology Conditions of Certification proposed by Staff in its Rebuttal Testimony filed on October 21, 2013. Reasons for each proposed change will be detailed in the direct testimony of PSH witnesses at evidentiary hearing.

Condition of Certification BIO-2

6. Notify the Project owner and the CPM ~~within one working day of discovery~~ of any non-compliance with any biological resources condition of certification, **and notify the CPM within one working day of** injury or mortality of a special status species, or if more than six injured or dead birds or bats are located onsite at one time;

Condition of Certification BIO-4

BIO-4 The Biological Monitors shall assist the Designated Biologist in conducting surveys and in monitoring of site mobilization activities, and construction including-related ground disturbance, site preparation, or permanent installation activities, including installation of desert tortoise exclusion fencing, grading, boring, trenching, or reporting. The Designated Biologist shall remain the contact for the Project owner and the CPM. However, biological monitors will also respond directly to inquiries of the CPM or Energy Commission biological resources staff, **provided the Designated Biologist is also present**, and collect and provide reasonably available information to the CPM when requested. Neither the Designated Biologist nor the Biological Monitors shall be prohibited from contact with the CPM or Energy Commission biological resources staff, and the Designated Biologist and the Biological Monitors shall not be precluded from sharing their full and complete knowledge of project related biological information with the CPM or Energy Commission biological resources staff.

Condition of Certification BIO-5

BIO-5 The Project owner's construction/operation manager shall act on the advice of the Designated Biologist and Biological Monitor(s) to ensure conformance with the biological resources conditions of certification. The Project owner shall provide Energy Commission staff with reasonable access to the Project site under the control of the Project owner and shall otherwise fully cooperate with the Energy Commission's efforts to verify the Project owner's compliance with, or the effectiveness of, mitigation measures set

forth in the conditions of certification. The Designated Biologist shall have the authority to immediately stop any activity that is not in compliance with these conditions and/or order any reasonable measure to avoid take of an individual of a listed species. If required by the Designated Biologist and Biological Monitor(s) the Project owner's construction/operation manager shall halt all site mobilization and construction, including ground disturbance, site preparation, or permanent installation activities, including installation of desert tortoise exclusion fencing, grading, boring, trenching, and operation activities in areas specified by the Designated Biologist. The Designated Biologist shall:

1. Require a halt to all activities in any area when determined that there would be an unauthorized adverse impact to biological resources if the activities continued;
2. Inform the Project owner and the construction/operation manager when to resume activities; and
3. Notify the CPM if there is a halt of any activities and advise them of any corrective actions that have been taken or would be instituted as a result of the work stoppage. If the work stoppage relates to desert tortoise or any other federal- or state-listed species, the Palm Springs Office of the USFWS and the Ontario Office of the CDFW shall also be notified.

If the Designated Biologist is unavailable for direct consultation, the Biological Monitor shall act on behalf of the Designated Biologist. It is expected the Designated Biologist will be onsite **during construction or otherwise available by phone** ~~as per BIO-2~~, or as otherwise directed by the CPM.

Condition of Certification BIO-6

9. All onsite workers will be informed of the requirement to contact the Designated Biologist or Biological Monitors to report the location of any injured or dead birds or bats. ~~The Designated Biologist or Biological Monitors shall identify and photograph the injured or dead birds or bats in situ, as well as a full-frame dorsal, ventral and head view using a 12 megapixel camera with an automatic GPS and time/date stamp. The record(s) will be provided to the CPM in the monthly compliance report during construction and operation.~~

Condition of Certification BIO-7

BIO-7 The Project owner shall develop a Biological Resources Mitigation Implementation and Monitoring Plan (BRMIMP), and shall submit two copies of the proposed BRMIMP to the CPM and BLM for review and approval and USFWS and CDFGW for review. The Project owner shall implement the measures identified in the approved BRMIMP. The BRMIMP shall incorporate avoidance and minimization measures described in final versions of the Desert Tortoise Translocation Plan, the Biological Opinion, the Raven Management Plan, the Closure, Conceptual Restoration Plan, the American Badger and Kit Fox Management Plan, **the current version of** the Bird and Bat Conservation Strategy, ~~the Eagle Protection Plan~~, the Burrowing Owl Mitigation and Monitoring Plan, the Weed Management Plan, and all other individual biological mitigation and/or monitoring plans associated with the Project, or **permits** issued by the CDFW, BLM, and USFWS. The Project owner shall provide to CDFGW and USFWS a copy of all portions of the BRMIMP relating to desert tortoise and any other federal or state-listed species for review and comment.

Condition of Certification BIO-16a

2. Additional Migratory Bird Conservation: The Project owner shall, prior to the commencement of commercial operation of the facility, provide funds for mitigation as follows:
 - a. Pay \$1,500,000.00 to fund the activities of a CPM-approved third party, **or CEC**, that will perform migratory bird conservation measures. Funds would be dispersed only with the release and approval of the CPM. **The third party or CEC shall prepare and submit an annual report to the CPM and the project owner that provides an accounting of the funds spent, the activities performed, and the results of any studies, surveys, analysis, etc. performed with the funds.**

Verification

For Migratory Bird Conservation:

1. No later than 30 days prior to commercial operation, the project owner shall provide the CPM written verification of deposit of \$1,500,000.00

to the California Energy Commission or the CPM-approved third party. If the funds are provided to the CEC, ~~The account shall be fully funded no later than 7 days prior to commercial operation, and they shall be held by the Energy Commission in a special deposit fund that will be earmarked for use only for the purpose of mitigating impacts from this project.~~

2. Either the CEC or the CPM-approved third party shall prepare an annual report detailing a full accounting of the funds spent, the funds remaining in the account, the amount of interest earned, the recipient of any funds spent, the specific activities performed, and the results of any studies, surveys, analysis, etc. performed with the funds.

Condition of Certification BIO-16b

2. Formation of a technical advisory committee (TAC). The TAC will consist of a single representative of the BLM, CEC, CDFW, USFWS, one representative of the Project Owner involved in operation of the project and one representative of the Project Owner with environmental compliance responsibilities. The TAC will facilitate concurrent project owner, CPM, and state and federal wildlife agency review of seasonal and annual survey results, development of a decision-framework for evaluating the effectiveness of the adaptive management measures implemented by the project owner, modification of the surveys in response to the results, if necessary, and the identification of additional mitigation responses that are commensurate with the extent of impacts that may be identified in the monitoring studies. A meeting schedule for the TAC will be identified, for regular review of avian and bat injury and mortality monitoring results, and recommend any necessary changes to monitoring, adaptive management, and appropriate dissemination of mitigation funds per BIO-16a #2. The TAC will also assist the CPM in implementing the following provisions #3 - #8 and will have the authority to require independent, third-party monitoring, if it determines advisable that the project owner is not monitoring consistent with the approved BBCS and the project owner fails to timely cure such inconsistency after reasonable advance notice from the TAC.

6. Survey schedule and period. All surveys and monitoring studies included in the BBCS shall be conducted for at least three years

following commercial operation and approval of the BBCS by the CPM. At the end of the three-year period, ~~the Energy Commission, will hold public meetings, and at that time shall determine~~ the project owner, **the TAC**, and the CPM shall meet and confer to determine whether the survey program shall be continued for subsequent periods. The monitoring program may be modified with the approval of the CPM in response to survey results, identified scavenging efficiency rates, or other factors to increase monitoring accuracy and reliability or in accordance with the adaptive management decision-making framework included in the BBCS. The individuals conducting the surveys and monitoring shall be available to the CPM or Energy Commission biological resources staff to answer questions on monitoring status, survey methods or the results of monitoring studies, and shall not be precluded from sharing their full and complete knowledge of the monitoring program, incidental observations, and results with the CPM or Energy Commission biological resources staff.

- 7 (a) Reasonable measures for characterizing the extent and significance of detected mortality and injuries clearly attributable to the project, and ensuring adequate funding for wildlife rehabilitation facilities ~~activities necessary for injuries clearly~~ **attributed to the project and** approved by the CPM, in conjunction with the USFWS and CDFW. **The Designated Biologist or Biological Monitors shall identify and photograph the injured or dead birds or bats in-situ, as well as a full-frame dorsal, ventral and head view using a camera with an automatic GPS and time/date stamp. The record(s) will be provided to the CPM in the monthly compliance report during construction and operation.**

8. (Third Paragraph)

The EPP shall also include any feasible adaptive modifications to heliostat positioning during operation (including day time and night time) in order to minimize collisions and/or risk of exposure to concentrated solar flux. Any such adaptive minimization measures must be commensurate (in terms of factors that include geographic scope, costs, and scale of effort) to the level of avian or bat risk that is specifically and clearly attributable to the project facilities. The EPP shall provide a reporting schedule for all monitoring or other activities related to bird or bat conservation or protection during

project construction or operation. The EPP shall be subject to review and approval by the CPM in consultation with CDFW, BLM, and USFWS, and shall be incorporated into the project's BRMIMP and BBCS, and implemented. ~~The results of golden eagle monitoring, initial progress of the BIO-16a #1, and review of adaptive management strategies will also be discussed publicly following three years of commercial operation.~~

- ~~9. After 3 years of commercial operation and data collection, the Energy Commission will hold public workshops to present data collection results, discuss and evaluate suitable adaptive management measures, and determine if additional mitigation is required. Future mitigation requirements, if any, would occur through a license amendment process.~~