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STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:

APPLICATION FOR CERTIFICATION
OF THE PUENTE POWER PROJECT

DOCKET NO. 15-AFC-01

Center for Biological Diversity
Opening Testimony of I. Anderson

CENTER FOR BIOLOGICAL DIVERSITY

Exhibit 7022

Opening Testimony of Ileene Anderson

Re: Impacts to Biological Resources from the Proposed Puente Power Project

January 18, 2017

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Summary of Testimony

The proposed project will be harmful to numerous rare species. In some instances the Final Staff Assessment (FSA) fails to identify the presence of rare species and then identify and evaluate impacts, this is of particular concern where no surveys were undertaken or where focused surveys for species of special concern were not protocol level surveys where such surveys are recommended by the wildlife agencies. This testimony focuses on the tidewater goby which may be present in the project area, California least tern, and the Ventura marsh milkvetch and other special status plants.

Qualifications

My qualifications are provided on my Resume attached to this Testimony and as discussed below.

I have over 26 years of experience in identifying, surveying for and documenting biological resources in southern California, including along the southern California coast. I have a Master's of Science in Biology and a Bachelor's of Arts in Biology from the California State University, Northridge. I have continuing education in restoration/revegetation/reclamation of native habitats at the University of California, Riverside.

I have directed and participated in numerous field surveys for federal- and state-listed threatened and endangered species, as well as other rare and common species. I have written results in conformance with the California Environmental Quality Act and the National Environmental Policy Act.

I have written, implemented and monitored a variety of restoration and revegetation plans, primarily implemented as mitigation. I have published articles on these subjects in peer-reviewed scientific journals and presented papers/posters at scientific meetings.

I have provided expert testimony on plant and animal issues at State Water Resources Control Board, California Public Utilities Commission and the California Energy Commission hearings.

I was a two-term federal appointee to the BLM's California Desert Advisory Council representing renewable resources from 1997-2002, and served one year as chairperson.

I am currently a senior scientist with the Center for Biological Diversity, where I focus on native natural resource issues primarily in southern California.

Statement

After my review of the biological sections of the FSA, the AFC, and the Project Enhancement/Outfall Removal document filed by the Applicant I am concerned that staff has mischaracterized the potential impacts to tidewater goby, California least tern, and Ventura marsh milkvetch and other special status plants.

Tidewater Goby

For the tidewater goby, a federally endangered fish, the FSA merely concludes:

The open water of Edison Canal may provide habitat for common coastal saltwater fishes. Freshwater aquatic species such as the western pond turtle (*Actinemys marmorata*) are not expected to occur in the canal due to elevated salinity levels, but may disperse through the area, and the tidewater goby (*Eucyclogobius newberryi*) is not expected in the canal due to high salinity levels.

FSA part 1 at 4.2-15 (pdf 454). There is no information in the FSA about the salinity level of the Edison Canal. Elsewhere the FSA states “This species [tidewater goby] could occur in Edison Canal.” FSA at 4.2-9.

The FSA, in the Biological Resources Table 3 at 4.2-17, simply concludes without support that the potential for occurrence in the Project Impact Area is “low.” (Emphasis added)

...

Tidewater Goby (<i>Eucyclogobius newberryi</i>)	FE/___/___/G3/S3	Low. Suitable aquatic habitat is not present on the site. The nearest documented occurrences are Santa Clara River estuary, Oxnard drain (J Street canal), Ormond Beach Area, and southeast of Port Hueneme.
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The AFC documents provided no surveys for tidewater goby and no information about the actual salinity level of the Edison Canal.

In fact, the tidewater goby can tolerate a range of salinity levels. The USFWS recovery plan for the tidewater goby states: “Tidewater gobies have been documented in waters with salinity levels from 0 to 42 parts per thousand”.¹ Ocean water is generally 32 ppt- 37 ppt with less salinity near mouths creeks and rivers and during high storm event.²

The Project Enhancement/Outfall Removal document filed by the Applicant states:

As described above, very limited habitat occurs along the bank of the Edison Canal. Special-status wildlife species are not expected to occur along the bank. As described in the AFC, the open water of Edison Canal may provide potential habitat for special-status wildlife species, such as the tidewater goby (*Eucyclogobius newberryi*) and California least tern (*Sterna antillarum browni*). Freshwater aquatic species, such as the northern western pond turtle (*Actinemys*

¹ Exh. 7023 at 1, *see also id.* at 8: USFWS Recovery Plan

² Exh. 7024: download from <http://www.sccoos.org/data/autoss/> on 1/17/17 of current data in southern California.

marmorata), are not expected to occur in the canal due to elevated salinity levels. A brief description of the documented occurrences within the Project area, and how these species potentially use or are known to use the area surrounding the proposed discharge, is provided below.

Tidewater goby is a federally listed endangered species and a California Species of Special Concern. It occurs in lagoons, estuaries, and freshwater tributaries to estuaries. It has been documented in the Santa Clara River estuary and the Oxnard Drain (“J Street Canal”), the Ormond Beach Area, and southeast of Port Hueneme (CDFW, 2015a). This species may occur in Edison Canal.

(TN 213802), Enhancement Doc. at 3-3 to 3-4 (emphasis added). Clearly, Enhancement document’s discussion of freshwater species and salinity levels is separate from its discussion of the tidewater goby. The conclusion in the Enhancement document that tidewater goby may occur in the Edison Canal is supportable, while the conclusion in the FSA is not.

Because tidewater goby are known to occur in close proximity to the project site and the Edison Canal, salinity levels would not exclude the presence of tidewater goby, and no surveys were undertaken, it is reasonable to conclude that this endangered species may occur in the area and the project may affect this species.

Because the Staff has failed to support its statements that “the tidewater goby (*Eucyclogobius newberryi*) is not expected in the canal due to high salinity levels” or that the potential for occurrence of tidewater goby in the project impact area is “low”, the record should reflect that “tidewater goby may occur in the Edison canal” and that there is a **high or moderate** potential for occurrence given close proximity of other known populations. And additional environmental review is required to assess the potential impacts, avoidance and minimization measures, and mitigation.

California least tern

The FSA fails to identify that the California least tern (*Sterna albifrons browni* also denoted *Sterna antillarum browni*) is a fully protected species under California Fish & Game Code Section 3511(b)(6). The Biological Resources Table 3 at 4.2-19 omits this critical information. The FSA notes that least tern forage in the Edison Canal (FSA at 4.2-15). The Enhancement Document (Enhancement Doc. at 3-4) also states:

“California least tern is a federally listed endangered and state-listed endangered species. It nests in the immediate vicinity of the Project; however, nesting habitat is not available adjacent to the proposed discharge point. The Edison Canal may also provide foraging habitat for this species.”

Nonetheless, the FSA ignores this information and concludes without support that the potential for occurrence in the Project Impact Area is “low”.

California Least Tern (<i>Sterna antillarum browni</i>)	FE/SE/ __/G4T2T 3Q/S2	Low. Suitable habitat is not present on the site. The nearest documented occurrences were the Santa Clara River mouth, McGrath Lake, and Ormond Beach between Ormond Beach Generating Station and Perkins Road.
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Biological Resources Table 3 at 4.2-19. Further, the FSA completely fails to address the occurrence of nesting and foraging California least tern in the immediate project vicinity.

The FSA’s failure to properly identify the California least tern as a fully protected species is important because no “take” of fully protected species can be authorized without a Natural Communities Conservation Plan (“NCCP”). An NCCP should be developed and implemented for the California least tern as a fully-protected species (and should include all of the special status species) prior to any decision being issued for this proposed project. An NCCP would provide avoidance and minimization measures as well as full mitigation of the impacts for this species. I believe this approach – first ensuring that an adequate conservation plan is in place for imperiled species-- is a reasonable way to provide safeguards for the California least tern and other impacted species.

In sum, the Staff ignored the fully protected status of the California least tern, failed to support its statements that the potential for occurrence of California least tern in the project impact area is “low,” or its statements regarding the nearest documented occurrences. Therefore, the record must be corrected to reflect that and that there is a **high** potential for occurrence of California least tern given close proximity including nesting adjacent to the project site and additional information and analysis must be provided to ensure full avoidance of any “take” of this fully protected species.

Ventura marsh milkvetch and other special status plants

The Ventura marsh milkvetch (*Astragalus pycnostachyus* var. *lanosissimus*) was thought to be extinct in the wild until it was rediscovered in 1997³ and despite multiple outplantings, still persists at only a few sites including one immediately adjacent to the proposed project. While the FSA mentions the milkvetch (at 4.2-6 and 4.2-7) and includes the federally designated critical habitat at Biological Resources Figure 4, this information is not identified on Biological Resources Figure 2 as USFWS Critical Habitat.

The FSA Biological Resources Table 3 (FSA at 4.2-16) fails to identify that the Ventura marsh milkvetch was listed by the State of California as endangered in 2000 and designated as federally endangered in May 2001.

³ https://www.fws.gov/carlsbad/SpeciesStatusList/5YR/20100521_5YR_ASPLYA.pdf

Ventura Marsh Milk-Vetch (<i>Astragalus pycnostachyus</i> var. <i>lanosissimus</i>)	/ / 1B.1/G2T1 /S1	Low. The iceplant and coyote brush on the project site are not suitable habitats for the species. Species was not observed during botanical surveys. Nearest documented occurrences were across the road from McGrath State Beach, the mouth of the Santa Clara River, northeast of the intersection of Harbor Boulevard and West 5th Street near McGrath State Beach, and Mandalay Beach.
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The FSA concludes that the milkvetch was not detected on site (at 4.2-8 and 4.2-20). However, at pg 4.2-26 to 27, the FSA states “Special-status plants recorded within the vicinity of the project site include Ventura marsh milk vetch (CRPR 1B.1), dundelion (CRPR 4.3), and others” but “vicinity” is not clearly defined. It is unclear if this statement conflicts with previous statements and with the presence of designated critical habitat as shown on Biological Resources Figure 4. It is known that the milkvetch is growing within 500 feet of the northern edge of the project site as one of the mitigation planting sites for the North Shore at Mandalay Bay development project (Magney pers. comm.). Thus, the conclusion that the potential for occurrence is “low” is not supported. Moreover, the FSA fails to evaluate if the onsite activities would affect the off-site but adjacent critical habitat that the Ventura marsh milkvetch relies upon for survival and recovery. These shortcomings in the environmental identification and evaluation for the Ventura marsh milkvetch must be remedied.

Other special-status plant species in the immediate vicinity of the project site include: *Abronia maritima* (CRPR 4.3), *Atriplex dioica* (Locally Rare), *Atriplex prostrata* (Locally Uncommon), *Persicaria lapathifolia* (Locally Uncommon) *Argentina egedii* ssp. *egedii* (Locally Uncommon) *Acmispon heermannii* var. *heermannii* (Locally Rare), *Calystegia soldanella* (Locally Uncommon), *Cuscuta pacifica* var. *pacifica* (Locally Rare), *Plantago ovata* var. *fastigiata* (Locally Uncommon), *Chloropyron maritimum* var. *maritimum* (CA & Federally Endangered), *Bidens laevis* (Locally Uncommon), *Chaenactis glabriuscula* var. *orcuttiana* (CRPR 1B.1), *Eclipta prostrata* (Locally Rare), *Ericameria ericoides* ssp. *ericoides* (Locally Uncommon), *Jaumea carnosa* (Locally Uncommon), *Pluchea odorata* (Locally Uncommon), *Pseudognaphalium ramosissimum* (Locally Uncommon), *Ruppia maritima* (Locally Rare), *Juncus acutus* ssp. *leopoldii* (CRPR 4.2), *Juncus torreyi* (Locally Rare), *Bolboschoenus robustus* (Locally Rare), *Carex pansa* (Locally Rare), *Carex odoratus* (Locally Rare), *Schoenoplectus acutus* var. *occidentalis* (Locally Uncommon), *Schoenoplectus californicus* (Locally Uncommon), and *Typha latifolia* (Locally Uncommon) (Magney pers. comm.). There is no evidence that the biologists performing the site assessment consulted the California Native Plant Society’s checklist of rare and uncommon plants of Ventura County, available at www.cnpsci.org.

Alternatives

Because, the FSA failed to consider potential impacts to the tidewater goby and California least tern, and mischaracterized the potential impacts to Ventura marsh milkvetch and other special status plants, the alternatives did not address ways to avoid, minimize and mitigate these impacts. As a result

the alternatives discussions regarding a power plant at this site inadequate as any avoidance of impacts to these biological resources.

Conclusions

I would like to summarize my conclusions as follows:

In summary, I find the document to be lacking as it pertains to biological resources and provide testimony on the tidewater goby, California least tern, and Ventura marsh milkvetch and other special status plants. These deficiencies need to be addressed and remedied prior the consideration of project permitting.

Declaration of Ileene E. Anderson

**Re: Opening Testimony on Impacts to Biological Resources from
the Proposed Puente Power Project**

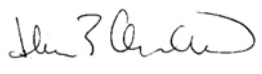
Docket 15-AFC-01

I, Ileene Anderson, declare as follows:

- 1) I am currently a senior scientist for the Center for Biological Diversity. I have worked with the organization for eleven years.
- 2) My relevant professional qualifications and experience are set forth in the attached resume and the attached testimony and are incorporated herein by reference.
- 3) I prepared the testimony attached hereto and incorporated herein by reference, relating to the impacts of the proposed project on wildlife and plants.
- 4) I prepared the testimony attached hereto and incorporated herein by reference relating to the proposed Puente Power Project in Oxnard, California.
- 5) It is my professional opinion that the attached testimony is true and accurate with respect to the issues that is addressed.
- 6) I am personally familiar with the facts and conclusions described within the attached testimony and if called as a witness, I could testify competently thereto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: January 18, 2017

Signed: 

At: Los Angeles, California



Curriculum Vitae For Ileene Anderson



Education

- M.S. with Distinction, Biology, California State University, Northridge, 1992
- B.A. Cum Laude, Biology, California State University, Northridge, 1989
- A.S. with Honors, Electronics, Bakersfield College, 1981

Professional Experience

2005 - present

Senior Scientist and Public Lands Deserts Director with the non-profit Center for Biological Diversity. Provide scientific expertise necessary for the conservation of California's internationally recognized unique flora and fauna in a variety of public and private land use arenas. My primary projects focus on central and southern California, including the California deserts, San Joaquin Valley issues, Santa Ana River issues, Santa Clara River issues, southern California forests and numerous projects that occur within their watersheds. I review and provide comments on California Environmental Quality Act and/or National Environmental Policy Act, provide scientific expertise on resource issues including as an expert witness, engage as a stakeholder in planning processes; do public/media relations (print, radio, blog, tweet & TV). I oversee staff in three states on desert issues and organize staff and volunteers for project implementation on a variety of conservation issues.

1997- 2005

Southern California Regional Botanist for the non-profit California Native Plant Society (CNPS). Provided scientific expertise necessary for the conservation of California's unique vegetation types in a variety of public and private land use plans, including the Four Southern California Forests Updated Land Use Management Plan, the West Mojave Habitat Conservation Plan, the West Riverside Multiple Species Habitat Conservation Plan, the Northern and Eastern Colorado Desert Plan, the Northern and Eastern Mojave Desert Plan, and many other smaller planning efforts. I have commented on hundreds of California Environmental Quality Act and/or National Environmental Policy Act documents, written petitions for plant protection under the federal Endangered Species Act, provided scientific expertise for lawsuit settlement agreements, done public relations in both print and radio, ran CNPS internal consensus building meetings, and organized volunteers for a variety of conservation and fund-raising issues.

1995 - 2005

Consultant on a variety of botanical projects, including rare plant surveys, quantitative and qualitative vegetation community characterization, restoration plans, vegetation monitoring and weed surveys. Project locations comprise a variety of plant communities in southern/central California including riparian, coastal sage scrub, alluvial fan scrub, alkali meadows, chaparral, and a variety of desert scrubs. A full list of projects is available upon request.

1996 - 1999

Part-time instructor at College of the Canyons (community college in Valencia, California). Courses included Introductory Biology for majors (Organismal/Environmental and Cellular/Molecular), Current Topics in Environmental Biology, and Botany. I also developed a course in Economic Botany.

1992 - 1995

Lead Botanist for The Chambers Group (an environmental consulting firm). Projects for which I was responsible included mapping, inventories, and rare plant surveys, which were written in compliance with NEPA and/or CEQA guidelines, including impact analysis and mitigation. This information was typically included in Biological Assessments (BAs), Environmental Assessments (EAs), Environmental Impact Reports (EIRs) or Environmental Impact Statements (EISs). Supervisory duties included coordinating two other botanists. Project management was also part of my duties.

1990 - 1994

Sales Associate at the Theodore Payne Foundation. This part-time job primarily included helping customers select appropriate native plant material for their gardens. Other duties included propagation and transplantation of native plant species.

1990-1992

Herbarium Curatorial Assistant at Rancho Santa Ana Botanic Gardens. Herbarium specimen mounting and curation from international collections was the primary responsibility.

Professional Courses/Seminars

Methods of Habitat Restoration - University of California, Riverside, Winter 1993

Desert Restoration - SERCAL, October 1993

Habitat Restoration Evaluation - University of California, Riverside, Winter 1994

Basic Wetlands Delineation - Wetland Training Institute, Inc. November 1995

Mycorrhizae in Habitat Restoration - University of California, Riverside, Winter 1995

Soils Workshop - Natural Resources Conservation Service, November 1998

Plant Community Characterization and Series Identification- Native Plant Society, June 1999

Statistical Analysis for the Modified Whittaker Plot - Colorado State University, August 2002

Willow Flycatcher and Yellow-billed Cuckoo Workshops and Training, May and June 2012

Desert Tortoise Handling Workshop November 2013

Professional Affiliations

BLM California Desert Advisory Council - Department of Interior Appointee Representing Renewable Resources (Chairperson 2001) from 1996-2002

California Native Plant Society - Conservation Committee; Legal Committee.

Friends of the Santa Clara River - Director at Large

Society for Ecological Restoration - Coastal Sage Scrub Guild Co-coordinator (1995-2001)

Southern California Botanists - Director at Large (1994-2002)

Chaparral Conservancy - Director at Large

Expert Witness

State Water Resources Control Board – May 2007 – Testified on Santa Ana River plant and animal issues.

California Public Utilities Commission – March 2008 – Testified on plant/revegetation issues for Sunrise Powerlink Project.

California Energy Commission – 2010-11 – Testified on a number of rare plant and animal issues for a number of solar projects.

Publications, Posters and Presentations

2016. Flat-tailed Horned Lizard Needs Protection. Presentation to the California Fish and Game Commission Meeting, San Diego, CA December 1, 2016.

2015. Time is of the Essence for Protection and Recovery. Presentation at the 40th Annual Symposium of the Desert Tortoise Council, Las Vegas, NV. February 2015.

2014. Conserve, Protect, Recover. Presentation at the 39th Annual Symposium of the Desert Tortoise Council, Las Vegas, NV. February 2014.

2012. Desert Tortoise Conservation 2012: an NGO Perspective. Presentation at the 37th Annual Desert Tortoise Council Symposium. February 2012.

2011. The Politics of Listing Species. Presentation at the California Native Plant Society Conservation Conference, San Diego, CA, September 2011.

2011. Renewable Energy in Southern California. Presentation at the Wildlife Society- Western Section Conference, Riverside, CA, February 2011.

2010. Moving forward with the DRECP. Presentation at the Stakeholders meeting of the Desert Renewable Energy Conservation Plan, Ontario, CA, September 2010

2010. Considerations for the DRECP. Presentation at the Science Advisors Meeting for the Desert Renewable Energy Conservation Plan, Ontario, CA, April 2010.

2010. Desert Tortoise – Protection and Recovery. Presentation at the 35th Annual Symposium of the Desert Tortoise Council, Mesquite, NV. February 2010

2009. Center's Efforts to Protect and Recover the Desert Tortoise. Presentation at the 34th Symposium of the Desert Tortoise Council, Las Vegas, NV February 2009.

2009. Global Climate Change and its Effects on Plants and Animals in Southern California. Presentation at the G2 Gallery, Venice, CA. February 2009.

2007. Rethinking Mitigation – Western Riverside MSHCP. Presentation at the California Native Plant Society Conservation Symposium, Sacramento, CA, September 2007.

Dickey, John, Maurice Hall, Mark Madison, Jason Smesrud, Margot Griswold, Quitterie Cotten, Mica Heilmann, Greg Roland, Jim Jordahl, Richard Harasick, Wayne Bamossy, Richard Coles, Lizanne Wheeler, Pat Brown, Kevin Burton, Rick Fornelli, Ileene Anderson, Melissa Riedel-Lehrke, Ron Tiller, and Jim Richards 2005. Managing salt to stabilize the Owens Playa with saltgrass. Presented at the Center for Water Resources, Salinity Conference, Sacramento California.

Rodgers, Jane and Ileene Anderson 2002. A Rare Mint (*Monardella robisonii*) in a Rock-Climbing Mecca. Joshua Tree National Park. April 2002. Pgs 25 + appendices.

Anderson, Ileene, Margot Griswold, Dana Kamada, and Adrian Wolf. 2001. Coyote Canyon Landfill: Native Vegetation Restoration Results in Habitat Creation for a Threatened Species. Poster given at Society for Conservation Biology. July 2001.

Hartman, Steve and Ileene Anderson 1999. California Deserts in Transition: Ecosystem Planning. *Fremontia* 27(2): 13-17.

Anderson, Ileene 1998. Status of Sensitive Plant Populations on Public Grazing Allotments within the California Desert Conservation Area. California Native Plant Society. August 1998 Pgs. 34.