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June 2, 2009

Via Electronic and U.S. Mail Service

Robert B. Liden,
Executive Vice President
SES Solar Two, LLC
4800 North Scottsdale Road, Suite 5500
Scottsdale, AZ 85251
rliden@stirlingenergy.com

Re: SES SOLAR TWO PROJECT (08-AFC-5)
CURE Data Requests, Set Two (Nos. 143-178)

Dear Mr. Linden:

California Unions for Reliable Energy submits this second set of data requests to Stirling Energy Systems LLC for the SES Solar Two Project, pursuant to Title 20, section 1716(b), of the California Code of Regulations. We appreciate Mr. Allen Thompson stating at the May 7th workshop that you would respond to clarifying data requests if submitted in writing, rather than verbally at the workshop. Thus, the enclosed data requests seek to clarify your data responses to CURE's first set of data requests in the area of biological impacts.

The requested information is necessary to: (1) more fully understand the project; (2) assess whether the project will be constructed and operated in compliance with all laws, ordinances, regulations and standards; (3) assess whether the project will result in significant environmental impacts; (4) assess whether the project will be constructed and operated in a safe, efficient and reliable manner; and (5) assess potential mitigation measures.

Pursuant to section 1716(f) of the Energy Commission's regulations, written responses to these requests are due within 30 days. If you are unable to provide or object to providing the requested information by the due date, you must send a written notice of your objection(s) and/or inability to respond, together with a

STATE OF CALIFORNIA
California Energy Commission

In the Matter of: The Application for Certification for the SES Solar Two Project	Docket No. 08-AFC-05

CALIFORNIA UNIONS FOR RELIABLE ENERGY SET TWO, DATA REQUESTS 143-178

June 2, 2009

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Attorneys for the CALIFORNIA UNIONS FOR RELIABLE ENERGY

The following Data Requests are submitted by California Unions for Reliable Energy. Please provide your responses via email (if available) by July 2, 2009 to each of the following people:

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Please identify the person who prepared your responses to each Data Request. If you have any questions concerning the meaning of any Data Requests, please let us know.

Background: IMPACTS TO SPECIAL-STATUS PLANT SPECIES

The AFC identified several special-status plant species with "moderate" potential to occur on the Project site,[1] but concluded that there would not be impacts to special-status plants and no mitigation is required.[2] The applicant did not conduct rare plant surveys that adhered to protocol survey guidelines provided by the California Department of Fish and Game (CDFG), California Native Plant Society (CNPS), or U.S. Fish and Wildlife Service (USFWS). These survey guidelines were developed to determine the effects of proposed projects on botanical resources.[3][4] The CDFG guidelines state CDFG may recommend that lead agencies not accept the results of surveys that are not conducted according to its guidelines,[5] and the CNPS guidelines state CNPS recommends that lead agencies not accept the results of surveys unless they are conducted and reported according to its guidelines.[6] Cypher (2002) stated that surveys employing non-protocol methods should not be used to indicate an absence of rare plant species.[7]

Protocol survey guidelines require surveyors have experience conducting floristic surveys; possess knowledge of plant taxonomy and plant community ecology; and are familiar with plants of the survey area, including any rare, threatened, or endangered species.[8] Based on the resumes submitted by the applicant, many members of the applicant's survey team did not possess the requisite experience or knowledge.[9] This is problematic because some of the rare plant species identified as having the potential to occur onsite are extremely difficult to identify. For example, Reiser (1994) indicated flat-seeded spurge

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[1] AFC: Bio Tech report, Attachment D.
[2] Applicant's response to CURE data request 37.
[3] California Native Plant Society. 2001. CNPS botanical survey guidelines. Pages 38-40 *in* Conservation and management of rare and endangered plants: proceedings of a California conference on the conservation and management of rare and endangered plants (T.S. Elias, editor). California Native Plant Society, Sacramento, CA, 630 pp.
[4] California Department of Fish and Game. 2000. Guidelines for Assessing the Effects of Proposed Projects on Rare, Threatened, and Endangered Plants and Natural Communities. (Revision of 1983 Guidelines.) Sacramento, CA.
[5] *Id.*
[6] See footnote 3.
[7] Cypher, E.A. 2002. General rare plant survey guidelines. California State University, Stanislaus. Endangered Species Recovery Program. Available online at: http://sacramento.fws.gov/es/documents/rare_plant_protocol. pdf.
[8] California Department of Fish and Game. 2000. Guidelines for Assessing the Effects of Proposed Projects on Rare, Threatened, and Endangered Plants and Natural Communities. (Revision of 1983 Guidelines.) Sacramento, CA.
[9] Applicant's response to data adequacy request #1 *in* Supplemental information in response to CEC data adequacy requests and BLM minimum requirement comments. September 2008. Log #48223.

(*Chamaesyce platysperma*) may be under-reported due to superficial similarities with several other common spurges found on the southern deserts.[10]

The applicant stated that approximately 165 person-days were devoted to rare plant surveys in 2007 and 2008.[11] However, this number may be misleading because: 1) other surveys (e.g., flat-tailed horned lizard, general surveys, and site assessment) were conducted on the same days as rare plant surveys;[12] 2) teams of two or three individuals (as indicated) cannot devote the same level of effort as individuals working independently due to redundancy in effort; and 3) on March 11 and 12, 2008, Michelle Balk is reported as surveying both the Project site and another solar project site in San Bernardino County.[13]

Data Requests

143. In response to CURE data request 31 regarding the specific techniques that were used to survey the site for rare plants, the applicant stated rare plant surveys were conducted concurrent with FTHL surveys. However, the applicant indicated FTHL surveys consisted of a sample covering 38% of the site.[14] Please clarify whether the applicant considers the results of its rare plant fieldwork a sample (similar to FTHL sampling) or a survey providing 100% coverage of impact areas. If the latter, please discuss the specific efforts (i.e., not associated with incidental movement through the site)[15] that were dedicated to rare plant detection outside of FTHL survey plots.

144. Please indicate whether a reference site was visited as recommended by survey protocols.[16] If so, please provide information on the site visit similar to what is outlined in protocol survey reporting requirements.

145. Please justify the applicant's rare plant survey effort (i.e., time per unit area) and discuss why the time per unit area spent surveying is considered appropriate for determining potential Project impacts.

146. Plant phenology varies with location and weather conditions. To clarify CURE data request 35, please provide the phenological development of the target species at the time Project surveys were conducted (e.g., were the target species known to be blooming).

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[10] Reiser, C. 1994. Rare Plants of San Diego County. Imperial Beach, CA: Aquafir Press. Available at: http://sandiego.sierraclub.org/rareplants/.
[11] Applicant's response to CURE data request 31.
[12] AFC, p. 5.6-7.
[13] AFC for Solar Two, Biological Resources Technical Report, p. 8. AFC for Solar One, Appendix A of Appendix Y.
[14] Applicant's response to CURE data request 25.
[15] AFC: Bio Tech report, p. 7.
[16] California Department of Fish and Game. 2000. Guidelines for Assessing the Effects of Proposed Projects on Rare, Threatened, and Endangered Plants and Natural Communities. (Revision of 1983 Guidelines.) Sacramento, CA.

147. The applicant's response to CURE data request 37 suggests the lack of documented occurrences of rare plants onsite and in the Project vicinity was a factor in the applicant's decision to forgo mitigation. Please discuss past focused survey efforts that the applicant is aware of that were conducted onsite and in the Project vicinity.

148. Please provide copies of the field notes that were taken during rare plant surveys. Please highlight any field notes associated with the two *Chamaesyce* species documented as occurring on the Project site.

149. Please provide a copy of the rare plant guide that was prepared by URS and distributed to the survey team.

150. Please discuss the botanical training that was conducted (as indicated in response to CURE data request 31), including the number of hours devoted to training before surveys were initiated, the trainer(s), individuals that were trained, and any tests that were applied to determine surveyors possessed the minimum qualifications necessary to provide accurate survey information.

151. Please indicate the individuals that constituted each survey team and provide their plant survey hours (i.e., total number of hours that were specifically dedicated to locating rare plants (as opposed to lizards or other wildlife) for each day of surveys.

152. Please provide copies of timesheets that substantiate surveyors were present on the Solar Two site.

Background: IMPACTS TO THE AMERICAN BADGER

In response to CURE data request 40 regarding badger survey techniques, the applicant stated any potential badger burrows or other sign would have been documented during Project surveys. The applicant also stated that although several potential burrows were observed, they were not active and were more likely made by either coyotes or kit fox. Dens used by the three species have similar characteristics, and determining activity status often requires specialized techniques.

Data Request

153. Please discuss the evidence that was used to conclude potential burrows were inactive and most likely made by coyotes or kit fox.

Background: IMPACTS TO WILDLIFE CORRIDORS

CURE data requests 42 and 43 pertained to Project impacts on wildlife corridors. The applicant responded by stating the Project site is not considered an important wildlife corridor, and by providing a map depicting wildlife corridors around the Project area. This response contradicts the FTHL Rangewide Management Strategy, which identifies lands between the Yuha Desert and West Mesa Management Areas as potential habitat corridors that should be maintained.[17] This also contradicts the Peninsular bighorn sheep recovery plan, which provides extensive discussion on the importance of maintaining connectivity among all portions of habitat so that bighorn sheep are able to move freely and maintain metapopulation dynamics.[18]

Data Requests

154. Please clarify whether the Project will maintain wildlife corridors through the Project area that enable uninhibited FTHL and bighorn sheep movement between the Project's northern and southern boundaries.

155. The map provided by the applicant depicts three wildlife corridors, all of which pass through proposed project areas.[19] Please clarify whether these proposed project areas will be fenced and how movement corridors will be maintained.

156. Please discuss the types of analyses that were used to map wildlife corridors (i.e., the corridors depicted on Figure BIO-1).

Background: IMPACTS TO THE PENINSULAR BIGHORN SHEEP

In response to CURE data request 44 regarding bighorn sheep occurrence in the Project region, the applicant indicated a group of five ewes/yearlings occurred within the Project site on 25 March 2009. According to the applicant's response, at least one of the sheep appeared pregnant.[20]

The recovery plan considers alluvial fans and washes crucial to the viability of bighorn sheep populations.[21] This information suggests even transitory or occasional use of the site by bighorn may be important to the species' recovery.

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[17] Flat-tailed Horned Lizard Interagency Coordinating Committee. 2003. Flat-tailed horned lizard rangewide management strategy, 2003 revision. 80 pp. plus appendices.
[18] U.S. Fish and Wildlife Service. 2000. Recovery plan for bighorn sheep in the Peninsular Ranges, California. U.S. Fish and Wildlife Service, Portland,OR. xv+251 pp.
[19] Applicant's response to CURE data requests, Figure BIO-1.
[20] Applicant's response to CURE data request 44.
[21] *Id.*

Data Requests

157. Please provide additional information on bighorn sheep occurrence within the Project area, including:

    a. A map that shows the location of the ewe group that was detected onsite.

    b. Any behavioral (e.g., foraging) observations made by Dr. Platt.

    c. Any subsequent efforts (field or other) taken by the applicant to document bighorn use of the Project site following Dr. Platt's observations.

    d. Quantification of previous efforts devoted to surveying the locations surrounding the area where sheep were recently documented. That is, of the survey days in 2007 and 2008, how many hours were devoted to surveying the area where sheep were documented?

158. Please provide a revised assessment of potential Project impacts on the Peninsular bighorn sheep that incorporates information presented in the recovery plan.

Background: IMPACTS TO THE BURROWING OWL

According to the AFC, "[s]everal apparently active owl burrows were observed on-site and two individual owls were observed along the off-site transmission line route."[22] In addition, "Owl burrows with sign were documented in three on-site locations."[23] Despite this information, the applicant responded to CURE data requests 48 and 50-52 (which sought information on proposed burrowing owl mitigation) by stating no burrowing owls were detected onsite and therefore mitigation was not necessary. The applicant's response also presented the conclusion that habitat onsite is only marginally suitable for owls and the majority of burrowing owls in the Imperial Valley occur along irrigation canals near agricultural fields east of the site.[24] The applicant concluded the Project would not have a cumulatively significant effect on burrowing owls within the area because the Project would not impact agricultural lands.[25]

Data Requests

159. Please clarify the discrepancy between the applicant's responses to CURE data requests 48 and 50-52 (regarding burrowing owl mitigation), and statements made in the AFC, Biological Resources Technical Report, and

[22] AFC, p. 5.6-19.
[23] Bio Tech report, p. 12.
[24] Applicant's response to CURE data request 52.
[25] Supplemental cumulative analysis, p. 36.

Supplemental Cumulative Analysis. Specifically, please:

a. Clarify how the applicant was able to conclude no burrowing owls are present onsite even though active burrows with burrowing owl sign (i.e., scat) were detected.

b. Discuss the survey techniques that were implemented to monitor the status of owl burrows that were detected during Project surveys.

c. Clarify whether the applicant intends to propose mitigation for the two burrowing owls that were observed along the proposed transmission line corridor.

d. Clarify why the applicant considers the site only "marginally suitable" burrowing owl habitat.

160. Please clarify whether the applicant considers the results of its burrowing owl surveys a sample of 38% of the site (similar to FTHL sampling) or a survey providing 100% coverage of impact areas. If the latter, please discuss the specific efforts (i.e., not associated with incidental movement through the site)[26] that were dedicated to burrowing owl detection outside of FTHL survey plots.

161. Burrowing owl protocol requires surveys to be conducted in the hours around sunrise or sunset.[27] Please justify why the applicant considers its survey results valid even though a significant amount of its survey effort was conducted outside of these time periods and when owls are generally less detectable.

162. Please provide a revised analysis of Project impacts to burrowing owls that considers environmental stochasticity and documented concerns on the viability of owls associated with agricultural habitat.

163. Please clarify the applicant's response to CURE data request 49, which stated the applicant's pre-construction surveys will follow the Burrowing Owl Consortium survey protocol. Specifically, does the applicant intend to conduct the four survey phases outlined in the protocol?

Background: IMPACTS TO NESTING BIRD SPECIES

The applicant responded to CURE data request 54 (which sought information on Project compliance with the Migratory Bird Treaty Act) by stating the Project will avoid "take" of migratory birds to the maximum extent practicable. The applicant's response does not appear consistent with the Migratory Bird Treaty Act

[26] AFC: Bio Tech report, p. 7.
[27] The California Burrowing Owl Consortium. 1993. Burrowing Owl Survey Protocol and Mitigation Guidelines. Available online at: http://www.dfg.ca.gov/wildlife/species/docs/boconsortium.pdf.

(MBTA), which states "take" *shall be unlawful at any time, by any means or in any manner*.[28]

If vegetation needs to be cleared during the breeding season, the applicant proposes nest surveys to avoid active nests. In response to CURE data request 55, the applicant indicated bird nests were occasionally encountered during field surveys. Most of these nests were determined to be inactive. Active nests that were identified onsite included house finch, lesser nighthawk, and mourning dove.

Data Requests

164. Please clarify what the applicant considers avoidance when "practicable" for the purposes of the MBTA.

165. Please clarify the applicant's response to data requests 54-55 by:

    a. Discussing how bird nests detected were determined inactive (as opposed to temporarily vacant or in the nest building phase).

    b. Identifying the species associated with inactive nests (old nests lead to valid inferences on past and probable future nesting).

    c. Discussing the applicant's interpretation of why nests from such few species (i.e., 3) were detected during two years of survey efforts conducted during the avian breeding season.

166. Please provide support for the conclusion that the territories (or home ranges) of the three species identified can be reduced without affecting survivorship or nesting success, as CURE requested in data request 57.

Background: IMPACTS TO OTHER BIRD SPECIES

To assess the effects of the Project on breeding bird habitat, the AFC provides an estimate of carrying capacity for each bird species detected on-site.[29] These estimates were made based on perceived relative abundance, and on home range and breeding territory data obtained from literature.[30] CURE data requests 58-61 sought more specific information on how the applicant's carrying capacity calculations were made, and the relevance of including them in the AFC. The applicant responded by stating the USFWS had requested carrying capacity information that could be used in their regional planning program.[31] The AFC does not identify any bird species listed by the USFWS, and to date the USFWS's involvement in the Project appears to have been minimal. As a result, it's unclear

[28] 16 USC §703(a)
[29] AFC, p. 5.6-19.
[30] *Id.*
[31] Applicant's response to CURE data request 62.

why carrying capacity information was presented in the AFC and the relevance it has to impact evaluation.

Data Requests

167. If project impacts are evaluated on the basis of the carrying capacity estimates in the AFC, or are being used to infer habitat quality, please:

    a. Indicate the data that was recorded in the field to achieve perceived abundance (e.g., relative abundance values, species lists by day).

    b. Clarify whether the use of frequency of observation to determine relative abundance accounted for varying detection rates among species (i.e., some species are elusive and hard to detect even when abundant).

    c. Clarify how encountering species throughout the site is a measure of abundance instead of distribution.[32]

    d. Clarify the relationship between frequency of observation and relative abundance given that a species may exhibit low absolute abundance, but still be relatively abundant.[33] For example, if the site has 10 individuals of species A and 50 individuals of species B, then species A is relatively less abundant *within* the site. However, if other sites only have five individuals of species A, then the species is relatively more abundant *among* other sites.

    e. Identify the surveyors that were capable of identifying all potentially occurring bird species by ear.

    f. Provide a species-specific response to CURE's initial data request 61 that asked the applicant to discuss the Project's relative significance on regional populations (including critical factors affecting those populations). Specifically, provide the analysis for the applicant's response that bird diversity and abundance are likely higher at other sites.[34]

    g. Discuss the relevance of using carrying capacity estimates to infer site habitat quality given that higher quality sites may have fewer not more individuals.[35]

[32] Applicant's response to CURE data request 59.
[33] See applicant's response to CURE data request 60.
[34] See applicant's response to CURE data request 61.
[35] Morrison ML, BG Marcot, and RW Mannan. 2006. Wildlife-Habitat Relationships: Concepts and Applications. 3rd ed. Washington (DC): Island Press.

Background: PROJECT IMPACTS TO THE COLORADO DESERT FRINGE-TOED LIZARD

CURE data request 63 asked the applicant to address potential Project impacts on the Colorado Desert fringe-toed lizard. The applicant responded by stating there is no suitable soft, sandy dune habitat for fringe-toed lizard onsite. However, the AFC indicates the site has suitable habitat for the flat-tailed horned lizard, which the AFC describes as "sparsely vegetated desert scrub areas with fine, wind-blown (aeolian) sand deposits and shifting sand substrate."[36] Whereas fringe-toed lizards may be restricted to areas with fine, loose, wind-blown sand, they are not limited to dunes.[37] Therefore, the applicant's response appears to conflict with information presented in the AFC.

Data Request

168. Please provide additional information demonstrating the site does not provide suitable habitat for the Colorado Desert fringe-toed lizard and explain the apparent discrepancy between the applicant's response and information presented in the AFC (i.e., on presence of fine, wind-blown sand).

Background: IMPACTS TO THE FLAT-TAILED HORNED LIZARD

Survey Protocol

The Flat-tailed Horned Lizard Rangewide Management Strategy (2003 Revision) outlines three distinct survey protocols. These are the population monitoring protocol (Appendix 4); the distribution monitoring protocol (Appendix 5); and the project evaluation protocol (Appendix 6).[38] The applicant stated it conducted a distribution survey to estimate how many flat-tailed horned lizards (FTHL) may occupy the site based on methods in Appendix 5 of the Rangewide Management Strategy, and then modified the survey methodology according to guidance provided by the BLM. As a result, 20 to 30 FTHL are estimated to occupy the Project site.[39]

The distribution monitoring protocol outlined in Appendix 5 is not the appropriate procedure for estimating FTHL abundance (or population size) because

[36] AFC, p. 5.6-4.
[37] California Wildlife Habitat Relationships System. 2005. California Department of Fish and Game. California Interagency Wildlife Task Group. CWHR version 8.1 personal computer program. Sacramento (CA).
[38] Flat-tailed Horned Lizard Interagency Coordinating Committee. 2003. Flat-tailed horned lizard rangewide management strategy, 2003 revision. 80 pp. plus appendices.
[39] AFC: Bio Tech report, p. 11.

it was designed to estimate distribution (not abundance) and the Interagency Coordinating Committee considers it untested.[40]

Data Requests

169. Please clarify the relevance of the FTHL occupancy estimate. Specifically, please indicate whether the estimate is being used to assess Project impacts and appropriate mitigation measures.

170. If the occupancy estimate is being used to assess Project impacts or determine mitigation, please:

    a. Discuss how the applicant's surveys differed from the distribution monitoring protocol in Appendix 5 (i.e., were modified).

    b. Discuss the measures that were implemented to demonstrate survey personnel were competent at locating FTHLs (as specified in Appendix 5).

    c. Indicate whether data on disturbance and other variables of interest were recorded (as specified in Appendix 5).

    d. Provide copies of the distribution monitoring data sheets.

    e. Provide a copy of the applicant's FTHL survey plan and discuss any measures that were taken to ensure surveyors were effectively implementing survey techniques.

Mitigation

The Flat-tailed Horned Lizard Rangewide Management Strategy (2003 Revision) outlines the 10 mitigation measures that should be incorporated into projects having FTHLs in the project area. In response to CURE data request 20, the applicant stated these 10 measures are [only] meant to apply to small projects. The applicant's response appears inconsistent with the Rangewide Management Strategy, which indicates mitigation is not required for small projects. [41]

Data Request

171. Please provide the applicable information from the Rangewide Management Strategy that supports the applicant's statement that the 10 mitigation measures are only meant for small projects.

[40] Flat-tailed Horned Lizard Interagency Coordinating Committee. 2003. Flat-tailed horned lizard rangewide management strategy, 2003 revision. 80 pp. plus appendices.
[41] *Id:* Appendix 6.

Background: COLLISION HAZARDS

The applicant responded to CURE's data request 68 about avian mortality from Suncatchers by stating that this has never been a problem at other sites.[42]

Data Request

172. Please discuss the methods that were used to monitor avian mortality at the sites referenced in the applicant's response.

173. Please provide any additional data or information that supports the applicant's assertion that birds would not be injured or killed from Suncatchers at the SES Two Site, other than the anecdotal information supplied by the Solar Thermal Test Facility in Albuquerque, New Mexico.

Background: PROJECT COMPLIANCE WITH LAWS, ORDINANCES, REGULATIONS, AND STANDARDS

CURE data request 70 sought information on compliance with any habitat management plans covering the site. The Desert Plan directed that habitat management plans be written for lands adjacent to the Yuha Basin and East Mesa Area of Critical Environmental Concern.[43] In response, the BLM prepared the "Yuha Desert Management Plan." The Yuha Desert MA is located immediately south of the Project site. Therefore, it appears that the Yuha Desert Management Plan would cover land within the Project site (as directed by the Desert Plan). However, the AFC suggests the Yuha Desert management areas (i.e., those covered by the plan) do not encompass the Project site. The applicant's response to CURE data request 70 does not adequately clarify this issue.

Data Request

174. Please indicate whether land within the Project site is covered by the Yuha Desert Management Plan.

    a. If the answer to data request 174 is no, please support your answer by showing the Project site and plan area on a map.

    b. If the answer to data request 174 is yes, please discuss the Project's compliance with the plan.

[42] Applicant's response to CURE data request 68.

[43] Flat-tailed Horned Lizard Interagency Coordinating Committee. 2003. Flat-tailed horned lizard rangewide management strategy, 2003 revision. 80 pp. plus appendices.

Background: INDIRECT AND CUMULATIVE PROJECT IMPACTS

CURE data request 81 asked the applicant to indicate the biological resources of management concern in the management areas depicted in Figure 1 of the AFC's *Review of Federal and State Surface Waters*, and to identify whether the Project has the potential to have an adverse effect on these biological resources of management concern (i.e., in addition to the already identified potential increase in raven abundance). The applicant responded by stating: *There is no "Figure 1" in the AFC document. All figures are numbered by subsection (e.g., Figure 5.6-1). There is no figure in the AFC with the title "Review of Federal and State Surface Waters."* The full title of the document referenced by CURE is Draft Federal and State Surface Waters Review in Response to CEC & BLM Data Request 1. The document was signed by Ms. Angela Leiba of URS.

Data Request

175. Please indicate the biological resources of management concern in the management areas depicted in the figure referenced above. Please identify whether the Project has the potential to have an adverse effect on these biological resources of management concern (i.e., in addition to the already identified potential increase in raven abundance).

Background: CHARACTERIZATION OF BIOLOGICAL RESOURCES

CURE data request 85 asked the applicant to provide information on any informal consultation that has occurred with the USFWS or CDFG. The applicant responded by stating: "No listed species were detected during two seasons of spring/summer surveys and none are expected." The Peninsular bighorn sheep discussed in the applicant's response to CURE data request 44 is a Federally and State listed species that requires consultation.

Data Request

176. Please discuss any informal consultation that has occurred as a result of Peninsular bighorn sheep being detected on the Project site. If consultation has not yet occurred, please discuss the anticipated schedule for consultation.

Background: IMPACT OF PROJECT FENCING

CURE data requests 91 and 92 are related to potential impacts of Project fencing. The applicant's discussion of Project fence characteristics suggests both small and large animals will be able to freely enter the site once the fence is

installed. These animals may be subject to entombment or other types of direct mortality from Project equipment.

Data Requests

177. Please specify the timing (i.e., order of activities) of fence installation in relation to pre-construction surveys, proposed wildlife mitigation measures, Project construction, and any other Project activities that may affect resident wildlife species.

178. Please specify how the applicant intends to minimize entombment and other types of construction related mortality to wildlife for which clearance surveys have not been proposed.

Dated: June 2, 2009

Respectfully submitted,

/s/

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DECLARATION OF SERVICE

I, Bonnie Heeley, declare that on June 2, 2009, I served and filed copies of the attached **CALIFORNIA UNIONS FOR RELIABLE ENERGY SET TWO, DATA REQUESTS 143-178**. The original document, filed with the Docket Unit is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: www.energy.ca.gov/sitingcases/solartwo. The document has been sent (1) electronically, and (2) via US Mail by depositing in the US mail at South San Francisco, California, with first-class postage thereon fully prepaid and addressed as provided on the attached Proof of Service list to those addresses NOT marked "email preferred." It was sent for filing to the Energy Commission by sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address shown on the attached Proof of Service list.

I declare under penalty of perjury that the foregoing is true and correct. Executed at South San Francisco, California, this 2nd day of June, 2009.

/s/
Bonnie Heeley

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statement of reasons, to Commissioners Byron and Levin and to CURE within 20 days.

Please contact us if you have any questions. Thank you for your cooperation with these requests.

Sincerely,

/s/

Loulena A. Miles

LAM:bh
Attachment