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June 17, 2010

DOCKET
09-AFC-7
DATE JUN 17 2010
RECD. JUN 17 2010

California Energy Commission
Attn: Docket No. 09AFC7
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

Re: 09-AFC-7 Palen Solar Power Project

Dear Docket Clerk:

Enclosed are an original and one copy of CALIFORNIA UNIONS FOR RELIABLE ENERGY PETITION TO COMPEL PRODUCTION OF INFORMATION IN RESPONSE TO CURE DATA REQUESTS, SET ONE. Please process the document and provide us with a conformed copy in the envelope enclosed.

Thank you.

Sincerely,

/s/

Jason W. Holder

JWH:bh
Enclosures

2357-033a

STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of: The Application for Certification for the Palen Solar Power Plant Project	Docket No. 09-AFC-7

CALIFORNIA UNIONS FOR RELIABLE ENERGY PETITION TO COMPEL PRODUCTION OF INFORMATION IN RESPONSE TO CURE DATA REQUESTS, SET ONE

June 17, 2010

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I. INTRODUCTION

The Commission has stressed that when a project presents unusual challenges, it expects the applicant and Staff to thoroughly analyze a project's potential impacts as required by the California Environmental Quality Act ("CEQA").[1] Thus, the relevant scope of discovery, and the decisions that the Commission will be required to make in its evaluation, will vary with the complexity and novelty of the project under review. Although the Commission is required to conduct a thorough analysis of every application before it, the need for a proper analysis is underscored here because this Application is for an immense solar facility on biologically productive undeveloped land in a sensitive desert ecosystem, and is one of a series of similarly scaled electric generating facilities currently being proposed in California's desert region.[2] Yet, despite the high importance of a thorough analysis of the potential impacts of the Palen Solar Power Project (the "Project"), the Applicant, Palen Solar I, LLC ("PSI"), has not provided the Commission or other parties to this proceeding with sufficient facts regarding, among other things:

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[1] Committee Order Responding to CURE's Motion to Compel Production of Information, In the Matter of the Application for Certification for the Carrizo Energy Solar Farm, Docket No. 07-AFC-08 (Dec. 3, 2008), pp.2-3.

[2] *See* Staff Assessment/Draft Environmental Impact Statement ("SA/DEIS") for Project, Executive Summary, 3 [applicant seeks right-of-way grant of 5,200 acres for the Project, which will disturb approximately 2,970 acres]; *but see id.* at C.2-1 [3,899 acres disturbed]; see also *id.* at C.2-118 – C.2-119 [list of existing and proposed projects]; *see also* BLM list of large solar thermal projects, available at: http://www.energy.ca.gov/siting/solar/ (as of June 7, 2010); *see also* BLM map of pending solar energy projects in Project vicinity, available at: http://www.energy.ca.gov/siting/solar/cdd_energy_points_8_5x11_solar.pdf (as of June 7, 2010).

(1) the means employed to gather information regarding reported baseline environmental conditions at the Project site for biological resources and jurisdictional waters;

(2) all Project design components currently proposed, including the transmission line and related infrastructure, the evaporation ponds, the redesigned drainage facilities, and the concrete batch-plant;

(3) potentially significant Project impacts to special-status species and their habitat, water quality and water supply; and

(4) the feasibility of mitigation measures and alternatives designed to reduce or eliminate potentially significant impacts.

Section 1716(b) of the Commission's regulations gives *any party* the right to request from the applicant any information that is reasonably available and relevant to the application proceedings or reasonably necessary to make any decision on the application.[3] The Commission's discovery procedures require the applicant to provide a response to a data request if "the information sought appears to be reasonably available, relevant, or necessary for [the Commission] to reach *any* decision in [the] proceeding."[4]

On May 14, 2010, California Unions for Reliable Energy ("CURE") served its first set of data requests on PSI, pursuant to section 1716(b). (Exhibit 1, "CURE's Data Requests.") On May 25, 2010, PSI filed and served

[3] Cal. Code Regs., tit.,§ 1716(b).

[4] Committee Ruling re: CVRP Petition to Compel Production of Documents, Docket No. 99-AFC-3 (Nov. 21, 2000), p.1 (emphasis added).

objections to all of CURE's data requests. (Exhibit 2, "PSI's Objections.") Notwithstanding PSI's Objections, PSI agreed to respond to select data requests. (Exhibit 2, p. 5.) On June 14, 2010, PSI filed its responses to the select data requests identified in PSI's Objections. (Exhibit 3, "PSI's Select Responses.") CURE intends to address the adequacy of PSI's responses to select data requests in its testimony and at evidentiary hearings. This Petition focuses on the data requests that PSI has absolutely refused to answer and not on those select data requests that PSI stated it would answer "completely or partially" at some point.[5]

CURE requests information that relates to the direct, indirect and cumulative environmental impacts of the Project under Commission regulations, the California Environmental Quality Act ("CEQA"),[6] and the Warren-Alquist Act.[7] This information relates specifically to the Commission's analysis of the Project's potentially significant impacts to biological resources, soils and drainage, and water supply. Without this information, the Commission will not have all of the information necessary to evaluate the Project.[8] In addition, absent adequate responses to all of

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[5] PSI states in its objections that "[t]he answers to [select data requests] will be either answered completely or partially in the Biological Resources Technical Report revisions to be filed by May 28, 2010." Exhibit 2, p. 5, fn. 2. As of this filing, to our knowledge, PSI has still not filed the Biological Resources Technical Report revisions as assured.

[6] Pub. Res. Code § 21000 *et seq.*

[7] Pub. Res. Code § 25500 *et seq.*

[8] *Concerned Citizens of Costa Mesa, Inc., v. 32nd District Agricultural Association* (1986) 42, Cal.3d 929, 936 ["CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge

CURE's data requests, CURE will be unable to exercise its right to fully participate in this proceeding and to provide meaningful input into the Commission's licensing process.

CURE respectfully submits this petition pursuant to section 1716(f) of the Commission's regulations to compel the production of information that is relevant, reasonably available and largely within the sole control of PSI.[9] For the Commission's convenience and for ease of reference, CURE has prepared a table summarizing the relevant issues covered in critical select data requests that the Applicant has refused answer. (Exhibit 4.) This petition focuses on those data requests.

For the reasons that follow, the Commission should find PSI's objections meritless. CURE respectfully requests an order directing PSI to provide all information sought in CURE's first set of data requests.

II. DISCUSSION

Any party to an AFC proceeding may "request from the applicant any information reasonably available to the applicant which is relevant to the … proceedings or reasonably necessary to make any decision on the … application."[10] At least three sources define the type of information that is relevant and reasonably necessary to make a decision on PSI's AFC. First, Commission regulations identify the preliminary scope of environmental

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from the process . . . . This process helps demonstrate to the public that the agency has in fact analyzed and considered the environmental implications of its action."(citations omitted)].

[9] Cal. Code Regs., tit. 20, § 1716(f).

[10] Cal. Code Regs., tit. 20, § 1716(b).

information that must be produced by PSI before the Commission can determine that an application is "data adequate."[11] Second, CEQA requires sufficient facts and analysis for the Commission to identify potentially significant environmental impacts and devise feasible mitigation measures for significant adverse direct, indirect, and cumulative impacts of the Project.[12] CEQA also requires the SA/DEIS to include "detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project."[13] Third, the Warren-Alquist Act requires that the Commission determine the Project's conformity with other laws, ordinances, regulations and standards ("LORS"), and assure that the public's health and safety will be protected prior to issuing a license.[14] Information related to any of these requirements is unquestionably relevant and necessary for the Commission's review of PSI's AFC.

PSI raises only general objections to CURE's data requests.[15] These unspecified objections appear to apply to all of CURE's data requests. As explained below, PSI's objections lack merit.

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[11] Cal. Code Regs., tit. 20, art. 6, Appendix B.

[12] Pub. Resources Code §§ 21080(d)-(f), 21081.6, 21082.2; Cal. Code Regs., tit.14, §15151.

[13] *Center for Biological Diversity v. County of San Bernardino* (May 25, 2010) __ Cal.App.4th __, quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 405, 253 Cal.Rptr. 426, 764 P.2d 278 (*Laurel Heights I*).

[14] Pub. Resources Code § 25500.

[15] *See generally* Exhibit 2, 09-AFC-7, Objections and Notice of Inability to Respond to CURE's Data Requests (May 25, 2010) ("PSI's Objections").

The Commission regularly resolves disputes concerning the appropriate scope of discovery in power plant siting proceedings. The Committee in the Carlsbad Energy Center proceeding, for example, recently noted that the production of "information" by the applicant includes data and other objective information available to it.[16] Although the answering party is not required to perform research or analysis on behalf of the requesting party, the "line between discoverable data and undiscoverable analysis and research is dependent on the particulars of a request and cannot be drawn with precision."[17] Thus, in evaluating the request, the Committee in Carlsbad Energy Center considered four factors:

- The relevance of the information;
- Whether the information is available to the applicant, or from some other source, and whether it has already been provided in some form;
- Whether the request is for data, analysis, or research; and
- The burden on the applicant to provide the data.[18]

If the applicant refuses to provide the requested information, the requesting party "may petition the committee for an order directing the responding party to supply such information."[19]

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[16] Committee Ruling on Intervenor Center for Biological Diversity's Petition to Compel Data Responses, Application for Certification for the Carlsbad Energy Center, Docket, No. 07-AFC-6, December 26, 2008.

[17] *Id.*

[18] *Id.*

[19] *Id.* at § 1716(g).

PSI must provide responses to CURE's data requests, because, as shown below, CURE's data requests are relevant, the information sought should be reasonably available to PSI because it is required by Commission regulations and, for that same reason, exact no unfair burden on PSI.

A. The Information Sought Through the CURE's Data Requests is Relevant to the Commission's Decision Concerning the Application for Certification.

Some of CURE's data requests request information necessary to establish the *environmental baseline* for evaluating potentially significant impacts under CEQA. Other data requests seek information necessary to evaluate *significant impacts*. The remaining data requests focus on the information necessary to identify appropriate and feasible *mitigation measures*. CEQA, Energy Commission regulations, and other sources of authority impose specific and stringent requirements for these aspects of the environmental analysis. Based on the incomplete and otherwise inadequate analysis in the SA/DEIS,[20] CURE submitted data requests to elicit the required information and analysis.

It may be possible that information provided in response to one data request would be responsive to another request. It may also be possible that the Revised Staff Assessment ("RSA") will provide the information requested

[20] The SA/DEIS acknowledges that additional information is required to complete the discussion of Project characteristics, analysis of Project impacts and compliance with LORS, and formulation of mitigation measures. *See*, *e.g.*, SA/DEIS, Executive Summary, p. 4 [acknowledging transmission line route has not been finalized]; *see also id.* at pp. 15-19 [acknowledging that the mitigation of potential impacts and compliance with LORS was undetermined for four technical areas].

in one or more of CURE's data requests. The overarching reasons for these requests are: (1) to help cure the inadequacies of the SA/DEIS by obtaining information supporting PSI's assumptions, methodologies, and conclusions regarding the existing conditions for the environmental baseline and the required analysis of potentially significant impacts, and (2) to obtain information to enable identification and development of feasible mitigation measures and alternatives to the proposed Project so that the numerous significant Project impacts may be eliminated or reduced to less-than-significant levels.

1. *Data requests seek relevant information regarding the environmental baseline for the entire Project disturbance area, including the transmission line corridor.*

The determination of existing (or baseline) conditions is an important aspect of an environmental review document because, without an adequate baseline description, an accurate analysis of a project's impacts and the development of proper mitigation measures may be impossible.[21] In order to ascertain the environmental baseline against which the Project's impacts may be measured, CEQA requires a reasonably high level of specificity.[22] CEQA guidelines require "a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences . . . [t]he courts have looked not for perfection but for adequacy, completeness, and a

[21] *Save Our Peninsula Com. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 120-124 (*Save Our Peninsula Com.*).

[22] *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.

good faith effort at full disclosure."[23] CEQA also requires that the Commission's decisions be made on the basis of facts and not conclusions alone.[24] The information requested in CURE's data requests are facts relevant to the Commission's duty under CEQA to analyze potentially significant impacts.

A number of data requests sought information or explanations regarding the methodology the Applicant's consultants used to conduct wildlife and jurisdictional waters surveys in 2009 and after the release of the SA/DEIS in 2010.[25] Because the methodology employed by the consultants differed from that recommended by agencies with jurisdiction over wildlife species and habitat, the requested information and explanations are relevant to determining the adequacy of these surveys. For example, the Spring 2009 and Spring 2010 survey documents do not satisfy the California Department of Fish and Game ("CDFG") guidelines for conducting surveys, which recommend, among other things, that the number of person-hours spent surveying be reported. The surveys also departed from well-established protocol from the U.S. Fish and Wildlife ("USFWS") service.[26] CURE simply requested the missing required information and explanations for the departures from established protocol.

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[23] *Id*. at 954, citing Cal. Code Regs, tit.14 § 15151.

[24] *Laurel Heights I*, *supra*, 47 Cal.3d at p. 404.

[25] *See*, *e.g.*, Exhibit 1, DRs: 1, 3, 4, 5, 6, 7, 69, 71, 156, 163.

[26] For example, the surveys departed from established USFWS protocol for Desert Tortoise.

Information on the type(s) and level(s) of habitat disturbance in the Project area is necessary to make inferences about the presence, abundance, and distribution of the special-status species that may be impacted by the Project. The Spring 2010 surveys were conducted in part to identify the environmental baseline information for the transmission line corridor for the Project, a portion of the Project that was not adequately addressed in the SA/DEIS.[27] Commission staff recognized that the transmission line for the Project and its associated access road and spur roads are parts of the Project that must be analyzed in the RSA.[28] Numerous wildlife and plant species with special-status listing were identified as present in the Project study area and the proposed transmission line alignments or have the potential to occur in these areas.[29] These include desert tortoise ("DT"), Mojave fringe-toed lizard ("MFTL"), Western burrowing owl ("WBO"), the golden eagle, and Coachella Valley milk-vetch. Therefore, information regarding the likelihood of their occurrence along the transmission line corridor is relevant to the Commission's basic assessment of the biological baseline.

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[27] *See*, *e.g.*, SA/DEIS, p. C.2-13 [describing transmission line as extending 1.2 miles to the south of the Project site, rather than extending approximately 10 miles to the west of the site]; see also *id.* at C.9-35 [describing minor excavation required for transmission line, but omitting discussion of excavation required for access and spur roads]; *see also* Survey Approach and Methodologies for the Solar Millennium Parabolic Trough Palen Solar Power Project, April 10, 2010 ("2010 Survey Protocol") [acknowledging need for surveying along westward transmission line corridor].

[28] *See*, *e.g.*, SA/DEIS, pp. C.11-1, C.11-4 [chapter regarding transmission line safety acknowledges need to analyze impacts associated with transmission line and correctly identifies transmission line route].

[29] SA/DEIS, pp. C.2-27 – C.2-60; see also 2010 Survey Protocol, pp. 1-14; Letter regarding Preliminary Spring 2010 Survey Results for Desert Tortoise, Rare Plants and Jurisdictional Waters, dated May 7, 2010.

The transmission line corridor will be approximately 8-12 miles long.[30] The SA/DEIS recognized that the transmission line route had changed from the route identified in the AFC and that additional information and analysis would be required in order to properly address the impacts associated with developing the transmission line.[31] PSI also evidently recognized that the description of the environmental baseline and the analysis of Project impacts would have to be modified in a Revised Staff Assessment, after conducting surveys along the new transmission line corridor.[32] Several of CURE's data requests concern the surveys conducted along the transmission line[33]: these requests are relevant for establishing an accurate environmental baseline for the whole of the Project.

Some data requests sought an explanation for the limited surveys conducted in Spring 2010.[34] According to the survey protocol provided by PSI, the 2010 surveys were only conducted in Project disturbance and buffer areas that were not surveyed in 2009. As a result, the Spring 2010 surveys did not provide a thorough or robust sampling and may not have yielded a representative capture of the species present within the Project disturbance

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[30] Documents submitted to and prepared by the CEC and BLM inconsistently describe the length of the transmission line. *See*, e.g., SA/DEIS, pp. B.1-11 [describing 10-mile distance to substation], D. 5-5 [describing 8-mile gen tie line]; *see also* Updated Plan of Development, dated July 20, 2009, p. 35 [describing 12-mile gen tie line].

[31] *See* SA/DEIS, pp. B.1-11, C.2-13, C.11-1.

[32] *See* PSI's Initial Comments on SA/DEIS, dated May 4, 2010, p. 2 ["The required biological resources and cultural resources surveys for [the selected gen-tie] route are underway and results will be reported when they are available later this spring"].

[33] *See e.g.*, Exhibit 1, DRs 7, 35, 36, 176, 177, 180.

[34] *See e.g.*, Exhibit 1, DRs 1, 4, 5, 6, 16, 18, 69, 71, 72, 135.

area, along the transmission line route and in the buffer areas. CURE's data requests regarding this issue were intended to illicit an explanation for the limited survey area.

In addition, CURE seeks through its data requests information supporting the PSI's characterization of the on-site desert tortoise habitat as low or moderate quality.[35] This characterization is used to justify PSI's recommendation for acquisition of substantially fewer acres as compensation for the Project's impacts to DT than recommended by Commission staff in the SA/DEIS. The Spring 2010 surveys, however, reveal more DT and DT sign on the Project site and in the buffer areas than what was found in 2009.[36] This up-to-date data suggests that the baseline environmental conditions are more biologically productive and important for DT and other species than acknowledged or reflected in the SA/DEIS.

2. Data requests seek relevant and accurate information regarding the size and characteristics of the proposed Project.

"An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR."[37] As discussed in CURE's data requests, the Project disturbance area was inconsistently reported in the

[35] *See e.g.*, Exhibit 1, DRs 76, 78, 79.

[36] Letter regarding Preliminary Spring 2010 Survey Results for Desert Tortoise, Rare Plants and Jurisdictional Waters, dated May 7, 2010, Table 1 [describing preliminary results of Spring 2010 surveys for DT].

[37] *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.

SA/DEIS.[38] PSI refuses to respond to two data requests concerning the inconsistently reported size of the proposed Project.[39]

In addition, PSI has recently submitted new information regarding Project characteristics, including redesigned drainage facilities for the Project site, newly proposed evaporation ponds for wastewater and a new on-site concrete batch plant.[40] The impacts associated with these Project characteristics were not addressed in the SA/DEIS. Several data requests seek information, not provided in PSI's recent filings, regarding these new Project characteristics.[41]

3. Data requests seek relevant information regarding the Project's environmental impacts.

Requested information regarding unaddressed Project impacts is relevant under CEQA.[42] CEQA requires "facts and analysis," as well as sufficient detail "to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project."[43]

Due to the immense scale of the proposed Project and the presence of special-status plant and animal species on the Project site, information

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[38] *See* Exhibit 1, Background for DRs 161-166.

[39] *Compare* Exhibit 2, PSI's Objections, p. 5 with Exhibit 1, DRs 163, 166.

[40] *See* Exhibit 1, Background for DRs 176, 177, 180, 189, pp. 47-48, 51-52; *see also* PSI's Initial Comments on SA/DEIS, Appendix A, Air Modeling Analysis, dated May 4, 2010, pp. 1-2; *see also* Attachment 2 to PSI's Initial Comments on SA/DEIS, Environmental Evaluation of Project Updates.

[41] *See* Exhibit 1, DRs 55-58, 161.

[42] 20 Cal. Code Regs. art. 6, Appendix B(g)(13)(E)(i); *id*. B(g)(13)(A); *see* Public Res. Code. § 15151.

[43] *Laurel Heights I*, *supra*, 47 Cal.3d at pp. 404-405.

regarding significant impacts to biological resources is particularly necessary in this case.[44] Consequently, CURE's data requests place a heavy emphasis on the information required for an adequate analysis of impacts to biological resources.

For example, CURE requested information regarding the chemical constituents of the dust suppression coating that will be applied at the Project site.[45] These chemicals could contaminate the soil and water, and could eventually harm native plants and wildlife both on and off the Project site. The Applicant has refused to answer these requests and the SA/DEIS does not address this important issue.

In addition, CURE sought updated information regarding direct and indirect impacts to several special-status species, including desert tortoise, Mohave fringe toed lizard, golden eagle, and swainson's hawk, taking into consideration the results of the Spring 2010 surveys.[46] Separate data requests target updated information regarding impacts to wildlife movement corridors.[47] Despite the relevancy of these requests, PSI refused to respond to them.

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[44] *See Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449 ["given the sensitivity and listed status of the resident [species], the [lead agency's] failure to address [potentially significant impacts to the species' habitat] in the Draft EIR 'deprived the public ... of meaningful participation [citation]' in the CEQA discussion"], quoting (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123, fn. 4 (*Laurel Heights II*) and citing CEQA Guidelines, § 15065, subd. (a)(1) [potential substantial impact on endangered, rare or threatened species is per se significant].)

[45] *See* Exhibit 1, DRs 53 – 54.

[46] *See* Exhibit 1, DRs 78, 79, 80, 95-98, 124.

[47] *See* Exhibit 1, DRs 135, 136, 137, 138.

4. Data requests seek relevant information regarding the feasibility of mitigation of impacts and alternatives to the proposed Project.

"An [environmental review document] is inadequate if '[t]he success or failure of mitigation efforts . . . may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR.'"[48] In other words, substantial evidence must support the approving agency's conclusion that mitigation measures will be effective.[49]

A number of CURE's data requests seek information supporting the asserted effectiveness of proposed mitigation measures. For example, CURE requested information regarding the feasibility of acquiring *thousands of acres* as compensation habitat for impacts to a variety of species.[50] For example, several data requests concern the means for reducing the recognized impacts to Mohave fringe-toed lizards and their habitat.[51] These requests ask for information regarding the effectiveness of proposed mitigation measures and the feasibility of an off-site alternative or a reconfigured alternative.[52]

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[48] *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92, 108 Cal.Rptr.3d 478, 494, quoting *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 655-656.

[49] *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1027 (*SOCA*).

[50] See, e.g., Exhibit 1, DRs 50, 51, 60-62, 85, 86, 118-123, 129-132, 142, 148, 150, 152. Notably, the SA/DEIS does not include any evidence that adequate land for mitigation or Project impacts to species is available for purchase.

[51] *See* Exhibit 1, DRs 65-66, 100, 101, 102, 105-110.

[52] *See Ibid.*; *see also Id.* at DRs 172-175.

The requested information regarding mitigation is also relevant under the California Endangered Species Act ("CESA"). CESA provides for the protection and management of plant and animal species listed as threatened or endangered, or designated as candidates for such listing.[53] CESA requires consultation between the CDFG and other state agencies to ensure that projects do not jeopardize the continued existence of threatened or endangered species or habitats essential for the continued survival of any threatened and endangered species. Any mitigation proposed by PSI and accepted as a condition of certification by the Committee must mitigate potential "take" of protected species under CESA.

B. The Information Sought is Necessary.

The information sought in CURE's data requests is reasonably necessary for a Commission decision. CEQA requires project applicants to disclose facts underlying their conclusions.

> An expert's opinion "concerning matters within [his or her] expertise is of obvious value, but the public and decision-makers, for whom the EIR is prepared, should also have before them the basis for that opinion so as to enable them to make an independent, reasoned judgment. [Citation] If [the applicant's] position becomes the rule - that a project proponent can pick and choose who sees pertinent data - then a stake is driven into the "heart of CEQA" by preventing the information necessary for an informed decision from reaching the decisionmakers and the public. [Citation][54]

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[53] Cal. Fish and Game Code §§ 2050-2098.

[54] *Communities for a Better Environment v. City of Richmond* (2010) 108 Cal.Rptr.3d 478, 491, citing *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831 and *Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1123 (*Laurel Heights II*).)

Commission regulations specifically require applicants to include "a regional overview and discussion of terrestrial and aquatic biological resources, with particular attention to sensitive biological resources within ten (10) miles of the project."[55] Commission regulations further provide that the applicant's "discussion shall address the distribution of vegetation community types, denning and nesting sites, population concentrations, migration corridors, breeding habitats, and other appropriate biological resources."[56] Applicants must also include in the application "[a] description and results of all field studies and seasonal surveys used to provide biological baseline information about the project site."[57] The AFC, the SA/DEIS, the preliminary results from the Spring 2010 surveys, and PSI's recently submitted comments regarding the SA/DEIS all fail to include all of the information required under Commission regulations and CEQA. Because this information was missing, CURE's data requests were necessary.

PSI claims that the information sought by CURE is not reasonably necessary to make a decision on the AFC because "[s]taff had sufficient detailed information to write the SA/DEIS and any information it needed to develop [the RSA] has been provided to all parties."[58] CURE's data requests, however, were designed to obtain data missing from the SA/DEIS and

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[55] Cal. Code Regs., tit.20, art. 6, Appendix B(g)(13)(A).

[56] Cal. Code Regs., tit.20, art. 6, Appendix B(g)(13)(C).

[57] Cal. Code Regs., tit.20, art. 6, Appendix B(g)(13)(D).

[58] *See* Exhibit 2, p. 2. PSI asserts that it has supplied additional information to Commission staff and the agencies "that responds to many of the Data Requests." *Ibid.* PSI's response indirectly admits that information that responds to other data requests has not been provided.

information underlying the assumptions and conclusions in the Spring 2010 surveys, among other things. By stating that all information needed to develop a RSA has been provided, PSI also implies that the information sought by CURE is not reasonably necessary because the Commission should accept, without question, the statements and conclusions of PSI's experts. This may be the case had PSI provided the underlying data for such statements and conclusions. It did not.[59] As a result, CURE requested that PSI provide its underlying assumptions and data in order to adequately analyze the conclusions in the AFC, the SA/DEIS, and the forthcoming RSA. As shown below, the information is reasonably necessary for the Commission to satisfy its obligations under CEQA and the Warren-Alquist Act.

1. *Responses to CURE's Data Requests Are Necessary For The Commission To Comply With CEQA*

CEQA requires that an environmental impact report ("EIR"), or EIR equivalent, set forth "sufficient information to foster informed public participation and to enable the decision makers to consider the environmental factors necessary to make a reasoned decision."[60] Although an

[59] *See* Letter regarding Preliminary Spring 2010 Survey Results for Desert Tortoise, Rare Plants and Jurisdictional Waters, dated May 7, 2010 [describing preliminary results of Spring 2010 surveys, but not providing detailed information regarding survey methodology required by CDFG and USFWS protocol] ; *see also*, *e.g.*, Letter regarding Mojave Fringe-Toed Lizard Mitigation Lands in the Chuckwalla Valley, dated May 14, 2010 [stating that adequate compensation habitat for impacts to MFTL are available, but providing no data or maps substantiating this assertion].

[60] *Berkeley Keep Jets Over the Bay Com. v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1356.

EIR's analysis need not be exhaustive, "courts have favored specificity and use of detail…"[61] Specifically,

> "[a] conclusory statement 'unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind' not only fails to crystallize issues [citation] but 'affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.'"[62]

Therefore, at a minimum, CEQA requires that an EIR, or EIR equivalent, be an adequate informational document.

An EIR must not only identify impacts, but must also provide "information about how adverse the impacts will be."[63] The Commission may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. "An agency must use its best efforts to find out and disclose all that it reasonably can."[64]

Moreover, as the Committee is aware, CEQA requires implementation of all feasible mitigation measures. CEQA requires that an EIR, or EIR equivalent, "include a detailed statement setting forth…[m]itigation measures proposed to minimize significant effects on the environment."[65] The CEQA Guidelines echo this requirement, stating that an EIR "shall identify mitigation measures for each significant environmental effect

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[61] *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 411.

[62] *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842, quoting *Silva v. Lynn* (1973) 482 F.2d 1282, 1285.

[63] *Santiago County Water Dist.*, *supra*, 118 Cal.App.3d 818, 831.

[64] CEQA Guidelines, § 15144; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692 (agency must produce a credible analysis and substantial evidence before determining impacts to be insignificant).

[65] Pub. Resources Code, § 21100(b).

identified in the EIR."[66] "[T]he CEQA process demands that mitigation measures timely be set forth, the environmental information be complete and relevant, and that environmental decisions be made in an accountable arena."[67]

These requirements ensure that members of the public and interested agencies will have an opportunity to review and comment on significant impacts and proposed mitigation and identify any shortcomings. This public and agency review has been called "the strongest assurance of the adequacy of the EIR."[68]

CEQA recognizes that drafting an EIR requires research and information gathering. For example, in *Mountain Lion Coalition v. Fish & Game Commission* (1989) 214 Cal.App.3d 1043, the trial court ordered the defendant Fish & Game Commission to conduct research for an EIR on hunting of mountain lions. The court required the agency to "include data generated from meaningful research," to support its analysis with "references to specific scientific and empirical evidence," to analyze the "potential of repeated hunting to cause genetic isolation, genetic depression, and damage to the social structure of individual populations and the statewide population," and to "develop more specific information on the impacts resulting from the loss of even a few individual lions on those lions' social

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[66] 14 Cal. Code Regs., § 15126.4(a)(1)(A).

[67] *Oro Fino Gold Mining Corporation v. County of El Dorado* (1990) 225 Cal.App.3d 872, 885.

[68] *Sundstrom v. Mendocino County* (1988) 202 Cal.App.3d 296, 308.

groups."[69] The EIR, which failed to provide this information, was held to be inadequate.

An analysis of the Project's impacts cannot be based on conclusory assumptions, opinion, and factual assertions that lack any foundation or evidentiary basis. CEQA requires that conclusions about impacts be supported by substantial evidence in the record.[70] Therefore, an analysis must present some explanation to supply the logical step between its conclusions and the facts in the record.[71] Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.[72] "The evidence considered must be reasonable, credible, and of solid value. . . ."[73]

This requirement also applies to expert opinions. Expert opinion does not constitute substantial evidence when it is "based on speculation and conjecture, and accordingly…not supported by substantial evidence in light of the whole record."[74] It does not include "argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous…" Additionally, "opinion testimony of expert witnesses does not

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[69] *Id.* at 1047-1048.

[70] Pub. Resources Code, § 21081.5; CEQA Guidelines, § 15091(b).

[71] *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506; See also CEQA Guidelines, §15091.

[72] Pub. Resources Code, § 21082.2(c).

[73] *Newman v. State Personnel Board* (1992) 10 Cal.App.4th 41, 47.

[74] *Coastal Southwest Dev. Corp. v. California Coastal Zone Conservation Commission* (1976) 55 Cal.App.3d 525, 532.

constitute substantial evidence when it is based upon conclusions or assumptions not supported by evidence in the record."[75]

CURE requested information supporting PSI's experts' opinions in order to evaluate PSI's conclusions and the conclusions that will be reached in the forthcoming RSA. Without the information, the RSA may repeat unsupported and inaccurate statements – and the public would be unable to comment on the validity of its conclusions. The issue is not whether an analysis ***can*** be based on estimates and assumptions, but whether those estimates and assumption are speculative, pure conjecture, lack any factual basis, or are contrary to the evidence in the record. Without the information regarding the underlying basis for conclusions, the actual scope of a particular impact may be unrecognized or underestimated and a mitigation measure may not adequately mitigate a significant impact.

Allowing discovery to obtain supporting information is good policy, is consistent with existing policy, and is consistent with CEQA's underlying principles. Without disclosure of the underlying evidentiary support and the critical analytical details, CURE and other members of the public would be denied an opportunity to meaningfully consider and submit testimony regarding the RSA.

Allowing discovery after the SA/DEIS is released may enable the parties to resolve issues before the RSA is released. It may also provide the

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[75] *Hongsathavij v. Queen of Angels/Hollywood Presbyterian Med. Ctr.* (1998) 62 Cal.App.4th 1123, 1137.

parties the opportunity to resolve issues before testimony and hearings. Thus, allowing discovery at this time is administratively efficient and better serves the public interest.

CURE's data requests are consistent with these legal principles. As set forth in the attached list of data requests (Exhibit 1), the information requested by CURE relates to the baseline for environmental review, the Project's direct, indirect, and cumulative environmental impacts, and mitigation measures and Project alternatives: all subjects that must be evaluated under CEQA. Thus, providing the information requested by CURE is necessary so that the Commission has all of the information it needs to make an informed decision and provide an adequate environmental document.

2. Responses To CURE's Data Requests are Necessary for The Commission To Comply With the Warren-Alquist Act

The Warren-Alquist Act requires that the Commission expressly determine the Project's conformity with other laws, ordinances, regulations, and standards ("LORS").[76] Thus, any information necessary to determine whether a proposed facility will or will not conform to applicable LORS is not only "relevant to the proceeding," but manifestly necessary to the Commission's decision on the AFC. For example, in this case, the Project must comply with the California Endangered Species Act, the federal

[76] Pub. Resources Code, §§ 25523(d)(1), 25525.

Endangered Species Act, Fish and Game Code section 1600, among numerous other statutes.

Without the information requested in CURE's data requests, the Commission cannot reasonably find that the Project's impacts to special-status species and jurisdictional waters have been adequately analyzed and mitigated to less-than-significant levels. For these reasons, the Commission should order PSI to disclose the information.

C. CURE's Data Requests are Not Unduly Burdensome, Untimely, or Intended to Cause Delay.

1. Providing responses to CURE's data requests is not unduly burdensome.

While responding to some of CURE's data requests may impose some burden, the burden is not undue, considering the importance of the requested information and its conspicuous absence in the SA/DEIS and other materials in the record. Because CURE's data requests concern the environmental baseline for measuring Project impacts, the severity of direct, indirect, and cumulative impacts, and the feasibility of mitigating or avoiding the Project's impacts, PSI must provide the requested information to the Commission in these proceedings, prior to any decision to certify the Project.

The information sought should be reasonably available to PSI. Furthermore, PSI's argument that providing the requested information is "unduly burdensome" is tantamount to an admission that PSI failed to perform the analysis required by Commission regulations. An application for certification must provide "a regional overview and discussion of terrestrial

and aquatic biological resources, with a particular attention to sensitive biological resources within ten (10) miles of the project;"[77] "[a] discussion of the biological resources at the proposed project site . . . [which] shall address the distribution of vegetation community types;"[78] and "a description and results of all field studies and seasonal surveys used to provide biological baselines information about the project site."[79]

PSI's objection that CURE's request is "unduly burdensome" is meritless. PSI has only recently conducted surveys for biological resources and jurisdictional waters along the transmission lines, and no impact analysis concerning these resources has been conducted, despite long-standing knowledge that the transmission route would be changed. PSI's recent factual clarifications and revisions to the proposed Project have triggered the requirement for additional impact analysis and revision of mitigation measures. Thus, PSI has created much of the need for additional information and analysis.

Instead of balking at CURE's data requests, PSI can view the requests as an opportunity to present CURE, Commission staff, and the concerned public with information and analysis that is missing from the SA/DEIS. Because CURE's data requests provide a roadmap for this missing information, CURE has actually reduced the burden on PSI to provide this

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[77] Cal. Code Regs., tit. 20, art. 6, Appendix B (g)(13)(A).

[78] *Id*. at Appendix B (g)(13)(C) (emphasis added).

[79] *Id*. at Appendix B (g)(13)(D).

important information. In other words, by submitting its data requests, CURE has helped solve a problem created by PSI. The information CURE seeks is necessary, in PSI's possession and control, and should have been produced without embroiling the Committee in a discovery dispute.

PSI asserts that, notwithstanding its objections, it "could nevertheless provide responses to the [enumerated] Requests without causing undue burden and will do so as a showing of good faith."[80] By virtue of this statement, PSI admits that the information sought in the enumerated data requests is reasonably available to PSI, and that at least some of the responsive information is relevant and reasonably necessary for the Commission to make a decision on the application. Further, PSI already has at least some of the requested information, as evidenced by its reliance on the data for its forthcoming "Biological Resources Technical Report revisions to be filed on May 28, 2010."[81]

2. CURE's data requests are timely in the context of this proceeding.

CURE drafted its data requests after reviewing: (1) Staff's data requests and PSI's responses thereto, (2) the SA/DEIS published in March 2010, (3) the protocol for additional surveys required for the Project, submitted by PSI in late April 2010, and the preliminary results of such surveys, dated May 7, 2010, and (4) PSI's comments on the SA/DEIS and information regarding recent modifications to the Project, dated May 6, 2010,

[80] *See* Exhibit 2, PSI Objections, p. 5.

[81] *See Ibid.* PSI has not filed the Biological Resources Technical Report revisions, but has filed select responses to CURE's data requests. See Exhibit 3.

and after participating in several public workshops regarding the Project. It was only after thorough review of the SA/DEIS and the limited information made available after release of the SA/DEIS and after active participation in the public workshops that CURE was able to identify necessary and relevant information and analysis that is missing from the SA/DEIS but required to satisfy the Commission's obligations under CEQA, the Warren-Alquist Act, and the Commission's own regulations. CURE submitted its data requests as soon as possible following its review of information that has only recently been made available.

CURE initially set forth good cause with the data requests submitted to PSI on May 14, 2010.[82] Generally, CURE explained how, in the context of this case, the data requests are timely. CURE's letter submitted with the data requests explained that CURE requested information to (1) assess issues not addressed in PSI's responses to Staff's data requests, the SA/DEIS, PSI's subsequent comments on the SA/DEIS and PSI's other submissions and (2) to follow-up on issues raised at the public workshops conducted in April and May 2010.

As a policy matter, CURE is proceeding exactly as an intervenor should. CURE has been evaluating the Project since submittal of the AFC. Staff and the agencies have done a good job investigating controversial aspects of the Project that raise not only important legal and policy issues,

[82] *See* Exhibit 1, Cover letter to PSI, pp. 1-2. The relevancy of each request is also thoroughly laid out in CURE's requests. *See generally Id.* [Background discussions preceding DRs].

but real and significant environmental impacts. CURE has appropriately not repeated Staff's requests, but has continued to review the assumptions, evaluate the analysis, and review PSI's responses to Staff's data requests. Following those responses, the issues have narrowed and some new issues have arisen, thus focusing the requests for information submitted by CURE.

PSI argues that CURE does not have good cause since CURE did not submit data requests earlier in this proceeding.[83] This argument is absurd. PSI suggests that CURE should have submitted, at an earlier time, before the release of the SA/DEIS and prior to or concurrent with workshops, general data requests addressing similar issues as Staff only to preserve CURE's ability to show good cause for follow-up requests. However, inherent in the discovery process is the fact that data requests are often initially broader requests for information that are later followed-up with more specific requests, as the issues narrow down based on the responses. PSI's policy that CURE should have participated earlier in this case is not consistent with the Energy Commission's policy discouraging the same data requests from multiple parties. In addition, the data requests were technically timely because CURE's submitted its data requests within 180 days of the date the AFC was deemed "data adequate."[84]

When PSI skirts an issue or otherwise fails to provide expected information in a data response, at a workshop, or in subsequent submittals

[83] *See* Exhibit 2, pp. 2-4.

[84] *See* Cal. Code Regs., tit. 20, art. 1, § 1716(e).

concerning, for example, the results of the Spring 2010 surveys, this is precisely the time when Staff or another party must request detailed responsive information. This is exactly what CURE has done. To find otherwise would compel CURE to repeat Staff's requests for information earlier in a proceeding only in an effort to preserve its rights as an intervenor.

The Commission has established a 180-day discovery period that would normally allow a party a right to submit discovery a few weeks after the Preliminary Staff Assessment ("PSA") is released in a proceeding that is on schedule. The timeline for proceedings is evidence of the Energy Commission's intent to normally allow discovery – as a matter of right – through and after release of a PSA and is proper for consideration of good cause in the context of a particular case. Inherent in the Commission's timeline is that discovery after release of the PSA would not prejudice an applicant, the Staff, or another party.

In this proceeding, CURE submitted its data requests to PSI approximately one month ago, after the release of the SA/DEIS, but well before the scheduled release of the RSA and the deadlines for submitting testimony. Had PSI answered CURE's data requests, the information would have been provided well before the release of the RSA and may have been incorporated into the RSA. PSI's argument that the data gathering phase of this proceeding is over contradicts its admission that it is freely exchanging

information with Staff. PSI's objections are a blatant attempt to delay providing information in order to make CURE's data requests appear closer in time to the release of the RSA. PSI's tactics should not be allowed.

First, the discovery phase of the proceeding is admittedly not complete. Both PSI and Staff recognize that information continues to be exchanged.[85] Second, PSI is not *voluntarily* continuing to provide information to Staff; PSI is *compelled* to provide information requested by Staff. Under section 1704 of the Commission's regulations, PSI has the burden to provide information supporting its application.[86] Third, PSI ignores the fact that Staff's data gathering is still ongoing because there are numerous unresolved issues. Staff and CURE requested additional information on issues that either remain unresolved or arose in light of new facts provided in responses to earlier data requests and discussions at workshops. Unresolved issues involve the impacts associated with the newly identified transmission line corridor, the proposal to include a concrete batch plant at the Project site, the design of newly proposed evaporation ponds and impacts associated with such ponds, the redesign of Project drainage facilities, and quantification of impacts and mitigation for impacts to biological resources, among others.

In sum, CURE's data requests are timely in the context of this proceeding. CURE's requests came at a time that, had PSI provided

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[85] In fact, on June 14, 2010, the Commission issued an order cancelling the Prehearing Conference and Evidentiary Hearing in this proceeding in order to "[provide the parties additional time to analyze proposed changes to the project which may be forthcoming."

[86] Cal. Code Regs., tit. 20, art. 1, § 1704(b)(2); see also *Id.* at Appendix B.

responses, the information would have been available before release of the RSA.

3. By submitting its data requests, CURE does not intend to cause delay.

PSI boldly accuses CURE of deliberately "waiting until the 11th hour to file data requests for the sole purpose of causing delay."[87] PSI also suggests that CURE will attempt to move the evidentiary hearings to accommodate "last minute 'data gathering' strategies."[88] As discussed above, these accusations are unfounded and do not reflect PSI's recent submissions in these proceedings. CURE's purpose is not to cause delay. Rather, by submitting data requests, CURE intends to elicit information that will enable thorough and responsible analysis of all Project impacts and the formulation of effective mitigation measures and alternatives.

III. CONCLUSION

All of the information requested by CURE is relevant and reasonably necessary to make a decision on PSI's AFC. The information is critical to a basic understanding of the environmental baseline that is required to enable an analysis of the Project's impacts. The information is also critical to determining impacts and the adequacy of mitigation measures under CEQA. In addition, much of the information is critical to findings that the Commission must make under the Warren-Alquist Act. Without the requested information, the public, the parties, and the Commission will have

[87] *See* Exhibit 2, PSI Objections, p.3.

[88] *Ibid.*

insufficient information to assess the impacts of PSI's proposed Project. CURE therefore respectfully requests that the Commission issue an order compelling PSI to respond to all 195 data requests in set one.

Dated: June 17, 2010 Respectfully submitted,

_____/s/_____

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EXHIBIT 1

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May 14, 2010

California Energy Commission
Attn: Docket No. 09AFC7
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

Re: 09-AFC-7 Palen Solar Power Project

Dear Docket Clerk:

Enclosed are an original and one copy of CALIFORNIA UNIONS FOR RELIABLE ENERGY DATA REQUESTS, SET ONE. Please process the document and provide us with a conformed copy in the envelope enclosed.

Thank you.

Sincerely,

/s/

Jason W. Holder

JWH:bh
Enclosures

2357-027a

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Via Electronic Service

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Re: Palen Solar Power Project (09-AFC-7)
CURE Data Requests, Set One (Nos. 1-195)

Dear Ms. Harron and Mr. Galati:

California Unions for Reliable Energy (CURE) submits this first set of data requests to Palen Solar I, LLC for the Palen Solar Power Project (PSPP or Project) pursuant to Title 20, section 1716(b), of the California Code of Regulations. CURE requests this information (1) to assess issues not addressed in Palen Solar I, LLP's responses to California Energy Commission staff's data requests, the Staff Assessment/Draft Environmental Impact Statement (SA/DEIS), Applicant's initial comments regarding the SA/DEIS (and attachments thereto), or the preliminary results of the Spring 2010 surveys, and (2) to follow-up on issues raised at the April 16, 2010, April 27-28, 2010, and May 7, 2010 workshops.

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.

CURE reserves the right to submit additional data requests and/or comments on any other topic that requires further information. Our reservation is based in part on matters beyond our control; principally, in response to the California Energy Commission staff's requests, Palen Solar I, LLP continues to file new information regarding the design of the project, potentially significant impacts in several resource areas, and the manner in which Project impacts will be mitigated.

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 statement of reasons, to Commissioners Douglas and Weisenmiller and to CURE within 20 days.

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

Sincerely,

/s/

Jason W. Holder

JWH:bh
Enclosure

cc: Docket (09-AFC-7)
Proof of Service List (09-AFC-7)

STATE OF CALIFORNIA
California Energy Commission

In the Matter of: The Application for Certification for the Palen Solar Power Project	Docket No. 09-AFC-7

CALIFORNIA UNIONS FOR RELIABLE ENERGY DATA REQUESTS, SET ONE

May 14, 2010

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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 as soon as possible, but no later than June 14, 2010, 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.

Palen Solar Power Project

CURE Data Requests Set #1

BIOLOGICAL RESOURCES

Background: GENERAL WILDLIFE SURVEYS

An accurate description of the environmental baseline is necessary for an adequate analysis of potentially significant impacts.[1] The Application for Certification ("AFC") states that vegetation mapping was conducted within the Biological Resources Survey Area ("BRSA") between February 11 and April 21, 2009, and that rare plant surveys were conducted between February 11 and April 21, 2009.[2] The Biological Resources Technical Report ("BRTR") states that "vegetation mapping was conducted from strategic vantage points whenever direct access was not feasible."[3]

The AFC further states that the applicant conducted general wildlife surveys concurrent with protocol wildlife surveys and vegetation mapping. [4]

Palen Solar I, Inc. (the "Applicant") recently submitted a survey protocol document for Spring 2010 surveys.[5] Again, these protocol states that general wildlife surveys were conducted along with protocol wildlife surveys and vegetation mapping.[6]

Energy Commission Staff found that botanical survey results for the Imperial Valley Solar Project (formerly Solar Two) were not adequate to assess presence or absence of plant species within the project area because the plant surveys were conducted during wildlife surveys when the focus and methods may be different.[7]

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1 *See, e.g.*, *Communities for a Better Environment v. South Coast Air Quality Management District* (March 15, 2010) 48 Cal.4th 310, 316.

2 AFC, p.5.3-13 – 5.13-14.

3 BRTR, p. 24.

4 *Id*.

5 See Survey Approach and Methodologies for the Solar Millennium Parabolic Trough Palen Solar Power Project, April 2010 ("2010 Survey Protocol").

6 See *Id.* at p. 13.

7 Staff Assessment and Draft Environmental Impact Statement, SES Solar Two Project, California Energy Commission Docket No. 08-AFC-5, pp. C.2-3, C.2-20.

The 2010 Survey Protocol states that burrow mapping for Western Burrowing owl ("WBO") will be conducted "mostly" during focused surveys for the Desert tortoise ("DT").[8] The proposed protocol also states that surveys for a number of sensitive species will be conducted during the surveys for DT, WBO, and during the vegetation mapping and jurisdictional waters delineation process. Biologists conducting surveys for the DT and WBO and performing other functions could be distracted by searches for other species, and vice versa.

Data Requests:

1. Please justify the validity of the Applicant's approach to conducting general wildlife surveys concurrently with protocol surveys.

2. Please identify and provide the qualifications for those persons who conducted general wildlife surveys in 2009 and those who have or will conduct such surveys in 2010.

3. Please provide an update for the requested information (i.e. identify and provide qualifications for those persons) concerning the 2010 surveys when such surveys have been completed and are considered final.

4. Please indicate on the vegetation map which portions of the map were drawn from vantage points and which were drawn from actual site visits.

5. Please provide a map indicating which portions of the site were not visited based on the Applicant's statement that there was no direct access.

6. Please explain why focused surveys are not proposed for the species listed on page 13 of the proposed 2010 Survey Protocol document.

Background: BIOLOGICAL RESOURCE SURVEYS ALONG NEW TRANSMISSION LINE CORRIDOR AND PREVIOUSLY UNSURVEYED PORTIONS OF PROJECT DISTURBANCE AREA

Biological resources surveys and wetland delineations were conducted along the originally proposed transmission line route extending south from the Palen Solar Power Project ("PSPP") site to a proposed substation.: However, no surveys or delineations were conducted along the transmission line route that extends to the west of the PSPP site prior to preparation of the

[8] 2010 Survey Protocol, p. 4.

Staff Assessment/Draft Environmental Impact Statement ("SA/DEIS").[9] The SA/DEIS states that the latter transmission line (extending west to the new Red Bluff substation) will be used to connect the PSPP to the Southern California Edison ("SCE") transmission system.[10] Information regarding existing resources along the now proposed transmission line route to the west of the PSPP site must be provided to the Commission in order for Staff to conduct its analysis of potentially significant impacts as required by the Commission's regulations.

The proposed 2010 Survey Protocol document is dated April 10, 2010. April is generally too late in the spring to begin valid rare plant surveys. The proposed protocol suggests, however, that some surveys were begun in February and March 2010.

The 2010 Survey Protocol states that biological resource surveys will be conducted along the transmission line corridor ROW and buffer areas and also in previously unsurveyed portions of the PSPP disturbance area. The 2010 Survey Protocol does not provide a list of the biologists that will participate in field surveys, nor does it provide information regarding the biologists responsible for conducting each of the various surveys, and the qualifications of those biologists. Furthermore, the 2010 Survey Protocol lacks information on the level of effort devoted to each survey task. Information on the man-hours dedicated to each survey is necessary to evaluate whether the Applicant adhered to the survey protocols, and thus if the description of existing biological resource conditions is accurate.[11]

Data Requests:

7. Please provide the person-hours spent surveying, by date and biologist, for each of the following survey efforts:

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[9] *See*, e.g., Applicant's Responses to CEC Data Requests Set 1, Vol. A, Biological Resources, (January 6, 2010), Figures: DR-BIO-60-2, DR-BIO-63-1, DR-BIO-64-1, DR-BIO-91, DR-BIO-98-2, DR-BIO-98-3, DR-BIO-98-4, DR-BIO-101.

[10] *See* SA/DEIS, p. B.1-11; *see also Id.* at pp. C.11-1, C.11-4; *see also* Updated Plan of Development, dated July 20, 2009, p. 35 [describing 12-mile gen tie line].

[11] 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; US Fish and Wildlife Service. 1992. Field survey protocol for any non-federal action that may occur within the range of the desert tortoise. Available from: Fish and Wildlife Service, Ventura (CA); 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.

a. vegetation community;

b. Desert tortoise ("DT");

c. Western Burrowing owl ("WBO") Phase II;

d. WBO Phase III;

e. Mojave fringe-toed lizard ("MFTL");

f. Other special-status wildlife;

g. avian point count surveys;

h. cacti sampling; and

i. delineation of wetlands and jurisdictional waters.

8. Please confirm whether the Spring 2010 surveys along the selected Transmission Line Route and PSPP disturbance areas have been completed.[12]

9. If Spring 2010 surveys have been completed, please describe the outcome of these surveys and provide the information requested in Data Requests 2, 3, and 4 above for these surveys.

10. If not complete, please describe what steps remain to complete the surveys and provide the requested information concerning ongoing and future surveys when such surveys are completed.

11. Please explain why surveys were begun before the proposed survey protocol was approved by agencies with jurisdiction over species and their obligate habitats. If the proposed survey protocol received prior approval, please identify the agencies and officials who provided such approvals.

Background: SCOPE OF ORIGINAL AND SPRING 2010 BIOLOGICAL RESOURCE SURVEYS

The SA/DEIS indicates the California Department of Fish and Game ("CDFG") and the U.S. Fish and Wildlife Service ("USFWS") representatives were consulted regarding the scope and type of surveys conducted during

[12] On May 11, 2010, we received a letter from the Applicant's consultant transmitting the Preliminary Results from the Spring 2010 surveys. These preliminary results specifically pertain to the DT, rare plants, and jurisdictional waters, they do not address the other species identified in the 2010 Survey Protocol.

each of the survey years.[13] However, the SA/DEIS does not discuss the results of these consultations, including the individuals consulted and whether all agency recommendations were implemented.

The 2010 Survey Protocol states that "[a]ll protocols to be implemented in 2010, and described herein, are consistent with 2009 survey protocols, with the exception of a few modifications to the DT protocol, rare plant surveys, and jurisdictional waters surveys."[14] The 2010 Survey Protocol also states that Spring 2010 surveys for species such as DT and Western burrowing owl ("WBO") and for vegetation community mapping and rare plants will only be conducted in areas "for which surveys were not previously conducted in 2009."[15] The maps attached to the 2010 Survey Protocol clearly indicate that 2010 surveys will bypass 2009 surveyed areas.[16] The preliminary results of the Spring 2010 surveys suggest that only previously unsurveyed areas were surveyed.[17]

By not surveying previously surveyed areas, the Applicant's consultant may fail to observe DT or WBO now within the PSPP disturbance area. Movements on and off the project site by DT, WBO and other species can be rapid, and can occur within the 12 months between surveys (this is particularly true with respect to the WBO).

Data Requests

12. Please list the individuals from the CDFG and USFWS that provided survey guidance for both the 2009 and 2010 survey protocols.

13. Please provide copies of any written correspondence between the Applicant and the agencies regarding the recommended focal species (or taxa) and survey methods.

14. Please document agency approval to forego each of the following survey efforts:

    a. Surveys in areas that were previously surveyed in 2009, and

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[13] SA/DEIS, p. C.2-3.

[14] 2010 Survey Protocol, p. 1.

[15] *Id.* at p. 3.

[16] 2010 Survey Protocol, Figures P-1 through P-4.

[17] See figures attached to AECOM letter dated May 7, 2010 reporting preliminary results of Spring 2010 surveys.

b. Standard DT survey protocol, including Zone of Influence survey requirements and the requirement to conduct surveys when DT are most active (April through May).

Background: SPECIAL-STATUS PLANT SURVEYS

The AFC and the BRTR indicate botanical surveys have not yet been conducted in the areas that will be impacted by the substation and the transmission line corridor.[18] However, CEQA requires an accurate description of the environmental baseline in order to ensure an adequate analysis of potentially significant impacts.[19]

In response to DR-BIO-101, the applicant asserted that "[t]he transmission line Disturbance Area had previously been proposed and had already been surveyed along with its associated 1,000 foot buffer during the spring 2009 surveys."[20] The applicant, however, was referring to the transmission line to the proposed substation to the south, not the transmission line to the proposed Red Bluff substation.[21]

The BRTR lists fifteen special status plant species as possibly occurring within the Project's disturbance area.[22] The survey transects were "from 10 to 100 feet apart."[23] The 2010 Survey Protocol suggests even wider transects of 50 to 100 feet for some plant species and 100 to 200 feet for other vegetation types, depending on topographic complexity and visibility.

The BRTR states that the spring 2009 survey adhered to the protocols established by the CDFG and USFWS. However, adherence to these protocols require:

(a) use of systematic field techniques in all habitats of the site to ensure a thorough coverage of potential impact areas;

(b) a sufficient number of visits spaced throughout the growing season to accurately determine what plants exist on the site;

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[18] AFC, p. 5.3-12; BRTR, p. 20.

[19] *See, e.g.*, *Communities for a Better Environment v. South Coast Air Quality Management District* (March 15, 2010) 48 Cal.4th 310, 316.

[20] See Responses to CEC Data Requests, Set 1, Vol. A, p. BIO-82.

[21] *See* Figure DR-BIO-101.

[22] BRTR, pp. 16, 19.

[23] *Id.* at p. 24.

(c) identification of plants to the taxonomic level necessary to determine whether or not they are rare, threatened or endangered;

(d) a detailed description of survey methodology;

(e) total person-hours spent on surveys;

(f) a description of reference site(s) visited and phenological development of rare, threatened, or endangered plant(s); and,

(g) references cited, persons contacted, herbaria visited, and the location of voucher specimens.[24]

The BRTR, SA/DEIS and accompanying survey reports lack these elements. The 2010 Survey Protocol also lacks these elements.

The 2010 Survey Protocol states rare plant surveys will not include the endangered Coachella Valley Milk vetch.[25] The decision to forego focused surveys for this plant was apparently based entirely on a taxonomic conclusion based upon findings by Applicant's consultant Andrew Sanders.

The 2010 Survey Protocol states voucher specimens of rare plants are to be collected if it is determined that such collections will not jeopardize the survival of the species.[26]

Data Requests

15. Please indicate whether all habitats and impact areas, including all transmission line corridors currently under consideration and adjacent areas were surveyed for special-status plant species.

16. Please provide a map of the roads that were driven to conduct vegetation surveys.

17. Please discuss how driving and meandering transects (at inconsistent spacing) constitute systematic field techniques.

18. Please explain how rare plant species, many of which are less than 12 inches in height, could be located at the proposed survey

[24] 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.

[25] 2010 Survey Protocol, p. 8.

[26] *Id.* at p. 9.

distances of 50 or 100 feet, in a landscape covered with shrubs and bisected by small and large washes.

19. Please provide information on the specific locations at which protocol rare plant surveys were conducted, by month and year. In your response, please identify the "key vantage points" referenced in the BRTR (p. 24), and specify the areas within the assessment area that were surveyed more than once.

20. For each botanical survey performed (i.e., spring 2009 and any other surveys performed), please provide the following, as required by the CNPS and CDFG protocols:

    a. the total number of hours each surveyor spent surveying in the field on each date.

    b. a description of the reference site(s) visited and phenological development of the target special-status plants, with an assessment of any conditions differing from the Project site that may affect their identification.

21. Please identify the local experts consulted and the herbaria that were visited for information on special-status plant species occurrence within the Project area and vicinity.

22. Please provide a resume for Andrew Sanders including degrees earned and his peer-reviewed publications on plant taxonomy with specific reference to his formal research on the Coachella Valley Milk vetch.

23. Please explain whether genetic work will be performed to conclusively resolve the question on the taxonomy of the Coachella Valley Milk vetch and any similar species found on-site during surveys.

24. Please explain whether any Coachella Valley Milk vetch were observed on the PSPP disturbance area or buffer area during the Spring 2010 surveys.

25. Please provide the mean rainfall and temperature data obtained by the weather station(s) nearest the Project site for 2007, 2008, and 2009, and Spring 2010.

26. Please identify the expert or experts who will make the determination concerning whether collecting voucher specimens

will jeopardize the survival of the species. Please explain the criteria such expert(s) will use to make this determination.

Background: SPECIAL-STATUS SPECIES ASSUMED TO BE ABSENT FROM THE SITE

The Northern and Eastern Colorado Desert Coordinated Management ("NECO") Plan includes maps that suggest the Project area provides habitat for the California leaf-nosed bat, pallid bat, and Colorado Valley woodrat.[27] It does not appear the Applicant conducted the specialized surveys necessary to identify the presence of any of these species, nor does the AFC or SA/DEIS sufficiently justify that their habitat is absent in the survey area.

California leaf-nosed bats occur in lowland desert habitat in California in close proximity to desert wash vegetation.[28] They forage primarily in desert washes, generally within one to three miles of the roost. The primary factors responsible for their population declines are roost disturbance, the closure of mines, and the destruction of foraging habitat.

Pallid bats occur in a number of habitats, including coniferous forests, non-coniferous woodlands, brushy terrain, rocky canyons, open farmland, and deserts.[29] They roost primarily in rock crevices, but commonly in old buildings, under bridges, in caves and old mines, and in hollow trees.

Colorado Valley woodrats are found in a variety of habitats including low desert, pinyon-juniper woodlands, and desert-transition chaparral.[30] They prefer a mixture of brushy cover and rocky soil, such as is found in desert canyons, washes, and mountains. Areas such as washes where organic debris gathers are particularly attractive. They are often found where cactus and mesquite occur. The most important threats are the loss of habitat and reduction in habitat quality by removal of nest material such as cactus and woodland.

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[27] BLM and CDFG. 2002. Final Environmental Impact Statement. Proposed Northern & Eastern Colorado Desert Coordinated Management Plan. Bureau of Land Management, California Desert, Riverside, CA.

[28] BLM and CDFG. 2002. Final Environmental Impact Statement. Proposed Northern & Eastern Colorado Desert Coordinated Management Plan. Bureau of Land Management, California Desert, Riverside, CA.

[29] *Id.*

[30] *Id.*

Data Requests

27. Please provide information on the occurrence of bat roosts in the vicinity of the Project area and indicate whether the BLM was solicited for information on the occurrence of known roost sites.

28. Please provide the methods that were used to survey for bats at the Project site.

29. Please provide the methods that were used to survey for woodrats at the Project site, and indicate the number of middens that were detected, if any.

30. Please provide the criteria that were used to distinguish a desert woodrat midden from a Colorado Valley woodrat midden.

Background: INADEQUACY OF DATA

Issue No. 1: Biological Resource Surveys and Wetland Delineation for Transmission Line Corridor.

At the time the 2009 biological resource surveys were conducted, the Applicant had not selected its now proposed transmission corridor to the west of the PSPP site.[31] Therefore, no surveys for listed and sensitive species were conducted in the corridor extending west from the Project site.

The BRTR states: "The surveys of the Project transmission line route that will occur when the route is finalized will include the transmission right-of-way plus 500-foot buffers on either side of the ROW."[32] Federal 1992 protocols for tortoise surveys require transects be walked at intervals of 100, 300, 600, 1200 and 2400 feet beyond the transmission corridor right-of-way.[33] However, USFWS and BLM officials apparently agreed that it was not necessary to follow these protocols when conducting surveys within the originally defined disturbance area.[34]

Prior to the preparation of the SA/DEIS, a wetland delineation was prepared for the Project site, but not for transmission line corridor to the

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[31] BRTR, p. 4 and Figure 2.

[32] BRTR, p. 20.

[33] Attachment DR-BIO-55-C-1: U.S. Fish and Wildlife Service. 1992. Field survey protocol for any non-federal action that may occur within the range of the desert tortoise. USFWS, Ventura, California, p. 6 and Figures 1 and 2.

[34] BRTR, p. 34.

proposed Red Bluff substation.[35] The 2010 Survey Protocol describes the wetland delineation that was performed in April 2010 for the PSPP disturbance areas, including the transmission line corridor. This delineation only surveyed a 250-foot buffer from the transmission line ROW.[36]

Data Request:

31. Please provide complete biological resource surveys and analysis reports of the transmission line corridor addressing all sensitive species.

32. Please describe the design of the road that will be built along the transmission line corridor. Please identify the associated potential impacts to drainage and habitat connectivity.

33. Please explain why desert tortoise field surveys will not be followed beyond the 500-foot buffer surrounding the transmission line corridor.

34. Please explain why the 2010 jurisdictional waters delineation included a 250-foot buffer, rather than a more extensive buffer especially for areas downstream from the disturbance area.

35. For the waters of the state that will be disturbed by the transmission line corridor, please provide the total acreage of the immediate watershed.

36. For the waters of the state that will be disturbed by the transmission line corridor, please provide the total acreage of the floodplain for the state waters.

Issue No. 2: Impacts of Groundwater Pumping on Local Aquifer and Surface Waters.

The power-generating facility will consume more than 300-acre feet per year of groundwater.[37] This drawdown will likely result in the lowering of groundwater level over time. Reduction of groundwater level can negatively impact natural springs and waterholes in the region such as the one at Corn Springs. The pumping of water out of an underground aquifer has been shown to reduce the flow of natural springs many miles from the

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[35] *See* Notification of Lake or Streambed Alteration ("Notification"), dated November 25, 2009, § 10, Description of Project [identifies originally proposed transmission line extending south from Project site]; *See* Attachment 5 to Notification, p. v, Figures 2, 3, 4, 6.

[36] 2010 Survey Protocol, p. 10.

[37] *Id.* at p. 10.

pumping location.[38] Bighorn sheep and other sensitive species depend upon springs for drinking water particularly in summer when moist food resources are unavailable.[39]

Reduction of groundwater level can also negatively impact water-dependant plant species that depend on a water table within reach of the root zone. The SA/DEIS identified Mesquite trees in the area north of the playa of Palen Dry Lake.[40] Such trees are "thought to be associated with 'shallow' groundwater."[41]

In comments regarding the SA/DEIS analysis concerning groundwater impacts to biological resources, the Applicant asserts that reduced groundwater levels will not impact water-dependant species including the mesquite trees identified in the SA/DEIS.[42]

Data Request:

37. Please describe how the pumping of groundwater from beneath the project site will impact the regional aquifer.

38. Please demonstrate that drawdown will not adversely impact area springs or the mesquite trees observed to the north of the PSPP site. Please provide site-specific data in support of your response.

39. Please provide such substantiation from a peer reviewed journal for the assertions concerning the impacts to mesquite trees from lowering the groundwater table, as these conclusions were solely derived through personal communications.

40. Please identify the distance of the mesquite trees from the PSPP site.

41. Please quantify the projected amount of aquifer drawdown in the vicinity of the mesquite trees observed to the north of the PSPP

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[38] Pavlik, B. M. 2008. *The California Deserts*. University of California Press, Berkeley, California.

[39] Toweill, D. E. 2003. *Desert Bighorn Sheep*. Nature Trails Press, Palm Springs, California.

[40] SA/DEIS, p. C.9-20.

[41] *Ibid.*

[42] *See* Applicant's Initial Comments on the Biological Resources Section of the SA/DEIS, dated May 12, 2010, pp. 6-7. We have had limited time to review and analyze Applicant's comments. Our comments regarding Applicant's comments should therefore not be interpreted as being comprehensive or final: we reserve the right to submit supplemental comments regarding Applicant's comments following a more thorough review.

site, taking into consideration the increased water demand for construction.

42. Please address whether aquifer drawdown in the northern portion of Palen Dry Lake would impact the viability of mesquite seedlings and saplings.

Issue No. 3: Origin of Desert Tortoise ("DT") Bone Fragments on PSPP Site.

The BRTR states that "[t]he only Desert Tortoise sign observed within this area (*the Chuckwalla Desert Tortoise Critical Habitat Unit*) were bone fragments, which were probably washed down from the adjacent mountains."[43] No explanation for this conclusion was found within the BRTR. The SA/DEIS does not provide any explanation for this assertion.[44]

Data Request:

43. Please describe how it was determined that the tortoise bone fragments were washed down from the adjacent mountains.

Issue No. 4: Asserted Deficiencies in DT Critical Habitat.

The BRTR asserts that the "Desert Tortoise Chuckwalla Critical Habitat unit does not meet all seven principles required in the Desert Wildlife Management Area."[45] Reference is made to "fragmentation, high edge to area ratio, limited functional connectivity, and high human disturbance in the Chuckwalla Habitat Unit north of Interstate 10" as the reasons why the CHU does not meet the criteria.

Data Request:

44. Please provide supporting descriptions, diagrams and/or photographs demonstrating the Applicant's reference to fragmentation in the Chuckwalla Habitat Unit north of Interstate 10.

45. Please provide supporting descriptions, diagrams and/or photographs demonstrating the Applicant's reference to high edge to area ratio in the Chuckwalla Habitat Unit north of Interstate 10.

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[43] BRTR, p. 13.

[44] *See* SA/DEIS, p. C.2-35.

[45] BRTR, p. 13.

46. Please provide supporting descriptions, diagrams and/or photographs demonstrating the Applicant's reference to limited functional connectivity in the Chuckwalla Habitat Unit north of Interstate 10.

47. Please provide supporting descriptions, diagrams and/or photographs demonstrating the Applicant's reference to high human disturbance in the Chuckwalla Habitat Unit north of Interstate 10.

Issue No. 5: Surveys for Golden Eagle.

The golden eagle (*Aquila chrysaetos*) is a fully protected species in California[46] (California Department of Fish & Game, 2010) and its habitat is protected under the federal Bald and Golden Eagle Protection Act (U.S. Fish & Wildlife Service, 2010). The SA/DEIS states that surveys for golden eagle nest sites and forage habitat value have not been conducted.[47]

The golden eagle is known to occur within desert regions of California.[48] Several golden eagle prey species were recorded in the project site disturbance area including black-tailed jackrabbit, desert cottontail and ground squirrels.[49] In addition, suitable golden eagle nesting sites occur in the Chuckwalla Mountains less than 10 miles to the southeast and the Palen Mountains less than 10 miles to the northeast (Leuschner, personal communication).[50]

The 2010 Survey Protocol states that surveys will now be conducted for the golden eagle.[51] In comments regarding the SA/DEIS biological resources analysis, the Applicant urges Commission staff to change its conclusion regarding impacts to Golden Eagle foraging habitat.[52] The Applicant urges

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[46] California Department of Fish & Game. 2010. Fully Protected Animals. CDFG Website: http://www.dfg.ca.gov/wildlife/nongame/t_e_spp/fully_pro.html.

[47] SA/DEIS, p. C.2-88.

[48] Massey, W. W. 1998. *Guide to Birds of the Anza-Borrego Desert.* Anza-Borrego Desert Natural History Association, Borrego Springs, California; *see also* Miller, A. H. and R. C. Stebbins. 1964. *The Lives of Desert Animals in Joshua Tree National Monument*. University of California Press, Berkeley, California; *see also* Peterson, R. T. 2002. *Peterson Field Guide to Birds of North America.* Houghton Mifflin Company, New York, New York.

[49] BRTR, pp. 76-77.

[50] SA/DEIS, p. C.2-39.

[51] 2010 Survey Protocol, p. 13.

[52] *See* Applicant's Initial Comments on the Biological Resources Section of the SA/DEIS, dated May 12, 2010, p. 3.

staff to modify mitigation measures designed to address the loss of golden eagle foraging habitat, despite inconclusive evidence regarding these impacts.

Data Request:

48. Please provide the rational for not including the golden eagle as a special-status species with the potential for occurring within the project disturbance area.

49. Please provide the name(s) and qualifications of the individual(s) conducting the golden eagle surveys identified in the 2010 Survey Protocol.

50. Please explain the basis for the Applicant's argument that the PSPP site is not suitable foraging habitat for the golden eagle, despite the presence of golden eagle prey and the availability of suitable nesting sites within 10 miles of the PSPP site.

51. Please provide evidence that acquisition of DT compensation habitat will be sufficient to mitigate potentially significant impacts to golden eagle foraging habitat.

52. Please provide evidence that the function and value of DT compensation habitat is the equivalent of the function and value of golden eagle foraging habitat.

Background: IMPACT OF CONTAMINANTS ON PLANT AND ANIMAL RESOURCES

Plant and animal life can be harmed by the introduction of potentially toxic chemicals into the environment (Carson, 1962).[53] The BRTR indicates that a "dust suppression coating" is to be applied to large areas of the project site.[54] The SA/DEIR does not address the potential impacts to biological resources that may be caused by the dust suppression coating.

The Applicant's comments concerning the SA/DEIS state, for the first time in these proceedings, that four 4-acre bioremediation ponds will be part of the Project.[55] The potentially significant impacts on biological resources that may be caused by these ponds were not analyzed in the SA/DEIS. The Applicant has expressed the opinion that the addition of these evaporation

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[53] Carson, R. 1962. *Silent Spring*. Houghton Mifflin Company, Boston, Massuchusetts.

[54] BRTR, p. 4.

[55] *See* Attachment 1 to Applicant's Initial Comments on the SA/DEIS, Applicant Update to Staff Assessment Section B.1, pp. 7-8.

ponds will generally not change the results of the SA/DEIS impact analyses.[56] Modifications to the Raven Management Plan are proposed to address potential impacts, posed by the evaporation ponds, to avian species.[57]

Data Request

53. Please provide the chemical composition of the dust suppression coating.

54. Please provide all third-party studies showing the dust suppression coating is harmless to native plant and animal life.

55. Please provide information and analysis concerning the impacts to biological resources that the four newly proposed evaporation ponds may cause.

56. Please provide information regarding possible damage to the newly proposed evaporation ponds caused by floods.

57. Please provide the Applicant's plans for closure of evaporation ponds upon retirement of the generation facility.

58. Please describe in detail the design features and mitigation measures that may reduce potential significant impacts to wildlife from the evaporation ponds and provide an explanation concerning the anticipated effectiveness of these measures.

Background: FEDERAL ENDANGERED SPECIES ACT COMPLIANCE

The Warren-Alquist Act requires that the Commission determine a project's conformity with other laws, ordinances, regulations and standards ("LORS") prior to issuing a license.[58] Thus, to gain Commission certification for the Project, the Applicant will be required to demonstrate compliance with the federal Endangered Species Act ("ESA"). The Applicant anticipates compliance with the ESA either through an incidental take permit, issued by the USFWS under Section 10 of the ESA, or through an incidental take permit resulting from formal consultation under Section 7 of the ESA.

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[56] Attachment 2 to Applicant's Initial Comments on the SA/DEIS, Environmental Evaluation of Project Updates, pp. 3-4.

[57] *Id.* at p. 4.

[58] Pub. Resources Code § 25500.

The SA/DEIS identifies impacts to the desert tortoise ("DT"), a listed species under the ESA, and proposes mitigation measures.[59] Mitigation includes acquisition of approximately 4,737 acres of compensation habitat.[60]

Although the Staff Assessment was published on March 18, 2010 and a Staff Assessment workshop was held in late April 2010, to date, the Applicant's submittals fail to demonstrate that compliance with the ESA is being pursued under Section 10 of the Act in the event that Section 7 consultation is not timely available or the Applicant is not selected for federal funding under the ARRA.

Data Requests:

59. Please provide all correspondence between the Applicant and the USFWS regarding the Applicant's incidental take permit application.

60. Please explain how the proposed compensation mitigation for impacts to the desert tortoise will satisfy the requirement to contribute to the species' recovery.

61. Please identify proposed or potential private or public land that may be purchased as compensation habitat for the DT.

62. Please explain how the proposed or potential private or public land would provide habitat for the DT of an equal function and value to the existing site.

Background: CALIFORNIA ENVIRONMENTAL QUALITY ACT ISSUES

Issue No. 1: Loss of Critical Habitat for DT – Significant impact under CEQA.

The BRTR and the applicant's responses to DR-BIO-53 and DR-BIO-54 imply that, because the portion of the project disturbance area that falls within the Chuckwalla Critical Habitat Unit is so small (183 acres), the PSPP's impacts on this designated habitat is insignificant.[61] In contrast, the SA/DEIS recognizes the importance of the designated critical habitat area

[59] SA/DEIS, pp. C.2-73 – C.2-83.

[60] *Id.* at p. C.2-79.

[61] *See* BRTR, p. 12; *see also* Responses to CEC Data Requests, Set 1, Vol. A, pp. BIO-4 – BIO-5.

within the PSPP disturbance area and requires enhanced mitigation for the loss of this habitat.[62]

At the workshop regarding the SA/DEIS, the Applicant presented information regarding the 24 crossings under I-10 in the 26±mile stretch between Desert City and Wiley's Well. This information was presented to demonstrate alternative crossings that may remain available to the DT for ongoing gene flow and dispersal. The Applicant further describes these crossings in comments regarding the SA/DEIS.[63] The Applicant, however, has not addressed the Project's contribution to the cumulative impacts of multiple large-scale projects on DT connectivity.

Data Request:

63. Please explain how incremental loss of critical habitat for desert tortoise is acceptable under CEQA.

64. Please explain the potentially significant cumulative impacts on DT gene flow and dispersal caused by multiple solar projects within the region, including the Project's contribution to these cumulative impacts.

Issue No. 2: Impacts to Mojave Fringe Toed Lizard Warrant Consideration of Alternative Locations for PSPP and the Reduced Acreage Alternative.

The BRTR acknowledges that the Mojave fringe-toed lizard, *Uma scoparia*, is considered a State Species of Special Concern and a "sensitive" species by the Bureau of Land Management.[64] The BRTR further states that 141 incidental observations were recorded for the species and 1,735 acres of habitat occurred within project site area of disturbance.[65] Furthermore, the BRTR states that there will be indirect impacts to the species offsite as a result of wind breaks erected to protect site facilities. Windbreaks will result in the stabilization of sand and loss of lizard habitat offsite to the east as well.

The SA/DEIS recognizes that such direct, indirect, and cumulative impacts would have a "significant" adverse impact to the Mojave fringe-toed

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[62] *See* SA/DEIS, pp. C.2-74 – C.2-75.

[63] *See* Applicant's Initial Comments on the Biological Resources Section of the SA/DEIS, dated May 12, 2010, p. 9.

[64] BRTR, p. 82.

[65] *Ibid.*; *see also* SA/DEIS, p. C.2-83.

lizard and that this impact is unmitigable even with habitat acquisition.[66] In light of this significant and unmitigable impact, the SA/DEIS identifies the Reduced Acreage Alternative as the only alternative capable of reducing this impact to a less-than-significant level.[67] The SA/DEIS states that the electricity generation capacity of this alternative would be 375 MW, 75% of the capacity of the proposed project.[68] At the workshop regarding the SA/DEIS, the Applicant stated that the Reduced Acreage Alternative would not be feasible.

Data Request:

65. In light of the SA/DEIS' findings that the Project will result in significant direct, indirect, and cumulative impacts would have a "significant" adverse impact to the Mojave fringe-toed lizard and that this impact is unmitigable even with habitat acquisition, explain why is there are no recommendations to select an alternate site for the power plant.

66. Please explain why the PSPP site cannot be reconfigured, as proposed in the revised Reduced Acreage Alternative, to avoid impacts to the MFTL and its habitat.

Background: DESERT TORTOISE SURVEY EFFORTS

As discussed above, the DT is a federally listed threatened species. The BRTR states that DT surveys were conducted in March through May 2009.[69] The 2010 Survey Protocol states that DT surveys will again be conducted this Spring. Although the applicant stated the 2009 and 2010 surveys were/will be conducted according to USFWS survey protocol, intensive surveys apparently were not conducted and will not be conducted. In addition, USFWS Zone of Influence survey protocol was not followed, apparently with the consent of resource agencies.[70]

The USFWS protocol recommends an "intensive survey" to determine the accuracy of the surveyor in locating DT sign during presence-or-absence surveys.[71] According to the protocol, the size of the intensive survey area should be five percent of the size of the project area. In the intensive survey

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66 *See* SA/DEIS, p. C.2-84.

67 SA/DEIS, pp. C.2-107, C.2-145.

68 *Id.* at p. B.2-1.

69 BRTR, p. 34.

70 *Ibid.*; *see also* 2010 Survey Protocol, p. 2.

71 Attachment DR-BIO-55-C-1, p. 20.

area, the surveyor conducts surveys using transects 10 feet wide rather than 30 feet, then compares the results with the initial survey effort. If there is a major difference in number of sign recorded between the two survey efforts, the project survey may not be deemed adequate by the USFWS.[72] Neither the BRTR nor the 2010 Survey Protocol specifies whether the resource agencies made (or agreed to) the recommendation to skip intensive surveys.

USFWS protocol also recommends closer transect spacing (i.e., 10-foot) when topography obscures or reduces that surveyor's ability to see tortoise sign.[73] The BRTR and the 2010 Survey Protocol do not discuss whether the closer transect spacing recommended by the USFWS was or will be implemented.

Data Requests

67. Please provide a map that depicts the areas where desert tortoise protocol surveys were conducted during each of the following years;

    a. 2009

    b. 2010.

68. Please confirm that DT surveys were conducted for <u>all</u> possible transmission lines and other areas impacted by infrastructure required for the PSPP project.

69. Please clarify why the *Non-Federal Action* protocol for desert tortoise was the appropriate protocol to use for the Project rather than the *Field Survey Protocol for any Federal Action* when the Project involves a right-of-way permit from the BLM.

70. Please explain why Zone of Influence surveys for desert tortoise were not conducted for the Project. Please include a summary of the rationale for waiving this requirement and provide documentation if possible.

71. Please provide the results (including map) of the intensive surveys for desert tortoise conducted for the Project. If intensive surveys were not conducted, please provide a justification for why they were not conducted and describe how surveyor accuracy was evaluated.

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[72] Attachment DR-BIO-55-C-1, p. 20.

[73] Attachment DR-BIO-55-C-1, p. 9.

72. Please clarify whether the resource agencies made (or agreed to) the recommendation to skip the intensive surveys for desert tortoise discussed in the protocol and provide documentation if possible.

73. Please clarify whether closer transect spacing for desert tortoise surveys was implemented at any location(s) within the survey area. If closer transects were implemented, please mark these locations on a map.

74. Please confirm that the 2009 and 2010 surveys for DT were conducted during the time periods when DT are considered most active. Please indicate whether the timing of the surveys may affect the number of adult DT observed within the survey area.

Background: DIRECT IMPACTS TO DESERT TORTOISE

The SA/DEIS concludes the Project will destroy approximately 3,899 acres of suitable habitat for DT, including 210 acres of DT critical habitat.

In comments regarding the SA/DEIS analysis regarding these impacts, the Applicant states that the project will impact approximately 26.6 fewer acres of DT critical habitat than reported in the SA/DEIS.[74] The Applicant further asserts that most of the impacted DT critical habitat is of low quality and therefore does not warrant mitigation at a 5:1 ratio.[75] For most of the impacted areas outside of the Chuckwalla Critical Habitat Unit ("CHU"), the Applicant proposes a mitigation ratio of only 0.5:1, due to asserted low habitat quality.

The Applicant's comments regarding the SA/DEIS analysis concerning DT impacts emphasizes that no DT were found on the Project site during the 2009 protocol surveys.[76] In these comments, the Applicant urges the Commission staff to consider the Project site unoccupied.

However, the preliminary results of the Spring 2010 surveys state that a single adult DT was observed on the PSPP site, 4 adult DTs were found within the buffer area, and that DT burrows, bone fragments, and scat were observed within the disturbance area and buffer area.[77]

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[74] Applicant's Initial Comments on the Biological Resources Section of the SA/DEIS, dated May 12, 2010, p. 3.

[75] *Id.* at pp. 5, 8.

[76] *Id.* at p. 7.

[77] Preliminary Results of Spring 2010 surveys, dated May 7, 2010, Table 1.

Data Requests

75. Please explain how the number of acres of impacted DT critical habitat was calculated and why the Applicant's calculations differ from Commission staff calculations.

76. Please explain how the quality of impacted DT habitat was evaluated. Please provide quantitative data supporting the conclusions regarding the quality of impacted habitat, if possible.

77. Please provide an updated analysis of the quality of DT habitat, and the DT occupancy, taking into consideration the results of the Spring 2010 surveys.

78. Please address the impacts to DT connectivity, taking DT occupancy of the Project site into account.

79. The presence of adult DT and the large number of recent tortoise bone fragments discovered in the 2010 surveys suggest the project area and buffer may (or once) supported more DT than found. Please explain this discrepancy.

Background: INDIRECT IMPACTS TO DESERT TORTOISE

Ravens are acknowledged to be a significant threat to desert tortoise populations.[78] The SA/DEIS states that "[d]evelopment of new raven perching sites as a result of Project construction could increase raven numbers locally. . . ." The analysis, however, does not consider the approximately 8-12-mile long transmission line[79] as an additional source of raven perching sites.

The SA/DEIS also acknowledges that Project access roads may indirectly impact DT by increasing vehicle traffic.[80] The SA/DEIS, however, did not indicate whether a road will be built along the approximately 8-10-mile transmission route to the new Red Bluff substation.[81] The Applicant has confirmed that a road will be built along the transmission line.[82]

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[78] SA/DEIS, p. C.2-80.

[79] Documents submitted to and prepared by the CEC and BLM inconsistently describe the length of the transmission line. *See*, e.g., *Id.* at pp. B.1-11, D. 5-5; *see also* Updated Plan of Development, dated July 20, 2009, p. 35 [describing 12-mile gen tie line].

[80] *Id.* at p. C.2-81.

[81] *See* SA/DEIS, p. B.1-11; *see also Id.* at pp. C.9-48 – C.9-49 [there will be "localized grading at the drainages which cross the transmission main alignment to allow vehicular access during construction and operation of the facility."]; *see also* SA/DEIS, p. D.5-5 ["PSPP power

Data Requests

80. Please confirm whether the 8-10-mile transmission line vaguely identified in the SA/DEIS and recently confirmed in Applicant submittals to the Commission was considered as a potential new source of raven perching sites that may impact DT.

81. Please analyze and describe how DT may be indirectly impacted by perching sites on the 8-10 mile newly proposed transmission line.

82. Please analyze and describe how DT may be indirectly impacted by vehicle traffic along the road that will be located along the 8-10-mile long transmission line.

Background: MITIGATION FOR DESERT TORTOISE

As mitigation for direct impacts to the DT, the SA/DEIS identifies Condition of Certification BIO-10, which requires the Applicant to develop and implement a DT Relocation/Translocation Plan.[83] The SA/DEIS also identifies Condition of Certification BIO-12, which requires the Applicant to acquire 4,737 acres of DT habitat to mitigate the PSPP's impacts to DT.[84] The 2002 FEIS for the NECO identified a limited amount of DT critical habitat within private ownership.[85]

The Applicant proposes substantially less compensation habitat for impacts to DT, on the ground that the habitat impacted by the Project is low to moderate quality.[86] As discussed above, the Spring 2010 surveys confirmed that DT are present on the Project site.[87] Consequently, the site must be considered occupied, and the quality of impacted habitat must be re-evaluated using objective, verifiable, and conservative criteria.

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would be transmitted . . . to the proposed . . . Red Bluff substation via an 8 mile long . . . transmission line."].

[82] *See* Attachment 2 to Applicant's Initial Comments on the SA/DEIS, Environmental Evaluation of Project Updates, p. 7.

[83] *See* SA/DEIS, p. C.2-162 – C.2-163.

[84] *See* SA/DEIS, p. C.2-165 – C.2-169.

[85] *See* FEIS for NECO (BLM, 2002), p. 3-8.

[86] Applicant's Initial Comments on the Biological Resources Section of the SA/DEIS, dated May 12, 2010, p. 5, Table 6; *see also id.* at pp. 8-9.

[87] Preliminary Results of Spring 2010 surveys, dated May 7, 2010, Table 1.

Data Requests

83. Please provide specific performance standards for the Raven Management Plan and a Weed Management Plan.

84. Please address the recommended compensation mitigation ratios for DT habitat, taking into consideration the results of the Spring 2010 surveys.

85. Please specifically identify potential property of equivalent function and value that would be available to fully mitigate the Project's impacts to DT.

86. If the potential property that would be used to fully mitigate the Project's impacts to DT is publicly owned land, please explain how acquisition of such land would mitigate the project's impacts.

87. Please identify specific performance criteria that can be adopted to ensure mitigation of DT impacts will be effective in reducing impacts to less-than-significant levels.

Background: IMPACTS TO MOHAVE FRINGE-TOED LIZARDS

The Mohave fringe-toed lizard (MFTL) is a California Species of Special Concern and is considered sensitive by the BLM. Although the resource agencies have not issued survey guidelines for the MFTL, Jones and Lovich (2009) indicate that MFTLs are most commonly detected from late spring (May) through early fall (into October).[88] Because MFTLs are generally difficult to detect, they are more easily detected by teams of at least two people.[89]

The Applicant notes that the MFTL can be found in both large and small dunes, margins of dry lakebeds and washes, and isolated dune pockets against hillsides (Stebbins 1944, 1985; Smith 1946; Norris 1958) and generally within creosote scrub desert habitat (Norris 1958; Stebbins 1985).[90] Sand transported in and from washes traversing the Project site provides MFTL habitat.[91]

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[88] Jones LC, RE Lovich, eds. 2009. Lizards of the American Southwest: A Photographic Field Guide. Rio Nuevo Publishers, Tucson (AZ). p. 567.

[89] *Id.*

[90] BRTR, p. 82.

[91] *See* SA/DEIS, Exhibit A to the Soil and Water Resources chapter, p. 5.

In the past, CDFG and FWS has required both pitfall trapping and intensive area searches to effectively survey Colorado Desert fringe-toed lizards.[92] These surveys were to be conducted monthly between March and November.[93]

Surveys detected the MFTL on the BRSA[94] (prior to substation and transmission line surveys). In response to Staff's data request DR-BIO-62, the Applicant stated that dune studies had not been completed and referred to a Sand Dune Ecosystem Mitigation Plan.[95] This plan identifies potential occupied habitat and Project impacts to the MFTL, and proposes mitigation and avoidance measures to reduce impacts to the MFTL.[96] However, it appears that the Applicant has not actually conducted focused surveys for the MFTL, nor does the applicant provide information regarding MFTL occurrence and suitable habitat for the MFTL in the northern extent of the BRSA footprint. The response admits that "[m]itigation measures will depend on information to be elaborated by further dune study."[97]

Just prior to the SA/DEIS workshop in April, 2010, the Applicant submitted new survey protocol for biological resource surveys to be conducted in areas that would be impacted by the Project, but that had not yet been surveyed.[98] These as yet unsurveyed areas include the transmission line corridor for the Project. The new survey protocols indicate that focused surveys will not be conducted for the MFTL.[99] The preliminary results from the Spring 2010 surveys do not mention the MFTL.

In comments regarding the analysis of impacts to MFTL, the Applicant expresses the opinion that the Project's direct obliteration of 1.1 percent of all MFTL habitat in the NECO is not a significant impact.[100] These comments also challenge the SA's determination that the MFTL present at the Project

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[92] CH2MHILL. 2002. Final Environmental Impact Report /Environmental Impact Statement. Imperial Irrigation District: Water Conservation and Transfer Project. Appendix F. Available at: http://iid.com/Media/Appendix-F-General.pdf.

[93] *Id*.

[94] *Ibid*.

[95] Applicant's Responses to CEC Data Requests Set 1, Vol. A, Biological Resources, (January 6, 2010), Response to DR-BIO-62, BIO-11.

[96] *See Ibid.*; *see also* Attachment DR-BIO-62.

[97] *See Ibid.*

[98] *See* 2010 Survey Protocol, pp. 2-3.

[99] *See Id.* at p. 13.

[100] *See* Applicant's Initial Comments on the Biological Resources Section of the SA/DEIS, dated May 12, 2010, p. 10.

site may represent an important gene pool, on the basis that this determination relied in part on personal communications with an expert.[101]

The Sand Dune Ecosystem Mitigation Plan acknowledges indirect impacts to MFTL habitat that may be caused by "vehicle activity and possible effects of grading and construction on channels that provide sources of sand and wind that moves sand onto dunes."[102] The plan, however, also concludes that the acreage and location of these indirect impacts is not yet known.[103] The SA/DEIS analysis reflects this conclusion.[104] The SA/DEIS calls for 3,011 acres of compensation habitat to mitigate the direct, indirect and cumulative impacts to MFTL, but does not consistently identify the amount of replacement acreage such mitigation will require.[105]

Biological Resources Figure 9 illustrates the Project's close proximity to Crescentic and Longitudinal Dunes. Depending on the prevailing direction of the wind, the Project, together with the proposed transmission line to the Red Bluff substation, and the substation itself, may adversely impact sand transport to these dunes. Exhibit A to the Soil and Water Resources chapter provides evidence supporting this conclusion.[106]

The workshop on April 16, 2010, focused on the issue of Project impacts to the MFTL and on the sand transport corridor. In comments regarding the SA/DEIS analysis regarding these impacts, the Applicant reports that a consultant has conducted additional field investigations and has accumulated data demonstrating that winds from the north, rather than the west, transport a greater percentage of the sand through the corridor.[107] According to the Applicant, this evidence demonstrates that Project impacts to the MFTL's habitat are less than what staff concluded in the SA/DEIS.

The preliminary results for the Spring 2010 surveys did not mention observations of the MFTL.

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101 *Ibid.*

102 Attachment DR-BIO-62, p. 14.

103 *Id.* at pp. 14-16.

104 SA/DEIS, p. C.2-4.

105 SA/DEIS, p. C.2-84; *see also* SA/DEIS, p. C.2-176 – C.2-178.

106 *See* Exhibit A Soil and Water Report, dated February 18, 2010, p. 3.

107 *See* Applicant's Initial Comments on the Biological Resources Section of the SA/DEIS, dated May 12, 2010, pp. 1-3.

Data Requests:

88. Please identify all surveys during which MFTL was detected within the BRSA.

89. Please explain why focused surveys have not and apparently will not be conducted for the MFTL. In addition, please clarify why the Applicant did not conduct pitfall trapping for the MFTL.

90. Please explain whether surveys for MFTL will be conducted in late May through early October 2010.

91. Please explain whether any MFTL were observed within the survey area during the Spring 2010 surveys.

92. Please describe potential habitat for MFTL for the facility footprint and buffer area north of I-10.

93. Please indicate how many acres of suitable MFTL habitat are present in the facility footprint and buffer area north of I-10.

94. Please describe the basis by which the Applicant determined that the elimination of an estimated 1.1 percent of MFTL habitat is not a significant impact.

95. Please identify a) the amount and b) the function and value of MFTL habitat that may be indirectly impacted by the following:

    a. PSPP footprint area, and

    b. PSPP associated transmission line and roads.

96. Please provide quantified evidence of the amount of sand moving through the sand transport corridor (in Zones 1, 2, and 3).

97. Please provide the predominant and varied direction of winds through the sand transport corridor.

98. Please provide information supporting the conclusion that washes traversing the Project site contribute only a "small amount of source sand" to the corridor.

99. Please indicate whether any MFTL were observed within the PSPP disturbance area or buffer areas during the Spring 2010 surveys. If MFTL were observed, please describe these observations in detail.

Background: MITIGATION FOR MOHAVE FRINGE-TOED LIZARDS

As mitigation for direct impacts to the MFTL, the SA/DEIS identifies Condition of Certification BIO-20, which requires the Applicant to acquire 3,011 acres of MFTL habitat to mitigate the PSPP's direct, indirect, and cumulative impacts to MFTL.[108] Even with mitigation, the SA/DEIS concludes that Project impacts to the sand transport corridor will be significant and unmitigable.[109]

In comments regarding the SA/DEIS biological resources analysis, the Applicant proposes a sand replenishment program ("SRP") as mitigation for the Project's impacts to the sand transport corridor (MFTL habitat).[110] The Applicant disagrees with SA/DEIS conclusions regarding the amount of acres of MFTL habitat that would be indirectly impacted by the Project. The Applicant also disagrees with the Commission staff's conclusion that impacts to the sand transport system will be unmitigable.[111] At the same time, the Applicant proposes eliminating the requirement for acquiring *any* compensation habitat for these indirect impacts.[112]

Data Requests

100. Please specifically identify potential property of equivalent function and value that would be available to fully mitigate the Project's impacts to MFTL.

101. If the potential property to mitigate the Project's impacts to MFTL is publicly owned land, please explain how acquisition of such land would mitigate the Project's impacts.

102. Please explain the Applicant's proposed mitigation measures for impacts to MFTL, including the proposals to maintain habitat through the sand replenishment program and provide replacement habitat within the Chuckwalla Valley.

103. Please provide evidence supporting the Applicant's proposed mitigation ratios for acknowledged direct, indirect, and cumulative impacts to the MFTL and its habitat.

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[108] *See* SA/DEIS, pp. C.2-62, C.2-176 – C.2-178.

[109] *Id.* at p. 2-69.

[110] *See* Applicant's Initial Comments on the Biological Resources Section of the SA/DEIS, dated May 12, 2010, pp. 1-3.

[111] *See Id.* at p. 6.

[112] *See Id.* at p. 5, Table 6.

104. Please provide evidence demonstrating that mitigation at the the Applicant's proposed ratios will be effective in reducing all impacts to MFTL to less-than-significant levels.

105. Please provide detailed information regarding the sand replenishment program, including the following:

    a. anticipated number of truck trips per year,

    b. the equipment that will be used to collect, transport and deposit sand,

    c. the manner in which sand will be deposited, and

    d. the precautions that will be taken to minimize impacts to plants and animals within the areas where sand will be taken and deposited.

106. In order to verify the effectiveness of the Applicant's proposed mitigation, please provide copies of mitigation monitoring reports prepared by the Applicant's consultant that document the results of other sand replenishment programs.

107. Please specifically identify successful sand replenishment programs that would be similar to the program suggested as mitigation for indirect impacts to the MFTL and its habitat.

108. Please provide specific performance standards for the sand replenishment program.

109. Please identify alternative measures that will be employed if the proposed sand replenishment programs is not successful.

110. Please identify the potential impacts to biological resources that may result from transporting sand at various frequencies throughout the year, depending on wind speeds and directions.

Background: WESTERN BURROWING OWL SURVEYS

The Western burrowing owl ("WBO") is a Species of Special Concern under the California Endangered Species Act. The WBO Technical Report indicates the Applicant conducted burrowing owl surveys in 2009 according to California Burrowing Owl Consortium ("CBOC") Guidelines.[113] CBOC protocol provides that burrowing owls exhibit high site fidelity, reusing burrows year after year and that a site should be assumed occupied if at least

[113] Attachment J to BRTR, WBO Technical Report, p. 5.

one burrowing owl has been observed occupying a burrow there within the last three years.[114]

Survey protocols require that tracks, feathers, pellets, or other items (prey remains, animal scat) at burrows should be reported. The Applicant determined several burrows to be "inactive."[115] However, the Applicant does not describe the analysis used to determine inactivity, including the estimated age and condition of sign.

The technical report identifies two nesting burrowed pairs within the PSPP disturbance area.[116] The technical report acknowledges that no surveys were conducted for the PSPP's transmission route.[117]

The 2010 Survey Protocol states that surveys for WBO will focus on areas that were not surveyed in 2009.[118]

Data Request

111. Please describe in greater detail the WBO sign observed during surveys.

112. Please provide information on whether other burrows within the Disturbance Area may be active.

113. Please confirm whether WBO surveys have been performed for the PSPP's transmission route currently under consideration and for the Red Bluff substation. Please also provide the results of such surveys, if any.

114. Please provide justification for the Applicant's reliance on one survey year to estimate burrowing owl abundance

Background: WESTERN BURROWING OWL MITIGATION

The Applicant's proposed mitigation for impacts to burrowing owls includes passive translocation of owls, installation of artificial burrows, and post-translocation monitoring. CEC staff have expressed support for an

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[114] Rich 1984 & Feeney 1992, as cited in Burrowing Owl Survey Protocol And Mitigation Guidelines, prepared by The California Burrowing Owl Consortium. April 1993.

[115] Attachment J to BRTR, WBO Technical Report, pp. 7-8.

[116] *Id.* at pp. 7-8.

[117] *Id.* at p. 6.

[118] *See* 2010 Survey Protocol, p. 3.

active translocation program, subject to agreement by CDFG and USFWS, and sufficient research supporting the efficacy of such a program.[119]

The SA/DEIS identifies passive relocation and compensation mitigation for impacts to WBO.[120] BIO-18 requires the Applicant to acquire at least 78 acres of WBO habitat to replace the habitat that would be impacted by the PSPP.[121] In contrast, the Draft WBO Relocation/ Translocation Plan states that "due to the large size of the Project, passive relocation may not be the most effective relocation strategy."[122] This document advocates active relocation instead.[123] This document also asserts that only 6.5 acres of habitat is sufficient for each WBO pair or occupied burrow.[124] The applicant's comments regarding the SA/DEIS analysis of this issue repeats this same mitigation ratio.[125]

CDFG mitigation guidelines state the project sponsor should provide funding for long-term management and monitoring of the protected lands, and that artificial burrows should be at least 50 meters from the impact zone. CDFG's definition of an impact includes destruction and/or degradation of foraging habitat adjacent to (within 100 m) an occupied burrow.[126] The Applicant's proposed burrowing owl conservation area appears to be immediately adjacent to the solar field, which, by definition, precludes it from offsetting impacts (impacts will simply be different).[127]

Data Requests

115. Please provide the rationale for the conclusion in the AFC that a 6.5-acre conservation area would likely provide enough habitat for two (2) pairs of western burrowing owls and their fledglings, including citations to scientific literature if possible.

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[119] SA/DEIS, p. C.2-86.

[120] *Id.* at p. C.2-86 – C.2-87.

[121] *Ibid.*

[122] Attachment DR-BIO-51, Introduction.

[123] *Id.* at § V.B.-C.

[124] *Id.* at § V.C.

[125] *See* Applicant's Initial Comments on the Biological Resources Section of the SA/DEIS, dated May 12, 2010, p. 5, Table 6.

[126] State of California, Department of Fish and Game. 1995. Staff Report on Burrowing Owl Mitigation. Available at: http://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html#Birds.

[127] Attachment DR-BIO-51, § V.C.

116. Please indicate whether the Applicant agrees with the 78-acre compensation requirement for WBO proposed in the SA/DEIS.

117. Please state how the Applicant determined the amount of compensation habitat for burrowing owls.

118. Please discuss the current habitat conditions within the proposed conservation area with respect to the habitat needs of the WBO.

119. Please explain whether the proposed conservation area will be at least 100 meters from Project features after Project construction.

120. Please discuss the actions that will be taken for the long-term management and monitoring of the proposed conservation area, including:

    a. whether the Applicant plans to provide funding for the management and monitoring of the proposed conservation area and

    b. whether a conservation easement will be established for private lands acquired for compensation purposes.

121. If a conservation easement will be established, please state whether such lands will be preserved in perpetuity.

122. If a conservation easement will be established, please identify the proposed fee title holder.

123. Please provide copies of mitigation monitoring reports prepared by the applicant's consultant that document the results of other WBO active translocation projects.

Background: IMPACTS TO SWAINSON'S HAWKS

The Swainson's hawk is listed as threatened under the California Endangered Species Act. Suitable foraging habitat for Swainson's hawks occurs within the Project area, and a Swainson's hawk was detected within the Project area.[128] Telemetry studies have shown that Swainson's hawks may travel up to 18 miles from their nests in search of prey.[129] CDFG

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[128] BRTR, p. 77; *see also* AFC, p. 5.3-32.

[129] California Department of Fish and Game. 1994. Staff report regarding mitigation for impacts to Swainson's hawks (*Buteo swainsoni*) in the Central Valley of California [internet]. Available from: <http://www.madera-county.com/rma/archives/uploads/1188143775_Document_upload_23w.pdf>.

recommends mitigation for impacts to foraging habitat within 10 miles of an active Swainson's hawk nest.[130]

Data Requests

124. Please provide justification for the conclusion that Project impacts to Swainson's hawks would not be significant.

125. Please confirm whether Swainson's hawk nest surveys will be conducted within one or more survey periods.

126. Please confirm whether Swainson's hawk nests were observed during the surveys recently conducted for the Golden Eagle.

127. Please indicate whether there are any potential nesting substrates for Swainson's hawks within the Project survey area.

128. If potential nesting substrates are present in the Project survey area, please indicate if nesting surveys will be conducted and the protocol that will be used to conduct the surveys.

Background: MITIGATION FOR IMPACTS TO SWAINSON'S HAWKS, OTHER SPECIAL-STATUS BIRDS AND MIGRATORY BIRDS

In comments regarding the SA/DEIS analysis, the Applicant urges modifications to the mitigation measure designed to address impacts to special-status birds and migratory birds.[131] Specifically, the Applicant proposes to delete the words "and enhancement" from the BIO-12 measure so that simply acquiring compensation habitat for the DT will fully mitigate the impacts to these bird species. The Applicant does not provide any evidence supporting this proposed change.

Data Requests

129. Please provide evidence that demonstrates that compensation habitat for DT impacts would also provide suitable habitat of equivalent function and value for special-status birds and migratory birds.

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[130] For the Central Valley; mitigation guidelines for other regions of California, including the Mohave Desert, are not available.

[131] *See* Applicant's Initial Comments on the Biological Resources Section of the SA/DEIS, dated May 12, 2010, pp. 1-3.

130. Please explain why enhancement of the acquired DT habitat would not be necessary to provide suitable habitat for the bird species that would be impacted by the Project.

Background: MITIGATION FOR IMPACTS TO DESERT KIT FOX AND AMERICAN BADGER

In comments regarding the SA/DEIS analysis, the Applicant urges modifications to the mitigation measure designed to address impacts to the desert kit fox and the American badger.[132] Specifically, the Applicant proposes to delete the words "and enhancement" from the BIO-12 measure so that simply acquiring compensation habitat for the DT will fully mitigate the impacts to these two species. The Applicant does not provide any evidence supporting this proposed change.

Data Requests

131. Please provide evidence that demonstrates that compensation habitat for DT impacts would also provide suitable habitat of equivalent function and value for the desert kit fox and the American badger.

132. Please explain why enhancement of the acquired DT habitat would not be necessary to provide suitable habitat for the desert kit fox and the American badger.

Background: IMPACTS TO SPECIAL-STATUS PLANTS AND MITIGATION

In comments regarding the SA/DEIS analysis, the Applicant asserts that the Project would not impact Harwood's Milk vetch dune habitat.[133] This assertion does not reflect the results of the Spring 2010 surveys, which identify this species as present both on the PSPP site and within the buffer area.[134]

Data Requests

133. Please provide updated information concerning the Project's impacts to Harwood's Milk-vetch and any other special-status plants, based on the results of the Spring 2010 survey.

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[132] *See* Applicant's Initial Comments on the Biological Resources Section of the SA/DEIS, dated May 12, 2010, pp. 1-3.

[133] *See* Applicant's Initial Comments on the Biological Resources Section of the SA/DEIS, dated May 12, 2010, p. 12.

[134] Preliminary Results of Spring 2010 surveys, dated May 7, 2010, Table 2.

134. Please describe appropriate and feasible mitigation measures that would reduce or eliminate the impacts to Harwood's Milk-vetch and any other special-status plants.

Background: IMPACTS TO WILDLIFE MOVEMENT/GENETIC EXCHANGE CORRIDORS

In desert environments such as the Chuckwalla Valley, wildlife movement corridors allow long-term genetic exchange between animal and plant populations.

CEC siting guidelines require information on the distribution of wildlife corridors at the proposed project area and related facilities. Furthermore, the CEC's Best Management Practices and Guidance Manual for Desert Renewable Energy Projects states solar energy facilities should be located and/or designed to minimize or mitigate for disruptions to wildlife movement. The SA/DEIS acknowledges the importance of desert washes as wildlife movement corridors and the impacts that past projects have had on the Palen watershed.[135]

The Applicant states that the project will likely cause significant permanent impacts to wildlife corridors despite reduced impact through mitigation. In response to Staff's requests for information about potential wildlife use of desert washes within the Project site as movement corridors, the Applicant provided information and a qualitative analysis, based on reconnaissance level surveys which were confounded by rainstorms.[136] The Applicant concludes that a movement study conducted throughout the course of an entire year would be necessary to determine the extent of wildlife movement within the washes versus the uplands.[137] However, the Applicant does not provide any information about the methodology of such a survey, and commits only to make note of wildlife sign in washes during subsequent visits.[138]

The Applicant notes that the Project would impact movement by large mammals such as coyote, desert kit fox, mule deer, bobcat, American badger, mountain lion, and Nelson's bighorn sheep.[139] However, the Applicant fails

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[135] *See* SA/DEIS, p. C.2-120 ["Standing dead ironwood trees, stunted, drought-stressed creosote bushes and other shrubs, sparse cover and very low diversity seen north of I-10 in the Palen watershed are a testament to the downstream effects that channel diversions can have on both upland and riparian plant communities"].

[136] *See* Applicant's Response to DR-BIO-70, DR-BIO-71, and DR-BIO-76.

[137] *See* Applicant's Response to DR-BIO-76, p. BIO-49.

[138] *Ibid.*

[139] *See* Applicant's Response to DR-BIO-80, p. BIO-52.

to provide information about impacts to the Couch's spadefoot toad, invertebrates, small mammals, and the impacts to species at both individual and intergenerational movement levels.

There are a variety of techniques that can be used to estimate movement patterns in addition to a long-term study. These include use of remote cameras, modeling, and review of genetic differences among populations.

The Applicant plans to construct drainage channels to divert desert wash flows through and around the Project site. The Applicant further states that the design of the proposed channels may impede wildlife movement due to minimal vegetative cover, the visibility of man-made structures which would deter wildlife, and the lack of habitat in the channels. The Applicant also states that the channels cannot be widened any further.[140]

The SA/DEIS concludes that "[n]o mitigation measures are currently available that can adequately minimize the Project's contribution to cumulative impacts to wildlife connectivity." [141] This document also asserts, without substantiation, that adoption of the Reconfigured Alternative or the Reduced Acreage Alternative would be required to minimize these impacts to less than significant levels. The Alternatives chapter of the SA/DEIS concludes the Reconfigured Alternative "would eliminate the proposed project's significant unmitigable impacts to a wildlife movement corridor."[142]

The 2010 Survey Protocol does not indicate the washes will be surveyed to determine their potential use as a movement corridor.

Data Requests:

135. Please state whether the Applicant intends to conduct any additional surveys to identify what wildlife species may be using the washes and the Project area as a movement corridor.

136. Please determine the extent to which the Project will impede wildlife movement.

137. Please define what survey methodology would be used to assess wash areas and/or the Project site as dispersal and movement corridors.

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[140] *See* Applicant's Response to DR-BIO-77, p. BIO-49.

[141] SA/DEIS, p. C.2-134.

[142] SA/DEIS, p. B.2-1.

138. Please confirm whether construction and operation of the transmission line to the proposed Red Bluff substation will have any impacts on wildlife movement corridors.

139. Please indicate how the Project, and the redesigned drainage channels will impact the Couch's spadefoot toad, and whether those impacts are potentially significant.

140. Please indicate how the Project and the redesigned drainage channels have been located and/or designed to minimize or mitigate impacts to the Couch's spadefoot toad.

141. Please indicate how the Project and the redesigned drainage channels have been located and/or designed to minimize or mitigate impacts to wildlife movement.

142. Please identify potentially feasible mitigation measures that can reduce the Project's contribution to cumulative impacts to wildlife connectivity.

143. Please explain how both the Reconfigured Alternative and the Reduced Acreage Alternative would, if either is adopted, avoid the Project's contribution to cumulative impacts to wildlife connectivity.

Background: NIGHTTIME CONSTRUCTION IMPACTS

The Applicant recently submitted modifications to the Project construction schedule which indicated that more construction activities would be conducted at night than was considered in the SA/DEIS.[143] The SA/DEIS acknowledges that nighttime lighting would impact nocturnal animals in the Project vicinity.[144]

Data Requests

144. Please evaluate the potentially significant impacts to biological resources that may result from increased nighttime construction activities, including impacts caused by nighttime noise and lighting.

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[143] Attachment 2 to Applicant's Initial Comments on the SA/DEIS, Environmental Evaluation of Project Updates, section entitled "Refinement of the Daily Construction Schedule.

[144] SA/DEIS, pp. C.2-95 – C.2-96.

Background: CUMULATIVE IMPACTS

CEQA requires a "reasonable effort to discover, disclose, and discuss" related past, present and future projects. With regard to future projects, the analysis must include all reasonably foreseeable future projects. Because the SA/DEIS lacks a map of the future projects considered in the cumulative impact analysis, it is difficult to evaluate their contribution to cumulative impacts.

The SA/DEIS, acknowledges that "[t]he Red Bluff substation is a reasonably foreseeable project if the PSPP is approved and constructed as proposed."[145] While the Red Bluff substation is listed as a foreseeable future project in Biological Resources Table 9, the transmission line for this substation and transmission lines for other power plants listed in this table do not appear to have been considered in the cumulative impact analysis for biological resources.[146]

The SA/DEIS acknowledges cumulative impacts to several species and their habitat. The SA/DEIR, for example, admits the Project's contribution to cumulative impacts to DT habitat "fragmentation, impaired connectivity, and degradation of the function and values of remaining habitat from predators, invasive plants, fire, and disease."[147] In addition, the SA/DEIR acknowledges cumulative impacts to the MFTL and its habitat.[148] There is no attempt, however, to address the Project's contribution to these cumulative effects through mitigation. Instead, in the case of the DT, the SA/DEIS asserts that "[t]hese residual effects can only be addressed through a regional and coordinated planning effort. . . ." CEQA requires enforceable mitigation for the Project's contribution to these and all other cumulative impacts.

The cumulative impact analysis did not include a quantitative analysis of habitat loss and diminished function and value of surrounding habitat.[149] The analysis also fails to explain how acquiring compensation habitat for impacts to DT (BIO-12) and to state waters (BIO-21) would reduce the Project's contribution to impacts to natural communities to less-than-significant levels.

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145 SA/DEIS, p. D.5-11.

146 *See* SA/DEIS, pp. C.2-118 – C.2-119.

147 *Id.* at p. C.2-124.

148 *Id.* at p. C.2-126.

149 *Id.* at p. C.2-126.

Data Requests

145. Please state whether the Applicant relied on data available through the BLM database of right of way of applications for renewable energy projects.[150]

146. Please provide a map that identifies the projects considered in the Applicant's cumulative impact analysis and that shows their location with respect to the Project.

147. Please confirm whether transmission line corridors for the various projects identified in Biological Resources Table 9 were considered in the cumulative impact analysis.

148. Please explain how the purchase of compensation land located adjacent to the Palen watershed will mitigate impacts to wildlife movement corridors within the Palen watershed.

149. Please provide a quantitative analysis of the contribution of the PSPP to habitat loss and associated diminished habitat functions and values.

150. Please specifically identify potential property of equivalent function and value that would be available to mitigate the Project's impacts to wildlife movement corridors.

151. Please describe feasible mitigation measures that can reduce or eliminate the Project's admitted contribution to cumulative impacts to habitat function and value for DT, MFTL, and Golden Eagle.

152. Please explain how proposed Conditions of Certification BIO-12 and BIO-21 will be effective in reducing the Project's contribution to cumulative impacts to natural communities to less-than-significant levels.

Background: IMPACTS TO CONSERVED NATURAL COMMUNITIES AND WHMA

The Northern and Eastern Colorado Desert Coordinated Management (NECO) Plan is a landscape-scale, multi-agency planning effort that protects and conserves natural resources while simultaneously balancing human uses of the California portion of the Sonoran Desert ecosystem. The NECO Plan

[150] Available at http://www.blm.gov/lr2000/; *see also* http://www.geocommunicator.gov/GeoComm/index.shtm.

established two types of Wildlife Habitat Management Areas (WHMA): one for bighorn sheep, and one for all other special status species and habitats.[151]

In establishing WHMAs, the NECO Plan provides protection to sensitive natural communities. These include (a) Desert Dry Wash Woodland; (b) Sonoran Creosote Bush Scrub; and, (c) sand dune and playa communities.[152]

The SA/DEIR concludes that the Project would impact 1,735 acres of MFTL habitat in the northeast portion of the Project Disturbance Area.[153] The proposed transmission line for the Project has been changed, and the impacts associated with the new transmission line route were not analyzed in the SA/DEIS.

The SA/DEIS concludes that the Project will contribute to cumulative impacts to Sonoran Creosote Bush Scrub and Desert Dry Wash Woodland communities.[154] The conclusions of the SA/DEIS do not appear to be consistent with information provided in the NECO Plan.[155]

A portion of the Project site and portions of the linear facility routes are situated within a Multi-species WHMA.[156] The NECO Plan provides mitigation for specific species and habitats within WHMAs.[157] Specifically, the NECO Plan states

> [I]n the Multi-species WHMA, compensation for disturbance of Desert Dry Wash Woodland and Desert Chenopod Scrub communities as shown on Map 3-3 Appendix A would be required at 3 acres for each acre disturbed … In sand dune and playa communities (Map 3-3

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[151] BLM and CDFG. 2002. Final Environmental Impact Statement. Proposed Northern & Eastern Colorado Desert Coordinated Management Plan. Bureau of Land Management, California Desert, Riverside, CA. p. 2-2.

[152] *Id.*, p. 2-56.

[153] SA/DEIS, p. C.2-83.

[154] *Id.* at p. C.2-136.

[155] BLM and CDFG. 2002. Final Environmental Impact Statement. Proposed Northern & Eastern Colorado Desert Coordinated Management Plan. Bureau of Land Management, California Desert, Riverside, CA. Appendix A, Map 3-3.

[156] *See Id.*; *see also* SA/DEIS, pp. C.2-133 – C.2-134.

[157] *Id.*

Appendix A) that are closed to vehicle use, compensation for surface disturbance would be required at 3 acres for each acre disturbed.[158]

Appendix H of the NECO Plan discusses the methods that were used to establish Multi-species WHMAs. In short, a system of WHMAs was selected that, in conjunction with already protected areas and Desert Wildlife Management Areas (DWMA), would provide protection for 80 percent (generally) of a covered species or habitat distribution.[159] Thus, by design, each Multi-species WHMA serves to protect one or more biological resource element of conservation concern.

The SA/DEIS concludes the Project will contribute to the cumulative loss of natural communities protected by the NECO Plan.[160]

Data Requests

153. Please provide a map that shows the currently proposed Project boundaries (including linear facilities) in relation to the Multi-species WHMA and Conserved Natural Communities established by the NECO Plan.

154. Please identify the Project boundaries (including linear facilities) in relation to the vegetation communities depicted on Map 3-3 of the NECO Plan.

155. Please identify the criteria that the BLM used to delineate Desert Dry Wash Woodland, Desert Chenopod Scrub, and sand dune and playa communities.

156. Please identify the criteria that the Applicant used to delineate Desert Dry Wash Woodland, Desert Chenopod Scrub, and sand dune and playa communities.

157. Please identify the features being managed and conserved by the Multi-species WHMA at the Project site.

158. Please clarify the number of acres within the WHMA that would be impacted by the Project.

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[158] BLM and CDFG. 2002. Final Environmental Impact Statement. Proposed Northern & Eastern Colorado Desert Coordinated Management Plan. Bureau of Land Management, California Desert, Riverside, CA. p. 2-57.

[159] BLM and CDFG. 2002. Final Environmental Impact Statement. Proposed Northern & Eastern Colorado Desert Coordinated Management Plan. Bureau of Land Management, California Desert, Riverside, CA. Appendix H.

[160] SA/DEIS, p. C.2-136 – C.2-137.

Background: COMPLIANCE WITH THE NECO PLAN

The NECO Plan clearly states that projects that impact BLM lands outside of DWMAs are required to provide compensation (lands or equivalent fee) at a 1:1 ratio.[161] In addition, bridges and culverts for animal passage are required for new linear projects (e.g., roads).[162]

In addition, although the Project will require construction of a paved access road and a permanent road along the transmission line route, the SA/DEIS does not discuss installation of bridges or culverts for animal passage.[163]

Data Requests

159. Please indicate the Project's compliance with the NECO Plan's requirement for 1:1 compensation for impacts to BLM lands outside of DWMAs.

160. Please indicate the Project's compliance with the NECO Plan's requirement for bridges and culverts enabling animal passage across new linear projects including the road required for the transmission line to the planned Red Bluff substation.

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[161] BLM and CDFG. 2002. Final Environmental Impact Statement. Proposed Northern & Eastern Colorado Desert Coordinated Management Plan. Bureau of Land Management, California Desert, Riverside, CA. Appendix D, p. D-2.

[162] BLM and CDFG. 2002. Final Environmental Impact Statement. Proposed Northern & Eastern Colorado Desert Coordinated Management Plan. Bureau of Land Management, California Desert, Riverside, CA. p. 2-30.

[163] The road for the transmission line was not disclosed or analyzed in the SA/DEIS. This aspect of the Project was revealed at the workshop regarding the SA/DEIS. Detailed plans for this road have not been disclosed.

Background: PROJECT DISTURBANCE AREA

The California Environmental Quality Act requires an accurate, stable, and finite project description.[164] "A project description that omits integral components of the project may result in an EIR that fails to disclose all of the impacts of the project."[165]

The Staff Assessment/Draft Environmental Impact Statement ("SA/DEIS") inconsistently describes the amount of acres that will be disturbed by the proposed Palen Solar Power Project ("PSPP" or "Project"): the figures range from 2,740 to 3,899 disturbed acres.[166] These inconsistent figures appear to reflect the varying ways in which the total "Project disturbance" area was considered (i.e., Project footprint, solar fields, transmission line, etc.), but this is not clear from the various SA/DEIS references. Significantly, none of the inconsistently reported amounts of disturbed acreage took into account the proposed transmission line to the planned Red Bluff substation and the associated road.[167]

The Application for Certification ("AFC") for the Project similarly provided inconsistent figures for the Project disturbance area and facility footprint.[168]

The introduction to Applicant's responses to Commission staff's Data Requests ("DR" or "DRs") regarding biological resources attempts to clarify the Project disturbance area.[169] This explanation only induces further confusion however. The introduction recites the AFC Disturbance Area as 3,874 acres and the revised Project Disturbance Area as 3,945.8 acres. These figures suggest that at least some of the SA/DEIS analyses failed to consider the impacts of the Project as a whole. Moreover, the revised Project Disturbance Area reported in the introduction to DR responses took into

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164 *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192.

165 Kostka and Zischke, Practice Under the California Environmental Quality Act ("Practice Under CEQA), § 12.2, p. 577, citing *Santiago County Water Dist. V. County of Orange* (1981) 118 Cal.App.3d 818, 829.

166 *See*, e.g., SA/DEIS, Proposed Project, pp. B.1-1 [2,970 acres disturbed], B.2-16 [2,740 occupied by Units 1 and 2], Biological Resources, C.2-1 [3,899 acres disturbed], Health and Safety, C.5-21 [2,740 acres disturbed], C.9-3 [2,970 acres disturbed], C.12-14 [4.5 square miles].

167 *See Id.* at p. C.6-1.

168 *See* AFC, § 2.0, Fact Sheet [2,970 acres disturbed]; *see also id.* at pp. 5.3-9 [3,871 acres disturbed and 2,970-acre facility footprint], 5.4-1 [3,871 acres disturbed].

169 *See* BIO-1.

account the Transmission Line Disturbance Area for the formerly proposed transmission line to the south of the Project site, not the current transmission line to the west of the Project site.[170]

The estimated amount of cut and fill for the Project is also inconsistent. In the Streambed Alteration Notification submitted to the California Department of Fish and Game ("CDFG") and in the SA/DEIS, only 4.5 million cubic yards of earth movement is reported.[171] In contrast, the response to DR-S&W-181 states that 16.3 million cubic yards will be moved.

Data Requests:

161. Please provide the total amount of acreage that will be disturbed by the Project footprint (i.e., solar units, power blocks, fence line, evaporation ponds, land treatment units, project laydown area, administrative buildings, maintenance buildings, access road, etc.), as currently proposed.

162. Please provide the total amount of acreage within the Transmission Line Disturbance Area, including the associated road, as currently proposed.

163. Please provide the total amount of acreage that will otherwise be disturbed by the Project (i.e., downstream drainage impacts and downwind impacts to the sand transport corridor).

164. Please ensure that the revised drainage plan currently being developed accurately reflects the total amount of disturbed acreage provided in the Applicant's responses to Data Requests 161, 162 and 163, above.

165. Please provide an accurate estimate of the total amount of cut and fill that will be required for the Project.

166. Please evaluate the soil erosion that will potentially occur during Project grading activities, taking into consideration the accurate estimate of cut and fill volumes.

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[170] *Ibid.*

[171] *See* Streambed Alteration Notification, § 10, Project Description [describing preliminary site grading plan]; *see also* SA/DEIS, p. C.9-35.

Background: SOIL EROSION/DEPOSITION ISSUES

The Applicant's response to DR-S&W-186 states that the "gravel roads along the perimeter of the solar fields will be watered *on a regular basis* to control erosion by using excess water from the water treatment plant."[172] At the continued SA workshop on May 7, 2010, the parties discussed a new Project design feature: evaporation ponds that will be used to treat water from Project equipment. The evaporation ponds will treat water contaminated with as yet undisclosed chemicals. Presumably the water treated at this evaporation pond would be used to water the gravel roads along the perimeter of the site.

The Applicant's response cited above also states that "[a] 30-foot high wind fence will be constructed on the east and west sides of the solar fields." The Staff Assessment/Draft Environmental Impact Statement ("SA/DEIS") does not describe the wind fence in the discussion regarding wind erosion.[173]

The SA/DEIS includes a report addressing the Project's interference with the sand transport corridor: this interference is considered an indirect Project impact that "could only be minimized by the revised Reduced Acreage Alternative.[174] On April 16, 2010, Commission staff held a workshop to discuss the impacts that would result from the Project's interference with the sand transport corridor and the alternatives and mitigation measures that may feasibly reduce this impact. Staff maintains that the revised Reduced Acreage Alternative identified in the SA/DEIS would be the best option to avoid interference with the sand transport corridor. In comments concerning the SA/DEIS, the Applicant states that the impact could be fully mitigated through a sand replenishment program.[175]

Data Requests:

167. Please explain what is meant by the phrase "watered on a regular basis" in the quoted excerpt from the DR response above by providing a) the amount of water that will be used and b) the frequency of such use.

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[172] *See* S&W-3, italics added.

[173] *See* SA/DEIS, pp. C.9-35 – C.9-36.

[174] *See* SA/DEIS, Appendix A to Soil and Water Section; *see also Id.* at pp. C.2-26, C.2-83, C.2-145.

[175] *See* Applicant's Initial Comments on the Biological Resources Section of the SA/DEIS, dated May 12, 2010, pp. 1-3; *see also Id.* at Table 6 [recommending 0 mitigation acres for indirect impacts to MFTL habitat].

168. Please provide an estimate of the quantity of water required for regular watering of the gravel road surrounding the Project site by providing a) the total amount of water for each watering event and b) the number of watering events per year.

169. In light of anticipated chemical contamination of water treated in the newly proposed evaporation ponds, please explain whether this water will be used to water the gravel road along the perimeter of the facility.

170. If water from the evaporation ponds will not be used to water the gravel road along the perimeter of the facility, please provide the Applicant's proposed water source for this activity.

171. Please explain why wind fences will not also be constructed along the north and south sides of the solar fields. If the quoted excerpt from response to DR-S&W-186 is incorrect, please provide the correct information.

172. Please provide the details of the Applicant's proposed sand replenishment program. Please explain how Applicant's proposed sand replenishment program will effectively transport sand deposited by the wind along the northern fenceline to areas downwind of the Project site.

173. Please explain how the Applicant's proposed sand replenishment program will effectively reduce the Project's impact to the sand transport corridor to a less-than-significant level.

174. Please evaluate any potentially significant impacts that may result from the Applicant's proposed sand replenishment program.

175. Please describe feasible mitigation measures that may reduce or eliminate potential impacts from the Applicant's proposed sand replenishment program.

Background: DRAINAGE/JURISDICTIONAL WETLAND ISSUES

Issue No. 1: Impact of Project on Local Hydrology.

Roadways, and drainage modifications often associated with their construction, can alter natural drainage patterns resulting in impacts to plant and animal populations.[176] A 1,350-foot-long roadway will be created to

[176] Johnson, H. B., F. Vasek and T. Yonkers. 1975. Productivity, Diversity and Stability Relationships in Mojave Desert Roadside Vegetation, Bulletin Torrey Botanical Club.

provide access to the generating facility.[177] A "Possible Transmission Line Route" would extend from a minimum of 8 miles to a maximum of approximately 12 miles west of the power-generating facility disturbance area.[178]

The BRTR indicates that the originally proposed transmission line route and substation that would extend south of the I-10 is "no longer a part" of the PSPP.[179] The SA/DEIS does not adequately analyze the PSPP project's impacts on existing surface flow patterns.[180] For example the SA/DEIS does not consider the drainage impacts that will be caused by the construction of the transmission line and the associated 15-foot road for the transmission line.[181]

The SA/DEIS addresses, to some degree, the PSPP project's impacts on existing surface flow patterns.[182] The technical details of the components of Project drainage facilities were discussed at the continued SA/DEIS workshop on May 7, 2010. At this workshop, the Applicant's consultant team presented draft revised drainage plans. Apparently, these facilities are being redesigned in response to the concerns expressed by Commission staff.

In comments regarding the SA/DEIS Condition of Certification Soil&Water-10, the Applicant states that drainage channels will be constructed at 3:1 rather than 4:1 slopes.[183] At the recent workshop, Commission staff expressed the concern that it may not be possible to sufficiently compact soils in the area to maintain this steeper slope.

The road for the transmission line was recently identified at the April 2010 workshop for the SA/DEIS. This road will be approximately 15 feet wide and will extend the length of the transmission line to the planned Red Bluff substation. The SA did not mention this road or analyze the environmental impacts associated with this road. The 2010 Survey Protocol acknowledges that the ROW for the transmission line corridor will be

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[177] BRTR, p. 4; SA/DEIS, p. C.9-4.

[178] BRTR, Figure 2; Compare Updated Plan of Development, dated July 20, 2009, p. 35 with SA/DEIS, pp. B.1-11, p. D.5-5 [inconsistently describing transmission line as approximately 12, 10, and 8 miles long, respectively].

[179] *Ibid.*

[180] SA/DEIS, p. C.9-49.

[181] The road associated with the selected transmission line was not described in the SA/DEIS. This road was first identified by the Applicant's consultant during the workshop concerning the SA/DEIS in April 2010.

[182] SA/DEIR, p. C.9-49.

[183] *See* Applicant's Initial Comments on the SA/DEIS, dated May 4, 2010, pp. 31-32.

surveyed for jurisdictional waters. The preliminary results of the Spring 2010 surveys reveal the presence of washes and riparian vegetation along the transmission line right of way ("ROW").[184] The SA/DEIS will presumably be revised to reflect the survey results.

The response to DR-S&W-193 states that there are two surface water sites "approximately eight and 13 miles west of the proposed PSPP site."[185] It is not clear from this description whether these surface water facilities are in close proximity to the transmission line ROW.

Data Requests:

176. Please provide a detailed description of the following Project components:

    a. drainage facilities for the Project site,

    b. the Project site access road, and

    c. the transmission line road.

177. Please include maps depicting the redesigned drainage facilities and detailed plans for all facility components.

178. Please explain how the desired 3:1 slope for drainage will be accomplished.

179. Please explain whether the transmission line road will affect either of the surface water sites to the west of the Project site.

180. Please provide information regarding the drainage facilities that will be used to protect the road along the transmission line from wash out.

181. Please analyze the Project's impacts on existing surface flow patterns on-site and off-site.

[184] *See* figures attached to AECOM letter dated May 7, 2010 reporting preliminary results of Spring 2010 surveys.

[185] S&W-10.

Issue No. 2: Qualifications of Biologists and Biological Consulting Firms Collecting and Analyzing Palen Site Data Regarding Jurisdictional Waters Delineation.

Delineation of a dry streambed has two components: (1) delineation by biological components and (2) delineation by physical components (Environmental Laboratory, 1987).[186] The BRTR refers to those individuals who conducted the delineation of jurisdictional waters as "ecologists," a sub-specialty of biology. [187]

The 2010 Survey Protocol does not describe the qualifications of the personnel who have conducted or will be conducting the jurisdictional waters delineation.

Data Request:

182. Please demonstrate the ecologists responsible for the 2009 and 2010 delineations have degrees, course work and training in such physical sciences as geomorphology and hydrology which would allow them to analyze the physical characteristics of dry streambeds for the delineation process.

183. Please provide the name(s) and qualifications of any geomorphologist(s) who may assist the Applicant in the jurisdictional waters delineations.

Issue No. 3: Streambed Alteration Notification and Agreement.

The SA/DEIS states that the Project would comply with state law with respect to streambed alteration through compliance with BIO-21.[188] The Streambed Alteration Notification, however, does not provide accurate information regarding the transmission line for the Project.[189] This error is significant, because the current proposed transmission line is much longer than the former proposed line, and a 15-foot wide access road is associated with the current line.

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[186] Environmental Laboratory, Department of The Army, Waterways Experimental Station Corps of Engineers. 1987. *Corps of Engineers Welands Delineation Manual.* Vicksburg, MS.

[187] Appendix F to Application for Certification ("AFC"): BRTR, p. 25.

[188] SA/DEIS, pp. C.2-147, C.2-148 – C.2-149.

[189] *See* Streambed Alteration Notification, § 10, Project Description [describing formerly proposed transmission line to south of Project site, rather than current transmission line to the west of Project site].

Data Request:

184. Please indicate whether a revised Streambed Alteration Notification, which takes into account all recent Project modifications, has been submitted to the CDFG.

185. Please provide revised calculations of impacted waters of the state, taking into account all recent Project modifications.

186. Please provide revised mitigation calculations that reflect the Project's impacts to waters of the state taking into account all recent Project modifications.

Background: DIRECT IMPACTS TO STABILIZED AND PARTIALLY STABILIZED SAND DUNES

The Biological Resources section of the SA/DEIS provides a provisional estimate of 285 acres of directly impacted stabilized and partially stabilized sand dunes.[190] The report regarding impacts to the sand transport corridor, however, includes a much higher estimate of dunes present on the Project site.[191] Specifically, this report states that 890 acres of shallow vegetated sand dune and 560 acres of deeper vegetated sand dune will be directly impacted by the Project.[192]

Data Request:

187. Please explain the apparent discrepancy in the amount of sand dunes that will be directly impacted by the Project.

188. Please describe the distinction made between sand dunes and "sand fields vegetated with sparse creosote bush scrub."

Background: WATER REQUIREMENTS FOR PROJECT CONSTRUCTION

CEQA requires an evaluation of the Project's direct and indirect impacts on groundwater resources.[193]

The Applicant's recently submitted comments on the SA/DEIS indicate that substantially more water will be required for Project construction than

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190 SA/DEIS, pp. C.2-62, C.2-65.

191 *See* SA/DEIS, Appendix A to Soil and Water Report, p. 2; *see also id.* at pp. 10 [figure depicting "Qsa" soil type traversing substantial portion of Project site].

192 *Ibid.*

193 Pub. Resources Code §§ 21100(B)(1), 21083.

was disclosed and analyzed in the SA/DEIS.[194] The original estimate of the total amount of groundwater required for Project construction was approximately 1,500 acre-feet.[195] The revised project description information recently submitted by the Applicant reveals construction-related water use will, instead, total approximately 5,750 acre-feet.[196]

Despite this five-fold increase in Project water demands, the Applicant urges the Commission Staff to conclude that there will be no Project impacts to water supply.[197] The Applicant relies on an explanation of prior modeling efforts that were performed on the Applicant's proposal to use 1,500 acre-feet of groundwater to support the conclusion that the increase in Project construction water demand to 5,750 acre-feet of groundwater will not have any impact on groundwater supplies.

Data Requests

189. Please confirm that no additional modeling has been conducted to determine potentially significant impacts from the Applicant's proposed increased construction water demand of 5,750 acre-feet.

Background: PROJECT'S IMPACT ON GROUNDWATER BASIN WATER SUPPLY

The Applicant advocates the conclusion that the Project's long-term impact on basin storage is "insignificant."[198] This conclusion relies on the assumption that the groundwater basin has a recoverable storage of 15,000,000 acre-feet, and thus the Project water demand, even when combined with the water demands of all other users in the basin, is negligible.[199]

In contrast, the SA/DEIS compared the Project's construction and operation water demands, combined with other sources of outflow, to

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194 *See* Attachment 1 to Applicant's Initial SA Comments, Staff Assessment Section B.1 Description of Proposed Project, Applicant Update, p. 12; *see also* Attachment 2 to Applicant's Initial Comments on the SA/DEIS, Environmental Evaluation of Project Updates, pp. 2-3.

195 SA/DEIS, p. C.9-38.

196 Applicant's Initial Comments on the SA/DEIS, dated May 4, 2010, p. 1; *see also* Attachment 1 to Applicant's Initial Comments on the SA/DEIS, Applicant Update to Staff Assessment Section B.1, pp. 11-12.

197 *See* Attachment 2 to Applicant's Initial Comments on the SA/DEIS, Environmental Evaluation of Project Updates, pp. 5-7.

198 *See Id.* at p. 7.

199 *See Ibid.*

determine the water balance (or net inflow) of the groundwater basin.[200] The SA/DEIS also considered the groundwater basin's estimated perennial yield of 12,200 afy.[201]

Data Requests

190. Please provide any evaluation that the Applicant has conducted on the impacts of the Project's construction and operation water requirements on the groundwater basin's water balance and perennial yield.

191. Please confirm that the recoverable storage within the Chuckwalla Groundwater Basin remains 15,000,000 acre-feet.

Background: OUTFLOW FROM THE EASTERN CHUCKWALLA GROUNDWATER BASIN TO THE PALO VERDE MESA GROUNDWATER BASIN

An adequate understanding of the hydraulic continuity between the Chuckwalla Groundwater Basin and the Palo Verde Mesa Groundwater Basin is necessary for the Energy Commission to adequately analyze whether the Project has a reliable water supply and to determine the Project's impacts on local groundwater supplies.

The SA/DEIS acknowledges a hydrologic interconnection between the two basins.[202] This interconnection between the two basins results in a potential impact from Project pumping on groundwater inflow to the adjudicated Colorado River, and a decline in the accounting surface in local aquifers.

Data Requests

192. Please provide any evaluation that the Applicant has conducted regarding the potential for outflow of groundwater from the Chuckwalla Groundwater Basin to the Palo Verde Mesa Groundwater Basin and the hydraulic connection between the two basins.

193. Please provide any evaluation that the Appliant has conducted on impacts from increased construction water requirements on the

[200] SA/DEIS, pp. C.2-22, C.9-38.

[201] *See Id.* at p. 9-21.

[202] *See* SA/DEIS, pp. C.9-18, C.9-22, C.9-39.

outflow from the Chuckwalla Groundwater Basin to the Palo Verde Mesa Groundwater Basin.

Background: CUMULATIVE IMPACTS TO WATER SUPPLY

CEQA requires an evaluation of significant cumulative impacts on groundwater resources.[203] The SA/DEIS presents a positive water budget balance of 2,608 afy for the Chuckwalla Groundwater Basin.[204] The increased estimate of Project construction demand of approximately 1,916.67 afy leaves only a small margin of error of 691.33 afy relative to the available basin operational yield.

Table 5.17-12 (rev1) attached to Applicant's Responses to CEC Workshop, January 14, 2010, Soil and Water Resources (Groundwater), dated March 11, 2010, includes estimated groundwater demand amounts that differ from the estimated demand amounts presented in the Genesis Solar Power Project proceedings (Docket 09-AFC-8) (*See* Table 1 – Groundwater Demand from Cumulative Projects, attached here as Exhibit A)[205]

The increased Project construction water requirements pose serious concerns that the proposed Project groundwater pumping may result in a significant Project contribution to the forecasted overdraft situation in the Chuckwalla Groundwater Basin.

Data Requests

194. Please evaluate the potential for Project near-term and long-term groundwater pumping to result in a cumulatively considerable contribution to the forecasted overdraft situation in the Chuckwalla Groundwater Basin during future Project pumping.

195. Please provide an updated table listing the construction and operation water demands for all pending projects that will rely on groundwater from the Chuckwalla Groundwater Basin.

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[203] CEQA Guidelines. § 15355(b); *see also* Pub. Resources Code § 21083(b)(2).

[204] SA/DEIS, p. C. 9-39.

[205] Table 1 and the attached figure depicting cumulative drawdown at end of project operation are attachments to Technical Memorandum – Groundwater Resources Cumulative Impact Analysis for Genesis Solar Power Project, Riverside County, CA.

EXHIBIT 1

Table 1 - Groundwater Demand from Cumulative Projects

	Annual Water Demand (AFY)		Cumulative Future Water Demand for Planned and Reasonably Foreseeable Projects											
Project	**Construction**	**Operation**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019 to 2043**	**Source**	**Remarks**
Projects in Western Chuckwalla Valley Groundwater Basin														
Chuckwalla Solar I (CACA048808)	20	40	0	20	20	20	40	40	40	40	40	40	BLM, 2009a; CEC, 2009	SF-299 Filed. NOI issued. Construction 2011 to 2013
Palen Solar Power Project (CACA048810)	436	300	0	426	426	436	300	300	300	300	300	300	AECOM, 2009	SF-299 Filed. NOI issued. AFC Filed. Construction 2011 to 2013
enXco Eagle Mountain Solel (CACA049491)	–	–	–	–	–	–	–	–	–	–	–	–	BLM, 2009a; CEC, 2009	SF-299 Filed, but neither CEQA or NEPA process has been initiated.
enXco Desert Ldi (CACA049492)	–	–	–	–	–	–	–	–	–	–	–	–	BLM, 2009a; CEC, 2009	SF-299 Filed, but neither CEQA or NEPA process has been initiated. Not on BLM's list of active projects as of Sep-09.
Solel Desert Ldi (CACA049494)	–	–	–	–	–	–	–	–	–	–	–	–	BLM, 2009a and 2009b	Project has been withdrawn
First Solar Desert Sunlight (CACA048649)	27	3.8		27	27	27	3.8	3.8	3.8	3.8	3.8	3.8	CEC, 2009; BLM, 2009b	SF-299 Filed. NOI imminent. 3 year construction period. Assume 2011 construction start.
enXco (CACA049489)	–	–	–	–	–	–	–	–	–	–	–	–	BLM, 2009a	SF-299 Filed, but neither CEQA or NEPA process has been initiated.
Solel (CACA049493)	–	–	–	–	–	–	–	–	–	–	–	–	BLM, 2009a and 2009b	Project has been withdrawn
Devers-Palo Verde II Transmission	2	–	0	2	2	2	0	0	0	0	0	0	CEC, 2009	Assumed 2 AFY in western basin from 2011 to 2013
Blythe Energy Transmission Line	2	–	2	2	0	0	0	0	0	0	0	0	CEC, 2009	Under construction. Assume 2 AFY in western basin from 2010 to 2011
Desert SW Transmission	0.3	–	0	0	0	0.3	0.3	0	0	0	0	0	CEC, 2009	Assume 0.3 AFY in western basin from 2013 to 2014
Eagle Crest Pumped Storage Startup	2,380 to 8,066	1,628	0	0	0	0	8,066	8,066	8,066	8,066	2,380	1,628	Eagle Crest, 2009	Groundwater demand during reservoir filling 8,066 AFY 2014 to 2017, 2,380 AFY 2018
Total Sub-Basin Groundwater Demand			**2.0**	**477.0**	**475.0**	**485.3**	**8,410.1**	**8,409.8**	**8,409.8**	**8,409.8**	**2,723.8**	**1,971.8**		
Projects in Eastern Chuckwalla Valley Groundwater Basin														
Genesis Solar Energy Project	616 to 1,358	1,644		1,368	616	616	1,644	1,644	1,644	1,644	1,644	1,644		
enXco Mule Mountain Solel (CACA049488)	–	–	–	–	–	–	–	–	–	–	–	–	CEC, 2009; BLM, 2009b	SF-299 Filed, but neither CEQA or NEPA process has been initiated.
Bullfrog Mule Mountain (CACA049097)	–	–	–	–	–	–	–	–	–	–	–	–	CEC, 2009; BLM, 2009b	Formerly Altera; SF-299 Filed, but neither CEQA or NEPA process has been initiated.
Devers-Palo Verde II Transmission	2	–	0	2	2	2	0	0	0	0	0	0	CEC, 2009	Assumed 2 AFY in western basin from 2011 to 2013
Blythe Energy Transmission Line	2	–	2	2	0	0	0	0	0	0	0	0	CEC, 2009	Under construction. Assume 2 AFY in western basin from 2010 to 2011
Desert SW Transmission	0.3	–	0	0	0	0.3	0.3	0	0	0	0	0	CEC, 2009	Assume 0.3 AFY in western basin from 2013 to 2014
Total Sub-Basin Groundwater Demand			**2.0**	**1,372.0**	**618.0**	**618.3**	**1,644.3**	**1,644.0**	**1,644.0**	**1,644.0**	**1,644.0**	**1,644.0**		

Notes

– No data. Project does not meet criteria for consideration in cumulative impact analysis for groundwater resources.

BLM, 2009a. First in Line Solar Applications. http://www.blm.gov/pgdata/etc/medialib/blm/ca/pdf/pa/energy/solar.Par.45875.File.dat/Renewable_Solar_12-09.pdf. December 21.

BLM, 2009b, Personal communication between Tricia Bernhardt of Tetratech EC and Holly Roberts of BLM on December 29.

CEC. 2009. Cumulative Projects. I-10 Corridor. Electronic file received via email December 15, 2009.

Eagle Crest. 2009. Eagle Mountain Pumped Storage Project No. 13123 Final License Application Technical Appendices for Exhibit E. Applicant Prepared Environmental Impact Statement. Volume 3 of 6. appendix C - Technical Memoranda. Groundwater Pumping Technical Memorandum. June 22.

Table 2: Cumulative Water Budget Forecast

	Western Chuckwalla Valley Groundwater Basin [1]											Eastern Chuckwalla Groundwater Basin [2]										Chuckwalla Valley Groundwater Basin Water Budget	
	Inflow (AFY)				Outflow (AFY)					Sub-Basin Water Budget (AFY)		Inflow				Outflow				Sub-Basin Water Budget			
Year	Subsurface Inflow [3]	Recharge from Precipitation [3]	Irrigation Return Flow [3]	Wastewater Return Flow [3]	Total Current Pumping [3]	Total Future Construction Pumping	Total Future Operations Pumping	Palen Lake Evapo-transpiration	Increased Outflow to Eastern Basin	Annual Water Budget	Cumulative Water Budget	Recharge from Precipitation [3]	Irrigation Return Flow [3]	Wastewater Return Flow [3]	Increased Inflow from Western Basin	Outflow to PVMB	Total Current Pumping [3]	Total Future Construction Pumping	Total Future Operations Pumping	Annual Water Budget	Cumulative Water Budget	Basin Annual Water Budget	Basin Cumulative Water Budget
2009	3,500	4,680	750	38	7,868	0	0	350	0	748	748	4,760	50	795	0	400	2,607	–	–	2,593	2,593	3,346	3,346
2010	3,500	4,680	750	38	7,866	2	0	350	0	748	1,496	4,760	50	795	0	400	2005 [4]	2	0	5,203	7,801	5,951	9,297
2011	3,500	4,680	750	38	7,866	477	0	350	0	273	1,769	4,760	50	795	0	400	2,005	1372	0	1,828	9,629	2,101	11,398
2012	3,500	4,680	750	38	7,866	475	0	350	0	276	2,044	4,760	50	795	0	399	2,005	618	0	2,583	12,212	2,858	14,256
2013	3,500	4,680	750	38	7,866	485.3	0	350	0.5	264	2,308	4,760	50	795	0.5	388	2,005	618.3	0	2,594	14,806	2,858	17,114
2014	3,500	4,680	750	38	7,866	8,060.30	344	350	2.5	-7,683	-5,354	4,760	50	795	2.5	373	2,005	0.3	1,644	1,585	16,391	-6,077	11,037
2015	3,500	4,680	750	38	7,866	8,066	344	350	5	-7,665	-13,019	4,760	50	795	5	360	2,005	0	1,644	1,601	17,992	-6,064	4,973
2016	3,500	4,680	750	38	7,866	8,066	344	350	7.5	-7,667	-20,687	4,760	50	795	7.5	347	2,005	0	1,644	1,617	19,609	-6,051	-1,078
2017	3,500	4,680	750	38	7,866	8,066	344	350	10	-7,670	-28,356	4,760	50	795	10	334.5	2,005	0	1,644	1,632	21,240	-6,038	-7,116
2018	3,500	4,680	750	38	7,866	2,330	344	350	12.5	-1,986	-30,343	4,760	50	795	12.5	322	2,005	0	1,644	1,647	22,887	-340	-7,456
2019	3,500	4,680	750	38	7,866	0	1,972	350	15.5	-1,237	-31,580	4,760	50	795	15.5	308	2,005	0	1,644	1,664	24,550	426	-7,029
2020	3,500	4,680	750	38	7,866	0	1,972	350	19	-1,241	-32,821	4,760	50	795	19	295	2,005	0	1,644	1,680	26,230	439	-6,590
2021	3,500	4,680	750	38	7,866	0	1,972	350	24	-1,246	-34,067	4,760	50	795	24	281.5	2,005	0	1,644	1,699	27,929	453	-6,138
2022	3,500	4,680	750	38	7,866	0	1,972	350	28	-1,250	-35,316	4,760	50	795	28	269	2,005	0	1,644	1,715	29,644	465	-5,672
2023	3,500	4,680	750	38	7,866	0	1,972	350	33.5	-1,255	-36,572	4,760	50	795	33.5	256.5	2,005	0	1,644	1,733	31,377	478	-5,195
2024	3,500	4,680	750	38	7,866	0	1,972	350	39	-1,261	-37,832	4,760	50	795	39	245	2,005	0	1,644	1,750	33,127	489	-4,706
2025	3,500	4,680	750	38	7,866	0	1,972	350	44.5	-1,266	-39,099	4,760	50	795	44.5	233	2,005	0	1,644	1,768	34,894	501	-4,204
2026	3,500	4,680	750	38	7,866	0	1,972	350	50	-1,272	-40,371	4,760	50	795	50	221	2,005	0	1,644	1,785	36,679	513	-3,691
2027	3,500	4,680	750	38	7,866	0	1,972	350	56	-1,278	-41,648	4,760	50	795	56	210	2,005	0	1,644	1,802	38,481	524	-3,167
2028	3,500	4,680	750	38	7,866	0	1,972	350	63	-1,285	-42,933	4,760	50	795	63	198.5	2,005	0	1,644	1,820	40,301	536	-2,632
2029	3,500	4,680	750	38	7,866	0	1,972	350	70	-1,292	-44,225	4,760	50	795	70	190	2,005	0	1,644	1,836	42,137	544	-2,088
2030	3,500	4,680	750	38	7,866	0	1,972	350	77.5	-1,299	-45,524	4,760	50	795	77.5	182	2,005	0	1,644	1,854	43,990	554	-1,534
2031	3,500	4,680	750	38	7,866	0	1,972	350	85	-1,307	-46,831	4,760	50	795	85	170	2,005	0	1,644	1,871	45,861	564	-970
2032	3,500	4,680	750	38	7,866	0	1,972	350	93.5	-1,315	-48,146	4,760	50	795	93.5	160	2,005	0	1,644	1,890	47,751	574	-395
2033	3,500	4,680	750	38	7,866	0	1,972	350	102	-1,324	-49,470	4,760	50	795	102	150	2,005	0	1,644	1,908	49,659	584	189
2034	3,500	4,680	750	38	7,866	0	1,972	350	110.5	-1,332	-50,802	4,760	50	795	110.5	140	2,005	0	1,644	1,927	51,585	594	783
2035	3,500	4,680	750	38	7,866	0	1,972	350	121.5	-1,343	-52,146	4,760	50	795	121.5	131	2,005	0	1,644	1,947	53,532	603	1,386
2036	3,500	4,680	750	38	7,866	0	1,972	350	131.5	-1,353	-53,499	4,760	50	795	131.5	122	2,005	0	1,644	1,966	55,497	612	1,998
2037	3,500	4,680	750	38	7,866	0	1,972	350	141.5	-1,363	-54,862	4,760	50	795	141.5	113	2,005	0	1,644	1,985	57,482	621	2,620
2038	3,500	4,680	750	38	7,866	0	1,972	350	151.5	-1,373	-56,235	4,760	50	795	151.5	100	2,005	0	1,644	2,002	59,483	628	3,248
2039	3,500	4,680	750	38	7,866	0	1,972	350	162	-1,384	-57,619	4,760	50	795	162	98	2,005	0	1,644	2,020	61,503	636	3,884
2040	3,500	4,680	750	38	7,866	0	1,972	350	172.5	-1,394	-59,014	4,760	50	795	172.5	90	2,005	0	1,644	2,039	63,542	644	4,528
2041	3,500	4,680	750	38	7,866	0	1,972	350	184.5	-1,406	-60,420	4,760	50	795	184.5	83	2,005	0	1,644	2,058	65,599	651	5,179
2042	3,500	4,680	750	38	7,866	0	1,972	350	196	-1,418	-61,838	4,760	50	795	196	77	2,005	0	1,644	2,076	67,674	657	5,837
2043	3,500	4,680	750	38	7,866	0	1,972	350	209	-1,431	-63,269	4,760	50	795	209	71	2,005	0	1,644	2,094	69,768	663	6,500

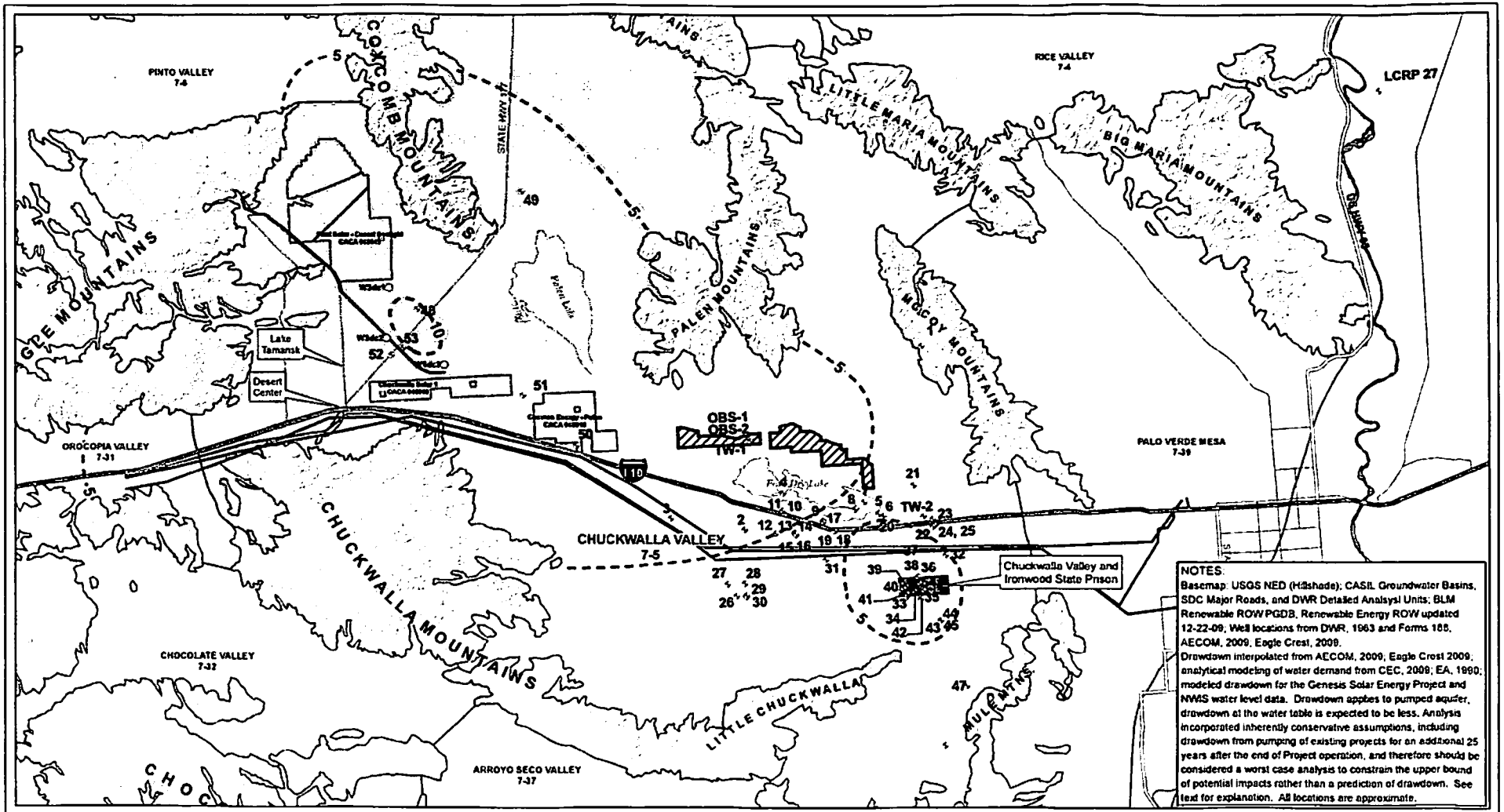
Notes

1 Western Chuckwalla Valley Groundwater Basin boundaries assumed to coincide with DWR's Palen Detailed Analysis Unit

2 Eastern Chuckwalla Valley Groundwater Basin boundaries assumed to coincide with DWR's Ford Detailed Analysis Unit

3 For details, see Response to Data Request Item 151, submitted to CEC December 15, 2009

4 Reflects decreased prison water demand starting in 2010 due to water conservation and population reduction (Eagle Crest, 2009; Lanahan, 2009).



NOTES:
Basemap: USGS NED (Hillshade); CASIL Groundwater Basins, SDC Major Roads, and DWR Detailed Analysis Units; BLM Renewable ROW PGDB, Renewable Energy ROW updated 12-22-09; Well locations from DWR, 1963 and Forms 188, AECOM, 2009, Eagle Crest, 2009.
Drawdown interpolated from AECOM, 2009; Eagle Crest 2009; analytical modeling of water demand from CEC, 2009; EA, 1990; modeled drawdown for the Genesis Solar Energy Project and NWIS water level data. Drawdown applies to pumped aquifer, drawdown at the water table is expected to be less. Analysis incorporated inherently conservative assumptions, including drawdown from pumping of existing projects for an additional 25 years after the end of Project operation, and therefore should be considered a worst case analysis to constrain the upper bound of potential impacts rather than a prediction of drawdown. See text for explanation. All locations are approximate.

- Eagle Crest Proposed WS Well
- Existing Wells
- Blythe Energy Transmission Line
- Desert Southwest Transmission Project
- Devers Palo Verde No. 2 Transmission Project
- Eagle Crest Pumped Storage Project Supply Pipeline
- Interpolated Line of Equal Groundwater Drawdown in the Pumping Zone
- Proposed Solar Project Sites
- Project Site
- Eastern Chuckwalla Valley Groundwater Basin
- Western Chuckwalla Valley Groundwater Basin

N W E S

0 8 Miles

GENESIS SOLAR, LLC

WorleyParsons

CUMULATIVE DRAWDOWN IN PUMPED AQUIFER FROM EXISTING, PLANNED AND REASONABLY FORESEEABLE PROJECTS AT END OF PROJECT OPERATION

SWL	MT	12/2009
52004617		6

DECLARATION OF SERVICE
Palen Solar Power Plant Project

Docket No. 09-AFC-7

I, Bonnie Heeley, declare that on May 14, 2010, I served and filed copies of the attached CALIFORNIA UNIONS FOR RELIABLE ENERGY DATA REQUESTS, SET ONE dated May 14, 2010. The original document, filed with the Docket Office, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: http://www.energy.ca.gov/sitingcases/solar_millennium_palen/index.html

The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Office via email and U.S. mail as addressed below.

I declare under penalty of perjury that the foregoing is true and correct. Executed at South San Francisco, California on May 14, 2010.

/s/
Bonnie Heeley

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EXHIBIT 2

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May 25, 2010

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

Subject: **PALEN SOLAR I, LLC'S OBJECTIONS AND NOTICE OF INABILITY TO RESPOND TO CURE'S DATA REQUESTS**
DOCKET NO. (09-AFC-7)

Enclosed for filing with the California Energy Commission is the original of **PALEN SOLAR I, LLC'S OBJECTIONS AND NOTICE OF INABILITY TO RESPOND TO CURE'S DATA REQUESTS**, for the Palen Solar Power Project (09-AFC-7).

Sincerely,

Marie Mills

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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:	**DOCKET NO. 09-AFC-7**
Application for Certification for the PALEN SOLAR POWER PROJECT	**PALEN SOLAR I, LLC'S OBJECTIONS AND NOTICE OF INABILITY TO RESPOND TO CURE'S DATA REQUESTS**

Palen Solar I, LLC (PSI) hereby files the following Objections and Notice of Inability to Respond to California Unions for Reliable Energy's (CURE) May 14, 2010 Data Requests.

OBJECTIONS

Unduly Burdensome

First, PSI objects to CURE's May 14, 2010 Data Requests on the grounds that they impose an undue burden on PSI during the time in which PSI and its consultants are actively preparing for evidentiary hearings, working with the wildlife agencies to finalize various compliance plans, and working diligently to finalize engineering to meet the objectives of qualifying for stimulus funding under the American Recovery and Reinvestment Act (ARRA). The Commission's Regulations provide that the Presiding Member of the siting committee "may set reasonable time limits on the use of, or compliance with, information requests in order to avoid interference with any party's

preparation for hearings or imposing other undue burdens on a party."[1] CURE's eleventh hour filing of its Data Requests (requiring PSI to answer 195 questions) imposes an undue burden on PSI because:

- PSI is currently pooling its resources to prepare and file its testimony due on June 23, 2010, review the Revised Staff Assessment (RSA) due to be published on June 18, 2010, and further prepare for evidentiary hearings in which some subject areas may require adjudication;
- PSI is also working to provide information to the federal permitting agencies pursuant to the work performed at the Staff Assessment/Draft Environmental Impact Statement (SA/DEIS) Workshops.

Irrelevant

Second, PSI also objects to the Data Requests on the grounds that the information is not relevant nor is it reasonably necessary to make a decision on the application. Staff and the agencies have requested additional information from PSI since the AFC was deemed data adequate on November 18, 2010 which has already been supplied and served on CURE that responds to many of the Data Requests. Staff had sufficient detailed information to write the SA/DEIS and any additional information it needed to develop a Revised Staff Assessment has been provided to all parties. CURE has had numerous opportunities to comment on this process in a timely manner. It chose to remain silent. PSI contends that CURE does not need ANY of the information requested in its Data Requests to meaningfully participate in the proceedings at this time.

Untimely And Intended To Cause Delay

On December 23, 2009 the Committee granted CURE's Petition To Intervene. In that order the Committee specifically stated,

> **The Committee will not permit** unnecessary, irrelevant or unreasonably burdensome data requests and may, on the motion of a party or on its

[1] Title 20 CCR § 1716 (i).

> own motion, exercise its authority pursuant to sections 1203 and 1204 (Cal. Code Regs., tit. 20, §§ 1203, 1204) to enforce the provisions of section 1716, setting forth procedures for obtaining information (Cal. Code Regs., tit. 20, § 1716), in order to eliminate undue delay in the completion of these proceedings.

PSI believes that CURE deliberately waited until the 11th hour to file data requests for the sole purpose of causing delay. As in other proceedings PSI expects CURE to engage in further activities, such as requesting moving of the evidentiary hearings, to accommodate these last minute "data gathering" strategies. PSI strongly urges the Committee to see through these tactics and grant PSI's objections on its own motion rather than waiting for CURE to file a Motion To Compel in an attempt to further delay the proceedings. If CURE truly required information to meaningfully participate in these proceedings, it would have made such requests earlier in the proceedings as the scope of review was unfolding and as numerous workshops (all attended by CURE) discussed the range of issues CURE now "raises." Then, both Staff and PSI would have had the time and resources to accommodate answering even duplicative or extraneous requests without objection. PSI reminds the Committee that PSI has not objected to a single Data Request in this proceeding until now.

CURE provides the following reasons for its Data Requests at this time.

> CURE requests this information (1) to assess issues not addressed in the Applicant's responses to California Energy Commission staff's data requests, the Staff Assessment/Draft Environmental Impact Statement (SA/DEIS), Applicant's initial comments regarding the SA/DEIS (and attachments thereto) and (2) to follow-up on issues raised at the workshops.

While not controlling it is persuasive to examine the Committee's recent ruling on a Motion to Compel filed by CURE in the San Joaquin Solar I & II Proceedings, the Committee reasoned:

> Section 1716 of our Regulations (Cal. Code Regs., tit. 20 § 1716) contains the basic framework for information exchanges (i.e., Data Requests and

> Responses) for licensing proceedings. The procedure is straightforward. A party may request from an applicant"... information reasonably available to the applicant which is relevant to the … application proceedings or reasonably necessary to make any decision on the ... application." [§ 1716, subd. (b).] An applicant may then answer or object to the request. If an applicant objects, the requesting party may then forego the request, seek alternative means of obtaining the desired information, or petition for an Order directing an applicant to provide the information. The regulations do not, however, require that the information provided satisfy all expectations of the requesting party. In considering the Petitions, ***we have disregarded the rhetorical elements of the pertinent filings, instead focusing on evaluating whether the information sought appears to be reasonably available, relevant, or necessary. (emphasis added)***

When considering whether any of these justifications are valid and whether the information is reasonably available, relevant or necessary, we request the Committee to consider the following:

- PSI filed Data Responses to CEC Data Requests on January 20, 2010
- PSI filed Supplemental Responses on January 22, 2010
- PSI filed Responses to Queries Raised at Data Response Workshops and Supplements to Prior Data Responses on February 4, 2010
- PSI filed Responses to CEC Staff email queries and Workshop Queries on February 8 through 12, 2010
- PSI filed a Draft Biological Assessment on March 8, 2010
- PSI filed additional Responses to Workshop Queries on March 11 and 12, 2010
- Staff filed SA/DEIS on March 18, 2010
- PSI filed its Comments on the SA/DEIS on May 4 and 12, 2010

First, CURE had plenty of opportunity to file Data Requests seeking clarification on PSI's Responses to CEC Data Requests and Workshop Queries. In fact, CURE attended Data Response Workshops which were held for the purpose of discussing and providing the exact clarification that CURE alleges it now seeks. When evaluating whether information is reasonably available to PSI, the Committee should also inquire whether the information is reasonably available to CURE or could have been obtained at a time that did not interfere with PSI's ability to prepare for evidentiary hearings.

Second, CURE claims it is necessary to request information ***from PSI*** to address issues not addressed by the SA/DEIS. PSI believes these questions should be directed to Staff through comments on the SA/DEIS. CURE is free to comment on the SA/DEIS, file testimony and provide cross-examination of Staff at evidentiary hearing to develop or undermine the underlying assumptions and data used to support Staff positions. In fact, CURE attended and participated in the SA/DEIS Workshops where it had ample opportunity to question Staff and PSI experts.

Notwithstanding these objections and without a waiver thereof, PSI could nevertheless provide responses to the following Requests without causing undue burden and will do so as a showing of good faith:

2, 8^2, 9^2, 10^2, 14^2, 15^2, 17, 19^2, 24^2, 25, 27, 28, 29, 31, 32, 33, 34^2, 37, 38, 39, 40, 41, 42, 48, 49, 50, 55^2, 56, 58, 67^2, 68^2, 70, 73, 74^2, 75, 77^2, 88^2, 81, 82, 83, 84, 87, 88, 89, 90, 91^2, 92, 93^2, 94, 99^2, 103, 104, 111, 112, 113, 114, 115, 116, 117, 125, 126, 133^2, 139, 140, 141, 144, 145, 147, 151, 158, 159, 161, 162, 164, 165, 167, 168, 169, 170, 171, 178, 179, 181, 182, 183, 184, 185, 186, 187, 188, 189 190, 191, 192, 193, and 195

All other Data Requests are objected to on the grounds outlined above. We urge the Committee on its own motion to issue an Order granting these objections thereby avoiding a lengthy Motion to Compel proceeding.

Respectfully Submitted,

Dated: May 25, 2010

/original signed/

Scott A. Galati
Counsel to Palen Solar I, LLC

[2] The answers to these data requests will be either answered completely or partially in the Biological Resources Technical Report revisions to be filed by May 28, 2010.

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

APPLICATION FOR CERTIFICATION FOR THE *PALEN SOLAR POWER PLANT PROJECT*

Docket No. 09-AFC-7

PROOF OF SERVICE
(Revised 4/19/10)

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DECLARATION OF SERVICE

I, Marie Mills, declare that on May 25, 2010, I served and filed copies of the attached **PALEN SOLAR I, LLC'S OBJECTIONS AND NOTICE OF INABILITY TO RESPOND TO CURE'S DATA REQUESTS,** dated **May 25, 2010**. 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:
[http://www.energy.ca.gov/sitingcases/solar_millennium_palen]

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(*Check all that Apply*)

FOR SERVICE TO ALL OTHER PARTIES:

__X__ sent electronically to all email addresses on the Proof of Service list;

_____ by personal delivery;

__X__ by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

__X__ sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (***preferred method***);

OR

_____ depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 09-AFC-7
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Marie Mills

EXHIBIT 3

PALEN SOLAR POWER PROJECT (09-AFC-7)
CURE DATA REQUESTS, SET ONE Nos.1 – 195 (SELECTED RESPONSES)

Response Date: June 14, 2010

Introduction

The following are responses to select CURE Data Requests (DRs) from their Set One (Nos. 1-195) submittal dated May 14, 2010. Solar Millennium is responding in good faith to 96 of the 195 DRs as previously stated in the Palen Solar I, LLC's Objections And Notice of Inability To Respond to CURE's DATA REQUESTS, dated May 25, 2010. Responses will be provided to the following requests:

2, 8, 9, 10, 14, 15, 17, 19, 24, 25, 27, 28, 29, 31, 32, 33, 34, 37, 38, 39, 40, 41, 42, 48, 49, 50, 55, 56, 58, 67, 68, 70, 73, 74, 75, 77, 80, 81, 82, 83, 84, 87, 88, 89, 90, 91, 92, 93, 94, 99, 103, 104, 111, 112, 113, 114, 115, 116, 117, 125, 126, 133, 139, 140, 141, 144, 145, 147, 151, 158, 159, 161, 162, 164, 165, 167, 168, 169, 170, 171, 178, 179, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, and 195.

CURE DR-2

Information Required:

Please provide the resume of each person that performed "general wildlife surveys."

Response:

A summary of all personnel qualifications was provided in Attachment A of the 2009 BRTR.

CURE DR-8

Information Required:

Please confirm whether the Spring 2010 surveys along the selected Transmission Line Route and PSPP disturbance areas have been completed.

Response:

Yes, Spring 2010 surveys have been completed along the selected Transmission Line Route and PSPP disturbance areas.

In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-9

Information Required:

If Spring 2010 surveys have been completed, please describe the outcome of these surveys and provide the information requested in Data Requests 2, 3 and 4 above for these surveys.

(**CURE DR-2**: Please identify and provide the qualifications for those persons who conducted general wildlife surveys in 2009 and those who have or will conduct such surveys in 2010.

CURE DR-3: Please provide an update for the requested information (i.e. identify and provide qualifications for those persons) concerning the 2010 surveys when such surveys have been completed and are considered final.

CURE DR-4: Please indicate on the vegetation map which portions of the map were drawn from vantage points and which were drawn from actual site visits.)

Response:

See answer to CURE DR-2.

In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-10

Information Required:

If not complete, please describe what steps remain to complete the surveys and provide the requested information concerning ongoing and future surveys when such surveys are completed.

Response:

The 2010 surveys have been completed.

CURE DR-14

Information Required:

Please document agency approval to forego each of the following survey efforts:

a. Surveys in areas that were previously surveyed in 2009, and

b. Standard DT survey protocol, including Zone of Influence survey requirements and the requirement to conduct surveys when DT are most active (April through May).

Response:

Methods and approvals were summarized in the 2009 BRTR and were provided in the Spring Survey Protocols, docketed on April 22, 2010.

CURE DR-15

Information Required:

Please indicate whether all habitats and impact areas, including all transmission line corridors currently under consideration and adjacent areas, were surveyed for special-status plant species.

Response:

All areas surveyed are presented in the 2009 BRTR and the preliminary 2010 results, docketed on June 14, 2010.

All areas for which special status plant species surveys are required have been completed.

CURE DR-17

Information Required:

Please discuss how driving and meandering transects (at inconsistent spacing) constitute systematic field techniques.

Response:

Methodology for botanical surveys was provided in the 2009 BRTR. . In DR-BIO-81 of the AECOM Response to the CEC Data Request (December 2009), AECOM proposed that biologists would walk 10- to 20-meter parallel transects within all habitats of the disturbance areas, regardless of habitat suitability. After further consideration of the terrain within the survey area, this approach was revised; habitat complexity dictated how far each botanist was able to see and therefore dictated the necessary spacing. AECOM botanists have consulted with regional experts including Andrew Sanders and David Silverman to conclude that intuitive controlled surveys per Whiteaker et al. 1998 are sufficient for documenting a complete floral inventory on site (including the target special status plant species). The Whiteaker (1998) method is the BLM-approved method for conducting botanical surveys.

CURE DR- 19

Information Required:

Please provide information on the specific locations at which protocol rare plant surveys were conducted, by month and year. In your response, please identify the "key vantage points" referenced in the BRTR (pg. 24), and specify the areas within the assessment area that were surveyed more than once.

Response:

Relevant and appropriate information was provided in the 2009 BRTR, and the preliminary 2010 results, docketed on June 14, 2010. . In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-24

Information Required:

Please explain whether any Coachella Valley Milk vetch were observed on the PSPP disturbance area or buffer area during the Spring 2010 surveys.

Response:

Coachella Valley milkvetch was not observed in the 2009 or 2010 surveys for PSPP.

CURE DR- 25

Information Required:

Please provide the mean rainfall and temperature data obtained by the weather station(s) nearest the Project site for 2007, 2008, and 2009, and Spring 2010.

Response:

Weather information applicable to the survey seasons was provided in the 2009 BRTR. The agencies make determinations as to whether the weather conditions are reasonable to allow for acceptance of survey data.

CURE DR- 27

Information Required:

Please provide information on the occurrence of bat roosts in the vicinity of the Project area and indicate whether the BLM was solicited for information on the occurrence of known roost sites.

Response:

Bat surveys are not required.

CURE DR- 28

Information Required:

Please provide the methods that were used to survey for bats at the Project site.

Response:

Bridges were checked and no bats were found. No special surveys were required.

CURE DR- 29

Information Required:

Please provide the methods that were used to survey for woodrats at the Project site, and indicate the number of middens that were detected, if any.

Response:

Woodrats do not require specific survey protocols.

CURE DR- 31

Information Required:

Please provide complete biological resource surveys and analysis reports of the transmission line corridor addressing all sensitive species.

Response:

After submittal of the AFC documents to the CEC in 2009, an alternative site configuration was proposed for the PSPP. Additionally, various design refinements were made related to potential transmission line routes and the substation area. As a result of design changes and development of an alternative, additional biological resource technical surveys were necessary in 2010 to fill in the survey gaps in support of the PSPP review, approval, and permitting. The following biological resource surveys were conducted

at the Proposed Project and Reconfigured Alternative BRSAs during the 2010 survey season: desert tortoise (*Gopherus agassizii*; DT) survey, Western burrowing owl (*Athene cunicularia hypugaea*; WBO), golden eagle (*Aquila chrysaetos* [GOEA]) nest surveys, botanical survey (vegetation community mapping and rare plant surveys), and jurisdictional waters delineation. Spring 2010 botanical surveys at the PSPP occurred within areas that were not previously surveyed in 2009 associated with the Project Disturbance Area and the Reconfigured Alternative Disturbance Area and associated 1-mile buffers.

In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010..

CURE DR- 32

Information Required:

Please describe the design of the road that will be built along the transmission line corridor. Please identify the associated potential impacts to drainage and habitat connectivity.

Response:

Proposed project components and impacts are discussed in the 2009 BRTR. In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR- 33

Information Required:
Please explain why desert tortoise field surveys will not be followed beyond the 500-foot buffer surrounding the transmission line corridor.

Response:

Survey methods and approvals were described in the 2009 BRTR, and were provided in the Spring Survey Protocols, docketed on April 22, 2010.

CURE DR- 34

Information Required:

Please explain why the 2010 jurisdictional waters delineation included a 250-foot buffer, rather than a more extensive buffer especially for areas downstream from the disturbance area.

Response:

The associated 250-foot buffers are based upon the California Energy Commission's *Rules of Practice and Procedure: Power Plant Site Certification and Designation of Transmission Corridor Zones* (Appendix B [Information Requirements for an Application] [13][B][iii]) (CEC 2008).

CURE DR- 37

Information Required:

Please describe how the pumping of groundwater from beneath the project site will impact the regional aquifer.

Response:

Additional numerical groundwater modeling using the same model as provided in the AFC was conducted to evaluate the impacts of the change in the construction water volume and the effects on the regional aquifer. An update to the numerical groundwater modeling and Basin water balance was provided to the CEC on March 11, 2010 in response to the January 14, 2010 CEC workshop queries. Subsequently, an evaluation of the cumulative impacts and impacts to Basin storage and affects from project pumping using the numerical groundwater modeling were updated to reflect the change in the proposed construction water volume. This evaluation was provided in Attachment 2, Environmental Evaluation of Project Updates contained in the comments to the Draft Staff Assessment and Draft Environmental Impacts Statement dated May 4, 2010.

CURE DR- 38

Information Required:

Please demonstrate that drawdown will not adversely impact area springs or the mesquite trees observed to the north of the PSPP site. Please provide site-specific data in support of your response.

Response:

Please see the Response to Data Request (January 2010) and subsequent response to work shop queries dated March 11, 2010.

CURE DR- 39

Information Required:
Please provide such substantiation from a peer reviewed journal for the assertions concerning the impacts to mesquite trees from lowering the groundwater table, as these conclusions were solely derived through personal communications.

Response:

See response to CURE DR- 38 above.

CURE DR- 40

Information Required:

Please identify the distance of the mesquite trees from the PSPP site.

Response:

See response to CURE DR- 38 above.
.

CURE DR-41

Information Required:

Please quantify the projected amount of aquifer drawdown in the vicinity of the mesquite trees observed to the north of the PSPP site, taking into consideration the increased water demand for construction.

Response:

See response to CURE DR-37.

CURE DR-42

Information Required:

Please address whether aquifer drawdown in the northern portion of Palen Dry Lake would impact the viability of mesquite seedlings and saplings.

Response:

See response to CURE DR-37 and CURE DR-38.

CURE DR- 48

Information Required:

Please provide the rationale for not including the golden eagle as a special-status species with the potential for occurring within the project disturbance area.

Response:

Golden eagle surveys were conducted in 2010 to determine whether the projects have any impact on eagle foraging habitat.

CURE DR-49

Information Required:

Please provide the name(s) and qualifications of the individual(s) conducting the golden eagle surveys identified in the 2010 Survey Protocol.

Response:

Eagle surveys were completed by WRI. Information regarding the Golden Eagle surveys will be presented in the Golden Eagle survey report to be completed in June 2010.

CURE DR-50

Information Required:

Please explain the basis for the Applicant's argument that the PSPP site is not suitable foraging habitat for the golden eagle, despite the presence of golden eagle prey and the availability of suitable nesting sites within 10 miles of the PSPP site.

Response:

See response to CURE DR-48 and 49.

CURE DR-55

Information Required:

Please provide information and analysis concerning the impacts to biological resources that the four newly proposed evaporation ponds may cause.

Response:

In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-56

Information Required:

Please provide information regarding possible damage to the newly proposed evaporation ponds caused by floods.

Response:

The evaporation ponds will be designed so that no surface water from the surrounding area will flow to the ponds. Any water that falls directly into the ponds during a rainfall event has been included in the calculations associated with the sizing of the ponds. A discussion on the pond design and design basis was provided in the Report of Waste Discharge Application docketed May 25, 2010.

CURE DR-58

Information Required:

Please describe in detail the design features and mitigation measures that may reduce potential significant impacts to wildlife from the evaporation ponds and provide an explanation concerning the anticipated effectiveness of these measures.

Response:

This will be included in the updated Biological Assessment which will be completed by July 2010. The ponds will be netted and will have slopes sufficient to deter access by wildlife. A condition of certification was proposed for Blythe in the Revised Staff Assessment and the same condition is expected for Palen. This condition is consistent with ongoing agency coordination regarding this issue on other solar projects. Please see response to CURE DR-56. A discussion on the pond design and design basis, mitigation and corrective action plans were provided in the Report of Waste Discharge Application docketed May 25, 2010.

CURE DR-67

Information Required:
Please provide a map that depicts the areas where desert tortoise protocol surveys were conducted during each of the following years;

a. 2009

b. 2010.

Response:

Survey areas were described in the 2009 BRTR. See Response to CURE DR-31.

CURE DR-68

Information Required:

Please confirm that DT surveys were conducted for all possible transmission lines and other areas impacted by infrastructure required for the PSPP project.

Response:

In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-70

Information Required:

Please explain why Zone of Influence surveys for desert tortoise were not conducted for the Project. Please include a summary of the rationale for waiving this requirement and provide documentation if possible.

Response:

Survey methods and approvals were described in the 2009 BRTR and were provided in the Spring Survey Protocols, docketed on April 22, 2010.

CURE DR-73

Information Required:

Please clarify whether closer transect spacing for desert tortoise surveys was implemented at any location(s) within the survey area. If closer transects were implemented, please mark these locations on a map.

Response:

Survey methods and approvals were described in the 2009 BRTR and were provided in the Spring Survey Protocols, docketed on April 22, 2010.

CURE DR-74

Information Required:

Please confirm that the 2009 and 2010 surveys for DT were conducted during the time periods when DT are considered most active. Please indicate whether the timing of the surveys may affect the number of adult DT observed within the survey area.

Response:

Yes, surveys were conducted during active periods agreed to by agencies.

CURE DR-75

Information Required:
Please explain how the number of acres of impacted DT critical habitat was calculated and why the Applicant's calculations differ from Commission staff calculations.

Response:

Critical habitat impacts are a straight calculation from GIS based on footprint. The only differences are based on project refinements.

CURE DR-77

Information Required:
Please provide an updated analysis of the quality of DT habitat, and the DT occupancy, taking into consideration the results of the Spring 2010 surveys.

Response:

A discussion of DT occupancy and habitat quality was presented in the Applicant's comments on the Staff Assessment, docketed on May 12, 2010. In response to agency direction and comment relating to the

sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010. .

CURE DR-80

Information Required:
Please confirm whether the 8-10-mile transmission line vaguely identified in the SA/DEIS and recently confirmed in Applicant submittals to the Commission was considered as a potential new source of raven perching sites that may impact DT.

Response:

The Raven plan is based on all potential subsidies, irrespective of location, and would include monitoring of the final transmission line.

CURE DR-81

Information Required:

Please analyze and describe how DT may be indirectly impacted by perching sites on the 8-10-mile newly proposed transmission line.

Response:

There are no new impacts that were not previously identified. The Raven plan is based on all potential subsidies, irrespective of location, and would include monitoring of the final transmission line.

CURE DR-82

Information Required:
Please analyze and describe how DT may be indirectly impacted by vehicle traffic along the road that will be located along the 8-10-mile long transmission line.

Response:

There are no new impacts that were not previously identified. Avoidance/minimization measures have already been identified to minimize this (i.e., speed limits). Also, the transmission line road will not be continuously used.

CURE DR-83

Information Required:
Please provide specific performance standards for the Raven Management Plan and a Weed Management Plan.

Response:

Draft Plans have already been submitted to Docket (January 2010).

CURE DR-84

Information Required:

Please address the recommended compensation mitigation ratios for DT habitat, taking into consideration the results of the Spring 2010 surveys.

Response:

Spring 2010 data do not change project findings or mitigation ratio proposals. In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-87

Information Required:

Please identify specific performance criteria that can be adopted to ensure mitigation of DT impacts will be effective in reducing impacts to less-than-significant levels.

Response:

The discussion of mitigation is already presented in multiple documents including the HMP (January 2010) and in the Applicants comments to the Staff Assessment (May 12, 2010). The compensatory mitigation has been proposed consistent with required mitigation for impacts that would provide protection of species habitat in perpetuity and/or contribution to agency approved in lieu fee programs/species recovery programs that directly target DT recovery. Specific proposed lands and disclosure of those is not required or appropriate at this time. Lands must be approved by agencies.

CURE DR-88

Information Required:

Please identify all surveys during which MFTL was detected within the BRSA.

Response:

This information was provided in the 2009 BRTR. In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-89

Information Required:

Please explain why focused surveys have not and apparently will not be conducted for the MFTL. In addition, please clarify why the Applicant did not conduct pitfall trapping for the MFTL.

Response:

Protocol surveys were not required for the MFTL. Information regarding surveys has already been provided in BRTRs, AFC, HMP, etc. No further information should be necessary.

CURE DR-90

Information Required:

Please explain whether surveys for MFTL will be conducted in late May through early October 2010.

Response:

See response to CURE DR-89.

CURE DR-91

Information Required:

Please explain whether any MFTL were observed within the survey area during the Spring 2010 surveys.

Response:

In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-92

Information Required:

Please describe potential habitat for MFTL for the facility footprint and buffer area north of I-10.

Response:

A description of suitable MFTL habitat and proposed mitigation, when relevant, was already provided in the 2009 BRTR and January 2010 HMP. In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-93

Information Required:

Please indicate how many acres of suitable MFTL habitat are present in the facility footprint and buffer area north of I-10.

Response:

A description of suitable MFTL habitat and proposed mitigation, when relevant, was already provided in the 2009 BRTR and January 2010 HMP. In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-94

Information Required:

Please describe the basis by which the Applicant determined that the elimination of an estimated 1.1 percent of MFTL habitat is not a significant impact.

Response:

This issue was addressed in the Applicant's comments on the Staff Assessment docketed on May 12, 2010.

CURE DR-99

Information Required:

Please indicate whether any MFTL were observed within the PSPP disturbance area or buffer areas during the Spring 2010 surveys. If MFTL were observed, please describe these observations in detail.

Response:

In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-103

Information Required:

Please provide evidence supporting the Applicant's proposed mitigation ratios for acknowledged direct, indirect and cumulative impacts to the MFTL and its habitat.

Response:

In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-104

Information Required:

Please provide evidence demonstrating that mitigation at the Applicant's proposed ratios will be effective in reducing all impacts to MFTL to less-than-significant levels.

Response:

See response to CURE DR- 103.

CURE DR-111

Information Required:

Please describe in greater detail the WBO sign observed during surveys.

Response:

See the 2009 BRTR. In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-112

Information Required:

Please provide information on whether other burrows within the Disturbance Area may be active.

Response:

See the 2009 BRTR. In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-113

Information Required:

Please confirm whether WBO surveys have been performed for the PSPP's transmission route currently under consideration and for the Red Bluff substation. Please also provide the results of such surveys, if any.

Response:

See response to CURE DR-31. In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-114

Information Required:

Please provide justification for the Applicant's reliance on one survey year to estimate burrowing owl abundance.

Response:

One survey year is in compliance with CDFG/CBOC guidelines. Nevertheless, AECOM conducted burrowing owl surveys both in 2009 and 2010. In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-115

Information Required:

Please provide the rationale for the conclusion in the AFC that a 6.5-acre conservation area would likely provide enough habitat for two (2) pairs of western burrowing owls and their fledglings, including citations to scientific literature if possible.

Response:

This is not a correct interpretation, a 6.5 acre area was proposed per pair and was proposed based on habitat to be acquired. In addition, the project applicant has agreed to mitigate as proposed in the Staff Assessment at 19.5 acres per pair or individual impacted.

CURE DR-116

Information Required:

Please indicate whether the Applicant agrees with the 78-acre compensation requirement for WBO proposed in the SA/DEIS.

Response:

Yes, will mitigate per SA/DEIS.

CURE DR-117

Information Required:

Please state how the Applicant determined the amount of compensation habitat for burrowing owls.

Response:

See response to CURE DR-115. The applicant has agreed to mitigate at 19.5 acres per individual or pair. Preconstruction surveys are also required with passive relocation. We will mitigate per SA/DEIS Comments. Also DT mitigation will be sufficient for WBO mitigation if it meets the required criteria and would protect more than the compensatory mitigation obligation for the owl.

CURE DR- 125

Information Required:

Please confirm whether Swainson's hawk nest surveys will be conducted within one or more survey periods.

Response:

Specific Swainson's hawk nest surveys are not proposed, since there is no suitable breeding habitat exists on site, nor over most of the Colorado Desert. Nearest breeding sites are in Mojave Desert within higher desert where it nests in Joshua trees and junipers. Any Swainson's hawk observations would be evaluated as part of the Golden Eagle surveys and as part of preconstruction surveys.

CURE DR-126

Information Required:

Please confirm whether Swainson's hawk nests were observed during the surveys recently conducted for the Golden Eagle.

Response:

Information will be presented in the Golden Eagle Report. In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-133

Information Required:

Please provide updated information concerning the Project's impacts to Harwood's Milk-vetch and any other special-status plants, based on the results of the Spring 2010 survey.

Response:

In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR- 139

Information Required:

Please indicate how the Project, and the redesigned drainage channels will impact the Couch's spadefoot toad, and whether those impacts are potentially significant.

Response:

Palen is at the edge of Couch's spadefoot toad range, is outside the NECO range, and no ponded areas were identified in 2010 that would support the species.

CURE DR-140

Information Required:

Please indicate how the Project and the redesigned drainage channels have been located and/or designed to minimize or mitigate impacts to the Couch's spadefoot toad.

Response:

See response to CURE DR-139. No mitigation for the Couch's spadefoot is required.

CURE DR-141

Information Required:

Please indicate how the Project and the redesigned drainage channels have been located and/or designed to minimize or mitigate impacts to wildlife movement.

Response:

Wildlife movement has been addressed in the AFC, 2009 BRTR, and general mitigation measures. This is also addressed Applicants comments to the Staff Assessment (May 12, 2010). In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-144

Information Required:

Please evaluate the potentially significant impacts to biological resources that may result from increased nighttime construction activities, including impacts caused by nighttime noise and lighting.

Response:

This is already addressed in the AFC, BRTR, and general mitigation measures as well as in the SA/DEIS.

CURE DR-145

Information Required:

Please state whether the Applicant relied on data available through the BLM database of right of way of applications for renewable energy projects.

Response:

Yes, the Applicant has viewed and utilized data available through the BLM database.

CURE DR-147

Information Required:

Please confirm whether transmission line corridors for the various projects identified in Biological Resources Table 9 were considered in the cumulative impact analysis.

Response:

Projects considered in the cumulative impacts analysis are summarized in the cumulative impacts discussion.

CURE DR- 151

Information Required:

Please describe feasible mitigation measures that can reduce or eliminate the Project's admitted contribution to cumulative impacts to habitat function and value for DT, MFTL, and Golden Eagle.

Response:

This discussion has been presented in the AFC, SA/DEIS comments, HMP, and BRTR. In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR- 158

Information Required:

Please clarify the number of acres within the WHMA that would be impacted by the Project.

Response:

In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-159

Information Required:

Please indicate the Project's compliance with the NECO Plan's requirement for 1:1 compensation for impacts to BLM lands outside of DWMA's.

Response:

A discussion of the mitigation ratios and rationale for the Applicant's proposal was provided in the Applicant's comments on the Staff Assessment (May 12, 2010) and in the HMP (January 2010). In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR- 161

Information Required:

Please provide the total amount of acreage that will be disturbed by the Project footprint (i.e., solar units, power blocks, fence line, evaporation ponds, land treatment units, project laydown area, administrative buildings, maintenance buildings, access road, etc.), as currently proposed..

Response:

In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-162

Information Required:

Please provide the total amount of acreage within the Transmission Line Disturbance Area, including the associated road, as currently proposed**.**

Response:

In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-164

Information Required:

Please ensure that the revised drainage plan currently being developed accurately reflects the total amount of disturbed acreage provided in the Applicant's responses to Data Requests 161, 162 and 163, above.

Response:

In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-165

Information Required:

Please provide an accurate estimate of the total amount of cut and fill that will be required for the Project.

Response:

In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-167

Information Required:

Please explain what is meant by the phrase "watered on a regular basis" in the quoted excerpt from the DR response above by providing a) the amount of water that will be used and b) the frequency of such use.

Response:

The peripheral roads will not use water from the evaporation ponds but will now use a dust palliative specific to roadways for control of dust during operation. Approximately 1 AF of water will be used per year to apply the dust palliative. The application will be occur approximately every 6 months using 0.5 AF each time.

CURE DR-168

Information Required:

Please provide an estimate of the quantity of water required for regular watering of the gravel road surrounding the Project site by providing a) the total amount of water for each watering event and b) the number of watering events per year.

Response:

The peripheral roads will not use water from the evaporation ponds but will use a dust palliative specific to roadways for control of dust during operation. Approximately 1 AF of water will be used per year to apply the dust palliative. The application will be done approximately every 6 months using 0.5 AF each time.

CURE DR-169

Information Required:

In light of anticipated chemical contamination of water treated in the newly proposed evaporation ponds, please explain whether this water will be used to water the gravel road along the perimeter of the facility.

Response:

Water from the evaporation ponds will **not** be used for dust suppression or any other application within the facility. The wastewater will be contained and managed consistent with the Report of Waste Discharge Application docketed May 25, 2010.

CURE DR-170

Information Required:

If water from the evaporation ponds will not be used to water the gravel road along the perimeter of the facility, please provide the Applicant's proposed water source for this activity.

Response:

Dust palliatives will be used for dust control. Any water needed for dust control purposes or the dust palliatives will be groundwater from onsite water supply wells.

CURE DR-171

Information Required:

Please explain why wind fences will not also be constructed along the north and south sides of the solar fields. If the quoted excerpt from response to DR-S&W-186 is incorrect, please provide the correct information.

Response:

The rows of solar arrays extend north-south so that the mirrors can be oriented east-west to track the sun as it moves across the sky during the day. The wind fences are intended to protect the mirrors from windblown dust; because the mirrors are oriented east–west, the wind fences are only on the east and west sides of the solar fields. In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-178

Information Required:

Please explain how the desired 3:1 slope for drainage will be accomplished.

Response:

The 3:1 side slopes for the channels will be constructed of native material with conventional earthwork equipment.

CURE DR-179

Information Required:

Please explain whether the transmission line road will affect either of the surface water sites to the west of the Project site.

Response:

The transmission line road will not affect any surface water sites to the west of the Project site.

CURE DR-181

Information Required:

Please analyze the Project's impacts on existing surface flow patterns on-site and off-site.

Response:

The Project's impacts on the existing surface flow patterns on site and off site are documented in the Project Drainage Report in the Pre-development Drainage Conditions Report, and in the Post-development Drainage Conditions Report, all of which have been docketed with the CEC.

CURE DR-182

Information Required:

Please demonstrate the ecologists responsible for the 2009 and 2010 delineations have degrees, course work and training in such physical sciences as geomorphology and hydrology which would allow them to analyze the physical characteristics of dry streambeds for the delineation process.

Response:

Completion of jurisdictional delineations do not require degrees in geomorphology and hydrology. Delineations were conducted in accordance with the criteria defined by the agencies for delineations. However, our scientists are qualified to delineate waters and have USACE certifications for conducting delineations as well as comprehensive understandings of the hydrologic and geomorphic processes.

CURE DR-183

Information Required:

Please provide the name(s) and qualifications of any geomorphologist(s) who may assist the Applicant in the jurisdictional waters delineations.

Response:

See response to CURE DR-182 above.

CURE DR-184

Information Required:

Please indicate whether a revised Streambed Alteration Notification, which takes into account all recent Project modifications, has been submitted to the CDFG.

Response:

No, a revised SAA application has not been submitted to CDFG. A revised SAA application is not necessary. The intent of the governor's executive order was to make the State permitting process more efficient and the permitting authority rests with the CEC. A draft SAA application was prepared to facilitate exchange of the required information; however the project has not significantly changed from the original application, and all relevant and necessary information has been provided in subsequent submittals to the CEC and agencies to support a final decision regarding State waters..

CURE DR-185

Information Required:

Please provide revised calculations of impacted waters of the state, taking into account all recent Project modifications.

Response:

In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-186

Information Required:

Please provide revised mitigation calculations that reflect the Project's impacts to waters of the state taking into account all recent Project modifications.

Response:

In response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-187

Information Required:

Please explain the apparent discrepancy in the amount of sand dunes that will be directly impacted by the Project.

Response:

As indicated in the Applicant's comments on the Staff Assessment/Draft EIS that were docketed with the CEC in May 2010, the differences in the estimates of sand dune impacts between the study performed by the Applicant's geomorphologist (Dr. Miles Kenney, PG) and a study prepared by a CEC consultant (Andrew Collison), appear to center on differences in the wind vector data used in the two studies. Dr. Kenney holds that Mr. Collison overemphasizes the importance of westerly winds rather than northerly winds in determining sand transport in the area affected by the Project. Dr. Kenney's data shows a greater component of winds from the north that affect the movement of sand than does Mr. Collison; Collison sees the winds from the west as more important than does Dr. Kenney. Winds from the west would transport sand across the Project site; winds from the north would carry sand from north of the site, not across it. The greater the component of northerly winds compared to westerly winds, the less would be the effect of the Project on sand transport.

The Applicant sand dune acreages were based on GIS calculations of mapped dunes. Calculations in the final analysis will not include those from the substations because those impacts and associated mitigation will be the responsibility of SCE.

However, in response to agency direction and comment relating to the sand transport corridor, PSI has developed a reconfiguration of the PSPP to avoid to the extent feasible the most active portion of the sand transport corridor. This reconfiguration is currently being developed in more detail and will be docketed on June 30, 2010. This reconfiguration will affect the information requested by this data request and therefore a response at this time will be out of date. Therefore, we will provide a Supplemental Response to this Data Request on June 30, 2010.

CURE DR-188

Information Required:

Please describe the distinction made between sand dunes and "sand fields vegetated with sparse creosote bush scrub.

Response:

These features differ in the coarseness and stability of the sands. Sand fields are not equivalent to stabilized or partially stabilized sand dunes. .

CURE DR-189

Information Required:

Please confirm that no additional modeling has been conducted to determine potentially significant impacts from the Applicant's proposed increased construction water demand of 5,750 acre-feet.

Response:

Additional numerical groundwater modeling using the same model as provided in the AFC has been conducted to evaluate the impacts of the change in the construction water volume. An update to the numerical groundwater modeling and Basin water balance was provided to the CEC on March 11, 2010 in response to the January 14, 2010 CEC workshop queries. Subsequently, an evaluation of the cumulative impacts and impacts to Basin storage and affects from project pumping using the numerical groundwater modeling were updated to reflect the change in the proposed construction water volume. This evaluation was provided in Attachment 2, Environmental Evaluation of Project Updates contained in the comments to the Draft Staff Assessment and Draft Environmental Impacts Statement dated May 4, 2010.

CURE DR-190

Information Required:

Please provide any evaluation that the Applicant has conducted on the impacts of the Project's construction and operation water requirements on the groundwater basin's water balance and perennial yield.

Response:

The evaluation of the groundwater basin water balance and perennial yield was provided in the AFC water resources section (5.17-22 to 5.17-26) and revised based on comments from the CEC in data response (Data Response S&W-194) dated March 11, 2010.

CURE DR-191

Information Required:

Please confirm that the recoverable storage within the Chuckwalla Groundwater Basin remains 15,000,000 acre-feet.

Response:

The reference to 15,000,000 acre-feet of storage is after the Department of Water Resources (2004), Bulletin 118, California's Groundwater - Chuckwalla Valley Groundwater Basin Summary: California Department of Water Resources, Sacramento, California. The Bulletin references LeRoy Crandall and Associates, 1979, Report of Phase I Investigation, Feasibility of Storing Colorado River Water in Desert Groundwater Basins.

CURE DR-192

Information Required:

Please provide any evaluation that the Applicant has conducted regarding the potential for outflow of groundwater from the Chuckwalla Groundwater Basin to the Palo Verde Mesa Groundwater Basin and the hydraulic connection between the two basins.

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Response:

The Applicant has not conducted an evaluation of the change in groundwater flux from the Chuckwalla Valley Groundwater Basin to the adjacent Palo Verde Mesa Groundwater Basin. The Applicant has adequately assessed the water balance and impacts to the basin storage, demonstrating that the Project is not cumulatively considerable in terms of its impact on the Chuckwalla Valley Groundwater Basin. Recognize that as provided in Staff Assessment Condition 18 (March 2010, page C.9-106) the Applicant is required to evaluate the Project pumping affects on the flux from the Colorado River. Subsequent workshop discussions (May 11, 2010) on compliance with this condition resulted a two part approach, beginning with an assessment in the change in outflow from the Chuckwalla Valley Groundwater Basin resultant from Project pumping followed by modeling of this change and its affect on the flux from the Colorado River.

CURE DR-193

Information Required:

Please provide any evaluation that the Applicant has conducted on impacts from increased construction water requirements on the outflow from the Chuckwalla Groundwater Basin to the Palo Verde Mesa Groundwater Basin.

Response:

Please see the response to CURE DR-192.

CURE DR-195

Response Date: June 14, 2010

Information Required:

Please provide an updated table listing the construction and operation water demands for all pending projects that will rely on groundwater from the Chuckwalla Groundwater Basin.

Response:

Please see the attached TABLE CURE DR-195 for updated information on the projected groundwater use for projects in the Chuckwalla Valley Groundwater Basin.

Soil and Water Resources

Attachment DR-S&W-195

Table DR-S&W-195

TABLE DR-S&W-195
PUMPING SCHEDULE FOR PROJECTS WITHIN THE CHUCKWALLA VALLEY GROUNDWATER BASIN
RESPONSE TO CURE COMMENTS
PALEN SOLAR POWER PROJECT
CHUCKWALLA VALLEY GROUNDWATER BASIN

TECHNOLOGY	SOURCE	USE	WATER USE - RENEWABLE PROJECTS (AFY)									COMMENTS [3]
			2010	2011	2012	2013	2014	2015	2016	2017	2018-2043	
Photovoltaic (200MW)	Groundwater	Construction	--	20	20	10	--	--	--	--	--	Updated from CEC email (12-16) transmitting Table "Cumulative Projests - I-10 Corridor" and First-In-Line Solar Applications, BLM (12-21-09)
		Operational	--	--	5	7	10	10	10	10	10	
Photovoltaic (100MW)	Groundwater	Construction	--	--	10	10	--	--	--	--	--	Updated from CEC email (12-16) transmitting Table "Cumulative Projests - I-10 Corridor" and First-In-Line Solar Applications, BLM (12-21-09).
		Operational	--	--	--	--	5	5	5	5	5	
Photovoltaic	Groundwater	Construction	--	--	20	20	20	--	--	--	--	Updated from CEC email (12-16) transmitting Table "Cumulative Projests - I-10 Corridor" and First-In-Line Solar Applications, BLM (12-21-09)
		Operational	--	--	--	--	--	5	5	5	5	
Parabolic Trough (500MW)	Groundwater	Construction	--	--	--	--	--	--	--	--	--	Updated from CEC email (12-16) transmitting Table "Cumulative Projests - I-10 Corridor" and First-In-Line Solar Applications, BLM (12-21-09). Project Withdrawn.
		Operational	--	--	--	--	--	--	--	--	--	
Photovoltaic (550MW)	Groundwater	Construction	--	700	700	--	--	--	--	--	--	Updated from Draft Environmental Impact Statement May 2010, Page 4.5-2 and 4.5-3.
		Operational	--	--	--	0.2	0.2	0.2	0.2	0.2	0.2	
Pump - Storage (1300MW)	Groundwater	Construction	--	--	--	--	8,066	8,066	8,066	8,066	--	Updated from CEC email (12-16) transmitting Table "Cumulative Projests - I-10 Corridor" and First-In-Line Solar Applications, BLM (12-21-09)
		Operational	--	--	--	--	--	--	--	--	1,802	
Parabolic Trough (250MW)	Groundwater	Construction	--	813	813	813	--	--	--	--	--	Updated from CEC Staff Assessment water use discussion (March 2010, page C.9-5)
		Operational	--	--	--	--	1,644	1,644	1,644	1,644	1,644	
Photovoltaic (500MW)	Groundwater	Construction	--	20	20	20	--	--	--	--		Updated from CEC email (12-16) transmitting Table "Cumulative Projests - I-10 Corridor" and First-In-Line Solar Applications, BLM (12-21-09)
		Operational	--	--	0.25	0.5	0.7	0.7	0.7	0.7	0.7	
Photovoltaic (200MW)	Groundwater	Construction	--	--	10	10	--	--	--	--	--	Updated from CEC email (12-16) transmitting Table "Cumulative Projests - I-10 Corridor" and First-In-Line Solar Applications, BLM (12-21-09)
		Operational	--	--	--	--	5	5	5	5	5	
Parabolic Trough (484MW)	Groundwater	Construction	--	1917	1917	1917	--	--	--	--	--	Total construction time remains about the same (38 months). Total water usage during construction (1,872,602,991 gallons) or about 5,750 af. Operational use remains at 600 afy. Construction water usage averaged over a period of 3 years starting in 2011.
		Operational	--	--	--	--	303	303	303	303	303	

as to whether these projects will be permitted. They have been included for completeness though they may well not be part of the cumulative water budget for the Chuckwalla Valley Groundwater Basin.
n has been rejected.
gov/pgdata/etc/medialib/blm/ca/pdf/pa/energy/solar.Par.45875.File.dat/Renew_Energy_2_09_solar.pdf

EXHIBIT 4

Palen Solar Power Project (09-AFC-7)

Summary of Data Requests Applicant Objects to and Refuses to Answer

Request(s)	Description (Requested Information/Explanation)	Relevance[1]
1, 3, 4, 5	Explanation regarding survey methodology for general wildlife surveys and for vegetation mapping.	B, I, M
6	Explanation for lack of focused surveys for several species (including Mohave Fringe Toed Lizard ("MFTL")).	B, I, M
7, 20	Information regarding man-hours spent surveying for specific species (info required per California Dept. of Fish & Game ("CDFG") protocol).	B
22, 23	Information regarding qualifications of biologist who ruled out presence of Coachella Valley Milk vetch.	B
35, 36	Information regarding jurisdictional waters that will be disturbed by transmission line and associated access and spur roads.	B, I, M
44 – 47	Information regarding asserted poor quality of DT habitat on the Project site.	B, I, M
51, 52	Information regarding adequacy of DT compensation habitat for mitigating impacts to golden eagle.	M
53, 54	Information regarding chemical composition of dust suppression coating and its safety for plants and animals.	I, M
61, 62	Information regarding the proposed or potential land that will be purchased as mitigation for impacts to DT.	M

[1] The relevance of requested information has been categorized herein using the following labels:
B: Baseline for environmental review,
I: Impact analysis,
M: Mitigation feasibility and adequacy for eliminating or reducing potentially significant impact(s), and
A: Alternative feasibility and adequacy for avoiding or reducing potentially significant impact(s).

Request(s)	Description (Requested Information/Explanation)	Relevance[1]
64	Explanation regarding cumulative impacts to DT gene flow, caused by multiple large scale projects within the region.	I, M
66	Explanation regarding feasibility of revised Reduced Acreage Alternative (proposed to address indirect impacts on MFTL habitat).	A
76, 78	Explanation regarding assessment of DT habitat on Project site as moderate or poor in quality (even after DT and sign were detected).	B, I, M
80	Explanation regarding whether possible increased predation of DT could be caused by transmission line (increased raven perching sites).	I, M
95 – 98	Information regarding amount of sand moving through sand transport corridor, predominant wind direction, and washes as sources of sand.	B, I, M
100 – 102	Information regarding the proposed or potential land that will be purchased as mitigation for impacts to MFTL.	M
105 – 110	Information regarding the effectiveness of the proposed sand replenishment program, which will supposedly mitigate indirect impacts to MFTL.	M
118 – 123	Information regarding the proposed or potential land that will be purchased as mitigation for impacts to WBO.	M
129 – 132	Explanation regarding adequacy of DT compensation habitat as mitigation for impacts to migratory birds, kit fox, and American badger.	M
134	Explanation regarding mitigation for impacts to Harwood's Milk vetch.	M
135 – 138	Information regarding the Project's impacts to wildlife movement corridors.	I, M
142, 143	Explanation regarding feasibility of mitigating impacts to wildlife movement corridors.	M
149	Explanation regarding project's contribution to cumulative impacts to habitat.	I, M
150, 152	Information/Explanation regarding possible and proposed mitigation to address cumulative impacts to habitat.	M

Request(s)	Description (Requested Information/Explanation)	Relevance[1]
153 – 156	Information regarding the Project's impacts to resources managed through the WHMA and the NECO.	I, M
160	Information regarding bridges and culverts that are supposed to be used for linear facilities, including the transmission line access road.	I, M, A
163	Information regarding indirect impacts, in the form of land disturbance, that will be caused by drainage modifications and wind interference.	I, M
166	Information regarding the estimated volume of soil erosion during Project construction.	I, M
172 – 175	Information regarding proposed sand replenishment program (somewhat duplicative of requests 105. – 110.).	M
176, 177, 180	Information regarding drainage facilities for Project (which are currently being redesigned).	I, M
194	Explanation regarding Project's contribution to cumulative impacts to water supply (pumping groundwater will lead to overdraft).	I, M

DECLARATION OF SERVICE
Palen Solar Power Plant Project

Docket No. 09-AFC-7

I, Bonnie Heeley, declare that on June 17, 2010, I served and filed copies of the attached CALIFORNIA UNIONS FOR RELIABLE ENERGY PETITION TO COMPEL PRODUCTION OF INFORMATION IN RESPONSE TO CURE DATA REQUESTS, SET ONE, dated June 17, 2010. The original document, filed with the Docket Office, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:
http://www.energy.ca.gov/sitingcases/solar_millennium_palen/index.html

The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Office via email and U.S. mail as addressed below.

I declare under penalty of perjury that the foregoing is true and correct. Executed at South San Francisco, California on June 17, 2010.

/S/
Bonnie Heeley

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