



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

DOCKET

09-AFC-7

DATE JUL 29 2010

RECD. JUL 29 2010

APPLICATION FOR CERTIFICATION

FOR THE *PALEN SOLAR POWER PROJECT*

DOCKET No. 09-AFC-7

**COMMITTEE ORDER RESPONDING TO
CURE'S PETITION TO COMPEL PRODUCTION OF INFORMATION**

I. SUMMARY

On June 17, 2010, Intervenor California Unions for Reliable Energy (CURE) filed its *Petition to Compel Production of Information In Response to CURE Data Requests, Set One*.

Palen Solar I, LLC, (referred to herein as "Applicant"), filed timely opposition to the Petition.

The Applicant, while objecting to all of the requests, agreed to answer 96 of the 195 data requests, which we view as a showing of good faith.

Neither party requested that the Committee conduct public hearings on the Petitions.

II. DISCUSSION

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. Energy Commission regulations require all discovery to be filed within 180 days of data adequacy. The Commission found the AFC data adequate on November 18, 2009 and the 180 day period expired May 17, 2010. CURE submitted questions on May 14, 2010, which meets the letter of our requirements but complicated the case, which was already in an advanced state of preparation for Evidentiary Hearings. We encourage all intervenors to serve data requests as soon as possible, and applicants to provide responses in a similar fashion.

Our regulations do not require that an applicant conduct original research or analysis on behalf of, or prepare documents specifically for, an intervenor. Nor do they require that the information provided satisfy all expectations of the requesting party. Furthermore, an intervenor is afforded the opportunity to challenge the adequacy of an environmental analysis during Evidentiary Hearings if it believes essential research or analysis has not been undertaken.

In considering the Petition, 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, and, in light of those determinations, whether or not the request imposes an undue burden upon Applicant. This Order reflects the Committee's careful consideration of all information provided by the parties to date, e.g., the Staff Assessment/ Draft Environmental Impact Statement ("SA/DEIS") and various Applicant filings.

A. Committee Rulings on CURE's Petition to Compel Production of Information CURE Data Requests, Set 1

1. General Wildlife Surveys

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

Committee Response: DENIED. This request does not ask for specific information. Also, relevant wildlife surveys have been addressed in various Applicant filings and the SA/DEIS.

***Data Request 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.*

Committee Response: DENIED. Information regarding Staff conducting the surveys has already been provided in the Biological Resources Technical Report ("BRTR"), Application for Certification ("AFC"), Habitat Management Plan ("HMP"), etc. However, Applicant must continue to meet its obligation to update its responses as the information becomes available.

***Data Request 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.*

***Data Request 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.*

Committee Response: DENIED. The BRTR states that “vegetation mapping was conducted from strategic vantage points whenever direct access was not feasible.” Overall vegetation data has been addressed by various Applicant filings and the SA/DEIS.

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

Committee Response: DENIED. This request does not ask for specific information available to Applicant. Also, relevant surveys have been addressed by various Applicant filings and the SA/DEIS. CEQA does not require that every conceivable study, research project or test be carried out, or that the analyses be exhaustive. Information regarding 2010 surveys has already been provided in BRTRs, AFC, HMP, etc.

2. Biological Resource Surveys Along New Transmission Line Corridor and Previously Unsurveyed Portions of Project Disturbance Area

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

- 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.*

Data Request 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.*

Committee Response: DENIED. Information regarding surveys has already been provided in BRTRs, AFC, HMP, etc. In regards to specific hours spent surveying, the Committee finds that preparing this information would be tedious and unduly burdensome especially since it is very unlikely it would yield any information that would be helpful to the Committee in reaching a decision. In addition, many of the details

requested have been provided in other ways such as discussions in Staff workshops and the SA/DEIS, so this request appears to be duplicative.

Data Request 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.*

Committee Response: GRANTED IN PART. Applicant shall provide CURE with a resume for Andrew Sanders. Relevant peer reviewed publications should be equally available to CURE.

Data Request 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.*

Committee Response: GRANTED. The request by its language and intent is clear and straightforward, and seeks only a yes or no answer.

Data Request 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.*

Committee Response: CONDITIONALLY AND PARTIALLY GRANTED. If these experts have been identified, Applicant will provide their names and contact information to CURE. Applicant is not required to conduct analysis or research on behalf of an intervenor.

3. Inadequacy of Data

Data Request 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.*

Data Request 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.*

Committee Response: DENIED. CURE can locate information relevant to these requests on its own from the data the Applicant has previously provided.

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.*

Data Request 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.*

Data Request 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.*

Data Request 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.*

Committee Response: PARTIALLY GRANTED. Regarding data requests 44-47, Applicant will provide any documents already in its possession that support its assertion that the Chuckwalla Habitat Unit north of Interstate 10 does not meet four of the principles of a Desert Wildlife Management Area. Applicant is not required to conduct analysis or research on behalf of an intervenor.

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

Data Request 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.*

Committee Response: DENIED. These data requests address the concept of two or more species sharing the same or an overlapping ecosystem. They also touch on the established option of an acquired wildlife preserve serving as mitigation for impacts to multiple species. The sufficiency of mitigation has been addressed in the SA/DEIS as well as miscellaneous Applicant filings. Furthermore, Applicant is not required to conduct analysis or research on behalf of an intervenor.

4. Impact of Contaminants On Plant and Animal Resources

Data Request 53: *Please provide the chemical composition of the dust suppression coating.*

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

Committee Response: PARTIALLY GRANTED. Applicant will provide identifying information, such as its trade name, for the dust suppression coating. CURE can then use this information to research the chemical composition and third party studies as it sees fit.

5. Federal Endangered Species Act Compliance

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

Data Request 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.*

Committee Response: DENIED. The subject matter of these data requests has been addressed in the SA/DEIS as well as Applicant filings. Furthermore, Applicant is not required to conduct analysis or research on behalf of an intervenor.

6. California Environmental Quality Act Issues

Data Request 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.*

Data Request 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.*

Committee Response: DENIED. CEQA does not require that every conceivable study, research project or test be carried out, or that the analyses be exhaustive. The Supplementary Information for Reconfigured Alternative 2 and Reconfigured Alternative 3, docketed July, 2, 2010, and the SA/DEIS provide information regarding mitigation to MFTL habitat.

7. Direct Impacts to Desert Tortoise

Data Request 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.*

Data Request 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.*

Committee Response: DENIED. This request does not ask for specific information available to Applicant, and the Applicant is not required to conduct analysis or research on behalf of an intervenor. Furthermore, the subject matter of these data requests has been addressed in the SA/DEIS as well as Applicant filings.

8. Indirect Impacts to Desert Tortoise

Data Request 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.*

Committee Response: GRANTED. The request by its language and intent is clear and straightforward, and seeks only a yes or no answer.

9. Mitigation For Mojave Fringe-Toed Lizards

Data Request 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.*

Committee Response: PARTIALLY GRANTED. Applicant will provide the amount of MFTL habitat that may be indirectly impacted by the PSPP footprint, transmission line, and roads. With respect to the portion of the data request regarding the function and value of the MFTL habitat, the Applicant is not required to conduct analysis or research on behalf of an intervenor. Furthermore, the subject matter of these data requests has been addressed in the SA/DEIS as well as Applicant filings.

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

Data Request 97: *Please provide the predominant and varied direction of winds through the sand transport corridor.*

Committee Response: CONDITIONALLY GRANTED. If Applicant knows of a study regarding the requested information, Applicant will provide a copy to CURE. However, Applicant is not required to conduct analysis or research on behalf of an intervenor.

Data Request 98: *Please provide information supporting the conclusion that washes traversing the Project site contribute only a “small amount of source sand” to the corridor.*

Committee Response: DENIED. Applicant is not required to conduct analysis or research on behalf of an intervenor. Moreover, the subject matter of these data requests has been addressed in the SA/DEIS as well as various Applicant filings.

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

Committee Response: DENIED. CEQA and the Commission's Siting Regulations do not require Applicant identification of specific parcels for mitigating significant biological resources impacts. Commission decisions identify specific performance standards, mitigation mechanisms, and implementation steps. The Applicant also has the option of using the interim mitigation strategy/fee program established by SB 8x 34, through which acquisition of property for mitigation is being handled by the Department of Fish and Game. It does not require that specific parcels be identified at the time of a Commission decision.

Data Request 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.*

Committee Response: DENIED. The Committee does not believe that the Applicant has this information, in that the data request addresses a public policy question which is still being considered by the state/federal Renewable Energy Action Team and other decision makers.

Data Request 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.*

Committee Response: CONDITIONALLY GRANTED. To the extent that the information sought is readily available and has not already been provided the Applicant is directed to provide the information to CURE. However, the Applicant is not required to conduct analysis or research on behalf of intervenors.

Data Request 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.*

Committee Response: CONDITIONALLY GRANTED. To the extent that the information sought is readily available and has not already been provided the Applicant is directed to provide the information to CURE. However, the Applicant is not required to conduct analysis or research on behalf of intervenors.

Data Request 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.*

Committee Response: CONDITIONALLY GRANTED. If the Applicant has the requested information readily available and the mitigation monitoring reports have already been prepared by the Applicant's consultant, then the Applicant is directed to provide the information to CURE. However, the Applicant is not required to conduct analysis or research on behalf of intervenors.

***Data Request 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.*

Committee Response: DENIED. The requested information should be equally available to CURE.

***Data Request 108:** Please provide specific performance standards for the sand replenishment program.*

Committee Response: CONDITIONALLY GRANTED. If these standards have been set, Applicant is directed to inform CURE of them, or to provide them when they become available.

***Data Request 109:** Please identify alternative measures that will be employed if the proposed sand replenishment program is not successful.*

***Data Request 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.*

Committee Response: DENIED. Applicant is not required to conduct research on behalf of an intervenor. The subject matter of these data requests has been addressed in the SA/DEIS as well as various Applicant filings. In addition, CURE has equal access to information regarding potentially feasible alternative measures from other scientific studies.

10. Western Burrowing Owl Mitigation

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

Committee Response: DENIED. This request does not ask for specific information in Applicant's possession, and Applicant is not required to conduct research or prepare documents on behalf of an intervenor. Furthermore, the SA/DEIS discusses the concept of a regional mitigation strategy for the various proposed renewable energy projects in the I-10 area, with possible conservation areas having the potential for supporting multiple species in the Colorado desert.

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

Committee Response: GRANTED. The request by its language and intent is clear and straightforward, and seeks only a yes or no answer.

Data Request 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.

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

Committee Response: GRANTED IN PART. These requests are granted to the extent they seek only yes or no answers.

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

Committee Response: DENIED. This information will be determined by the California Department of Fish and Game. However, the level of detail CURE seeks in this data request is not relevant or reasonably necessary for the Committee to make a decision. The Committee encourages CURE to present specific concerns, if any, regarding potential fee title holders.

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

Committee Response: CONDITIONALLY GRANTED. If the Applicant has the requested information readily available and the mitigation monitoring reports have already been prepared, then the Applicant is directed to provide the information to CURE. However, the Applicant is not required to conduct analysis or research on behalf of CURE.

11. Mitigation For Impacts to Swainson's Hawks, Other Special-Status Bird and Migratory Birds

Data Request 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.

Data Request 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.*

Committee Response: DENIED. The sufficiency of mitigation has been addressed in the SA/DEIS as well as various Applicant filings. These documents cover the subject matter of these data requests regarding the concept of two or more species sharing the same or an overlapping ecosystem. They also touch on the established option of an acquired wildlife preserve serving as mitigation for impacts to multiple species. Furthermore, Applicant is not required to conduct analysis or research on behalf of an intervenor.

12. Mitigation For Impacts to Desert Kit Fox and American Badger

Data Request 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.*

Data Request 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.*

Committee Response: DENIED. The sufficiency of mitigation has been addressed in the SA/DEIS as well as various Applicant filings, focusing on the concept of two or more species sharing the same or an overlapping ecosystem. The SA/DEIS also addresses the established option of an acquired wildlife preserve serving as mitigation for impacts to multiple species. Furthermore, Applicant is not required to conduct analysis or research on behalf of an intervenor.

13. Impacts To Special-Status Plants And Mitigation

Data Request 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.*

Committee Response: DENIED. Applicant is not required to conduct analysis or research on behalf of an intervenor. Moreover, the Supplementary Information for Reconfigured Alternative 2 and Reconfigured Alternative 3, docketed July, 2, 2010, provides more information regarding impacts to Harwood's Milk-vetch and any other special-status plants.

14. Impacts to Wildlife Movement/Genetic Exchange Corridors

Data Request 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.*

Committee Response: GRANTED. The request by its language and intent is clear and straightforward, and seeks only a yes or no answer.

Data Request 136: *Please determine the extent to which the Project will impede wildlife movement.*

Committee Response: DENIED. Applicant is not required to conduct analysis or research on behalf of an intervenor. Furthermore, the subject matter of these data requests has been addressed in the SA/DEIS as well as various Applicant filings.

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

Committee Response: DENIED. Applicant is not required to conduct analysis on behalf of an intervenor. Relevant wildlife surveys have been addressed in various Applicant filings and the SA/DEIS.

Data Request 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.*

Committee Response: DENIED. Applicant is not required to conduct analysis or research on behalf of an intervenor. Furthermore, the subject matter of this data request has been addressed in the SA/DEIS as well as various Applicant filings.

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

Committee Response: DENIED. This request does not ask for specific information in Applicant's possession, and Applicant is not required to conduct analysis or research on behalf of an intervenor. Furthermore, the subject matter of this data request has been addressed in the SA/DEIS as well as various Applicant filings. CURE has access to information regarding potentially feasible mitigation measures from other scientific studies and does not need the Applicant to locate this information for it.

Data Request 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.*

Committee Response: DENIED. The subject matter of this data request has been addressed in the SA/DEIS as well as various Applicant filings. In addition, parties are not required to conduct analysis or research on behalf of a requesting party.

15. Cumulative Impacts

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

Committee Response: DENIED. Applicant is not required to conduct analysis or research on behalf of an intervenor. Furthermore the subject matter of this data request has been addressed in the SA/DEIS as well as various Applicant filings.

Data Request 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.

Committee Response: DENIED. Please refer to the response to Data Request 100.

Data Request 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.

Committee Response: DENIED. This request does not ask for specific information in Applicant's possession, and Applicant is not required to conduct analysis or research or prepare documents on behalf of an intervenor. Furthermore, the subject matter of this data request has been addressed in the SA/DEIS as well as various Applicant filings.

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

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

Committee Response: DENIED. This request does not appear to ask for documents in Applicant's possession; Applicant is not required to prepare documents on behalf of an intervenor. Moreover, the information requested is already available to CURE. Based on data the Applicant and Staff have previously provided or otherwise available, CURE can prepare maps if it so chooses.

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

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

Committee Response: DENIED. The Applicant is not required to conduct analysis or research or prepare documents on behalf of an intervenor. As to DR 155, the information requested is likely to be in the possession of BLM rather than Applicant.

16. Compliance With the NECO Plan

Data Request 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.

Committee Response: DENIED. The topics of animal passage and connectivity between various habitat regimes or areas have been addressed in the SA/DEIS as well as various Applicant filings. The SA/DEIS and Applicant filings also address the project's compliance with BLM's NECO Plan.

17. Project Disturbance Area

Data Request 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).

Data Request 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.

Committee Response: DENIED. Applicant is not required to conduct research or analysis on behalf of an intervenor. Moreover, the subject matter of these data requests has been addressed in the SA/DEIS as well as various Applicant filings

18. Soil Erosion/Deposition Issues

Data Request 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 fence line to areas downwind of the Project site.

Data Request 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.

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

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

Committee Response: DENIED. The Supplementary Information for Reconfigured Alternative 2 and Reconfigured Alternative 3, docketed July, 2, 2010, and the SA/DEIS, provide information regarding many of these issues. CEQA does not require that every conceivable study, research project or test be carried out, or that the analyses be exhaustive. Applicant is not required to conduct analysis or research on behalf of an intervenor.

19. Drainage/Jurisdictional Wetland Issues

Data Request 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.

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

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

Committee Response: DENIED. The Supplementary Information for Reconfigured Alternative 2 and Reconfigured Alternative 3, docketed July, 2, 2010 and the SA/DEIS provide information on the subject matter of these data requests. Moreover, Applicant is not required to conduct analysis or research on behalf of an intervenor.

20. Cumulative Impacts to Water Supply

Data Request 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.

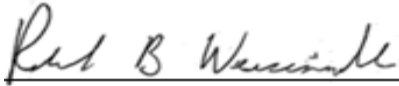
Committee Response: DENIED. Applicant is not required to conduct research or analysis on behalf of an intervenor. Moreover, the Applicant has provided more information regarding the conclusion that the Project water supply requirements would not significantly affect water supply within the Chuckwalla Valley Groundwater Basin in the Supplementary Information for Reconfigured Alternative 2 and Reconfigured

Alternative 3, docketed July, 2, 2010. This topic has also been addressed in the SA/DEIS.

III. ORDER

Where the Committee has indicated that CURE's Petition to Compel is granted, whether wholly, partially or conditionally, the Applicant shall comply within 30 days of the date of this Order except as otherwise directed in the above Committee responses.

Dated July 29, 2010, at Sacramento, California.



ROBERT B. WEISENMILLER
Commissioner and Presiding Member
Palen Solar AFC Committee



KAREN DOUGLAS
Chairman and Associate Member
Palen Solar AFC Committee



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

Docket No. 09-AFC-7

**PROOF OF SERVICE
(Revised 7/2/10)**

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DECLARATION OF SERVICE

I, RoseMary Avalos, declare that on July 29, 2010, I served and filed copies of the attached COMMITTEE ORDER RESPONDING TO CURE'S PETITION TO COMPEL PRODUCTION OF INFORMATION, dated July 29, 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:

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

by personal delivery;

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:

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.

Original Signed By: _____
ROSEMARY AVALOS
Hearing Adviser's Office