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via email and USPS

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Eric W. Veerkamp, AICP
Compliance Project Manager
California Energy Commission
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RE: Comments on the Draft American Badger and Desert Kit fox Monitoring and Management Plan for the Genesis Solar Energy Project.

Dear Mr. Veerkamp,

We fully support the requirement for an American Badger and Desert Kit Fox Mitigation and Monitoring Plan and provide specific comments below. However, we note that the draft plan is very belatedly submitted, well after significant desert kit fox (DKF) mortality has occurred on the Genesis project site that might have been lessened or avoided if a mitigation and monitoring plan had timely been adopted and put in place for the project.

As you are aware, the Center was an intervenor in the Genesis matter and repeatedly asked that this and other mitigation and monitoring plans be drafted and approved before project approval or construction—our request was ignored. In order to ensure that future projects avoid and minimize impacts to these and other imperiled species we suggest the following. First, the CEC should use the pre-project surveys for these species as a basis for avoiding and minimizing impacts through appropriate siting. Secondly, the CEC should require these plans be *finalized* well before construction activities occur so that they can actually be implemented during construction. If a plan had been in place on the Genesis solar site, the concerning DKF mortality may have been prevented, and certainly the horrendous spread of the canine distemper could have been prevented. Instead the CEC's failure to put a final plan in place prior to construction has resulted in this highly contagious disease running rampant through the population. We urge the CEC to have these types of plans available for public review as part of the public permitting process, not after the fact.

The Draft American Badger and Desert Kit Fox Monitoring and Management Plan falls woefully short of actually providing meaningful monitoring of these species especially during the crucial time after being "passively relocated" from their dens to accommodate project construction and operations. Document specific comments include:

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- The CEC in conjunction with the Department of Fish and Game (DFG) should strongly consider providing a permitting system to monitor the effects of "passive translocation" or "hazing" on these species. Indeed, "passive translocation" simply encourages the DKF/AB to move off of the project site into other already-established DKF/AB territories, setting up competition for resources on those adjacent lands that may likely lead to the displaced animals' mortality[1] (even without a disease threat). Absent monitoring, the CEC can not prove that animals are not, in fact, being "taken". Turning a blind eye to the results of "passive relocation" does not reduce or eliminate the potential impact. Instead, the CEC and DFG now have the opportunity to require gathering of data on this controversial "avoidance" measure. Therefore, the Mitigation and Monitoring Plan needs to include acquiring permits to radio-collar impacted kit fox and badger and requiring monitoring of these species to identify the outcomes of the "passive relocations" for a meaningful time period and reporting requirements. Particularly in the case of desert kit foxes, which have already sustained high mortality in the project area, monitoring is requisite.

- The number of nights of monitoring of the DKF/American badger (AB) burrows needs to be increased to 5-7 nights, to ensure that the animals are not actively using the burrow.

- Consistency between monitoring protocols should be required, so that the monitoring on the project site and the "buffer area" are comparable and reporting is coherent and can be effectively reviewed and analyzed.

- In order to more effectively protect burrows that will not ultimately be destroyed by the project we recommend that a 300 foot construction exclusion zone around active burrows and a 500 foot construction exclusion zone around natal burrows be put in place between July and December, while during January to June, a 1000 foot construction exclusion zone around the burrows be required. This protects the burrows from undue degradation and potential unnecessary abandonment by the species. In order to be consistent, these same types of protections should be put in place while the burrows are occupied on the project site prior to the animals being removed (either passively or actively).

- If coyote urine or any other type of predator excretion is used to "haze" the DKF off the site, it should be certified "disease-free". While we are unaware of any definitive study showing if the coyote urine used to "haze" the DKF off the Genesis site was in fact tainted by canine distemper virus, by requiring that any predator excretion used for "hazing" be certified disease-free, the CEC can help to ensure that distemper and other potential epidemics from this type of substance are eliminated from introduction into the environment.

1 http://beheco.oxfordjournals.org/content/16/5/898.full

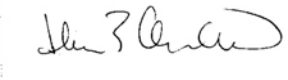
- The monitoring plan should require documentation of how many DKF/AB (age class, sex, etc.) are being displaced.

- Because both the DKF/AB rely on burrows to escape the intense heat (and cold) of the desert[2], we also recommend that timeframes be established for burrow destruction so that these mammals are not excluded from their protective burrows during the hottest (or coldest) times of the year.

- The plan should include actions that will be taken if certain contingencies occur. For example, if the species are not responding to being "passively hazed", trapping and translocating (including follow-up monitoring and reporting requirements) should be included or actions to prevent the spread of disease should also be included. While it is currently unclear whether implementation of inoculations against disease, as implemented on the Genesis project site when the canine distemper was identified as the cause of mortality, was effective, the Plan should provide some mechanism for allowing inoculations or other measures to be used if qualified wildlife managers or state veterinarians believe such measures are necessary in efforts to stem the spread of disease.

Because this is the first (to our knowledge) DKF/AB Mitigation and Monitoring Plan to be available for public review, the incorporation of the above recommendations along with that of the wildlife agencies should set a good standard for subsequent plans. Please feel free to contact me with any questions, and thank you for the opportunity to submit these comments.

Sincerely



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2 http://wildlife.utah.gov/publications/pdf/2010_**kit_fox**.pdf*;*
http://animaldiversity.ummz.umich.edu/site/accounts/information/Taxidea_taxus.html