State of California –The Natural Resources Agency
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EDMUND G. BROWN, JR., Governor
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LETTER 5

June 6, 2014

Mr. Jim Minnick, Interim Director
Imperial County Planning and Development Services
801 Main Street
El Centro, CA 92243

Subject: Draft Environmental Impact Report
Seville Solar Farm Complex Project
State Clearinghouse No. 2013091039

Dear Mr. Minnick:

The Department of Fish and Wildlife, CDFW (Department) appreciates the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Seville Solar Farm Complex Project proposed by Regenerate Power LLC [State Clearinghouse No. 2013091039].

The Department is responding to the DEIR as a Trustee Agency for fish and wildlife resources (Fish and Game Code Sections 711.7 and 1802, and the California Environmental Quality Act [CEQA] Guidelines Section 15386), and as a Responsible Agency regarding any discretionary actions (CEQA Guidelines Section 15381), such as the issuance of a Lake or Streambed Alteration Agreement (LSA Agreement) [Fish and Game Code Sections 1600 et seq.] and/or a Permit for Incidental Take of Endangered, Threatened, and/or Candidate species (Incidental Take Permit) [Fish and Game Code Sections 2080 and 2080.1]. 5-1

The project applicant proposed to develop and operate approximately 135-megawatt photo voltaic energy generation facilities that would be located on portions of the 2,440-acre Allegretti Farms property in west-central Imperial County, California, about eight miles west of the junction of State Route (SR) 78 and SR 86, and approximately three miles east of the San Diego County line. The area encompasses portions of Sections 13, 15, 14, 22, 23 and 25-27, Township 12 South, Range 9 East, San Bernardino Baseline and Meridian. The existing access road to the agricultural lands is located on public lands managed by the U.S. Bureau of Land Management in Section 14. 5-2

Conserving California's Wildlife Since 1870

Mr. Jim Minnick, Imperial County Planning and Development Services
Seville Solar Farm Complex Project [State Clearinghouse No. 2013091039]
June 6, 2014

The project would comprise construction, operation, and reclamation of up to five solar energy projects including a new access road from SR 78, internal access roads, an Imperial Irrigation District (IID) electrical switch station, electrical substations, internal solar development transmission lines to the substations and IID switch station, 0.75 mile of new on-site 92 kV transmission line, and 2.25 miles of new off-site 92 kV transmission lines. The proposed project also includes development of two new wells, sanitary waste septic systems and leach fields, on-site storm water retention basins, and a major subdivision/tract map that would reconfigure seven existing property parcels into eight new individual lots and four common development interest lots. The energy generation technology would consist of either thin film or crystalline solar photovoltaic modules mounted on horizontal single-axis tracker systems; concentrating photovoltaic systems mounted on a dual-axis tracking system; or a mix of both systems. The project would disturb at least 1,238 acres of lands. 5-2 Continued

Based on review of the DEIR and Appendices, the Department is providing the following preliminary recommendations to the Lead Agency for inclusion in the Biological Resources Section of the Final Environmental Impact Report (FEIR).

1) **State Jurisdictional Lake or Streambed Alteration:** The DEIR states that the CDFW jurisdictional boundaries were determined based on the presence of riparian vegetation or regular surface flow. Please provide detailed delineation of both riparian and non-riparian resources including active as well as inactive channels within the project boundary and any adjacent buffer zones that could be impacted by the project activities. Also, furnish comprehensive analyses of temporary, permanent, and cumulative impacts of the project on the State jurisdictional resources. Please describe measures and success-criteria for site-specific restoration and mitigations for the project impacts on the jurisdictional resources. 5-3

2) **Burrowing owl (*Athene cunicularia*)** is a species of special concern in California, and the project area and the vicinity provide suitable habitat for this species. Burrowing owl should be mitigated through acquisition and protection, in perpetuity, of high quality biological habitat, and the surveys and mitigation should be consistent with the 2012 CDFW Staff Report on Burrowing Owl Mitigation. Some of the survey data reported in the DEIR were collected outside of the timeframe recommended in the guideline. Please provide a discussion on how the timing of the survey affected the comprehensiveness and detection probability, and elucidate the cogency of the conclusion and impact analysis based on these data. Also, chronicle the sunrise and sunset hours on the days of the survey. 5-4

3) **Flat-tailed horned lizard (*Phrynosoma mcallii*)** is a species of special concern in California. The Department is a Signatory Agency to the Rangewide Management Strategy, which designates and protects Management Areas and Research Areas for this species. The project site abuts the West Mesa Management Area and the Ocotillo Wells State Vehicular Recreation Area Research Area, with documented records of occurrence of this species within a short distance from the project site. The Department recommends that focused surveys for flat-tailed horned lizard should be conducted, and 5-5

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robust avoidance and mitigation measures should be adopted as per the Rangewide Management Strategy. The Department had already provided these recommendations to the Imperial County in a previous comment letter dated September 27, 2013, and the DEIR did not include any pre-project focused survey data for this species. 5-5 Continued

4) **Desert pupfish (*Cyprinodon macularius*)** is an endangered species in California. The proposed project site is located in the proximity of the critical desert pupfish habitat in the San Felipe Creek. The aquatic habitat necessary for this species also occurs in drains flowing to the Salton Sea, which is located in the vicinity of the project site. Excess surface water flowing through the project area drains to the Salton Sea. Please discuss the impacts of proposed water use and application of chemical palliatives in the project area on stream and drain habitat of desert pupfish. 5-6

5) Please include a discussion on the strategy for monitoring potential avian injury and mortality during the project construction and operation phases, and define the success criteria for measuring the avian impacts and potential risks. 5-7

6) Please include a discussion of the project's potential impacts on any plausible gaming and hunting opportunities. 5-8

Please note that as a Responsible Agency, the Department must rely on the environmental documents prepared by the Lead Agency in order to prepare and issue a Lake or Streambed Alteration Agreement and/or Incidental Take Permit for the project. If the FEIR for this project fails to identify all project impacts and adequately mitigate those impacts, the project proponent may be required to reinitiate the CEQA process at their expense, or fund another CEQA process under the direction of the Department to ensure that all project impacts are identified and adequately mitigated. 5-9

The Department appreciates the importance of renewable energy development, and would like to thank you for the opportunity for this feedback. If you have any questions regarding this letter, please contact Dr. Shankar Sharma, Senior Environmental Scientist (Specialist) at shankar.sharma@wildlife.ca.gov or 909-228-3692. 5-10

Sincerely,

Shankar Sharma

Shankar Sharma, Ph.D.
Senior Environmental Scientist (Specialist) of Renewable Energy

Cc: State Clearinghouse
CDFW (attention: Dr. Shankar Sharma)

RESPONSE TO COMMENT LETTER 5

Commenter: Shankar Sharma, PhD, Senior Environmental Scientist (Specialist) of Renewable Energy, State of California - The Natural Resources Agency - Department of Fish and Wildlife

Date of Letter: June 6, 2014

Response to Comment 5-1: The comment provides introductory remarks regarding the California Department of Fish and Wildlife's (CDFW) role as a trustee agency for CEQA and a responsible agency for issuance of a Lake or Streambed Alteration Agreement and Incidental Take Permit. Comment noted.

Response to Comment 5-2: The comment provides a brief summary of the proposed Project, including its location, scope and components. The comment also notes that the CDFW has reviewed the Draft EIR and Appendices and is providing preliminary recommendations to the lead agency for inclusion in the Biological Resources Section of the Final EIR. The following response to comments address CDFW's recommendations.

Response to Comment 5-3: The comment requests that detailed delineations of both riparian and non-riparian resources that could be impacted by the Project be provided; that comprehensive analysis of temporary, permanent, and cumulative impacts be conducted; and that measures and success criteria for site-specific restoration and mitigation for Project impacts be described.

A jurisdictional delineation of the Project area and surrounding lands was conducted by HELIX Environmental Planning, Inc. ("Seville Solar Project Jurisdictional Delineation," January 3, 2014, referenced in Draft EIR text as (HELIX 2014a)), which is provided in its entirety in Appendix I of the Seville Solar Farm Complex Project Draft EIR. A summary of the jurisdictional delineation and the resulting impact analysis was presented in Section 4.12, Biological Resources, of the Draft EIR. The methods used in the jurisdictional delineation, including how the jurisdictional boundaries were determined, can be found in Appendix I, Jurisdictional Delineation (page 3 (Section II. Methods)).

Areas of state (California Department of Fish and Wildlife [CDWF]) jurisdictional waters within the survey area were identified as tamarisk thicket and streambed (including the drainage ditch), and comprise a total 0.72 acres and 1,043 linear feet. The small patch of habitat occurs along the transmission line where it crosses Tarantula Wash (Draft EIR Appendix I, page 11-12). The definitions used to identify the CDFW jurisdictional boundaries were included in Appendix B of the Helix jurisdictional delineation, which include ""a body of water that flows at least periodically or intermittently through a bed or channel having banks and supporting fish or other aquatic life. This includes watercourses having a surface or subsurface flow that supports riparian vegetation" (Title 14, Section 1.72)." Thus, inactive channels were included in the definition of CDFW jurisdictional boundaries.

As stated in the Draft EIR (page 4.12-38), "no impacts to federal and state jurisdictional areas would occur in association with construction of the proposed solar farm complex site." Although it is anticipated that construction of the transmission line would span the areas of state waters, any impacts to state jurisdictional areas during construction of the transmission line are considered potentially significant, and a Stream and Lakebed Alteration Agreement may be necessary for activities along the transmission line. Draft EIR mitigation measures MM 4.12.2a and MM 4.12.2b would reduce impacts to these state waters through the application of mitigation ratios. These ratios would create wetland habitat, require the acquisition and preservation of existing jurisdictional habitat, and enhance wetland areas. The implementation of such mitigation, including the preservation, creation, and enhancement of wetland habitat, if required, would be developed in conjunction with the resource agencies and would follow compensatory

mitigation requirements, including development of a Habitat Mitigation and Monitoring Proposal/Restoration Plan, which would outline the appropriate success criteria for site-specific restoration and monitoring protocols.

No change to the Draft EIR has been made in response to this comment.

Response to Comment 5-4: The comment states that surveys and mitigation should be consistent with the 2012 CDFW Staff Report on Burrowing Owl Mitigation, and that some of the survey data reported in the Draft EIR were collected outside of the recommended timeframe. The comment requests a discussion on how the survey timing affected the comprehensiveness and detection probability, and how that impacted the impact analysis; and also to chronicle the sunrise and sunset hours on the days of the survey.

The timing and results of the burrowing owl surveys are provided in Appendix I of the Draft EIR. The impact analysis is based on these results. The burrowing owl surveys were conducted during the breeding season (1 February to 31 August[13)], which is when the probability of detecting this species is highest.[14] The burrowing owl surveys were conducted in a manner consistent with recommendations outlined within the 2012 CDFW Staff Report on Burrowing Owl Mitigation.

The recommended times for conducting surveys with the highest probability of detecting owls is "between morning civil twilight and 10:00 a.m. and two hours before sunset until evening civil twilight."[15] Comparing those timing parameters with when the surveys were conducted, 96 percent, or 27 hours 51 minutes of the 29 hours 9 minutes, of the surveys were conducted during the time of day that has the highest probability of detection. Even so, the extra 1 hour and 10 minutes surveyed beyond 10:00 a.m. on April 30, 2013, though outside the ideal time for surveys, also has some level of probability for owl detection. Given the overall amount of time spent surveying for owls and the nearly total amount of time spent surveying during the most optimal time for detection, the results and corresponding impact analysis are regarded as sufficient.

SURVEYS, SUNRISES AND SUNSETS				
DATE	**TIME**	**SURVEY NUMBER**	**SUNRISE**	**SUNSET**
3/19/13	0705-0945	Survey 1	6:45 a.m.	6:53 p.m.
4/2/13	0645-1000		6:27	7:03
4/2/13	1705-1815			
4/3/13	0615-1000		6:26	7:04
4/30/13	0530-1110	Survey 2	5:54	7:24
5/29/13	1751-2000	Survey 3	5:35	7:44
5/30/13	0510-0940		5:35	7:44
6/25/13	1800-1950	Survey 4	5:35	7:54
6/26/13	0520-0930		5:36	7:54

[13] Conway, C., V. Garcia, K. Hughes. 2008. Factors affecting detection of burrowing owl nests during standardized surveys. Journal of Wildlife Management 72: 688-696.

[14] Staff Report on Burrowing Owl Mitigation, Department of Fish and Game. March 7, 2012. 34 p

[15] Appendix D (page 28) in Conway, C., V. Garcia, K. Hughes. 2008. Factors affecting detection of burrowing owl nests during standardized surveys. Journal of Wildlife Management 72: 688-696.

Response to Comment 5-5: The comment recommends that focused surveys for flat-tailed horned lizard (FTHL) be conducted, and robust avoidance and mitigation measures be adopted as per the Rangewide Management Strategy. The comment also states that a request for focused surveys was provided on September 27, 2013, yet the Draft EIR did not include pre-project focused surveys.

With the exception of those lands not previously farmed along the northern edge of the Project area (i.e. much of the IID transmission line corridor and a short portion of the primary access road), all other areas within the potential impact footprint of the Project do not support habitat typically associated with FTHL. This conclusion is based on the implementation of habitat-level biological resources surveys conducted by HELIX Environmental Planning, Inc. ("Seville Solar Project Biological Technical Report," January 3, 2014, referenced in the Draft EIR text as (HELIX 2014b). In addition, no FTHL or sign of FTHL was identified during the implementation of habitat-level biological resources surveys. The nearest observation of FTHL reported to the California Natural Diversity Database (CNDDB) is in the west Tarantula Wash area, 0.8 mile west/northwest of the junction of Tarantula Wash and SR 78 in the Ocotillo Wells State Vehicle Recreation Area (OWSRVA). For all these reasons no focused FTHL survey was conducted on the agricultural lands.

The Draft EIR identified mitigation measure MM 4.12.3, which would implement the terms and conditions of IID's ROW Grant, consistent with the Range-wide Management Strategy, to reduce direct and indirect impacts to FTHL on those lands identified as habitat. This mitigation specifies measures in accordance with IID's ROW Grant and consistent with the Rangewide Management Strategy to reduce direct and indirect impacts to FTHL (Draft EIR, at page 4.12-42). Mitigation measure MM 4.12.3 would reduce impacts to FTHL through worker education, designation of a field contact representative (FCR), demarcation of work areas, relocation of lizards, use of existing roads, minimizing grading and vegetation clearance and covering of construction holes. The FCR shall be approved by the CDFW and the work would be performed in consultation with CDFW, as necessary. Following implementation of these measures, any impacts to FTHL would be reduced to less than significant (Draft EIR, p 4.12-43).

No change to the Draft EIR has been made in response to this comment.

Response to Comment 5-6: The comment states that the proposed Project is located in the proximity of the critical desert pupfish habitat in San Felipe Creek, and aquatic habitat necessary for this species occurs in drains flowing to the Salton Sea. The comment also states that excess surface water flows through the Project area and drains to the Salton Sea and requests that impacts of proposed water use and application of chemical palliatives in the Project area on stream and drain habitat of desert pupfish be discussed.

As stated in the Draft EIR (page 4.12-21), "Critical habitat for the desert pupfish has been designated in San Felipe Creek approximately two miles southeast of the survey area." The Draft EIR also states that desert pupfish populations are found in "the non-natural irrigation drains around the Salton Sea," although the southern tip of the Salton Sea is located approximately 14 miles from the Project area (Draft EIR, page ES-2), and no water leaving the Project area would be discharged through these drains.

The Draft EIR (pages 4.12-47 and 4.12-48) states the following regarding the impacts of the proposed water use for the solar projects:

- "Based on the distance of the species from the survey area, and the requirement that the Project prepare and comply with a Storm Water Pollution Prevention Plan (SWPPP), impacts to desert pupfish during construction are considered less than significant.
- "Runoff and reduced water quality impacts to the desert pupfish critical habitat are not anticipated from operation of the proposed Project for the following reasons.
    - "First, the proposed Project includes on-site retention basins that will fully retain the 100-year, 24-hour peak flood volume resulting from on-site precipitation.
    - "Additionally, the existing berms on the west and north sides of the proposed solar farm complex site that currently divert off-site flow around the Property will be maintained.
    - "However, any flows which breach the berms will be allowed to flow unimpeded across the solar farm complex site and under the solar panels.
    - "Finally, the proposed Project would be required to conform to Policy 4 of the Water Element in the Imperial County General Plan (County of Imperial 1993) regarding the protection of water resources, and prepare and comply with a Storm Water Pollution Prevention Plan (SWPPP) (HELIX 2014b, page 21).
    - "Therefore impacts to desert pupfish during operation are considered less than significant."
- "As noted under the discussion of construction, above, based on the distance of the species from the survey area, and the requirement that the Project prepare and comply with a Storm Water Pollution Prevention Plan (SWPPP), impacts to desert pupfish during reclamation are considered less than significant. Likewise, upon reclamation of the solar farm complex site to its end state of idle farmland, no impacts desert pupfish are anticipated."

Consistent with CDFW's request, the Draft EIR (page 2.0-20) states "Dust generated during construction would be controlled by watering and, as necessary, the use of other dust suppression methods and materials accepted by the ICAPCD or the California Air Resources Board (CARB)." The Draft EIR also states (page 2.0-29) that the dust control plan "…would include information on the dust suppressants to be applied and the specific surface treatment(s)." Finally, the Draft EIR (page 4.11-21) states that the "Project proposes application of advanced, environmentally safe, polymer emulsion dust control palliatives that produce highly effective dust control, erosion control, and soil stabilization." Please also see the Response to Comment 4-7 and Response to Comment 4-18.

Response to Comment 5-7: The comment requests that the strategy for monitoring potential avian injury and mortality during Project construction and operation be discussed and that the success criteria for measuring avian impacts and potential risks be discussed.

The Draft EIR (page 4.12-48) states that:

"The proposed Project could result in direct impacts to avian nesting protected under California Fish and Wildlife Code sections 3503.5 and 3511 and the MBTA. Violation of the California Fish and Wildlife Code and the MBTA is not allowed. Construction activities, involving removal of vegetation, could cause destruction or abandonment of nests or the mortality of adults, young, or eggs through vehicle strikes, crushing, etc. (Note: Impacts to burrowing owl, specifically, were addressed in Impact 4.12.6). This is considered a **potentially significant impact**."

To mitigate this impact, the Draft EIR (page 4.12-49) proposes mitigation measure MM 4.12.8:

"**MM 4.12.8** Vegetation clearing shall take place outside of the general avian breeding season (February 1 through August 31). If vegetation clearing cannot occur outside the avian breeding season, a qualified avian biologist will conduct a pre-vegetation clearing survey for nesting birds no more than 7 days prior to vegetation clearing. If no active nests are found, clearing can proceed. "Active" shall be defined as from nest construction through fledging of young. If active nests are found, no clearing shall be allowed within 100 feet of the active nests of non-listed species, within 300 feet of the active nests of listed species, and within 500 feet of active raptor nests until the biologist determines the nest is no longer active or the nest is abandoned or fails. The biologist will submit the results of the survey to the CDFW and USFWS. Any requests for reductions to these prescribed buffers shall be made to the CDFW and USFWS."

"Timing/Implementation: Prior to issuance of grading permits for the solar farm complex site and maintained throughout the operation."

"Enforcement/Monitoring: Project Applicant in collaboration with CDFW and USFWS."

The Draft EIR (page 4.12-49) then concludes that:

"Implementation of mitigation measure MM 4.12.8 would reduce impacts to nesting birds protected under California Fish and Wildlife Code and the MBTA. A pre-vegetation clearing survey for nesting birds would determine the presence of active nests and whether buffers are needed. In addition, the Project biologist will be required to coordinate with CDFW and USFWS regarding buffer distances. Implementation of these measures would reduce potential impacts to nesting birds during construction to less than significant levels."

To minimize potential adverse impacts to avian species during project operations, the Project applicant has voluntarily agreed to develop, with input from CDFW and USFWS, and implement a BBCS, which would include as a primary component monitoring of the Project area to identify the level of mortality, if any, in the Project area during Project operations. The development and implementation of this BBCS with the monitoring of any avian mortality from operations would provide data which would be valuable in evaluating avian mortality in the Imperial Valley in general and specifically in regards to the selected solar technology implemented for these projects.

For all of the reasons stated in the Responses to Comments 4-4B, 4-4D, 4-4E, 4-4F and 4-5B, which are summarized in Response to Comment 4-4G, construction, operation and reclamation of the Project would not result in significant impacts to migratory birds, and the preparation and implementation of an avian mortality and injury monitoring program for the Project is not warranted. The voluntary development of the BBCS outlined above, which would be based on the points presented in Response to Comment 4-4G, would monitor potential avian injury and mortality, if any, during the Project operation. See Response to Comment 4-4G for additional details of the proposed BBCS.

Response to Comment 5-8: The comment requests that a discussion of the Project's potential impacts on any gaming and opportunities be discussed.

The Property is private property which is, and has been, posted "No Hunting." The Property will remain private property and will continue to be posted "No Hunting." Thus, construction, operation and reclamation of the Project is not expected to have any effect on gaming and hunting opportunities.

Response to Comment 5-9: The comment notes that the CFWS must rely on the environmental documents in order to prepare and issue a Lake or Streambed Alteration Agreement and/or Incidental Take Permit.

Response to Comment 5-10: The comment provides contact information for CDFW staff. This comment is noted. No response is required.

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