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Comment Letter O22

July 31, 2009

Mr. Jensen Uchida,
San Joaquin Cross Valley Loop Transmission Project
c/o Environmental Science Associates
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San Francisco, CA 94104-4207
E-mail: sjxvl@esassoc.com
Via: email

Re: Biological Resources Chapter 4.4, SCE San Joaquin Cross Valley Loop DEIR (CPUC A.08-05-039)

Dear Mr. Uchida;

From 1991 to 1996, I worked as a Project Scientist for Woodward-Clyde Consultants, serving as the lead field biologist evaluating the potential impacts of several major pipeline and freeway projects traversing California. In 1992 and 1993, I served as the principal investigator for a project to identify the remaining potential habitat and presence of eight target species in Tulare County: vernal pool fairy shrimp, California Tiger Salamander, San Joaquin Valley Orcutt grass, Hoover's spurge, California jewelflower, Green's tuctoria, San Joaquin woollythreads, and San Joaquin adobe sunburst. The results of this investigation were published in the report, *Focused Biological Surveys for Eight Target Species in Tulare County, California*, for the Tulare County Association of Governments in February, 1993. A supplemental report, *Focused Biological Surveys for Vernal Pool Fairy Shrimp (Branchinecta lynchi) in Tulare County, California*, was published in September, 1993.

Review of the Biological Resources Chapter 4.4 of the DEIR for the Cross Valley Loop indicates that potential impacts to sensitive species and habitats are similar along the Proposed Project and Alternative Routes, with the following exceptions: impacts to known habitat for several listed species at the Stone Corral Ecological Reserve (SCER) and potential impacts to Hoover's spurge and San Joaquin Valley Orcutt grass within designated critical habitat along Alternative Routes 2, 3 and 6. The DEIR appears to overstate the potential impacts to Hoover's spurge and San Joaquin Orcutt grass and fails to discuss possible modifications to the location of Alternative Route 3 that would avoid impacts to the SCER.

The DEIR states that the Alternative 3 crosses 8.2 miles of critical habitat for Hoover's spurge, San Joaquin Valley Orcutt grass and that Alternatives 2 and 6 cross "about five miles" of critical habitat for San Joaquin Valley Orcutt grass and Hoover's spurge. The report acknowledges that potential impacts are only likely to occur in areas that have the "primary constituent elements (PCE's) for the species survival, yet fails to describe what these elements are and where they specifically occur on the proposed

routes. The DEIR misleads and misinforms the public and decision makers unless the following issues are addressed:

1. What are the PCE's that indicate potential presence of Hoover's spurge and San Joaquin Orcutt grass and where are they specifically found along the Alternative Routes?
2. The DEIR states that "perhaps less than half a linear mile supports the primary constituent elements that are considered essential for the biological needs of Hoover's spurge and San Joaquin Valley Orcutt grass" along Alternatives 2 and 6, but fails to discuss the nature and specific location of the potential habitat.
3. Field surveys for Hoover's spurge and San Joaquin Valley Orcutt grass were conducted in 1992 and reported in *Focused Biological Surveys for Eight Target Species in Tulare County*. These surveys were conducted in one of the wettest years on record and failed to identify any potential habitat for Hoover's spurge or San Joaquin Valley Orcutt grass in the vicinity of reported historic populations near Elderwood and Woodlake.
4. The Biological Resources Study Report prepared by John Stebbins and SCE in June, 2008 concludes that vernal pool habitat in the vicinity of Spring Gap and Colvin Mountain is highly degraded and that there is little likelihood that Hoover's spurge or San Joaquin Valley Orcutt grass occur along the proposed routes outside of the SCER.
5. The DEIR states that potential vernal pool habitat along Alternatives 2, 3 and 6 may not have been apparent during field surveys in Spring 2009 due to below normal rainfall. However, historic weather data from the National Weather Service for Fresno indicates that rainfall for February 2009 was above normal and vernal pools capable of supporting vernal pool fairy shrimp, vernal pool tadpole shrimp, Hoover's spurge and San Joaquin Valley Orcutt grass should have filled during these rainfall events. Aerial photography from the Spring of 1992 should also be available from the Tulare County Resource Management Agency or WAC Corporation.

The DEIR'S conclusion that impacts to listed species present within the Stone Corral Ecological Reserve are unmitigable is not adequately supported. The report does not discuss specific reasons that the avoidance measures proposed for vernal pool habitat along Alternative Routes 2 and 6 can't be implemented along Alternative Route 3. These measures include minor realignment of the route, relocation of tower sites and access roads, and compensation and restoration for impacted habitat. The following facts should be considered and addressed by the DEIR in order to provide an objective analysis of the impacts to biological resources and the feasibility of potential mitigation measures:

1. High quality vernal pool habitat capable of supporting vernal pool tadpole shrimp, California tiger salamander, Hoover's spurge, and San Joaquin Valley Orcutt Grass is strictly limited to the boundaries of the SCER and is further limited to the large claypan vernal pools located in the southwest corner of the SCER north of Avenue 384.
2. Vernal pools in the northwest corner of the SCER are hardpan vernal pools, which tend to be smaller and more ephemeral than claypan vernal pools. While it is likely that these pools support populations of vernal pool fairy shrimp, it is unlikely that they support vernal pool

- tadpole shrimp, California tiger salamander, Hoover's spurge, and San Joaquin Valley Orcutt Grass.
3. Land adjacent to the SCER is developed to agricultural uses, is abandoned farmland or railroad ROW, or non-native grassland that does not support vernal pools. Realignment of the route into these areas will avoid impacts to listed species.
 4. Although areas around the SCER have been designated as critical habitat for vernal pool fairy/tadpole shrimp, California tiger salamander, Hoover's spurge, and San Joaquin Valley Orcutt grass, the primary constituent elements capable of supporting populations of the listed species are not present and it is highly unlikely that realignment of the project through these areas will result in incidental take of these species.
 5. The existing Rector Line traverses the SCER with eight pairs of towers, one of which sits directly within the largest claypan vernal pool at the southwest corner of the Reserve. These towers must certainly have been and will continue to be accessed for repairs and routine maintenance, which will require avoidance measures to prevent incidental take of listed species.
 6. There are several opportunities for the acquisition and restoration of abandoned farmland and degraded vernal pool habitat adjacent to, or in the immediate vicinity of, the SCER. Restoration of this compensatory habitat could expand the size of the SCER and provide additional high quality vernal pool habitat capable of supporting the listed vernal pool species.

I have also reviewed the evaluation of proposed alternative alignments prepared by ESA (Pittman Memo July 9, 2009) and find it to be, at best, disingenuous and, at worst, intentionally biased and misleading. The memo vaguely describes potential impacts to biological resources along the Alternative Alignments 3A, 3B and 3C and concludes that the impacts are the same as those occurring within the SCER. However, the analysis of the alternative alignments fails to address the character and quality of the potential habitat and whether the primary constituent elements of critical habitat for vernal pool fairy/tadpole shrimp, California tiger salamander, Hoover's spurge, and San Joaquin Valley Orcutt Grass are present or absent. It appears that surveys along the proposed alternative alignments were not performed during field surveys in the Spring of 2009 and the information provided in the memo makes it impossible to compare the habitat along the proposed alternatives with the well-documented surveys of habitat within the SCER. Furthermore, it is unclear how the non-native grassland habitat along Alternative Alignment 3C differs from the habitat found along Alternative Routes 2 and 6, which the DEIR concludes can be mitigated to a less than significant level. The memo also discusses a number of non-biological factors which make the alternative alignments infeasible, many of which are present along all of the Proposed Project alignment and Alternative Routes 2 and 6 and go well beyond the scope of evaluation of biological resource impacts.

The PACE proposal to re-route the project around the SCER (Alternative 3A) appears to completely avoid impacts to listed species within the Reserve and traverses degraded potential habitat where impacts to sensitive species can be avoided or mitigated by measures recommended for the Proposed Project and Alternative Routes 2 and 6 to a level that is Less Than Significant. This dramatically changes the

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conclusion of the DEIR that Significant Unmitigable (Unavoidable) Impacts to biological resources occur along Alternative Route 3.

In conclusion, avoidance of impacts to biological resources within the SCER by realignment of the proposed route reduces the potential impacts to biological resources along Alternative Route 3 to a level that is Less Than Significant with Mitigation and puts this alignment on par with potential impacts to biological resources for the Proposed Project and Alternatives 2 and 6. In fact, potential impacts to biological resources along the Proposed Project alignment may be greater than the Alternatives due to proximity to designated critical habitat for the California Condor and a higher likelihood of potential impacts to San Joaquin Valley kit fox that have been documented to utilize citrus orchards as secondary habitat along the southeastern foothills of Tulare County.

Sincerely,

/s/ Gregory S. Kirkpatrick
Gregory S. Kirkpatrick