

Appendix L - Section 7 Consultation Concurrence Letter





United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE

Ecological Services
Palm Springs Fish and Wildlife Office
777 East Tahquitz Canyon Way, Suite 208
Palm Springs, California 92262



In Reply Refer to:
2024-0115101-S7-I-SB

October 18, 2024
Sent Electronically

Rebecca Hopkins
Environmental Project Manager
Western Area Power Administration
Desert Southwest Region
P.O. Box 6457
Phoenix, Arizona 85005

Subject: Informal Section 7 Consultation for the Vidal Solar Interconnection Project,
San Bernardino County, California

Dear Rebecca Hopkins:

On August 30, 2024, we received Western Area Power Administration's (WAPA) letter requesting our concurrence that the proposed Vidal Solar Interconnection Project is not likely to adversely affect the federally threatened desert tortoise [Mojave population Distinct Population Segment (*Gopherus agassizii*); desert tortoise] or the federally endangered Yuma Ridgway's (=clapper) rail [*Rallus obsoletus* (=longirostris) *yumanensis*] in accordance with section 7 of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). WAPA's proposed action is approving and providing an interconnection to connect CDH Vidal, LLC's proposed Vidal Energy Project to WAPA's Headgate Rock-Blythe 161-kilovolt transmission line. WAPA and the U.S. Fish and Wildlife Service (Service) consider the Vidal Solar Interconnection Project and Vidal Energy Project as connected activities for the purpose of section 7 consultation and therefore considered effects to desert tortoise and Yuma Ridgway's rail from both projects. These projects are located near the unincorporated community of Vidal in San Bernardino County, California.

PROJECT DESCRIPTION

The Vidal Energy Project (hereafter solar project) is a proposed 1,100-acre photovoltaic project with a 160-megawatt generating capacity and a battery energy storage system; the solar project is located entirely on private land. The solar project would include solar panels, battery storage, access roads, underground electrical collection systems, and associated infrastructure. The WAPA Headgate Rock-Blythe 161-kV transmission line crosses through the southeast portion of the solar project area where the interconnection between the solar project and transmission line would occur. The interconnection will consist of a new switchyard and interconnection loop, on up to five-acres, and include underground fiber from a control building to a take-off structure. Optical Ground Wire would be installed from the take-off structure, along the new overhead approach spans, to existing

transmission structures. The nearest existing transmission structure may need to be replaced. The interconnection will be located entirely within the solar project boundary.

Conservation Measures

WAPA and CDH Vidal, LLC will implement the following avoidance and minimization measures (AMM) during the construction and operation of the interconnection and solar project to avoid and minimize adverse effects to all listed species from these projects. We summarize these measures here and incorporate by reference the full measures and details that are in the Biological Assessment (Stantec 2024) submitted by WAPA to the Service. We consider these measures to be part of the proposed action, and our analysis assumes they will be implemented:

General measures

AMM-1 Construction Monitoring. A qualified Biological Monitor (BM) shall be present prior to the initiation of ground-disturbing activities to demark the limit of disturbance boundaries and avoid any features identified for protection in the Biological Assessment. Flagging and/or staking will be used to clearly define the work area boundaries. The BM will be present to conduct pre-construction sweeps to ensure no listed species are present in the construction area and inspect compliance with listed species protection measures.

AMM-2 Pre-Construction Training. A Worker Environmental Awareness Program (WEAP) shall be developed and presented to all crew members prior to the beginning of construction and will be provided to all operations and maintenance personnel during operations. The training shall describe all listed wildlife species that could occur in work areas, protection afforded to these species and avoidance and minimization measures.

AMM-3 Nesting Surveys. If a listed avian species or nest is observed at any time, construction, maintenance, and operations will cease immediately until the Service has been contacted and consulted on whether additional conservation measures are needed.

AMM-4 Construction Monitoring Reports. Quarterly compliance reports will be provided by the BM to WAPA and the Service during construction activities, documenting the effectiveness and practicality of the protection measures, making any recommendations for modifying measures, and providing an overall summary of biological resources-related activities conducted during the reporting period. A final compliance report will be submitted to the Service, California Department of Fish and Wildlife (CDFW), and the County of San Bernardino upon completion of construction.

AMM-5 Incident Reporting. Federally listed species will not be handled or relocated without appropriate regulatory authorizations. Mortalities of listed species will be reported to the Service within 24 hours so the Service, or another permitted entity, may retrieve and document the mortality. For injured listed species, WAPA or CDH Vidal, LLC will immediately contact a rehabilitation facility, and the Service and CDFW.

Desert Tortoise

WAPA and CDH Vidal, LLC will implement the following measures to avoid and minimize adverse effects to the desert tortoise during project implementation. We consider these measures to be part of the proposed action, and our analysis assumes they will be implemented:

AMM-6 Biological Monitor Authority. The BM will oversee compliance with all desert tortoise protection measures. The BM, or monitors working under the BM's supervision, will have the authority to halt any activities violating the desert tortoise protection measures.

AMM-7 Habitat Preservation. The largest desert washes traversing the action area will be avoided to the extent practicable to preserve habitat for potential future desert tortoise movement and connectivity.

AMM-8 Pre-Construction Desert Tortoise Survey. Pre-construction surveys for desert tortoise will be conducted by a Service approved biologist(s) within 30 days prior to initiation of ground disturbing activities. If desert tortoises are observed in the project area, construction activities will be halted until the WAPA or CDH Vidal, LLC communicates with the Service.

AMM-9 Raven Management. WAPA and CDH Vidal, LLC will prepare a Raven Management Plan prior to construction that includes minimizing subsidies to common ravens (*Corvus corax*; raven)(e.g., food and water), removal of inactive raven nests and reporting of active raven nests to the Service, notifying the Service of any evidence of raven predation on desert tortoise, and providing a one-time contribution of \$105/acre of disturbance to the regional Raven Management Program.

AMM-10 Construction Dust Control. The Project will maintain dust control measures on any undeveloped areas devoid of vegetation to reduce fugitive dust emissions that could result in indirect impacts to off-site vegetation that could be an important food source for desert tortoise.

Yuma Ridgway's Rail

WAPA and CDH Vidal, LLC will implement the following measures to avoid and minimize adverse effects to Yuma Ridgway's rail during the life of the interconnect project and solar project. We consider these measures to be part of the proposed action, and our analysis assumes they will be implemented.

AMM-11 Avian Power Line Interaction Committee. Aboveground lines, transformers, and conductors will be spaced and designed to adhere to the Avian Power Line Interaction Committee's suggested practices (Avian Power Line Interaction Committee 2006) to prevent electrocutions of listed avian species.

AMM-12 Bird Flight Diverters. Reflective flight diverters or flight diverters with an LED or ultra-violet light component will be installed along fences and guywires to reduce collisions of nocturnal avian migrants, including listed species.

AMM-13 Lighting. To reduce interference with the navigation of Yuma Ridgway's rail, facility lighting will comply with "Shielding Requirements for Outdoor Lighting in the Mountain Region and Desert Region" of the County's Development Code (i.e. "Dark Sky" requirements). All lighting will be limited to that necessary for maintenance activities and security purposes, will be oriented downwards and/or shielded, and/or will use motion sensors.

AMM-14 Post Construction Monitoring. CDH Vidal, LLC will conduct systematic surveys for injured or dead listed avian species (i.e., Yuma Ridgway's rails) during the Yuma Ridgway's rail spring and fall migration periods (approximately May 15-June 15 and September 1-November 15, respectively) for two years following construction of the interconnection project and solar project. Monitoring will occur weekly during the survey periods. The surveys will be conducted from roads within the solar project and include coverage of the entire perimeter fence line and a minimum coverage of 40 percent of the solar array. Individual surveys will start around dawn to account for the crepuscular and nocturnal timing of Yuma Ridgway's rail migration. Prior to monitoring CDH Vidal, LLC will prepare a detailed monitoring plan for review and approval by WAPA and the Service.

Additional Measures

Through electronic correspondence on August 30, 2024, and September 5, 2024, WAPA and CDH Vidal, LLC agreed to implement the following additional measures requested by the Service. We consider these measures to be part of the proposed action, and our analysis assumes they will be implemented:

AMM-15 Surveyor Qualifications. Individuals conducting post-construction mortality surveys will receive training (e.g., limited basic trials) or have previous experience in post-construction mortality monitoring surveys. Surveyors should also be able to identify Yuma Ridgway's rail and related species.

AMM-16 Monitoring Data. Surveyors will record and document basic information (e.g., photographs and GPS coordinates) for any avian mortality found during post-construction mortality monitoring (AMM-14).

AMM-17 Raven Subsidies. The avoidance and minimization measures include common raven management measures to minimize subsidies to ravens. If after one year of post-construction mortality monitoring for Yuma Ridgway's rail WAPA and the Service determine that there is a high number of avian mortalities detected at the project that could be a subsidy to ravens, then WAPA and CDH Vidal, LLC will request a permit from the Service to remove avian carcasses found during the second year of rail mortality monitoring.

BASELINE CONDITIONS

The action area for this informal consultation consists of approximately 1,092 acres where the interconnection project and solar project will occur. The action area does not include areas outside of the proposed solar project (and interconnection project) because the above avoidance and minimization measures sufficiently negate the potential for effects to listed species outside of the solar project area. The action area is located approximately 2.5 miles [4 kilometers (km)] southeast of Vidal, California and 0.33 miles (0.53 km) west of the Colorado River. The action area is mostly vacant, undeveloped lands, and currently contains scattered structures associated with an abandoned rural residence, and several Southern California Edison and WAPA electrical transmission and distribution towers.

The action area is within the Colorado Desert Recovery Unit for the desert tortoise. The Chuckwalla to Chemehuevi desert tortoise linkage (BLM 2016) is 0.04 miles (0.06 km) west of the action area and the Tortoise Conservation Area is 2.11 miles (3.4 km) northwest of the action area. In 2020 and 2024, CDH Vidal, LLC conducted protocol-level desert tortoise surveys following Service guidelines (Service 2019) within the entire action area. Survey results indicated no live desert tortoise or recent desert tortoise sign (i.e., dead desert tortoise, disarticulated shells, burrows or scat). One potential desert tortoise burrow was observed in the survey buffer near the southwest corner of the survey area, but based on the condition of the burrow it was determined to be old and no longer in use. Historic records indicate a desert tortoise was observed 0.62 miles (0.99 km) from the action area in 1987 (California Natural Diversity Database 2024 in Stantec 2024) but we have no records of recent observations in the immediate vicinity of the action area.

There is no Yuma Ridgway's rail habitat in the action area, however, there is potential suitable rail habitat located 0.5 miles (0.8 km) to the east along the Colorado River. Designated critical habitat for the Yuma Ridgway's rail is also located 0.59 miles (0.9 km) to the east of the action area. A study of Yuma Ridgway's rails wearing transmitters found that some rails migrate between the Havasu National Wildlife Refuge, which is approximately 38 miles (61 km) north of the action area, and areas southeast of the action area, including the Kofa National Wildlife and overwintering areas in Mexico (Harrity and Conway 2020). Therefore, Yuma Ridgway's rail could fly over the action area during migration.

ANALYSIS OF POTENTIAL EFFECTS

Activities including excavation, ground disturbance, soil removal and vehicular traffic in and around the action area have the potential to injure or kill desert tortoise. However, the action area is modeled as having low habitat potential for desert tortoise (Nussear 2009) and surveys resulted in no observations of desert tortoise or other indicators that the species occurs in the action area. Designated desert tortoise critical habitat is located 2.23 miles (3.58 km) from the action area and subsidies generated from project activities (e.g., trash, perch sites, etc.) could attract ravens, which could then impact desert tortoise populations in the nearby Colorado Desert Recovery Unit. However, based on the lack of desert tortoise in the action area and the above avoidance and minimization measures that will be implemented at the interconnection project and solar project the risk to desert tortoise is insignificant and discountable.

Project infrastructure such as fences and overhead power lines have the potential to injure or kill Yuma Ridgeway's rail due to collision. Yuma Ridgeway's rails will fly across and stopover in desert and other upland (non-riparian) habitat during their migration between their breeding sites along the lower Gila and Colorado rivers and their overwintering sites in Mexico (Harrity and Conway 2020). Long-distance migrants such as rails fly at night and their flight pattern takes them over large expanses of arid desert and uplands which also include stopovers for rest. Solar arrays sited in uplands near riparian habitats could potentially impact migrating rails as they may perceive these arrays as stopover or breeding habitat which may result in collisions with fence lines, solar panels, and other infrastructure (Service 2023). For example, we are aware of three Yuma Ridgeway's rail mortalities found at utility scale photovoltaic solar projects (see Service 2023), including one at the Desert Sunlight Solar Project sited in desert upland habitat approximately 55 miles (88.5 km) southwest of the action area. However, these are rare events and the avoidance and minimization measures (e.g., AMM-12) will increase the visibility of the projects and the likelihood that if a Yuma Ridgeway's rail occurs in the vicinity of the action area during migration or otherwise it will detect and avoid the projects. Therefore, based on the lack of Yuma Ridgeway's rail habitat in the action area and the collective avoidance and minimization measures the risk to Yuma Ridgeway's rail is insignificant and discountable.


CONCLUSION

Based on the information provided and the avoidance and minimization measures incorporated into the proposed interconnection project and solar project, we concur with your determination that the proposed Vidal Solar Interconnection Project is not likely to adversely affect the desert tortoise or the Yuma Ridgeway's rail. Therefore, the interagency consultation requirements of section 7 of the Act have been satisfied. Although our concurrence ends informal consultation, obligations under section 7 of the Act will be reconsidered if new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not previously considered or this action is subsequently modified in a manner that was not considered in this assessment.

If you have any questions regarding this letter, please contact [Kristen Lalumiere](#)¹ of this office.

Sincerely,

PETER
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Digitally signed by
PETER
SANZENBACHER
Date: 2024.10.18
11:16:04 -07'00'

for Brian Croft
Assistant Field Supervisor

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LITERATURE CITED

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- [Service] U.S. Fish and Wildlife Service. 2019. Mojave Desert Tortoise Pre-project Survey Protocol. Preparing for Any Action that May Occur Within the Range of the Mojave Desert Tortoise (*Gopherus agassizii*).
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