

Memorandum

Date: January 10, 2003
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To: Robert Pernell, Commissioner and Committee Presiding Member
Arthur H. Rosenfeld, Commissioner and Committee Associate Member

From: **California Energy Commission** - Kristy Chew
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Subject: **COSUMNES POWER PLANT PROJECT (01-AFC-19) - STATUS REPORT 5**

Energy Commission staff has prepared this status report to inform the Committee of the project status as well as of the timeliness and completeness of the Sacramento Municipal Utility District's (SMUD or applicant) submissions as directed by the December 13, 2002 Hearing Notice.

UPDATE ON SIGNIFICANT ISSUES

Project Description

On January 2, 2003, SMUD filed Informal Data Response 13 which contains a modified grading and drainage plan for the construction laydown area and project site stormwater detention basin.

Soil and Water Resources staff and Biological Resources staff are reviewing the revised plans. Staff has forwarded the revised grading and drainage plans to the other reviewing and permitting agencies (e.g., U.S. Army Corps of Engineers (USCOE), U.S. Fish and Wildlife Service (USFWS), Regional Water Quality Control Board (RWQCB), and Sacramento County) for their comments.

Biological Resources

As stated in staff's Preliminary Staff Assessment (pages 4.2-35 and 4.2-36), staff requires a number of items prior to completing the final staff assessment (FSA). SMUD has since filed some of these items. However, listed below are the major information items still required by staff:

- A Clean Water Act Section 404 Application for a Permit filed and accepted as complete by USCOE.
- A Biological Assessment (BA) that has been accepted as complete by the USFWS and National Marine Fisheries Service (NMFS).
- A revised Biological Resource Mitigation Implementation and Monitoring Plan (BRMIMP) that incorporates all of the updated mitigation measures.

- A completed Section 2081 Incidental Take Permit application (per the June 5, 2002 Committee Schedule).

On November 27, 2002, the applicant submitted a Revised Draft Biological Resources Assessment for the Cosumnes Power Plant to the USCOE, USFWS, and NMFS. An errata to the Revised Draft Biological Resources Assessment was submitted on December 18, 2002. The BA will be based on the information in the Revised Draft Biological Resources Assessment and will be used to draft the Biological Opinion. Based on staff's review of the Revised Biological Resources Assessment and errata and other filings made to date, staff notes that the following information is needed in order to complete staff's analysis.

- Revised Biological Assessment, Appendix B – CPP: Indirect Impacts to Fairy Shrimp on the CPP Site, Laydown Area, Transmission Line Towers, Water Supply Line, and Access Road (not included in the November 27, 2002 Revised Draft Biological Assessment).
- Revised Biological Assessment, Appendix D – Modeling for the Lower American River (not included in the November 27, 2002 Revised Draft Biological Assessment).
- SMUD has proposed creating a habitat mitigation area on applicant-owned property. A management plan of the habitat mitigation area is needed as well as confirmation of future management from the third-party organization that would manage the mitigation area.
- As partial mitigation for impacts to sensitive habitats and species, the applicant has proposed to restore three (3) degraded seasonal wetlands (approximately 1.8 acres) located approximately 0.2 mile north of the project site, south of the Rancho Seco Nuclear Plant. These seasonal wetlands were degraded during the construction and operation of the Rancho Seco Nuclear Plant. Prior to staff accepting the restoration of these seasonal wetlands as mitigation, the applicant must provide baseline information about the seasonal wetlands (e.g., soil tests, pH, chemical analysis etc.). The information would help staff determine if the wetlands are suitable for restoration or whether they have been too degraded from past use for successful restoration. SMUD must also provide a proposed restoration plan (including a timeline for restoration) and a commitment to establishing a conservation easement in order for staff to consider the area as acceptable mitigation.
- Mitigation measures for loss of Swainson's hawk foraging habitat.
- An adequate assessment of impacts to burrowing owls and mitigation measures as appropriate. A number of burrowing owl records identified in the California Natural Diversity Data Base in proximity to

the project's natural gas pipeline alignment have not been assessed by the applicant.

Staff notes that many of the items listed above have been requested or commented upon during past communications with the applicant.

In a letter dated December 10, 2002, the USCOE informed SMUD that the "November 27, 2002 Department of the Army Permit [Clean Water Act Section 404 Permit] Application for the Cosumnes Power Plant & Natural Gas Supply Pipeline" project was not complete and was lacking complete wetland delineation information. On January 8, 2003, SMUD informed staff that additional wetland delineation information was submitted to USCOE. USCOE staff informed Energy Commission staff that they would be reviewing the new information over the next couple of weeks. Staff is not aware of the USCOE's review or permitting schedule for the wetland delineation or the 404 Permit Application. Lacking a complete 404 Permit application for the CPP project, USCOE has not initiated consultation of the permit with the USFWS.

To date, staff is not aware of any comments regarding the November 27, 2002 Revised Draft Biological Resources Assessment from the USFWS or the NMFS. However, the USFWS informed staff that once the BA is complete and formal consultation on the 404 Permit Application begins, they would do their best to complete the consultation in 4-6 months, although it could take longer (by regulation, USFWS has 135 days to complete their review and issue a Biological Opinion). The federal Section 404 permit, which is required prior to the start of ground disturbance, would not be issued until the Biological Opinion is completed.

Cultural Resources

On November 27, 2002 SMUD submitted a Draft Cultural Resource Management/ Treatment Plan which contains the applicant's proposed plan to address cultural resources discovered during the construction of the project and related facilities. Cultural resources staff has reviewed the draft Plan and has determined that in order to adequately mitigate potentially significant impacts to cultural resources, substantial revisions to the Plan are necessary. Staff and SMUD are working together to revise the draft Plan.

Water & Soil Resources

As stated in staff's November 27, 2002 Status Report, staff has been working with SMUD on modifying the project's drainage and grading plans. Water and soil resources staff is reviewing the above-mentioned Informal Data Response 13 -- revised drainage and grading plans. Based on staff's preliminary review, staff believes that the revised grading and drainage plans are an improvement from past proposed plans, however, they still do not address all of staff's

concerns. Staff and SMUD are working together to revise the drainage and grading plans.

The grading and drainage plan changes affect water and soils, and also affect biological resources; therefore the changes should also be incorporated into the 404 Permit Application and the Revised Draft Biological Resource Assessment. Additionally, these grading and drainage changes are being shared with the Regional Water Quality Control Board and Sacramento County for their comments.

PUBLIC COMMENTS

Staff and the Public Adviser's Office have received comments from Kathryn Peasha (intervenor) and Karen French (resident) primarily in regard to the project's impacts on visual resources and biological resources. Staff has discussed their concerns in several telephone conversations, and has written a letter to Ms. Peasha, dated December 16, 2002.

SCHEDULE

Staff needs the biological and water and soils resources information identified above in order to complete the FSA. Per the Committee's June 5, 2002 Schedule, staff intends to file the FSA within three weeks from receipt of these items. However, the applicant has asked staff if the FSA could be bifurcated, with the majority of the sections filed as soon as possible (FSA, Part 1) and the remaining sections (FSA, Part 2) filed after the USFWS and NMFS accept the BA. Although staff prefers to file a single FSA, if directed by the Committee to do so, staff would be able to file Part 1 of the FSA in early February 2003. At this time staff anticipates being able to file all sections except for Biological Resources and Alternatives, and possibly Water and Soils Resources, in Part 1. Due to outstanding issues, the Water and Soil Resources section may take additional time to resolve, and therefore may need to be included with Part 2.

cc: POS