

CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of:)	Docket No. 99-AFC-8C
BLYTHE ENERGY, LLC'S)	Order Approving Amendment To
BLYTHE ENERGY PROJECT)	Add 66-Acre Area for Deposit of
_____)	Excess Sediments
		Order No. 02-0814-01(e)

On June 4, 2002, Blythe Energy, LLC submitted a petition to amend the Blythe Energy Project (BEP) Energy Commission Decision. The request is to deposit approximately 240,000 cubic yards of fill dirt sediments on the 66 acre site adjacent and to the west of the existing BEP site (see attached figure). These sediments are the results of excavations on the BEP site for the evaporation ponds and the storm water retention basin. The amendment modifies Cultural Resources Conditions of Certification CUL-7 and adds conditions CUL-9, 10, 11, 12, 13, 14, and 15. It also modifies Biological Resources Conditions of Certification BIO-1, 10, 12, 13, and adds condition BIO-15. The proposed modifications allow the deposition of sediments to be accomplished on the 66-acre site without any unmitigated significant environmental or health and safety impacts.

In addition, the petition requests that a 10-acre area that was originally added to the project description on December 21, 2001, for temporary laydown, be made a permanent part of the facility as part of this petition. All required environmental analysis and mitigation was provided to make this area permanent when the area was added for temporary laydown purposes.

COMMISSION FINDINGS

Based on staff's analysis, and adoption of the proposed mitigation measures, the Commission concludes that the proposed changes will not result in any significant impact to public health and safety, or the environment. The Commission finds that:

- A. There will be no new or additional unmitigated significant environmental impacts associated with the proposed changes.
- B. The facility will remain in compliance with all applicable laws, ordinances, regulations, and standards, subject to the provisions of the Public Resources Code section 25525.
- C. The changes will be beneficial to the public, applicant, or intervenors. In this case, the amendment will be of benefit to the applicant since it provides an area for disposal of excess sediments excavated from the original project site, and makes 10-acres that were designated for temporary use available for permanent use.

D. There have been substantial changes in circumstances resulting in information that was not available to the parties prior to the Commission certification. The changes are that the quantity of sediments removed from the Blythe project site is much greater than originally anticipated, and the need to convert 10 acres from temporary to permanent use designation.

ORDER

The Commission hereby approves Blythe Energy, LLC's proposed project description changes and the proposed new and modified conditions in accordance with Title 20, Section 1769 (a) (3) of the California Code of Regulations.

The Commission hereby adopts the following changes to the Project Description in the BEP Decision:

A 66 acre expansion area is added to the original project site that will be used for the deposition of excess sediments excavated and removed from the original BEP site. A 10-acre area that was approved to be added to the project site on December 21, 2001, as a temporary laydown area is approved as a permanent part of the site.

The Commission hereby adopts the following changes to Conditions of Certification in the BEP Decision:

Modify the following Cultural Resources Condition CUL-7

(Additions shown underlined, deletions shown with strikeout)

CUL-7: The project owner shall ensure that the designated cultural resources specialist prepares a report on any discovery of cultural resources. The project owner shall submit the Cultural Resources Report (CRR) to Western and the CPM for review and written approval. The CRR shall report on all field activities including dates, times and locations, findings, samplings and analysis. All survey reports, Department of Parks and Recreation (DPR) 523 forms and additional research reports not previously submitted to the California Historic Resource Information System (CHRIS) shall be included as an appendix to the CRR.

The ~~Cultural Resources Report~~ CRR shall include (but not be limited to) the following:

1. A brief description of pre-project literature search and surveys;
2. A description of the ~~discovery~~ cultural resource(s) that could be affected by the project;
3. A description of the process used to arrive at a determination of significance;
4. A discussion of the research questions that the recovered data could address or answer;

5. A description of the methods employed in the field and laboratory to complete data recovery efforts;
6. A description (including drawings and/or photos) of recovered cultural materials;
7. An inventory list of recovered cultural resource materials;
8. Results and findings of any special analyses conducted on recovered cultural resource materials, including an interpretation of the site in regards to any research design prepared prior to the data recovery;
9. Conclusions and recommendations;
10. Maps (7.5 minute USGS topographic map) showing the area involved in the data recovery;
11. Copies of completed ~~state site~~ DPR 523 forms, including photos, maps, and drawings; and
12. The name and location of the public repository that has agreed to receive the recovered cultural resources for curation.

Verification: The project owner shall ensure that the designated ~~cultural resource specialist~~ CRS completes the ~~Cultural Resources Report~~ CRR within ninety (90) days following completion of the analysis of the recovered cultural materials. Within seven (7) days after completion of the report, the project owner shall submit the ~~Cultural Resources Report~~ CRR to Western and the CPM for review and written approval. Western will submit the report, when approved, to the State Historic Preservation Officer in order to complete consultation under Section 106 of the National Historic Preservation Act. Reports previously submitted to the Energy Commission and approved in compliance with other conditions of certification and copies provided to the CHRIS may be incorporated by reference.

Add the following Cultural Resource Conditions:

CUL-9 Prior to any ground disturbance within the boundaries of CA-RIV-6370H, the project owner shall complete a thorough recording of the features (mounds, bulldozer tracks, and other landform modifications) in the southern portion of the site (as depicted on the sketch map of the June 2002 update of CA-RIV-6370H) by photographs, detailed written descriptions, and maps. Any artifacts associated with the features will be thoroughly documented (materials, size, function, any production marks or time sensitive attributes).

Verification:

1. At least 30 days prior to ground disturbance within the boundaries of CA-RIV-6370H, evidence shall be provided to the CPM for review and approval that sufficient information has been gathered to complete a report documenting the southern portion of CA-RIV-6370H.

2. Within 90 days of completing verification 1 above, a report documenting the southern portion of CA-RIV-6370H, including written descriptions, maps, and photographs of the features south of the south fence impact area shall be submitted to the CPM for review and approval.

CUL-10 Prior to ground disturbance and after the southern portion of CA-RIV-6370H has been recorded as required in CUL-9, the project owner shall complete the following:

1. Construction of the southern portion of the chain-link fence (minimum of six-foot height) separating the northern portion of the CA-RIV-6370H from the area to be graded. At a minimum, the fence shall enclose the area depicted on the sketch map of the June 2002 update of CA-RIV-6370H. The southern portion of the fence shall be desert tortoise proof. The remainder of the CA-RIV-6370H area shall be fenced concurrent with grading. The fence shall be constructed in such a manner that all areas disturbed as a result of preparation for, construction of, and removal of the temporary desert tortoise proof fence and the permanent desert tortoise proof fence shall not disturb the portion of CA-RIV-6370H that contains artifacts.
2. Construction of a gate with lock mechanism in the fence shall allow access for inspections, and research as approved by the CPM, or for emergency operations. Requests for research within the area fenced shall be submitted to the CPM and Western Area Power Administration (Western) for review and approval.

Verification:

1. At least 15 days prior to start of fence construction, plans or maps shall be provided to the CPM (under confidential cover) for review and approval delineating the location of the proposed fence, temporary fences, and construction/removal impact areas and the boundary of CA-RIV-6370H. The boundary between the northern and southern portions of the site shall be noted on the plans or maps provided.
2. Requests to conduct research on CA-RIV-6370H shall be provided to the CPM and to Western for review and approval. Copies of letters granting access to the project owner's property shall be provided to the CPM and Western.

CUL-11

1. The CRS or a CRM shall monitor ground disturbance, but not the subsequent placement of fill material, within the southern portion of CA-RIV-6370H, including the portion already altered within the 10 acre laydown area, and the construction of the fence around the northern portion of CA-RIV-6370H. Any artifacts or other sources of archeological data encountered during construction will be

documented, adding any artifacts recovered to the collection. All collected artifacts shall be added to the collection, and the documentation shall be added to the CRR that will be filed with the collection.

2. Monitors shall keep a daily log of any monitoring or cultural resource activities and the CRS shall prepare a weekly summary report on the progress or status of cultural resources-related activities providing an update that may include information that no monitoring activities have occurred. The CRS may informally discuss cultural resource monitoring and mitigation activities with Energy Commission technical staff.
3. The CRS shall notify the project owner and the CPM, by telephone or email, of any incidents of non-compliance with any cultural resources conditions of certification within 24 hours of becoming aware of the situation. The CRS shall also recommend corrective action to resolve the problem or achieve compliance with the Conditions of Certification.

Verification:

1. The requirements for the CRR are specified in CUL-7.
2. During the ground disturbance phases of the project, the project owner shall include in the MCR to the CPM copies of the weekly summary reports prepared by the CRS regarding project-related cultural resources monitoring activities. Copies of daily logs shall be retained and made available for audit by the CPM as needed.
3. Within 24 hours of recognition of a non-compliance issue, the CRS shall notify the CPM by telephone of the problem. Daily logs shall include forms detailing any instances of non-compliance with conditions of certification. In the event of a non-compliance issue, a report written no sooner than two weeks after resolution of the issue shall be provided in the next MCR.

CUL-12

1. The CRS shall ensure that the artifacts collected from CA-RIV-6370H are analyzed by archeologists experienced in the analysis of twentieth-century cultural material. The analysis, an expanded research design, and additional background research shall be contained in the CRR and shall address significant historical, anthropological, sociological, or other research questions relevant to the collection. The CRR shall provide a final recommendation of eligibility for CA-RIV-6370H. If the CPM determines that CA-RIV-6370H does not meet eligibility criteria for the CRHR, no further mitigation will be necessary.

2. The cultural resource materials shall be treated in accordance with the requirements and verification of condition CUL-8 unless CA-RIV-6370H does not meet the eligibility criteria for the CRHR.

Verification:

1. The project owner shall provide a copy of the resume of the individual experienced in the analysis of twentieth-century cultural material responsible for the analysis to the CPM for review and approval.
2. The project owner shall provide a letter to the CPM notifying the Energy Commission that the collection has been transferred to the collection repository, if site CA-RIV-6370H is determined to be eligible.

CUL-13 A copy of the CRR will be provided to the CHRIS.

Verification: Within 30 days of the approval of the CRR by the Energy Commission and Western, the project owner shall provide a copy of the transmittal letter of the CRR to the CHRIS will be provided to the CPM.

CUL-14 Prior to any project-related activities, such as transmission line reconductoring, pole replacement, or any other project-related task which may result in ground disturbance that was not included in information provided to the Energy Commission, the project owner must determine the availability of current (i.e. within 5 years) cultural resource surveys of the proposed ground disturbance. If there are not current surveys, the project owner must ensure that new surveys are performed. If cultural resources are identified that cannot be avoided, they must be evaluated for eligibility for the National Register of Historic Places and the CRHR.

The responsibility for the evaluation must be taken by persons meeting the Secretary of the Interior's Professional Qualification Standards in a discipline appropriate to the historic context within which the resource is being considered (OHP 1995). If significant cultural resources would be affected, then mitigation measures shall be determined in consultation with the CPM and Western.

Verification: At least 30 days prior to ground disturbance associated with project-related activities not previously described in the AFC or other information provided to the Energy Commission, the project owner shall provide the results of any additional cultural resource surveys and evaluations in the form of a technical report (with request for confidentiality, if needed), along with any associated maps, to the CPM for review and approval. All required mitigation will be completed prior to construction of the project-related activities.

CUL-15 The project owner shall have a cultural anthropologist meeting the Secretary of Interior's Standards prepare a study of the ethnographic area that contains the Blythe Energy Project for review and approval by the CPM.

Verification: Within 30-days after the on-line date of the power plant, the project owner shall provide an ethnographic study of the project area (with request for confidentiality, if needed), along with any associated maps, to the CPM for review and approval.

Modify The Following Biological Resources Conditions
(Additions shown underlined, deletions shown with strikeout)

BIO-1: [No change in the condition.]

Verification: For the ~~76~~152-acre power plant site, the project owner shall ensure the following:

1. Fence the ~~project site~~ construction areas and permanent facilities with desert-tortoise-proof fencing prior to ~~construction~~ mobilization in undeveloped areas. Gate(s) shall be desert tortoise proof as well. Gate(s) shall remain closed except for the immediate passage of vehicles. High use gate(s) will be maintained and have monthly examinations. If the northern portion of the western 76-acre parcel is deemed a historic area and will not be developed, its northern and western edge shall be fenced with a chain-link fence at least 6-foot high which has a six-inch gap between the bottom of the fence and ground level. If, at some future time, the area is deemed not to be a historic area, and the area is developed, the northern and western edges shall be fenced with desert-tortoise-proof fence.

Items Numbered 2-8: [No Change.]

9. Only approved species shall be used for revegetating the applicable portion of the 66-acre expansion area.

BIO-10 A comprehensive exotic control program for California Department of Agriculture List A, List B, and Red Alert weeds, shall be implemented at the ~~76~~152-acre power plant site. This program shall be implemented until such time that the adjacent land uses to the north and west are no longer a natural community or agriculture, or until the plant is permanently closed. At the Colorado River, this exotic control program shall be implemented as feasible until the Caltrans ROW is replanted and established. The natural vegetation adjacent to the BEP Site shall be monitored to determine if it has been modified or degraded. If so, these changes to the adjacent sites shall be documented by the project's Designated Biologist in a report which includes photos of adjacent land uses.

Verification: [The verification for Condition of Certification **BIO-10** remains unchanged.]

BIO-12 To compensate for permanent impact to desert tortoise habitat, the project owner shall provide compensation funds in the amount of ~~\$92,580~~ \$183,780 to the Desert Tortoise Preserve Committee for the improvement or acquisition of desert tortoise habitat in the Chuckwalla Bench area. The compensation funds include land or conservation purchase costs and endowment funds for administration, management, maintenance, monitoring, operation, and research costs.

Verification: Not less than 15 days prior to the start of any ~~construction~~ earth moving activities on the original site or the 66-acre expansion area (including exclusion fencing), the project owner will provide the check made out to the Desert Tortoise Preserve Committee (DTPC) to the DTPC and a copy of the check verifying the funds were paid, to the CPM.

BIO-13 To compensate for permanent impacts to Harwood's milkvetch, the project owner shall provide ~~\$25,000~~ \$50,000 to revegetate or to protect an appropriate area with Harwood's milkvetch. The minimum number of viable plants to be installed or protected will be two hundred. On the land conserved for the desert tortoise, appropriate locations for the plantings will be identified and plantings carried out under the supervision of a botanist with desert restoration experience working for the Desert Tortoise Preserve Committee. Alternatively, a donation in the amount of ~~\$25,000~~ \$50,000 (or a partial sum or any portion that has not already been released to the Desert Tortoise Preserve Committee) shall be given to the Rancho Santa Ana Botanical Gardens for the collection and preservation of Harwood's milkvetch seeds if the mitigation can not be fulfilled on the desert tortoise conservation parcel. Other appropriate options can be considered as needed and desired.

Verification: Within 30 days of the start of ~~construction~~ earth moving activities on the site or the 66 acre expansion area (including exclusion fencing), the project owner shall submit a plan to the CPM for review and approval. Or, the project owner will provide a check to the Desert Tortoise Preserve Committee or Rancho Santa Ana Botanical Garden as applicable, and will provide a copy of the check to the CPM.

Add the Following Biological Resources Condition BIO-15

BIO-15 The project owner shall implement an Interim Weed and Erosion Prevention Program for the applicable portion of the 66-acre expansion area to mitigate any potential outbreak of noxious weeds on all bare ground sites for the three (3) years (1095 days) following final grading. The Interim Weed and Erosion Prevention Program shall propose a technique that prevents erosion, reduces dependence on herbicides, and prevents the germination of weed seed to the highest level possible. If the 66-acre

expansion area remains undeveloped for the entire three (3) year period, and there is no permitted project for the site, then the project owner shall implement a long-term plan to re-establish regionally native vegetation on the site within one year, and remove portions of the desert tortoise proof fencing to allow wildlife to return to the site.

Verification: The project owner shall submit an Interim Weed and Erosion Prevention Program at least 30 days prior to the expected completion of grading to the CPM for approval. The Interim Weed and Erosion Prevention Program should: (1) evaluate at least two weed prevention techniques, (2) compare the merits and cost of their implementation at the Expansion Site, and (3) describe in detail the selected alternative. The Interim Weed and Erosion Prevention Program shall be in consultation with the Designated Biologist and be incorporated into the BRMIMP.

If the project owner re-establishes vegetation after three (3) years, then they shall submit to the CPM for approval within 90 days prior to the start of re-vegetation on the 66 acre expansion area: (1) the proposed plantings or seed mixture (which includes at least one fast-growing cover crop) with the relative percentages of species types; (2) certification that the mulches and seed mixtures are nearly weed-free; (3) a Long-Term Re-vegetation Maintenance and Monitoring Plan for the Expansion Site; and (4) a drawing indicating where the fenceline would be altered to allow wildlife to enter the site. The Long-Term Re-vegetation Maintenance and Monitoring Plan shall be incorporated into the BRMIMP. The Long-Term Re-vegetation Maintenance and Monitoring Plan shall be prepared under the supervision of a botanist with desert restoration expertise, in consultation with the Designated Biologist.

IT IS SO ORDERED:

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

Date: August 14, 2002

[Original Signed By]

WILLIAM J. KEESE
Chairman