



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO CA 95814-2922

April 20, 2010

DOCKET

09-AFC-3

DATE APR 20 2010

RECD. APR 20 2010

Regulatory Division (SPK-2009-01261)

Ms. Kim Squires
U.S. Fish and Wildlife Service
Endangered Species Division
2800 Cottage Way, W-2605
Sacramento, California 95825-1888

Dear Ms. Squires:

I am writing to initiate consultation under section 7 of the Endangered Species Act for a Department of the Army Permit application for the Mariposa Energy Project. The project is located near the California Aqueduct, in Section 1, Township 2 South, Range 3 East, Latitude 37.79023°, Longitude -121.60233°, MDB&M, Alameda County, California. A copy of the applicant's April 2010, *Mariposa Energy Project Biological Assessment* was mailed to you on April 16, 2010.

Based on the available information, we have determined the action may affect the Federally-listed California red-legged frog (*Rana aurora draytonii*), San Joaquin kit fox (*Vulpes macrotis mutica*), California tiger salamander (*Ambystoma californiense*), vernal pool fairy shrimp (*Branchinecta lynchi*), longhorn fairy shrimp (*Branchinecta longiantenna*) and/or their critical habitat. If new information becomes available indicating that other listed species or critical habitat may be affected, we will follow the procedures under 50 CFR 402.16, reinitiation of consultation.

Formal consultation as defined in 50 CFR 402.02 commences with your receipt of this letter. The following information is included to initiate consultation:

1. A description of the action to be considered: Mariposa Energy proposes to construct and operate the Mariposa Energy Project (MEP) electrical generating facility, which includes a 10.3-acre facility site and road, a 9.2-acre temporary parking and work area, a 580' by 75' gas pipeline work corridor, a 0.7-mile by 100' transmission line work corridor, and a 1.8-mile by 15' water supply pipeline work corridor.

2. A description of the specific area that may be affected by the action: The MEP is proposed to be located in northeastern Alameda County, southeast of the intersection of Kelso and Bruns Roads. The majority of the site is non-irrigated pasture. See Figures 1 and 2.

3. A description of any listed species or critical habitat that may be affected by the action: California red-legged frog (*Rana aurora draytonii*), San Joaquin kit fox (*Vulpes macrotis mutica*), California tiger salamander (*Ambystoma californiense*), vernal pool fairy shrimp (*Branchinecta lynchi*), longhorn fairy shrimp (*Branchinecta longiantenna*) and/or their critical habitat.

4. A description of the manner in which the action may affect any listed species or critical habitat and analysis of any cumulative impacts: There is a potential for take of listed fairy shrimp, frog and salamander during construction and operation due to sediment or other material being released via stormwater into nearby wetlands; potential for take of frog, salamander and kit fox during construction and operation, caused by

vehicles and other equipment. Cumulative impacts may occur as a result of new developments and operation and maintenance of existing facilities in the action area.

5. Relevant reports including any environmental impact statement, environmental assessment, or biological assessment prepared: See Biological Assessment, Section 7 References.

6. Any other relevant available information on the action, the listed species, or critical habitat: See Biological Assessment, Section 7 References.

This constitutes the best scientific and commercial data available. If you need additional information, or determine conditioning the permit or modifying the project would preclude the need for formal consultation, please contact us immediately. You may also contact the applicant or authorized agent to allow them the opportunity to provide information for consideration as prescribed by 50 CFR 402.14(d). If you need additional data beyond that discussed above, the procedures of 50 CFR 402.14(f) must be followed.

Please refer to identification number SPK-2009-01261 in any correspondence concerning this project. If you have any questions, please contact Marc Fugler at U.S. Army Corps of Engineers, Delta Branch, 1325 J Street, Room 1480, Sacramento, California 95814, email Marc.A.Fugler@usace.army.mil, or telephone 916-557-5255. For more information regarding our program, please visit our website at www.spk.usace.army.mil/regulatory.html.

Sincerely,

ORIGINAL SIGNED

Marc A. Fugler
Senior Project Manager
California Delta Branch

Copy Furnished

Mr. Kent Smith, California Department of Fish and Game Region 2, 1701 Nimbus Drive, Rancho Cordova, California 95670-4599

Mr. William Marshall, Storm Water and Water Quality Certification Unit, Central Valley Regional Water Quality Control Board, 11020 Sun Center Drive #200, Rancho Cordova, California 95670

Mr. Doug Urry, CH2MHill, 2485 Natomas Park Drive, Suite 600, Sacramento, California 95833



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION
FOR THE **MARIPOSA ENERGY PROJECT**
(MEP)

Docket No. 09-AFC-3

PROOF OF SERVICE
(Revised 2/8/2010)

APPLICANT

Bo Buchynsky
Diamond Generating Corporation
333 South Grand Avenue, #1570
Los Angeles, California 90071
b.buchynsky@dgc-us.com

APPLICANT'S CONSULTANTS

Doug Urry
2485 Natomas Park Dr #600
Sacramento, CA 95833-2975
Doug.Urry@CH2M.com

COUNSEL FOR APPLICANT

Gregg Wheatland
Ellison, Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816-5905
glw@eslawfirm.com

INTERESTED AGENCIES

California ISO
e-recipient@caiso.com

INTERVENORS

Mr. Robert Sarvey
501 W. Grantline Road
Tracy, California 95376
Sarveybob@aol.com

*Rajesh Dighe
395 W. Conejo Avenue
Mountain House, CA 95391
dighe.rajesh@gmail.com

Morgan K. Groover
Development Director
Mountain House Community
Services District
230 S. Sterling Drive, Suite 100
Mountain House, CA 95391
mgroover@sjgov.org

ENERGY COMMISSION

JEFFREY D. BYRON
Commissioner and Presiding Member
jbyron@energy.state.ca.us

*ROBERT B. WEISENMILLER
Commissioner and Associate Member
rweisenm@energy.state.ca.us

Kristy Chew
Advisor to Commissioner Byron
kchew@energy.state.ca.us

Kenneth Celli
Hearing Officer
kcelli@energy.state.ca.us

Craig Hoffman
Siting Project Manager
choffman@energy.state.ca.us

Kerry Willis
Staff Counsel
kwillis@energy.state.ca.us

*Jennifer Jennings
Public Adviser's Office
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Stephanie Moore, declare that on April 23, 2010, I served and filed copies of the attached MEP USACE Section 7 Consultation Request Letter. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

<http://www.energy.ca.gov/sitingcases/mariposa/index.html>.

The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

For service to all other parties:

X sent electronically to all email addresses on the Proof of Service list;

___ by personal delivery or by depositing in the United States mail at Sacramento, California, with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

For filing with the Energy Commission:

X **sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (preferred method);**

OR

___ depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 09-AFC-3
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct.

Original Signed by: _____
Stephanie Moore