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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

Application for Certification for the
Roseville Energy Park

DOCKET NO. 03-AFC-1

**ROSEVILLE ELECTRIC'S PETITION
FOR AMENDMENT TO LICENSE,
CONDITION OF CERTIFICATION
BIO-13**

On April 13, 2005, the California Energy Commission (CEC) issued a License to Roseville Electric to construct and operate the Roseville Energy Park (REP). After issuance of the License, the United States Fish and Wildlife Service (USFWS) finalized its Biological Opinion. The final Biological Opinion provided for specific mitigation, including specifying acreages for habitat compensation. The acreages specified in the final Biological Opinion vary slightly from the habitat compensation acreages specified in Condition of Certification, **BIO-13** located on page 223 of the Commission Decision. The purpose of this Petition for Amendment is to request modification of Condition of Certification **BIO-13** to make the habitat compensation acreages contained in the condition consistent with those required by the Biological Opinion.

In accordance with 20 CCR §1769 the following contains a description of the proposed modification including a discussion of the necessity. Additionally, the Petition contains an analysis that demonstrates that the proposed modification does not undermine any

assumption, rationale or finding for the final decision, will not result in significant environmental impacts, and will not affect the ability of the facility to comply with all applicable laws, ordinances, regulations or standards (LORS).

Description of Proposed Modification

Condition of Certification **BIO-13** specifies, among other things, the amount of habitat compensation acreages necessary to mitigate the potential impacts to the vernal pool ecosystem. Both Staff and Roseville Electric agreed to the specific wording of **BIO-13** including the estimates of habitat compensation acreages. The Commission Decision incorporated **BIO-13** in the form that was agreed by Staff and Roseville Electric. This Petition requests **BIO-13** be revised as follows:

BIO-13 To compensate for direct, indirect, and cumulative impacts to the vernal pool ecosystem (vernal pool grasslands, vernal pools, vernal pool fairy shrimp and its habitat, and seasonal wetlands) the Project owner shall preserve ~~44.5~~ **11.5** acres of vernal pool grassland habitat suitable for vernal pool fairy shrimp and other sensitive species affected by the Project. In addition, the Project owner shall preserve at least ~~6.5~~ **6.112 acres and create 1.298** acres of vernal pools/swales within the same parcel and in addition to the ~~44.4~~ **11.5** acres of vernal pool grasslands for a total of ~~20.6~~ **18.9** acres. To comply with this requirement the Project owner may 1) preserve grassland habitat which contains vernal pools, 2) six months after a good faith effort to locate high quality vernal pool grassland ecosystem habitat, the Project owner shall participate in the in-lieu fund program administered by the USFWS for vernal pool fairy shrimp habitat; or 3) both preserve vernal pool grassland and vernal pool acreage together as vernal pool grassland ecosystem and participate in the in-lieu fund program complying with section 2).

Verification: Within 90 days of the Commission Decision, the Project owner shall enter into an agreement with the Center for Natural Land Management (CLNM) or other suitable land management organization to seek to locate and preserve (if sufficient habitat has not already been located and preserved) and manage the grassland and vernal pool habitat required by this Condition. The Project owner shall pay all costs incurred by the CNLM or other suitable land management organization resulting from the locating, preservation (if sufficient habitat has not already been located and preserved) and managing the compensation habitat required

under this Condition. The Project owner shall provide a copy of the agreement to the CPM. After the habitat has been secured, the Project owner shall provide proof that the habitat is appropriate mitigation, has been preserved in perpetuity, that a suitable endowment (derived through a PAR or other suitable analysis) has been provided to manage the habitat in perpetuity, and the name of the non-profit organization designated as manager of the habitat. No more than 90 days from the date of habitat acquisition, the Project owner shall also provide a habitat management plan to the CPM, CDFG, and USFWS for review and approval. All documents are to be included in the BRMIMP.

If sufficient habitat is not secured within six months from the date of the Commission decision, the Project owner shall provide to the CPM, copies of the check made out to the USFWS and documentation indicating USFWS acceptance of the amount to compensate via the in-lieu fund for the amount of wetted acres not otherwise preserved.

Necessity of Proposed Modification

The REP Application For Certification (AFC) originally requested the Commission to license more than one alternative gas pipeline route. Prior to evidentiary hearings, all but one of the alternative routes was withdrawn. However, estimates of habitat compensation acreages were included in the FSA for all alternatives. Since the Biological Opinion was not yet finalized by the USFWS, Staff and Roseville Electric agreed to include acreage estimates in **BIO-13** that represented the “worst-case” scenario which were based on the most disturbance associated with the gas pipeline route entitled Alternative A. While RE had filed supplemental project description information with the Commission eliminating all gas pipeline routes except Alternative D, and since the Biological Opinion had not been finalized, REP and Staff agreed to use the “worst-case” acreage estimates to ensure that enough mitigation would be provided should the Biological Opinion require more habitat compensation than anticipated at the time of licensing.

The final Biological Opinion was issued on May 27, 2005. Proposed Conservation Measure 1 specifies the habitat compensation acreages. These acreages differ slightly from Staff and Roseville Electric’s “worst-case” estimates. Therefore, in

order to reflect the requirements of the USFWS Biological Opinion, Condition of Certification **BIO-13** should be revised as described above. The revision ensures that the REP will provide adequate habitat compensation in accordance with the federal LORS.

Effect of Decision's Findings, Assumptions and Rationale

The proposed revision to Condition of Certification **BIO-13** does not undermine any of the assumptions, findings or rationale contained in the Decision. Roseville Electric believes that had the Biological Opinion been finalized prior to licensing, Staff and Roseville Electric would have agreed to the Condition as proposed to be revised. Since the Commission Decision incorporated Staff and Roseville Electric's stipulation to Condition of Certification **BIO-13**, such an amendment is consistent with the findings, assumptions and rationale employed by the Commission in drafting the Decision.

Analysis of Environmental Impacts

The proposed revision will not result in environmental impacts because it is merely a revision of the amount of mitigation acreage that the USFWS has determined is necessary to support mitigation of the actual impacts associated with the project.

Compliance with LORS

Revision of Condition of Certification **BIO-13** will conform the Decision to the federal LORS relating to habitat compensation acreages for threatened and endangered species.

Effect of Modification on Public and Surrounding Property Owners

The modification will have no effect on the public and surrounding property owners because the modification does not seek any modification to construction or operation of the facility, but rather seeks the amount of mitigation to be revised to reflect the actual amount of disturbance associated with construction of the project. There was

no public opposition to the project and such a modification is necessary to conform the Decision to the applicable LORS.

Roseville Electric is currently in the process of finalizing its compliance with Condition of Certification **BIO-13** and therefore requests Staff to process this Petition for Amendment quickly. Roseville Electric believes that the proposed modification is ministerial and therefore no additional analysis is required. We have however, included a copy of the Biological Opinion for your review.

Dated: June 14, 2005

Respectfully Submitted,

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