

## **APPENDIX D**

### **Agency & Utility Correspondence**

**D.1 Imperial Irrigation District**

**D.2 Imperial County Planning Department**

**D.3 USACE**

**D.4 California Department of Fish and Game**

## **APPENDIX D**

### **Agency & Utility Correspondence**

#### **D.1 Imperial Irrigation District**



**CALENERGY OPERATING CORPORATION**  
A MIDAMERICAN ENERGY HOLDINGS COMPANY AFFILIATE

7030 Gentry Road, Calipatria, California 92233 760-348-4000 Fax: 760-348-2714

November 3, 2008

Mr. Jesse Montaña  
Inter-Connect Transmission Contracts Administrator  
Imperial Irrigation District  
1561 Main St, Suite 11A  
El Centro, CA 92243

Subject: Interconnection Request Requirements for Black Rock 1, 2, and 3

Dear Mr. Montaña:

This letter is a submittal of the Interconnection Request Requirements for Generating Facilities of Black Rock 1, 2, and 3 for CE Obsidian Energy LLC. The \$10,000.00 application fee is attached (Check No. 6902418). The information required as part of the subject request is attached (20 pages).

CalEnergy is interested in moving through the process on a fast-track. We will work with the Imperial Irrigation District (IID) as needed to minimize any delays.

Please contact me should you have any additional information requirements to assure this request is processed in a timely manner. Thank you for your assistance in moving along with the process of getting an interconnection agreement.

Best regards,

Doug Hackley  
Project Manager, Black Rock Project  
CalEnergy, IV

Attachments

1. Interconnection Request Requirements for Black Rock 1, 2, and 3, November 3, 2008
2. Check for filing fee

cc: Steve, Larsen, President, CalEnergy

6902402

23-OCT-08

14050

STUDY

22-OCT-08

50,000.00

50,000.00

**CALENERGY GENERATION OPERATING CO.**

302 S. 36TH STREET, SUITE 400  
OMAHA, NE 68131



27-2  
1040

CHECK NO. 6902402

23-OCT-08

DATE

AMOUNT

Fifty Thousand Dollars And Zero Cents\*\*\*\*\*50,000.00

PAY  
TO THE  
ORDER  
OF

IMPERIAL IRRIGATION DISTRICT  
P.O. BOX 937  
IMPERIAL, CA 92251  
United States

AUTHORIZED SIGNATURE

⑈6902402⑈ ⑆104000029⑆ 150872055168⑈

~~SS5170~~ SS1201 (create 110-water contract.)  
1212



**CALENERGY OPERATING CORPORATION**  
Land Department  
551 West Main Street, Suite 1  
Brawley, CA 92227  
(760) 351-3050  
Fax: (760) 351-3058

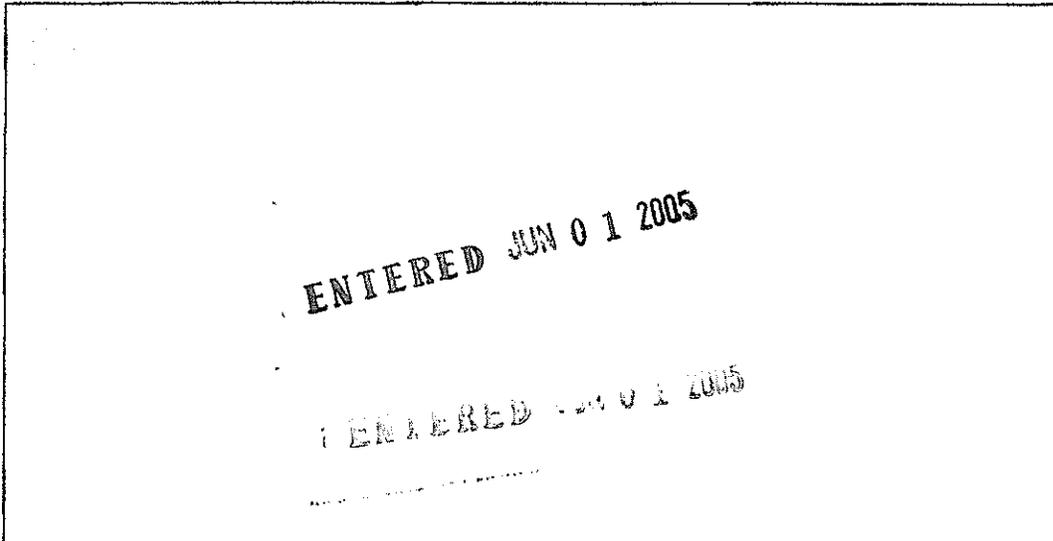
**FACSIMILE TRANSMISSION COVER SHEET**

<b>DATE:</b>	January 17, 2002	<b>NUMBER OF PAGES:</b> (3) (including cover page)
<b>TO:</b>	Jeff Hansen	Bernard Raemy
<b>COMPANY:</b>	MEHC	CE
<b>FAX #:</b>	402/231/1668	348/4073
<b>FROM:</b>	Vince Signorotti	

IF YOU DO NOT RECEIVE ENTIRE TRANSMISSION, PLEASE CALL (760) 351-3050.

\*\*\*\*\*

**MESSAGE:**



NOTE: The information contained in this facsimile message is privileged and confidential intended only for the use of the recipient named above. If you are not the named recipient(s) or authorized by the named recipient(s) you are hereby notified that any use, disclosure, dissemination or copying of this information is strictly prohibited. If you have received this communication in error, please notify us immediately at (619) 351-3050 and return the facsimile documents to us via U.S. Mail at the address shown above. Thank you.

Transmitted by: Sandra Gonzales Date: January 17, 2002

ORLANDO B. FOXIE  
JOHN PENN CARTER, A.P.C.  
FRANK A. OSWALT, III, A.P.C.  
DENNIS H. MONTA  
PHILIP J. KRUM, JR.  
MERCEDES Z. WHEELER  
PATRICK M. PACE

JEFFREY M. GARBER  
STEVE ESCALERA  
MARGARITA HAUGAARD  
VANCE M. TAYLOR

OF COUNSEL  
PAUL D. ENGSTRAND

HORTON, KNOX, CARTER & FOOTE  
ATTORNEYS AT LAW  
LAW BUILDING - 895 BROADWAY  
ET. CENTRO, CALIFORNIA 92243  
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E-mail: [jcarter@hkcf-law.com](mailto:jcarter@hkcf-law.com)

BRAWLEY OFFICE  
195 SOUTH SECOND STREET  
BRAWLEY, CA 92227  
TELEPHONE (760) 344-2360  
TELECOPIER (760) 344-9778  
E-mail: [hkcfbrawley@earthlink.net](mailto:hkcfbrawley@earthlink.net)

SAN DIEGO OFFICE  
501 WEST BROADWAY, SUITE 860  
SAN DIEGO, CA 92101-3536  
TELEPHONE (619) 595-0220  
TELECOPIER (619) 595-0225  
E-mail: [hkcfstd@earthlink.net](mailto:hkcfstd@earthlink.net)

January 17, 2002

VINCENT J. SIGNOROTTI

JAN 17 2002

Manager of Lands

Via Facsimile & U.S. Mail

Vincent J. Signorotti  
Land Manager  
Cal Energy Operating Corporation  
551 West Main Street, Suite 1  
Brawley, California 92227

Re: Delivery of Water to Lands Within IID

Dear Vince:

You have asked that I provide you with a brief summary of the laws, rules and regulations that apply to the delivery of water to lands within the Imperial Irrigation District.

The Imperial Irrigation District (IID) is a public corporation formed under the laws of the State of California and governed by a Board of Directors elected by voters in the District. IID is empowered to distribute and otherwise administer water for the beneficial use of its inhabitants and to levy charges and other assessments upon the land served for the payment of its expenses. See California Water Code Sections 20500 to 29978.

Lands that have been included within the boundaries of IID are entitled to receive water from IID so long as a landowner has complied with the rules and regulations governing the distribution and use of water in IID. Those rules and regulations can be obtained from IID. You can also review them on IID's website, [iid.com](http://iid.com). Generally, the lands are entitled to delivery of water by IID if proper application is made, all fees, charges and assessments are current, delivery and drainage facilities exist, and the water will be used for irrigation and potable purposes.

The lands within the boundaries of IID are not entitled to any particular quantity of water but are entitled to the amount that can be put to reasonable and beneficial use. In general, the included lands within IID have equal rights but no individual farm in IID has a permanent right to any specific portion of the water held in

Vincent J. Signorotti  
January 17, 2002  
Page 2

Re: Delivery of Water to Lands Within IID

trust by IID, but the water rights are equitably owned by the beneficiary landowners to whom IID is obligated to deliver water.

I hope this is helpful. Please call me if you have any further questions.

Yours truly,



John P. Carter  
for

HORTON, KNOX, CARTER & FOOTE

JPC:ta  
[File No. 3006.1725]



**Inter-Office Memorandum  
Imperial Valley**

**DATE:** July 24, 2002  
**TO:** Bernard Raemy  
**FROM:** Sandra Gonzales *Sandra*  
**SUBJECT:** Water Supply Agreement

---

Attached is one (1) original copy of Water Supply Agreement for your records. An original copy is being kept for our files as well. As you requested, a copy has been sent to David Marx of URS via overnight delivery.

SG/me  
Attachment

ENTERED JUL 24 2002

## **WATER SUPPLY AGREEMENT**

The parties to this agreement, entered into this 12th day of July 2002, are IMPERIAL IRRIGATION DISTRICT, an irrigation district (hereinafter referred to as "IID"); and CE OBSIDIAN ENERGY LLC, a Delaware limited liability company (hereinafter referred to as "CEOE").

### **1. RECITALS:**

This agreement (hereinafter referred to as the "Agreement") is made with reference to the following facts:

- 1.1. WHEREAS, CEOE is currently undertaking geothermal development activities precedent to the construction and operation of the proposed CEOE Geothermal Power Project (hereinafter referred to as the "Project") located within the service area of the IID, Imperial County, California. The expected site of the proposed Project is defined as the Southwest quarter of Section 33, T.11S.R.13E., of the S.B.B.M.
- 1.2. WHEREAS, CEOE requires a continuous supply of water in connection with construction and operation of the Project.
- 1.3. WHEREAS, the Board of Directors of the IID has determined that it is in its best interest to make available up to 1,000 acre of water per calendar year from its canal system for beneficial consumptive use by CEOE in accordance with the terms and conditions hereinafter recited.

### **2. DEFINITIONS:**

For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings:

- 2.1. Aggregate Requirement – With respect to any given calendar year, a volume of water consisting of the aggregate of (i) the Historical Use Amount and (ii) the Conservation Project Amount.
- 2.2. Conservation Project Amount – The aggregate of the verified water volume yields associated with (i) any Initial Conservation Project Payment Election and (ii) any Supplemental Conservation Project Election(s) made in or prior to any given calendar year.
- 2.3. Effective Date – The date of execution of this Agreement by both parties.
- 2.4. Excess Requirement – With respect to any given calendar year, the volume of water consumed by CEOE for the Project for such year (i) greater than the

Historic Use Amount but (ii) less than the Aggregate Requirement applicable to such year.

2.5. Historical Use Amount - A volume of water consisting of 763 acre-feet per calendar year.

2.6. Initial Conservation Project Payment – An up-front, one time fee, in an amount mutually agreed to by CEOE and IID, payable with respect to the exercise of an Initial Conservation Project Payment Election.

2.7. Initial Conservation Project Payment Election - An election to be exercised, if at all, by CEOE to make a one-time payment to IID representing the cost to IID of implementing a specified water conservation project, with a defined water volume yield.

2.8. Project Startup Period - The initial six months of startup of the Project.

2.9. Supplemental Conservation Project Election – An election to be exercised, if at all, by CEOE subsequent to the Initial Conservation Project Payment Election to make a supplemental one-time payment to IID representing the cost to IID of implementing a specific supplemental conservation project, with a defined water volume yield.

2.10. Supplemental Conservation Project Payment – An up-front, one-time fee, in an amount mutually agreed to by CEOE and IID, payable with respect to the exercise of a Supplemental Conservation Project Election.

### 3. AGREEMENT:

3.1. In consideration of the mutual covenants contained herein, CEOE and IID agree as follows.

### 4. DELIVERY:

4.1. IID shall permit CEOE to take from an IID operated canal at the location depicted under this section (or where otherwise agreed by the parties) such water as may be required by CEOE for use in and incidental to the operation of the Project, and for no other purpose in a total quantity not to exceed 1,000 acre-feet during any calendar year (the "Maximum Use Amount"); provided, however, nothing in this Agreement shall be construed to require IID to modify or enlarge its existing canal system to make water available to CEOE, and CEOE shall not be entitled to take water at a rate which will unreasonably deplete the supply available in the canal for other uses.

<u>Canal</u>	<u>Delivery Gate</u>	<u>Cubic Feet Per Second</u>
Vail 4A	459	0-1.5
Vail 4A	460	0-1.5

In combination not to exceed 3 cubic feet per second per day from Vail 4A Del. Gate 459 and Vail 4a Del. Gate 460.

4.2. CEOE shall be responsible, at its sole cost and expense, for the construction, installation, and maintenance of any structures, facilities or improvements necessary in connection with its retrieval of water from said IID canal. The IID shall assist CEOE in obtaining any necessary easements, permits or other rights to transport said water from the Vail 4a Canal to the Project and CEOE may terminate this Agreement if it cannot reasonably obtain such permits.

4.3. To the extent that IID receives an order or directive from a governmental authority having appropriate jurisdiction, reducing the volume of water allocable to IID from the Colorado River, IID may reduce the Maximum Use Amount, as directed by the IID Board of Directors; provided, however, that in no event shall the ratio of (i) such reduction in the Maximum Use Amount to (ii) the total reduction of water allocable to IID from the Colorado River exceed the ratio of (a) the Maximum Use Amount to (b) the current total amount of water allocable to IID from the Colorado River.

5. DRAINAGE RIGHTS:

5.1. CEOE has represented to IID that the Project will be designed as a zero discharge system and as a result CEOE will not need drainage services that are typically provided to IID's industrial customers, with the exception of occasional rain run-offs which CEOE is allowed to discharge, from time to time, to the appropriate IID's discharge canal.

6. TERM:

6.1. The term of this Agreement shall commence on the Effective Date and shall remain in effect until terminated pursuant to this Section 6. The obligation of IID to furnish water to CEOE under this Agreement shall commence on the date CEOE initiates start-up and check-out operations of the Project which will utilize such water and shall terminate the earlier of:

6.1.1. 21 years following the Commercial Operation Date as such term is defined in the Power Sales Agreement dated November 6, 2001, between IID and CEOE.

6.1.2. At the option of the IID, thirty-six (36) months from the date the Project has ceased to operate.

6.2. The termination date for delivery of water from IID's canal system may be extended by mutual agreement of the parties. Any such extension must be in writing.

7. REQUIREMENTS NOTICE:

7.1. CEOE shall project the total quantity of water to be purchased by CEOE on an annual basis, to reflect the anticipated water requirements for the Project. CEOE shall on or before November 1<sup>st</sup> of each year, provide IID with written notice of the approximate quantity of water to be purchased during each month of the following calendar year ("Quantity Notice Letter"). Such amount shall constitute a good faith estimate on the part of CEOE, but shall not constitute a minimum or maximum quantity of water to be purchased during the specified period.

8. PAYMENT/BILLING:

8.1. For the right to take and use the water identified herein:

8.1.1. For water consumption up to the Historic Use Amount per calendar year during the Project Startup Period: CEOE shall pay a per acre-foot charge for water used by the Project at one-half of IID's industrial water rate as amended, from time to time, payable monthly.

8.1.2. For water consumption up to the Historic Use Amount per calendar year after the Project Startup Period: CEOE shall pay a per acre-foot charge for water used by the Project at IID's industrial water rate as amended, from time to time, payable monthly.

8.1.3. For water consumption above the Historic Use Amount per calendar year CEOE shall pay a per acre-foot charge for water used by the Project at IID's conserved water rate as amended, from time to time, payable monthly.

8.1.4. In lieu of payment at the conserved water rate for future water consumption above the Historic Use Amount per calendar year pursuant to section 8.1.3., CEOE may exercise an Initial Conservation Project Payment Election at any time during the term of the Agreement and pay IID an Initial Conservation Project Payment, the payment of which by CEOE to IID shall be deemed to constitute CEOE's exercise of its Initial Conservation Project Payment Election right, with no further action on CEOE's part; provided, however that CEOE shall not be deemed to have any obligation to make an Initial Conservation Project Payment until a financial closing occurs which enables CEOE to proceed with construction of the Project.

After making any such Initial Conservation Project Payment, (a) to the extent that CEOE's water consumption for the Project for any given calendar year exceeds the Historic Use Amount but does not exceed

Aggregate Requirement, for such year, CEOE shall pay the same rate for the resulting Excess Requirement as is applicable at such time for water consumption up to the Historic Use Amount per calendar year and (b) to the extent that CEOE's water consumption for the Project for any given calendar year exceeds the Aggregate Requirement, CEOE shall pay the applicable conserved water rate for the amount of such excess over the Aggregate Requirement. In lieu of payment at the conserved water rate for future water consumption above the Aggregate Requirement pursuant to clause b) above, CEOE may exercise a Supplemental Conservation Project Election at any time after making such Initial Conservation Project Payment, or Supplemental Conservation Project Payment(s), to pay IID one or more Supplemental Conservation Project Payments, subject to the same terms and conditions as the Initial Conservation Payment Election.

8.1.5. CEOE Project water shall be measured at the outlet of Vail 4a Del. Gate 459 and/or Vail 4a Del. Gate 460 or such other location the parties may agree to.

8.2. For the right to discharge into IID's drainage system, the parties agree that:

8.2.1. CEOE shall pay no charge for occasional rain run-offs discharged from time to time, to the appropriate IID's discharge drain, per section 5.1 of the Agreement. Process water shall not be allowed to discharge into the IID drainage system.

## 9. RULES AND REGULATIONS:

9.1. CEOE shall be obligated to comply with the "Rules and Regulations Governing the Distribution and Use of Water and Construction, Operation and Maintenance of the Canal and Drainage System of Imperial Irrigation District," in its present form or as it may be reasonably amended hereafter. Notwithstanding CEOE's obligation to comply with said Rules and Regulations, any conflict between this Agreement and said Rules and Regulations pertaining to CEOE's payment obligation set forth in Section 8 of this Agreement, shall be resolved in favor of the provisions of this Agreement.

## 10. GOVERNING LAW:

10.1 This Agreement shall be interpreted, governed by and construed under the laws of the State of California or the laws of the United States, as applicable, as if executed within and to be performed wholly within the state of California.

## 11. BINDING OBLIGATIONS; ASSIGNMENT:

11.1 This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns. No party may assign or transfer its rights or

obligations under this Agreement without the prior written consent of the other party hereto. Such consent shall not be unreasonably withheld. However, without prior consent, IID may assign its rights under this Agreement as security for any water conservation financing IID might obtain in carrying out this Agreement. CEOE may, without prior consent, assign its rights to a lender, lessor, and/or trustee acting on behalf of a lender or lessor, or any other financing entity which acquires an interest in the Project (collectively "Financing Entities") in connection with any financing involving the Project. Notwithstanding the foregoing, IID agrees that no successor or assignee, including any such Financing Entity shall, by reason of any assignment, be subject to any liability or obligation hereunder, unless such party shall have elected to assume the role of CEOE under this Agreement, in which case such Financing Entities (or any transferee of the Project) shall become liable to perform such duties and obligations. In the event of an assignment of CEOE's rights hereunder to any Financing Entities, IID shall take such further actions and execute such documents as are reasonably requested by such Financing Entities to effectuate such assignment.

Solely with respect to any Financing Entity which acquires an interest in this Agreement, IID agrees to give written notice to such Financing Entities of any default and will afford such Financing Entities a reasonable period of time to commence appropriate action to cure such default, should they choose to do so and, in the event that this Agreement is terminated by reason of bankruptcy of any party, IID will, at the option of any Financing Entity, enter into a new contract with such Financing Entities or their successors or assigns, having terms similar to this Agreement.

## 12. NO THIRD PARTY RIGHTS:

12.1 Except as provided in Section 11.1, the parties do not intend to create rights and/or to grant remedies to any third party or others as a beneficiary of this Agreement or of any duty, covenant, obligation or undertaking established hereunder.

## 13. NO DEDICATION OF FACILITIES:

13.1 Any undertaking by one party to another party under any provision of this Agreement shall not constitute the dedication of the system or any portion thereof of the party to the public or to the other party, and it is understood and agreed that any such undertaking under any provision of this Agreement by a party shall cease upon the termination of its obligations hereunder.

14. NON-WAIVER:

14.1 None of the provisions of this Agreement shall be considered waived by any party except when such waiver is given in writing. The failure of any party to insist in anyone or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or their relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

15. UNCONTROLLABLE FORCES:

15.1 No party shall be considered to be in default in the performance of any of its obligations under this Agreement when a failure of performance shall be due to an uncontrollable force. The term "Uncontrollable Force" shall mean any cause beyond the control of the party affected including, but not restricted to, flood, drought, earthquake, tornado, storm, fire, pestilence, lightning and any other natural catastrophe, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, acts, including restraint or enjoinder by proper authority, of civil or military authority (whether valid or invalid), inaction or non-action by or inability to obtain or keep the necessary authorizations or approvals from any governmental agency or authority, which by exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome. Nothing contained herein shall be construed as to require a party to settle any strike or labor dispute in which it may be involved. Any party rendered unable to fulfill any of its obligations under this Agreement by reason of an uncontrollable force shall give prompt written notice of such fact to the other parties and shall exercise due diligence, and cooperate with any efforts of such other parties, to remove such inability with all reasonable dispatch.

16. WATER RIGHTS:

16.1 Nothing contained in this Agreement is intended or shall be construed to affect, alter, or in any way limit or restrict the rights held by IID by contract or law to divert or use Colorado River or restrict the rights held by CalEnergy Minerals, LLC, pursuant to the agreement between CalEnergy Minerals, LLC, and IID dated September 22, 1998. The right of the Project to use water hereunder is not cumulative, and it has no right in subsequent calendar year to water that is not used in a current calendar year. Any water that is not required to be made available for use by the Project in calendar year may be used by IID as it, in its sole discretion, shall determine.

17. LATE PAYMENT PENALTY:

17.1 If CEOE (solely with respect to the payments under Sections 8.1.1 and 8.1.2 fails to pay any amount when due, an interest charge on the unpaid amount due based on the late payment charge percentage calculated by the Department of the Treasury and published quarterly in the Federal Register (but not less than 0.5% per month) shall be added on the first day following the due date and monthly thereafter until the payment, any penalty and interest are paid in full. Additionally, if any payment is not made within three (3) business days after written notice received by the defaulting party, that such payment is overdue, a penalty of two percent (2%) of the amount due shall be added thereto.

18. TERMINATION:

18.1 If CEOE breaches this Agreement, including failure to make payment when due, IID shall have the following rights and remedies:

- (a) If usage charges for water used by the project is not paid within sixty (60) days after written notice is received by CEOE and any Financing Entities, IID may suspend this Agreement with respect to such Project, and such Project shall have no further rights to use water hereunder until and unless such default (plus penalty and interest) is fully cured within an additional six months, after which time IID may terminate this Agreement with respect to such Project if such default is still outstanding.
- (b) IID may charge penalties and interest only in accordance with paragraph 16 above.
- (c) IID may institute any available and appropriate legal or equitable action to enforce the terms of this Agreement.
- (d) IID may cease delivering water to CEOE upon the expiration of the period referenced in section 18.1(a).

18.2. IID may use any or all of these rights and remedies in case of CEOE's breach and if it selects one, shall not waive its rights to select or use any other. IID acknowledges (and will accept) that any Financing Entities or other parties which acquire an interest in the Project may cure any breach of this Agreement and such cure shall be considered as full performance hereunder.

19. NOTICES:

19.1 All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been received when delivered or faxed or on the fifth business day following the

mailing, by registered or certified mail, postage prepaid, return receipt requested, thereof address as set forth below:

If to IID:

IMPERIAL IRRIGATION DISTRICT  
Attention: General Manager  
PO Box 937  
333 E. Barioni Blvd.  
Imperial, CA 92251

If to CEOE:

CE Obsidian Energy LLC  
Attention: General Counsel  
302 South 36<sup>th</sup> Street  
Suite 400 L  
Omaha, NE 68131

With copies to:

CE Obsidian Energy LLC  
Attention: Vincent Signorotti  
551 West Main Street  
Suite 1  
Brawley, CA 92227

Any party may change the addressee or address to which communications or copies are to be sent by giving notice of such change of addressee or address in conformity with the provisions of this paragraph for the giving notice.

20. CONDITIONS AND MISCELLANEOUS PROVISIONS:

20.1 CEOE is a limited liability company duly organized and validly existing in good standing under the Delaware Limited Liability Company Act, and has all requisite power and authority to enter into and perform its obligations hereunder. The execution, delivery and performance by CEOE of this Agreement has been duly authorized by all necessary action on the part of CEOE and does not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of CEOE. This Agreement has been duly executed and delivered on behalf of CEOE by the appropriate officers of CEOE and constitutes the legal, valid and binding obligation of CEOE, enforceable against CEOE in accordance with its terms.

20.2 IID is an irrigation district duly organized and validly existing in good standing under the laws of the State of California, and has all requisite power and

authority to enter into and perform its obligations hereunder. The execution, delivery and performance by IID of this Agreement has been duly authorized by all necessary action on the part of IID and does not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of IID. This Agreement has been duly executed and delivered on behalf of IID by the appropriate officers of IID and constitutes the legal, valid and binding obligation of IID, enforceable against IID in accordance with its terms.

20.3 This Agreement sets for the entire agreement between CEOE and IID with respect to the matters to herein, superseding all previous agreements, oral or written.

20.4 Any owner trustee (the "Owner Trustee") which acquires an interest in the Project shall only be liable hereunder from the income and proceeds of the trust estate created in connection with the financing pursuant to which the Owner Trustee acquires an interest in the Project (the "Trust Estate") and only to the extent that the Owner Trustee shall have received sufficient assets, income and/or proceeds from the Trust Estate to make such payments. Each of IID and CEOE agrees for itself and for its successors and assigns that, as against the Owner Trustee, it will look solely to the assets, income and/or proceeds of the Trust Estate for the payment of any amounts payable by the Owner Trustee is in no way personally liable for any such amounts or on account of any such representation, warranty, covenant or agreement, but nothing hereunder shall limit the liability of the Owner Trustee, for their comparative fault as established under California law.

IN WITNESS WHEREOF, CEOE and IID have caused this Agreement to be executed on the day and year first above written.



IMPERIAL IRRIGATION DISTRICT

By Stella Mendez  
President

ATTEST: Gloria A. Rivera  
Secretary

CE OBSIDIAN ENERGY LLC

By [Signature]  
Vice President

**AMENDMENT NO. 1 TO WATER SUPPLY AGREEMENT**

This Amendment No. 1 to the Water Supply Agreement (this "Amendment") is made and entered into as of this 21<sup>st</sup> day of Sept, 2004, between Imperial Irrigation District, an irrigation district organized and existing under the laws of the State of California ("IID") and CE Obsidian Energy LLC, a Delaware limited liability company ("CEOE" and together with IID, the "Parties" and each a "Party").

**WITNESSETH**

WHEREAS, IID and CEOE are parties to the Water Supply Agreement, dated July 12, 2002 (the "Agreement"), pursuant to which, among other things, IID will supply water to CEOE for the construction and operation of the Project; and

WHEREAS, the Parties desire to amend the Agreement in accordance with terms and conditions specified in this Amendment; and

NOW, THEREFORE, in consideration of above premises and the mutual covenants and agreements hereinafter set forth, the Parties hereto mutually contract and agree as follows:

**AGREEMENT**

1. Definitions. Capitalized terms used, and not otherwise defined herein, shall have the meanings assigned to them in the Agreement.

2. Amendment to the Agreement. The Agreement is amended by deleting the text of Section 6.1.1 in its entirety and replacing it with the following:

"31 years following the Commercial Operation Date as such term is defined in the Amended and Restated Power Sales Agreement dated Sept 21, 2004, between IID and CEOE (as amended from time to time)."

3. Effect. Except as expressly amended by this Amendment, the terms and conditions of the Agreement shall remain in full force and effect.

**ENTERED JUN 0 1 2005**

IN WITNESS WHEREOF, each of CEOE and IID hereby acknowledges and consents to the terms of this Amendment and has executed this Amendment as of the date and year first written above.

CE OBSIDIAN ENERGY LLC

By:   
Name: Stefan A. Bird  
Title: President

IMPERIAL IRRIGATION DISTRICT

By:   
Name: Bruce Kuhn  
Title: President

## **APPENDIX D**

### **Agency & Utility Correspondence**

#### **D.2 Imperial County Planning Department**



**CALENERGY OPERATING CORPORATION**  
A MIDAMERICAN ENERGY HOLDINGS COMPANY AFFILIATE

7030 Gentry Road, Calipatria, California 92233 760-348-4000 Fax: 760-348-2714

November 6, 2008

Mr. Jurg Heuberger  
Planning and Development Services Director  
Imperial County Planning and Development Services Department  
801 Main Street  
El Centro, CA 92243-2811

Subject: Proposed Amended Salton Sea Unit 6 (SSU6) Project:  
Conditional Use Permit 02-2008

Dear Mr. Heuberger:

The purpose of this letter is to request that Conditional Use Permit (CUP) No. 02-2008 be amended to i) conform to the Amended Project description and ii) take into consideration the currently projected construction schedule. Attached is an information package that provides the updated description of the project, a list of differences between the current and original projects, a general description of the construction phases, and a summary of environmental impacts categorized in accordance with the requirements of the California Energy Commission (CEC) Siting Regulations.

CalEnergy believes Section G-14 of the Conditional Use Permit, Minor Amendment, authorizes you to approve of such a request when such changes will not result in any additional environmental impacts. We believe the proposed changes meet this requirement and respectfully request your concurrence and amendment of the CUP.

We would appreciate the opportunity to meet with you and your staff to discuss the proposed changes to the project and the anticipated changes in environmental impacts. In order to allow you time to review the attached information package, we will contact you in the near future to schedule a meeting at your convenience.

Sincerely,

*{via electronic – hard copy delivered via courier}*

Doug Hackley  
Project Manager  
CalEnergy

Attachments

cc: Steve Larsen – CalEnergy  
Arrie Bachrach – ENSR  
Michael P. Fawdry, P.E. – ICSUS Group  
Peter Weiner – Paul Hastings



IMPERIAL COUNTY

# PLANNING & DEVELOPMENT SERVICES

PLANNING / BUILDING INSPECTION / ECONOMIC DEVELOPMENT / PLANNING COMMISSION / A.L.U.C.

JURG HEUBERGER, AICP, CEP, CBO  
PLANNING & DEVELOPMENT SERVICES DIRECTOR

July 31, 2006

Vincent Signorotti  
Cal Energy  
551 West Main Street, Suite 1  
Brawley, CA 92227

RECEIVED

AUG 02 2006

LAND DEPT.

RE: Williamson Act

Dear Vince,

The Imperial County Planning & Development has reviewed your June 26, 2006, letter requesting clarification on compatible uses for land voluntarily placed under Williamson Act land Preservation contacts. Specifically, Cal Energy is interested in the agricultural land preservation program, but wants to ensure the continued geothermal use of their property. Pursuant to a November 3, 2005, letter from the Department of Conservation, the Williamson Act allows for provision for oil and gas wells, but whether or not above ground geothermal pipelines are compatible uses is ultimately up to the County of Imperial to determine.

The Department finds that the continued exploration and extraction of the geothermal resources is a value to Imperial County and it would not be our intent to impose additional limits on it. The preservation of the County's agricultural resources is of equal importances. The County General Plan, Geothermal Element has found geothermal uses to be compatible with agricultural uses provided that the operator designs and constructs the pipelines for minimum impacts on agriculture fields, and ensuring that a viable agriculture operation is still possible on a field that has geothermal wells and pipelines.

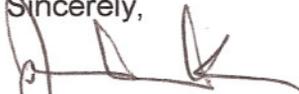
Based on the geothermal pipeline details provided with your letter, the Department feels that if done correctly, the goal of protecting and preserving both resources can be achieved. The test is proving a given agricultural field can still be a viable agricultural operation while having proportions of the field set aside for geothermal wells and pipelines.

The County has long determined that forty acre (gross) lots are typically considered to be viable agricultural operation, which has resulted in both the County General Plan and Land Use Ordinance establishing forty acre minimum lot sizes in the agricultural areas.

While the Williamson Act allows for lots as small as ten acres in size to be placed under Williamson act contract if located in an existing agricultural preserve Using the County's agricultural lot size, as a basis the Department finds that so long as individual parcels still allow for a viable agricultural operation on at least 80% of the historical agricultural field (For example: an 80 (gross) acre parcel, has a historical field footprint of 70 acres, the field could be reduced in size to 56 acres of field footprint) and further provided that the agricultural operation is greater than 10 acres, the geothermal wells and pipelines would be compatible uses with the County's Williamson Act Program. However, individual parcels with Geothermal Power Plans and other large scale physical structures would not be considered compatible uses with the County's Williamson Act Program due to the elimination of viable agricultural operations.

If you have any questions please contact me at (760) 482-4236 extension 4278 or [Jimminnick@imperialcounty.net](mailto:Jimminnick@imperialcounty.net).

Sincerely,



Jim Minnick  
Planning Division Manager

CC: Jurg Heuberger, AICP, CEP, Planning & Development Services Director  
Darrell Gardner, Assistant Planning & Development Director  
Williamson Act file  
File 10.102

## **APPENDIX D**

### **Agency & Utility Correspondence**

#### **D.3 USACE**

Atlanta  
Beijing  
Brussels  
Chicago  
Frankfurt  
Hong Kong  
London  
Los Angeles  
Milan  
New York  
Orange County  
Palo Alto  
Paris  
San Diego  
San Francisco  
Shanghai  
Tokyo  
Washington, DC

(415) 856-7010  
peterweiner@paulhastings.com

October 24, 2008

70073.00003

**VIA EMAIL AND OVERNIGHT MAIL**

Mr. Robert R. Smith  
U.S. Army Corps of Engineers, Los Angeles District  
Regulatory Division, South Coast Branch, San Diego Section  
6010 Hidden Valley Road, Suite 105  
Carlsbad, CA 92011-4213  
(760) 602-4831  
robert.r.smith@uasce.army.mil

**Re: Renewed permit for amended Salton Sea Unit 6 project**

Dear Mr. Smith:

On Friday, October 10, 2008, representatives of CalEnergy LLC and I met with you to discuss the permitting process for the amended Salton Sea Unit 6 ("SSU6") Project ("Project"). As we indicated during that meeting, the original SSU6 Project has been amended to reduce the environmental impacts associated with harnessing the clean, renewable geothermal energy that underlies the Salton Sea and surrounding area.

The Corps previously asserted jurisdiction over "waters of the United States" that might have been impacted by the original project, and required CalEnergy to obtain a permit pursuant to Section 404 of the Clean Water Act ("CWA"), 33 U.S.C. § 1344. That original jurisdictional determination and permit have since expired.

Accordingly, in this letter we describe the amended Project's reduced impacts and CalEnergy's suggested approach for settling jurisdictional issues, securing coverage for the amended Project under the Corps' Nationwide Permit No. 12, and using the original project's Biological Opinion ("BO"), prepared by the U.S. Fish & Wildlife Service ("FWS"), to satisfy the requirements of the Endangered Species Act ("ESA"). On behalf of CalEnergy, we seek concurrence from you that this approach will satisfy the Corps' and CalEnergy's obligations under the CWA and ESA.

Mr. Robert R. Smith

October 24, 2008

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**I. Project changes**

**A. The original project**

The original SSU6 project (Corps Project No. 200301514-JMB) was a multiple-flash 215 megawatt ("MW") capacity plant located on a 160-acre site near Calipatria in Imperial County, California. The project included ten production wells on five well pads and seven injection wells on three well pads, all of which would be located off-site. One of these well pads (OB-3) would be located on Obsidian Butte, and McKendry Road would be widened to serve that well pad. In May 2005, the California Energy Commission ("CEC") amended the original Application for Certification ("AFC") allowing for the addition of a binary-cycle turbine to the original project through Order No. 05-0511-02 (Docket No.: 02-AFC-2C). This amendment to the original AFC also included permission to construct one additional production well and one additional injection well.

The original SSU6 project would have impacted 0.18 acres of jurisdictional waters of the United States. Direct impacts to 0.1 acres of wetlands would have resulted from the widening of McKendry Road and the parallel placement of a pipeline in the wetlands. Approximately 0.08 acres of ephemeral desert washes would be impacted by construction of unpaved access roads, transmission line support structures, and a switchyard associated with the "L" electric transmission line, a related project being constructed by the Imperial Irrigation District ("IID").

The Corps determined that the wetlands were waters of the United States over which it had jurisdiction, pursuant to CWA Section 404, 33 U.S.C. § 1344, based on a Jurisdictional Delineation dated July 11, 2002. On April 18, 2003, the Corps issued an addendum to the Jurisdictional Delineation, based on which the Corps determined that it had jurisdiction over the ephemeral washes because they were "hydraulically connected to the Salton Sea, a navigable waterway." On February 13, 2004, the Corps issued a Section 404 authorization for the project pursuant to the Corps' NWP 12. This authorization has since expired.

The Corps and FWS also engaged in consultation under Section 7 of the ESA because of concern about the project's potential impacts upon certain species listed as endangered or threatened under the ESA. In its subsequent BO, FWS concluded that of the species examined in the biological assessment, only the Yuma clapper rail and the California brown pelican warranted the implementation of mitigation measures. FWS also stated in its November, 2003 BO that the project was not likely to jeopardize the continued existence of the Yuma clapper rail or the California brown pelican. The BO has not expired.

Copies of the Corps' July 2002 Jurisdictional Delineation, April 2003 Jurisdictional Delineation Addendum, February 2004 404 authorization, and of FWS's November 2003 BO, are attached.

Mr. Robert R. Smith  
October 24, 2008  
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## B. The amended project

The amended Project will consist of three 53-MW (i.e. – net) geothermal electric plants to be developed on the same site. The amended Project involves a substantially smaller footprint than the original project and correspondingly fewer impacts. (The attached figure depicts the changes from the original SSU6 project.) In particular:

- Whereas all of the original project's well pads and injection wells would be located offsite, the amended Project includes nine production wells on three onsite well pads and nine injection wells on three offsite well pads.
- The onsite and offsite well pads will be in different locations from those proposed in the original project. Most significantly, the amended Project will not involve the construction of an injection well pad located on Obsidian Butte (OB-3), and it will not involve the widening of McKendry Road that was designed to serve OB-3.
- Because the amended Project will not require the construction of OB-3 or its pipeline, or the widening of McKendry Road, the amended Project will not have direct impacts to 0.1 acres of jurisdictional wetlands.

However, the amended Project still relies on construction of the "L" transmission line, so the amended Project still will have the potential to impact approximately 0.08 acres of ephemeral desert washes. CalEnergy cannot rely on the Corps' Section 404 authorization for the original project because it has expired.

## II. Preliminary jurisdictional determination and authorization under NWP 12

Ordinarily, a project that might involve impacts to waters that the Corps previously determined were jurisdictional would require the issuance of a permit under CWA Section 404. However, since the Corps issued its Jurisdictional Determination for the original project in 2002, the U.S. Supreme Court handed down its decision in *Rapanos v. United States*, 547 U.S. 715 (2006), which establishes certain limits on the extent of federal jurisdiction over "navigable" waters under the CWA. Under *Rapanos*, certain waters that previously were subject to the Corps' jurisdiction may no longer be. This is particularly true for "channels through which water flows intermittently or ephemerally, or channels that periodically provide drainage for rainfall." *Rapanos*, 547 U.S. at 739. Thus, there is now a question as to whether the Corps has jurisdiction over the ephemeral washes that may be impacted by the amended Project.

The Corps' Regulatory Guidance Letter ("RGL") 08-02 (June 26, 2008) provides the Corps and CalEnergy a means of resolving this jurisdictional question. Under RGL 08-02, an applicant may apply for a "Preliminary Jurisdictional Determination" ("PJD"), which is an "advisory," "non-binding" . . . written indication that there may be waters of the United

Mr. Robert R. Smith  
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States, including wetlands, on a parcel ....” RGL 08-02 at 3 (quoting 33 C.F.R. § 331.2). In particular,

A landowner, permit applicant, or other “affected party” may elect to use a preliminary JD to voluntarily waive or set aside questions regarding CWA/RHA jurisdiction over a particular site, usually in the interest of allowing the landowner or other “affected party” to move ahead expeditiously to obtain a Corps permit authorization where the party determines that is in his or her best interest to do so.

RGL 08-02 at 3. In other words, in a PJD, the “Corps is making no legally binding determination of any type regarding whether CWA/RHA jurisdiction exists over the particular water body or wetland in question,” RGL 08-02 at 3; rather, the Corps and the applicant are assuming without deciding that such jurisdiction exists. To further the purpose of allowing applicants to “move ahead expeditiously,” RGL 08-02 directs the Corps to process PJD applications in 60 days or as soon as is practicable. RGL 08-02 at 3-4.

The amended Project is well suited to a PJD. The Project will involve impacts to ephemeral washes that the Corps already concluded were jurisdictional waters, and for which impacts the Corps already issued authorization under NWP 12. A PJD for the amended Project will result in an expeditious resolution that the ephemeral washes are jurisdictional waters and that coverage under NWP 12 for the same potential impacts is still appropriate. Moreover, as we explain in the next section, the amended Project will implement all of the mitigation measures called for in the 2003 BO for the original project.

### III. Coverage under Section 7 of the ESA

As noted above, the original project involved ESA Section 7 consultation between the Corps and FWS concerning the project’s potential impacts to species listed as threatened or endangered under the ESA. This consultation resulted in FWS’ issuance of a BO in 2003.

CalEnergy has determined that re-initiation of consultation for the amended Project is unnecessary. In a meeting on October 10, 2008, Ms. Carol Roberts of FWS informally concurred for the following reasons.

First, FWS’ 2003 BO does not expire, but states simply:

As provided in 50 C.F.R. Part 402.16, re-initiation of formal consultation is required where discretionary Federal agency involvement or control over an action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded, (2) new information reveals effects

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of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion, (3) the action is subsequently modified in a manner that causes an effect to a listed species of critical habitat that was not considered in this action, or (4) a new species is listed or critical habitat designated may be affected by this action.

2003 BO at page 44.

Second, the amended Project does not give rise to any of the re-initiation conditions listed in the 2003 BO:

- With respect to the first condition, the areal extent of the amended Project has been reduced, construction activities that were to be implemented in sensitive habitat areas have been eliminated, and the intensity of construction has been reduced. In particular, the new injection well locations are now located to the south and east of the plant site, further away from the Obsidian Butte roost areas for the brown pelican and away from the wetland areas that had potential for Yuma clapper rails. All of these changes will reduce, not increase, impacts to listed species.
- Regarding the second condition, CalEnergy has commissioned biological surveys of both the new injection well pads and injection pipeline alignment. These surveys have revealed no new information with respect to anticipated impacts to species of concern delineated in the original BO.
- Regarding the third condition, and as with the first condition, the Project has been modified to *reduce* impacts to listed species. Moreover, CalEnergy biological surveys have discovered no new habitat that would support the species of concern identified in the original BO.
- Regarding the fourth condition, the surveys CalEnergy has commissioned have revealed no new listed species in the amended Project area.

Third, even though the amended Project is likely to have significantly reduced impacts to listed species, CalEnergy is committed to undertaking all of the mitigation measures prescribed in the 2003 BO. These measures include measures to minimize the harassment of listed species associated with construction noise and disturbance, and measures to minimize the harm to listed species associated with the loss of existing habitats. All of the terms and conditions designed to implement these measures (except for those that apply to structures eliminated by the amended Project design) would continue to apply.

In particular, CalEnergy remains committed to implementing the Wetland Mitigation Plan described in the 2003 BO, despite the fact that the amended Project will not adversely impact any wetlands. Under the Plan, CalEnergy will construct approximately 4.5 acres of

Mr. Robert R. Smith  
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jurisdictional wetlands on the southerly side of the Alamo River. This site is located approximately one mile from the SSU6 project site. The proposed Alamo site will be submitted to the Corps for approval prior to CalEnergy's developing any construction plans, specifications and the like. All plans and specifications will be developed as set forth in the Corps' original NWP 12 authorization, dated February 13, 2004, unless otherwise directed and as noted below.

CalEnergy would ask that the Corps modify its original Authorization in two minor respects. First, CalEnergy would prefer that the performance bonds previously required under the Plan be eliminated. As indicated below, CalEnergy intends to create the wetlands in such a manner as they will be "jurisdictional" by the Corps and subsequently "bankable" and available to address potential, future offsetting requirements. Aside from fulfilling CalEnergy's obligations as set forth in the 2003 BO, the wetlands creation project represents a capital investment related to future Imperial Valley projects. As such, it is in CalEnergy's best interest to maintain this asset. This approach will not detract from the value of creating wetlands as a mitigation measure for the amended Project. Excepting the foregoing, CalEnergy commits to complying with and otherwise satisfying all of the other conditions set forth in the Corps' original February 13, 2004 NWP 12 authorization.

#### **IV. Conclusion**

CalEnergy seeks your concurrence that the following process will satisfy the Corps' and CalEnergy's obligations under the CWA and the ESA:

- The Corps prepares a PJD in which it assumes for the purposes of CWA jurisdiction that the Corps has jurisdiction over the ephemeral washes that might be impacted by the amended Project. The Corps will complete the PJD in 60 days or as soon as is practicable.
- Pursuant to the PJD, the Corps will authorize these potential impacts pursuant to NWP 12.
- The 2003 BO for the original project remains in effect for the amended Project, and the Corps will not re-initiate consultation with FWS.
- Even though the amended Project will involve fewer impacts than the original project to listed species, CalEnergy will implement all of the mitigation measures and terms and conditions in the 2003 BO (except those applicable to structures that are no longer part of the amended Project).
- As one mitigation measure, CalEnergy will create approximately 4.5 acres of jurisdictional wetlands. These wetlands will not require performance bonds

Mr. Robert R. Smith

October 24, 2008

Page 7

and will be "banked" to offset any wetland mitigation requirements associated with potential future projects.

Thank you for the opportunity to provide additional information about the amended Project. CalEnergy looks forward to continued coordination with you and your colleagues.

Sincerely,

*Peter H. Weiner / by MJS*

Peter H. Weiner

for PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: Ms. Carol Roberts  
Supervisory, EC Biologist  
U.S. Fish & Wildlife Service  
6010 Hidden Valley Road  
Carlsbad, CA 92011  
(760) 431-9440  
Carol\_Roberts@fws.gov

LEGAL\_US\_W # 60210410.1

Attachments:

- (A) July 11, 2002 Jurisdictional Delineation
- (B) April 18, 2003 Jurisdictional Delineation Addendum
- (C) February 13, 2004 NWP 12 Authorization
- (D) November 21, 2003 Biological Opinion

## **APPENDIX D**

### **Agency & Utility Correspondence**

#### **D.4 California Department of Fish and Game**

**AECOM Environment**

1220 Avenida Acaso, Camarillo, CA 93012  
T 805.388.3775 F 805.388.3577 [www.aecom.com](http://www.aecom.com)

AECOM

January 26, 2009

Ms. Kimberly Nicol  
California Department of Fish and Game,  
78078 County Club Drive, Suite 109  
Bermuda Dunes, CA 92203

**Subject:** Special-Status Species Surveys for the Amended Salton Sea Unit 6 Project

Dear Ms. Nicol,

The purpose of this letter is to request California Department of Fish and Game (Department) input and concurrence with respect to plans for surveys for special-status wildlife species for a geothermal power plant project under development. The Salton Sea Unit 6 (SSU6) project was originally licensed by the California Energy Commission (CEC) in 2003 and amended in 2005. However, CE Obsidian Energy, LLC (the Applicant, an affiliate of CE Operating Corp.) plans to modify the project further and is seeking to amend its CEC license. As originally proposed, the project was found to potentially affect the Yuma clapper rail (Federal endangered and State threatened) and the California brown pelican (Federal endangered and State endangered). The western burrowing owl (BUOW), a California Species of Concern, also was found in the project area. As discussed below, the Amended SSU6 Project (Amended Project) has been modified such that potential impacts to the Yuma clapper rail and brown pelican have been substantially reduced. However, additional field surveys are needed to evaluate the potential for impacts to BUOW due to changes in the Project footprint.

The Applicant is proposing to amend the SSU6 project to use a different geothermal power generating technology on the same site as the original project in Imperial County. The site is currently used for agriculture, and land uses in the surrounding area include existing geothermal power facilities, agriculture, and the Sonny Bono National Wildlife Refuge. Figure 1 (at the end of this letter) shows the Project regionally, and Figure 2 depicts the Project area, including the plant site, planned brine injection well pads and associated pipelines, borrow site, and transmission lines. Please note that the transmission lines associated with the Project are already licensed, no changes are proposed to them as part of the Amended Project, and thus, no additional biological investigations are being conducted or planned for the transmission lines. The focus of the additional work for which we are requesting Department input and concurrence are the changes at the plant site and offsite facilities that were not previously evaluated in the original SSU6 licensing process. Figure 2 shows both the original SSU6 and Amended Project configurations.

In addition to the different geothermal technology, primary differences between the original project and the Amended Project involve changes in the location and number of production and injection well pads. The original SSU6 project included ten production wells on five well pads and seven injection wells on three well pads, all of which would be located offsite. In contrast, the Amended Project will locate all production well pads on the plant site and will locate nine injection wells on three well pads offsite, but in different locations from those originally proposed. The Amended Project also includes a new soil borrow site (34 acres) to the east of the plant site.

The CEC concluded that the original SSU6 project would result in direct impacts to Yuma clapper rail habitat due to the placement of a production well pad on Obsidian Butte and the widening of McKendry Road needed to serve the Obsidian Butte well. The CEC also determined that there would be indirect impacts to the clapper rail and the brown pelican from construction activities. In its November 21, 2003 Biological Opinion, the US Fisheries and Wildlife Service determined that the SSU6 project is "...not likely to jeopardize the continued existence of the Yuma clapper rail and the California brown pelican...".

With the Amended Project, the removal of the production well on Obsidian Butte, its pipeline to the plant site, and cancellation of the associated widening of McKendry Road will avoid direct impacts on the Yuma clapper rail because there will be no Amended Project activities that cross Yuma clapper rail habitat. The Amended Project also will reduce the potential for indirect impacts to the clapper rail and brown pelican. Pile driving associated with the plant site facilities for the original project resulted in indirect impacts to the clapper rail. The Amended Project relocates the plant site facilities that require pile driving further away from clapper rail habitat, thus reducing the potential for indirect impacts. The relocation of the production wells and pipelines to the plant site also reduce the potential for indirect impacts to the California brown pelican, because the Amended Project is further removed from the islands south and west of Obsidian Butte that are a loafing area for the brown pelican.

Wildlife and botanical surveys conducted in late 2008 for the new injection well pads and pipeline locations found that none of the new injection well pads or pipelines are located on or near habitat for the Yuma clapper rail, the brown pelican, or other listed wildlife and plant species. With the exception of the burrowing owl, no suitable habitat for other special-status species was found within the Amended Project footprint.

Figure 3 depicts the vegetation of the Project site and immediately surrounding area. As shown on the figure, the Project area consists primarily of irrigated agricultural land with disturbed areas (roads, agricultural ditches/canals, and geothermal facilities). The Salton Sea with associated marshes, riparian, and open water habitat is to the west and northwest of the Project site. Patches of non-native grasses and non-vegetated areas were observed in disturbed areas adjacent to agricultural areas.

Phase I (habitat assessment) and Phase II (burrow survey) BUOW surveys of the footprint (and a 500-foot California Burrowing Owl Consortium protocol-recommended surrounding buffer) of the plant site, new injection well pads, injection pipeline routes, and borrow site were conducted in late 2008 in accordance with the requirements of the 1993 Burrowing Owl Consortium Protocol. Burrows with the potential for use by burrowing owls, burrowing owl sign (white-wash, pellets, feathers, bones), and observed BUOW were mapped during the survey.

As shown on Figure 4, the 2008 protocol Phase I and Phase II BUOW surveys identified three burrows with BUOW sign within the survey area, but none of the burrows were on the Project site itself. Two burrows were detected with recent BUOW sign and one burrow was observed with an owl present.

In order to meet Project schedule requirements, the Applicant plans to submit the Amendment Petition to the CEC in early 2009, with all of the biological resources information available to date, including results of the Phase I and II burrowing owl surveys summarized above. However, submittal will occur prior to the survey protocol's time window for the BUOW nesting surveys. To meet BUOW survey protocol requirements, the Phase III nesting season survey will involve four site visits between April 15 and July 15, 2009.

Survey results, the assessment of potential impacts, and identification of mitigation measures (if needed) will be reported to the Department and the CEC as soon as they are available. This will allow mitigation arrangements to be worked out with the Department and implemented prior to the planned start of Project construction in April 2010. It will also facilitate the CEC's development of Conditions of

Certification related to BUOW. We expect to coordinate closely with you on an ongoing basis regarding the Phase III survey activities, to work out an acceptable mitigation plan in a timely manner, and to implement that plan such that we are able to meet the Project construction schedule.

We request your general concurrence with the proposed schedule and approach for conducting the remaining burrowing owl surveys, which will enable the Applicant to meet their Project development schedule. Please feel free to contact the undersigned at (805)388-3775 if you have any questions.

Sincerely,



Arrie Bachrach  
Senior Program Manager  
AECOM Environment

on behalf of CalEnergy Corporation

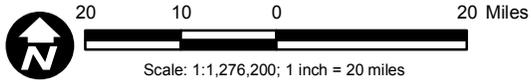
cc: Mr. Doug Hackley, CalEnergy, IV  
Mr. Michael Fawdry, ICSuS Group  
Mr. Dale Rundquist, California Energy Commission  
Mr. Matt Trask, Matthew Trask & Associates  
Ms. Carol Roberts, U.S. Fish and Wildlife Service

Attachments:

Figures



Source: NAIP 2005, EDAW 2008



**Figure 1**  
**Regional Map**

**Salton Sea Unit 6**

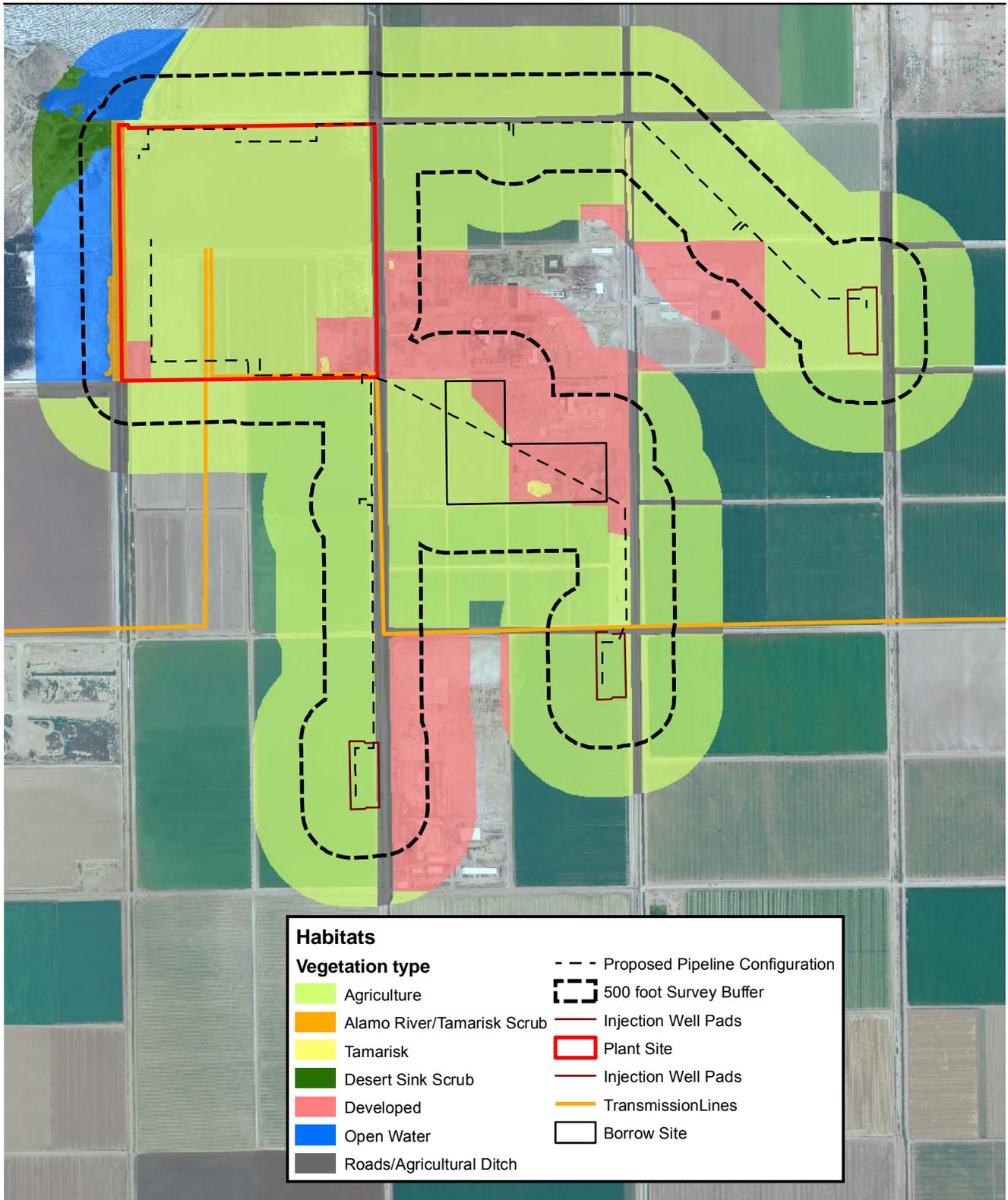
Path: P:\2008\08080156 Black Rock Energy\6.0 GIS\6.2 Project Directory\6.2.5 Layout\Figure1\_BlackRock\_RegionalMap\_85x11\_ARCGIS92.mxd, 11/21/08, SteinB



Figure 2  
Original and Amended SSU6 Project:  
Facilities Configuration

1 inch = 1,500 feet  
0 750 1,500 3,000 Feet

- New Configuration
- Old Configuration
- Transmission Lines
- Plant Site



Source: NAIP 2005, EDAW 2008

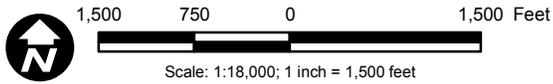
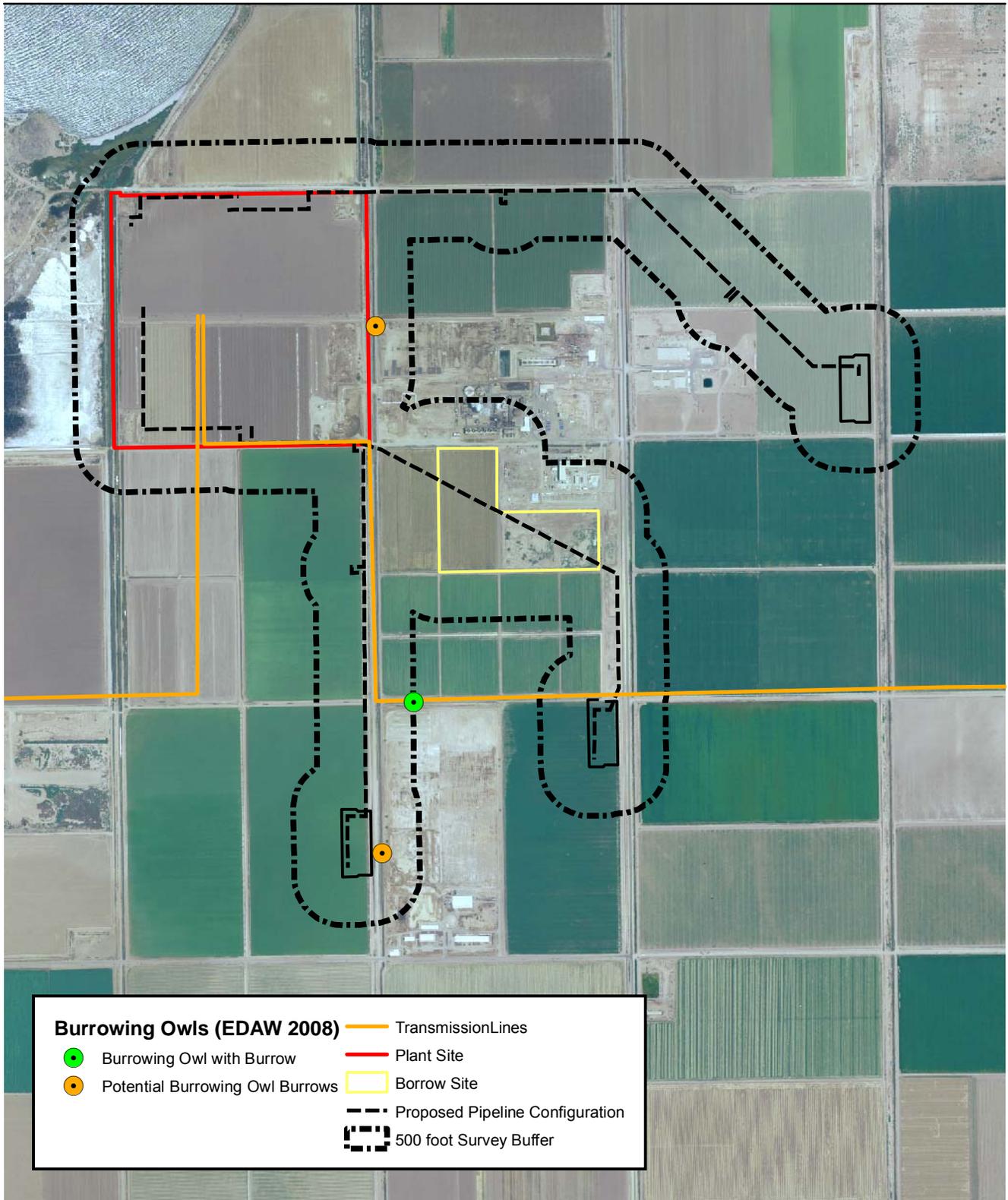


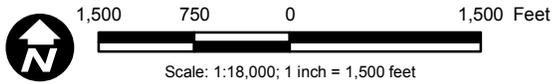
Figure 3  
Habitat Map for Project Site and Buffer Zones  
of Potential Areas of Impact

Amended Salton Sea Unit 6

Path: P:\2008\08080156 Black Rock Energy\6.0 GIS\6.2 Project Directory\6.2.5 Layout\Figure3\_BlackRock\_Habitat\_Buffer\_zones.mxd, 01/19/09, SteinB



Source: NAIP 2005; AECOM 2008



**Figure 4**  
**Burrowing Owl Sign and Observations**

Amended Salton Sea Unit 6