State of California – The Resources Agency ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FISH AND GAME

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March 23, 2007

Mr. John Kessler
Project Manager
California Energy Commission
1516 9th Street, MS-15
Sacramento, CA 95814

Subject: Request for Agency Participation in the review of the Victorville 2 Hybrid Power Plant Project, Application for Certification

Dear Mr. Kessler:

The Department of Fish and Game (Department) has reviewed the information supplied for the data adequacy phase of the environmental process of the California Energy Commission (CEC) for the above-named project. The project is located immediately north of the Southern California Logistics Airport in the City of Victorville, San Bernardino County, California. The proposed project consists of constructing and operating a thermal electric and solar plant hybrid.

The Department is providing comments on this data adequacy phase, as the State agency having the statutory and common law responsibilities with regard to fish and wildlife resources and habitats. California's fish and wildlife resources, including their habitats, are held in trust for the people of the State by the Department (Fish and Game Code §711.7). The Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitats necessary for biologically sustainable populations of those species (Fish and Game Code §1802). The Department's Fish and wildlife management functions are implemented through its administration and enforcement of Fish and Game Code (Fish and Game Code §702). The Department is a trustee agency for fish and wildlife under the California Environmental Quality Act (see CEQA Guidelines, 14 Cal. Code Regs. §15386(a)). The Department is providing these comments in furtherance of these statutory responsibilities, as well as its common law role as trustee for the public's fish and wildlife.

Based on our review of the submitted information, thee Department has determined that certain data that would be required for future analysis and permits for this project is lacking. The following items are missing from the data provided:

(1)The project description is lacking information on the access roads. The traffic section states "...access to the Project site during construction and operation will be from the south through the City of Victorville's planned upgrade of Perimeter

Road to a four lane, paved road." Apparently this is outlined in the Southern California Logistic Airport Plan (Airport Plan) which is not provided or referenced with enough detail on which to base our analysis. The Department would like to offer the observation that the Airport Plan is a planning document and thus would not contain the requisite project-specific details and analysis that subsequent CEQA documents are required to contain. It should also be noted that there are no existing building or structures at SCLA that would warrant construction of a paved four lane road. However, if there is a CEQA document for the proposed road it should be referenced so the Department can ensure the environmental impacts have been addressed adequately. If there currently is no CEQA document for the proposed construction of Perimeter Road and this project is the reason for construction, then the Lead Agency needs to evaluate the environmental impacts of the access roads within this document. Without this information, the Department can not evaluate the project's environmental impacts adequately.

(2) Again the whole action must be discussed and any unavoidable impacts minimized or mitigated. It is not realistic to believe that the entire project site, including waterlines and transmission lines, can be adequately surveyed for sensitive species in one 30-day survey. It is reasonable and foreseeable that at least a couple of pre-construction surveys will be required to ensure that sensitive species are not occupying the site. Once pre-construction surveys have been completed and no sensitive species are determined to be present, how will the project proponent ensure that individuals do not re-occupy the site? These critical data are not in this preliminary report.

(3) Although more detail is required later, it should be noted that this document only discusses the ground disturbance associated with putting in power lines. There are foreseeable direct and indirect impacts associated with installation and presence of the lines which should also be addressed. (i.e. Will these lines provide ample raven nesting locations?)

(4) Avoidance of take or disturbance to any species should be the first goal of any proposed project, but it is also foreseeable that not all burrowing owl burrows will be avoided by construction of the project. The discussion of relocation should be addressed in future documents.

(5) The restoration of temporarily disturbed sites must set criteria for success. Seeds cannot simply be broadcast and then left with any expectation that the restoration will be successful. They require a watering plan, establishment and maybe weeding. The Department must have a Restoration Plan developed prior to any ground disturbance.

(6) The project states "...that if permanent impacts to jurisdictional Waters of the United States or California become necessary during Project activities, the necessary permits would be obtained and the affected acreage would be

replaced to offset the loss or the acreage." The Department requires a Streambed Alteration Agreement for any substantial impacts to a jurisdictional drainage. The impacts could be temporary or permanent. Once it is known or believed that any bed, bank or channel will be impacted by construction of the project, the Department must be notified.

In general, to enable Department staff to adequately review and comment on the proposed project, the following information should be included in the documentation:

1. A complete assessment of the flora and fauna within and adjacent to the project area, with particular emphasis upon identifying endangered, threatened and sensitive species and sensitive habitats.

    a. If appropriate habitat for any listed species occurs on the site, including surface waters potentially containing any fish species, a qualified biologist should conduct focused surveys according USFWS and /or Department protocols (guidelines).
    b. A qualified botanist should conduct a focused rare plant survey during the appropriate time of year following UFWS and/or Department protocols.
    c. A qualified biologist should conduct focused surveys for burrowing owl following the 1993 Burrowing Owl Consortium protocol guidelines. Survey guidelines can be obtained from the Department. The mitigation measures presented in the guidelines should be included in the DEIR.
    d. If any listed species will potentially be impacted by the proposed project, consultation with the Department and the USFWS will be required to establish appropriate avoidance, minimization and mitigation measures. An Incidental Take Permit may be required by the Department pursuant to Fish and Game Code Section 2080 *et. seq.*
    e. The Department requests that impacts to State and Federally-listed species and potential avoidance, alternative and mitigation measures be addressed in the CEQA document and not solely in subsequent negotiations between the applicant and the agencies.

2. A through discussion of direct, indirect and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts:

    a. CEQA Guidelines, 15125(a), state that knowledge of the regional setting is critical to an assessment of environmental impacts and that special emphasis should be placed on resources that are rare or unique to the region.
    b. Project impacts should be analyzed relative to their effects on off-site habitats. Specifically, this should include nearby public lands, open space, adjacent natural habitats and riparian ecosystems. Impacts to and maintenance of wildlife corridor/movement areas, including access to undisturbed habitat in adjacent areas, should be fully evaluated and

provided. This includes impacts to wildlife from increased raven populations.

1) The zoning of areas for development projects or other uses that are nearby or adjacent to natural areas may inadvertently contribute to wildlife–human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the environmental document.
2) A cumulative effects analysis should be developed as described under CEQA Guidelines, 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.

3. A range of alternatives should be analyzed to ensure that alternatives to the proposed project are fully considered and evaluated. A range of alternatives, which avoid or otherwise minimize impacts to sensitive biological resources should be included. Specific alternative locations should also be evaluated in areas with lower resource sensitivity, where appropriate.

   a. Mitigation measures for project impacts to sensitive plants, animals and habitats should emphasize evaluation and selection of alternatives which avoid or otherwise minimize project impacts. Off-site compensation for unavoidable impacts through acquisition and protection of high-quality habitat elsewhere should be addressed.
   b. The Department considers Rare Natural Communities as threatened habitats having regional and local significance. Thus, these communities should be fully avoided and otherwise protected from project-related impacts.
   c. A California Endangered Species Act (CESA) Permit must be obtained, if the project has the potential to result in "take" of species of plants or animals listed under CESA, either during construction or over the life of the project. CESA Permits are issued to conserve, protect, enhance and restore State-listed threatened or endangered species and their habitats. Early consultation is encouraged, as substantial modification to the proposed project and mitigation measures may be required in order to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, requires that the Department issue a separate CEQA document for the issuance of a CESA permit unless the project CEQA document addresses all project impacts to listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of a CESA permit. For these reasons, the following information is requested:

      1) Biological mitigation monitoring and reporting proposals and a raven control plan should be of sufficient detail and resolution to satisfy the requirements of a CESA Permit. The Department

recommends early consultation with the Department to discuss appropriate measures to avoid, minimize, and/or compensate for impacts.

2) A Department-approved Mitigation Agreement and Mitigation Plan are required for plants listed as rare under the Native Plant Protection Act.

4. Under Section 1600 *et. seq* of the Fish and Game Code, the Department requires the project applicant to notify the Department of any activity that will divert, obstruct or change the natural flow of the bed, channel or bank (which includes associated riparian habitat) or a river, stream or lake, or use material from a streambed prior to the applicant's commencement of the activity. Streams include, but are not limited to, intermittent and ephemeral streams, rivers, creeks, dry washes, sloughs, blue-line streams and watercourses with subsurface flow. The Department, as a responsible agency under CEQA, may consider the local jurisdiction's (Lead Agency) Negative Declaration of EIR for the project. However, if the EIR does not fully identify potential impacts to lakes, streams and associated resources (including, but not limited to, riparian and alluvial fan sage scrub habitat) and provide adequate avoidance, mitigation, monitoring and reporting commitments, additional CEQA documentation will be required prior to execution (signing) of the Streambed Alteration Agreement. In order to avoid delays or repetition of the CEQA process, potential impacts to a lake or stream, as well as avoidance and mitigation measures need to be discussed within this CEQA document. The Department recommends the following measures to avoid subsequent CEQA documentation and project delays:

   a. Incorporate all information regarding impacts to lakes, streams and associated habitat within the DEIR. Information that needs to be included within the document includes: (a) a delineation of lakes, streams and associated habitat that will be directly or indirectly impacted by the proposed project; (b) details on the biological resources (flora and fauna) associated with the lakes and/or streams; (c) identification of the presence or absence of sensitive plants, animals or natural communities; (d) a discussion of environmental alternatives; (e) a discussion of avoidance measures to reduce project impacts; and (f) a discussion of potential mitigation measures required to reduce the project impacts to a level of insignificance. The applicant and lead agency should keep in mind that the State also has a policy of no net loss of wetlands.

5. The Department recommends that the project applicant and/or lead agency consult with the Department to discuss potential project impacts, avoidance and mitigation measures. Early consultation with the Department is recommended, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources.

Although Department staff did review the information as thoroughly as possible, it is possible that some items were overlooked. The data is not currently in an easy to follow format. Care was taken to proceed back and forth through the information to ensure that everything was evaluated. However, the Department may have addressed some details as missing that are actually in the document. Questions regarding this letter and further coordination of these issues should be directed to Ms. Tonya Moore at (760) 955-8139.

Sincerely,

Denyse Racine

Denyse Racine
Senior Environmental Scientist
Habitat Conservation Program

cc: Ms. Tonya Moore
State Clearinghouse
Chron