



13 July 2007

California Department of Fish and Game
Inland Deserts Region (IDR)
407 West Line Street
Bishop, CA 93514

Attn: Denyse Racine,
Senior Environmental Scientist

Dear Ms. Racine,

AMEC Earth and Environmental Inc. (AMEC), on behalf of our clients, Inland Energy and the City of Victorville, hereby responds to those comments submitted by the California Department of Fish and Game (Department) to the California Energy Commission (CEC) in a letter dated March 23, 2007. The subject of the Department's letter involved the CEC's request for agency participation in its review of the Victorville 2 Hybrid Power Plant Project's Application for Certification (AFC).

The Department stated in its letter to the CEC that data necessary for future analysis and permits for the proposed Victorville 2 Hybrid Power Plant (Project) were lacking. However, the Department also acknowledged that some of the apparently lacking data noted, which formed the bulk of the submitted comments, may have been overlooked in its review of the rather lengthy AFC.

AMEC therefore is providing a detailed response to each summarized Department comment in order to facilitate the Department's understanding of the proposed Project and its potential effect on biological resources, as described in the AFC. The specific location where much of this information can be found in the AFC is also identified below. We hope that this information, in addition to the several briefings/meetings we have had with Department staff to date, clarifies the proposed Project description and its potential effect on biological resources.

The main comments included by the Department in its March 23, 2007, letter to the CEC are set forth below, followed by AMEC's response.

1) "The project description is lacking information on the access roads..."

With the exception of short entryways/driveways off the existing Colusa and Helendale Roads, no new roads are proposed for access to the Project power plant site and

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construction staging areas. Access will be obtained via the existing Adelanto/Colusa Road. While it is possible that Perimeter Road may be used to access the Project site in the future, the Project is not relying on Perimeter Road for access.

Accordingly, the statements in the AFC at pages 2-2 and 2-33 will be revised to reflect that Adelanto/Colusa Road would be used for access to the Project site. The AFC at page 2-33 further describes internal roads that will be built within the Project site.

The Draft Victorville 2 Hybrid Power Project Biological Resources Technical Report, which is attached as Exhibit H to the AFC (hereinafter referred to as "Technical Report"), also includes information regarding access roads for the plant site and construction staging areas, including the following:

The power plant site (*including access roads* and areas that will be disturbed by Project grading activities but are outside the area where Project facilities will be located) occupies 338 acres and is located north of the SCLA and extends north and east from the intersection of Colusa Road and Helendale Road (see Appendix 1, Map 2); and "Colusa Road serves as the power plant site's southern boundary, while Helendale Road serves as the plant site's western boundary (see Section 4.2.1, page 19).

With respect to the proposed transmission line, access roads already exist along much of the proposed transmission line route, as described in AFC Section 2.5 at page 2-38 and Section 2.5.1 at page 2-39. The Technical Report also includes information regarding access to the proposed transmission line at pages 13 - 15.

Construction of new spur routes also would be necessary to access certain transmission line towers associated with the Project, as described in Section 2.1 of the Technical Report at pages 4 - 5; and in Section 3.2.1 of this AFC appendix, at pages 14 - 15. New transmission line spur routes would be of relatively small size and mitigation specified in the AFC and Technical Report relative to all new surface disturbances would be applicable to such situations, i.e., minimization of soil disturbance, construction monitoring, streambed avoidance and compensation for affected habitat.

Relative to the proposed reclaimed water line and sewer line, a single permanent access road would be constructed within the ROW areas shared by these two pipelines, adjoining the electrical transmission line ROW.

Outside of the shared ROW, no new access roads are proposed, as access roads already exist along much of these proposed alignments. Mitigation specified in the AFC and in the Technical Report relative to all new surface disturbances would be applicable to situations where new access road construction work would be necessary, as described in both the AFC and in Section 7.3.2 of the Technical Report, at page 105.

Proposed transmission line utility features have been designed to span all state/federal waters and avoid any surface disturbance impacts to these jurisdictional areas. New access roads are planned to avoid all state and federal jurisdictional waters. Existing dirt roads will be utilized where present for project-related drainage crossings (see Section 7.3.2, page 105; Section 8.1.5, page 117; and Section 8.1.12, page 122).

2) “. . . [T]he whole action must be discussed and any unavoidable impacts minimized or mitigated.”

The proposed Project in its entirety has been discussed in AFC Section 6.4, Biological Resources, with this discussion based upon initial biological surveys encompassing the entire proposed Project area over a period of 122 field survey days (see AFC Section 6.4.2.3 at 6.4-13, and Section 5.2 of the Technical Report, at pages 25-32). Impacts considered unavoidable have been identified in AFC Section 6.4.3 at page 6.4-27, and also in Sections 7.3.1 - 7.3.4 of the Technical Report, at pages 88 - 108. Measures have also been proposed to minimize and/or mitigate these effects, as described in AFC Section 6.4.4 at page 6.4-46; as well as in Sections 8.0 - 8.1.12 of the Technical Report, at pages 108 - 122.

The proposed Project would be constructed in separate phases, with construction activities at the plant site itself occurring throughout the overall 27-month construction schedule, as discussed in AFC Section 2.5.1 at pages 2-37 and 2-38. Construction of the transmission lines will begin in the third month of the schedule, with Segment 3 (the southernmost segment furthest from the plant site); and then construction would proceed northward to Segment 2 and Segment 1; with construction of the various pipelines beginning in the seventh month of the construction schedule.

Each of these construction elements would entail additional preconstruction surveys to further ensure no substantially adverse impacts to biological resources would occur within 30 days of work being initiated for each action. In addition to initial site characterization, preconstruction survey work and relocation of identified onsite desert tortoises (and burrowing owls, if found) in any given area of the proposed Project area, all vegetation clearance and ground disturbance activities would be monitored by a qualified biologist.

Such monitoring includes a final clearance inspection of the areas to be cleared or disturbed, immediately prior to the disturbance activity, to ensure that no at-risk species are present at the time of physical surface disturbance activity.

All burrows that could potentially be occupied by wildlife within proposed surface disturbance areas would be collapsed after verifying non-wildlife occupation, prior to site grading. The proposed power plant itself would also be fenced with chain link fencing

during initial site grading and surface disturbance work, to ensure non-flying, potentially at-risk wildlife would not reoccupy a clearance-surveyed site. This critical information has been discussed in the AFC (Section 6.4.4.2 at page 6.4-47) and in the Technical Report appendix to the AFC (Section 7.3: Project Implementation, at pages 88 – 108; as well as in Section 8.0: Proposed Mitigation, at pages 108 – 125).

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?).”

The AFC discusses all anticipated ground disturbance connected with the proposed Project, as well as all associated foreseeable, direct and indirect, impacts (see AFC Section 6.4.3.2: Direct Impacts, at pages 6.4-28 – 6.4-42; AFC Section 6.4.3.3: Indirect Impacts, at pages 6.4-42 – 6.4-46; and in Section 7.3.2 of the Technical Report, at pages 96 – 107. These narratives address all impacts associated with wildlife habitat loss and the installation/presence of proposed power lines.

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.”

AFC Section 6.4.4.2 (Species Specific Mitigation Measures) at page 6.4-50 describes specific measures to avoid and mitigate impacts to burrowing owls. This avian species is also addressed in Section 7.3.1 (Direct Permanent or Long-term Surface Disturbance Impacts, subheading Burrowing Owl) of the Technical Report, at page 103. Mitigation for potential impacts to this species is addressed as follows:

...Mitigation measures, outlined in Sections 8.1.1 and 8.1.6, would be implemented to reduce the impacts to a less than significant level. These mitigation measures would include a focused nesting season burrowing owl survey conducted within one year prior to construction (i.e., 2007 or 2008) and a 30-day pre-construction survey conducted throughout all suitable areas of the site. Additionally, specific California Protected Raptor impact minimization permitting, habitat loss compensation and CDFG-recommended mitigation measures (see Sections 8.1.1 and 8.1.6 below) would be implemented for all Burrowing Owls detected at any time prior to facility installation.

In addition, Section 8.1.6 (General Mitigation, subheading Burrowing Owl, Specific Mitigation Measures) of the Technical Report, at page 120, states:

4. If burrowing owls must be moved away from the disturbance area, passive relocation techniques would be used rather than actual avian trapping. At least one or more weeks would be necessary to accomplish this and allow the birds to acclimate to alternate burrows.

If the CDFG requires specific burrowing owl relocation measures (i.e., active relocation, fencing and monitoring of relocated owls, etc.) other than what is described in the AFC and Technical Report, please provide all necessary information.

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.”

Although only some desert restoration techniques involve watering and weeding components, AMEC agrees that all required Restoration Plans must set criteria for treatment acceptability and/or success.

Although the term “Restoration Plan” was not specifically used in the AFC or Technical Report, the preparation of a Restoration Plan acceptable to all involved resource agencies as well as its implementation, was implied in Section 8.1.1 (General Mitigation, subheading Habitat Restoration) of the Technical Report, at page 109:

*...Upon completion of construction of the power plant site and the need for the adjacent 50 acres of construction staging/laydown areas, these areas would be revegetated and restored. Additionally, upon completion of construction of the 275 new transmission line towers, stringing of new lines, and the installation of the two pipelines for the Project, the temporarily disturbed areas (i.e., the two construction staging areas, all pulling sites, all tower assembly areas, areas needed for off-road vehicular travel) would be reclaimed, revegetated, and/or restored. **Techniques used for these efforts will be subject to project-specific approval by the USFWS, CDFG, and/or other involved agencies** and may include any or all of the following methods: 1) vertical mulching; 2) raking tracks; 3) imprinting; 4) transplantation of salvaged Joshua trees and cacti; and 5) and hand broadcasting of native seed from locally-collected seed stock....*

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."***

The Project as currently designed would not affect California streambeds, or Waters of the United States, as described in Section 6.4.3.2 of the AFC, at page 6.4-42 (i.e., "No vegetation, clearing, grading, digging, placement of fill, or use of culverts are currently planned for any of the 55 jurisdictional drainages located throughout the linear features of the Project") and in Section 2.0 (Regulatory Framework) of the Technical Report, at pages 3 - 4:

Current VV2 Project design proposes to avoid any and all impacts to WUS by placing all Project features (i.e., transmission line towers, access roads) well outside of jurisdictional areas. If, at a later date, circumstances change such that it is determined that WUS may be affected by the VV2 Project, an agency review and issuance of a Water Quality Certification, or a Waste Discharge Permit, are likely to be required by the RWQCB.

Pages 6 – 7 of the Technical Report also identify this Project design feature:

...Current VV2 Project design proposes to avoid all surface disturbance to state jurisdictional areas by placement or construction of Project components (i.e., transmission line towers, access roads, staging areas, etc.) outside of WSC...

The Technical Report at page 11 additionally identifies this design feature:

...Federal Clean Water Act permits under Section 404 and Section 401, and a state Stream Alteration Agreement under Fish & Game Code Section 1602, are not anticipated to be necessary at this time because current VV2 Project plans are designed to avoid any and all impacts to State Waters and Waters of the United States. If, at a later date, it is determined that impacts to these jurisdictional areas are unavoidable, the appropriate requisite state and federal permits referenced above would be obtained.

Page 22 of the Technical Report addresses potential mitigation, should Project design features change and a potential for jurisdictional waters impact arise:

Offsite Habitat Compensation

Should impacts to California streambeds and/or federal waters become necessary during Project activities, affected acreage would be replaced to offset the loss of this acreage. Replacement lands would have intact streambed habitat within their perimeter and would be managed for the long-term protection of this resource.

An implementation agreement with a mitigation banking and land management entity (e.g., the Desert Tortoise Preserve Committee [DTPC], or third party entity approved by CDFG) would be secured to replacement streambed habitat and provide funds to initially enhance this acquired habitat; as well as to manage it over the long term for the benefit of the streambed resource.

Specific Impact Minimization Measures (if necessary)

- 1) Construction and maintenance of access routes would not result in alteration of existing drainage flow patterns. All road shoulder "berms" associated with route construction would be leveled to re-establish original drainage flow patterns.*
- 2) All applicable state and federal hazardous materials and waste management laws, along with all implementing regulations. These laws include the Comprehensive Environmental Response, Compensation, and Liability Act; the Resource Conservation and Recovery Act; and the Clean Water Act.*
- 3) Appropriate spill containment material would be kept on site and personnel instructed on how to use this equipment. All fuels and other materials used would be contained and equipment/materials stored with appropriate containers. All hazardous materials associated with construction activities would be removed from the site upon completion of construction activities.*
- 4) Road installation across washes would be designed to not affect the wash banks or bed; nor utilize culverts.*

As stated throughout the AFC and in the Technical Report, should the proposed Project's design change in a manner potentially affecting Waters of the United States, the U.S. Army Corps of Engineers and the Lahontan Regional Water Quality Control Board would be notified. Similarly, should the proposed Project's design change in a manner potentially affecting California streambeds, the Department would be notified. A



standard Streambed Alteration Agreement would subsequently be completed to address this potential design change if determined necessary by the Department.

If AMEC can provide any further information relative to the AFC and the Biological Resources Technical Report prepared for the proposed Project, please contact either of us at the postal address, telephone or fax number listed below.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. Wilcox".

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