

VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-01)
CEC STAFF DATA REQUEST NUMBERS 10-23

Technical Area: Biological Resources

Response Date: July 23, 2007

Data Request 10:

Please provide any documents (i.e., letters or records of conversation including dates and names of agency personnel) that resulted from communication with CDFG, City of Victorville, RWQCB, USACE, and USFWS staff regarding sensitive biological resources.

Response:

Following are summaries of documents associated with agency communications with Federal and State agencies concerning sensitive biological resources. The materials are presented in chronological order and; as appropriate, refer to attachments associated with the communication:

May 8, 2006. Email concurrence from Tonya Moore (CDFG) to Stephen Myers (AMEC) regarding the proposed Mohave ground squirrel (MGS) trapping survey work plan (see Attachment DR10-1).

June 20 2006. Meeting notes of a meeting held at the Southern California Logistics Airport (SCLA) in Victorville, California to provide an overview of the proposed VV2 Project. This meeting provided information on the biological findings to date, involved a discussion of permitting issues and included a field visit. This meeting was attended by Eileen Allen (CEC); Tonya Moore (CDFG); Judy Hohman (USFWS); Tom Barnett, Michael Gilmore, Tony Penna, (Inland Energy); and Kimberly McCormick (representing Inland Energy); Arrie Bachrach and Catrina Mangiardi (ENSR); and Wes Speake and Tom Egan (AMEC) (see Attachment DR10-2).

June 30, 2006. Email exchange between Wes Speake (AMEC) and Tonya Moore (CDFG) regarding locations of special-status species reported in the biological reports for the Southern California Logistics Airport project (see Attachment DR10-3).

July 21, 2006. Meeting notes of a meeting held at the Lahontan Regional Water Quality Control Board Victorville Office to discuss notification and permitting procedures related to the VV2 Project. The meeting was attended by Mary Dellavalle, Mike Coony and Cindi Mitton (Lahontan RWQCB); Tony Penna (Inland Energy); Catrina Mangiardi (ENSR); and Tom Egan (AMEC) (see Attachment DR10-4).

August 2 2006. Meeting notes of a meeting held at the SCLA in Victorville to provide an overview of the proposed VV2 Project and discuss Clean Water Act/streambed-related permitting issues. This meeting was attended by Mary Dellavalle (Lahontan RWQCB); Gerry

VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-01)
CEC STAFF DATA REQUEST NUMBERS 10-23

Technical Area: Biological Resources

Response Date: July 23, 2007

Salas (USACE); Tony Penna (Inland Energy); Catrina Mangiardi (ENSR); and Tom Egan (AMEC) (see Attachment DR10-5).

August 10, 2006. Notes of a telephone conversation among Tonya Moore (CDFG), Kim McCormick representing (Inland Energy), and Tom Egan (AMEC) regarding rationale for agency-recommended habitat compensation ratios relative to the State and Federally listed threatened desert tortoise and State listed Mohave ground squirrel (see Attachment DR10-6).

August 23, 2006. A white paper titled “*Habitat Compensation in the Urban Interface: Surety and Equitable Precepts*” was authored by Tom Egan (AMEC) on behalf of the VV2 Project (see Attachment DR10-7). This white paper analyzed the application of compensation ratios to projects in the VV2 Project vicinity and was mailed to CDFG in August 2006 by mail and also provided at a meeting with CDFG personnel on September 15, 2006.

August 23, 2006. Email from Mary Dellavalle (Lahontan RWQCB) to Tony Penna (Inland Energy) regarding potential impacts and permitting needs associated with possible installation of pipelines across State or Federal jurisdictional waters (see Attachment DR10-8).

September 15, 2006. Meeting notes of a meeting held at SCLA to discuss biological findings to date, permit issuance and mitigation compensation ratio issues. The meeting was attended by Michael Haynie, Denyse Racine and Tonya Moore (CDFG); Tom Barnett and Tony Penna (Inland Energy); Kimberly McCormick (representing Inland Energy); and Tom Egan (AMEC) (see Attachment DR10-9).

November 27, 2006. Letter from Tonya Moore (CDFG) to Steve Myers (AMEC) concurring that no MGS take authorization was needed based on negative findings in 2006 trapping surveys; this concurrence was stated as expiring on July 14, 2007, without additional negative findings in an additional MGS trapping survey (see Attachment DR10-10).

March 7, 2007. Email from Larry LaPre (BLM) to Wes Speake (AMEC) regarding potential desert tortoise translocation to public lands (see Attachment DR10-11).

March 23, 2007. Letter signed by Denyse Racine (CDFG) to John Kessler (CEC) with a copy also provided to Tom Barnett (Inland Energy) providing CDFG comments on the VV2 Project Application for Certification (AFC) (see Attachment DR10-12).

March 30, 2007. Email from Kimberly McCormick to Tom Barnett, Tony Penna, and Fred Redell (Inland Energy) summarizing the March 28, 2007 meeting in Ventura, California to discuss desert tortoise translocation and Endangered Species Act agency needs/coordination. This meeting was attended by Ray Bransfield (USFWS); Tonya Moore (CDFG) by phone;

VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-01)
CEC STAFF DATA REQUEST NUMBERS 10-23

Technical Area: Biological Resources

Response Date: July 23, 2007

Larry LaPre (BLM) by phone; Kimberly McCormick (representing Inland Energy); as well as Mike Wilcox and Tom Egan (AMEC) (see Attachment DR10-13).

June 11, 2007. Letter from Gerardo Rios (EPA) to Diane Noda (USFWS) requesting formal consultation under Section 7 of the Federal ESA for the VV2 Project (see Attachment DR10-14).

July 13, 2007. Letter to Denyse Racine (CDFG) from Michael Wilcox and Tom Egan (AMEC) dated July 13, 2007 was prepared on behalf of the Project Applicant in response to the March 23, 2007 CDFG letter commenting on the VV2 Project AFC (see Attachment DR10-15 on the CD provided as part of the submittal to the CEC).

Data Request 11:

Please provide a status update on the anticipated schedule for the Section 7 consultation process and a copy of the final USFWS-approved BA to Energy Commission staff when available.

Response:

A draft Biological Assessment (BA) outlining potential impacts to the Federally listed threatened Desert Tortoise was submitted by the U.S. Environmental Protection Agency (EPA) to the USFWS on June 11, 2007, for the VV2 Project. This BA was unchanged from the draft BA that the Project Applicant had provided to the EPA on May 2, 2007 for this purpose; a copy of the May 2 draft BA was provided to the CEC. Submittal by EPA of the BA to the USFWS initiated the Endangered Species Act (ESA) Section 7 consultation process, which is generally completed within a 135 day period following a determination that the BA is complete. Should any changes be made to the BA as a result of the Section 7 consultation process, a copy of the revised BA will be provided to the CEC. Following completion of the USFWS –EPA consultation, USFWS will issue a Biological Opinion (BO) for the proposed Project that will include incidental take authorization for desert tortoise and other Federally-listed species if necessary.

VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-01)
CEC STAFF DATA REQUEST NUMBERS 10-23

Technical Area: Biological Resources

Response Date: July 23, 2007

Data Request 12:

Please summarize any biological resource goals and policies of the San Bernardino General Plan, and discuss the project's compliance with the General Plan.

Response:

The County of San Bernardino provides regulation over development projects within its jurisdiction, with the goals/policies of these regulations outlined in the San Bernardino County General Plan. Conservation is one of the most important strategies for managing the County of San Bernardino's resources. The purpose of the San Bernardino County General Plan's Conservation Element is as follows:

"The Conservation Element provides direction regarding the conservation, development, and utilization of the County of San Bernardino's natural resources. Its objective is to prevent the wasteful exploitation, destruction and neglect of resources...One role of the Conservation Element is to establish policies that reconcile conflicting demands on those resources...The Conservation Element is greatly connected to the Land Use and Open Space Elements...The Desert Region supports a high number of sensitive plant species presented in the Conservation background report. Other sensitive wildlife occurring within the Desert Region includes locally sensitive populations of several species, burrowing owl, and Mohave ground squirrel."

Countywide goals and policies of the San Bernardino County General Plan's Conservation Element pertaining to biological resources include:

Goal

CO 2 *The County will maintain and enhance biological diversity and healthy ecosystems throughout the County.*

Policies

CO 2.1 *The County will coordinate with state and federal agencies and departments to ensure that their programs to preserve rare and endangered species and protect special areas of special habitat value, as well as conserve populations and habitats of commonly occurring species, are reflected in reviews and approvals of development programs.*

Programs

- 1. All County Land Use Map changes and discretionary land use proposals, for areas within the Biotic Resource Overlay or Open Space Mapping on the Resources Overlay, shall be accompanied by a report that identifies all biotic resources located on the site and those on adjacent parcels, which could be*

VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-01)
CEC STAFF DATA REQUEST NUMBERS 10-23

Technical Area: Biological Resources

Response Date: July 23, 2007

adversely affected by the proposal. The report shall outline mitigation measures designed to eliminate or reduce impacts to identified resources. An appropriate expert such as a qualified biologist, botanist, herpetologist or other professional “life scientist” shall prepare the report.

- 2. The County shall require the conditions of approval of any land use application to incorporate the County’s identified mitigation measures in addition to those that may be required by state or federal agencies to protect and preserve the habitats of the identified species. This measure is implemented through the land use regulations of the County Development Code and compliance with CEQA, CESA, ESA and related environmental laws and regulations.*
- 3. The County shall coordinate with local, state, and federal agencies to create a specific and detailed wildlife corridor map for the County of San Bernardino. The map will identify movement corridors and refuge areas for large mammal, migratory species, and desert species dependent on transitory resource based on rainfall. The wildlife corridor and refuge area map will be used for preparation of biological assessments prior to permitting land use conversion within County jurisdictional areas. The mapping will be included in the Open Space and Biological Resource Overlays.*
- 4. The County shall coordinate with state and federal agencies and departments to ensure that their programs to preserve rare and endangered species and protect areas of special habitat value, as well as conserve populations and habitats of commonly occurring species, are reflected in reviews and approvals of development programs. This coordination shall be accomplished by notification of development applications and through distributed CEQA documents.*
- 5. The San Bernardino County Museum (Museum) will review and update the Biological Resources Overlay and Open Space Overlay to provide accurate and current spatial data based on rare, threatened, endangered species and the habitats that they rely on. An updated database that integrates CNDDDB data with other occurrence data from the Museum and other sources such as the USFWS, CDFG, USFS, BLM, National Park Service, California Native Plant Society to identify areas where biological surveys are required. Overlay maps will identify movement corridors and refuge area for large mammal, migratory species, and desert species dependent on transitory resources based on rainfall. South Coast Wildlands Corridor Project and other data from the resource agencies will be consulted as an information reference base. The wildlife corridor and refuge area map will be used for preparation of biological assessments prior to permitting land use conversion within County jurisdictional areas. The mapping will be included in the Open Space and Biological Resource overlays.*

CO 2.2 *Provide a balanced approach to resource protection and recreational use of the natural environment.*

VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-01)
CEC STAFF DATA REQUEST NUMBERS 10-23

Technical Area: Biological Resources

Response Date: July 23, 2007

***CO 2.3** In addition to conditions of approval that may be required for specific future development proposals, the County shall establish long-term comprehensive plans for the County's role in the protection of native species because preservation and conservation of biological resources are statewide, regional, and local issues that directly affect development rights. The conditions of approval of any land use application approved with the BR overlay district shall incorporate the mitigation measures identified in the report required by Section 82.13.030 (Application Requirements), to protect and preserve the habitats of the identified plants and/or animals.*

Programs

- 1. Prepare or participate in Habitat Conservation Plans when there is sufficient support of such plans, and adequate funding for their preparation, and a strong likelihood of success.*
- 2. Establish a land ownership transfer program.*
- 3. Establish a land conservation easement program.*
- 4. The County shall work with local communities to improve trash collection, recycling programs, and reduce illegal dumping in unincorporated areas. The County shall sponsor mitigation efforts that minimize landfill growth, reduce trash haul routes that spread litter and increase predator species numbers (i.e., raven or crow in the Desert region), and reduce illegal dumping of large bulk items (e.g., furniture, appliances, tires, batteries).*
- 5. The County shall participate with Regional plans to improve water quality and habitat that are downstream but may be beyond County limits. The County shall coordinate with Regional plans to minimize degradation of water quality within the County that affects downstream resources and habitats.*

***CO 2.4** All discretionary approvals requiring mitigation measures for impacts to biological resources will include the condition that the mitigation measures be monitored and modified, if necessary, unless a finding is made that such monitoring is not feasible.*

Programs

- 1. The monitoring program will be designed to determine whether the mitigation measures were implemented and effective.*
- 2. The monitoring program will be funded by the project applicant to ensure compliance with and effectiveness of conditions of approval.*
- 3. The County shall not permit land conversion until adequate mitigation is provided to reduce impacts to less than significant in cases where a Mitigated Negative*

VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-01)
CEC STAFF DATA REQUEST NUMBERS 10-23

Technical Area: Biological Resources

Response Date: July 23, 2007

Declaration is used for CEQA compliance. Direct and growth inducing impacts determined to cause a significant adverse effect on rare, threatened or endangered desert species shall be mitigated by avoidance, habitat restoration or compensated by off-site mitigation and evaluated through a project level EIR. Mitigation will be required for adverse impacts to critical areas around residential land conversion when it can be shown that the indirect effects of pets, associated human activity and other encroachments into sensitive habitats will be significant.

4. *The County shall require all new roadways, roadway expansion, and utility installation within the wildlife corridors identified in the Open Space and Biological Resource Overlays to provide suitable wildlife crossings for affected wildlife. Design will include measures to reduce or prevent habitat fragmentation and provide wildlife a means of safe egress through respective foraging and breeding habitats. A qualified biologist will assist with the design and implementation of wildlife crossing including culverts, overcrossings, undercrossings, and fencing.*

Included in the County's Development Code is the protection of specified native desert plants. Title 8, Division 9, Chapter 4, Section 89.0420 reads as follows:

"The following desert native plants are subject to the regulations specified by this Division. In all cases the botanical names shall govern the interpretation of this chapter.

(a) REGULATED DESERT NATIVE PLANTS

The following desert native plants, or any part thereof except the fruit, shall not be harvested or removed except under a permit issued by the Agricultural Commissioner or other applicable County Reviewing Authority:

- (1) The following desert native plants with stems two (2) inches or greater in diameter or six (6) feet or greater in height:
 - (A) Dalea spinosa (smoketree).*
 - (B) All species of the genus Prosopis (mesquites).**
- (2) All species of the family Agavaceae (century plants, nolinias, yuccas).*
- (3) Creosote Rings, ten (10) feet or greater in diameter.*
- (4) All Joshua trees.*

(b) All plants protected or regulated by the State Desert Native Plants Act (i.e. California Food and Agricultural Code 80001 et. seq.) shall be required to comply with the provisions of those statues prior to the issuance of any County development permit or land use application approval."

VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-01)
CEC STAFF DATA REQUEST NUMBERS 10-23

Technical Area: Biological Resources

Response Date: July 23, 2007

The VV2 Project AFC, including the Biological Resources Technical Report provided as Appendix H to the AFC, has addressed all parameters of the San Bernardino County General Plan's Conservation Element pertaining to biological resources outlined above. Life scientists currently identified on the County's list of qualified personnel conducted the biological resource surveys that were documented in AFC Appendix H and summarized in the main volume of the AFC. The AFC has been prepared with the overall intent of assisting in the prevention of wasteful exploitation, destruction and neglect of biological resources.

A subset of this biological resource information, e.g., data pertinent to State/Federally listed species, has been discussed in further detail within a biological assessment prepared according to USFWS/CDFG format guidelines. The latter effort included early and extensive coordination with State and Federal agencies. This coordination has ensured that all programs designed to preserve rare/endangered species and conserve special habitats have been considered relative to this action.

Close coordination with respective State and Federal agencies has been factored into all aspects of Project design and analysis. The necessity of providing suitable wildlife crossings and/or exclusion to benefit affected wildlife has been considered, as has the Project's potential contribution to habitat fragmentation. Compensation for the loss of threatened and rare species habitat associated with the proposed Project has been identified as a prominent mitigation measure. The latter planned mitigation action has been designed to conform to regional habitat protection and open space planning efforts.

Potential impacts to State and Federal waters, as well as groundwater, have been taken into account. Avoidance of impacts to these jurisdictional waters has been incorporated into Project design.

Surveys for migratory birds have been conducted and mitigation has been designed to avoid or mitigate all possible direct and indirect impacts. The Project's potential for provisioning of the common raven has also been considered and appropriate management mitigation measures designed.

The potential for impacts to sensitive desert plant species dependent on transitory rainfall has been analyzed and initial surveys conducted to determine if these species would be affected by the proposed Project. Additional pre-construction plant surveys will be conducted. If rare plant species are encountered in the pre-construction survey, the appropriate resources agencies will be consulted to discuss possible mitigation measures.

VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-01)
CEC STAFF DATA REQUEST NUMBERS 10-23

Technical Area: Biological Resources

Response Date: July 23, 2007

The preparation of a landscape and revegetation plan has been incorporated into the Project design, which will address the native plant revegetation of temporary surface disturbance areas and the transplantation of affected Joshua Trees.

Monitoring of surface disturbance actions and the efficacy of mitigation measures by qualified biological personnel has similarly been factored into Project design. The monitoring program will be funded by the Project applicant and will be conducted in a manner to ensure compliance with, and effectiveness of, conditions of approval issued for the Project.

Data Request 13:

Please explain why the county's West Mojave Plan does not apply, and if possible, comment on the likelihood of this status changing during project licensing.

Response:

The West Mojave Plan Amendment to the California Desert Conservation Area Plan or "West Mojave Plan" applies only to public land administered by the BLM at this time. There is no "county West Mojave Plan" other than San Bernardino County General Plan Conservation Element specifications for the Desert Region.

Although the "West Mojave Plan" was originally envisioned to become a Habitat Conservation Plan (HCP) applicable to City, State and private land permitting processes within San Bernardino County, the HCP as well as California Environmental Quality Act (CEQA) documentation and review actions necessary to enable this application have not yet been initiated. As these latter processes are anticipated to take upwards to three years from the date of initiation to complete, licensing for the proposed Project is likely to be completed long before a relevant San Bernardino County HCP for the affected area is completed.

However, should an option of translocating affected desert tortoises from the proposed Project area to public lands be selected by the City of Victorville after State/Federal incidental "take" permitting is completed for the proposed Project, the aforementioned "West Mojave Plan" would apply. Any such translocation to public lands would have to be approved by the BLM and CDFG, as well as addressed in respective incidental "take" permits issued for the Project. Should permissions be received from all involved regulatory agencies to do so, desert tortoise translocation would have to be implemented per incidental take permit conditions and would have to involve public lands specified for this purpose in the "West Mojave Plan".

VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-01)
CEC STAFF DATA REQUEST NUMBERS 10-23

Technical Area: Biological Resources

Response Date: July 23, 2007

Alternatively, affected desert tortoises could be translocated to private lands with landowner permission, as long as this translocation met all terms and conditions specified in incidental take permits issued to the City of Victorville for this purpose. The desert tortoise translocation plan to be prepared for the VV2 Project will include a description of both translocation animal destination options outlined above.

Data Request 14:

Please explain the project-specific circumstances that would necessitate permanent impacts to jurisdictional waters.

Response:

As indicated in the AFC, as the VV2 Project transmission system is currently designed, no activities are expected during either construction or operation that would affect jurisdictional waters.

If the Project were to be modified, the kinds of modifications that would impact jurisdictional waters and thus require permits from the USACE, Lahontan RWQCB, and/or CDFG would include: placement of a transmission structure (tower or pole) within a jurisdictional waterway (including placement in a jurisdictional waterway of fill material during tower/pole installation); and construction of a road, staging area, or line pulling site in or through a jurisdictional water (including placement of a culvert or other drainage device and fill material). Re-grading an existing roadway could require permitting if it involved moving fill materials into a jurisdictional water. It should be stressed that no such modifications are currently expected and the Project as proposed does not involve activities that would affect jurisdictional waters.

Data Request 15:

Please clarify the status and anticipated schedule of USACE, RWQCB, and CDFG permitting for (and verification of) jurisdictional waters, and provide expected mitigation ratios for each permit, if appropriate.

VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-01)
CEC STAFF DATA REQUEST NUMBERS 10-23

Technical Area: Biological Resources

Response Date: July 23, 2007

Response:

As noted above in the response to Data Request 14, no Project activities are planned that would affect Federal or State jurisdictional waters. Thus, no Clean Water Act (CWA) or Section 1600 permits would be required from the USACE, Lahontan RWQCB, or CDFG. Because there would no impacts and thus no permits required, mitigation ratios also would not apply. As no impacts are expected, no permit applications to these agencies or verifications from these agencies would be required and none are planned. If circumstances change and the Project is unable to avoid impacts to Federal or State jurisdictional waters, the following process would be followed:

State agencies determine the "completeness" and/or data adequacy of the application and necessity for the issuance of a State permit and/or agreement immediately upon receipt of a respective permit application. This initial State agency review can take up to 30 days. When applications are determined to be data adequate, each State agency is generally required to produce a complete permit/agreement within 30 to 60 days.

For the USACE, CWA Section 404 permitting procedures vary greatly depending upon degree and types of project impacts. For the proposed Project, the USACE has indicated that no CWA Section 404 permitting is necessary if surface disturbance impacts to washes identified in the wetland delineation completed for this proposed project are avoided (e.g., if horizontal drilling beneath a drainage rather than trenching through it were used if a Project pipeline were to cross a jurisdictional water) (see Attachment DR10-5).

In instances where impacts to jurisdictional waters cannot be avoided, unlike the proposed Project, both permitting duration as well as scheduling involves the consideration of variables such as whether threatened and/or endangered species, and/or cultural resources, could be impacted, as well as the degree of such impact.

Further, the use of a Nationwide Permit (NWP) or Individual Permit (IP) has great bearing on the length of the permitting process and schedule, in instances where jurisdictional impacts are anticipated. Two CWA Section 404 NWPs – NWP 12 and NWP 14 – are commonly applied where the potential for jurisdictional water impacts are identified and the associated project meets criteria for application.

NWP 12 is used for utility line activities and addresses construction, maintenance, repair, and removal of utility lines; as well as construction of associated facilities in waters of the U.S. This NWP can be used provided the proposed activity does not result in impacts to more than 0.5 acre of jurisdictional waters. This programmatic permit also allows for the construction of

VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-01)
CEC STAFF DATA REQUEST NUMBERS 10-23

Technical Area: Biological Resources

Response Date: July 23, 2007

substations, utility line tower, poles, and anchors; provided the placement impact of separate utility footings and associated roadway construction totals less than 0.5 acre.

NWP 14 is used for linear transportation projects and can similarly be used for roads; again as long as this activity does not result in the loss of more than 0.5 acre of waters of jurisdictional waters.

The authorization process for the use of a NWP is normally kept to within a 90 day period. The concurrent acquisition of a CWA Section 401 certification issued by the Lahontan RWQCB is required for use of any CWA Section 404 NWP.

Projects where impacts total a combined surface disturbance area exceeding 0.5 acre of jurisdictional waters must apply for a CWA Section 404 IP. Issuance of an IP requires a project alternatives analysis, as well as a public notice and comment period, in addition to permit application procedures outlined for the use of a NWP. This permitting process usually takes between 6 and 9 months to complete.

Projects, where impacts to jurisdictional waters are likely and/or a potential impact to federally-listed species has been identified, require consultation with USFWS under Section 7 of the Endangered Species Act. Because the EPA already is consulting with USFWS under ESA Section 7 for the VV2 Project, the USACE would simply join this consultation to satisfy its CWA Section 404 permitting requirements.

Mitigation ratios are discussed generally in Data Request 14 above and are applicable only when impacts to jurisdictional waters are actually going to occur, which is unlikely for the VV2 Project due to engineering design to avoid such impacts. In actions where mitigation ratios are applied for impacts to jurisdictional waters, they are typically applied at a ratio of 3:1 for permanent impacts and at a ratio of 1:1 for temporary impacts.

Such mitigation is expected to be in-kind (i.e., dry wash creation or restoration or purchase of land with conservation deed) and to be applied in the same watershed. Ratios for mitigation acreage or funding can be as much as 15:1 for the applied use of out-of-kind, outside-watershed acreage/funding mitigation (i.e., such as the use of a mitigation bank purchase application in another part of the State).

**VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-01)
CEC STAFF DATA REQUEST NUMBERS 10-23**

Technical Area: Biological Resources

Response Date: July 23, 2007

Data Request 16:

Please identify the drainages in Table 1 of the wetland delineation (Appendix H-10) that could receive impacts. For each drainage, specify the potential “affected acreage” and whether the potential impacts are direct or indirect, and temporary or permanent.

Response:

As currently designed, the Project would avoid impacts to jurisdictional waters by ensuring that transmission towers, staging areas, pull sites, etc. are located away from washes and that no road improvements occur within the jurisdictional limits of the washes. Thus, there would be no drainages with “affected acreage”, no temporary or permanent impacts and no direct or indirect impacts.

The number of drainages (55 in total) and the proximity of some of these drainages to portions of the VV2 Project transmission line route make it difficult to single out individual drainages that are more likely or less likely to be impacted in the event of Project modifications. Should avoidance of impacts to all jurisdictional waters become infeasible, Federal and/or State permits will be obtained and appropriate mitigation measures will be worked out with the USACE and/or CDFG during the permitting process.

Data Request 17:

Please provide a map or detailed description of proposed tortoise-exclusion fence lines and indicate whether the fences will be permanent or temporary.

Response:

Desert tortoise exclusion fences will be placed at the following locations:

- 1) A permanent tortoise exclusion fence will be placed around the perimeter of the VV2 Project plant site facilities;
- 2) A temporary tortoise exclusion fence will be placed around the power plant site disturbance footprint during construction related activities;
- 3) A temporary tortoise exclusion fence will be placed around the perimeter of the western staging and equipment lay-down area; and
- 4) A temporary tortoise exclusion fence will be placed around the perimeter of the southern staging and equipment lay-down area.

A graphic depiction of the general locations of these proposed desert tortoise exclusion fences is shown in Figure DR17-1.

VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-01)
CEC STAFF DATA REQUEST NUMBERS 10-23

Technical Area: Biological Resources

Response Date: July 23, 2007

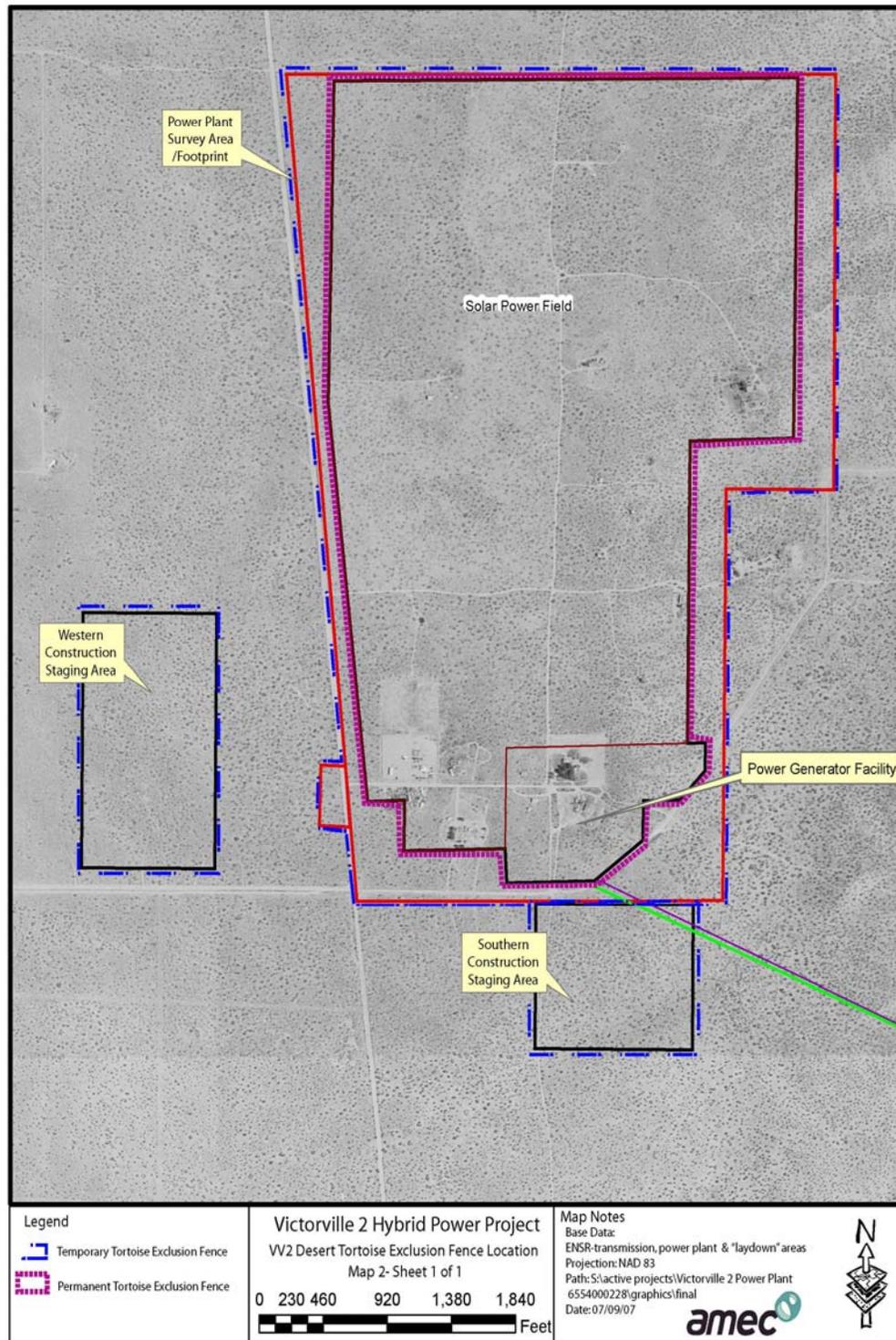


Figure DR17-1. Locations of VV2 Desert Tortoise Exclusion Fence

VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-01)
CEC STAFF DATA REQUEST NUMBERS 10-23

Technical Area: Biological Resources

Response Date: July 23, 2007

All temporary tortoise exclusion fences will be removed upon completion of Project-related activities in those areas unless otherwise required by USFWS and/or CDFG.

Data Request 18:

Please analyze the biological resource impacts related to construction of the Perimeter Road or provide a reference to its associated California Environmental Quality Act (CEQA) document.

Response:

Currently the Project is not proposing to rely on or contemplating the use of Perimeter Road for access, and thus, there will be no “biological resource impacts related to the construction of the Perimeter Road.” The Project’s planned approach regarding site access as discussed in the AFC at pages 2-2 and 2-33, previously submitted to the CEC as the primary CEQA review document, has been revised to reflect the use of Adelanto/Colusa Road for access to the Project site.

With the exception of short entryways/driveways off the existing Colusa and Helendale Roads, no new roads are proposed for access to the Project plant site and construction staging areas. Access for the proposed Project will be obtained via the existing Adelanto/Colusa Road and any improvements to that road will occur within the existing disturbed right-of-way.

If Perimeter Road improvements occur at some time in the future, as part of any other City of Victorville or private project, use of Perimeter Road to provide additional access to the VV2 Project site will be considered at that time.

Data Request 19:

Please describe the approach and schedule for following up on un-surveyed areas and supplementing the floristic surveys in 2008 to confirm presence/absence of special-status annuals in the project area that were undetectable in 2006-2007 due to low rainfall.

Response:

The potential likelihood for the presence of regional special-status annual plants throughout the proposed Project area was assessed prior to conducting desert tortoise surveys and was considered low. This assessment included an analysis of California Natural Diversity Database records for these annual plant species and a consideration of onsite plant

VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-01)
CEC STAFF DATA REQUEST NUMBERS 10-23

Technical Area: Biological Resources

Response Date: July 23, 2007

communities/surface area disturbance regimes occurring in the proposed Project area. Although these field surveys were conducted in a sub-optimum rainfall year and primarily outside of the flowering season for most of the identified special-status plant species of the region, personnel who conducted desert tortoise surveys were knowledgeable of habitats favored by these plants and would have been able to identify potential occurrence habitat, if it existed in the proposed Project area. No such habitat was identified.

The Project Applicant will assess the entire VV2 Project area for the presence/absence of special-status annual plant species concurrent with final pre-construction surveys undertaken to detect at-risk special status animal species.

Data Request 20:

Please provide a detailed raven control plan that discusses, but is not limited to:

- a. the coordination process with CDFG and USFWS;
- b. potential use of perch-deterrent devices;
- c. the circumstances when nest removal would be necessary;
- d. the remedial actions that would be employed if evidence of raven predation of juvenile desert tortoise is detected; and
- e. the circumstances that would trigger the implementation of remedial actions.

Response:

A detailed common raven control plan will be prepared as part of permitting discussions with the USFWS and CDFG pursuant to the Federal ESA and CESA. Elements of that plan will include measures recommended in the Draft Environmental Assessment to Implement a Desert Tortoise Recovery Plan Task Force: Reduce Common Raven Predation on the Desert Tortoise (Draft EA), released by the USFWS on April 5, 2007, as well as measures recommended by CDFG. A draft of the Raven Control Management Plan will be provided to the CEC.

Data Request 21:

Please describe the likely components of a closure plan (e.g., decommissioning methods, timing of any proposed restoration, restoration performance criteria) and discuss each relative to biological resources and specifically to species of concern such as desert tortoise.

**VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-01)
CEC STAFF DATA REQUEST NUMBERS 10-23**

Technical Area: Biological Resources

Response Date: July 23, 2007

Response:

At the time of Project closure, all VV2 Project facilities and equipment, both above ground and subsurface (e.g., pipelines) would be removed. To the extent practicable, removed materials would be recycled or reused; materials that could not be recycled or reused would be disposed at appropriately permitted disposal facilities in accordance with applicable regulations.

Treatment of decommissioned facility lands would include both soil preparation and native plant revegetation, which will be fully described in the Project Revegetation Plan that will be prepared for the VV2 Project. Impermeable surfaces would be ripped or pitted with appropriate heavy machinery to facilitate native plant revegetation. Constructed road berms, if any, would be removed. Minor surface disturbances would be raked using manual methods.

The removal of any potential hazards to wildlife, particularly to the desert tortoise, would be required. A certification issued by a qualified consultant that no wildlife hazards or potential groundwater contaminants remained onsite following decommissioning would be required.

Development of the Revegetation Plan will be coordinated with the Project Landscaping and Irrigation Plan also being developed (see DR 91). The Landscaping Plan has as a primary component the use for landscaping of Joshua trees relocated from various locations around the plant site where they currently exist. The Revegetation Plan also will encompass Joshua trees.

A native plant species seed mix would be broadcasted through manual and/or mechanical means onto prepared soils in winter months; followed by an initial watering if weather was not conducive to seed germination. Plant species comprising the various involved plant communities, as documented in the Biological Resources Technical Report (AFC Appendix H), would be used in developing the native plant seed mix. "Vertical mulching", surface raking and rock/organic debris placement; as well as a degree of initial non-native plant manual removal, would be incorporated into this revegetation effort to maximize native plant species survival.

Planting success criteria would be specified in the Project Revegetation Plan that will be prepared. Native plant revegetation success criteria not achieved in a specified time period would necessitate additional effort until an acceptable level of planting success was accomplished.

**VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-01)
CEC STAFF DATA REQUEST NUMBERS 10-23**

Technical Area: Biological Resources

Response Date: July 23, 2007

Data Request 22:

Please describe the potential funding (e.g., a bond) and/or legal mechanisms for decommissioning and restoration of the project site that could be used:

- a. at the end of operations; and
- b. in the event of bankruptcy or the untimely closure for financial reasons.

Response:

The VV2 Project will be owned and operated by the City of Victorville. As such, funding for decommissioning and site restoration activities would be provided by the City from the City's General Fund. Regardless of the timing (at the end of the facility's normal operating life or unexpectedly before that time), there is minimal risk that the City, as a public agency, will go out of business or be otherwise unable to fund the needed decommissioning/restoration activities for the Project.

Data Request 23:

Please provide a discussion of facility closure requirements of the City of Victorville, County of San Bernardino, USACE, USFWS, CDFG, and any other agency that may have closure requirements.

Response:

In order to meet existing Victorville City Code, San Bernardino County General Plan direction and State agency guidelines, the City of Victorville, San Bernardino County and CDFG would require removal of all facility infrastructures in the event of facility closure. This would include the removal of all power plant buildings, natural gas pipelines and use infrastructure, solar energy generation mirrors, heat transfer fluid piping, fencing, paved roadways, water and chemical tanks, water pipelines and utility poles/lines.

This structural removal would be required to entail several post-decommissioning surface disturbance treatments; such as the removal of potential soil/groundwater contaminants and wildlife entrapment hazards, the de-compaction of compacted soils and native plant revegetation. The latter native plant effort is addressed in the Victorville 2 Hybrid Power Project Revegetation Plan that will be prepared. This native plant revegetation effort incorporates the application of success criteria; whereby additional requisite planting effort is necessitated should criteria not be met within identified timelines.

**VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-01)
CEC STAFF DATA REQUEST NUMBERS 10-23**

Technical Area: Biological Resources

Response Date: July 23, 2007

Facility closure would also entail obtaining a certification from a qualified consultant that no wildlife entrapment or hazardous material remained onsite following decommissioning that could pose a risk to wild/domestic animals; or potentially contaminate the ground water, surface waters in the vicinity or the Mojave River.

While USACE, USFWS, and CDFG do not have specific closure requirements, they require that impacts to waters, habitats, and wildlife under their respective jurisdictions be fully mitigated and compensated prior to or at the time of Project closure.
