

DOCKETED

Docket Number:	84-AFC-06C
Project Title:	Compliance - Application for Certification of Sycamore Cogeneration Project
TN #:	214808
Document Title:	Commission Order (88-0106-06) Approving Purchase of Kit Fox Habitat and Establishing the Sycamore San Joaquin Kit
Description:	January 6, 1988 Sycamore San Joaquin Kit Fox Preserve Fund and Associated Changes to Bio Res Condition No. 5
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Organization:	California Energy Commission
Submitter Role:	Commission Staff
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Docketed Date:	12/15/2016

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

IN THE MATTER OF:)
)
)
THE SYCAMORE)
COGENERATION PROJECT)

DOCKET NO: 84-AFC-6C

ORDER APPROVING ESTABLISHMENT
OF THE SYCAMORE-SAN JOAQUIN KIT
FOX PRESERVE FUND AND ASSOCIATED
CHANGES TO BIOLOGICAL RESOURCES
CONDITION NO. 5 AND PROCEDURES
GOVERNING DISBURSEMENT OF FUNDS

The CEC staff recommends Commission approval to establish a Special Deposit Fund account, Sycamore-San Joaquin Kit Fox Preserve Fund, with the Department of Finance. The fund will be used for the purchase of land as habitat compensation for all unmitigated impacts of the Sycamore Cogeneration Project. The Commission in that decision, in Condition 5 of Biological Resources, requires that the Sycamore Project establish an interest bearing escrow account of \$1,100,000 within one year of project certification but in no event, no more than 120 days after the start of construction. The 120th day after start of construction was May 26, 1987. Sycamore was ready and able to make the funds available by May 26, 1987.

Approval of this account is needed to fulfill the intent of the Sycamore Cogeneration Project AFC Decision for Biological Resources Condition No. 5. The intent of this Condition requires Sycamore Cogeneration Company to deposit the sum of \$1,100,000 into an interest bearing account for the purchase of a San Joaquin kit fox preserve and to cover related administrative, site improvement, and site protection costs.

In order to establish a Special Deposit Fund account with the Department of Finance, staff also requests changes in the language of Biological Resources Condition No. 5 and the associated Procedures Governing Disbursement of Funds to eliminate specific reference to "escrow" and "custodial" accounts.

Staff analysis for establishing the Special Deposit Fund account follows in Attachment A.

Summary of Findings

1. Sycamore has been ready and able to make the \$1,100,000 available, as of May 26, 1987, for deposit to such interest bearing escrow account as the Commission designates.
2. There are unforeseen, undue administrative burdens to the establishment of an interest bearing escrow account as described in Attachment A of the order.

3. The establishment of an interest bearing escrow account would unnecessarily use a portion of the funds for processing, administrative fees and the like.
4. The establishment of an interest bearing escrow or custodial account will consume an unforeseen and unnecessary amount of time.
5. The establishment of a Special Deposit Fund account with the State Department of Finance would maximize the funds for their intended use as no accounting charges would be incurred and the Pooled Money Investment Board, which handles the funds, should yield a higher return than a commercial account.
6. The Department of Finance has indicated that it will expedite establishment of a Special Deposit Fund account upon Commission request. The Department of Finance has previously, with other agencies, approved of Special Deposit Fund accounts for similar purposes.

Conclusions

The Commission hereby orders that the Sycamore-San Joaquin Kit Fox Preserve Fund, a Special Deposit Fund account for the Commission, be established with the Department of Finance and that funds in the account be invested by the Pooled Money Investment Board. The funds in this account will be used for the exclusive use of purchasing suitable acreage for kit fox habitat preservation and to cover related administrative, site improvement, and site protection costs as required in the Sycamore Cogeneration Project AFC Decision.

In support of establishing the Special Deposit Fund account the Commission hereby orders that the Sycamore Cogeneration Project Decision be amended as follows:

Page 124, Biological Resources Condition 5.

5. Sycamore, CEC, and its designee will establish an interest bearing escrow account within one year of project certification, but in no event more than 120 days after the start of construction. Within 5 business days after receiving written notice from the CEC that an interest bearing account (Special Deposit Fund - account 942-035-3360-45-505) has been established by the CEC pursuant to this Decision and instructions from the CEC regarding the transfer of funds to such account, Sycamore will deposit the sum of \$1,100,000 into the account for the purchase of land as habitat compensation for all unmitigated impacts of the Sycamore Project. The sum in the escrow account will be used as a fund for the purchase of suitable acreage for kit fox habitat preservation and to cover related administrative, site improvement, and site protection costs.

Verification: Within one year of project certification, but in no event more than 120 days after the start of construction, Sycamore will submit to the CEC verification of the deposit to the escrow account. Sycamore will notify the CEC that the escrow account has been established and provide a signed copy of the escrow agreement and all related documents

within 15 days of executing the agreement. Within 15 days of Sycamore's receipt of the CEC's written notice of the establishment of an interest bearing account (Special Deposit Fund - account 942-035-3360-45-505) pursuant to this Decision and instructions regarding the transfer of funds to such account, Sycamore will submit to the CEC verification that Sycamore made deposit to the account within the required time.

Pages 126-127, Procedures Governing Disbursement of Funds

1. The monies resulting from compliance with Biological Resources Condition 5, contained in the Sycamore Cogeneration AFC Decision, shall be deposited in an custodial account with a bank with fiduciary powers. account (Special Deposit Fund - account 942-035-3360-45-505) with the State of California. The bank, with the assistance of EEC staff, will prepare a custodial agreement and the agreement will be signed by the necessary parties. Under the agreement the Sycamore Cogeneration Company will be the principal. The bank will be the custodian, a non-profit, natural resource land preservation organization such as The Nature Conservancy will be the primary beneficiary and the EEC will be the secondary beneficiary. The Staff shall present to the Commission alternative procedures, including an Invitation to Bid, for the selection of the bank.

A principal selection criterion shall be maximization of income during the period the funds are in the custodial account.

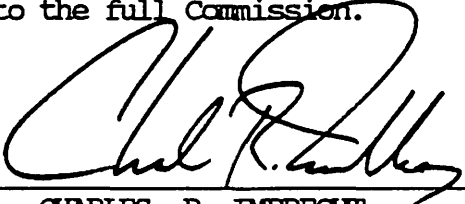
2. The establishment of the Special Deposit Fund account custodial agreement shall be reviewed and agreed to by the Executive Director, the Accounting Officer, the General Counsel, and the Chief of the Siting and Environmental Division. The final agreement establishment of the account shall require approval of the full Commission. The Commission will have the power of to appointment appoint for selection of as the beneficiaries of the funds one or more non-profit, natural resource land preservation organizations such as The Nature Conservancy and, upon the approval of the full Commission, the custodian monies will be released the monies to the beneficiary.
3. All monies in the custodial account, less the account's custodian's administrative fees, shall be used for the purchase of suitable acreage for San Joaquin kit fox habitat preservation (to be held by the beneficiary into perpetuity) and for related administrative costs (not to exceed 10 percent of the total monies), site improvement costs and site protection costs. The Staff shall take all appropriate steps to ensure that administrative costs are minimized, including the consideration of an RFP for selection of the primary beneficiary, and that as much of the fund as possible is devoted to habitat purchase. A principal criterion for selecting the primary beneficiary shall be minimization of administrative costs.
4. The Siting and Environmental Division will appoint a staff person to ensure compliance with Biological Resources Condition 5. That person's tasks will include:
 - a. take all necessary actions to assure implementation of Biological

Resources Condition 5, including the directions of this document and the conditions of the ~~custodial~~ account;

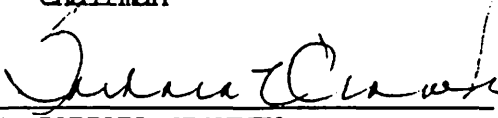
- b. arrange for the ~~custodial~~ account, assist in preparation of the ~~custodial~~ agreements, and help secure necessary signatures;
 - c. solicit recommendations from and coordinate with agencies, non-profit land preservation organizations, and other organizations having information on the biological resources of the area regarding suitable acreage to be considered for preservation. Prepare and obtain approval of Memoranda of Understanding as necessary.
 - d. recommend disbursement of the funds from the ~~custodial~~ account based on satisfactory completion of the tasks described in Items 5 and 6 below.
 - e. carry out other activities necessary to complete the requirements of Biological Resources Condition 5.
5. An ~~Advisory~~ Committee of biologists, consisting of one member from the CEC biology staff (who may be the Project Manager) appointed by the CEC Executive Director, and one member each from CDFG staff and USFWS staff, will determine the acceptability of a parcel or parcels submitted to the CEC for consideration as a preserve and determine the related site improvements that are necessary to adequately preserve and protect the kit fox. ~~The Advisory Committee shall be approved by the Commission pursuant to its adopted policy on Advisory Committees. (Resolution No. 84-0111-14.)~~
 6. The ~~Advisory~~ Committee of biologists shall consider the attached "Criteria Guiding The Selection of Off-site Parcels for San Joaquin Kit Fox Mitigation" in their evaluation of a suitable parcel or parcels of land for preservation.
 7. Staff shall formulate recommendations on the foregoing matters and submit such recommendations for approval to the full Commission.

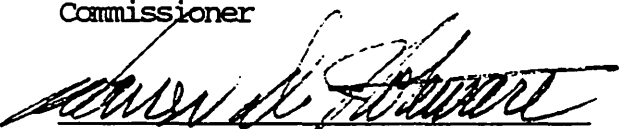
Dated: January 6, 1988


ROBERT MUSSETTER
Commissioner


CHARLES. R. IMERECHT
Chairman


RICHARD A. BILAS
Commissioner


BARBARA CROWLEY
Vice Chair


WARREN D. NOTEWARE
Commissioner

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:)	DOCKET NO. 84-AFC-6C
)	
THE SYCAMORE COGENERATION PROJECT)	ORDER APPROVING PURCHASE
)	OF KIT FOX HABITAT BY
)	THE CALIFORNIA NATURE
)	CONSERVANCY
)	

Based on the record of this proceeding and the comments presented at the hearing on January 6, 1988, the Commission finds the following:

1. Pursuant to the Commission Final Decision in this matter and Biological Resources Condition 5 of that Decision, the Commission must approve all proposals to purchase habitat using monies from the Sycamore-San Joaquin Kit Fox Preserve Fund. Condition 5 provides that the fund be used "for the purchase of suitable acreage for kit fox habitat preservation and to cover related administrative, site improvement and site protection costs."

2. The California Nature Conservancy, a non-profit tax exempt conservation organization that acquires and manages habitat of rare and endangered species, has proposed six nature preserve locations for acquisition approval. The Nature Conservancy, in a

proposal dated December 9, 1987, has proposed parcels totaling 264.67 acres at a total purchase price of \$74,034. The proposal also requests \$22,210 for land management and habitat enhancement, and \$7,403 for administrative overhead. The total requested from the fund is \$103,647.

3. The committee, created by the Commission Decision in this matter to advise the Commission on the acceptability of parcels, has recommended approval of this proposal. The committee agrees that these parcels meet the criteria of the Commission Decision and that these parcels will help to preserve and protect the kit fox.

Therefore, the Commission hereby orders the following:

A. The proposal from The California Nature Conservancy dated December 9, 1987, attached hereto as Exhibit A, for the purchase of 264.67 acres at a price of \$74,034 is hereby approved.

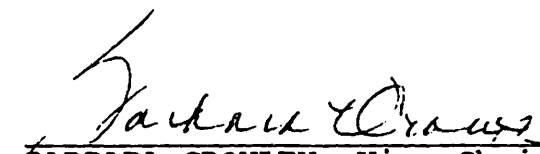
B. The land management and habitat enhancement costs in the amount of \$22,210 is hereby approved.

C. The administrative overhead costs of \$7,403 is hereby approved.


D. The monies shall be used by The California Nature Conservancy in accordance with their proposal, Exhibit A attached.

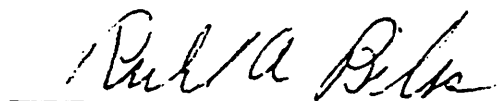
DATED: January 6, 1988


CHARLES R. IMBRECHT, Chairman


BARBARA CROWLEY, Vice Chair


WARREN D. NOTEWARE, Commissioner


ROBERT MUSSETTER, Commissioner


RICHARD A. BILAS, Commissioner