UNRESOLVED ISSUES RAISED
IN THE
VICTORVILLE 2 PROJECT
PRELIMINARY STAFF ASSESSMENT (07-AFC-1)

There were five areas where the PSA indicated open issues that did not allow a determination that impacts would be mitigated to insignificance. Following are the Applicant's comments on these issues.

Air Quality

Issue:

Staff believes that the priority reserve and road paving ERCs would reduce impacts to insignificance. However, ongoing legal challenges to the SCAQMD and MDAQMD rules underlying the Project's use of priority reserve and road paving credits might affect the mitigation available to the VV2 Project.

Applicant Response:

Litigation Status

Priority Reserve

Petitioners NRDC et al. filed two separate petitions for writ of mandate under the California Environmental Quality Act (CEQA) challenging the South Coast Air Quality Management District's (SCAQMD) actions to grant certain proposed power plants access to a bank of emission offsets called the Priority Reserve. The first petition challenged the SCAQMD's use of a CEQA exemption for thermal power plants, alleging that the exemption was not applicable and that SCAQMD should have prepared an Environmental Assessment (EA) under their certified regulatory program to evaluate the potential environmental impacts of the SCAQMD's actions. So as not to exacerbate the current energy crisis in Southern California by delaying proposed power plants' access to the Priority Reserve, the SCAQMD prepared an EA. Accordingly, the first petition has since been dismissed as moot (over Petitioners' objection) because the SCAQMD's preparation of the EA granted Petitioners the relief sought in their petition.

The second petition (Superior Court, County of Los Angeles - Central District, Case No. BS110792) challenges the adequacy of the EA. The petition was filed on 8/31/2007 and a trial date has been set for 4/11/2008. Petitioners opening brief is due on 1/22/2008, with briefing expected to be completed by 3/28/2008. Also, Real Parties in Interest Inland Energy, Mojave Desert Air Quality Management District (MDAQMD), and Antelope Valley Air Quality Management District (AVAQMD) filed a demurrer to the petition based on failure to join indispensable parties. This demurrer could resolve this litigation; the court is scheduled to hear this demurrer on 2/26/2008.

Mojave Desert AQMD Rule 1406

On 10/5/2007, California Unions for Reliable Energy (CURE) et al. filed a petition for writ of mandate under CEQA (Superior Court, County of Riverside - Indio Branch, Case No. INC 071192) challenging the MDAQMD's approval of MDAQMD Rule 1406 -- Generation of Emission Reduction Credits for Paving Unpaved Roads. The petition challenges the MDAQMD's use of a CEQA categorical exemption, alleging that the exemption is not applicable and the MDAQMD should prepare an environmental document analyzing the environmental impacts of Rule 1406. The parties are currently working on preparing the Administrative Record. A case management conference is scheduled for 3/24/2008.

Challenged Rules Remain Valid During Litigation

Even if these cases proceed to trial, we expect them to be resolved in a timeframe compatible with VV2 Project development. In the interim, the challenged rules remain valid. County of Del Norte v. City of Crescent City, 71 Cal.App.4th 965, 973 (1999). The mere filing of a CEQA lawsuit does not automatically enjoin project proponents from proceeding with their projects: "An injunction is an equitable remedy, not a cause of action, and thus it is attendant to an underlying cause of action." Id. If, during the pendency of litigation in the superior court, a petitioner desires to halt project-related activities, the petitioner must seek either a preliminary injunction (traditional mandamus) or a stay (administrative mandamus).

Biology

Issues:

"Outstanding items needed for the FSA" include:

- Likely mitigation details and habitat compensation ratios
- Agency input regarding the needed for desert tortoise exclusion fencing along the areas of Adelanto, Colusa, and Helendale Roads that will be paved to provide access to the Project site
- Details (e.g., locations) on agency-approved desert plant relocation areas and plant adoption centers/programs.

Applicant Response:

Mitigation Details

Project Applicant has been discussing details of a desert tortoise translocation plan and mitigation and compensation measures for impacts to federal and state listed desert tortoise and state listed Mohave ground squirrel. It is Project Applicant's understanding that the U.S. Fish and Wildlife Service (USFWS) intends to issue a draft Biological Opinion for the Project under Section 7 of the Federal Endangered Species Act, for desert tortoise, before January 1, 2008. On December 6, 2007, the Project Applicant submitted to the California Department of Fish and Game (CDFG) a draft California Endangered Species Act (CESA) Section 2081 incidental take permit application for desert tortoise

and Mohave ground squirrel. The Project Applicant anticipates that it will submit a Desert Tortoise Translocation Plan to USFWS, CDFG and the CEC by Friday, December 14, 2007. The Project Applicant has proposed to acquire compensation lands to fully mitigate impacts to desert tortoise and Mohave ground squirrel at a compensation ratio of 1:1, but will be discussing the mitigation ratio further with USFWS, CDFG and the CEC. The Project Applicant also is undertaking analysis and research to identify suitable desert tortoise translocation sites and compensation lands for desert tortoise and Mohave ground squirrel. Finally, the Project Applicant has proposed a meeting with all resource agencies (EPA, USFWS, CDFG and CEC) during the week of December 17, 2007, to discuss and ensure coordination on remaining biology issues.

Tortoise Fencing along Adelanto Road, Colusa Road and Helendale Road

The Project Applicant is discussing this issue with USFWS and CDFG to determine whether and to what extent it is necessary to install fencing to avoid and/or minimize impacts to desert tortoise and/or Mohave ground squirrel.

Desert Plant Relocation

Detailed plans for relocation of desert plants from the VV2 Project site have not yet been developed. Information will be provided in response to planned Staff data requests mentioned in the PSA.

Cultural Resources

Issue:

Staff needs data from additional surveys of part of Segment 3 of the Project transmission line route and along the potable/back-up process water line route.

Applicant Response:

Portion of Transmission Line Segment 3

The report on the survey of part of Segment 3 of the Project transmission line has been submitted to the CEC. No historic or prehistoric artifacts or features were observed during the survey. No traces were found of a previously recorded historic road that reportedly crossed the survey area.

Potable/Back-up Process Water Line

With respect to the potable water line route, we have identified two past cultural surveys in the area of concern: 1) a survey that covered much of the SCLA Planning Area prepared for the SCLA Specific Plan Amendment and Rail Service Project and 2) a survey of the natural gas supply pipeline route that supplies the High Desert Power Project. The survey for the SCLA Specific Plan covered a large area from the north end of the VV2 Project plant site south to the SCLA fence line, including areas extending approximately 0.5 mile on either side of the water line route. This survey identified no cultural resources of concern and clearly establishes that there is no need for additional survey work for the northern half of the water line route. The survey of the HDPP gas line route approximated the route of Perimeter Road (the planned potable water line will follow the route of Perimeter Road), which is highly disturbed, and found no cultural resources of concern. However, this survey covered a narrow corridor and we are still

researching whether the route surveyed for the gas line coincides with the planned water line route. If it does not, the Project will survey the portion of the water line route that was not covered by the SCLA Specific Plan project survey.

Soil and Water

Staff identified three issues to resolve, all related to the Project's preliminary Drainage, Erosion, and Sediment Control Plan (DESCP). Following are summaries of the changes that have been made to the DESCP in response to the issues raised. A disk containing the complete revised DESCP will be overnighted to the CEC.

Issue 1

The assumed precipitation for the 100-year, 24-hour event of 3.0 inches appears too low based on comparison with the 50-year, 24-hour event of 4.7 inches. Intuitively, a less frequently occurring event should have a higher value of precipitation.

Applicant Response to Issue 2

The precipitation of the 100-year, 24 hour- event is correctly stated in DESCP Table 2.1 as 3.0 inches. However, the 50-year, 24-hour value (4.7 inches) was incorrect; the correct value for the 50-year, 24-hour event is 2.8 inches. Please see revised Rainfall Precipitation Table (attached).

Issue 2

The assumed Curve Number (75) for the post-development runoff condition of the solar field should be higher than the pre-development condition because of planned use of a soil bonding agent that has the effect of reducing soil porosity and increasing runoff.

Applicant Response to Issue 2

The Curve Number of the solar field pre-development will stay at 75 as would be expected. However, the post-development Curve Number will change from 75 to 85 to reflect the changed water retention properties of the post-development soil. Please see revised DESCP Table 2.1 (attached).

Issue 3

Higher post-development rates of stormwater runoff in the solar field compared to pre-development rates will create the need for stormwater retention to attenuate the rate of discharge from the site.

Applicant Response to Issue 3

Based on the increased runoff rates resulting from the use of somewhat less permeable soil conditioning agents (see response to Issue 2 above), the Applicant has amended the DESCP as described in the following paragraph.

The solar field stormwater retention and discharge system now includes an enhanced runoff retention plan. This includes installation of a drainage/discharge ditch starting in the northwest corner of the solar field and extending easterly to the northeast corner of the solar field. This ditch will have twelve 18" HDPE pipes extending from its banks;

these pipes will pass under an adjacent service road and allow the ditch in an overflow condition to flood approximately 300 feet of the northernmost portion of the solar field. After the precipitation event subsides, because of the slope of the area, the accumulated water will flow back through the HDPE pipes into the ditch and will be discharged from the site at a rate equal to or less than pre-development runoff conditions.

Traffic and Transportation

Issues:

Two issues were raised:

- Staff "continues to investigate" the issue of glare from the solar array and its potential impact on aviation activities.
- Staff has asked that the SCLA Manager work with the U.S .Army to change the helicopter departure or arrival route to avoid overflying the power block of the VV2 power plant"

Applicant Response:

Solar Array Glare

The City of Victorville feels that there is ample evidence to support the finding that there will be no significant glare impacts on aviation from the solar arrays. We have nothing more to add at this time; however, a representative from Solucar (Applicant's selected Solar Equipment provider) will be available at the Workshop to answer further questions.

Helicopter Routes

Mr. Peter Soderquist, SCLA Airport Manager has discussed this issue with Lt. Edwards, Interim Commanding Officer, U.S. Army Reserve Unit – Victorville Blackhawks. The Army has agreed to modify their helicopter routes to avoid risks associated with thermal plumes from the VV2 Project power block. Mr. Soderquist will attend the Workshop to provide additional information and answer questions.