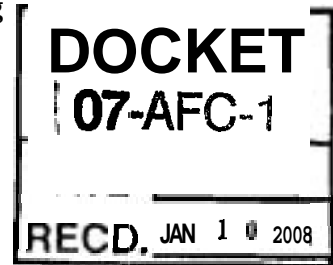


**Victorville 2 Hybrid Power Project
 Inter-agency Biological Resources Review Meeting
 December 20, 2007, 9 a.m. – 11 a.m.
 Hyatt Regency Sacramento
 12th St. & L St, Sacramento, California
 Sequoia Room (2nd Floor)
 Call-in number 888-422-7141, code 931296**



MEETING NOTES

Attendees:

| | |
|--|---|
| Ray Bransfield, U.S. Fish and Wildlife Service (by phone) | Gerardo Rios, EPA |
| Tonya Moore, California Department of Fish and Game (by phone) | Anita Lee, EPA (by phone) Margaret Alkon, EPA (by phone) |
| Tom Barnett, Inland Energy (by phone) | Misa Ward, CEC |
| Allan Cadreau (by phone) | John Kessler, CEC |
| Tony Penna, Inland Energy | Brian McCollough, CEC |
| Tom Egan, AMEC | Arrie Bachrach, ENSR |
| Kim McCormick, representing Inland Energy | |

1. Project Permitting Status Overview

Kim McCormick, representing Inland Energy, provided a status report on the following permits:

- a. USFWS Biological Opinion (BiOp) – Ray Bransfield (USFWS) circulated a draft BiOp on the Victorville 2 Project (W 2) to EPA and Inland Energy (on behalf of the Applicant, the City of Victorville) on December 12, 2007.
- b. CDFG CESA Section 2081 (2081) – Applicant submitted a draft Section 2081 Permit Application to CDFG on December 6, 2007.
- c. CEC Preliminary Staff Assessment (PSA) – CEC issued its PSA on November 21, 2007. The comment period closes on January 2, 2008.
- d. EPA Prevention of Significant Deterioration (PSD) Permit – EPA is reviewing the draft PSD Permit Application submitted by the Applicant on May 8, 2007.

2. Draft BiOp

a. Applicant responses to USFWS requests in the draft BiOp for additional information regarding the following items:

- i. Power plant access road and water line revisions – Applicant will provide additional information and impact analysis regarding the use of Adelanto/Colusa/Helendale roads as the primary access route to the power project site, and the proposed route for a potable water line to serve the project. Tonya Moore (CDFG), Ray and Misa Ward (CEC) all agreed that temporary fencing along the access route is acceptable to prevent desert tortoise impacts from traffic during construction, provided the fencing is placed in disturbed area (the road shoulder) not in desert tortoise habitat areas. Tonya further requested that monitors be used during installation of the fencing and be available on-call during construction activities to

address issues as and if they arise with respect to desert tortoise along the access route. Tonya, Ray and Misa further agreed that the speed limit in the BiOp should be increased from 15 mph to 25 mph on the access route during construction in light of the temporary fencing installation.

ii. Impacts to vegetation from cooling tower drift and nitrogen deposition – Applicant will provide additional information and analysis on these two issues. Misa agrees with Applicant's initial analysis of this issue as not a significant issue and indicated this is not a concern for CEC. It was agreed that all agencies participating in this meeting will receive copies of the Applicant's submittal on vegetation impacts, as well as of the various other Applicant submittals discussed in the meeting.

iii. Clarification of permanent and temporary disturbance – Applicant will confirm the final habitat impact acreage values, from both temporary and permanent disturbance, for all project components. Applicant also will make the necessary submittals to ensure consistency among the various permitting/licensing documents (BiOp, 2081 application, PSD permit application, and information provided to the CEC).

b. **Other agency review and comments on the draft BiOp** – Gerardo Rios (EPA) and Misa indicated that they will be contacting Ray to provide EPA and CEC input on wording in the BiOp regarding responsibility for complying with BiOp terms and conditions.

3. **Translocation Plan**

a. **Options**

Tom Egan (lead project biologist for the Applicant) provided an overview of the options to be included in the Translocation Plan for moving desert tortoises from the project site. He stressed that Applicant anticipates finding only 2-4 desert tortoises on the site based on protocol survey results, and that the Translocation Plan therefore should not be extensive or complicated. After discussion amongst the group, it was agreed that the following four options will be analyzed in the Translocation Plan, and that the Plan will indicate the Applicant's preference among the options:

i. Moving all desert tortoises located on the VV2 project power plant site to a permanent translocation site in April/May 2008.

ii. Moving all desert tortoises located on the power plant site to a temporary holding area in April/May 2008, and then translocating them to a permanent translocation site in early fall 2008.

iii. Moving all desert tortoises located on the power plant site to an established desert tortoise facility prior to site disturbance (expected to begin June 2008), such as the "headstarting" breeding facility currently being established at Edwards AFB.

iv. Leaving all desert tortoises located on the power plant site on the site until fall 2008, and phasing initial construction activities during summer 2008 (June – August) to avoid work in areas where the tortoises are located and thus avoid disturbance to the animals. Final clearance surveys and translocation would then take place in fall 2008.

Although all biologists in the meeting (agency and Applicant representatives) agreed that translocating the desert tortoises in the spring 2008 was preferable, they also agreed to examine further the feasibility of translocating them in the fall 2008 if necessary. Ray indicated that he is comfortable with moving tortoises in the fall in light of the small number of anticipated tortoises to be moved and provided it is not an extremely dry year; Tonya agreed with that view.

b. Permit Issuance -- Timing Issues

All agencies agreed that permits must be issued before site disturbance (including erection of desert tortoise exclusion fencing, tortoise clearance surveys, or tortoise translocation), can proceed. The anticipated schedule for permit issuance is as follows:

- i. CEC – Final Staff Assessment (FSA) late January 2008; final licensing decision May 2008 (per John Kessler, (CEC); John said that the CEC needs the Mojave Desert AQMD’s Final Determination of Compliance (FDOC) prior to issuance of the FSA (but that the CEC does not need to wait for the final BiOp); Tom Barnett (Inland Energy) indicated that the FDOC is expected to be issued in early January and John said the FSA would be issued within 30 days of FDOC issuance.
- ii. USFWS BiOp – late January 2008
- iii. EPA PSD Permit – propose draft for public comment tentatively February 2008; final (date TBD)
- iv. CDFG 2081 Permit – approximately 45 days after CEC final licensing decision issued

c. Size of Temporary Holding Area

Ray Bransfield indicated that extensive acreage would not be required to hold the small number of desert tortoises that are anticipated to be located on the VV2 power plant site. He will talk with USFWS biologists working at Ft. Irwin and Edwards AFB regarding an adequate size for a temporary holding area. Ray indicated that he thought it should be possible to find a way to protect a small number of tortoises for a short time such that the tortoises could be adequately protected while avoiding major disruptions to the VV2 project schedule. Tonya Moore and Misa Ward indicated they would also research the temporary holding pen issue further and provide Applicant and USFWS with any additional information/recommendations.

d. Permanent Translocation Site Locations

- i. Kern County -- Northwest of Edwards AFB, south of Highway 58. Tom Egan provided an overview of this potential site, which is being acquired by the Desert Tortoise Preserve Committee (DTPC). Tom explained that the BLM parcels interspersed with privately parcels are Class L (limited use) and are identified for retention by BLM, and that the land is located within the range of the Mohave ground squirrel (MGS) and includes suitable MGS habitat; Tonya indicated that there have been enough MGS studies in that area for her to consider the area suitable for MGS. Tom also explained that a pre-survey of the recipient population of desert tortoises will be conducted of the translocation site and that he believes it has a fairly low density population of desert tortoises. Tonya and Ray indicated this is an attractive area for desert tortoises because it meets the Desert Tortoise Recovery Plan guidance that animals not be

translocated into desert wildlife management areas and because impacts from neighboring lands are likely to be minimal. Tonya also indicated that this area may be suitable as compensation lands for desert tortoise and Mohave ground squirrel and that she considered areas located south of the railroad tracks and directly adjacent to Edwards AFB more suitable for tortoise translocation because it was farther from Highway 58 and thus posed lower highway-related risks to translocated tortoises. Tonya also indicated she will have to research the site further because it is located in Kern County.

ii. Alternative translocation site locations – Tom Egan indicated that the project is also evaluating private lands in the vicinity of the project site as possible translocation sites, but that acreage is limited and the surrounding area is developing which renders these areas less desirable in the long-term than an area such as northwest of Edwards AFB. Tom indicated the desire to stay south of Highway 58 because there may be genetic differences between tortoise populations south v. north of Highway 58. Tonya and Tom both will look into the possibility of other translocation sites in San Bernardino County. Tonya, Ray, Misa and Tom all agreed to have a separate conference call to discuss alternative translocation site locations, in the event the Kern County site is not available or is determined to be not suitable.

4. Mitigation Ratios – Desert tortoise and Mohave ground squirrel (MGS)

Tom Egan explained that Applicant is proposing to acquire compensation lands for desert tortoise, Mohave ground squirrel and burrowing owl for both temporary and permanent project impacts, totaling approximately 420 acres, and that the Applicant has proposed a 1:1 mitigation ratio for desert tortoise and MGS.

a. **Desert Tortoise** – Tonya stated that CDFG will require a mitigation ratio of 1.5:1 for impacts to desert tortoise if desert tortoise is the only species for which the project is seeking CESA Section 2081 take authorization. Misa also indicated CEC staff is more comfortable with this ratio for desert tortoise, rather than 1:1, to ensure that any cumulative impacts are mitigated.

b. **Mohave ground squirrel** – Tonya stated that CDFG will require a mitigation ratio of 3:1 for MGS and committed to providing Applicant with copies of recently issued Section 2081 permits in the vicinity of the project site that also required a 3:1 mitigation ratio for MGS. A discussion ensued regarding the biological basis for a 3:1 mitigation ratio. It was noted that the project area has been identified for development by resource agencies in various regional planning documents, including the West Mojave Plan. Tom Egan and Kim also pointed out that recent permits issued in the area, including one for the Victorville Wastewater Reclamation Agency, which is located adjacent to the project site, required a 1:1 mitigation ratio for MGS. Tonya indicated that most of the other CDFG permits issued in the Victorville area with 1:1 mitigation ratios were in areas that she considered more disturbed and more urbanized than the VV2 project area. John asked Tonya if CDFG uses any guidelines to determine appropriate mitigation ratios and Tonya responded that the decision is made on a project-by-project basis, the objective is to “fully mitigate” project impacts, and that she has determined that a 3:1 mitigation ratio is necessary to fully mitigate VV2 project impacts to MGS. Tom pointed out that only two MGS individuals have been trapped anywhere in the vicinity of the project over the last 10 years, and that it is not likely that there is a substantial population of MGS in the area. Tonya responded that trapping two individuals over the last 10 years, combined with anecdotal reports of MGS sightings and the unusually dry year, indicates there is a MGS population present, and that areas of Victorville where she has supported 1:1 ratios have experienced no MGS trappings or reported sightings over the past years. Applicant and CDFG agreed to disagree on the

mitigation ratio for MGS. Tonya also informed the group that she would be briefing Curt Taucher of CDFG on the mitigation ratio issue next week.

5. Coordination and Timing of Acquisition of Compensation Lands

Tonya agreed that Applicant may provide financial assurances that compensation lands will be acquired and enhancement and endowment monies will be paid if compensation lands cannot be acquired prior to ground disturbance. Misa indicated that CEC will add a condition to the license certification that power may not be sold until all compensation lands have been acquired.

Kim also informed the group that she has been advised that CDFG now has a project-specific process that would allow a third party organization, such as DTPC, to hold long term endowment monies rather than CDFG. Tonya requested that Kim further research with CDFG the applicability to the VV2 project of this CDFG process for the acquisition of compensation lands and management of long term endowment funds for those lands.

6. PSD Permit Schedule

Anita Lee (EPA) requested that Applicant confirm whether the PSD permit application includes an analysis of nitrogen deposition and cooling tower mist impacts. Anita indicated that she needs to review and update the draft PSD permit and AAQIR prior to routing it for internal reviews and that it tentatively may be proposed for public comment in February 2008. Arrie Bachrach (ENSR, Applicant's lead environmental consultant) asked if a preliminary draft of the PSD permit could be made available to the Applicant and the other agencies participating in this meeting, but Gerardo indicated that the draft permit could be provided to the Applicant (or to anyone other than other federal agencies) only when it is also made available to the public. Gerardo Rios also indicated that EPA Region 9 will be talking with the Mojave Desert AQMD regarding emission reduction credits (ERCs), NSR issues, and the MDAQMD's new Rule 1406.

Action Items

Inland Energy (on behalf of Applicant)

1. Will prepare comments and provide supplementary information regarding the draft BiOp and submit it to EPA Region 9, with copies to USFWS, CDFG and CEC. Those comments will address:
 - a. Power plant access route – Adelanto/Colusa/Helendale
 - b. Water pipeline route
 - c. Nitrogen deposition
 - d. Cooling tower mist
 - e. Revised temporary and permanent habitat impact acreage
2. Will prepare revisions/addendum to the pending CDFG Section 2081 permit, incorporating the comments/additional information provided for the draft BiOp.
3. Will prepare and submit to CEC comments regarding the PSA and also provide to the CEC the information submitted to the FWS on the draft BiOp.

4. Will prepare and submit a Translocation Plan to CDFG, CEC, EPA and USFWS that includes the four options discussed at the meeting for translocating desert tortoises on the project site, and alternative locations for a permanent translocation site.

5. After the final BiOp is issued by FWS, will submit an addendum to EPA requesting that the final BiOp be included as part of the PSD permit application and committing to implement all Reasonable and Prudent Measures, Terms and Conditions of the BiOp.

6. Will submit to EPA an addendum to the pending PSD permit application that includes the information submitted to USFWS regarding the BiOp. The addendum will identify each section in the PSD permit application that is being revised, and the revision that should be included in that section.

7. EPA would like additional information on total PM and Applicant agreed to discuss that issue further with EPA staff.

USFWS - Will submit the final BiOp to EPA.

CDFG

1. Tonya Moore will discuss with others in CDFG whether the lands northwest of Edwards AFB will be suitable for a translocation and compensation area and provide that information to Applicant and CEC during the first week of January 2008.

2. Tonya will provide copies of recently issued Section 2081 permits that adopted a 3:1 mitigation ratio for MGS to Applicant and CEC.

3. Tonya will determine an appropriate size for a temporary holding area for desert tortoises, should one become necessary, and will determine whether desert tortoises can be moved on the project site during the summer months (June, July and August).

4. Tonya will determine whether desert tortoises can be moved to the "headstarting" breeding facility currently being established at Edwards AFB.

Inland Energy (on behalf of Applicant), CDFG, CEC, USFWS -- Will arrange a separate conference call to discuss alternative translocation sites.

Kim McCormick -- Will discuss with Denyse Racine (CDFG) the process for allowing a third party organization such as the Desert Tortoise Preserve Committee (DTPC) to hold long term endowment monies for compensation lands rather than CDFG.

EPA – Will propose the public draft PSD permit once the addendum, final BiOp, Translocation Plan, additional information on nitrogen deposition, cooling tower mist deposition and information total PM is received, and the internal EPA reviews are completed.