

LATHAM & WATKINS LLP

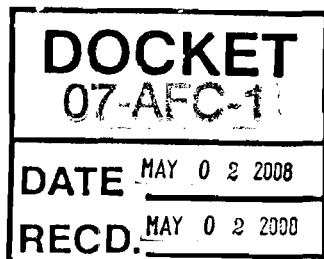
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File No. 039610-0001

May 2, 2008



VIA FEDEX

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-AFC-1
1516 Ninth Street, MS-4
Sacramento, California 95814-5512


Re: Victorville 2 Hybrid Power Project: Docket No. 07-AFC-1

Dear Sir/Madam:

Pursuant to California Code of Regulations, title 20, sections 1209, 1209.5, and 1210, enclosed herewith for filing please find Applicant's Supplemental Filing regarding Biological Resources and a DVD entitled, "Drainage Video, April 30, 2008."

Please note that the enclosed submittal was mailed to all parties on the CEC's current electronic proof of service list.

Very truly yours,


Paul E. Kihm
Senior Paralegal

Enclosure

cc: CEC 07-AFC-1 Proof of Service List (w/encl. via U.S. Mail)
Michael J. Carroll, Esq. (w/encl.)

Proposed Habitat Compensation Locations for Special-Status Species

A number of compensation land alternatives were presented by the Applicant and discussed at the Workshop. It was agreed that additional discussion is necessary before a final determination can be made regarding the most appropriate compensation land. It was also agreed that if an appropriate site for the translocation of desert tortoises can be identified in the near term, a final determination on the compensation land could be made at a later time, thereby providing the parties more time to address this issue. CDFG agreed to consider allowing the translocation of desert tortoises onto land owned by CDFG.

Streambed Impact Avoidance and Minimization Measures

Enclosed is a DVD which includes a Google Earth video illustrating the route of the wastewater pipeline and the transmission line, and the points at which those lines cross desert washes that are potentially jurisdictional waters of the state. Also contained on the DVD is a film which depicts, at close range, each wash at the point of crossing. The video and film were presented by Applicant at the Workshop. The video and film illustrate that the construction and operation of the project transmission line and wastewater pipeline will not impact potentially jurisdictional waters of the state, and that it will not be necessary to conduct any horizontal directional drilling in connection with installation of the wastewater pipeline or any other project linears or components.

Revised Proposed Conditions

Based on the foregoing, and additional discussions held during the Workshop, and to improve organization and consistency and reduce redundancy, Applicant recommends that the proposed Conditions of Certification be modified as set forth in the Attachments. Attachment A is a “redlined” version showing Applicant’s proposed changes relative to the proposed conditions as they existed as of the evidentiary hearing. Attachment B is a “clean” version incorporating Applicant’s proposed changes.

DATED: May 2, 2008

Respectfully submitted,



Michael J. Carroll
of LATHAM & WATKINS LLP

Attachment A

PROPOSED CONDITIONS OF CERTIFICATION

The project owner shall comply with the following conditions of certification, which incorporate measures that would be included as terms and conditions in an Incidental Take Permit issued by the California Department of Fish & Game if the project was not under California Energy Commission (CEC) jurisdiction.

DESIGNATED BIOLOGIST SELECTION

BIO-1 The project owner shall assign a Designated Biologist to the project. The project owner shall submit the resume of the proposed Designated Biologist, with at least three references and contact information, to the Energy Commission Compliance Project Manager (CPM) for approval in consultation with CDFG and USFWS.

The Designated Biologist must meet the following minimum qualifications:

- Bachelor's Degree in biological sciences, zoology, botany, ecology, or a closely related field; and
- Three years of experience in field biology or current certification of a nationally recognized biological society, such as The Ecological Society of America or The Wildlife Society; and
- At least one year of field experience with biological resources found in or near the project area.

In lieu of the above requirements, the resume shall demonstrate to the satisfaction of the CPM, in consultation with CDFG and USFWS, that the proposed Designated Biologist or alternate has the appropriate training and background to effectively implement the conditions of certification.

Verification: The project owner shall submit the specified information at least 60 days prior to the start of any site (or related facilities) mobilization. No site or related facility activities shall commence until an approved Designated Biologist is available to be on site.

If a Designated Biologist needs to be replaced, the specified information of the proposed replacement must be submitted to the CPM at least ten working days prior to the termination or release of the preceding Designated Biologist. In an emergency, the project owner shall immediately notify the CPM to discuss the qualifications and approval of a short-term replacement while a permanent Designated Biologist is proposed to the CPM for consideration.

DESIGNATED BIOLOGIST DUTIES

BIO-2 The project owner shall ensure that the Designated Biologist performs the following during any site (or related facilities) mobilization, ground disturbance, grading, construction, operation, and closure activities. The Designated Biologist may be assisted

Comment [L&W1]: This general statement replaces similar statements that previously appeared in various individual conditions.

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Comment [L&W2]: Duties of the DB were previously spread out over several conditions that were not entirely consistent. All duties have been moved to BIO-2, and changes were made to reconcile previously conflicting requirements. The requirements were also re-ordered into a more logical sequence. No requirement has been deleted. If text has been deleted, without an explanation provided in a comment, then it has simply been re-ordered within the condition.

by the approved Biological Monitor(s) but remains the contact for the project owner and CPM.

1. Consult on the preparation of the Biological Resources Mitigation Implementation and Monitoring Plan (BRMIMP) to be submitted to the CPM by the project owner;
2. Train the Biological Monitors as appropriate, and ensure their familiarity with the BRMIMP, Worker Environmental Awareness Program (WEAP) training, and all permits; and
3. Notify the CPM and CDFG at least fourteen (14) calendar days before initiating ground-disturbing activities;
4. Respond directly to inquiries of the CPM regarding biological resource issues;
5. Advise the project owner's Construction and Operation Managers on the implementation of the biological resources conditions of certification;
6. Maintain the ability to be in regular, direct communication with the CDFG regional biologist and CDFG warden responsible for the project area.
7. Be available to supervise, conduct and coordinate mitigation, monitoring, and other biological resources compliance efforts, particularly in areas requiring avoidance or containing sensitive biological resources, such as wetlands and special-status species or their habitat;
8. Clearly mark sensitive biological resource areas and inspect these areas at appropriate intervals for compliance with regulatory terms and conditions;
9. Inspect active construction areas where animals may have become trapped prior to construction commencing each day. At the end of the day, inspect for the installation of structures that prevent entrapment or allow escape during periods of construction inactivity. Periodically inspect areas with high vehicle activity (e.g., parking lots) for animals in harm's way;
10. Remain onsite daily while grubbing and grading are taking place to avoid or minimize take of listed species, to check for compliance with all impact avoidance and minimization measures, and to check all exclusion zones to ensure that signs, stakes, and fencing are intact and that human activities are restricted in these protective zones.
11. Maintain and check fences on a daily basis to ensure the integrity of the fence is maintained. The Designated Biologist shall be present onsite to monitor construction and determine fence placement during fence installation.

Comment [L&W3]: Deleted text redundant with later paragraph

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2. Consult on the preparation of the Biological Resources Mitigation Implementation and Monitoring Plan (BRMIMP) to be submitted by the project owner;¶

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Comment [L&W4]: Deleted text redundant with later paragraph

Comment [L&W5]: Verification text moved to end of Condition.

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6. Notify the project owner and the CPM of any non-compliance with any biological resources condition of certification;¶

¶

7. Respond directly to inquiries of the CPM regarding biological resource issues;¶

¶

8. Maintain written records of the tasks specified above and those included in the BRMIMP. Summaries of these records shall be submitted in the Monthly Compliance Report and the Annual Compliance Report;¶

¶

9. Train the Biological Monitors as appropriate, and ensure their familiarity with the BRMIMP, Worker Environmental Awareness Program (WEAP) training, and all permits; and¶

¶

10. Maintain the ability to be in regular, direct communication with the CDFG regional biologist and CDFG warden responsible for the project area. Verification: The Designated Biologist shall submit in the Monthly Compliance Report to the CPM copies of all written reports and summaries that document biological resources activities. If actions may affect biological resources during operation a Designated Biologist shall be available for monitoring and reporting. During project operation, the Designated Biologist shall submit record summaries in the Annual Compliance Report unless their duties are ceased as approved by the CPM.

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12. Conduct compliance inspections at a minimum of once per month after clearing, grubbing, and grading are completed and submit a monthly compliance report to the CPM and CDFG's Victorville office;

13. No later than January 31 of every year the project remains in operation, provide the CPM and CDFG an annual Listed Species Status Report, which shall include, at a minimum: 1) a general description of the status of the project site and construction activities, including actual or projected completion dates, if known; 2) a copy of the table in the BRMIMP with notes showing the current implementation status of each mitigation measure; and 3) an assessment of the effectiveness of each completed or partially completed mitigation measure in minimizing and compensating for project impacts;

14. No later than 45 days after the first firing of fuel in the project's equipment, provide the CPM and CDFG a Final Listed Species Mitigation Report that shall include, at a minimum: 1) a copy of the table in the BRMIMP with notes showing when each of the mitigation measures was implemented; 2) all available information about project-related incidental take of listed species; 3) information about other project impacts on the listed species; 4) construction dates; 5) an assessment of the effectiveness of conditions of certification in minimizing and compensating for project impacts; 6) recommendations on how mitigation measures might be changed to more effectively minimize and mitigate the impacts of future projects on the listed species; and 7) any other pertinent information, including the level of take of the listed species associated with the project;

15. In the event of a sighting in an active construction area (e.g., with equipment, vehicles, or workers), injury, kill, or relocation of any listed species:

a. Notify the CPM, CDFG, and USFWS immediately by phone and in no event later than noon on the business day following the event if it occurs outside normal business hours so that the agencies can determine what further actions, if any, are required to protect listed species;

b. Prepare written follow-up notification via phone or FAX to these agencies within two (2) calendar days of the incident and include the following information as relevant;

16. If a desert tortoise or Mohave ground squirrel is injured as a result of project related activities during construction, the Designated Biologist will immediately take it to a CDFG-approved wildlife rehabilitation and/or veterinarian clinic. Any veterinarian bills for such injured animals will be paid by the project owner. Following phone notification as required above, the CPM, CDFG, and USFWS will determine the final disposition of the injured animal, if it recovers. Written notification shall include, at a minimum, the date, time, location, circumstances of the incident, and the name of the facility where the animal was taken;

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17. If a desert tortoise is killed by project-related activities during construction, or if a desert tortoise is otherwise found dead, submit a written report with the same information

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as an injury report. These desert tortoises shall be salvaged according to *Salvaging Injured, Recently Dead, Ill, and Dying Wild, Free-Roaming Desert Tortoise* prepared by Kristin Berry, June 2001. The project owner shall pay to have these desert tortoises necropsied. The report will include the date and time of the finding or incident;

18. If a Mohave ground squirrel is killed by project-related activities during construction, or if a Mohave ground squirrel is otherwise found dead, the Designated Biologist shall immediately notify agencies as specified above. The written notification will include the date, time of the finding or incident, location of the carcass, and the circumstances;

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19. Approve a disposal site for materials (spoils or excess soils, etc.) prior to the materials leaving the proposed project site. Alternatively, materials need to be placed in an authorized dumpsite or landfill;

20. Maintain written records of the tasks specified above and those included in the BRMIMP. Summaries of these records shall be submitted in the Monthly Compliance Report and the Annual Compliance Report; and

21. Immediately notify the project owner, CPM and CDFG in writing if the project owner is not in compliance with any conditions of certification, including but not limited to any actual or anticipated failure to implement mitigation measures within the time periods specified in the conditions of certification;

Verification: The Designated Biologist shall submit in the Monthly Compliance Report to the CPM copies of all written reports and summaries that document biological resources activities. If actions may affect biological resources during project operation, a Designated Biologist shall be available for monitoring and reporting. During project operation, the Designated Biologist shall submit record summaries in the Annual Compliance Report unless their duties are ceased as approved by the CPM. No later than two (2) calendar days following the above required notification of a sighting, kill, or relocation of a listed species, the project owner shall deliver to the CPM, CDFG, and USFWS via FAX or e-mail the written report from the Designated Biologist describing all reported incidents of injury, kill, or relocation of a listed species, identifying who was notified, and explaining when the incidents occurred. In the case of a sighting in an active construction area, the project owner shall, at the same time, submit a map (e.g., using Geographic Information Systems) depicting both the limits of construction and sighting location to the CPM, CDFG, and USFWS.

BIOLOGICAL MONITOR QUALIFICATIONS

BIO-3 The project owner's CPM-approved Designated Biologist shall submit the resume, at least three references, and contact information of the proposed Biological Monitors to the CPM for approval in consultation with CDFG and USFWS. The resume shall

demonstrate, to the satisfaction of the CPM, the appropriate education and experience to accomplish the assigned biological resource tasks.

Biological Monitor(s) training by the Designated Biologist shall include familiarity with the conditions of certification, BRMIMP, WEAP, and all permits.

Verification: The project owner shall submit the specified information to the CPM for approval at least 30 days prior to the start of any site (or related facilities) mobilization. The Designated Biologist shall submit a written statement to the CPM confirming that individual Biological Monitor(s) have been trained including the date when training was completed. If additional biological monitors are needed during construction the specified information shall be submitted to the CPM for approval ten days prior to their first day of monitoring activities.

DESIGNATED BIOLOGIST, BIOLOGICAL MONITOR AND CPM AUTHORITY

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BIO-4 The project owner's construction/operation manager shall act on the advice of the Designated Biologist and Biological Monitor(s) to ensure conformance with the biological resources conditions of certification.

If required by the Designated Biologist and Biological Monitor(s) the project owner's construction/operation manager shall halt all site mobilization, ground disturbance, grading, construction, and operation activities in areas specified by the Designated Biologist.

The Designated Biologist shall:

1. Require a halt to all activities in any area when determined that there would be an unauthorized adverse impact to biological resources if the activities continued;
2. Inform the project owner and the construction/operation manager when to resume activities; and
3. Notify the CPM if there is a halt of any activities and advise the CPM of any corrective actions that have been taken or will be instituted as a result of the work stoppage.

If the Designated Biologist is unavailable for direct consultation, the Biological Monitor shall act on behalf of the Designated Biologist.

The CPM may issue the project owner a written stop work order to suspend any activity related to the construction or operation of the project for an appropriate period determined in consultation with CDFG in order to prevent or remedy a violation of one or more conditions of certification (including but not limited to failure to comply with reporting, monitoring, or habitat acquisition obligations) or to prevent the illegal take of an endangered, threatened, or candidate species. The project owner shall comply with the stop work order immediately upon receipt thereof.

Comment [L&W6]: New text moved from BIO-14

Verification: The project owner shall ensure that the Designated Biologist or Biological Monitor notifies the CPM immediately (and no later than the morning following the incident, or Monday morning in the case of a weekend) of any non-compliance or a halt of any site mobilization, ground disturbance, grading, construction, and operation activities. The project owner shall notify the CPM of the circumstances and actions being taken to resolve the problem.

Whenever corrective action is taken by the project owner, a determination of success or failure will be made by the CPM within five working days after receipt of notice that corrective action is completed, or the project owner will be notified by the CPM that coordination with other agencies will require additional time before a determination can be made.

WORKER ENVIRONMENTAL AWARENESS PROGRAM (WEAP)

BIO-5 The project owner shall develop and implement a CPM-approved WEAP in which each of its employees, as well as employees of contractors and subcontractors who work on the project site or any related facilities during site mobilization, ground disturbance, grading, construction, operation, and closure are informed about sensitive biological resources associated with the project.

The WEAP must:

1. Be developed by or in consultation with the Designated Biologist and consist of an on-site or training center presentation in which supporting written material and electronic media is made available to all participants;
2. Discuss the locations and types of sensitive biological resources on the project site and adjacent areas;
3. Present the reasons for protecting these resources;
4. Present the meaning of various temporary and permanent habitat protection measures;
5. Identify whom to contact if there are further comments and questions about the material discussed in the program;

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6. Include a training acknowledgment form to be signed by each worker indicating that they received training and shall abide by the guidelines; and

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7. Instruct all employees and contractors to look under vehicles and equipment for the presence of protected species prior to movement. No equipment will be moved until the animal has left voluntarily or it is removed by a biologist authorized to do so. Any time a vehicle is parked, the ground around and under the vehicle will be inspected for desert tortoises and other wildlife before the vehicle is moved.

Comment [L&W7]: New text moved here from BIO-12.

The specific program can be administered by a competent individual(s) acceptable to the Designated Biologist.

Verification: At least 60 days prior to the start of any site (or related facilities) mobilization, the project owner shall provide to the CPM two copies of the proposed draft WEAP and all supporting written materials and electronic media prepared or reviewed by the Designated Biologist and a resume of the person(s) administering the program.

The project owner shall provide in the Monthly Compliance Report the number of persons who have completed the training in the prior month and a running total of all persons who have completed the training to date. At least ten days prior to site and related facilities mobilization, submit two copies of the CPM-approved final WEAP.

Training acknowledgement forms signed during construction shall be kept on file by the project owner for at least six months after the start of commercial operation. During project operation, signed statements for operational personnel shall be kept on file for six months following the termination of an individual's employment.

BIOLOGICAL RESOURCES MITIGATION IMPLEMENTATION AND MONITORING PLAN (BRMIMP)

BIO-6 The project owner shall develop a BRMIMP, submit two copies of the proposed BRMIMP to the CPM (for review and approval) and shall implement the measures identified in the approved BRMIMP. The BRMIMP shall be prepared in consultation with the Designated Biologist and shall include;

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1. All mitigation measures identified in Biological Resources section 6.4 and Appendix H of the AFC (Victorville 2007a), responses to data requests (ENSR 2007d), and the Draft Biological Assessment (ENSR 2007b) unless they conflict with terms and conditions required in the Biological Opinion or elsewhere in the conditions of certification. In the case of an apparent conflict in mitigation measures, the project owner shall prior to completion of the final BRMIMP notify the CPM, who will confer with USFWS and CDFG, and then clarify and resolve the differences.

Comment [L&W8]: New text moved here from various other conditions were it had previously been repeated. Text reformatted to some extent.

2. All biological resources mitigation, monitoring, and compliance measures proposed and agreed to by the project owner;

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3. All biological resources conditions of certification identified as necessary to avoid or mitigate impacts;

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4. All biological resource mitigation, monitoring and compliance measures required in federal agency terms and conditions, such as those provided in the USFWS Biological Opinion (2008a);

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5. All biological resources mitigation, monitoring and compliance measures required in other state agency terms and conditions, such as those provided in the RWQCB permit (if needed);

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Comment [L&W9]: Deleted text already in preceding paragraph.

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6. All sensitive biological resources to be impacted (e.g., burrowing owl, desert tortoise, Mohave ground squirrel, Joshua trees, and cacti), avoided (e.g., southwestern pond turtle, San Diego coast horned lizard, Mojave River vole, San Emigdio blue butterfly), or mitigated by project construction, operation, and closure;

7. All required mitigation measures for each sensitive biological resource;

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8. A raven control plan;

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9. A final desert tortoise translocation plan and written comments on the plan as proof that it is acceptable to CDFG and USFWS. The elements of the plan shall include, but are not limited to, survey methods for locating and removing animals from the project area, holding and transport protocol, monitoring of translocation tortoises through permanent identification of animals, disease testing and management strategy, and a contingency plan;

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10. A copy of the Burrowing Owl Mitigation and Monitoring Plan submitted to CDFG;

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11. A Rare Plant Survey Report and if rare plants are found, a rare plant mitigation plan;

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12. A wetland mitigation plan for temporary and permanent impacts to state and federal jurisdictional waters. This component is only needed if project changes affecting jurisdictional waters occur after project licensing;

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13. A detailed description of measures that shall be taken to avoid or mitigate temporary disturbances from construction activities (e.g., restoration of desert saltbush scrub habitat for San Emigdio blue butterfly);

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14. All locations on a map, at an approved scale, of sensitive biological resource areas subject to disturbance and areas requiring temporary protection and avoidance during construction;

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15. Aerial photographs, at an approved scale, of all areas to be disturbed during project construction activities; include one set prior to any site or related facilities mobilization disturbance and one set subsequent to completion of project construction. Provide planned timing of aerial photography and a description of why times were chosen. Provide a final accounting of the before/after acreages and a determination of whether additional habitat compensation is necessary in the Construction Termination Report;

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- 16. Duration for each type of monitoring and a description of monitoring methodologies and frequency; Deleted: 5
- 17. Performance standards to be used to help decide if/when proposed mitigation is or is not successful; Deleted: 6
- 18. All performance standards and remedial measures to be implemented if performance standards are not met; Deleted: 7
- 19. A discussion of biological resources-related facility closure measures including a description of funding mechanism(s); Deleted: 8
- 20. Restoration and re-vegetation plan that addresses protection, compensation, or salvage methods for Joshua trees, cacti, and creosote rings; Deleted: 19
- 21. A process for proposing plan modifications to the CPM and appropriate agencies for review and approval; and Deleted: 0
- 22. Copies of all biological resources-related permits obtained. Deleted: 1

Verification: The project owner shall submit the BRMIMP to the CPM at least 45 days prior to start of any site (or related facilities) mobilization. The BRMIMP shall contain all of the required measures included in Conditions of Certification **BIO-6, BIO-8, BIO-9, BIO-10, BIO-12, BIO-13, BIO-15, BIO-17 and BIO-18**. No ground disturbance may occur prior to the CPM's approval of the final BRMIMP.

The CPM, in consultation with other appropriate agencies, will determine the BRMIMP's acceptability within 30 days of receipt. If there are any permits that have not yet been received when the BRMIMP is first submitted, these permits shall be submitted to the CPM within five days of their receipt, and the BRMIMP shall be revised or supplemented to reflect the permit condition within ten days of their receipt by the project owner. Ten days prior to site and related facilities mobilization the revised BRMIMP shall be resubmitted to the CPM.

The project owner shall notify the CPM no less than five working days before implementing any modifications to the approved BRMIMP to obtain CPM approval.

Any changes to the approved BRMIMP must also be approved by the CPM in consultation with appropriate agencies to ensure no conflicts exist.

Implementation of BRMIMP measures (e.g., rare plant and burrowing owl survey results, construction activities that were monitored, species observed) will be reported in the Monthly Compliance Reports by the Designated Biologist. Within 30 days after completion of project construction, the project owner shall provide to the CPM, for review and approval, a written construction termination report identifying which items of the BRMIMP have been completed, a summary of all modifications to mitigation measures made during the project's site mobilization,

ground disturbance, grading, and construction phases, and which mitigation and monitoring items are still outstanding.

CLOSURE PLAN MEASURES

BIO-7 The project owner shall implement and incorporate into the facility closure plan measures that address the local biological resources related to facility closure. The facility closure plan shall address biological resources-related mitigation measures. The plan must include the following in a Biological Resources Element:

1. Removal of transmission conductors when they are no longer used and useful;
2. Removal of all above ground and subsurface power plant site facilities and related facilities;
3. Methods for restoring wildlife habitat and promoting the re-establishment of native plant and wildlife species;
4. Re-vegetation of the project site and other disturbed areas utilizing appropriate seed mixture;
5. Criteria that would trigger implementation of the plan (e.g., non-operational for one year or greater); and
6. A cost estimate to complete closure-related activities.

In addition, the project owner shall secure funding to ensure implementation of the plan and provide to the CPM written evidence of the dedicated funding mechanism(s) (e.g., performance bond or "sinking" fund to minimize risk). The applicant has indicated that the source of funds shall be the city of Victorville's general fund (Victorville 2007d).

Verification: At least 12 months prior to commencement of planned closure activities, the project owner shall address all biological resources-related issues associated with facility closure, and provide final measures, in a Biological Resources Element. The draft planned permanent or unplanned closure measures shall be submitted to the CPM for comment by staff, CDFG, and USFWS. After revision, final measures shall comprise the Biological Resources Element, which shall include the items listed above as well as written evidence of the dedicated funding mechanism(s) for these measures. The final Biological Resources Element shall become part of the facility closure plan, which is submitted to the CPM within 90 days of the permanent closure or another period of time agreed to by the CPM.

In the event of an unplanned permanent closure, the project owner shall notify the CPM, as well as other responsible agencies, by telephone, fax, or e-mail, within 24 hours and shall take all necessary steps to implement the on-site contingency plan (see **COMPLIANCE** conditions of certification).

Upon facility closure, the project owner shall implement measures in the Biological Resources Element and provide written status updates on all closure activities to the CPM at a frequency determined by the CPM.

IMPACT AVOIDANCE MITIGATION FEATURES

BIO-8 Any time the project owner modifies or finalizes the project design they shall incorporate all feasible measures that avoid or minimize impacts to the local biological resources, including the following:

1. Design, install and maintain transmission line poles, access roads, pulling sites, and storage and parking areas to avoid identified sensitive resources;
2. Avoid impacts to jurisdictional waters;
3. Design, install, and maintain transmission lines and all electrical components in accordance with the Avian Power Line Interaction Committee's (APLIC) Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006 to reduce the likelihood of electrocutions of large birds;
4. Design, install, and maintain transmission lines and all electrical components in accordance with the APLIC Mitigating Bird Collisions with power lines: The State of the Art in 1994 to reduce the likelihood of bird collisions;
5. Eliminate any California Exotic Pest Plants of Concern List A species from landscaping plans;
6. Prescribe a road surfacing and sealant as well as soil bonding and weighting agents to non-paved surfaces that are non-toxic to wildlife and plants; and
7. Design, install, and maintain facility lighting to prevent side casting of light towards wildlife habitat.

Verification: All mitigation measures and their implementation methods shall be included in the BRMIMP. Implementation of the measures will be reported in the Monthly Compliance Reports by the Designated Biologist. Within 30 days after completion of project construction, the project owner shall provide to the CPM, for review and approval, a written construction termination report identifying how measures have been completed.

MITIGATION MANAGEMENT TO AVOID HARASSMENT OR HARM

B10-9 The project owner shall implement the following measures to manage their construction site and related facilities in a manner to avoid or minimize impacts to local biological resources:

1. Install temporary fencing and provide wildlife escape ramps for construction areas that contain steep walled holes or trenches if outside of an approved, permanent exclusionary fence. The temporary fence shall be hardware cloth or similar materials that are acceptable to USFWS and CDFG;

2. Contact the Designated Biologist or Biological Monitor if wildlife is found within the permanent or temporary fenceline during construction and if it does not leave voluntarily without physical contact or harassment within 24 hours of being found. Actions to prevent physical harm to any wildlife from construction equipment shall immediately be taken by on-site staff. The local office of CDFG shall be contacted within 24 hours if sensitive wildlife is found within the fenceline during operations. For any wildlife found within the fenceline during construction, a report shall be completed by the Designated Biologist and submitted with the Monthly Compliance Report. For any wildlife found within the fenceline during operations, a report shall be completed by the Designated Biologist and submitted with the Annual Compliance Report for the life of the project.

Comment [L&W10]: Deleted text moved to BIO-12.
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3. Make certain all food-related trash is disposed of in closed containers and removed at least once a week;

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4. Prohibit feeding of wildlife by all workers;

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5. Except for certified law enforcement personnel, all individuals will be prohibited from bringing firearms or weapons to the site;

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6. Prohibit pets from being brought to the site;

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7. Minimize use of rodenticides and herbicides in the project area and prohibit the use of chemicals and pesticides known to cause harm to amphibians; and

Comment [L&W11]: More detailed condition on this issue already in BIO-2.
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9. Report all encounters with federally- or state-listed species to the Designated Biologist, who will record the following information for the monthly compliance report: (1) species name; (2) location (global positioning system coordinates, narrative and maps) and dates of observations; (3) general condition and health, including injuries and state of healing; (4) diagnostic markings, including identification numbers or markers; and (5) locations moved from and to.

Verification: All mitigation measures and their implementation methods shall be included in the BRMIMP. Implementation of the measures will be reported in the Monthly Compliance Reports by the Designated Biologist. Within 30 days after completion of project construction, the project owner shall provide to the CPM, for review and approval, a written construction termination report identifying how measures have been completed.

NESTING OR MIGRATORY BIRD SURVEYS AND IMPACT AVOIDANCE

BIO-10 The project owner shall implement the following measures to avoid or minimize impacts to nesting birds:

1. If ground disturbance activities will occur when birds, including but not limited to Le Conte's thrasher and loggerhead shrike, could be nesting on the power plant site, complete a pre-construction survey for nesting birds in the project area 30 days prior to the start of initial ground disturbance activities to assess presence and need for mitigation. Consult USFWS and CDFG if needed to determine an appropriate survey period.
2. Complete a pre-construction survey for other nesting birds in the remainder of the project area (e.g., linear facilities) during an appropriate survey period determined in consultation with USFWS and CDFG and no less than 30 days prior to the start of initial ground disturbance activities.
3. If active, occupied nests are found, schedule work outside nesting and fledging periods. If this is not possible, fence the nest site a minimum of 200 feet (500 feet for federally or state-listed species and/or raptors) in all directions. This area shall not be disturbed until after September 15 and/or until the nest becomes inactive. These species include southwestern willow flycatcher, least Bell's vireo, western yellow-bird cuckoo, and other special-status birds that could nest in riparian habitat associated with the Mojave River. See B10-18 for additional requirements related to drainages and riparian areas.
4. Common raven nests in desert tortoise habitat shall be removed as part of desert tortoise mitigation during the non-nesting period in consultation with USFWS and CDFG.

Verification: At least 60 days prior to start of any project-related ground disturbance activities, the project owner shall provide the CPM with the final version of the BRMIMP, which includes nesting bird survey results and any necessary impact avoidance measures. All modifications to the approved BRMIMP must be made only after review and approval by the CPM in consultation with CDFG and USFWS.

DESERT TORTOISE, MOHAVE GROUND SQUIRREL, BURROWING OWL, AND CREOSOTE RING COMPENSATION

BIO-11 To compensate for temporary and permanent impacts to desert tortoise, Mohave ground squirrel, burrowing owl, creosote rings, and their habitat, the project owner shall implement a habitat compensation strategy that guarantees the perpetual care of at least 1,315.5 acres of off-site habitat in the region of the proposed project. The selected compensation land must be suitable for all three special-status species and creosote rings as determined by the CPM through consultation with the Mohave ground squirrel technical advisory group, CDFG, other technical advisory groups recommended by CDFG, and USFWS. The project owner shall attempt to acquire parcels that are as contiguous as possible in the same timeframe rather (i.e., avoid significantly separated

parcels and "piecemeal" acquisition). This mitigation acreage shall not overlap with other previously planned compensation land requirements set aside for other city projects.

As part of this condition, project owner shall:

1. Transfer fee title for the habitat compensation lands or a conservation easement over the habitat compensation lands to CDFG or to a third party non-profit habitat conservation organization (hereafter referred to as "third party"), such as DTPC, with experience in acquiring and protecting desert tortoise, Mohave ground squirrel, and burrowing owl habitat, approved by the CPM, in consultation with CDFG, under terms approved by the CPM. No third party shall be approved by the CPM until after the CPM has reviewed the third party's management plan. In the alternative, if approved by the CPM, the project owner may provide a check or a letter of credit to CDFG with a copy to the CPM in an amount deemed sufficient by the CPM, in consultation with CDFG, for acquisition of the habitat compensation lands identified in this condition of certification.
2. Provide to the third party or CDFG a check in the amount acceptable to the CPM, in consultation with CDFG, drawn from a banking institution located within California, for use as principal for a permanent, non-wasting capital endowment. The endowment amount shall be determined through a PAR analysis. Interest from this amount shall be available for the operation, management and protection of the habitat compensation lands, including reasonable administrative overhead, biological monitoring, improvements to carrying capacity, law enforcement measures, and any other action designed to protect or improve the habitat values of the habitat compensation lands. The endowment principal shall not be drawn upon unless such withdrawal is deemed necessary by the CPM, in consultation with CDFG, to ensure the continued viability of the species on the habitat compensation lands. The CPM, in consultation with CDFG, will decide how the funds will be spent. Monies received by CDFG pursuant to this provision shall be deposited in a special deposit account established pursuant to Fish and Game Code section 13014.
3. The project owner shall provide to the third party or CDFG funds for the initial protection and enhancement of the habitat compensation lands, if the PAR analysis indicates that such activities are needed for the specific parcels selected. The amount required for initial protection and enhancement needs to be approved by the CPM, in consultation with CDFG, once the project owner identifies the habitat compensation lands. Alternatively, project owner may fund CDFG's initial protection and enhancement of the lands by providing the funds required for the initial protection and enhancement as determined by the CPM, in consultation with CDFG, to CDFG.

The project owner may proceed with ground-disturbing project activities before completing all of the required mitigation (including acquisition of habitat compensation lands), monitoring, and reporting activities only if the project owner ensures funding to complete those activities by providing to the CPM and CDFG prior to commencing ground-disturbing activities or within 12 months of publication of the Energy Commission Decision, whichever occurs first: an irrevocable letter of credit, a pledged

savings account, or another form of security ("Security") approved by the Office of the General Counsel at the Energy Commission, in consultation with CDFG, in the amount necessary to ensure that all funds required pursuant to 1 - 3 above are available. The Security shall allow the Energy Commission and CDFG, to draw on the principal sum if the CPM, in consultation with CDFG, determines that project owner has failed to comply with the conditions of certification.

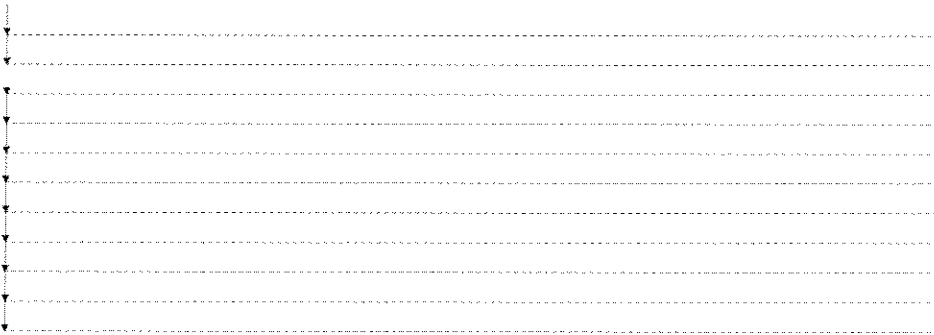
Verification: No later than 12 months following the publication of the Energy Commission Decision, the project owner will provide written verification to the CPM that the habitat compensation purchase has been completed. At the same time, the project owner will provide a certified check for the endowment and for initial protection and restoration activities, if required, to the third party or CDFG and written verification to the CPM that the check has been provided. Within six months of the land purchase (as determined by the date on title), the project owner shall provide the CPM a management plan for the habitat compensation lands and associated funds for review and approval in consultation with CDFG.

Within 90 days after completion of project construction, the project owner shall provide the CPM aerial photographs taken after construction and an analysis of the amount of any habitat disturbance additional to that identified in this staff assessment. The CPM will notify the project owner of any additional funds required to compensate for any additional habitat disturbances at the adjusted market value at the time of construction to acquire and manage habitat.

DESERT TORTOISE IMPACT AVOIDANCE AND MINIMIZATION MEASURES

BIO-12

The project owner shall comply with the final Desert Tortoise Translocation Plan, which shall be incorporated into the BRMIMP. The project owner cannot commence ground-disturbing activities until the CPM, in consultation with CDFG, and USFWS provide written approval of the final Desert Tortoise Translocation Plan.



Verification: At least 30 days prior to the start of any site or related facilities mobilization activities, the project owner shall incorporate the associated terms and conditions of the USFWS

- Comment [L&W12]: First sentence of deleted text already in BIO-6. Second sentence of deleted text redundant. Remainder of deleted text moved (... [1])
- Deleted: The project owner shall (... [2])
- Deleted: ¶
- Deleted: submit a...t...p... with (... [3])
- Comment [L&W13]: Deleted (... [4])
- Comment [L&W14]: Same
- Deleted: The project owner shall (... [5])
- Deleted: ¶
- Comment [L&W15]: Same
- Deleted: 2. The fences will be (... [6])
- Deleted: ¶
- Deleted: 3. Following fencing (... [7])
- Comment [L&W16]: Same
- Deleted: 4. Collection, holding (... [8])
- Deleted: ¶
- Comment [L&W17]: Same
- Comment [L&W18]: Same
- Deleted: 5. Temporary fencing (... [9])
- Comment [L&W19]: Deleted (... [10])
- Comment [L&W20]: Same
- Deleted: 6. Submit the name (... [11])
- Deleted: ¶
- Comment [L&W21]: Deleted (... [12])
- Deleted: 8. Instruct all emplo (... [13])
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- Comment [L&W22]: Deleted (... [14])
- Comment [L&W23]: Same
- Deleted: 10. The Designated (... [15])
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- Comment [L&W24]: Deleted (... [16])
- Comment [L&W25]: Same
- Deleted: 11. Monitor transloc (... [17])
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- Comment [L&W26]: Same
- Deleted: 12. Any tortoises fr (... [18])
- Comment [L&W27]: Deleted (... [19])
- Comment [L&W28]: Same
- Deleted: ¶ (... [20])
- Comment [L&W29]: Deleted (... [21])
- Deleted: 15. Unavoidable bu (... [22])
- Deleted: ¶

Biological Opinion and the final Desert Tortoise Translocation Plan into the project's BRMIMP, and implement them.

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MOHAVE GROUND SQUIRREL IMPACT AVOIDANCE AND MINIMIZATION MEASURES

BIO-13

The project owner shall implement the following measures for Mohave ground squirrel:

1. Project-related personnel shall access the project site during construction and development activities using existing routes and shall not cross Mohave ground squirrel habitat outside of the project site. To the extent possible, previously disturbed areas within the project site shall be used for temporary storage areas, staging/laydown sites, and any other surface-disturbing activities. If construction of off-site routes of travel will be required, CDFG and the CPM shall be contacted prior to carrying out such an activity.

2. Project owner's obligations under the Energy Commission's license do not end until the CPM, in consultation with CDFG, accepts the Final Mitigation Report as complete.

3. If a Mohave ground squirrel is found in a burrow during project-related activities on the site, it shall be immediately relocated to a burrow at a protected off-site location approved by the CDFG's Regional Representative. The Mohave ground squirrel may only be relocated by a qualified biologist. The relocation burrow shall be prepared in the following manner: dig a hole at least two (2) feet deep, place a nine (9) inch diameter plastic container (with thick enough walls that it will not collapse when buried) in the hole, place cotton bedding material in the container, connect the container to a three (3) inch diameter flexible plastic pipe (with thick enough walls that it will not collapse when buried) running to the surface at a 45 degree angle, cover the artificial burrow with dirt leaving the surface end of the three inch pipe open, and place the Mohave ground squirrel in the artificial burrow and lightly plug the burrow mouth with soil (in a manner similar to what Mohave ground squirrel do in natural burrows). Written notification shall include the date, time, location and circumstances of the incident, the name of the party that actually relocated the animal, and the location (including GPS coordinates) to which the animal was moved.

4. If the applicant chooses to conduct protocol-level trapping in transmission line segments 2 or 3 and the results are negative, the applicant has one year from the survey date to complete project work in these areas and exclude these areas from mitigation requirements above.

Comment [L&W30]: Deleted text moved to BIO-6.

Deleted: The project owner shall implement the associated mitigation measures identified in Biological Resources section 6.4 and Appendix H of the AFC (Victorville 2007a), responses to data requests (ENSR 2007d), and the Draft Biological Assessment (ENSR 2007b). The details of the compensation land required are specified in BIO-11. These mitigation measures shall also be incorporated into the final BRMIMP and implemented unless they conflict with terms and conditions required below or elsewhere in the conditions of certification. In the case of an apparent conflict in mitigation measures, the project owner shall, prior to completion of the final BRMIMP, notify the CPM who will confer with USFWS and CDFG, and then clarify and resolve the differences

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Comment [L&W31]: Deleted text replaced by general statement at beginning of conditions.

Deleted: , which would be included as terms and conditions in an Incidental Take Permit were the project not under Energy Commission jurisdiction

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Comment [L&W32]: Deleted text redundant.

Deleted: 3. The Designated Biologist shall follow the notification procedures specified in Condition of Certification BIO-14.
¶
4

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Comment [L&W33]: Deleted text no longer necessary.

Deleted: CDFG, in preparation for evidentiary hearing, is free to propose additional terms to this condition of certification for sponsorship in the evidentiary record

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Verification: At least 30 days prior to the start of any site or related facilities mobilization activities, the project owner shall incorporate the above terms and conditions into the project's BRMIMP, and implement them.

SITE AND COMPENSATION LANDS ACCESS

BIO-14 The project owner shall provide Energy Commission and CDFG representatives with reasonable access to the project site and compensation lands under the control of the project owner and shall otherwise fully cooperate with the Energy Commission's and CDFG's efforts to verify the project owner's compliance with, or the effectiveness of, mitigation measures set forth in the conditions of certification. The project owner shall hold the Designated Biologist, the Energy Commission, and CDFG harmless for any costs the project owner incurs in complying with the management measures, including stop work orders issued by the CPM, CDFG, or the Designated Biologist.

Verification: The project owner shall establish procedures for CEC and CDFG representatives to gain access to the project site and compensation lands under the control of the project owner.

BURROWING OWL IMPACT AVOIDANCE AND MINIMIZATION MEASURES

BIO-15 The project owner shall implement the following measures for the burrowing owl:

1. Complete a pre-construction survey for burrowing owls on the project site and linear facilities (this also supplements previously unsurveyed areas) no less than 30 days prior to the start of initial ground disturbance activities. If burrowing owls are present within 500 feet of the project site or linear facilities, then the CDFG burrowing owl guidelines (1995) shall be implemented;
2. Monitor burrowing owl pairs within 500 feet of any activities that exceed ambient noise and/or vibration levels;
3. Establish a SOD-foot set back from any active burrow and construct additional noise/visual barriers (e.g., haystacks or plywood fencing) to shield the active burrow from construction activities. Post signs (in both English and Spanish) designating presence of sensitive area;
4. Passively relocate all owls occupying burrows that will be temporarily or permanently impacted by the project and implement the following CDFG take avoidance measures (Victorville, Attachment DR 10-10):
 - A. Occupied burrows shall not be disturbed during the nesting season (February 1 - August 31) unless a qualified biologist can verify through non-invasive methods that egg laying/incubation has not begun or juveniles are foraging independently and able to fly;

Deleted: DESERT TORTOISE AND MOHAVE GROUND SQUIRREL COMPLIANCE

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Comment [L&W34]: Deleted text moved to BIO-2, which also previously set forth the duties of the DB. Two sets of requirements harmonized in BIO-2.

Deleted: The Designated Biologist shall do all of the following: ¶

1. Notify the CPM and CDFG at least fourteen (14) calendar days before initiating ground-disturbing activities; ¶
 2. Immediately notify the CPM and CDFG in writing if the project owner is not in compliance with any conditions of certification, including but not limited to any actual or anticipated failure to implement mitigation measures within the time periods specified in the conditions of certification; ¶
 3. Remain onsite daily while grubbing and grading are taking place to avoid or minimize take of listed species, to check for compliance with all impact avoidance and minimization measures, and to check all exclusion zones to ensure that signs, stakes, and fencing are intact and that human activities are restricted in these protective zones. ¶
 4. Maintain and check fences on a daily basis to ensure the integrity of the fence is maintained. The Designated Biologist shall be present onsite to monitor construction and determine fence placement during fence installation. ¶
 5. Conduct compliance inspections at a minimum of once per month after clearing, grubbing, and grading are completed and submit a monthly compliance report to the CPM and CDFG's Victorville office; ¶
 6. No later than January 31 of every year the Victorville 2 facility remains in operation, provide the CPM and CDFG an annual Listed Species Status Report, which shall include, at a minimum: 1) a general description of the status ... [23]
- Deleted:** No later than two (2) calendar days following the above required notification of a sighting, kill, or relocation of a listed species, the project owner shall deliver to the CPM, CDFG, and USFWS via FAX or e-mail the written report from the Designated Biologist describing all reported incidents of injury, kill, or relocation of a listed species, identifying who was notified, and explaining when the incidents occurred. In the case of a sighting in an active construction area, the project ow... [24]

- B. A qualified biologist must relocate owls, confirm that owls have left burrows prior to ground-disturbing activities, and monitor the burrows. Once evacuation is confirmed, the biologist should hand excavate burrows and then fill burrows to prevent reoccupation; and
 - C. Relocation of owls shall be approved by and conducted in consultation with CDFG.
5. Submit a Burrowing Owl Mitigation and Monitoring Plan to CDFG for review and approval prior to relocation of owls (and incorporate it into the project's BRMIMP) as well as a construction termination report with results to CDFG and CPM 30 days after completing owl relocation and monitoring and at least 30 days prior to the start of commercial operation.

Verification: The project owner shall submit a report to CDFG, USFWS, and the CPM at least 30 days prior to the start of site mobilization that describes when surveys were completed, observations, mitigation measures, and the results of the measures. If owls are to be relocated, the project owner shall coordinate with and report to CDFG on the number of new burrows, their locations, and how any created burrows/individuals and compensation land will be protected for the life of the project in a Burrowing Owl Mitigation and Monitoring Plan. Within 30 days after completion of owl relocation and monitoring, and the start of ground disturbance or at least 90 days prior to the sale of power, the project owner shall provide to the CDFG and CPM a written construction termination report identifying how measures have been completed.

RARE PLANT SURVEY AND IMPACT AVOIDANCE

BIO-16 A qualified botanist shall survey for rare plants on the power plant site and in suitable habitat along linear facilities in the spring of 2008 (and other appropriate identification periods if needed) according to the California Native Plant Society's Botanical Survey Guidelines (CNPS 2001). Immediately following the survey, submit a Rare Plant Survey Report to the CPM. This submittal may be included as part of the Monthly Compliance Report. If no rare plants are found, no further mitigation will be required. If any rare plants are found, the following measures shall be implemented:

1. Immediately submit a completed California Native Species Form to the CNDDDB.
2. If the plants can be avoided, they will be clearly marked in the field by a qualified botanist for avoidance during construction activities.
3. If avoidance is not possible, consult with the CPM and CDFG to develop a mitigation plan, which could include salvage of plants by CDFG a minimum of ten days prior to ground disturbance, creation of off-site occurrences through transplantation or seed banking, preservation through additional habitat acquisition, enhancement of existing occurrences, and/or restoration or creation of suitable habitat in sufficient quantities to compensate to for the impact(s).

4. Incorporate the mitigation plan into the final BRMIMP.

In no event shall any project related ground disturbance occur until the CPM, in consultation with CDFG, has approved the rare plant survey and mitigation plan, if required.

Verification: At least 30 days prior to start of any project-related ground disturbance activities, the project owner shall perform a survey for rare plants. The survey results, and if rare plants are present, the actions taken to avoid, minimize, or compensate for any rare plants located, shall be documented in the Rare Plant Survey Report and submitted to the CPM. Immediately following the survey, California Native Species Forms shall be submitted to the CNDDB for each rare plant occurrence located. The mitigation plan, if needed, shall be approved by the CPM in consultation with CDFG and incorporated into the final BRMIMP.

JOSHUA TREE, CACTI, AND CREOSOTE RING PROTECTION, SALVAGE, AND RELOCATION

BIO-17 The project owner shall incorporate into the BRMIMP a plan that address the protection of Joshua trees, cacti, and creosote rings as well as obtain the necessary permits related to impacting these plants. The details of the compensation land required for creosote rings are specified in **BIO-11**. The desert native plant protection, compensation, and salvage plan shall address the following elements including but not limited to those below:

1. An inventory of all Joshua trees, cacti, and 10-foot-diameter creosote rings. The inventory shall include photographs, mapped locations, and measurements for each creosote ring;
2. Plant retention/relocation/removal plan;
3. Plant avoidance or protection measures;
4. Landscaping plan;
5. Re-vegetation plan;
6. Transplantation measures and success criteria;
7. Compensation methods;
8. Maps showing agency-approved plant relocation areas;
9. Contact information and terms of agreements/contracts with local plant adoption programs or nurseries, if used; and
10. Mitigation monitoring and reporting.

Verification: At least 60 days prior to start of any project-related ground disturbance activities, the project owner shall perform an inventory of Joshua trees, cacti, and creosote rings. The survey results, and actions taken to avoid, minimize, or compensate for impacts, shall be documented in the Monthly Compliance Report by the Designated Biologist and that report submitted to the CPM. The desert native plant protection, compensation, and salvage plan shall be made part of the BRMIMP. At least 60 days prior to the start of any site or related facilities mobilization activities, the project owner shall submit to the CPM copies of the plan and permits authorizing removal/relocation of these plants from the County, the city of Victorville, and the city of Hesperia, as necessary. The project owner shall implement all permit terms and conditions and report on their status in the Monthly Compliance Report.

STREAMBED IMPACT AVOIDANCE AND MINIMIZATION MEASURES

BIO-18 The project owner shall not divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from any drainage during construction and operation of the project. The project owner may use the existing roadway located at drainage D2 for the purpose of inspecting and maintaining the wastewater pipeline and transmission line, but only during periods when there is no flow in the drainage.

Verification: The CPM shall ensure that project owner does not divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from any drainage during construction and operation of the project.

Deleted: If CDFG determines that a Streambed Alteration Agreement would be required were the project not under the Energy Commission's jurisdiction, then, the project owner shall implement measures, which are taken from a template Streambed Alteration Agreement that CDFG deemed applicable to the project. The project owner shall implement the following measures:¶

¶ Identify waters of the state impacted and specify the extent of impacts to waters of the state, including any riparian vegetation, in terms of duration, location, and acreage. Create an impacts table with the following headings: jurisdictional areas and habitat types, jurisdictional impacts in acres, and required mitigation. If impacts to drainages or riparian habitat exceed that authorized by CDFG, the project owner shall mitigate at a minimum 5:1 replacement-to-impact ratio for the impacts beyond those previously authorized and submit new information as required by the CPM, in consultation with CDFG, for the entire project. All mitigation shall be approved by the CPM, in consultation with CDFG.¶

¶ The project owner shall mitigate the permanent impacts to jurisdictional channels and riparian habitat within drainages by onsite creation of jurisdictional channel in the remaining reach of the drainage as outlined in a Conceptual Mitigation Plan. The project owner shall mitigate the tempora ... [25]

Comment [L&W35]: Revised text based on conclusion that project does not require a streambed alteration agreement.

Deleted: No fewer than 30 days prior to the start of any site or related facilities mobilization activities, the project owner shall implement the mitigation measures above as required by CDFG. No fewer than 30 days prior to the start of work potentially affecting waters of the state or riparian vegetation, the project owner shall provide written verification (i.e., through incorporation into the BRMIMP) to the CPM that the above best ... [26]

Comment [L&W36]: BIO-19 deleted because no HDD required for project construction.

Deleted: BIO-19: The project owner shall develop and implement a Horizontal Directional Drilling Plan (HDD Plan) for the underground crossing of ephemeral streams associated with the construction of the Victorville 2 sanitary sewer line. The plan shall be developed in consultation with the Army Corps of Engineers, Lahontan Regional Water Quality Control Board, and CDFG. The project owner shall provide ... [27]

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First sentence of deleted text already in BIO-6. Second sentence of deleted text redundant. Remainder of deleted text moved to BIO-6, paragraph 1, and reformatted to some extent.

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The project owner shall incorporate all terms and conditions from the USFWS (2008a) Biological Opinion into the project's final BRMIMP. The project owner will secure appropriate habitat compensation as determined in **810-11**. The project owner will implement the mitigation measures identified in Biological Resources section 6.4 and Appendix H of the AFC (Victorville 2007a), responses to data requests (ENSR 2007d), and the Draft Biological Assessment (ENSR 2007b). Such measures are described below, including installation of permanent, desert tortoise-exclusion fencing that extends below ground and a raven control plan. Mitigation measures in the aforementioned documents shall also be incorporated into the final BRMIMP unless they conflict with terms and conditions required in the Biological Opinion, below, or elsewhere in the conditions of certification. In the case of an apparent conflict in mitigation measures, the project owner shall prior to completion of the final BRMIMP notify the CPM, who will confer with USFWS and CDFG, and then clarify and resolve the differences

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with details on the final location selection to CDFG for review and comment and to USFWS and the CPM for review and approval. If the contingency plan to use a temporary holding area is employed, the area shall be in suitable habitat and consists of not more than 100 acres unless an unanticipated increase in the number of animals is discovered during clearance surveys. The final translocation plan shall be

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Deleted requirement will be incorporated into the DTTP.

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The project owner shall ensure the following measures are implemented:

1. Fence the construction areas and permanent facilities with desert-tortoise-proof fencing prior to mobilization in undeveloped areas. Gate(s) shall be desert tortoise proof as well. Gate(s) shall remain closed except for the immediate passage of vehicles. High use gate(s) will be maintained and have monthly examinations

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2. The fences will be maintained and checked on a daily basis to ensure the integrity of the fence is maintained. The Designated Biologist shall be present onsite to monitor construction and determine fence placement during fence installation

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3. Following fencing, a trained tortoise biologist shall search the interior of the fenced area areas for tortoises. Tortoise found on the construction site shall be removed and relocated using USFWS-approved handling techniques (see below).

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4. Collection, holding, and translocation of tortoises shall comply with USFWS handling protocol that ensures their health and safety

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5. Temporary fencing during construction along roads shall be installed at the direction of the Designated Biologist, and a biological monitor shall be on call for wildlife issues. Limit fence encroachment into relatively undisturbed desert tortoise, Mohave ground squirrel, and burrowing owl habitat while minimizing the potential for animals becoming trapped on the road side of the fence. The applicant shall account for the fence encroachment acreage in the final habitat disturbance calculations and provide any resulting, additional compensation habitat that would be required. At road intersections, extend the main fence at right angles along the edge of the intersecting road for 30 feet to discourage desert tortoises from following the main fenceline from directly crossing the intersecting road. A speed limit of 25 MPH shall be established.

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6. Submit the names, permit numbers, and resumes outlining relevant tortoise experience of all individuals who might need to handle desert tortoises to the USFWS and CPM for approval at least 15 days prior to initiation of clearance surveys. Proposed transmission line activities will not begin until an authorized biologist has been approved by the CPM. While other biologists may be employed as monitors, only those approved by the USFWS will be permitted to handle tortoises. Provide the names of all proposed, authorized biologists to BLM for their records. Ensure all persons authorized by the USFWS to handle desert tortoise follow the guidelines established in the Guidelines for Handling Desert Tortoises during Construction Projects (Desert Tortoise Council 1994, revised 1999).

7. Instruct all employees and contractors to look under vehicles and equipment for the presence of protected species prior to movement. No equipment will be moved until the animal has left voluntarily or it is removed by a biologist authorized to do so. Any time a vehicle is parked, the ground around and under the vehicle will be inspected for desert tortoises and other wildlife before the vehicle is moved

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8. Instruct all employees and contractors to follow the guidance of the USFWS for proper handling of desert tortoise. If a desert tortoise is observed, it will be left to move on its own. If this does not occur within 15 minutes, an authorized biologist can remove and relocate the tortoise. Desert tortoises that are found above ground and need to be moved from harm's way will be placed in the shade of a shrub by the authorized biologist. All desert tortoises removed from burrows will be placed in an unoccupied burrow of approximately the same size as the one from which it was removed. If an existing burrow is unavailable, the authorized biologist will construct or direct the construction of a burrow of similar shape, size, depth, and orientation as the original burrow. The project owner shall monitor desert tortoises moved during inactive periods for at least two days after placement in the new burrows to ensure their safety. The authorized biologist will be allowed some judgment and discretion to ensure that survival of the desert tortoise is likely.

9. Report all encounters with federally- or state-listed species to the Designated Biologist, who will record the following information for the monthly compliance report: (1) species name; (2) location (global positioning system coordinates, narrative and maps) and dates of observations; (3) general condition and health, including injuries and state of healing; (4) diagnostic markings, including identification numbers or markers; and (5) locations moved from and to

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10. The Designated Biologist shall follow the notification procedures specified in Condition of Certification BIO-14

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11. Monitor translocated tortoises for at least one year or other time period as determined by the CPM in consultation with CDFG and USFWS. In addition, the project owner shall implement the following measures, which would be included as terms and conditions in an Incidental Take Permit were the project not under Energy Commission jurisdiction; they are taken from a template Incidental Take Permit, which CDFG has indicated would be applicable to the project

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12. Any tortoises found on the project site, whether above ground, in excavated burrows, or in an open trench shall be moved at least 1,000 feet outside of the right-of-way into undisturbed habitat by the Designated Biologist(s). Desert tortoises shall be placed in the shade of a large, marked shrub. Disposable latex gloves shall be used to handle all desert tortoises. All desert tortoise handling and relocation shall be done in accordance with Desert Tortoise Council protocols

(Desert Tortoise Handling Guidelines prepared by the Desert Tortoise Council 1994, revised 1999).

13^[L&W1]. All materials which come in contact with desert tortoises shall be used only once and then properly discarded to minimize contact with the causative factor(s) for upper respiratory tract disease. Tortoises shall be kept upright at all times and handled in a secure but gentle manner to minimize stress including the possibility of voiding the bladder.

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14. The Designated Biologist shall approve a disposal site for materials (spoils or excess soils, etc.) prior to the materials leaving the proposed project site. Alternatively, materials need to be placed in an authorized dumpsite or landfill.

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15. Unavoidable burrows inhabited by tortoises shall be excavated using hand tools under the supervision of the Designated Biologist, with excavations permitted only prior to 12:00 noon. To prevent re-entry by a tortoise, all burrows in the construction zone that do not contain tortoises shall be collapsed.

CDFG, in preparation for evidentiary hearing, is free to propose additional terms to this condition of certification for sponsorship in the evidentiary record

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The Designated Biologist shall do all of the following:

1. Notify the CPM and CDFG at least fourteen (14) calendar days before initiating ground-disturbing activities;
2. Immediately notify the CPM and CDFG in writing if the project owner is not in compliance with any conditions of certification, including but not limited to any actual or anticipated failure to implement mitigation measures within the time periods specified in the conditions of certification;
3. Remain onsite daily while grubbing and grading are taking place to avoid or minimize take of listed species, to check for compliance with all impact avoidance and minimization measures, and to check all exclusion zones to ensure that signs, stakes, and fencing are intact and that human activities are restricted in these protective zones.
4. Maintain and check fences on a daily basis to ensure the integrity of the fence is maintained. The Designated Biologist shall be present onsite to monitor construction and determine fence placement during fence installation.

5. Conduct compliance inspections at a minimum of once per month after clearing, grubbing, and grading are completed and submit a monthly compliance report to the CPM and CDFG's Victorville office;
6. No later than January 31 of every year the Victorville 2 facility remains in operation, provide the CPM and CDFG an annual Listed Species Status Report, which shall include, at a minimum: 1) a general description of the status of the project site and construction activities, including actual or projected completion dates, if known; 2) a copy of the table in the BRMIMP with notes showing the current implementation status of each mitigation measure; and 3) an assessment of the effectiveness of each completed or partially completed mitigation measure in minimizing and compensating for project impacts;
7. Ensure that all observations of listed species and their sign during project activities are reported to the Designated Biologist for inclusion in the next monthly compliance report submitted to the CPM and CDFG;
8. No later than 45 days after the first firing of fuel in the project's equipment, provide the CPM and CDFG a Final Listed Species Mitigation Report that shall include, at a minimum: 1) a copy of the table in the BRMIMP with notes showing when each of the mitigation measures was implemented; 2) all available information about project-related incidental take of listed species; 3) information about other project impacts on the listed species; 4) construction dates; 5) an assessment of the effectiveness of conditions of certification in minimizing and compensating for project impacts; 6) recommendations on how mitigation measures might be changed to more effectively minimize and mitigate the impacts of future projects on the listed species; and 7) any other pertinent information, including the level of take of the listed species associated with the project;
9. In the event of a sighting in an active construction area (e.g., with equipment, vehicles, or workers), injury, kill, or relocation of any listed species, notify the CPM, CDFG, and USFWS immediately by phone and in no event later than noon on the business day following the event if it occurs outside normal business hours so that the agencies can determine what further actions, if any, are required to protect listed species;
10. Prepare written follow-up notification via phone or FAX to these agencies within two (2) calendar days of the incident and include the following information as relevant:
 - A. If a desert tortoise or Mohave ground squirrel is injured as a result of project related activities during construction, the Designated Biologist will immediately take it to a CDFG-approved wildlife rehabilitation and/or veterinarian clinic. Any veterinarian bills for such injured animals will be paid by the project owner. Following phone notification as required above,

the CPM, CDFG, and USFWS will determine the final disposition of the injured animal, if it recovers. Written notification shall include, at a minimum, the date, time, location, circumstances of the incident, and the name of the facility where the animal was taken.

B. If a desert tortoise is killed by project-related activities during construction, or if a desert tortoise is otherwise found dead, submit a written report with the same information as an injury report. These desert tortoises shall be salvaged according to *Salvaging Injured, Recently Dead, III, and Dying Wild, Free-Roaming Desert Tortoise* prepared by Kristin Berry, June 2001. The project owner shall pay to have these desert tortoises necropsied. The report will include the date and time of the finding or incident.

C. If a Mohave ground squirrel is killed by project-related activities during construction, or if a Mohave ground squirrel is otherwise found dead, the Designated Biologist shall immediately notify agencies as specified above. The written notification will include the date, time of the finding or incident, location of the carcass, and the circumstances.

11. The CPM may issue the project owner a written stop work order to suspend any activity related to the construction or operation of the project for an appropriate period determined in consultation with CDFG in order to prevent or remedy a violation of one or more conditions of certification (including but not limited to failure to comply with reporting, monitoring, or habitat acquisition obligations) or to prevent the illegal take of an endangered, threatened, or candidate species. The project owner shall comply with the stop work order immediately upon receipt thereof.

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No later than two (2) calendar days following the above required notification of a sighting, kill, or relocation of a listed species, the project owner shall deliver to the CPM, CDFG, and USFWS via FAX or e-mail the written report from the Designated Biologist describing all reported incidents of injury, kill, or relocation of a listed species, identifying who was notified, and explaining when the incidents occurred. In the case of a sighting in an active construction area, the project owner shall, at the same time, submit a map (e.g., using Geographic Information Systems) depicting both the limits of construction and sighting location to the CPM, CDFG, and USFWS.

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If CDFG determines that a Streambed Alteration Agreement would be required were the project not under the Energy Commission's jurisdiction, then, the project owner shall implement measures, which are taken from a template Streambed Alteration Agreement that CDFG deemed applicable to the project. The project owner shall implement the following measures:

Identify waters of the state impacted and specify the extent of impacts to waters of the state, including any riparian vegetation, in terms of duration, location, and acreage. Create an impacts table with the following headings: jurisdictional areas and habitat types, jurisdictional impacts in acres, and required mitigation. If impacts to drainages or riparian habitat exceed that authorized by CDFG, the project owner shall mitigate at a minimum 5: 1 replacement-to-impact ratio for the impacts beyond those previously authorized and submit new information as required by the CPM, in consultation with CDFG, for the entire project. All mitigation shall be approved by the CPM, in consultation with CDFG.

The project owner shall mitigate the permanent impacts to jurisdictional channels and riparian habitat within drainages by onsite creation of jurisdictional channel in the remaining reach of the drainage as outlined in a Conceptual Mitigation Plan. The project owner shall mitigate the temporary and permanent impacts to riparian vegetation by replanting the created jurisdictional channel with native riparian and upland transition plant species at an appropriate replacement ratio determined by the CPM, in consultation with CDFG, and by removing all non-native plants in the Conceptual Mitigation Area. To protect the mitigation area, the project owner shall place appropriate fencing and signage around the perimeter of the mitigation area. Except for uses appropriate to a habitat conservation area as approved by the CPM, in consultation with CDFG, the public shall not have access to the mitigation area(s), and no activities shall be permitted within the area(s) except the maintenance of the habitat and mitigation area(s), and the removal of exotic species, trash, and debris.

Prior to the initiation of any project activities in jurisdictional areas and no later than 60 days after publication of the Energy Commission Decision, the project owner shall submit to CDFG for review and comment and the CPM for review and approval a Habitat Mitigation and Monitoring Plan designed to meet the overall mitigation goals identified to mitigate impacts to jurisdictional waters and riparian habitat. The plan shall provide details on both the creation/restoration and enhancement aspects of the mitigation. The plan shall include a plant palette, planting plan, monitoring and maintenance procedures/timeline, irrigation, success standards and contingency measures, description of plans for invasive removal activities including monitoring and maintenance objectives to prevent the re-invasion of undesirable weeds for a minimum of five years. Any plans for exotic plant removal shall include a detailed plan that identifies on a map each location and size of non-native vegetation to be removed. Monitoring and maintenance of the sites shall be done annually for a minimum of five years or until the CPM, in consultation with CDFG, determines the restoration sites are successful.

Native plants should be used to the greatest extent feasible in the landscaped areas adjacent and/or near the mitigation/open space areas and within or adjacent to stream channels. The project owner shall not plant, seed or otherwise introduce invasive exotic plant species to the landscaped areas adjacent and/or near the

mitigation/open space areas and within or adjacent to stream channels (minimum 100 foot setback from open space areas and 150 foot setback from stream channels and riparian mitigation sites). Invasive exotic plant species not to be used include those species listed on the "California Invasive Plant Inventory, February 2006" (which updated Lists A & B of the California Exotic Pest Plant Council's list of "Exotic Pest Plants of Greatest Ecological Concern in California as of October 1999"). The project owner shall submit a copy of the draft landscape/planting plan to CDFG's representative for review and comment and to the CPM for review and approval at least 30 days prior to the acquisition and/or use of any plant materials (seeds or container plants) adjacent to the mitigation/open space site and/or within or adjacent to any stream channel.

The mitigation site(s) shall meet all the requirements below:

- A. All planting shall have a minimum of 80% survival the first year and 100% survival thereafter and shall attain 80% cover after three years and 90% cover after five years. If the survival and cover requirements have not been met, the project owner is responsible for replacement planting to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for five years after planting.
- B. The site shall not contain more than 5% exotic plant species for the CPM, in consultation with CDFG, to deem the site successful. Exotic removal shall be conducted throughout the 5-year monitoring and maintenance period.
- C. Irrigation of the mitigation site(s) may only be used to help the plants become established during the first two years following planting. Watering/irrigation of the site(s) shall be discontinued at least two years prior to completion of the monitoring period for the site(s) to be deemed successful by the CPM.

All planting should be installed between October 1 and April 30 to minimize the need for irrigation and maximize benefits from the winter rainy season.

An annual report shall be submitted to CDFG and the CPM each year for a minimum of five years after planting or until the CPM, in consultation with CDFG, deems the mitigation site(s) successful. This report shall include (a) a description of the restoration activities done the previous year (including revegetation and exotic species removal) and when they were conducted; (b) the survival, percent cover, and height of both tree and shrub species planted; the number by species of plants replaced, an overview of the revegetation effort, and the method used to assess these parameters shall also be included; (c) The report shall also include information regarding exotic vegetation removal including the amount removed, the amount removed and treated, frequency and timing of removal and treatment, disposal specifics, and a summary of the general success and failures or failure of the exotic removal plan. The report shall also include

wildlife observed at the site during monitoring surveys including sensitive species and/or listed species. Photos from designated photo stations shall be included.

To minimize temporal loss of fish and wildlife resources the Habitat Mitigation and Monitoring Plan shall be implemented within one hundred twenty (120) days of impacts to jurisdictional areas. The project owner shall notify the CPM and CDFG, in writing, no later than one hundred twenty (120) days after impacts to jurisdictional areas and confirm the implementation of the Habitat Mitigation and Monitoring Plan.

The CPM reserves the right to enter the project site or allow CDFG to enter the project site at any time to ensure compliance with these terms/conditions. The project owner herein grants to the CPM and to CDFG employees and/or their consultants (accompanied by a CDFG) the right to enter the project site at any time, to ensure compliance with the terms and conditions and/or to determine the impacts of the project on wildlife and aquatic resources and/or their habitats.

The CPM, in consultation with CDFG, shall verify compliance with protective measures to ensure the accuracy of the project owner's mitigation, monitoring and reporting efforts. The CPM and CDFG may, at the CPM's discretion, review relevant documents maintained by the operator, interview the operator's employees and agents, inspect the work site, and take other actions to assess compliance with or effectiveness of protective measures.

A security (either an irrevocable letter of credit, pledge savings account, or CD) for the amount of all mitigation measures pursuant to this condition of certification shall be submitted to, and approved by the CPM, in consultation with CDFG, prior to commencing project activities within areas of CDFG jurisdiction. This amount shall be based on a cost estimate which shall be submitted to CDFG for review and to the CPM for approval within 60 days of the Energy Commission Decision's publication and prior to commencing project activities within areas of CDFG jurisdiction. The security shall be approved by the CPM, in consultation with CDFG's legal advisors, prior to its execution, and shall allow the CPM at its discretion to recover funds immediately if the CPM, in consultation with CDFG, determines there has been a default.

A conservation easement shall be placed on the mitigation sites to protect fish and wildlife resources, in perpetuity. The easement shall be in favor of the CDFG or a conservation entity as approved by the CPM, in consultation with CDFG, and shall be recorded within six (6) months or twelve (12) months of publication of the Energy Commission Decision, or as extended by the CPM, in consultation with CDFG. The project owner shall be responsible for all costs in recording and funding the easement. The project owner shall provide sufficient funds to manage the preserved area in perpetuity. The amount and type of the funding shall be approved by the CPM, in consultation with CDFG. An executed copy of the

Conservation Easement shall be provided to CDFG and the CPM within six (6) months or twelve (12) months of publication of the Energy Commission Decision.

The project owner shall provide sufficient funds to manage the preserved area in perpetuity. The amount and type of the funding shall be approved by the CPM, in consultation with CDFG. Payment of the funds shall be made prior to ground disturbing activities in the project area.

If any sensitive species are observed on or in proximity to the project site, or during project surveys, the project owner shall submit California Natural Diversity Data Base (CNDDDB) forms and maps to the CNDDDB within five working days of the sightings, and provide the regional CDFG office with copies of the CNDDDB forms and survey maps. The CNDDDB form is available online at: www.dfg.ca.gov/whdab/pdfs/natspec.pdf. This information shall be mailed within five days to: California Department of Fish and Game, Natural Diversity Data Base, 1807 13th Street, Suite 202, Sacramento, CA 95814, (916) 324-3812. A copy of this information shall also be mailed within five days to the Victorville CDFG Office and the CPM.

The project owner shall avoid removing vegetation during the breeding season (March 15 to August 15) to avoid direct impacts to federally or state-listed species, such as least Bell's vireo, southwestern willow flycatcher, raptors, and other nesting riparian birds. If vegetation removal cannot be avoided from March 15 through August 15, the applicant shall have a qualified biologist survey all potential nesting vegetation within the project site for nesting birds, prior to vegetation removal. Surveys shall be conducted once a day for five consecutive days and shall be completed no more than three days prior to clearing. The CPM and CDFG shall be notified in writing prior to the start of the surveys. Documentation of surveys and findings shall be submitted to the CPM and CDFG for review prior to conducting project activities. If an active bird nest is located, the nest site shall be fenced a minimum of 200 feet (500 feet for federally or state-listed species and/or raptors) in all directions, and this area shall not be disturbed until after September 15 and/or until the nest becomes inactive. If no active nests are observed during the surveys, vegetation may be removed.

A qualified biologist shall be onsite to monitor all activities that result in the clearing or grading of sensitive habitat as well as grading, excavation, and/or other ground-disturbing activities in jurisdictional areas. The project owner shall flag the limits of grading and the jurisdictional areas, perform necessary surveys, and take photographs during the construction process, as required by this permit. The monitor is required to halt construction activities if special status species are identified and notify the appropriate agencies immediately.

No lighting shall be allowed to impact jurisdictional areas, and the lighting and fencing for all residential or commercial lots and infrastructure adjacent to jurisdictional areas shall be designed by a qualified biologist to allow wildlife to

move within the open space and conserved areas without hindrance. Prior to the initiation of any project activities in jurisdictional areas and no later than 60 days after the Energy Commission Decision is published, the project owner shall submit to CDFG for review and comment and to the CPM for review and approval a lighting plan detailing the jurisdictional areas to be avoided.

The project owner shall maintain a minimum twenty (20) foot setback from the existing, created, and impacted jurisdictional areas. No engineered fill or fuel modification zones for residential or commercial structures, or infrastructure may be closer than twenty (20) feet to the existing, impacted, restored, or created jurisdictional areas.

The project owner shall not allow water containing mud, silt or other pollutants from grading, aggregate washing, or other activities to enter a lake or flowing stream or be placed in locations that may be subjected to high storm flows.

The project owner shall comply with all litter and pollution laws. All contractors, subcontractors, and employees shall also obey these laws, and it shall be the responsibility of the operator to ensure compliance.

Spoil sites shall not be located within a stream/lake or locations that may be subjected to high storm flows, where spoil shall be washed back into a stream/lake, or where it will impact streambed habitat, aquatic or riparian vegetation.

Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to fish and wildlife resources, resulting from project related activities shall be prevented from contaminating the soil and/or entering the waters of the state. These materials, placed within or where they may enter a stream/lake, by project owner or any party working under contract or with the permission of the project owner shall be removed immediately.

No broken concrete, debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any construction, or associated activity of whatever nature shall be allowed to enter into or placed where it may be washed by rainfall or runoff into, waters of the state. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.

No equipment maintenance shall be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter these areas under any flow.

The project owner shall notify the CPM and CDFG, in writing, at least five (5) days prior to initiation of project activities in jurisdictional areas as noted and at least five days prior to completion of project activities in jurisdictional areas.

The project owner shall notify the CPM and CDFG of any change of conditions to the project, the jurisdictional impacts, or the mitigation efforts, if the conditions at the site of a proposed project change in a manner which increases or decreases the risk that a fish or wildlife resource may be substantially adversely affected by the proposed project. The notifying report shall be provided to the CPM and CDFG no later than seven (7) days after the change of conditions is identified. As used here, change of condition refers to the process, procedures, and methods of operation of a project, the biological and physical characteristics of a project area, or the laws or regulations pertinent to the project as defined below. A copy of the notifying change of conditions report shall be included in the annual reports.

A. Biological conditions: a change in biological conditions includes, but is not limited to, the following: 1) the presence of a fish or wildlife resource within or adjacent to the project area, whether native or non-native, not previously known to occur in the area; or 2) the presence of a fish or wildlife resource within or adjacent to the project area, whether native or non-native, the status of which has changed to endangered, rare, or threatened, as defined in section 15380 of Title 14 of the California Code of Regulations.

B. Physical conditions: a change in physical conditions includes, but is not limited to, the following: 1) a change in the morphology of a river, stream, or lake, such as the lowering of a bed or scouring of a bank, or changes in stream form and configuration caused by flooding; 2) the movement of a river or stream channel to a different location; 3) a reduction of or other change in riparian vegetation on the bed, channel, or bank of a river, stream, or lake, or 4) changes to the hydrologic regime such as fluctuations in the timing or volume of water flows in a river or stream.

C. Legal conditions: a change in legal conditions includes, but is not limited to, a change in Regulations, Statutory Law, a Judicial or Court decision, or the listing of a species, the status of which has changed to endangered, rare, or threatened, as defined in section 15380 of Title 14 of the California Code of Regulations.

The project owner shall provide a copy of the Energy Commission Decision to all contractors, subcontractors, and the Applicant's project supervisors. Copies shall be readily available at work sites at all times during periods of active work and must be presented to any CDFG personnel or personnel from another agency upon demand.

The CPM reserves the right to issue a stop work order or allow CDFG to issue a stop work order after giving notice to the project owner and the CPM, if the CPM

in consultation with CDFG, determines that the project owner has breached any of the terms or conditions or for other reasons, including but not limited to the following:

- A. The information provided by the applicant regarding streambed alteration or riparian vegetation removal is incomplete or inaccurate;
- B. New information becomes available that was not known to it in preparing the terms and conditions;
- C. The project or project activities as described in the Final Staff Assessment have changed; or
- D. The conditions affecting fish and wildlife resources change or the CPM, in consultation with CDFG, determines that project activities will result in a substantial adverse effect on the environment.

The following provisions are not subject to amendment or arbitration:

CDFG may issue a stop work order at any time in consultation with the CPM if CDFG determines that the project owner or any person acting on its behalf, including its agents, officers, and employees, agents, representatives, or contractors and subcontractors, is not in compliance with these terms and conditions, as provided herein. The CPM shall, in advance, provide the project owner written notice that it intends to suspend work. The notice shall state the reasons for the proposed suspension and provide the project owner an opportunity to correct any deficiency. In the interim, the project owner shall comply with any instructions in the notice.

Within seven days of receiving a suspension notice, the project owner shall notify CDFG and the CPM in writing by certified or registered mail either that it will correct any deficiency, and state how it intends to do so, or that it objects to the suspension, and state the reasons for the objection.

If the project owner notifies the CPM and CDFG that it will correct the deficiencies identified in the suspension notice, within seven (7) days of receiving the project owner's response, the CPM, in consultation with CDFG, shall direct the project owner verbally or in writing on how to proceed to correct the deficiencies and the date by which the deficiencies must be corrected. If the CPM, in consultation with CDFG, determines in consultation with the CPM that the deficiencies have been corrected in accordance with its instructions to the project owner, the CPM shall inform the project owner in writing that it no longer intends to suspend, in which case the project owner may restart any ceased activity. If the CPM determines that the deficiencies have not been corrected in accordance with its instructions to the project owner, the CPM will consult with CDFG to determine further actions.

If the project owner notifies the CPM that it objects to the suspension, within 14 days of receiving the project owner's response, the CPM shall notify the project owner in writing by of its decision regarding the proposed suspension. If the CPM, in consultation with CDFG, decides not to suspend, the CPM, in consultation with CDFG, will provide a scope of work to correct the deficiencies. After correcting the deficiencies and receiving the CPM's approval to proceed with the original scope, the project owner may restart any ceased activity. If the CPM, in consultation with CDFG, decides instead to suspend, the project owner shall cease all work immediately upon receipt of the decision, unless CDFG and the CPM specifies otherwise.

Even if a Streambed Alteration Agreement would not normally be required, the project owner shall implement the following best management practices recommended by CDFG (2006):

- A. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, construction waste, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material should be allowed to enter into or placed where it may be washed by rainfall or runoff into, waters of the state. When operations are completed, any excess materials or debris should be removed from the work area. The project owner should comply with all litter and pollution laws. All contractors, subcontractors, and employees should also obey these laws and it should be the responsibility of the operator to insure compliance.
- B. Any equipment or vehicles driven and/or operated within or adjacent to the stream/lake should be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life.
- C. Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to the stream/lake should be positioned over drip pans.
- D. No equipment maintenance should be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter these areas under any flow.
- E. The clean-up of all spills should begin immediately. CDFG should be notified immediately by the project owner of any spills and should be consulted regarding clean-up procedures.
- F. Raw cement/concrete or washings thereof, asphalt, paint, construction waste, or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, resulting from project related activities, should be prevented from contaminating the soil and/or entering the waters of the state. Any of these materials, placed within or where they may enter

a stream, by the project owner or any party working under contract, or with the permission of the project owner, should be removed immediately.

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No fewer than 30 days prior to the start of any site or related facilities mobilization activities, the project owner shall implement the mitigation measures above as required by CDFG. No fewer than 30 days prior to the start of work potentially affecting waters of the state or riparian vegetation, the project owner shall provide written verification (Le., through incorporation into the BRMIMP) to the CPM that the above best management practices will be implemented and provide a discussion of work in waters of the state in Monthly Compliance Reports for the duration of activities affecting waters of the state or riparian vegetation.

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BIO-19: The project owner shall develop and implement a Horizontal Directional Drilling Plan (HDD Plan) for the underground crossing of ephemeral streams associated with the construction of the Victorville 2 sanitary sewer line. The plan shall be developed in consultation with the Army Corps of Engineers, Lahontan Regional Water Quality Control Board, and CDFG. The project owner shall provide documentation that either it has obtained all necessary federal permits from the Army Corps of Engineers and complied with all conditions that would be required for permits and approvals from the Lahontan Regional Water Quality Control Board and CDFG were they to issue such permits or approvals, or that the proposed HDD will not require permits and approvals. The project owner shall submit its HDD Plan for review and comment to these agencies and to the CPM for review and approval. The HDD plan shall include the following:

1. A plan and profile of the sewer line at the crossings showing the setback from the ephemeral stream banks and the depth and cover of the sewer line;
2. A description of the geologic conditions including results of subsurface testing or borings for the HDD, and any special provisions for performing the HDD in consideration of the geologic conditions;
3. A contingency plan (or frac.-out plan) in the event of the release of drilling materials into the ephemeral stream, and safeguards for preventing a release;
4. A plan and description of the HDD laydown, setup and procedures for conducting the HDD at both ends of the crossings including the area needed for equipment setup and pipeline coupling, and plans for access; and
5. Design considerations to address any potential hydraulic performance issues (such as solids accumulation) associated with the gravity sewer line having a low spot at the underground crossings;

Verification: At least 180 days prior to constructing the sanitary sewer line, the project owner shall submit its HDD Plan to the Army Corps of Engineers, Lahontan Regional Water Quality Control Board, and CDFG for review and comment, and

to the CPM for preliminary review and approval. At least 30 days prior to constructing the sanitary sewer line, the project owner shall:

1. Provide copies of all necessary permits and approvals from the Army Corps of Engineers, and documentation from the Lahontan Regional Water Quality Control Board, and CDFG that it has complied with all conditions that would be required for permits and approvals from the Lahontan Regional Water Quality Control Board and CDFG were they to issue such permits or approvals, or otherwise provide documentation that no permits or approvals are necessary; and .
2. Provide copies of all agency comments on the HDD Plan, update the plan accordingly, and provide the updated HDD Plan to the CPM for final review and approval

Attachment B

PROPOSED CONDITIONS OF CERTIFICATION

The project owner shall comply with the following conditions of certification, which incorporate measures that would be included as terms and conditions in an Incidental Take Permit issued by the California Department of Fish & Game if the project was not under California Energy Commission (CEC) jurisdiction.

DESIGNATED BIOLOGIST SELECTION

BIO-1 The project owner shall assign a Designated Biologist to the project. The project owner shall submit the resume of the proposed Designated Biologist, with at least three references and contact information, to the Energy Commission Compliance Project Manager (CPM) for approval in consultation with CDFG and USFWS.

The Designated Biologist must meet the following minimum qualifications:

- Bachelor's Degree in biological sciences, zoology, botany, ecology, or a closely related field; and
- Three years of experience in field biology or current certification of a nationally recognized biological society, such as The Ecological Society of America or The Wildlife Society; and
- At least one year of field experience with biological resources found in or near the project area.

In lieu of the above requirements, the resume shall demonstrate to the satisfaction of the CPM, in consultation with CDFG and USFWS, that the proposed Designated Biologist or alternate has the appropriate training and background to effectively implement the conditions of certification.

Verification: The project owner shall submit the specified information at least 60 days prior to the start of any site (or related facilities) mobilization. No site or related facility activities shall commence until an approved Designated Biologist is available to be on site.

If a Designated Biologist needs to be replaced, the specified information of the proposed replacement must be submitted to the CPM at least ten working days prior to the termination or release of the preceding Designated Biologist. In an emergency, the project owner shall immediately notify the CPM to discuss the qualifications and approval of a short-term replacement while a permanent Designated Biologist is proposed to the CPM for consideration.

DESIGNATED BIOLOGIST DUTIES

BIO-2 The project owner shall ensure that the Designated Biologist performs the following during any site (or related facilities) mobilization, ground disturbance, grading, construction, operation, and closure activities. The Designated Biologist may be assisted

by the approved Biological Monitor(s) but remains the contact for the project owner and CPM.

1. Consult on the preparation of the Biological Resources Mitigation Implementation and Monitoring Plan (BRMIMP) to be submitted to the CPM by the project owner;
2. Train the Biological Monitors as appropriate, and ensure their familiarity with the BRMIMP, Worker Environmental Awareness Program (WEAP) training, and all permits; and
3. Notify the CPM and CDFG at least fourteen (14) calendar days before initiating ground-disturbing activities;
4. Respond directly to inquiries of the CPM regarding biological resource issues;
5. Advise the project owner's Construction and Operation Managers on the implementation of the biological resources conditions of certification;
6. Maintain the ability to be in regular, direct communication with the CDFG regional biologist and CDFG warden responsible for the project area.
7. Be available to supervise, conduct and coordinate mitigation, monitoring, and other biological resources compliance efforts, particularly in areas requiring avoidance or containing sensitive biological resources, such as wetlands and special-status species or their habitat;
8. Clearly mark sensitive biological resource areas and inspect these areas at appropriate intervals for compliance with regulatory terms and conditions;
9. Inspect active construction areas where animals may have become trapped prior to construction commencing each day. At the end of the day, inspect for the installation of structures that prevent entrapment or allow escape during periods of construction inactivity. Periodically inspect areas with high vehicle activity (e.g., parking lots) for animals in harm's way;
10. Remain onsite daily while grubbing and grading are taking place to avoid or minimize take of listed species, to check for compliance with all impact avoidance and minimization measures, and to check all exclusion zones to ensure that signs, stakes, and fencing are intact and that human activities are restricted in these protective zones.
11. Maintain and check fences on a daily basis to ensure the integrity of the fence is maintained. The Designated Biologist shall be present onsite to monitor construction and determine fence placement during fence installation.

12. Conduct compliance inspections at a minimum of once per month after clearing, grubbing, and grading are completed and submit a monthly compliance report to the CPM and CDFG's Victorville office;
13. No later than January 31 of every year the project remains in operation, provide the CPM and CDFG an annual Listed Species Status Report, which shall include, at a minimum: 1) a general description of the status of the project site and construction activities, including actual or projected completion dates, if known; 2) a copy of the table in the BRMIMP with notes showing the current implementation status of each mitigation measure; and 3) an assessment of the effectiveness of each completed or partially completed mitigation measure in minimizing and compensating for project impacts;
14. No later than 45 days after the first firing of fuel in the project's equipment, provide the CPM and CDFG a Final Listed Species Mitigation Report that shall include, at a minimum: 1) a copy of the table in the BRMIMP with notes showing when each of the mitigation measures was implemented; 2) all available information about project-related incidental take of listed species; 3) information about other project impacts on the listed species; 4) construction dates; 5) an assessment of the effectiveness of conditions of certification in minimizing and compensating for project impacts; 6) recommendations on how mitigation measures might be changed to more effectively minimize and mitigate the impacts of future projects on the listed species; and 7) any other pertinent information, including the level of take of the listed species associated with the project;
15. In the event of a sighting in an active construction area (e.g., with equipment, vehicles, or workers), injury, kill, or relocation of any listed species:
 - a. Notify the CPM, CDFG, and USFWS immediately by phone and in no event later than noon on the business day following the event if it occurs outside normal business hours so that the agencies can determine what further actions, if any, are required to protect listed species;
 - b. Prepare written follow-up notification via phone or FAX to these agencies within two (2) calendar days of the incident and include the following information as relevant;
16. If a desert tortoise or Mohave ground squirrel is injured as a result of project related activities during construction, the Designated Biologist will immediately take it to a CDFG-approved wildlife rehabilitation and/or veterinarian clinic. Any veterinarian bills for such injured animals will be paid by the project owner. Following phone notification as required above, the CPM, CDFG, and USFWS will determine the final disposition of the injured animal, if it recovers. Written notification shall include, at a minimum, the date, time, location, circumstances of the incident, and the name of the facility where the animal was taken;
17. If a desert tortoise is killed by project-related activities during construction, or if a desert tortoise is otherwise found dead, submit a written report with the same information

as an injury report. These desert tortoises shall be salvaged according to *Salvaging Injured, Recently Dead, Ill, and Dying Wild, Free-Roaming Desert Tortoise* prepared by Kristin Berry, June 2001. The project owner shall pay to have these desert tortoises necropsied. The report will include the date and time of the finding or incident;

18. If a Mohave ground squirrel is killed by project-related activities during construction, or if a Mohave ground squirrel is otherwise found dead, the Designated Biologist shall immediately notify agencies as specified above. The written notification will include the date, time of the finding or incident, location of the carcass, and the circumstances;

19. Approve a disposal site for materials (spoils or excess soils, etc.) prior to the materials leaving the proposed project site. Alternatively, materials need to be placed in an authorized dumpsite or landfill;

20. Maintain written records of the tasks specified above and those included in the BRMIMP. Summaries of these records shall be submitted in the Monthly Compliance Report and the Annual Compliance Report; and

21. Immediately notify the project owner, CPM and CDFG in writing if the project owner is not in compliance with any conditions of certification, including but not limited to any actual or anticipated failure to implement mitigation measures within the time periods specified in the conditions of certification;

Verification: The Designated Biologist shall submit in the Monthly Compliance Report to the CPM copies of all written reports and summaries that document biological resources activities. If actions may affect biological resources during project operation, a Designated Biologist shall be available for monitoring and reporting. During project operation, the Designated Biologist shall submit record summaries in the Annual Compliance Report unless their duties are ceased as approved by the CPM. No later than two (2) calendar days following the above required notification of a sighting, kill, or relocation of a listed species, the project owner shall deliver to the CPM, CDFG, and USFWS via FAX or e-mail the written report from the Designated Biologist describing all reported incidents of injury, kill, or relocation of a listed species, identifying who was notified, and explaining when the incidents occurred. In the case of a sighting in an active construction area, the project owner shall, at the same time, submit a map (e.g., using Geographic Information Systems) depicting both the limits of construction and sighting location to the CPM, CDFG, and USFWS.

BIOLOGICAL MONITOR QUALIFICATIONS

BIO-3 The project owner's CPM-approved Designated Biologist shall submit the resume, at least three references, and contact information of the proposed Biological Monitors to the CPM for approval in consultation with CDFG and USFWS. The resume shall

demonstrate, to the satisfaction of the CPM, the appropriate education and experience to accomplish the assigned biological resource tasks.

Biological Monitor(s) training by the Designated Biologist shall include familiarity with the conditions of certification, BRMIMP, WEAP, and all permits.

Verification: The project owner shall submit the specified information to the CPM for approval at least 30 days prior to the start of any site (or related facilities) mobilization. The Designated Biologist shall submit a written statement to the CPM confirming that individual Biological Monitor(s) have been trained including the date when training was completed. If additional biological monitors are needed during construction the specified information shall be submitted to the CPM for approval ten days prior to their first day of monitoring activities.

DESIGNATED BIOLOGIST, BIOLOGICAL MONITOR AND CPM AUTHORITY

BIO-4 The project owner's construction/operation manager shall act on the advice of the Designated Biologist and Biological Monitor(s) to ensure conformance with the biological resources conditions of certification.

If required by the Designated Biologist and Biological Monitor(s) the project owner's construction/operation manager shall halt all site mobilization, ground disturbance, grading, construction, and operation activities in areas specified by the Designated Biologist.

The Designated Biologist shall:

1. Require a halt to all activities in any area when determined that there would be an unauthorized adverse impact to biological resources if the activities continued;
2. Inform the project owner and the construction/operation manager when to resume activities; and
3. Notify the CPM if there is a halt of any activities and advise the CPM of any corrective actions that have been taken or will be instituted as a result of the work stoppage.

If the Designated Biologist is unavailable for direct consultation, the Biological Monitor shall act on behalf of the Designated Biologist.

The CPM may issue the project owner a written stop work order to suspend any activity related to the construction or operation of the project for an appropriate period determined in consultation with CDFG in order to prevent or remedy a violation of one or more conditions of certification (including but not limited to failure to comply with reporting, monitoring, or habitat acquisition obligations) or to prevent the illegal take of an endangered, threatened, or candidate species. The project owner shall comply with the stop work order immediately upon receipt thereof.

Verification: The project owner shall ensure that the Designated Biologist or Biological Monitor notifies the CPM immediately (and no later than the morning following the incident, or Monday morning in the case of a weekend) of any non-compliance or a halt of any site mobilization, ground disturbance, grading, construction, and operation activities. The project owner shall notify the CPM of the circumstances and actions being taken to resolve the problem.

Whenever corrective action is taken by the project owner, a determination of success or failure will be made by the CPM within five working days after receipt of notice that corrective action is completed, or the project owner will be notified by the CPM that coordination with other agencies will require additional time before a determination can be made.

WORKER ENVIRONMENTAL AWARENESS PROGRAM (WEAP)

BIO-5 The project owner shall develop and implement a CPM-approved WEAP in which each of its employees, as well as employees of contractors and subcontractors who work on the project site or any related facilities during site mobilization, ground disturbance, grading, construction, operation, and closure are informed about sensitive biological resources associated with the project.

The WEAP must:

1. Be developed by or in consultation with the Designated Biologist and consist of an on-site or training center presentation in which supporting written material and electronic media is made available to all participants;
2. Discuss the locations and types of sensitive biological resources on the project site and adjacent areas;
3. Present the reasons for protecting these resources;
4. Present the meaning of various temporary and permanent habitat protection measures;
5. Identify whom to contact if there are further comments and questions about the material discussed in the program;
6. Include a training acknowledgment form to be signed by each worker indicating that they received training and shall abide by the guidelines; and
7. Instruct all employees and contractors to look under vehicles and equipment for the presence of protected species prior to movement. No equipment will be moved until the animal has left voluntarily or it is removed by a biologist authorized to do so. Any time a vehicle is parked, the ground around and under the vehicle will be inspected for desert tortoises and other wildlife before the vehicle is moved.

The specific program can be administered by a competent individual(s) acceptable to the Designated Biologist.

Verification: At least 60 days prior to the start of any site (or related facilities) mobilization, the project owner shall provide to the CPM two copies of the proposed draft WEAP and all supporting written materials and electronic media prepared or reviewed by the Designated Biologist and a resume of the person(s) administering the program.

The project owner shall provide in the Monthly Compliance Report the number of persons who have completed the training in the prior month and a running total of all persons who have completed the training to date. At least ten days prior to site and related facilities mobilization, submit two copies of the CPM-approved final WEAP.

Training acknowledgement forms signed during construction shall be kept on file by the project owner for at least six months after the start of commercial operation. During project operation, signed statements for operational personnel shall be kept on file for six months following the termination of an individual's employment.

BIOLOGICAL RESOURCES MITIGATION IMPLEMENTATION AND MONITORING PLAN (BRMIMP)

BIO-6 The project owner shall develop a BRMIMP, submit two copies of the proposed BRMIMP to the CPM (for review and approval) and shall implement the measures identified in the approved BRMIMP. The BRMIMP shall be prepared in consultation with the Designated Biologist and shall include:

1. All mitigation measures identified in Biological Resources section 6.4 and Appendix H of the AFC (Victorville 2007a), responses to data requests (ENSR 2007d), and the Draft Biological Assessment (ENSR 2007b) unless they conflict with terms and conditions required in the Biological Opinion or elsewhere in the conditions of certification. In the case of an apparent conflict in mitigation measures, the project owner shall prior to completion of the final BRMIMP notify the CPM, who will confer with USFWS and CDFG, and then clarify and resolve the differences.
2. All biological resources mitigation, monitoring, and compliance measures proposed and agreed to by the project owner;
3. All biological resources conditions of certification identified as necessary to avoid or mitigate impacts;
4. All biological resource mitigation, monitoring and compliance measures required in federal agency terms and conditions, such as those provided in the USFWS Biological Opinion (2008a);

5. All biological resources mitigation, monitoring and compliance measures required in other state agency terms and conditions, such as those provided in the RWQCB permit (if needed);
6. All sensitive biological resources to be impacted (e.g., burrowing owl, desert tortoise, Mohave ground squirrel, Joshua trees, and cacti), avoided (e.g., southwestern pond turtle, San Diego coast horned lizard, Mojave River vole, San Emigdio blue butterfly), or mitigated by project construction, operation, and closure;
7. All required mitigation measures for each sensitive biological resource;
8. A raven control plan;
9. A final desert tortoise translocation plan and written comments on the plan as proof that it is acceptable to CDFG and USFWS. The elements of the plan shall include, but are not limited to, survey methods for locating and removing animals from the project area, holding and transport protocol, monitoring of translocation tortoises through permanent identification of animals, disease testing and management strategy, and a contingency plan;
10. A copy of the Burrowing Owl Mitigation and Monitoring Plan submitted to CDFG;
11. A Rare Plant Survey Report and if rare plants are found, a rare plant mitigation plan;
12. A wetland mitigation plan for temporary and permanent impacts to state and federal jurisdictional waters. This component is only needed if project changes affecting jurisdictional waters occur after project licensing;
13. A detailed description of measures that shall be taken to avoid or mitigate temporary disturbances from construction activities (e.g., restoration of desert saltbush scrub habitat for San Emigdio blue butterfly);
14. All locations on a map, at an approved scale, of sensitive biological resource areas subject to disturbance and areas requiring temporary protection and avoidance during construction;
15. Aerial photographs, at an approved scale, of all areas to be disturbed during project construction activities; include one set prior to any site or related facilities mobilization disturbance and one set subsequent to completion of project construction. Provide planned timing of aerial photography and a description of why times were chosen. Provide a final accounting of the before/after acreages and a determination of whether additional habitat compensation is necessary in the Construction Termination Report;

16. Duration for each type of monitoring and a description of monitoring methodologies and frequency;
17. Performance standards to be used to help decide if/when proposed mitigation is or is not successful;
18. All performance standards and remedial measures to be implemented if performance standards are not met;
19. A discussion of biological resources-related facility closure measures including a description of funding mechanism(s);
20. Restoration and re-vegetation plan that addresses protection, compensation, or salvage methods for Joshua trees, cacti, and creosote rings;
21. A process for proposing plan modifications to the CPM and appropriate agencies for review and approval; and
22. Copies of all biological resources-related permits obtained.

Verification: The project owner shall submit the BRMIMP to the CPM at least 45 days prior to start of any site (or related facilities) mobilization. The BRMIMP shall contain all of the required measures included in Conditions of Certification **BIO-6, BIO-8, BIO-9, BIO-10, BIO-12, BIO-13, BIO-15, BIO-17 and BIO-18**. No ground disturbance may occur prior to the CPM's approval of the final BRMIMP.

The CPM, in consultation with other appropriate agencies, will determine the BRMIMP's acceptability within 30 days of receipt. If there are any permits that have not yet been received when the BRMIMP is first submitted, these permits shall be submitted to the CPM within five days of their receipt, and the BRMIMP shall be revised or supplemented to reflect the permit condition within ten days of their receipt by the project owner. Ten days prior to site and related facilities mobilization the revised BRMIMP shall be resubmitted to the CPM.

The project owner shall notify the CPM no less than five working days before implementing any modifications to the approved BRMIMP to obtain CPM approval.

Any changes to the approved BRMIMP must also be approved by the CPM in consultation with appropriate agencies to ensure no conflicts exist.

Implementation of BRMIMP measures (e.g., rare plant and burrowing owl survey results, construction activities that were monitored, species observed) will be reported in the Monthly Compliance Reports by the Designated Biologist. Within 30 days after completion of project construction, the project owner shall provide to the CPM, for review and approval, a written construction termination report identifying which items of the BRMIMP have been completed, a summary of all modifications to mitigation measures made during the project's site mobilization,

ground disturbance, grading, and construction phases, and which mitigation and monitoring items are still outstanding.

CLOSURE PLAN MEASURES

BIO-7 The project owner shall implement and incorporate into the facility closure plan measures that address the local biological resources related to facility closure. The facility closure plan shall address biological resources-related mitigation measures. The plan must include the following in a Biological Resources Element:

1. Removal of transmission conductors when they are no longer used and useful;
2. Removal of all above ground and subsurface power plant site facilities and related facilities;
3. Methods for restoring wildlife habitat and promoting the re-establishment of native plant and wildlife species;
4. Re-vegetation of the project site and other disturbed areas utilizing appropriate seed mixture;
5. Criteria that would trigger implementation of the plan (e.g., non-operational for one year or greater); and
6. A cost estimate to complete closure-related activities.

In addition, the project owner shall secure funding to ensure implementation of the plan and provide to the CPM written evidence of the dedicated funding mechanism(s) (e.g., performance bond or "sinking" fund to minimize risk). The applicant has indicated that the source of funds shall be the city of Victorville's general fund (Victorville 2007d).

Verification: At least 12 months prior to commencement of planned closure activities, the project owner shall address all biological resources-related issues associated with facility closure, and provide final measures, in a Biological Resources Element. The draft planned permanent or unplanned closure measures shall be submitted to the CPM for comment by staff, CDFG, and USFWS. After revision, final measures shall comprise the Biological Resources Element, which shall include the items listed above as well as written evidence of the dedicated funding mechanism(s) for these measures. The final Biological Resources Element shall become part of the facility closure plan, which is submitted to the CPM within 90 days of the permanent closure or another period of time agreed to by the CPM.

In the event of an unplanned permanent closure, the project owner shall notify the CPM, as well as other responsible agencies, by telephone, fax, or e-mail, within 24 hours and shall take all necessary steps to implement the on-site contingency plan (see **COMPLIANCE** conditions of certification).

Upon facility closure, the project owner shall implement measures in the Biological Resources Element and provide written status updates on all closure activities to the CPM at a frequency determined by the CPM.

IMPACT AVOIDANCE MITIGATION FEATURES

BIO-8 Any time the project owner modifies or finalizes the project design they shall incorporate all feasible measures that avoid or minimize impacts to the local biological resources, including the following:

1. Design, install and maintain transmission line poles, access roads, pulling sites, and storage and parking areas to avoid identified sensitive resources;
2. Avoid impacts to jurisdictional waters;
3. Design, install, and maintain transmission lines and all electrical components in accordance with the Avian Power Line Interaction Committee's (APLIC) Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006 to reduce the likelihood of electrocutions of large birds;
4. Design, install, and maintain transmission lines and all electrical components in accordance with the APLIC Mitigating Bird Collisions with power lines: The State of the Art in 1994 to reduce the likelihood of bird collisions;
5. Eliminate any California Exotic Pest Plants of Concern List A species from landscaping plans;
6. Prescribe a road surfacing and sealant as well as soil bonding and weighting agents to non-paved surfaces that are non-toxic to wildlife and plants; and
7. Design, install, and maintain facility lighting to prevent side casting of light towards wildlife habitat.

Verification: All mitigation measures and their implementation methods shall be included in the BRMIMP. Implementation of the measures will be reported in the Monthly Compliance Reports by the Designated Biologist. Within 30 days after completion of project construction, the project owner shall provide to the CPM, for review and approval, a written construction termination report identifying how measures have been completed.

MITIGATION MANAGEMENT TO AVOID HARASSMENT OR HARM

BIO-9 The project owner shall implement the following measures to manage their construction site and related facilities in a manner to avoid or minimize impacts to local biological resources:

1. Install temporary fencing and provide wildlife escape ramps for construction areas that contain steep walled holes or trenches if outside of an approved, permanent exclusionary fence. The temporary fence shall be hardware cloth or similar materials that are acceptable to USFWS and CDFG;
2. Contact the Designated Biologist or Biological Monitor if wildlife is found within the permanent or temporary fenceline during construction and if it does not leave voluntarily without physical contact or harassment within 24 hours of being found. Actions to prevent physical harm to any wildlife from construction equipment shall immediately be taken by on-site staff. The local office of CDFG shall be contacted within 24 hours if sensitive wildlife is found within the fenceline during operations. For any wildlife found within the fenceline during construction, a report shall be completed by the Designated Biologist and submitted with the Monthly Compliance Report. For any wildlife found within the fenceline during operations, a report shall be completed by the Designated Biologist and submitted with the Annual Compliance Report for the life of the project.
3. Make certain all food-related trash is disposed of in closed containers and removed at least once a week;
4. Prohibit feeding of wildlife by all workers;
5. Except for certified law enforcement personnel, all individuals will be prohibited from bringing firearms or weapons to the site;
6. Prohibit pets from being brought to the site;
7. Minimize use of rodenticides and herbicides in the project area and prohibit the use of chemicals and pesticides known to cause harm to amphibians; and
9. Report all encounters with federally- or state-listed species to the Designated Biologist, who will record the following information for the monthly compliance report: (1) species name; (2) location (global positioning system coordinates, narrative and maps) and dates of observations; (3) general condition and health, including injuries and state of healing; (4) diagnostic markings, including identification numbers or markers; and (5) locations moved from and to.

Verification: All mitigation measures and their implementation methods shall be included in the BRMIMP. Implementation of the measures will be reported in the Monthly Compliance Reports by the Designated Biologist. Within 30 days after completion of project construction, the project owner shall provide to the CPM, for review and approval, a written construction termination report identifying how measures have been completed.

NESTING OR MIGRATORY BIRD SURVEYS AND IMPACT AVOIDANCE

BIO-10 The project owner shall implement the following measures to avoid or minimize impacts to nesting birds:

1. If ground disturbance activities will occur when birds, including but not limited to Le Conte's thrasher and loggerhead shrike, could be nesting on the power plant site, complete a pre-construction survey for nesting birds in the project area 30 days prior to the start of initial ground disturbance activities to assess presence and need for mitigation. Consult USFWS and CDFG if needed to determine an appropriate survey period.
2. Complete a pre-construction survey for other nesting birds in the remainder of the project area (e.g., linear facilities) during an appropriate survey period determined in consultation with USFWS and CDFG and no less than 30 days prior to the start of initial ground disturbance activities.
3. If active, occupied nests are found, schedule work outside nesting and fledging periods. If this is not possible, fence the nest site a minimum of 200 feet (500 feet for federally or state-listed species and/or raptors) in all directions. This area shall not be disturbed until after September 15 and/or until the nest becomes inactive. These species include southwestern willow flycatcher, least Bell's vireo, western yellow-bird cuckoo, and other special-status birds that could nest in riparian habitat associated with the Mojave River. See B10-18 for additional requirements related to drainages and riparian areas.
4. Common raven nests in desert tortoise habitat shall be removed as part of desert tortoise mitigation during the non-nesting period in consultation with USFWS and CDFG.

Verification: At least 60 days prior to start of any project-related ground disturbance activities, the project owner shall provide the CPM with the final version of the BRMIMP, which includes nesting bird survey results and any necessary impact avoidance measures. All modifications to the approved BRMIMP must be made only after review and approval by the CPM in consultation with CDFG and USFWS.

DESERT TORTOISE, MOHAVE GROUND SQUIRREL, BURROWING OWL, AND CREOSOTE RING COMPENSATION

BIO-11 To compensate for temporary and permanent impacts to desert tortoise, Mohave ground squirrel, burrowing owl, creosote rings, and their habitat, the project owner shall implement a habitat compensation strategy that guarantees the perpetual care of at least 1,315.5 acres of off-site habitat in the region of the proposed project. The selected compensation land must be suitable for all three special-status species and creosote rings as determined by the CPM through consultation with the Mohave ground squirrel

technical advisory group, CDFG, other technical advisory groups recommended by CDFG, and USFWS. The project owner shall attempt to acquire parcels that are as contiguous as possible in the same timeframe rather (i.e., avoid significantly separated parcels and "piecemeal" acquisition). This mitigation acreage shall not overlap with other previously planned compensation land requirements set aside for other city projects.

As part of this condition, project owner shall:

1. Transfer fee title for the habitat compensation lands or a conservation easement over the habitat compensation lands to CDFG or to a third party non-profit habitat conservation organization (hereafter referred to as "third party"), such as DTTPC, with experience in acquiring and protecting desert tortoise, Mohave ground squirrel, and burrowing owl habitat, approved by the CPM, in consultation with CDFG, under terms approved by the CPM. No third party shall be approved by the CPM until after the CPM has reviewed the third party's management plan. In the alternative, if approved by the CPM, the project owner may provide a check or a letter of credit to CDFG with a copy to the CPM in an amount deemed sufficient by the CPM, in consultation with CDFG, for acquisition of the habitat compensation lands identified in this condition of certification.
2. Provide to the third party or CDFG a check in the amount acceptable to the CPM, in consultation with CDFG, drawn from a banking institution located within California, for use as principal for a permanent, non-wasting capital endowment. The endowment amount shall be determined through a PAR analysis. Interest from this amount shall be available for the operation, management and protection of the habitat compensation lands, including reasonable administrative overhead, biological monitoring, improvements to carrying capacity, law enforcement measures, and any other action designed to protect or improve the habitat values of the habitat compensation lands. The endowment principal shall not be drawn upon unless such withdrawal is deemed necessary by the CPM, in consultation with CDFG, to ensure the continued viability of the species on the habitat compensation lands. The CPM, in consultation with CDFG, will decide how the funds will be spent. Monies received by CDFG pursuant to this provision shall be deposited in a special deposit account established pursuant to Fish and Game Code section 13014.
3. The project owner shall provide to the third party or CDFG funds for the initial protection and enhancement of the habitat compensation lands, if the PAR analysis indicates that such activities are needed for the specific parcels selected. The amount required for initial protection and enhancement needs to be approved by the CPM, in consultation with CDFG, once the project owner identifies the habitat compensation lands. Alternatively, project owner may fund CDFG's initial protection and enhancement of the lands by providing the funds required for the initial protection and enhancement as determined by the CPM, in consultation with CDFG, to CDFG.

The project owner may proceed with ground-disturbing project activities before completing all of the required mitigation (including acquisition of habitat compensation lands), monitoring, and reporting activities only if the project owner ensures funding to

complete those activities by providing to the CPM and CDFG prior to commencing ground-disturbing activities or within 12 months of publication of the Energy Commission Decision, whichever occurs first: an irrevocable letter of credit, a pledged savings account, or another form of security ("Security") approved by the Office of the General Counsel at the Energy Commission, in consultation with CDFG, in the amount necessary to ensure that all funds required pursuant to 1 - 3 above are available. The Security shall allow the Energy Commission and CDFG, to draw on the principal sum if the CPM, in consultation with CDFG, determines that project owner has failed to comply with the conditions of certification.

Verification: No later than 12 months following the publication of the Energy Commission Decision, the project owner will provide written verification to the CPM that the habitat compensation purchase has been completed. At the same time, the project owner will provide a certified check for the endowment and for initial protection and restoration activities, if required, to the third party **or** CDFG and written verification to the CPM that the check has been provided. Within six months of the land purchase (as determined by the date on title), the project owner shall provide the CPM a management plan for the habitat compensation lands and associated funds for review and approval in consultation with CDFG.

Within 90 days after completion of project construction, the project owner shall provide the CPM aerial photographs taken after construction and an analysis of the amount of any habitat disturbance additional to that identified in this staff assessment. The CPM will notify the project owner of any additional funds required to compensate for any additional habitat disturbances at the adjusted market value at the time of construction to acquire and manage habitat.

DESERT TORTOISE IMPACT AVOIDANCE AND MINIMIZATION MEASURES

BIO-12

The project owner shall comply with the final Desert Tortoise Translocation Plan, which shall be incorporated into the BRMIMP. The project owner cannot commence ground-disturbing activities until the CPM, in consultation with CDFG, and USFWS provide written approval of the final Desert Tortoise Translocation Plan.

Verification: At least 30 days prior to the start of any site or related facilities mobilization activities, the project owner shall incorporate the associated terms and conditions of the USFWS Biological Opinion and the final Desert Tortoise Translocation Plan into the project's BRMIMP, and implement them.

MOHAVE GROUND SQUIRREL IMPACT AVOIDANCE AND MINIMIZATION MEASURES

BIO-13 The project owner shall implement the following measures for Mohave ground squirrel:

1. Project-related personnel shall access the project site during construction and development activities using existing routes and shall not cross Mohave ground squirrel habitat outside of the project site. To the extent possible, previously disturbed areas within the project site shall be used for temporary storage areas, staging/laydown sites, and any other surface-disturbing activities. If construction of off-site routes of travel will be required, CDFG and the CPM shall be contacted prior to carrying out such an activity.
2. Project owner's obligations under the Energy Commission's license do not end until the CPM, in consultation with CDFG, accepts the Final Mitigation Report as complete.
3. If a Mohave ground squirrel is found in a burrow during project-related activities on the site, it shall be immediately relocated to a burrow at a protected off-site location approved by the CDFG's Regional Representative. The Mohave ground squirrel may only be relocated by a qualified biologist. The relocation burrow shall be prepared in the following manner: dig a hole at least two (2) feet deep, place a nine (9) inch diameter plastic container (with thick enough walls that it will not collapse when buried) in the hole, place cotton bedding material in the container, connect the container to a three (3) inch diameter flexible plastic pipe (with thick enough walls that it will not collapse when buried) running to the surface at a 45 degree angle, cover the artificial burrow with dirt leaving the surface end of the three inch pipe open, and place the Mohave ground squirrel in the artificial burrow and lightly plug the burrow mouth with soil (in a manner similar to what Mohave ground squirrel do in natural burrows). Written notification shall include the date, time, location and circumstances of the incident, the name of the party that actually relocated the animal, and the location (including GPS coordinates) to which the animal was moved.
4. If the applicant chooses to conduct protocol-level trapping in transmission line segments 2 or 3 and the results are negative, the applicant has one year from the survey date to complete project work in these areas and exclude these areas from mitigation requirements above.

Verification: At least 30 days prior to the start of any site or related facilities mobilization activities, the project owner shall incorporate the above terms and conditions into the project's BRMIMP, and implement them.

SITE AND COMPENSATION LANDS ACCESS

B10-14 The project owner shall provide Energy Commission and CDFG representatives with reasonable access to the project site and compensation lands under the control of the project owner and shall otherwise fully cooperate with the Energy Commission's and CDFG's efforts to verify the project owner's compliance with, or the effectiveness of, mitigation measures set forth in the conditions of certification. The project owner shall hold the Designated Biologist, the Energy Commission, and CDFG harmless for any costs the project owner incurs in complying with the management measures, including stop work orders issued by the CPM, CDFG, or the Designated Biologist.

Verification: The project owner shall establish procedures for CEC and CDFG representatives to gain access to the project site and compensation lands under the control of the project owner.

BURROWING OWL IMPACT AVOIDANCE AND MINIMIZATION MEASURES

BIO-15 The project owner shall implement the following measures for the burrowing owl:

1. Complete a pre-construction survey for burrowing owls on the project site and linear facilities (this also supplements previously unsurveyed areas) no less than 30 days prior to the start of initial ground disturbance activities. If burrowing owls are present within 500 feet of the project site or linear facilities, then the CDFG burrowing owl guidelines (1995) shall be implemented;
2. Monitor burrowing owl pairs within 500 feet of any activities that exceed ambient noise and/or vibration levels;
3. Establish a SOD-foot set back from any active burrow and construct additional noise/visual barriers (e.g., haystacks or plywood fencing) to shield the active burrow from construction activities. Post signs (in both English and Spanish) designating presence of sensitive area;
4. Passively relocate all owls occupying burrows that will be temporarily or permanently impacted by the project and implement the following CDFG take avoidance measures (Victorville, Attachment DR 10-10):
 - A. Occupied burrows shall not be disturbed during the nesting season (February 1 - August 31) unless a qualified biologist can verify through non-invasive methods that egg laying/incubation has not begun or juveniles are foraging independently and able to fly;
 - B. A qualified biologist must relocate owls, confirm that owls have left burrows prior to ground-disturbing activities, and monitor the burrows. Once evacuation is confirmed, the biologist should hand excavate burrows and then fill burrows to prevent reoccupation; and

C. Relocation of owls shall be approved by and conducted in consultation with CDFG.

5. Submit a Burrowing Owl Mitigation and Monitoring Plan to CDFG for review and approval prior to relocation of owls (and incorporate it into the project's BRMIMP) as well as a construction termination report with results to CDFG and CPM 30 days after completing owl relocation and monitoring and at least 30 days prior to the start of commercial operation.

Verification: The project owner shall submit a report to CDFG, USFWS, and the CPM at least 30 days prior to the start of site mobilization that describes when surveys were completed, observations, mitigation measures, and the results of the measures. If owls are to be relocated, the project owner shall coordinate with and report to CDFG on the number of new burrows, their locations, and how any created burrows/individuals and compensation land will be protected for the life of the project in a Burrowing Owl Mitigation and Monitoring Plan. Within 30 days after completion of owl relocation and monitoring, and the start of ground disturbance or at least 90 days prior to the sale of power, the project owner shall provide to the CDFG and CPM a written construction termination report identifying how measures have been completed.

RARE PLANT SURVEY AND IMPACT AVOIDANCE

BIO-16 A qualified botanist shall survey for rare plants on the power plant site and in suitable habitat along linear facilities in the spring of 2008 (and other appropriate identification periods if needed) according to the California Native Plant Society's Botanical Survey Guidelines (CNPS 2001). Immediately following the survey, submit a Rare Plant Survey Report to the CPM. This submittal may be included as part of the Monthly Compliance Report. If no rare plants are found, no further mitigation will be required. If any rare plants are found, the following measures shall be implemented:

1. Immediately submit a completed California Native Species Form to the CNDDDB.
2. If the plants can be avoided, they will be clearly marked in the field by a qualified botanist for avoidance during construction activities.
3. If avoidance is not possible, consult with the CPM and CDFG to develop a mitigation plan, which could include salvage of plants by CDFG a minimum of ten days prior to ground disturbance, creation of off-site occurrences through transplantation or seed banking, preservation through additional habitat acquisition, enhancement of existing occurrences, and/or restoration or creation of suitable habitat in sufficient quantities to compensate to for the impact(s).
4. Incorporate the mitigation plan into the final BRMIMP.

In no event shall any project related ground disturbance occur until the CPM, in consultation with CDFG, has approved the rare plant survey and mitigation plan, if required.

Verification: At least 30 days prior to start of any project-related ground disturbance activities, the project owner shall perform a survey for rare plants. The survey results, and if rare plants are present, the actions taken to avoid, minimize, or compensate for any rare plants located, shall be documented in the Rare Plant Survey Report and submitted to the CPM. Immediately following the survey, California Native Species Forms shall be submitted to the CNDDB for each rare plant occurrence located. The mitigation plan, if needed, shall be approved by the CPM in consultation with CDFG and incorporated into the final BRMIMP.

JOSHUA TREE, CACTI, AND CREOSOTE RING PROTECTION, SALVAGE, AND RELOCATION

BIO-17 The project owner shall incorporate into the BRMIMP a plan that address the protection of Joshua trees, cacti, and creosote rings as well as obtain the necessary permits related to impacting these plants. The details of the compensation land required for creosote rings are specified in **BIO-11**. The desert native plant protection, compensation, and salvage plan shall address the following elements including but not limited to those below:

1. An inventory of all Joshua trees, cacti, and 10-foot-diameter creosote rings. The inventory shall include photographs, mapped locations, and measurements for each creosote ring;
2. Plant retention/relocation/removal plan;
3. Plant avoidance or protection measures;
4. Landscaping plan;
5. Re-vegetation plan;
6. Transplantation measures and success criteria;
7. Compensation methods;
8. Maps showing agency-approved plant relocation areas;
9. Contact information and terms of agreements/contracts with local plant adoption programs or nurseries, if used; and
10. Mitigation monitoring and reporting.

Verification: At least 60 days prior to start of any project-related ground disturbance activities, the project owner shall perform an inventory of Joshua trees, cacti, and creosote rings. The survey results, and actions taken to avoid, minimize, or compensate for impacts, shall be documented in the Monthly Compliance Report by the Designated Biologist and that report submitted to the CPM. The desert native plant protection, compensation, and salvage plan shall

be made part of the BRMIMP. At least 60 days prior to the start of any site or related facilities mobilization activities, the project owner shall submit to the CPM copies of the plan and permits authorizing removal/relocation of these plants from the County, the city of Victorville, and the city of Hesperia, as necessary. The project owner shall implement all permit terms and conditions and report on their status in the Monthly Compliance Report.

STREAMBED IMPACT AVOIDANCE AND MINIMIZATION MEASURES

BIO-18 The project owner shall not divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from any drainage during construction and operation of the project. The project owner may use the existing roadway located at drainage D2 for the purpose of inspecting and maintaining the wastewater pipeline and transmission line, but only during periods when there is no flow in the drainage.

Verification: The CPM shall ensure that project owner does not divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from any drainage during construction and operation of the project.

**STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION**

In the Matter of:)	Docket No. 07-AFC-1
)	
Application for Certification,)	ELECTRONIC PROOF OF SERVICE
for the VICTORVILLE 2)	LIST
HYBRID POWER PROJECT)	
by the City of Victorville)	(revised September 6, 2007)
)	
_____)	

Transmission via electronic mail and by depositing one original signed document with FedEx overnight mail delivery service at Costa Mesa, California with delivery fees thereon fully prepaid and addressed to the following:

DOCKET UNIT

CALIFORNIA ENERGY COMMISSION

Attn: DOCKET NO. 07-AFC-1
1516 Ninth Street, MS-4
Sacramento, California 95814-5512
docket@energy.state.ca.us

Transmission via electronic mail addressed to the following:

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APPLICANT'S CONSULTANTS

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VICTORVILLE II HYBRID POWER PROJECT
CEC Docket No. 07-AFC-1

Sara Head

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INTERESTED AGENCIES

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DECLARATION OF SERVICE

I, Paul Kihm, declare that on May 2, 2008, I deposited a copy of the attached:

APPLICANT'S SUPPLEMENTAL FILING REGARDING BIOLOGICAL RESOURCES

with FedEx overnight mail delivery service at Costa Mesa, California with delivery fees thereon fully prepaid and addressed to the California Energy Commission. I further declare that transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service List above.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 2, 2008, at Costa Mesa, California.



Paul Kihm

**STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION**

In the Matter of:)	Docket No. 07-AFC-1
)	
Application for Certification,)	PROOF OF SERVICE LIST
for the VICTORVILLE 2)	
HYBRID POWER PROJECT)	(revised September 6, 2007)
by the City of Victorville)	
_____)	

Transmission by depositing six (6) DVD copies with FedEx overnight mail delivery service at Costa Mesa, California with delivery fees thereon fully prepaid and addressed to the following:

DOCKET UNIT

CALIFORNIA ENERGY COMMISSION

Attn: DOCKET NO. 07-AFC-1
1516 Ninth Street, MS-4
Sacramento, California 95814-5512
docket@energy.state.ca.us

Transmission by depositing one (1) DVD copy via U.S. Mail addressed to the following:

APPLICANT

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APPLICANT'S CONSULTANTS

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VICTORVILLE II HYBRID POWER PROJECT
CEC Docket No. 07-AFC-1

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DECLARATION OF SERVICE

I, Paul Kihm, declare that on May 2, 2008, I deposited a copy of the attached:

DRAINAGE VIDEO, APRIL 30, 2008

with FedEx overnight mail delivery service at Costa Mesa, California with delivery fees thereon fully prepaid and addressed to the California Energy Commission. I further declare that transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service List above.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 2, 2008, at Costa Mesa, California.



Paul Kihm

 **WILLIAMS LEA**
corporate information solutions

714-979-9400

Victorville 2 Hybrid
Power Project

Drainage Video
April 30, 2008