

Memorandum

Date: January 3, 2008
Telephone: (916) 653-1245

To: Commissioner Jeffrey F. Byron, Presiding Member
Commissioner John L. Geesman, Associate Member
Garrett Shean, Hearing Officer

From: California Energy Commission -
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DOCKET 06-AFC-10	
DATE	JAN 03 2008
RECD.	JAN 03 2008

Subject: **STARWOOD POWER PROJECT (06-AFC-10) PMPD COMMENTS**

Attached are staff's PMPD Comments for the proposed Starwood Power Project (SPP).

Starwood Proof of Service List
Mail List: 7221 7222, 7223

Proof of Service List (Revised on 3/16/07)
filed with Original Document. Mailed from
Sacramento on 1/3/08 TP.

Page 52. First Item on Table page (last item in Federal Section of Table).

Staff suggests moving this item to the hazardous materials section, as staff believes that the Emergency Planning and Community Right-to-Know Act LORS is not appropriate for the air quality section. It is appropriate for the hazardous materials section as it is only triggered through the manufacture, process, or otherwise use of listed toxic materials, which do not have to have any air quality component, or air quality releases.

BIOLOGICAL RESOURCES

Page 57. Operational Impact Mitigation.

Mitigation for operational impacts of wastewater evaporation pond should include both BIO-11 (Evaporation Pond Monitoring) and BIO-10 (Evaporation Pond Design). Specification of water quality and wildlife usage action is provided. Changes proposed as follows:

Staff suggests the following revision:

Mitigation: The Project Owner shall design and monitor the evaporation pond to avoid impacts to ~~for~~ water quality and prevent wildlife usage. Conditions BIO-10 and BIO-11.

Page 60. Short-term Construction Disturbance, first paragraph.

The CDFG has determined that the kit fox may be impacted by construction and operation of the project, requiring habitat compensation. The CDFG had a relatively minor, secondary role in determining impacts and recommending mitigation for SJKF.

Staff suggests the following revision:

The USFWS and CDFG ~~has~~ have determined that the kit fox may be impacted by construction and operation of the project, requiring habitat compensation.

CULTURAL RESOURCES

Page 87. Condition of Certification CUL-5, first paragraph, first sentence.

Staff suggests the following revision:

Prior to and during the start of pre-construction site mobilization; construction ground disturbance; construction grading, boring, and trenching; and construction, the project owner shall provide Worker Environmental Awareness Program (WEAP) training to ~~project managers, construction supervisors, foremen, and general~~

workers who are involved with or operate ground disturbing equipment or tools all new workers within their first week of employment at the project site and on the linear facilities. The training shall be prepared by the CRS, may be conducted by any member of the archaeological team, and may be presented in the form of a video. The CRS shall be available (by telephone or in person) to answer questions posed by employees. The training may be discontinued when ground disturbance, including landscaping, is completed.

The following is staff's rationale for recommending cultural resources awareness training to all workers present during ground disturbance on the construction site and in the areas where linear facilities are being installed:

Under CEQA, staff has a responsibility to evaluate cultural resources discovered during construction (largely limited to buried archaeological deposits) and to recommend appropriate mitigation for the destruction of such resources evaluated as significant. To accomplish these tasks, staff relies on having persons on the construction site who can recognize cultural resources when they are encountered during excavations. Generally, two kinds of people are available to assist staff in this way: archaeological monitors and construction workers trained to recognize cultural resources.

In recent years, staff has usually recommended having both archaeological monitors and trained workers on a construction site because that gave staff greater flexibility. With all workers on-site or at the linear facility construction zones during ground disturbance being trained to recognize cultural resources, staff could prescribe a variable level of archaeological monitoring, ranging from no monitoring at all to full-time monitoring, "customized" for each project according to the particulars of the project. To customize monitoring, staff could take into consideration whether or not there were known resources on or near the construction site and factor in the specific site and area history, with previous historic and prehistoric use as indicators of possible subsurface remains. Additionally, having both kinds of people on a construction site made it possible for staff to recommend allowing the CRS to request a reduction in archaeological monitoring when he or she thought it was warranted.

Staff's willingness to recommend no archaeological monitoring or allowing a reduction in monitoring was based on the assumption that there was a "safety net" in place during ground disturbance—universal worker training in cultural resources awareness. Staff has depended on having universal worker cultural resources training as a baseline or standard for two reasons. First, archaeological sensibility and practice are very conservative, so the more trained eyes on the ground, the better—that is, the more likely that a cultural resource find will be recognized. Second, project owners did not object to this provision—in fact, they usually proposed it themselves. Staff thinks this is the case because the training was not time-consuming; it was easily integrated with existing worker training in safety and awareness of other environmental resources, such as endangered animals, plants, and fossils; and it demonstrated the owners' willingness to be "good corporate citizens."

The PMPD for the SPP has changed the baseline staff has relied on to assure that cultural resources finds will be recognized if encountered during construction ground disturbance. It limits worker cultural resources training to specifically named categories of workers, and so staff's "safety net" would be present only where those workers were present.

Staff seeks to maintain the archaeologically conservative status quo, including universal worker cultural resources awareness training to provide baseline coverage of the entire site during ground disturbance as well as a variable, "customized" level of archaeological monitoring of the active earthmoving. As justification for this, staff points out that:

- construction sites continue to be large expanses of exposed soil for much longer than the period during which active excavation is ongoing;
- archaeologists are not present everywhere on a construction site or necessarily present at all if a CPM has approved a CRS's request for a reduced monitoring level, as allowed in CUL-6; and
- on a large site, archaeological monitors can only cover so much territory and typically focus on active earthmoving machines.

Whether archaeologists are present or not, many kinds of workers beyond those immediately involved in ground disturbance are everywhere on a construction site or on the linears and are present continually, so they have many more opportunities than archaeological monitors to observe soils widely and possibly to recognize cultural resources. Additionally, they can observe soils under more favorable conditions, for example—dust-spraying can bring out soil color differences that can be an indicator of previous human activity. If no cultural resources professionals are present, staff relies entirely on workers, of whatever type, who have been trained to recognize cultural resources and to know how to proceed appropriately.

Implementing the cultural resources awareness training as it is specified in the PMPD CUL-5 could be awkward and inefficient for the project owner. Previously, on Energy Commission-certified projects, biological, cultural, and paleontological resources awareness training was integrated with the health and safety training of all workers. Staff suggests it would be more burdensome for the project owner to provide two kinds of cultural resources training programs—one for selected workers (specified in the PMPD version of CUL-5) and one for everyone else.

Staff reiterates that for the conservative field of archaeology, the more trained eyes, the greater the likelihood that a cultural resource find will be seen, recognized, and reported. That would better enable Energy Commission staff to fulfill its duties under CEQA to evaluate discovered cultural resources for significance and mitigate their loss, if necessary. If staff cannot assume the "safety net" of universal worker cultural resources awareness training during the ground disturbance phase of a project's construction, it will have to forego "customizing" archaeological monitoring and recommend more continuous and extensive archaeological monitoring to enhance the likelihood that cultural resources discoveries will be recognized and properly treated.

HAZARDOUS MATERIALS

Page 107 and 117. Transportation Mitigation.

Please include condition of certification HAZ-9, which was erroneously labeled as HAZ-5 in the FSA. This is in addition to the HAZ-5 condition which addresses the type of tanker trucks to be used when delivering aqueous ammonia.

HAZ-9 The project owner shall relocate all persons residing in the 5-plex located about 100 feet from the project's north fenceline prior to the initial delivery of aqueous ammonia to the site.

Verification: At least ten (10) days prior to the first receipt of aqueous ammonia on site, the project owner shall submit a letter to the CPM indicating that the residents have been removed from the buildings.

WATER RESOURCES

Page 221, first paragraph, the text reads as follows:

Since lower quality water is available, it is not in the public interest to potentially vest a right to use the higher quality aqueduct-derived water for the 30-year or more (AFC 3-48)[*Note: This docket number is incorrect.*] life of the project based on the assumption, which is not supported by any evidence in the record, that such high quality water will continue to be available for the next 30 years.

The phrase, "vest a right," mischaracterizes the evidence in the record regarding the applicant's possible water rights, as well as the legal effect of an Energy Commission decision were it to allow use of the backwash water. Both Merriam-Webster's Dictionary of Law (2001), and Black's Law Dictionary (1999), define *vested right* as a right belonging completely and unconditionally to a person as a property interest which cannot be impaired or taken away (as through retroactive legislation) without the consent of the owner. As the facts show, the applicant has a contract with Baker Farms for the purchase and use of collected backwash water generated from the farm's agricultural operations. The connotation of some vested water right should be avoided for clarity because the term implies some Energy Commission-derived property right beyond the actual sales contract that the applicant has negotiated with Baker Farms.

Staff recommends the following change:

Since lower quality water is available, it is not in the public interest to potentially allow the applicant ~~vest a right~~ to use the higher quality aqueduct-derived water for the 30-year or more (AFC 3-48) life of the project (06-AFC-10) based on the assumption, which is not supported by any evidence in the record, that such high quality water will continue to be available for the next 30 years.

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE
STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION
FOR THE **STARWOOD POWER
PLANT**

Docket No. 06-AFC-10
PROOF OF SERVICE
(Revised 3/16/07)

INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

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