

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

July 17, 1996

DOCKET 88 AFC-1 c
DATE: JUL 17 1996
RECD. JUL 25 1996

Mr. Michael Gersick
Grattan, Gersick, Karp & Miller
1029 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Gersick:

RESPONSE TO YOUR CONCERNS ABOUT MARSH WATER LIABILITY - SEGS VIII AND SEGS IX PROJECTS, 88-AFC-1C AND 89-AFC-1C

Thank you for your letter of July 8, 1996, concerning proposed language to finalize the requirement to provide 75 acre feet of water per year to the Harper Lake south and central marshes. Your proposed draft amendment language, which you submitted on June 24, 1996, has been under review. As a result of that review, we are in accord with most of the language you submitted. However, we have made some modifications. One of the changes concerns your proposed paragraph regarding the owner's liability. Our proposed change is acceptable to the Commission from a legal standpoint while accomplishing your objective of protecting the project owners against potential claims. The following is our proposed replacement paragraph:

"The project owner shall never acquire any form of proprietary interest in or control over the water. As a result, the Commission releases, acquits and discharges the project owner from any and all claims for any impacts which result from the discharge of the water. Any obligations for any such impacts rest with the water discharger, not the project owner."

In your letter, you express concern about a June 25, 1996 letter from Tim Read of the Bureau of Land Management (BLM). Mr. Read's letter refers to a potential requirement for the project owners to obtain a right-of-way grant to transport well water to the marsh. We have discussed your objections with BLM representatives, and they have identified an alternative. The alternative is for the owner or contractor to obtain a temporary use permit to cover the period of construction. This is a simple procedure which would avoid the concerns you communicated in your letter. With the right-of-way problem resolved, this would appear to remove objections by the project owner to construction of piping to get the water to the marsh. Therefore we propose to change the second sentence of your proposed language as follows: (deletions indicated by ~~strikeout~~, insertions by *italics*):

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~~If necessary, the project owner shall also provide the CEC or the BLM with the funds necessary to develop a means of conveying~~ *provide and install piping to convey* the water to the BLM's property.

Enclosed is a complete copy of your proposed language with our proposed changes for your information. We appreciate your responsiveness and hope that the amendment can be finalized in the near future. If you have any questions, please contact me at (916) 654-3936.

Sincerely,


STEPHEN D. MUNRO

Compliance Project Manager
Energy Facilities Siting and
Environmental Protection Division

Enclosure

cc: Sally Rakow, Vice Chair
David A Rohy, Commissioner
Gary Fay
Michael Gersick
James N. LaMont
Tom Egan
Ken Carter
Becky Jones
Bob Orcutt

Enclosure

DRAFT ALTERNATIVE SEGS VIII AND IX
MARSH ENHANCEMENT CONDITION
SEGS VIII--BIOLOGICAL RESOURCES CONDITION 5
(and SEGS IX Biological Resources Condition 11k)
7/10/96 (Revised 7/16/96)

The project owner shall, in cooperation with the SEGS IX project owner, locate a source of a combined total of up to 75 acre feet per calendar year of well water capable of being delivered at a point on the BLM's property line indicated on Figure 1, and to secure by contract the right for the BLM to take up to that maximum volume of water for its discretionary use in maintaining the central and/or southern Harper Lake marshes. ~~If necessary, the project owner shall also provide the CEC or the BLM with the funds necessary to develop a means of conveying~~ *provide and install piping to convey* the water to the BLM's property. Source well water quality test results must demonstrate water quality which staff of the Lahontan Regional Water Quality Control Board accepts, in writing, as comparable to ground water in the vicinity of the marshes. After the test results are accepted, there will be no future obligations or requirements on the part of the project owners with respect to the quality of the water source, notwithstanding potential subsequent changes in the water quality from the accepted source well, as long as 75 acre feet per year remain available from the accepted source well.

The project owner shall never acquire any form of proprietary interest in or control over the water. As a result, ~~any liability for any impacts which result from the discharge of the water rests with the CEC or the BLM and not with the project owner.~~ *the Commission releases, acquits and discharges the project owner from any and all claims for any impacts which result from the discharge of the water. Any obligations for any such impacts rest with the water discharger, not the project owner.*

Verification: Within 90 days of signature on the Commission Order implementing this condition, the project owner shall submit all of the following:

1. Well water test results needed for acceptance of the proposed well water source.
2. A simple map and description showing the location of the selected well ~~and~~, the depth of the well. *and the pipe route in relation to the central and southern marshes and relevant property lines.*
3. A letter of commitment: from the water rights owner to provide the CEC or the BLM With up to 75 acre feet of water per year for the life of the project.
4. A statement from the project owner stating that all arrangements have been completed to deliver up to 75 acre feet of water per year to the Commission or the BLM for use by the BLM as authorized by this condition.