

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

DOCKET
89-AFC-1C
DATE <u>OCT 13 2005</u>
RECD. <u>OCT 12 2005</u>

**DATE:** October 13, 2005**TO:** Interested Parties**FROM:** Steve Munro, Compliance Project Manager**SUBJECT:** SEGS IX PROJECT (89-AFC-1C)
NOTICE OF RECEIPT OF PETITION TO MODIFY CONDITION OF
CERTIFICATION BIO-11.k. STAFF'S ANALYSIS FOR PUBLIC REVIEW

On August 30, 2005, the California Energy Commission received a petition from Luz Solar Partners Ltd. VIII and IX to amend the Energy Commission Decision for the Luz SEGS IX Solar Electric Generation Station Project.

SEGS IX is an 80 megawatt solar electric generating station located in the western Mojave Desert about 45 miles east of the town of Mojave and 15 miles west of Barstow in San Bernardino County. The power plant has been operational since October 1, 1990.

DESCRIPTION OF PROPOSED PROJECT CHANGE

Condition of Certification BIO-11.k. requires the project owner to transfer water rights to 75 acre feet per year of water in the Harper Lake Basin to the Bureau of Land Management (BLM) to be used for the maintenance of the Harper Lake Wetlands. These wetlands have been developed by the BLM into a Watchable Wildlife Area under the agency's protection. The purpose of the wetlands is to provide seasonable habitat for migrating birds.

BLM has subsequently determined that it cannot accept state water rights. The modifications proposed in the petition would amend Condition of Certification BIO-11.k. to require the project owner to allow BLM to pump up to 75 acre feet of water per year from the Harper Lake Basin to be used for the maintenance of the Harper Lake Wetlands without transferring water rights.

The modifications proposed in the petition would also remove from BIO-11.k. the requirement that the owner provide \$60,000 to BLM to construct a water well and water conveyance system because Energy Commission staff has confirmed payment of the \$60,000 by the project owner to BLM.

STAFF ANALYSIS

Energy Commission staff reviewed the petition and assessed the impacts of this proposal on environmental quality, public health and safety, and proposes revisions to Condition of Certification BIO-11.k. Biological Resources is the only technical area impacted by this petition.

Staff concludes there will be no significant adverse impacts because the proposed modifications will provide means for the project owner to provide the 75 acre feet of water per year to the BLM for maintenance of the Harper Lake Wetlands as Condition of Certification BIO-11.k. intended. It is Staff's opinion that with the implementation of the revised condition, the project will remain in compliance with applicable laws, ordinances, regulations, and standards pursuant to Title 20, California Code of Regulations, Section 1769, and no adverse environmental impacts will result from this change.

PROPOSED REVISIONS TO CONDITION(S) OF CERTIFICATION

(Deleted text is in ~~strikethrough~~, new text is **bold double-underlined**):

BIO-11.k. The project owner shall, in cooperation with the SEGS VIII project owner, ~~allow transfer water rights to 75 acre feet of water per year, from a producer or producers of water in the Harper Lake Basin to the Bureau of Land Management (BLM)~~ **to pump up to 75 acre feet of water per year**, as described in the Harper Lake Water Agreement (Agreement) ~~included as Appendix A of this Order, which was finalized on April 12, 2005. The water will be used for maintenance of the Harper Lake wetlands. The project owner~~ **has shall also provided** \$60,000 to the BLM to construct a water well and water conveyance system as specified in the Agreement. ~~The required \$60,000 shall be paid by the date specified in the Agreement. The water rights transfer must also be completed and approved by the Mojave Water Agency by the date specified in the Agreement.~~

~~Verification: Within 10 days of payment of the required \$60,000 to the BLM, the project owner shall submit to the CPM a copy of the financial transfer check or instrument. Within 30 days of the transfer of required water rights to the BLM, the project owner shall submit a copy of the water rights transfer document to the CPM. The CPM shall, upon written confirmation from the BLM that the water rights have been transferred and that the required \$60,000 has been received, send a letter notifying the project owner that this condition has been permanently satisfied. Upon notification that the BLM has completed its obligation under the Agreement, the project owner shall sign and return a release and acknowledgment to the BLM and the CPM discharging the BLM and the State from any claims regarding this condition.~~
No later than December 16, 2005, the project owner shall provide photo-documentation of the BLM well along with its latitude and longitude, the well number as assigned by the Watermaster's local designation and state well number designation, and submit this information in writing to the CPM. At the same time it reports its annual water usage to the Mojave River Basin Watermaster, the project owner shall submit to the CPM the annual record of water pumped by BLM.

RECOMMENDATIONS

Energy Commission staff intends to recommend approval of the petition at the November 3, 2005 Business Meeting of the Energy Commission.

PUBLIC REVIEW PROCESS

The petition to amend the project is available on the Energy Commission's website at http://www.energy.ca.gov/siting_pre-1999_compliance/documents/2005-09-07_SEGS_VIII_IX.PDF. Staff's analysis is enclosed for your information and review. If you would like to receive a hard copy of the petition, and/or the Energy Commission Order if the changes are approved, please complete the enclosed Information Request Form and return it to the address shown. If you have comments on this proposed modification, please submit them to Steve Munro, Compliance Project Manager, at the address on this letterhead, or by fax to (916) 654-3882, or by e-mail to smunro@energy.state.ca.us no later than 5:00 P.M., October 28, 2005. This notice is posted on the Commission's website at http://www.energy.ca.gov/siting_pre-1999_compliance/index.html. The Energy Commission Order (if approved), will also be posted on the website.

For further information on how to participate in this proceeding, please contact Margret J. Kim, the Energy Commission's Public Adviser, at (916) 654-4489, or toll free in California at (800) 822-6228, or by e-mail at pao@energy.state.ca.us. If you require special accommodations, please contact Lourdes Quiroz at (916) 654-5146. News media inquiries should be directed to Assistant Director, Claudia Chandler, at (916) 654-4989, or by e-mail at mediaoffice@energy.state.ca.us.

Enclosures:

Staff Analysis
Information Request Form

Mail List # 723

SEGS IX (89-AFC-1)
Petition for Change in Conditions of Certification
Marsh Restoration
Conditions BIO-11.k.
Biological Resources Staff Analysis Prepared by Marc Sazaki
(September 19, 2005)

SETTING

The Solar Electric Generating Station (SEGS) IX is an 80 MW power plant located in the western Mojave Desert about 45 miles east of the town of Mojave and 15 miles west of Barstow in San Bernardino County. The topography and landscape in the vicinity of SEGS IX includes both flat and gently rolling desert scrub habitat with sparsely distributed Joshua trees, but the power plant itself is situated on agricultural land that was spray-irrigated in the past. The power plant is comprised a power block building and control facilities surrounded by about a square mile of solar energy concentrating mirrors with associated heat transfer fluid pipes. No vegetation is allowed to grow in the mirror field and the facility is fenced to keep terrestrial animals out.

APPLICABLE LAWS, ORDINANCES, REGULATIONS, and STANDARDS (LORS)

- Public Resources Code, Section 25003, specifies "...in planning for future electrical generating and related transmission facilities...environmental protection,... should be considered."
- Public Resources Code, Section 25527, states that "...the commission shall give the greatest consideration to the need for protecting areas of critical environmental concern, including, but not limited to, unique and irreplaceable scientific, scenic, and educational wildlife habitats; ... and areas under consideration by the state or the United States for wilderness, or wildlife and game reserves.
- Native Plant Protection Act of 1977, Fish and Game Code Section 1900-1904 state that "The intent of the Legislature and the purpose of this chapter is to preserve, protect and enhance endangered or rare native plants of this state.", and; Section 1911 states that "All state departments and agencies shall, in consultation with the department, utilize their authority in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered or rare native plants. Such programs include, but are not limited to, the identification, delineation and protection of habitat critical to the continued survival of endangered or rare native plants.
- U.S. Endangered Species Act of 1973 and implementing regulations.

ANALYSIS

The SEGS IX power plant was certified on February 4, 1990. At that time, in order to meet the required "need test" for certification, environmental benefits were

deemed by the commission to be necessary for approval. One of the proposed benefits pledged by the owner for this project was that it would provide a reliable source of water for the Bureau of Land Management (BLM) to use in maintaining and managing the Harper Lake wetlands nearby. These wetlands had been designated by the BLM as an Area of Critical Environmental Concern and had historically benefited from irrigated agricultural practices in the area.

Staff worked with the project owner, the BLM, the local California Regional Water Quality Control Board, the California Department of Fish and Game, the Mojave Water Agency, and local special interest groups to develop an arrangement to accomplish the intended environmental benefit.

Initially, after it was determined that power plant blow-down water was unsuitable to serve as source water due to high selenium concentrations, an agreement was reached whereby the project owner would provide funds to drill a well and install a pump and piping system. In addition, water rights for 75 acre feet annually would be transferred from the project owner to BLM. Subsequently, after entering into an agreement approved by the California Energy Commission, BLM discovered it could not accept state water rights, so a new agreement had to be crafted.

A new agreement was developed in September of 2002 whereby a third party non-profit entity would accept and hold, on behalf BLM, annual water rights to 75 acre feet for exclusive use in the Harper Lake wetlands. Upon reexamination of this approach, it was determined that involving the third party entity was ill advised for at least two important reasons: 1) the future viability of the third party entity was uncertain; and 2) Energy Commission compliance enforcement could become problematic.

Now, a new agreement to accomplish the intended environmental benefit for the SEGS IX project has been created and signed by authorized representatives of Luz Solar Partners Ltd., VIII and IX, the BLM and the Energy Commission. The project owner has agreed to allow BLM to pump water for the Harper Lake wetlands and charge the use against the SEGS VIII and IX base annual production allowance as specified in the Mojave River adjudication and implemented under the authority of the Mojave Basin Area Watermaster. A copy of the current agreement is included in the project owner's petition to change Condition of Certification BIO-11.k.

Biology staff has reviewed the petition to change Condition of Certification BIO-11.k. and finds it complete and accurate.

CONCLUSIONS AND RECOMMENDATIONS

Staff concludes that the Luz SEGS IX project can provide the environmental benefit specified in the Energy Commission decision for the SEGS IX (89-AFC-1) project if the terms of the 2005 agreement (Harper Lake Water Agreement for Compliance with Wetland Maintenance Condition of Certification for Solar Electric Generating Station (SEGS) VIII and IX Projects at Harper Lake, California) are fully implemented.

Staff recommends approval of the proposed amendment.

PROPOSED REVISIONS TO EXISTING BIOLOGY CONDITIONS OF CERTIFICATION

Biological Resources

The following changes to condition BIO-11-k. of the SEGS IX Commission Decision are proposed (deletions shown as ~~strikeout~~, additions shown as underlined):

SEGS IX Project

BIO-11.k. The project owner shall, in cooperation with the SEGS VIII project owner, allow ~~transfer water rights to 75 acre foot of water per year, from a producer or producers of water in the Harper Lake Basin to the Bureau of Land Management (BLM) to pump up to 75 acre feet of water per year,~~ as described in the Harper Lake Water Agreement (Agreement) ~~included as Appendix A of this Order, which was finalized on April 12, 2005.~~ The water will be used for maintenance of the Harper Lake wetlands. The project owner has ~~shall~~ also provided \$60,000 to the BLM to construct a water well and water conveyance system as specified in the Agreement. ~~The required \$60,000 shall be paid by the date specified in the Agreement. The water rights transfer must also be completed and approved by the Mojave Water Agency by the date specified in the Agreement.~~

Verification: ~~Within 10 days of payment of the required \$60,000 to the BLM, the project owner shall submit to the CPM a copy of the financial transfer check or instrument. Within 30 days of the transfer of required water rights to the BLM, the project owner shall submit a copy of the water rights transfer document to the CPM. The CPM shall, upon written confirmation from the BLM that the water rights have been transferred and that the required \$60,000 has been received, send a letter notifying the project owner that this condition has been permanently satisfied. Upon notification that the BLM has completed its obligation under the Agreement, The project owner shall sign and return a release and acknowledgment to the BLM and the CPM discharging the BLM and the State from any claims regarding this condition. No later than December 16, 2005, the project owner shall provide photo-documentation of the BLM well along with its latitude and longitude, the well number as assigned by the Watermaster's local designation and state well number designation, and submit this information in writing to the CPM. At the same time it reports its annual water usage to the Mojave River Basin Watermaster, the project owner shall submit to the CPM the annual record of water pumped by BLM.~~

Privacy Policy: You will receive only the information requested, and the Energy Commission will make no additional use of your personal information and it will not be provided to any other entity.

INFORMATION REQUEST FORM

COMPLETE & MAIL TO:

CALIFORNIA ENERGY COMMISSION
COMPLIANCE UNIT
ATTN: STEVE MUNRO
1516 NINTH STREET, MS-2000
SACRAMENTO, CA 95814

OR FAX TO: (916) 654-3882

NAME AND/OR TITLE (AS IT IS TO APPEAR ON MAIL LABEL)

ORGANIZATION (IF APPLICABLE)

STREET ADDRESS OR P.O. BOX

CITY

STATE

ZIP CODE

PROPOSED AMENDMENT TO THE COMMISSION DECISION FOR THE SEGS IX PROJECT TO REQUIRE THE PROJECT TO ALLOW THE BLM TO PUMP UP TO 75 ACRE FEET OF WATER PER YEAR FOR MAINTENANCE OF THE HARPER LAKE WETLANDS.

PLEASE CIRCLE THE DOCUMENTS YOU WOULD LIKE TO RECEIVE:

- PETITION TO AMEND
- ENERGY COMMISSION ORDER

PROJECT: SEGS IX Project

DOCKET NO: 89-AFC-1C

MAIL LIST NO: 723