

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512



DATE: June 1, 2004

TO: Interested Parties

FROM: Donna Stone, Compliance Project Manager

SUBJECT: **Mountainview Power Project (00-AFC-2C)
Staff Analysis of Proposed Changes to the 17-Mile Natural Gas Pipeline and the Resulting Modifications to Conditions of Certification BIO-1 and BIO-6, the elimination of Condition of Certification BIO-8, and the addition of Conditions of Certification BIO-11 and BIO-12.**

On March 18, 2004, the California Energy Commission received a request from Mountainview Power Company, LLC, to amend the Energy Commission Decision for the Mountainview Power Project.

The Mountainview Power Project is a nominal 1056 MW natural gas-fired power plant that was certified by the Energy Commission on March 21, 2001. The facility is located at San Bernardino Avenue at Mountain View Avenue, in the City of Redlands, San Bernardino County, California. The permitted project, as approved in the March 21, 2001 Energy Commission Decision, included a 17-mile, 24-inch natural gas pipeline which would start in the City of Rancho Cucamonga and proceed east through the cities of Fontana, Colton, Rialto, and the City and County of San Bernardino, terminating at the power plant site in the City of Redlands.

This proposed amendment addresses several changes to the pipeline alignment that have resulted from detailed engineering design. These changes are requested by Mountainview Power Company, LLC. in order to reflect final engineering design of the 17.9-mile natural gas line. Mountainview Power Company believes all of the modifications are beneficial to the project and the community. These proposed changes include:

- The addition of a valve station at East Etiwanda Wash
- A horizontal bore under the Union Pacific Railroad tracks just to the north of the Mill Street Bridge
- Elimination of directionally boring 100 feet below the Santa Ana river and instead using an open cell through the Tippecanoe Bridge over the Santa Ana River to cross the river
- Additional construction laydown areas are needed due to the length of the pipeline

Energy Commission staff reviewed the proposed petition and assessed the impacts of this proposal on environmental quality, public health and safety. It was determined that the only potential impacts were to biology, and due to the potential for impacts to sensitive

biological habitats, a federal review was also necessary to keep the project in compliance with the Federal Endangered Species Act. Because the new alignment contained sections that were outside the areas described in the existing Biological Opinion, a new Biological Opinion issued from the United States Fish & Wildlife Service (USFWS) was needed.

On October 10, 2003, the project owner submitted a new application (Biological Assessment) to USFWS through the federal lead on the project, the United States Environmental Protection Agency (USEPA). USFWS and USEPA reviewed the Biological Assessment, analyzed preventive measures the owner proposed and the USFWS issued a revised Biological Opinion May 28, 2004. The attached Energy Commission Staff Analysis incorporates protections requested by USFWS, USEPA and the Energy Commission staff. Staff proposes revisions to existing conditions of certification for biology, **BIO-1** and **BIO-6**, the elimination of **BIO-8** and the addition of conditions **BIO-11** and **BIO-12**. It is Commission staff's opinion that, with the implementation of revised and new conditions, the project will remain in compliance with applicable laws, ordinances, regulations, and standards and that the proposed modifications will not result in a significant adverse direct or cumulative impact to the environment (Title 20, California Code of Regulations, Section 1769).

The amendment petition has been posted on the Energy Commission's webpage at www.energy.ca.gov/sitingcases. Staff's analysis is attached for your information and review. Staff's analysis and the order (if the amendment is approved) are also posted on the webpage. Energy Commission staff intends to recommend approval of the petition at the June 16, 2004 Business Meeting of the Energy Commission. If you have comments on this proposed project change, please submit them to me at the address above prior to June 16, 2004. If you have any questions, please call me at (916) 654-4745 or e-mail at dstone@energy.state.ca.us.

Attachment

Mountainview Power Project (00-AFC-2C)
Staff Analysis of the Proposed Changes to the 17-Mile
Natural Gas Pipeline

Background

In order for the Mountainview Power Project to be in compliance with the federal Endangered Species Act, any project construction outside of the Project Area described in the existing Biological Opinions (a 54.3-acre site plus 14-acre laydown area, a wastewater discharge pipeline, and a natural gas pipeline right-of-way within roadways), must be permitted by the U.S. Fish and Wildlife Service (USFWS). The project owner, through the U.S. Environmental Protection Agency, revised their application to the USFWS (called a Biological Assessment) on October 10, 2003. The new Biological Assessment includes changes to the Mill Street crossing and the Tippecanoe Avenue crossing. The USFWS issued their final Biological Opinion on May 28, 2004. The USFWS incorporated "Conservation Measures" and "Terms and Conditions" into their Biological Opinion which will necessitate a change to the project's approved Conditions of Certification. Staff has made changes to the project's approved Conditions of Certification based on the final Biological Opinion, as described below.

Because Staff has recommended changing the Conditions of Certification for the project, Staff requests the project owner revise their Biological Resources Mitigation Implementation and Monitoring Plan (BRMIMP) within 5 days of receipt of the last biological-resources-related permit for a 10-day review by staff and interested agencies (see revision to **Condition of Certification BIO-6**). As noted in **Condition of Certification BIO-6**, the BRMIMP should be sent to Energy Commission Staff, California Department of Fish and Game, and the USFWS. In addition, copies of any new permits should be submitted for inclusion in Appendix A of the BRMIMP.

Delhi Sands Flower Loving Fly Protections

The USFWS has completed review of the Biological Assessment submitted by U.S. Environmental Protection Agency, which identified potential construction impacts to the Delhi Sands Flower Loving Fly at the Mill Street crossing. Because of the nearness of several fly populations, and the quality of the area, USFWS has requested restoration of on-site lands after construction. The project owner submitted a plan in May 2004 to perform weed control at the site of disturbance and to monitor the area for 3 years. The USFWS adopted the project owner's "Conservation Measures" when they issued a draft Biological Opinion for the gas line. To reduce potential impacts to federally-listed species to less than significant levels, staff recommends the modification of **Condition of Certification BIO-1** and the addition of **Condition of Certification BIO-11**.

San Bernardino Kangaroo Rat Protection

The Biological Opinion found there were both temporary and permanent impacts to San Bernardino kangaroo rat critical habitat. The temporary impacts are the result of a 0.37 acre work area for the natural gas pipeline tie-in at East Etiwanda wash and a 0.14 acre equipment staging area at Tippecanoe Avenue. The only permanent impact is the 0.16-acre valve station at East Etiwanda wash. The previous analysis felt that some level of impact to the SBKR habitat was possible depending on the locations for directional drilling sites at Tippecanoe Avenue and recommended avoidance during construction and the purchase of 2 credits from a local mitigation bank. The project owner is still proposing avoidance measures and to purchase 2 credits to offset the work and staging areas.

To reduce potential impacts to federally-listed species to less than significant levels, staff recommends the modification of **Condition of Certification BIO-1** and the addition of **Condition of Certification BIO-12**. Because the applicant has eliminated the directional drill at Tippecanoe Avenue, **Condition of Certification BIO-8** is unnecessary and should be eliminated.

Santa Ana Woolly Star Protection

The project owner has proposed a flagged pedestrian corridor that will reduce the likelihood of impacts to the Santa Ana Woolly Star to a very low probability. The protocol has been incorporated into **Condition of Certification BIO-1**.

Least Bell's Vireo Protection

The project owner's biologist found three vireos immediately outside of the fence line for the power plant site in April 2004. They offered several measures to the USFWS on May 10, 2004 which would completely avoid impacts to the birds. The USFWS has determined the actions taken are not likely to adversely affect the vireo, and did not adopt any specific measures in their final Biological Opinion. The Energy Commission has reviewed the matter and is not suggesting any changes to the approved Conditions of Certification.

REVISED, DELETED and NEW CONDITIONS OF CERTIFICATION FOR MOUNTAINVIEW POWER PROJECT (00-AFC-2C)

BIO-1: The project owner shall implement the following mitigation measures as identified in Section 6.13.4 found on pages 6.13-48 through 6.13-50 of the MVPC Application for Certification (MVPC 2000a), Section 6.2 of the Biological Assessment (MVPC 2000a, AFC Appendix J), [Section 7 and Appendix B of the revised Biological Assessment \(MVPC 2003\)](#), and within the draft Biological Resources Mitigation Implementation and Monitoring Plan (MVPC 2000II). The project owner's mitigation measures will be incorporated into the final Biological Resources Mitigation Implementation and Monitoring Plan (see Condition of Certification **BIO-6** below) unless the mitigation measures conflict with any future mitigation that may be required by the USFWS and CDFG.

At the proposed power plant expansion the following conditions will apply:

- The project owner will minimize light and noise to the extent possible.

At the Arrow Route crossing of East Etiwanda Wash the following conditions will apply:

- Pre-construction surveys for sensitive species at East Etiwanda Wash will be conducted prior to construction;
- The work area for the gas pipeline will be flagged or fenced prior to ground disturbing activities to prevent construction personnel and/or equipment from disturbing adjacent areas; and
- Staging areas at East Etiwanda Wash will be restricted to the designated 0.36-acre work area and unvegetated (bare soil or paved) lots and ~~will not encroach on the wash~~ encroachment on the wash will be limited to the 0.01 acres tie-in work area on the bank of the wash;
- Grading, trenching, and associated activities are restricted to daylight hours;
- The perimeter of the construction area, including the valve station, work area, and pipe connections, will be delineated with temporary exclusionary fencing buried to a depth of at least 12 inches to exclude the SBKR. The installation and removal of the fencing will avoid direct impacts to existing SBKR burrows;
- The area inside of the temporary exclusionary fencing will be cleared of SBKR prior to the start of construction by a qualified and permitted biologist;
- Construction will be monitored by a qualified biologist(s) or their designee;
- During pipeline emplacement, any sections of the pipeline that are trenched outside of the temporary exclusionary fence will either be backfilled on the same day or be covered with rigid materials to prevent SBKR from entering the trench. If SBKR is detected in a trench, it shall be allowed to escape without harassment or the animal shall be removed from the trench by a qualified biologist;
- Following construction, all areas of temporary disturbance will be regraded, topsoil re-distributed, and the area restored according to an agency-approved plan; and
- Any pipe left outside of the temporary exclusionary fencing shall be inspected by a biological monitor every morning and no pipe containing SBKR shall be moved until the Designated Biologist has been consulted. The pipe may be moved once under the supervision of an approved biological monitor.

At Tippecanoe Avenue crossing of the Santa Ana River the following conditions will apply:

- Sensitive species surveys will be completed prior to construction;
- ~~Construction at this crossing will be timed to avoid the nesting season of most birds (e.g., between late June and November);~~
- Construction will be monitored by a qualified biologist(s) or their designee;
- Habitat disturbance will be mitigated by a restoration and revegetation program;
- ~~The work areas will be delimited with silt fencing or other erosion control structures;~~

- The perimeter of the construction area will be delineated with temporary exclusionary fencing buried to a depth of at least 12 inches to exclude the SBKR. The installation and removal of the fencing will avoid direct impacts to existing SBKR burrows;
- The area inside of the temporary exclusionary fencing will be cleared of SBKR prior to the start of construction by a qualified and permitted biologist;
- Any pipe left outside of the temporary exclusionary fencing shall be inspected by a biological monitor every morning and no pipe containing SBKR shall be moved until the Designated Biologist has been consulted. The pipe may be moved once under the supervision of an approved biological monitor.
- Grading, trenching, and associated activities are restricted to daylight hours;
- During pipeline emplacement, any sections of the pipeline that are trenched outside of the temporary exclusionary fence will either be backfilled on the same day or be covered with rigid materials to prevent SBKR from entering the trench. If SBKR is detected in a trench, it shall be allowed to escape without harassment or the animal shall be removed from the trench by a qualified biologist;
- Following construction, all areas of temporary disturbance will be regraded, topsoil re-distributed, and the area restored according to an agency-approved plan;
- During pipeline construction topsoil will be salvaged and replaced; and
- ~~Trenching in the riverbed is not expected (MVPC 2000k); however, if it becomes necessary, any diversion of surface flows will use techniques to reduce sediment.~~
- A temporary pedestrian corridor within the Santa Ana River that avoids SBKR burrows and Santa Ana wooly star plants will be established for all construction personnel to use. Each day prior to commencement of construction, a biological monitor will check for SBKR signs along the corridor to ensure project-related foot traffic will not disturb any SBKR burrows.

At the Twin Creek crossing the following conditions will apply:

- The wastewater pipeline will be hung from the existing golf-course foot-bridge;
- Equipment use will be confined to the golf course, the roadbed, the bridge, or the wash on the north side of the foot bridge;
- Work area will be located to avoid the creek bed, side slopes, and upland areas with friable (loose) soils if construction occurs during the summer months;
- Work areas would be enclosed in silt fencing and construction safety fencing which will be monitored by the Designated Biologist or their designee;
- Sightings of southwestern pond turtle or other sensitive wildlife during the pipeline installation will be reported by the Designated Biologist to the appropriate agencies (USFWS and CDFG); and
- Surveys for the Payson's Jewelflower (BIO-9) and the Southwestern Pond Turtle (BIO-10) must be completed according to the timelines established in the Conditions of Certification.

For construction in the Delhi Sands Unit, the following conditions will apply:

- The area of Delhi Sands will be delimited prior to construction with stakes and flagging; and

- While doing construction in Delhi Sands Unit, additional precautions will be taken under the guidance of a qualified biologist, to minimize impacts to Delhi Sands.

For construction at the Mill Street Crossing of the Delhi Sands Unit (at the Union Pacific Railroad)

- The perimeter of the work area will be flagged or fenced prior to ground disturbing activities to prevent construction personnel and/or equipment from disturbing adjacent areas;
- Following construction, all areas of temporary disturbance will be regraded, topsoil re-distributed, and the area restored according to an agency-approved plan (BIO-11);
- Construction will be monitored by a qualified biologist(s) or their designee; and
- Construction will occur outside of the July 15 to September 20 “flight-period” of the Delhi Sands flower loving fly.

At all construction locations:

- All construction vehicles (including cars and trucks) will be equipped with operating mufflers and will be cleaned of debris prior to access to the pipeline corridor;
- Topsoil will be salvaged and stored in an appropriate manner;
- Weed control techniques will be used at all sites;
- Erosion control devices at rivers, washes, drainage channels, ravines, and other water courses will be installed;
- Prior to construction, an Erosion Control, Revegetation, and Landscaping Plan will be developed with the landowner or managing agency;
- A qualified biological monitor, or their designee, will inspect the work site prior to commencement of construction each day;
- When working within or adjacent to any watercourse, ravine, etc., the contractor will have an emergency spill containment kit, and equipment re-fueling or storage of these materials will be restricted near surface water; and
- Avoidance areas will be delineated for all sensitive plant and wildlife occurrences in or near the construction impact zone.

Verification: At least 60 days prior to the start of any project related ground disturbance activities, the project owner shall provide the Energy Commission Compliance Project Manager (CPM) with the final version of the BRMIMP for this project, and the CPM will determine the plans acceptability within 15 days of receipt of the final plan. Implementation of the above measures must be included in the BRMIMP.

BIOLOGICAL RESOURCES MITIGATION IMPLEMENTATION AND MONITORING PLAN

BIO-6: The project owner shall submit to the CPM for review and approval a copy of the final Biological Resources Mitigation Implementation and Monitoring Plan (BRMIMP) and shall implement the measures identified in the plan.

Protocol: The final BRMIMP shall identify:

- All biological resources mitigation, monitoring, and compliance conditions included in the Energy Commission's Final Decision;
- All sensitive biological resources to be impacted, avoided, or mitigated by project construction, operation and closure;
- All mitigation measures identified in the USFWS Letter of Concurrence or Section 7 Biological Opinion (if applicable);
- All mitigation measures identified in the CDFG Section 2081 Incidental Take Permit (if applicable);
- Terms and conditions contained in the project's federal 404 and state 401 certification (if applicable);
- All mitigation measures identified in the CDFG Streambed Alteration Agreement;
- Required habitat compensation strategy, including provisions for acquisition, enhancement and management, for any temporary or permanent loss of sensitive biological resources (if applicable);
- Duration for each type of monitoring and a description of monitoring methodologies and frequency;
- Performance standards to be used to help decide if/when proposed mitigation is or is not successful;
- All performance standards and remedial measures to be implemented if performance standards are not met;
- Any landscaping plans proposed to visually screen the project and enhance adjacent wildlife habitat;
- A discussion of biological resource-related facility closure measures; and
- A process for proposing plan modifications to the Energy Commission CPM and appropriate agencies for review and approval.

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, and the CPM will determine the plan's acceptability within 15 days of receipt of the final plan. All modifications to the approved BRMIMP must be made only after consultation with Energy Commission staff and the USFWS and CDFG. The project owner shall notify the CPM five (5) working days before implementing any CPM approved modifications to the BRMIMP. 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, the CDFG and USFWS within 5 days of their receipt and the BRMIMP shall be revised or supplemented to reflect the permit condition within 10 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. Within thirty (30) days after completion of project construction, the project owner shall provide to the CPM, for review and approval, a written construction closure 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.

Removal of Condition Requiring San Bernardino Kangaroo Rat Surveys

~~**BIO-8** A qualified biologist shall complete a trapping survey for San Bernardino kangaroo rat prior to establishing the directional drill staging areas on either side of the Tippecanoe crossing of the Santa Ana River. Pre-construction surveys would be conducted April through mid-August. Surveys would map all areas of San Bernardino kangaroo rat habitat as off-limits to all construction. If the directional drill staging areas cannot be installed without complete avoidance, as determined and verified in writing by USFWS staff, the Applicant shall submit a Biological Assessment or application for an Incidental Take Permit to USFWS for guidance to address potential impacts to this species.~~

~~**Verification:** At least 80 days prior to start of any project-related ground disturbance activities, the project owner shall provide the CPM with the final survey results for San Bernardino kangaroo rat, and documentation that the USFWS has reviewed the survey results. All areas off-limits to construction shall be clearly mapped and maps placed within the BRMIMP. 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, and the CPM will determine if the plan includes the habitat avoidance map and sufficient measures to prevent construction equipment or personnel from entering sensitive areas (e.g., flagging and signs). If complete avoidance cannot be accomplished, then the CPM shall be given a copy of the Biological Assessment or application for incidental Take Permit, and the Biological Opinion or Incidental Take Permit from the USFWS, before the initiation of construction at this site.~~

On-Site Restoration for the Benefit of Delhi Sands Flower Loving Fly

~~**BIO-11** The project owner shall prepare a re-vegetation and habitat maintenance plan for areas of construction disturbance in Delhi sands unit (formation) and maintain the habitat at the diversity and density levels that Delhi sands flower loving fly prefer. All vegetation management will be conducted between October 31 and June 15. The project owner shall perform biannual monitoring of the Delhi sands unit (formation) to verify that vegetation has meet the success criteria approved by the U.S . Fish and Wildlife Service by the end of the third year. Remedial actions to correct problems found during monitoring shall implemented between October 31 and June 15.~~

~~**Verification:** At least 60 days prior to the start of ground disturbance relating to the natural gas pipeline construction at the Mill Street crossing, the project owner shall provide the CPM with (1) two copies of the a re-vegetation and~~

habitat maintenance plan for the Mill Street crossing of the Union Pacific railroad right-of-way for CPM approval and (2) two copies of the easement or agreement from the landowner to perform vegetation management. The plan shall include the methodology for monitoring, success criteria, and remedial actions. The approved re-vegetation and habitat maintenance plan shall be incorporated into the BRMIMP. The project owner shall submit monitoring results in the annual compliance report, or the March monthly compliance report for three years, or until the success criteria has been reached.

Purchase of San Bernardino Kangaroo Rat Mitigation Credits

BIO-12 To compensate for the temporary and permanent loss of San Bernardino Kangaroo Rat critical habitat, the project owner will purchase 2 acres (or 2 credits) from the Cajon Creek Conservation Bank or other USFWS approved mitigation bank.

Verification: Prior to the start of ground disturbance relating to the natural gas pipeline construction within San Bernardino Kangaroo Rat habitat, the project owner shall provide the CPM with a copy of the check issued to the mitigation bank, the contact information for the mitigation bank, and any receipt issued by the mitigation bank to the project owner. Within 100 days after the purchase of credits, the project owner shall provide a geo-referenced electronic file which represents the outline of the bank.