

The California Energy Commission hereby adopts the following changes to the Mountainview Power Project Decision:

CHANGES TO BIOLOGY CONDITIONS OF CERTIFICATION

(New language is shown as bold and underlined, deleted language is shown as strikethrough.)

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 refueling 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.

IT IS SO ORDERED.

Date: June 16, 2004

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION

WILLIAM J. KEESE, Chairman