

M e m o r a n d u m

To: Committee for the Colusa Generating Station Project
(06-AFC-9)
Commissioner Boyd
Raoul Renaud, Hearing Advisor

Date : February 25, 2008

From: **California Energy Commission** – Richard Ratliff
1516 Ninth Street
Sacramento CA 95814-5512

R.R.

DOCKET	
08-AFC-9	
DATE	FEB 25 2008
RECD.	FEB 25 2008

Subject: **Applicant's Post-FSA Changes to the Colusa Generating Station Biological Resources Analysis**

The U.S. Fish and Wildlife Service (USFWS) e-mailed the Colusa applicant on February 12, 2008, stating that the applicant had misapplied mitigation ratios in the USFWS (1997) programmatic mitigation guidance for the federal and state listed (as an "endangered species") giant garter snake. Soon thereafter, the applicant e-mailed Staff stating that its GIS staff discovered a miscalculation in the impact acreages originally calculated, reported to the Commission, and set forth in the FSA. This means the habitat compensation and impact acreages for giant garter snake are incorrect in the FSA. The attached table from the FSA reflects the changes that would need to be made, both to the acreages affected and to the mitigation ratio for habitat purchase.

The USFWS and applicant agree to the corrected acreage numbers, and Staff has requested that the USFWS review this memo and confirm its agreement.

The Committee will need to decide how to re-open the evidentiary record to admit this evidence. I propose that we address the problem by a written stipulation (regarding the mistake and the corrected number) between Staff and the applicant, attaching a declaration from the Staff witness. Please advise me if this approach is acceptable to the Committee

cc: Jack Caswell
Brian McCollough
Misa Ward
Rick York
Michelle Tovar (USFWS)
POS list (06-AFC-9)

Proof of Service (Revised 8/22/07) filed with original.
Mailed from Sacramento on 2/25/08 *RR*

**BIOLOGICAL RESOURCES Table 7
Giant Garter Snake Mitigation**

Type of Impact	Approximate Acreage Impacted	Proposed Mitigation Ratio	Approximate Mitigation Acreage Required*
<u>Permanent</u>	0.68 acre permanent aquatic habitat	3:1 impacted habitat for aquatic and upland habitat+	2.05 acres aquatic habitat and
	0.50 acre permanent upland habitat	2 x replacement habitat for upland habitat	1.50-1.10 acres upland habitat
	TOTAL 1.18 acres		TOTAL 3.55 acres
<u>Temporary</u>	1.83 acre temporary aquatic habitat	4:1 Restoration only if disturbed habitat is restored within one season	4.83 Restoration only if restored within one season (restoration of temporary impact area)
	0.87 acre temporary upland habitat	or Restoration plus 21:1 replacement if restored within two seasons	or Restoration plus 5.40 acres replacement habitat if restored within two seasons
	TOTAL 2.70 acres		

Sources: URS 2007u, USFWS 2008.

* Acreages are rounded. Mitigation land for impacts would be the greater amount for either impacts to giant garter snake habitat or jurisdictional wetlands, but not both.

In addition to changes in this table, Condition of Certification BIO-16 would also have to be changed, as follows.

Giant Garter Snake Mitigation

BIO-16 To mitigate impacts to the giant garter snake and its habitat, the project owner shall implement the USFWS avoidance and minimization measures for construction activities in giant garter snake habitat. For each acre (or portion of an acre) of giant garter snake habitat permanently impacted, the project owner shall purchase three (3) acres of giant garter snake credit at a USFWS and CDFG-approved conservation bank. Additionally, the project owner shall purchase two (2) acres of upland giant garter snake habitat for each acre of aquatic replacement habitat. The project owner shall purchase credits for a minimum of 2.05 acres of giant garter snake aquatic habitat and 4.10-1.50 acres of giant garter snake upland habitat. Temporary impact areas shall be restored within one season, or if restored within two seasons then an additional 5.40 acres of credit at a USFWS and/or CDFG-approved conservation bank shall be purchased by the project owner.

Verification: Within 15 days of site or related facilities mobilization the project owner shall provide written evidence of purchase of giant garter snake credits to the CPM.

References

USFWS 2008. Personal Communication between Melissa Newman, URS and Michelle Tovar, USFWS regarding applicant's misinterpretation of USFWS programmatic mitigation guidance on giant garter snake and miscalculated impact acreages. Emails dated 2/12/08, 2/19/08, and 2/20/08.

USFWS 1997. Programmatic Formal Consultation for U.S. Army Corps of Engineers 404 Permitted Projects with Relatively Small Effects on the Giant Garter Snake within Butte, Colusa, Glenn, Fresno, Merced, Sacramento, San Joaquin, Solano, Stanislaus, Sutter, and Yolo Counties, California. November 13, 1997.

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

**APPLICATION FOR CERTIFICATION
FOR THE COLUSA GENERATING
STATION PROJECT**

**Docket No. 06-AFC-9
PROOF OF SERVICE
(REVISED 8/22/2007)**

INSTRUCTIONS: All parties shall 1) send an original signed document plus 12 copies OR 2) mail one original signed copy AND e-mail the document to the web address below, AND 3) all parties shall also send a printed OR electronic copy of the documents that shall include a proof of service declaration to each of the individuals on the proof of service:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 06-AFC-9
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DECLARATION OF SERVICE

I, Lynn Tien-Tran, declare that on 2/25/08, I deposited copies of the attached **Application's Post-FSA Changes to the Colusa Generating Station Biological Resources Analysis** in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.



Lynn Tien-Tran