



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO CA 95814-2922

April 20, 2010

**DOCKET**

**09-AFC-3**

DATE APR 20 2010

RECD. APR 20 2010

Regulatory Division (SPK-2009-01261)

Ms. Kim Squires  
U.S. Fish and Wildlife Service  
Endangered Species Division  
2800 Cottage Way, W-2605  
Sacramento, California 95825-1888

Dear Ms. Squires:

I am writing to initiate consultation under section 7 of the Endangered Species Act for a Department of the Army Permit application for the Mariposa Energy Project. The project is located near the California Aqueduct, in Section 1, Township 2 South, Range 3 East, Latitude 37.79023°, Longitude -121.60233°, MDB&M, Alameda County, California. A copy of the applicant's April 2010, *Mariposa Energy Project Biological Assessment* was mailed to you on April 16, 2010.

Based on the available information, we have determined the action may affect the Federally-listed California red-legged frog (*Rana aurora draytonii*), San Joaquin kit fox (*Vulpes macrotis mutica*), California tiger salamander (*Ambystoma californiense*), vernal pool fairy shrimp (*Branchinecta lynchi*), longhorn fairy shrimp (*Branchinecta longiantenna*) and/or their critical habitat. If new information becomes available indicating that other listed species or critical habitat may be affected, we will follow the procedures under 50 CFR 402.16, reinitiation of consultation.

Formal consultation as defined in 50 CFR 402.02 commences with your receipt of this letter. The following information is included to initiate consultation:

1. A description of the action to be considered: Mariposa Energy proposes to construct and operate the Mariposa Energy Project (MEP) electrical generating facility, which includes a 10.3-acre facility site and road, a 9.2-acre temporary parking and work area, a 580' by 75' gas pipeline work corridor, a 0.7-mile by 100' transmission line work corridor, and a 1.8-mile by 15' water supply pipeline work corridor.
2. A description of the specific area that may be affected by the action: The MEP is proposed to be located in northeastern Alameda County, southeast of the intersection of Kelso and Bruns Roads. The majority of the site is non-irrigated pasture. See Figures 1 and 2.
3. A description of any listed species or critical habitat that may be affected by the action: California red-legged frog (*Rana aurora draytonii*), San Joaquin kit fox (*Vulpes macrotis mutica*), California tiger salamander (*Ambystoma californiense*), vernal pool fairy shrimp (*Branchinecta lynchi*), longhorn fairy shrimp (*Branchinecta longiantenna*) and/or their critical habitat.
4. A description of the manner in which the action may affect any listed species or critical habitat and analysis of any cumulative impacts: There is a potential for take of listed fairy shrimp, frog and salamander during construction and operation due to sediment or other material being released via stormwater into nearby wetlands; potential for take of frog, salamander and kit fox during construction and operation, caused by

vehicles and other equipment. Cumulative impacts may occur as a result of new developments and operation and maintenance of existing facilities in the action area.

5. Relevant reports including any environmental impact statement, environmental assessment, or biological assessment prepared: See Biological Assessment, Section 7 References.

6. Any other relevant available information on the action, the listed species, or critical habitat: See Biological Assessment, Section 7 References.

This constitutes the best scientific and commercial data available. If you need additional information, or determine conditioning the permit or modifying the project would preclude the need for formal consultation, please contact us immediately. You may also contact the applicant or authorized agent to allow them the opportunity to provide information for consideration as prescribed by 50 CFR 402.14(d). If you need additional data beyond that discussed above, the procedures of 50 CFR 402.14(f) must be followed.

Please refer to identification number SPK-2009-01261 in any correspondence concerning this project. If you have any questions, please contact Marc Fugler at U.S. Army Corps of Engineers, Delta Branch, 1325 J Street, Room 1480, Sacramento, California 95814, email [Marc.A.Fugler@usace.army.mil](mailto:Marc.A.Fugler@usace.army.mil), or telephone 916-557-5255. For more information regarding our program, please visit our website at [www.spk.usace.army.mil/regulatory.html](http://www.spk.usace.army.mil/regulatory.html).

Sincerely,

**ORIGINAL SIGNED**

Marc A. Fugler  
Senior Project Manager  
California Delta Branch

Copy Furnished

Mr. Kent Smith, California Department of Fish and Game Region 2, 1701 Nimbus Drive, Rancho Cordova, California 95670-4599

Mr. William Marshall, Storm Water and Water Quality Certification Unit, Central Valley Regional Water Quality Control Board, 11020 Sun Center Drive #200, Rancho Cordova, California 95670

Mr. Doug Urry, CH2MHill, 2485 Natomas Park Drive, Suite 600, Sacramento, California 95833



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
1-800-822-6228 – [WWW.ENERGY.CA.GOV](http://WWW.ENERGY.CA.GOV)

APPLICATION FOR CERTIFICATION  
FOR THE **MARIPOSA ENERGY PROJECT**  
(MEP)

**Docket No. 09-AFC-3**

**PROOF OF SERVICE**  
(Revised 2/8/2010)

**APPLICANT**

Bo Buchynsky  
Diamond Generating Corporation  
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**APPLICANT'S CONSULTANTS**

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**COUNSEL FOR APPLICANT**

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[glw@eslawfirm.com](mailto:glw@eslawfirm.com)

**INTERESTED AGENCIES**

California ISO  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)

**INTERVENORS**

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**ENERGY COMMISSION**

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[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)

**DECLARATION OF SERVICE**

I, Stephanie Moore, declare that on April 23, 2010, I served and filed copies of the attached MEP USACE Section 7 Consultation Request Letter. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

**<http://www.energy.ca.gov/sitingcases/mariposa/index.html>**.

The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

***(Check all that Apply)***

**For service to all other parties:**

X  sent electronically to all email addresses on the Proof of Service list;

    by personal delivery or by depositing in the United States mail at Sacramento, California, with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

**AND**

**For filing with the Energy Commission:**

X  **sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (preferred method);**

**OR**

    depositing in the mail an original and 12 paper copies, as follows:

**CALIFORNIA ENERGY COMMISSION**

Attn: Docket No. 09-AFC-3  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

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

Original Signed by: \_\_\_\_\_  
Stephanie Moore