



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road, Suite 101
Carlsbad, California 92011



In Reply Refer To:
FWS-OR-12B0337-12TA0563

Ms. Felicia Miller, Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, California 95814-5112

Attention: Mr. Anwar Ali, Staff Biologist

Subject: Request of Agency Participation in the Review of the Huntington Beach Energy Project Application for Certification (12-AFC-02), City of Huntington Beach, Orange County, California

Dear Ms. Miller:

This letter responds to your written request, received on August 6, 2012, for comments on the Huntington Beach Energy Project (HBEP) Application for Certification, dated June 2012 (application). AES Southland Development, LLC (applicant) proposes to replace the existing Huntington Beach Generating Station with a natural gas-fired, air-cooled generating facility within the same 28.6-acre footprint. Demolition of the old facilities and construction of the new facilities is anticipated to occur between 2014 and 2022.

The California Energy Commission (CEC) also received a Data Adequacy Supplement, dated August 6, 2012¹ (data supplement) and has since determined that sufficient information has been provided to meet the "data adequacy" requirements of your regulations. Although comments on the application will be accepted through December 7, 2012, the CEC is currently in the process of preparing a request for additional data². We have expedited our review of the application and data supplement to assist the CEC in the preparation of the data request.

The primary concern and mandate of the U.S. Fish and Wildlife Service (Service) is the protection of public fish and wildlife resources and their habitats. The Service has legal responsibility for the welfare of migratory birds, anadromous fish, and endangered animals and plants occurring in the United States. Specifically, the Service administers the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*; Act) and the Migratory Bird Treaty Act of 1918 (40 Stat. 755, as amended; 16 U.S.C. 703 *et seq.*; MBTA). We also

¹ Retrieved from http://www.energy.ca.gov/sitingcases/huntington_beach_energy/documents/index.html.

² Correspondence received from Anwar Ali (CEC Staff Biologist) on August 21, 2012.

California Energy Commission

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provide support to other Federal agencies in accordance with the provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*).

The proposed project is located adjacent to the Huntington Beach Wetlands (i.e., Newland, Magnolia, Brookhurst and Talbert marshes), which support the federally endangered light-footed clapper rail (*Rallus longirostris levipes*; clapper rail) and state endangered Belding's savannah sparrow (*Passerculus sandwichensis beldingi*). It is also less than 1.5 miles from the federally endangered California least tern (*Sternula antillarum browni*; least tern) nest site at Huntington State Beach, and habitat for the federally threatened coastal California gnatcatcher (*Polioptila californica californica*; gnatcatcher) at Banning Ranch, Talbert Nature Preserve, and Fairview Park.

We offer the following comments and recommendations regarding project-associated biological impacts based on our review of the application and data supplement, and our knowledge of declining habitat types and species in Orange County.

1. *Belding's savannah sparrow* - The measures recommended below to avoid and minimize impacts to the clapper rail will also benefit the Belding's savannah sparrow; however, because this species is protected under the provisions of the California Endangered Species Act, we recommend you coordinate with the California Department of Fish and Game directly regarding potential project-related impacts to this species.
2. *Construction Impacts* – According to the data supplement (page 5.2-1), the “Huntington Beach Generating Station site could potentially provide nesting habitat for some species covered under the MBTA.” To mitigate potential impacts to nesting birds, the applicant proposes to conduct pre-construction active nest surveys within 100 feet of the project site and additional monitoring if active nests will be significantly disturbed (page 5.2-38). The MBTA prohibits killing or injuring adults and destroying active nests. Although the proposed measure requires monitoring for active bird nests, it does not explicitly state that the nests will be avoided. The applicant should identify specific measures that will avoid impacts to active nests in the event they are located within the construction footprint.
3. *Construction Noise and Disturbance* - Breeding clapper rails were identified in Brookhurst Marsh in 2010 and Newland Marsh in 2011 (Zemba et al. 2011). Coastal wetland habitat in Magnolia Marsh, immediately adjacent to the proposed project site, was recently restored (i.e., restoration completed 2010) and will gradually become more suitable for clapper rails as dense cordgrass, and shallow water/mudflat foraging habitat establishes. According to the application (page 5.2-36), “noise from site preparation, construction, and demolition, could temporarily discourage wildlife from foraging and nesting in the coastal wetland habitat immediately adjacent to the project area.” Temporary disruption to foraging and nesting will extend over a period of approximately 9 years (i.e., 2014-2022). To mitigate the potential impacts associated with construction noise and disturbance, the applicant

proposes to conduct pre-construction active nest surveys within 100 feet of the project site and additional monitoring if active nests will be significantly disturbed (page 5.2-38). Although this measure requires monitoring, it contains little assurance that disturbance of nesting clapper rails will be avoided. Noise and disturbance associated with project construction has the potential to impact clapper rail productivity by impairing the ability of clapper rails to communicate with each other (Zemba et al. 2004) or otherwise disrupting nesting activity (Zemba et al. 2009). Clapper rails may also be more susceptible to predation due to the noise masking predator cues (Zemba et al. 2011).

To avoid noise-related impacts to the clapper rail, we recommend that a solid fence be erected around the project area and that the fence be of sufficient length and height and be constructed of appropriate materials to maintain ambient noise levels within the marsh for the duration of the construction period. The effectiveness of the fencing to reduce noise levels to ambient conditions should be tested with noise monitoring equipment. Fencing should be maintained in working condition until completion of the project. Provided the fence is constructed and maintained as described above, it will have the added benefit of reducing or avoiding the need for monitoring of adjacent clapper rails and avoiding potential construction delays resulting from disturbance of nesting clapper rails. If impacts to clapper rails cannot be avoided, the project may require consultation under the provisions of section 7 (Federal consultations) or section 10 (private actions) of the Act.

4. *Construction Lighting* - The application includes a discussion of the potential impacts of elevated light levels on biological resources in association with operation of the HBEP (page 5.2-36). To avoid impacts associated with operational lighting, the applicant proposes to shield all lighting sources and point them downward, away from the wetland habitat outside of the project area. Construction lighting will have similar impacts on biological resources as operational lighting; therefore, we recommend the applicant clarify if similar measures will be implemented to avoid impacts associated with construction lighting. The installation of solid fencing, as proposed above, would also assist in shielding construction lighting from sensitive marsh resources.
5. *Construction Dust* - The Air Quality section (5.1) of the application includes an extensive discussion of the potential impacts of fugitive dust on air quality, relative to State and Federal air quality standards. To meet the required standards, a "Construction Fugitive Dust and Diesel-Fueled Engine Control Plan" will be implemented which includes, watering unpaved surfaces, covering haul trucks, covering soil stockpiles, etc. (page 5.1-31). A comparable discussion of the potential for fugitive dust to impact adjacent wetland vegetation is not included in the Biological Resources section (5.2). We recommend the applicant clarify if the proposed air quality mitigation measures will also ensure impacts to wetland vegetation from fugitive dust will be avoided. The installation of solid fencing, as proposed above, would also assist in preventing construction dust and debris from exiting the construction site and impacting wetland vegetation.

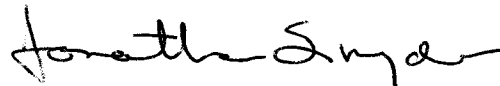
6. *Construction Trash* - The proposed project has the potential to increase the density of American crows (*Corvus brachyrhynchos*) in the project vicinity as a result of food waste from construction workers. We are concerned that project-related increases in crows during construction could impact least tern productivity at the nearby Huntington State Beach nest site. Armendariz et al. (2012) found a direct correlation between the density of crows and the availability of anthropogenic food subsidies, and crow predation is one of the primary causes of reproductive failure at least tern colonies (e.g., Ryan and Vigallon 2010). To avoid project-related impacts to least tern, we recommend the applicant include specific provisions to store trash properly (inaccessible to crows) and have it removed from the construction site on a daily basis. Waste management practices should be monitored throughout construction.
7. *Construction Site Runoff* - The application identifies potential construction-related impacts to water quality as a result of surface water runoff during excavation and construction (page 5.15-16). Implementation of a Storm Water Pollution Prevention Plan (SWPPP) and associated Best Management Practices for erosion and sediment control are anticipated to reduce the effects of runoff from the construction site to offsite areas. To avoid degradation of wetland habitat, including foraging habitat for clapper rail, we recommend the SWPPP specify that all surface runoff will be captured onsite, diverted away from or otherwise precluded from entering the Huntington Beach Wetlands.
8. *Operational Noise* - The loudest expected composite noise levels from HBEP are approximately 70 dBA (A-weighted decibels) at the HBEP fence line and 63 dBA at 400 feet from the fence line (application, page 5.2-36). We recommend the applicant clarify how these anticipated levels compare with existing ambient levels in adjacent wetland habitat. Sound monitoring should be conducted at various locations within the Huntington Beach Wetlands to determine ambient levels. According to the application, "HBEP will anticipate the potential for audible tones in the final design and specification of the project's equipment and take necessary steps to prevent sources from emitting tones that might be disturbing at the nearest receptors" (page 5.7-12). To avoid impacts to clapper rails from noise associated with operation of the project, we recommend the applicant consider the entire Huntington Beach Wetlands area as a sensitive receptor and include design features to ensure noise levels are maintained at or below ambient conditions.
9. *Combustion Turbine Emissions* - The application evaluates the potential for project associated nitrogen deposition to impact adjacent coastal wetlands. No impacts from the project are expected due to proposed emission controls, mitigation in the form of RECLAIM Trading Credits, and prevailing wind patterns (west to east) that are anticipated to direct air quality impacts inland (5.2-35). Critical nitrogen loads for intertidal salt marsh wetlands are identified in the application, but the actual anticipated loads are not provided for comparison. The applicant should clarify the anticipated nitrogen loads in the

Huntington Beach Wetlands. In addition, please clarify how the RECLAIM Trading Credits will reduce nitrogen loads in the wetlands.

Increases in nitrogen deposition associated with air pollution have contributed to the conversion of coastal sage scrub vegetation to nonnative annual grasslands in southern California (e.g., Allen et al. 1998, Padgett et al. 1999, Fenn et al. 2003, and Wood et al. 2006). We are concerned that nitrogen deposition associated with the proposed project may incrementally degrade the quality of coastal sage scrub for the gnatcatcher within Banning Ranch, Talbert Nature Preserve and Fairview Park, which are located less than 1.5 miles east of the project site. Although the applicant anticipates that ground-level concentrations of nitrogen will be reduced with time and distance from the project site (application, page 5.2-35), we recommend that an analysis of actual anticipated nitrogen deposition levels be conducted to more specifically identify how the proposed project will affect habitat for the gnatcatcher.

We appreciate your coordination on this project. Should you have any questions regarding this letter, please contact Fish and Wildlife Biologist Christine Medak of this office at 760-431-9440, extension 298.

Sincerely,



for Karen A. Goebel
Assistant Field Supervisor

cc:

Matt Chirton, California Department of Fish and Game

Literature Cited

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Zemal , R., S.M. Hoffman, J. Konecny, L. Conrad, C. Gailband, and M. Mace. 2011. Light-Footed Clapper Rail Management, Study, and Propagation in California, 2011. California Department of Fish and Game, Wildlife Management, Nongame Wildlife Unit Report, 2011-02. Sacramento, California.



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
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***APPLICATION FOR CERTIFICATION FOR THE
HUNTINGTON BEACH ENERGY PROJECT***

**Docket No. 12-AFC-02
(Revised 8/24/12)**

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DECLARATION OF SERVICE

I, Diane L. Scott, declare that on September 12, 2012, I served and filed a copy of the attached **Letter from Karen A. Goebel & Jonathan Snyder of the United States Department of the Interior / Fish and Wildlife Service, in regards to the Request of Agency Participation in the Review of the Huntington Beach Energy Project Application for Certification (12-AFC-02), City of Huntington Beach, Orange County, California**, dated September 10, 2012. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at: http://www.energy.ca.gov/sitingcases/huntington_beach_energy/index.html.

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

(Check all that Apply)

For service to all other parties:

- Served electronically to all e-mail addresses on the Proof of Service list;
- Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses marked ***"hard copy required"** or where no e-mail address is provided.

AND

For filing with the Docket Unit at the Energy Commission:

- by sending one electronic copy to the e-mail address below (preferred method); **OR**
- by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

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Attn: Docket No. 12-AFC-02
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
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OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

- Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission
Michael J. Levy, Chief Counsel
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Originally Signed By:

Diane L. Scott
Siting, Transmission and Environmental Protection Division