

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov



STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

California Energy Commission

DOCKETED
08-AFC-3C

TN # 68754

DEC 3 2012

In the Matter of:)
MARSH LANDING GENERATING)
STATION) Docket No. 08-AFC-3C
)
) Order No. 12-1114-3
)
) ORDER APPROVING a petition to modify
) Condition of Certification **BIO-8** to
GENON MARSH LANDING LLC) change the recipient of mitigation funds
) and provide a broader range of mitigation
) activities at the Antioch Dunes National
) Wildlife Refuge.
)

On May 14, 2012, GenOn Marsh Landing LLC, the owner of Marsh Landing Generating Station, filed a Petition to Amend California Energy Commission (Energy Commission) Decision for the Marsh Landing Generating Station to change the recipient of the mitigation funds required by Condition of Certification **BIO-8** from Friends of San Pablo Bay to the California Wildlife Foundation and provide a broader range of mitigation activities. Condition of Certification **BIO-8** requires that an annual payment be made by the project owner in support of weed mitigation efforts at the Antioch Dunes National Wildlife Refuge and clarifies what management activities may include.

STAFF RECOMMENDATION

Energy Commission staff reviewed the petition and finds that it complies with the requirements of Title 20, Section 1769(a) of the California Code of Regulations and recommends approval of GenOn Marsh Landing LLC's petition to modify the Marsh Landing Generating Station Project and amend related Condition of Certification **BIO-8**.

ENERGY COMMISSION FINDINGS

Based on staff's analysis, the Energy Commission concludes that the proposed changes will not result in any significant impact to public health and safety, or the environment. The Energy Commission finds that:

- The petition meets all the filing criteria of Title 20, section 1769(a) of the California Code of Regulations concerning post-certification project modifications;

- The modification will not change the findings in the Energy Commission's Final Decision pursuant to Title 20, section 1755;
- The project will remain in compliance with all applicable laws, ordinances, regulations, and standards, subject to the provisions of Public Resources Code section 25525; and
- The proposed modifications to the Biological Resources Conditions of Certification will result in a beneficial change by ensuring that allowing that the annual payments made under **BIO-8** be used to provide a broader range of mitigation activities to address impacts to sensitive species and other biological resources occurring at the Antioch Dunes National Wildlife Refuge site.

CONCLUSION AND ORDER

The California Energy Commission hereby adopts Staff's recommendations and approves the following changes to the Commission Decision for the Marsh Landing Generation Station Project. New language is shown as **bold and underlined**, and deleted language is shown in ~~strikeout~~.

CONDITION OF CERTIFICATION

BIO-8 The project owner shall provide an annual payment to ~~Friends of San Pablo Bay~~ **the California Wildlife Foundation or other third party approved by the CPM in coordination with the USFWS performing similar work** to assist in noxious weed management **and other activities that benefit state and/or federally protected species, including Lange's metalmark butterfly, Contra Costa wallflower, and Antioch Dunes evening primrose** at the Antioch Dunes National Wildlife Refuge. **Management activities funded may include but are not limited to: captive breeding and release of Lange's metalmark butterfly; propagation and transplanted of naked-stem buckwheat, Contra Costa wallflower, and Antioch Dunes evening primrose; and noxious weed eradication using grazing animals, hand tools and/or appropriate mechanical equipment.** The first annual payment shall be at least equal to \$2,805.00.

Each subsequent annual payment as calculated above shall be adjusted for inflation in accordance with the Employment Cost Index – West or its successor, as reported by the U.S. Department of Labor's Bureau of Labor Statistics. Payment shall be made annually for the duration of project operation.

The project owner has voluntarily offered to contribute additional annual funding for weed management ~~efforts~~ **and other activities that benefit native habitat and species** at the Antioch Dunes National Wildlife Refuge in an amount equal to \$20,000 per year and has agreed to include that additional payment as a requirement in this condition of certification. The additional annual payment shall be made at the same time as the annual payment specified above and shall be made for the duration of project operation, but shall not be adjusted for inflation.

Verification: No later than 30 days following the start of project operation, the project owner shall provide written verification to the CPM, USFWS, and CDFG that the first-annual payment was made to the ~~Friends of San Pablo Bay~~ **California Wildlife Foundation or other third party approved by the CPM in coordination with the USFWS performing similar work** in accordance with this condition of certification. The project owner shall provide evidence that it has specified that its annual payment to ~~Friends of San Pablo Bay~~ can be used only to assist in noxious weed management **and other management activities as required under BIO-8 as directed by the USFWS.**

Thereafter, within 30 days after each anniversary date of the commencement of project operation, the project owner shall provide written verification to the CPM, USFWS, and CDFG that payment has been made to the ~~Friends of the San Pablo Bay~~ **California Wildlife Foundation or other third party approved by the CPM in coordination with the USFWS performing similar work** in accordance with this condition of certification. This verification shall be provided annually for the operating life of the project. The project owner also shall request an annual report from the ~~Friends of the San Pablo Bay~~ **California Wildlife Foundation or other third-party approved by the CPM in coordination with the USFWS performing similar work** documenting how each annual payment required hereunder was used and applied to assist in noxious weed management **and other management activities as required under BIO-8** at the Antioch Dunes National Wildlife Refuge. The project owner shall provide copies of such reports to the CPM within thirty (30) days after receipt.

IT IS SO ORDERED.

CERTIFICATION

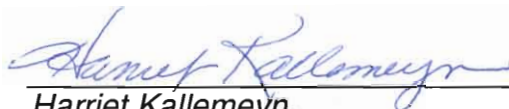
The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the California Energy Commission held on November 14, 2012.

AYE: *Weisenmiller, Douglas, Peterman, McAllister*

NAY: *None*

ABSENT: *None*

ABSTAIN: *None*



Harriet Kallemeyn,
Secretariat