

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

**RECORD PACKET COPY****W-10**

Energy and Ocean Resources
Staff: JJJ, SMH—SF
Staff Report: April 25, 2002
Hearing Date: May 8, 2002

STATUS REPORT ON SONGS MITIGATION PROGRAM

Following is a brief status report for the mitigation projects required in Southern California Edison Company's (SCE) coastal development permit for the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 (permit no. 6-81-330, formerly 183-73). The conditions originally were adopted by the Commission in 1991 to mitigate the adverse impacts of the power plant on the marine environment. The 1991 conditions also require SCE to provide the funds necessary for Commission technical oversight and independent monitoring of the mitigation projects, to be carried out by independent contract scientists under the direction of the Executive Director. In 1993, the Commission added a requirement for the permittee to partially fund construction of an experimental fish hatchery. The Commission has since approved amendments to the conditions in April 1997 and October 1998.

PROCEEDINGS OF TECHNICAL REVIEW WORKSHOP

A public workshop was conducted on February 27, 2002 by the Commission staff and contract scientists to review the status of the SONGS wetland restoration and artificial reef mitigation projects. Written proceedings are now available for review on the Commission's web site (www.coastal.ca.gov). The direct location is <http://www.coastal.ca.gov/energy/songs-workshop-mm2.pdf>. For more information, contact Dan Reed at (805) 893-7047.

WETLAND RESTORATION MITIGATION**The Project**

Condition A of the permit requires the permittee to create or substantially restore a minimum of 150 acres of wetlands to mitigate for impacts to fishes caused by the operation of SONGS. In April 1997, the Commission reaffirmed its 1992 approval of the permittee's choice of the San Dieguito River Valley as the site for the wetland restoration project and allowed for up to 35 acres credit for enhancement at San Dieguito Lagoon on the condition of perpetual inlet maintenance.

Progress Report

Wetland Restoration Planning. The Commission approved SCE's preliminary wetland restoration plan for the San Dieguito Lagoon in November 1997. The CEQA/NEPA environmental review incorporated the mitigation project into the overall San Dieguito River Valley Regional Open Space Park project. The lead agencies for the CEQA/NEPA review were the San Dieguito River Valley Regional Open Space Park Joint Powers Authority (JPA) and the U.S. Fish and Wildlife Service.

Following the review period on the January 2000 draft EIR/EIS, the final EIR/EIS was released in September 2000. At a public hearing on September 15, 2000, the JPA certified the EIR and voted to support the EIR's designation of Mixed Habitat plan as the environmentally preferred alternative. The Commission's contract scientists attended the meeting and concurred with this decision. As required by NEPA, the availability of the final EIR/EIS was published in the Federal Register in September 2000; however, the USFWS had not yet issued a final Record of Decision (ROD) when lawsuits on the Final EIR (FEIR) were filed (see next paragraph). The final ROD will be issued after the conclusion of the lawsuits and any revisions to the FEIR that may be necessary.

Litigation on Final EIR. Lawsuits challenging the adequacy of the FEIR were filed by the Del Mar Sandy Lane Association and Citizens United to Save the Beach. Although in a July 2001 decision the Court rejected certain of the plaintiff's claims, it determined that the FEIR is inadequate with regard to several issues, most significantly that there is insufficient evidence supporting the FEIR's conclusion that the project will not increase scour and loss of sand at the river mouth. The Court set aside the JPA's certification of the FEIR and remanded the matter back to the JPA. The JPA has filed its notice of appeal, and plaintiffs have filed notice of a cross-appeal.

Outstanding Issues. Although the JPA is appealing the Court's ruling on the FEIR, the JPA, SCE and USFWS have agreed to move forward during the appeals process to address the points other than the coastal process issue deemed inadequate by the Court in order to be ready to re-certify the FEIR if necessary. Regardless of the outcome of the appeals process, these additional analyses will be needed at the time of the Commission's review of the coastal development permit application for the restoration project.

At the same time, the staff and SCE are continuing to work with the parties to resolve the remaining issues involving the least tern nesting sites. Although the least tern nesting sites are included in the overall plan, they are a previous requirement from a coastal development permit (CDP No. 6-84-525) granted to the 22nd Agricultural District (District), and not a requirement of SCE's SONGS permit. SCE has agreed to construct the nesting sites for the District in exchange for access to and use of District property near the rivermouth. At issue is who is to take on the financial responsibility for implementing the maintenance, monitoring, and mitigation requirements.

Staff has worked with SCE, USFWS, Department of Fish and Game, the JPA, and the District on these issues. At a meeting in April 2001, staff discussed the annual nesting site maintenance and maintenance monitoring (i.e., site maintenance, including vegetation control and fence inspection and repair, predator monitoring and control, and bird monitoring) needed to maintain a viable least tern habitat as required under the District's coastal development permit. Staff also discussed

the need for mitigating impacts to existing wetlands caused by the construction of the nesting sites. As a follow-up to the meeting, staff presented a draft annual maintenance plan and estimated annual costs. In July 2001, staff presented a formal interpretation of the outstanding obligations the District continues to have under its permit. The District has not yet responded. In order to reinstate its efforts to resolve these permit issues, the staff sent the attached letter, dated April 22, 2002, to the District.

In addition, the State Lands Commission is continuing its efforts to resolve property ownership issues with the District. Resolution of title and boundary interests involving the San Dieguito River will assist in negotiations for access to the rivermouth for the restoration project.

In the meantime, SCE has moved ahead to develop its Final Plan while recognizing that project revisions may be necessary pending resolution of the outstanding issues. The staff is reviewing SCE's plan informally and will continue to work with SCE to ensure that the plan meets the objectives and standards specified in the permit and to ensure that Coastal Act issues will be addressed appropriately at the coastal development permit stage of the project. *The staff plans to bring SCE's final plan to the Commission for approval only after the CEQA/NEPA process is completed.*

Pre-restoration Monitoring. As part of the Commission's technical oversight, monitoring and management responsibilities under Condition D, the contract scientists are conducting pre-restoration monitoring in San Dieguito Lagoon and in other southern California wetlands that may be used as reference sites in post-restoration monitoring. Pre-restoration monitoring includes the collection of baseline physical and biological data on the wetland attributes to be monitored during post-restoration monitoring. Pre-restoration data are required to assess construction-related impacts and changes in the existing wetland following construction. Pre-restoration monitoring data are also needed to develop sampling designs for post-restoration monitoring that can effectively determine whether the various performance standards have been met.

One focus of the pre-restoration monitoring is the analysis of data collected to determine the appropriate number and spacing of samples for use in the post-restoration monitoring of intertidal epibenthic and infaunal invertebrates. Fieldwork for this study was carried out in three wetlands that may serve as reference sites in post-restoration monitoring (Tijuana Estuary, Mugu Lagoon, and Carpinteria Salt Marsh). Laboratory processing of the samples is nearly complete. The contract scientists are continuing to monitor water quality in San Dieguito Lagoon and Carpinteria Salt Marsh.

Another major focus of the contract scientists' pre-restoration monitoring tasks is to develop sampling designs that will allow unbiased comparisons of the abundance and number of species of fish in the restored and reference wetlands and will minimize any adverse effects of sampling on fish and invertebrate populations.

KELP REEF MITIGATION

The Project

Condition C of the permit requires construction of an artificial reef that consists of an experimental reef and a larger mitigation reef. The experimental reef must be a minimum of 16.8

acres and the mitigation reef must be of sufficient size to sustain 150 acres of medium to high density kelp bed community. The purpose of the experimental reef is to determine which combinations of substrate type and substrate coverage will most likely achieve the performance standards specified in the permit. The design of the mitigation reef will be contingent on the results of the experimental reef.

In April 1997, the Commission added the requirement for a payment of \$3.6 million to the State's Ocean Resource Enhancement and Hatchery Program (OREHP) to fund a mariculture/marine fish hatchery to provide compensation for resources not replaced by the artificial mitigation reef. SCE has fully satisfied this requirement.

Progress Report

Following completion of the environmental review and permitting process, construction of the experimental reef located off San Clemente was completed in September 1999. The experimental reef tests eight different reef designs that vary in substrate composition (quarry rock or recycled concrete), substrate coverage (actual coverages are higher than the intended nominal coverages of 17%, 34% and 67%, at approximately 54%, 65%, and 84%, respectively), and presence of transplanted kelp. All eight reef designs are represented as individual 40 m x 40 m modules that are replicated in seven areas (i.e., blocks) for a total of 56 artificial reef modules totaling 22.4 acres.

Monitoring of Experimental Reef. The monitoring plan approved by the Commission specifies that the abundance of giant kelp, macro invertebrates, understory algae, and kelp bed fish, and the area and coverage of hard substrate on the artificial reef modules be surveyed each year for five years.

The second year of these studies has been completed, and results were reviewed at the second annual public workshop held February 27, 2002. As noted above, written proceedings of the workshop are now posted on the Coastal Commission web site.

The major focus of work during the next several months will be on:

- (1) *Planning and implementing process studies.* Currently, three types of process studies are planned for the next two years: (1) studies that aim to determine the cause for differences in the species composition of the artificial reef modules vs. natural reference reefs, (2) studies that determine the possible influence of artificial reef design on invasive invertebrate species (these studies will concentrate on the sea fan, *Muricea californica*, which has been shown to monopolize artificial reefs in the region), and (3) studies that evaluate different methods of measuring fish production on the artificial and reference reefs. Planning for these process studies has involved meetings with the Scientific Advisory Panel, SCE and their consultants, and artificial reef biologists from the California Department of Fish and Game.

Field work on the first process study has begun. The initial experimental set-up was completed in March 2002, and the first sampling survey will be conducted this summer. Work on the second process study began in February 2002 and is continuing. Preliminary surveys for possible *Muricea* transplants, conducted in February 2002, found very few small colonies suitable for transplanting. Consequently, the contract scientists are emphasizing the assessment of the possible effects of *Muricea* on giant kelp by sampling

existing natural and artificial reefs. More recent surveys conducted during the contract scientists' annual winter/spring kelp survey found widespread evidence of recent *Muricea* recruitment. Following completion of the giant kelp survey, focused sampling will be done to characterize distributions of the recruits and to assess whether a field experiment can be done to assess the effects of reef design on the growth and survival of young *Muricea*. The goal of such an experiment is to gather demographic data that will allow prediction of the size of future *Muricea* populations on the different reef designs and to determine whether such populations might adversely affect giant kelp.

- (2) *Conducting an annual survey of giant kelp adults.* The annual winter/spring survey of giant kelp adults was begun in March 2002 and will be completed in April or early May 2002.

FISH BEHAVIORAL MITIGATION

The Project

Condition B requires the permittee to install and maintain behavioral barrier devices at SONGS to reduce fish impingement losses.

Progress Report

SCE conducted a number of laboratory and in-plant experiments testing the behavioral response of fish to lights and sound devices from 1992 through 1999. None of the experiments showed evidence that these devices would reduce fish impingement losses as required by Condition B. At the same time, SCE continued its modified heat cleaning treatments at the plant (called the Fish Chase procedure), which result in a considerable reduction in fish impingement losses.

In October 2000, the Commission reviewed the results and concluded that no further testing of alternative behavioral barriers should be required at this time, provided that (1) SCE continues to adhere to the operating, monitoring, and reporting procedures for the modified heat cleaning treatments and (2) SCE makes every effort to test and install, if feasible, future technologies or techniques for fish protection if such techniques become accepted industry standards or are required by the Commission in other power plant regulatory actions.

The staff received SCE's 2000 *Annual Marine Environmental Analysis* report in August 2001. The staff reviewed the report's data and analysis on the fish chase procedure at SONGS, which indicate that it was consistent with the Commission's requirements. SCE is currently in compliance with Condition B of the SONGS permit.

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



April 22, 2002

Mr. Barry Nussbaum, President
Board of Directors
22nd District Agricultural Association
2260 Jimmy Durante Boulevard
Del Mar, CA 92014-2216

Re: Follow-up to July 27, 2001 letter regarding obligations under Coastal
Development Permit No. 6-84-525

Dear Mr. Nussbaum:

We would like to emphasize for you and new Board members that the District continues to have outstanding obligations under coastal development permit No. 6-84-525. Now is the time to resolve these in the context of the development of the San Dieguito wetland restoration project.

The Coastal Commission staff met with former Board member Bob Vice and District staff in April last year to begin discussing ways in which we could craft a solution to the least tern nesting site mitigation requirement and related issues that are the subject of the District's CDP. In a follow-up to that meeting, we provided the District with a draft maintenance and monitoring plan, dated May 7, 2001. In a July 27, 2001 letter, the Commission staff summarized in detail the nature and scope of the District's outstanding obligations under its coastal development permit. Both of these letters are attached for your reference.

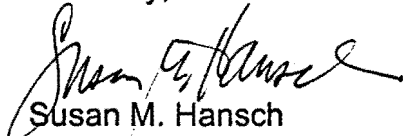
As you know, Southern California Edison has been planning since 1992 to undertake a substantial restoration of the San Dieguito Lagoon as part of its mitigation conditions under a separate coastal development permit (No. 6-81-330, formerly 183-73). SCE has incorporated nesting habitat for the endangered California Least Tern in its plans. Last July, in a lawsuit challenging the adequacy of the Final EIR on the restoration project, the Court set aside the JPA's certification and remanded the matter back to the JPA. Both sides have filed appeals.

To date, the District has not indicated how it will meet its outstanding obligations. Although the formal review and permitting of the San Dieguito wetland restoration project is on hold until the lawsuit is resolved, the Commission staff, SCE, and other parties are trying to use the appeals period productively. First, SCE and the JPA are working to address the points deemed inadequate by the Court to be ready to re-certify the FEIR if necessary. Regardless of the outcome of the appeals process, these additional analyses will be needed at the time of the Commission's review of the coastal development permit application for the restoration project. Second, the Commission staff is informally reviewing SCE's Final Plan submittal to allow us to take a revised

Final Plan and subsequent coastal development permit application to the Commission as quickly as possible after the conclusion of the appeals process. Third, the State Lands Commission is continuing its efforts to resolve property ownership issues with the District, which we hope will assist in negotiations for access to the rivermouth for the restoration project. Therefore, this is a critical opportunity for the District to resolve its obligations through this process.

We would like very much to resume our discussions with the District during this time. We believe that by working together with the parties the District can achieve compliance with its permit obligations in a cooperative manner as we continue to move forward with the San Dieguito wetland restoration project. If you need further assistance, please call me at (415) 904-5244. I hope to hear from you soon.

Sincerely,



Susan M. Hansch
Chief Deputy Director

cc: / 22nd District Board of Directors
Tim Fennell, 22nd District
Ron Small, Dept. of General Services
Patricia Butler, BRG Consulting
Supervisor Pam Slater
Dick Bobertz, JPA
Jack Fancher, USFWS
Terri Stewart, CDFG
David Kay, SCE
Curtis Fossum, SLC
Coastal Commissioners