

CALIFORNIA COASTAL COMMISSION

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Energy and Ocean Resources
Staff: JLL, SMH—SF
Staff Report: June 26, 2002
Hearing Date: July 11, 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.

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 in 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. Both parties appealed the Court's decision. Briefings should be completed by the end of August 2002.

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. In order to reinitiate its efforts to resolve these permit issues, the staff sent a follow-up letter to the District in April 2002. The District has indicated a readiness to renew discussion on these issues (see attached letter, dated May 30, 2002).

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. Results of the pre-restoration monitoring activities were reviewed at the second annual public workshop held in February 2002. Written proceedings of the workshop are posted on the Coastal Commission web site at <http://www.coastal.ca.gov/energy/songs-workshop-mm2.pdf>.

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. Recent work has focused on developing and evaluating the effectiveness of enclosure traps. This is important because enclosure traps have been estimated to be much more effective at sampling gobies, small fish that dominate wetland fish communities. Work to date suggests that enclosure traps are between 50 to 100 times more effective at sampling gobies than other sampling gear. Future work by the contract scientists will concentrate on determining whether the enclosure trap estimates are consistently higher than more traditional sampling methods or whether differences vary with habitat type or fish density.

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 in February 2002. Written proceedings of the workshop are posted on the Coastal Commission web site at <http://www.coastal.ca.gov/energy/songs-workshop-mm2.pdf>.

An experiment to determine the causes for differences in the species composition of the benthic community between the artificial reef modules and the natural reference reefs was initiated in March 2002. This experiment will run for the remainder of the experimental phase of the artificial reef. The experiment will be sampled for the first time in summer 2002 as part of the contract scientists' summer benthic monitoring. The spring 2002 survey of giant kelp was completed in the first week of June 2002. During this survey, dense colonization of the invasive sea fan *Muricea californica* was observed on many of the experimental reef modules. The effect of different artificial reef designs on the growth and survivorship of these *Muricea* recruits will be evaluated by following changes in the density and size structure of *Muricea* in the 12 permanently marked 1 m² quadrats located on each experimental reef module as part of the annual summer benthic monitoring which is scheduled to begin at the end of June 2002. Concurrent data collected on the physical and biological characteristics of each quadrat will be used to determine whether the survivorship and growth of *Muricea* is related to other variables.

Studies on the resident black-eye goby are scheduled to begin in June 2002 to investigate the degree to which the different artificial reef designs differentially influence fish reproductive

rates. This work is being done in collaboration with Professor Todd Anderson of San Diego State University.

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.

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MAY 31 2002
CALIFORNIA
COASTAL COMMISSION



22ND DISTRICT AGRICULTURAL ASSOCIATION
State of California

May 30, 2002

Ms. Susan M. Hansch
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2218

SUBJECT: LEAST TERN NESTING SITE RESOLUTION

Dear Ms. Hansch:

Thank you for your April 22, 2002 letter offering to renew the discussions to finalize the provisions for least tern nesting sites in the proposed San Dieguito Wetlands Restoration Project plans.

Master Plan Committee Chairman Bob Vice's May 18, 2001 letter to you provided the 22nd District Agricultural Association (District) substantive response to the issues you have raised regarding the Commission staff's view of the District's obligations under Special Condition 1 of CDP 6-84-525. Your subsequent July 27, 2001 letter did not directly respond to the District's offered solution, but rather provided the first long outstanding Commission response to submittals the District made to the Commission ten years ago, in compliance with the 1991 Settlement Agreement.

I am concerned that your most recent April 22, 2002 letter and the previous July 27, 2001 letter inaccurately portray the District's efforts to comply with the special condition of CDP 6-84-525, and imply that the District has not properly pursued compliance. . It is inappropriate to imply that the District has overtly delayed its permit compliance efforts in any way. It is important to correct this misunderstanding before we can proceed to negotiate further in a productive manner.

Background

The District actively pursued acquisition of a suitable least tern nesting site location for the first five-year period of the original Memorandum of Agreement (MOA), while maintaining the prescribed 4-acre interim nesting site in the south overflow parking lot. As provided in the MOA, when it became apparent that the District was unable to acquire suitable land for the nesting site within the MOA's prescribed timeline, the District turned to the Department of Fish & Game (CDFG) to identify a suitable 16 acre parcel on land owned by CDFG in the San Dieguito Lagoon. After a year's time, CDFG indicated they could not identify any area in the 100 acres owned by CDFG in the lagoon for construction of a least tern nesting site.

The original MOA did not contemplate that CDFG would refuse to allow the nesting site to be created on CDFG land in the lagoon. There was no direction, written or verbal, from the Commission on how to proceed in this unanticipated circumstance.

The District continued to seek alternative methods to satisfy the intent of the permit condition. When the rivermouth property became available, the District consulted with CDFG staff to check its possible suitability as a nesting site location. With CDFG's affirmative input, the District acquired the rivermouth property and the two agencies entered into an amended MOA, patterned after the original MOA, to create the new nesting site. Although the original MOA between the District and CDFG was required by Special Condition 1 of CDP 6-84-525, the Commission was clearly not a party to the MOA. The MOA provided that the parties could mutually agree to amend the MOA. Commission staff subsequently insisted that the Amended MOA required the Commission's approval.

The District felt that its acquisition of the nesting site location clearly allowed it to abandon the unoccupied, never utilized by least terns, 4-acre interim nesting location on the south parking lot, while the District pursued the coastal development to construct the permanent nesting site. When Commission staff disagreed and issued a violation notice, the District entered into the 1991 Settlement Agreement (SA). The District fully complied with the terms of the SA, as reported to Ms. Ellen Lirley in a May 19, 1993 Status Report letter from Ms. Patricia Butler, the District's environmental planner. To quote, in part, from that Status Report:

- "1. Item 1c (of the SA) required the District to submit an alternative least tern nesting site analysis by November 15, 1991, to be distributed among the various resources agencies. The report outline was submitted to the Commission on 11/15/91, in compliance with the settlement agreement schedule. However, the known interests of the San Dieguito River Park JPA and the City of Del Mar in opposition to the preferred alternative site selected by the California Department of Fish & Game, as identified in the Second MOU between the District and CDFG, dated June 20, 1990, delayed our completion of the alternatives sites analysis report until late-March 1992, when it was submitted to the Commission and distributed to the agencies.
2. Item 1d (of the SA) required the District to submit a coastal development permit for the preferred alternative nesting site by January 15, 1992, in order to provide for construction of the nesting site in time for the 1992 nesting season. The 22nd District submitted the required coastal development permit application on January 15, 1992. Said permit application was filed as CDP App. # 6-92-9."

Commission staff never responded or commented on the alternative nesting sites report until your July 27, 2001 letter. You have correctly confirmed that, at the request of the

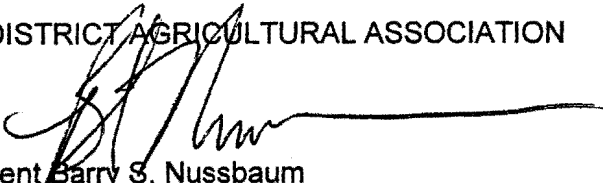
Commission staff in 1992, the District agreed to hold in abeyance its permit application for a least tern nesting site at the rivermouth, in view of the Commission's approval of San Dieguito as the location for Southern California Edison's SONGS mitigation. The District never withdrew the application, but agreed to the Commission's requested delay of its consideration. Since that time, the District has cooperated with the San Dieguito River Park JPA, Commission staff and the resources agencies in the comprehensive habitat planning effort.

All 22nd District Agricultural Association Board Members take their responsibility as stewards of the environment very seriously. Clearly this is an issue that has been hanging fire since before our tenures as members of this board. However, we are committed to doing everything possible to reach a resolution that best serves the interests of all Californians. I assure you that we will not allow the environment to suffer on our watch!

We look forward to further discussions with you and your staff on this issue. Please contact Tim Fennell, General Manager of the 22nd District Agricultural Association at (858) 792-4200 when it is appropriate to arrange another meeting.

Sincerely,

22ND DISTRICT AGRICULTURAL ASSOCIATION



President Barry S. Nussbaum
Chairman, Master Plan Committee
Board of Directors

Enclosure

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