

PETITION FOR A MINOR MODIFICATION

To the

CEC License for the Calpine -Otay Mesa Energy Center LLC

(Otay Mesa Generating Project)

99-AFC-5

Petition for Minor Modification of Condition of Certification BIO-10

March 2007

**PETITION FOR A MINOR MODIFICATION TO THE CEC LICENSE FOR THE CALPINE OMEC
FACILITY
99-AFC-5
Petition for Modification of the Verification of Condition of Certification BIO-10
March 2007**

- **CCR Title 20, Section 1769 (a) (1)(A) Description of Proposed Modification:**

The California Energy Commission (CEC) approved the Otay Mesa Energy Center LLC project formerly the Otay Mesa Generating Project (99-AFC-5) in April 2001.

The purpose of this Petition for a Minor Modification is to petition the California Energy Commission (CEC) with a proposed modification to the *Verification* of Condition of Certification BIO-10.

This Petition for Modification to the Condition of Certification contains information required pursuant to Section 1769 (Post Certification Amendments and Changes) of the CEC's Siting Regulations. The specific project change and information needed to fulfill the requirements of Section 1769 are contained herein.

The key proposed change is:

To add language to the *Verification* of Condition of Certification Biology-10 (BIO-10) to include the option of fulfilling off-site habitat compensation by providing a designated sum of \$440,000 to the San Diego National Wildlife Refuge for the acquisition and management of appropriate properties.

Proposed new language (underlined in italics):

BIO-10 To compensate for temporary and permanent impacts to sensitive species habitat, the project owner shall implement a habitat compensation strategy that guarantees the perpetual care of at least 43.7 acres of off-site habitat in the region of the proposed project.

Verification: At least 30 days prior to the start of any project-related ground disturbance activities the project owner will provide written verification to the Compliance Project Manager (CPM) that all habitat compensation purchases have been completed. At the same time, written verification must also be provided showing that the associated endowment and any other associated costs related to the habitat compensation have also been provided.

The project owner may also satisfy this condition by executing an MOU between the project owner, the Energy Commission and the USFWS that expressly fulfills the terms of this condition by funding the USFWS San Diego National Wildlife Refuge purchase and care for the mitigation habitat.

Within 90 days after completion of project construction, the project owner shall provide the CPM aerial photographs taken after construction and an analysis of the amount of any additional habitat compensation disturbance than that identified in this staff assessment. The CPM will notify the project owner of any additional funds required to compensate for any additional habitat disturbance at the adjusted market value at the time of construction to acquire and manage habitat.

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- **CCR Title 20, Section 1769 (a) (1)(B) Necessity for the Proposed Modification:**

(Calpine -OMEC has worked diligently with the Service, the San Diego National Wildlife Refuge (Refuge), the CDFG and local public landowners to find suitable off-site parcels which would fulfill the remaining off-site mitigation land obligations. By mutual consent with the Service, CDFG and the Refuge, all have agreed that Calpine-OMEC may fulfill their off-site obligation, if they so choose, by providing the sum of \$440,000 to the Refuge for the acquisition and management of appropriate properties. Therefore, Calpine-OMEC requests the language change to the *Verification* of Condition BIO-10 to allow this option as an alternative to the direct acquisition of off-site mitigation acreage.

- **CCR Title 20, Section 1769 (a) (1) (C) a discussion is required if the modification is based on information that was known by the petitioner during the certification proceeding, and an explanation of why the issue was not raised at that time.**

The information described in this proposed modification was not known by the petitioner (Calpine-OMEC) during the certification proceedings.

- **CCR Title 20, Section 1769 (a) (1)(D), a discussion is required if the modification is based on new information that changes or undermines the assumptions, rationale, findings, or other bases of the final decision, an explanation of why the changes should be permitted.**

The proposed modification to allow the project owner (Calpine-OMEC) an alternative to acquiring off-site mitigation land by providing a transfer of funds to the Refuge to acquire and manage appropriate properties they choose does not undermine the assumptions, rationale, findings or other bases of the final decision.

The proposed modification should be permitted as it is a result of mutual consent by all parties (Refuge, Service, CDFG, Calpine-OMEC) and allows an option, for the project owner to choose, other than direct land acquisition in order to move the project forward and still satisfy the habitat compensation requirement of BIO-10.

- **CCR Title 20, Section 1769 (a) (1) (E) an analysis is required of the impacts the modification may have on the environment and proposed measures to mitigate any significant adverse impacts is required.**

The proposed change to the *Verification* of the condition of certification does not result in any significant adverse environmental impact.

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- **CCR Title 20, Section 1769 (a) (1) (F), a discussion of the impacts of the modification on the facilities ability to comply with applicable laws, ordinances, regulations, and standards is required.**

The proposed modification will have no impact on the facility's ability to comply with applicable laws, ordinances, regulations and standards.

- **CCR Title 20, Section 1769 (a) (1) (G), a discussion of how the modification affects the public is required.**

Calpine-OMEC asserts that the proposed modification to the *Verification* of the condition of certification will not adversely affect the public.

- **CCR Title 20, Section 1769 (a) (1) (H), a list of property owners potentially affected by the modification is required.**

The proposed modification will not affect local property owners.

- **CCR Title 20, Section 1769 (a) (1) (I), a discussion of the potential effect on nearby property owners, the public and parties in the application proceedings is required.**

The proposed modification will have no impact on property owners, the public or any other parties.