

**DEPARTMENT OF FISH AND GAME**<http://www.dfg.ca.gov>

Eastern Sierra Inland Deserts Region - R6

4665 Lampson Avenue, Suite J

Los Alamitos, CA 90720



March 04, 2005

Bill Pfanner, Project Manager
California Energy Commission
Systems Assessments & Facilities Siting Division
Environmental Protection Office
1516 Ninth St., MS -40
Sacramento, CA 95814

DOCKET 02-AFC-1
DATE MAR 04 2005
RECD. MAR 08 2005

Subject: Blythe Energy Project Phase II - Preliminary Staff Assessment (PSA)
Biological Resources Workshop (Docket No. 02-AFC-01)

Dear Mr Pfanner:

The Department of Fish and Game (Department) is providing comments on the above-referenced Preliminary Staff Assessment (PSA) relative to impacts to biological resources that may be caused by construction and operation of the nominally-rated 520-megawatt combined-cycle power plant (Proposed Project). The Department has jurisdiction over the conservation, protection and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Fish and Game Code Section 1802). Also, the Department is a Trustee Agency under the California Environmental Quality Act (CEQA) Guidelines, responsible for ensuring that fish and wildlife resources of the State are addressed pursuant to CEQA (Cal. Code of Regs., tit. 14, § 15386). In these capacities, the Department provides the following comments on the Proposed Project.

The Department appreciates the California Energy Commissions (CEC) coordination on the Proposed Project. The Department is concerned that construction and operation of the evaporation ponds may have adverse impacts to wildlife. The 2004 First Monitoring Report for Blythe Energy Plant Phase I (BEP I) reports selenium levels within the evaporation ponds which are known to negatively affect avian reproduction (Memo dated August 14, 2004 from the California Energy Commission). In addition, reported arsenic levels within these ponds routinely exceeded the standard of .05 mg/L established by the California Regional Water Quality Control Board.

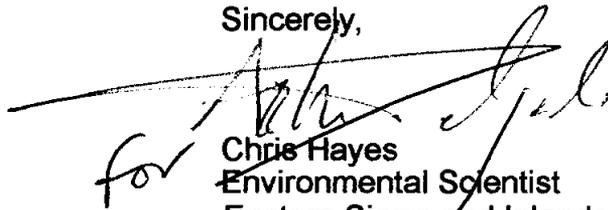
Blythe Energy Project's Annual Summary of Bird Use of the Evaporation Ponds: June 2003 through June 2004, indicates extensive use of the ponds by shorebirds, waders, and waterfowl. Killdeer and black-necked stilts (migratory birds) have been observed nesting at the BEP I east pond, and seventeen additional migratory bird species were observed feeding, drinking, and roosting along the pond edge. It is highly likely that birds would also utilize the two 8-acre

evaporation ponds included as part of the Proposed Project. The Department believes that construction and operation of any future ponds, as part of the Proposed Project, combined with the existing ponds will continue to attract birds and other wildlife that would otherwise use other water resources in the area. As a result, the ponds could be functioning as a mortality "sink", thus causing harm, and/or death to birds and other wildlife that are making use of these ponds.

Many, if not all, of the observed avian species are afforded protection under provisions of the Fish and Game Code. Fish and Game Code, Section 3513, prohibits any take or possession of birds that are designated by the Migratory Bird Treaty Act (MBTA) of 1918 as migratory nongame birds, except as allowed by federal rules and regulations promulgated pursuant to the MBTA. Similarly, Fish and Game Code, Sections 3503, 3503.5, and 3505, prohibits the take of several other species observed at the BEP I site. As the State Lead Agency for the Proposed Project, the CEC is responsible for ensuring that the Proposed Project is in compliance with State law. Given the likelihood that the construction and operation of the proposed evaporation ponds will result in adverse impacts (i.e. death, loss of reproduction, and physiological harm) to species protected under the Fish and Game Code, measures should be incorporated into the Proposed Project to avoid "take" of these species. As such, the Department supports the CEC's and U.S. Fish and Wildlife Service's recommendation to eliminate the evaporation ponds to ensure that take of species protected under the MBTA, and other relevant California regulations, are avoided.

If you have any questions regarding this matter, please contact Canh Nguyen at (760) 921-2974.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Hayes", is written over a horizontal line. To the left of the signature, the word "for" is written in a cursive script.

Chris Hayes
Environmental Scientist
Eastern Sierra and Inlands Deserts Region