



APPENDIX E

Comments Received on the
Draft Mitigated Negative Declaration

and

District Response to Comments



Response to Comments Received for the Chevron USA Inc. Lost Hills Steam Pilot Project (District Project No. S-1092524)

The San Joaquin Valley Air Pollution Control District (District) provided a Notice of Intent to adopt a Mitigated Negative Declaration for the construction and operation of ten (10) 85.0 MMBtu/hr and one (1) 62.5 MMBtu/hr natural gas fired steam generators within Chevron's Light Oil Western Stationary Source in the existing Lost Hills Oilfield. The Initial Study and Draft Mitigated Negative Declaration were available for public review from December 22, 2011 to January 20, 2012.

The following parties provided written comments on the proposed Initial Study and Mitigated Negative Declaration:

- Mr. Frank J. Maccioli, December 28, 2011
- Native American Heritage Commission (NAHC), December 29, 2011

All comments were duly considered and addressed in preparation of the Final Mitigated Negative Declaration (MND). A copy of the comment letters are incorporated into this document as Attachments 1 and 2. A summary of comments received and the District's responses follow below.

Mr. Frank J. Maccioli

Comment 1: The commenter requested clarification about where written comments should be sent and asked if e-mailed and/or faxed comments would be acceptable.

Response 1: Written comments may be submitted to any District regional office via letter, fax, or e-mail.

Comment 2: The commenter noted that greenhouse gas (GHG) emissions from construction activities are quantified while operational GHG emissions are not. The commenter noted that operational GHG emissions are several orders of magnitude greater than the construction emissions presented to the public. The commenter inquired as to why the District did not present operational GHG emissions and noted that omitting this information may be misleading the public about the GHG impacts of the project, even if those impacts are not exceeding any requirements.

Response 2: On December 17, 2009, the District's Governing Board adopted District Policy (APR 2005) *Addressing GHG Emission Impacts for Stationary Source Projects Under CEQA When Serving as the Lead Agency*. The policy establishes the District's



methodology for determining if project specific GHG emissions would have a significant effect on global climate change. The methodology relies on the use of performance based standards, otherwise known as Best Performance Standards (BPS). BPS is defined as the most effective Achieved-in-Practice means of reducing or limiting GHG emissions from a GHG emissions source. Streamlining the process of determining significance of GHG emissions is a key element of the policy. Emission reductions achieved through implementation of BPS are pre-quantified, thus negating the need for project specific quantification of GHG emissions. Per the District Policy, emission sources implementing Best Performance Standards are determined to have a less than significant individual and cumulative impact on global climate change and do not require project specific quantification of GHG emissions.

All stationary sources implemented BPS. Thus, GHG emissions from stationary sources did not require quantification and were determined to have a less than significant impact on global climate change. BPS has not been developed for construction activities. Thus, GHG emissions from construction activities were quantified and determined to have a less than significant impact on global climate change.

Comment 3: The commenter is inquiring whether operational GHG emissions aren't shown because District policy APR 2005 doesn't require it for projects that don't trigger an Environmental Impact Report (EIR) and whether this project does not trigger an EIR because the gas fired steam generators are considered BPS.

Response 3: All stationary sources implemented BPS. Therefore, GHG emissions from stationary sources were determined to have a less than significant impact on global climate change. Please see response to comment 2 for additional details.

NAHC

Comment 1: The commenter identifies the role of the NAHC and the desire to comment on the project.

Response 1: This comment is informational only. No response needed.

Comment 2: The commenter provides reference to both state and federal statutes relating to Native American historic properties and Native American consulting parties and notes that state law addresses the freedom of Native American Religious Expression.

Response 2: This comment is informational only. No response needed.



Comment 3: The commenter discusses CEQA requirements for determining potential impacts on historical and archaeological resources and the requirement to mitigate potentially significant impacts.

Response 3: As discussed in the MND, the District queried state and federal registers for historical resources and found there were no registered historical resources in or around the project area. Furthermore, the District recognized the possibility of unearthing previously unknown archaeological resources during construction activities and included mitigation measures CUL-1 and CUL-2 to reduce potential impacts in the event historical or archaeological resources are discovered.

Comment 4: The commenter states that although the NAHC Sacred Lands File search did not identify Native American cultural resources in the project area, the absence of archaeological resources does not preclude their existence. The commenter cites various state statutes allowing the NAHC to establish a Sacred Land Inventory and notes that this inventory is subject to confidentiality protection.

Response 4: Mitigation measures CUL-1 and CUL-2 have been incorporated into the project to address the uncertainty of precluding the existence of archaeological resources. These measures require consultation with the appropriate Native American consulting parties to determine the appropriate actions to be taken in the event historical or archaeological resources are discovered.

Comment 5: The commenter states that consultation with tribes in the project area would be the best way to avoid unanticipated discoveries of cultural resources or burial sites. The commenter recommends the District to consult with the persons/tribes provided on the list of Native American contacts. The commenter notes state statutes that mandate consultation with Native American tribes, both federally and non-federally recognized, where electric transmission lines are proposed.

Response 5: Mitigation measures CUL-1 and CUL-2 have been incorporated into the project to address the uncertainty of precluding the existence of archaeological resources. These measures require consultation with the appropriate Native American consulting parties to determine the appropriate actions to be taken in the event historical or archaeological resources are discovered.

Comment 6: The commenter states that consultation with Native American communities is a matter of environmental justice and requests that pertinent project information be provided to the Native American consulting parties. The commenter also recommends avoidance, documentation, and data recovery when pursuing a project that would have significant impacts on Native American cultural resources.

Response 6: See Response 5 above.



Comment 7: The commenter cites various federal codes relating to consultation with Native American consulting parties for projects under federal jurisdiction.

Response 7: This comment is informational only. No response needed.

Comment 8: The commenter notes that “historic properties of religious and cultural significance” is subject to confidentiality protection.

Response 8: This comment is informational only. No response needed.

Comment 9: The commenter cites state statutes that provide for accidental discovery of archaeological resources and human remains.

Response 9: As discussed in the MND, the District recognized the possibility of unearthing archaeological resources and human remains during construction activities and included mitigation measures CUL-1 and CUL-2, which specifically comply with existing regulations, to mitigate potential impacts.

Comment 10: The commenter notes the importance of on-going consultation between Native American tribes, applicants and lead agencies.

Response 10: This comment is informational only. No response needed.



Attachment 1

Jessica Willis

From: F.J. Maccioli <maccifj@yahoo.com>
Sent: Friday, December 30, 2011 9:07 AM
To: Jessica Willis
Subject: Re: Chevron Lost Hills Mitigated Neg Dec.

Comment 3

I guess the reason the GHG emissions from the project aren't shown is because APCD policy APR 2005 says you don't have to for projects that don't trigger an EIR? And this doesn't trigger an EIR because gas fired steam generators are considered BPS?

Frank J. Maccioli
maccifj@yahoo.com

From: F.J. Maccioli <maccifj@yahoo.com>
To: "jessica.willis@valleyair.org" <jessica.willis@valleyair.org>
Sent: Wednesday, December 28, 2011 12:35 PM
Subject: Chevron Lost Hills Mitigated Neg Dec.

Hello,

I'm a resident of Bakersfield, a retired environmental compliance specialist, and I write free-lance environmental articles for Examiner.com and Yahoo!News.

I just noticed the APCD intends to issue a Neg. Dec. for Chevron's Lost Hills steam generator project. I had a couple of questions.

Comment 1

1. The notice is unclear about where written comments should be sent. It appears to be the Fresno office or is it the Bakersfield office (or both)? Also, are e-mailed and/or faxed comments acceptable or must the comments be on paper?

2. Upon reading the report, I noticed that the APCD shows calculations for greenhouse gas (GHG) emissions from construction activity (~160 tonnes/yr), but, doesn't show GHG emissions that will result from the proposed operating equipment itself.

Comment 2

Using USEPA emission factors for CO2 (120,000 lb/mmscf and 1020 btu/scf), the total project (11 HSGs totaling 912.5 mmbtu/hr) will emit a potential maximum increase of 470,000 tons/yr (yes, tons) of CO2. That's several orders of magnitude greater than the construction emissions you took the time to show the public.

Why didn't you show this number? Some might say that omitting it is misleading the public about the GHG impacts of the project, even if those impacts are not exceeding any requirements.

Frank J. Maccioli
maccifj@yahoo.com



Attachment 2

STATE OF CALIFORNIA

NATIVE AMERICAN HERITAGE COMMISSION
 915 CAPITOL MALL, ROOM 364
 SACRAMENTO, CA 95814
 (916) 653-6251
 Fax: (916) 657-5300
 Web Site: www.nahc.ca.gov
 da_nahc@pacbell.net

Edmund G. Brown, Jr., Governor

RECEIVED

JAN 03 2012

Permits Services
SJVAPCD

December 29, 2011

Ms. Jessica Willis
San Joaquin Valley Unified Air Pollution Control District
 1990 E. Gettysburg Avenue
 Fresno, CA 93726

Re: SCH#201121088 CEQA Notice of Completion; proposed Mitigated Negative Declaration for the "Lost Hills Steam Pilot Project for Chevron USA, Inc. (Project S-1092524) Project," located in the Lost Hills Area of western Kern County, California

Dear Ms. Willis:

The Native American Heritage Commission (NAHC) is the State of California 'Trustee Agency' for the protection and preservation of Native American cultural resources pursuant to California Public Resources Code §21070 and affirmed by the Third Appellate Court in the case of EPIC v. Johnson (1985: 170 Cal App. 3rd 604). The court held that the NAHC has jurisdiction and special expertise, as a state agency, over affected Native American resources, impacted by proposed projects including archaeological, places of religious significance to Native Americans and burial sites. The NAHC wishes to comment on the proposed project.

This letter includes state and federal statutes relating to Native American historic properties of religious and cultural significance to American Indian tribes and interested Native American individuals as 'consulting parties' under both state and federal law. State law also addresses the freedom of Native American Religious Expression in Public Resources Code §5097.9.

The California Environmental Quality Act (CEQA – CA Public Resources Code 21000-21177, amendments effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the CEQA Guidelines defines a significant impact on the environment as 'a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ... objects of historic or aesthetic significance.' In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE), and if so, to mitigate that effect.

The NAHC Sacred Lands File (SLF) search resulted as follows: **Native American cultural resources were not identified** within the project area identified. Also, the absence of archaeological resources does not preclude their existence. . California Public Resources Code §§5097.94 (a) and 5097.98 authorize the NAHC to establish a Sacred Land Inventory to record Native American sacred sites and burial sites. These records are exempt from the provisions of the California Public Records Act pursuant to California Government Code §6254 (r). The purpose of this code is to protect such sites from vandalism, theft and destruction. The NAHC 'Sacred Sites,' as defined by the Native American Heritage Commission and the California Legislature in California Public Resources Code §§5097.94(a) and 5097.98. Items in the NAHC

Comment 1

Comment 2

Comment 3

Comment 4



**Comment 4
continued**

Sacred Lands Inventory are confidential and exempt from the Public Records Act pursuant to California Government Code §6254 (r).

Comment 5

Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries of cultural resources or burial sites once a project is underway. Culturally affiliated tribes and individuals may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We strongly urge that you make contact with the list of Native American Contacts on the list of Native American contacts, to see if your proposed project might impact Native American cultural resources and to obtain their recommendations concerning the proposed project. Special reference is made to the *Tribal Consultation* requirements of the California 2006 Senate Bill 1059: enabling legislation to the federal Energy Policy Act of 2005 (P.L. 109-58), mandates consultation with Native American tribes (both federally recognized and non federally recognized) where electrically transmission lines are proposed. This is codified in the California Public Resources Code, Chapter 4.3 and §25330 to Division 15.

Comment 6

Furthermore, pursuant to CA Public Resources Code § 5097.95, the NAHC requests that the Native American consulting parties be provided pertinent project information. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). Pursuant to CA Public Resources Code §5097.95, the NAHC requests that pertinent project information be provided consulting tribal parties. The NAHC recommends *avoidance* as defined by CEQA Guidelines §15370(a) to pursuing a project that would damage or destroy Native American cultural resources and Section 2183.2 that requires documentation, data recovery of cultural resources.

Comment 7

Consultation with tribes and interested Native American consulting parties, on the NAHC list, if the project is under federal jurisdiction, should be conducted in compliance with the requirements of federal NEPA and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 *et seq.*), 36 CFR Part 800.3 (f) (2) & .5, the President's Council on Environmental Quality (CSQ, 42 U.S.C 4371 *et seq.* and NAGPRA (25 U.S.C. 3001-3013) as appropriate. The 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The aforementioned Secretary of the Interior's *Standards* include recommendations for all 'lead agencies' to consider the historic context of proposed projects and to "research" the cultural landscape that might include the 'area of potential effect.'

Comment 8

Confidentiality of "historic properties of religious and cultural significance" should also be considered as protected by California Government Code §6254 (r) and may also be protected under Section 304 of the NHPA or at the Secretary of the Interior discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C., 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APEs and possibility threatened by proposed project activity.

Comment 9

Furthermore, Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for accidentally discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery'.



Comment 10

To be effective, consultation on specific projects must be the result of an ongoing relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. Regarding tribal consultation, a relationship built around regular meetings and informal involvement with local tribes will lead to more qualitative consultation tribal input on specific projects.

If you have any questions about this response to your request, please do not hesitate to contact me at (916) 653-6251.

Sincerely,

Dave Singleton
Program Analyst

Cc: State Clearinghouse

Attachment: Native American Contact List



California Native American Contacts
 Kern County
 December 29, 2011

Santa Rosa Rancheria
 Rueben Barrios, Chairperson
 P.O. Box 8
 Lemoore , CA 93245
 (559) 924-1278
 (559) 924-3583 Fax

Tache
 Tachi
 Yokut

Tejon Indian Tribe
 Katherine Montes- Morgan, Chairperson
 2234 4th Street
 Wasco , CA 93280
 kmorgan@bak.r.com
 661-758-2303

Yowlumne
 Kitanemuk
 Kawailsu

Tule River Indian Tribe
 Ryan Garfield, Chairperson
 P.O. Box 589
 Porterville , CA 93258
 chairman@tulerivertribe-nsn.
 (559) 781-4271
 (559) 781-4610 FAX

Yokuts

Kawailsu Tribe of Tejon Reservation
 David Laughinghorse Robinson
 PO Box 1547
 Kernville , CA 93238
 (661) 664-3098 - work
 (661) 664-7747 - home
 horse.robinson@gmail.com

Kawailsu

Ron Wermuth
 P.O. Box 168
 Kernville , CA 93238
 warmoose@earthlink.net
 (760) 376-4240 - Home
 (916) 717-1176 - Cell

Tubatulabal
 Kawailsu
 Koso
 Yokuts

Esohm Valley Band of Indians/Wuksache Tribe
 Kenneth Woodrow, Chairperson
 1179 Rock Haven Ct.
 Salinas , CA 93906
 kwood8934@aol.com
 831-443-9702

Foothill Yokuts
 Mono
 Wuksache

Kitanemuk & Yowlumne Tejon Indians
 Della Dominguez, Chairperson
 981 N. Virginia
 Covina , CA 91722
 deedominguez@juno.com
 (626) 339-6785

Yowlumne
 Kitanemuk

Chumash Council of Bakersfield
 Arianne Garcia, Chairperson
 P.O. Box 902
 Bakersfield , CA 93302
 chumashtribe@sbcglobal.net
 (661) 836-0486
 (661) 836-0487

Chumash

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2011121088; CEQA Notice of Completion; draft Mitigated Negative Declaration for the Lost Hills Steam Pilot Project for Chevron USA, Inc. (Project No. S-1092524) located in western Kern County, California.



California Native American Contacts
Kern County
December 29, 2011

Tubatulabals of Kern Valley
Dr. Donna Begay, Tribal Chairwoman
P.O. Box 226 Tubatulabal
Lake Isabella, CA 93240
drbegay@aol.com
(760) 379-4590
(760) 379-4592 FAX

Santa Rosa Tachi Rancheria
Laio Franco, Cultural Coordinator
P.O. Box 8 Tachi
Lemoore, CA 93245 Tache
(559) 924-1278 - Ext. 5 Yokut
(559) 924-3583 - FAX

Native American Heritage Preservation Council
George Jones, Representative
320 Belle Avenue, Suite B Cherokee
Bakersfield, CA 93308
(661) 304-9935

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This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2011121088; CEQA Notice of Completion; draft Mitigated Negative Declaration for the Lost Hills Steam Pilot Project for Chevron USA, Inc. (Project No. S-1092524) located in western Kern County, California.