

Attachment 2.3-10

Letter from U.S. Fish and Wildlife Service

(USFWS)



United States Department of the Interior
FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, W-2605
Sacramento, California 95825-1846

IN REPLY REFER TO:

1-1-01-CP-3220

October 4, 2001

Mr. D. W. Wheeler
Vice President
GWF Power Systems
4300 Railroad Avenue
Pittsburg, California 94565

Subject: Endangered Species Conservation Requirements for the Proposed
Henrietta Peaker Power Project, Kings County, California

Dear Mr. Wheeler:

We are responding to your submittal of August 28, 2001, and subsequent conversations with David Stein of URS Consultants, concerning conservation requirements for the proposed Henrietta Peaker Power Project (HPP) in Kings County, California. Your proposed project has the potential to result in take of San Joaquin kit foxes (*Vulpes macrotis mutica*, "kit fox"). This listed species is protected under the Federal Endangered Species Act of 1973, as amended (Act).

Section 9 of the Act and its implementing regulations prohibit the "take" of federally listed fish and wildlife species. Take is defined by the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" any listed wildlife species. "Harm" in this definition includes significant habitat modification or degradation where it actually kills or injures wildlife, by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR § 17.3).

The proposed facility will be a 91.4-net-megawatt (MW) simple cycle natural gas-fired power plant, to be located on the eastern side of 25th Avenue, one mile south of State Route 198, and 10 miles southwest of Lemoore, Kings County, California. The project will consist of the power plant, a 70-kilovolt (kV) switchyard, approximately 550 feet of new 70-kV transmission line, and 2.2 miles of new 16-inch natural gas pipeline. Additionally there will be a 16.5 foot water interconnection pipeline from the site property boundary. The California Energy Commission (CEC) has told us that GWF Power Systems will require CEC approval to hook up any customers to the power plant steam line. The U.S. Fish and Wildlife Service expects to be included in the CEC review process for any customer hookups, and therefore will not require GWF to address the likely effects of potential customer hookups at this time.

Based on the Biological Resources section of your Application for Small Power Plant Exemption to the California Energy Commission prepared by Bill VanHerweg and URS Corporation, and conversations between Mr. David Stein and Brian Peterson of this office, the Service believes that take of the species mentioned above will be minimized to the maximum extent possible. Your power plant will be built on fallow farmland and the plant will occupy a 7 acre portion of a 20-acre parcel. The laydown area for construction of the plant will also be within the 20-acre

parcel, and will temporarily occupy 5 acres. The gas pipeline route will be installed along 25th Avenue, which is an unimproved farm access road. It will tie into the Southern California Gas Line (SoCalGas) 800 approximately one mile south of the Avenal Cutoff and go north within an HPP easement, pass beneath the Avenal cutoff, and proceed north in an existing SoCalGas easement, then turn east to enter the HPP site. The transmission line is located entirely on the Henrietta Peaker Project site and the adjacent Pacific Gas and Electric site. We require compensation at a ratio of 1:1 for permanent development, and 0.2:1 for temporary impacts that occur on agricultural land in the range of the San Joaquin kit fox. Therefore 9.3 acres of compensation acreage will be required to offset the effects of your project.

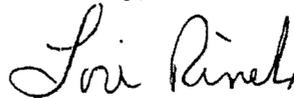
We think your project is appropriate for participation in the Kern Water Bank (KWB) Compensation Bank, and we authorize the KWB to extend incidental take authority to you and your entire project under their Master Permit. While your project is not within the normal service area for the KWB Compensation Bank, you can be covered as the Service retained the right to add additional projects to the KWB coverage, if the species and impacts are similar to those normally covered by the KWB. You will need to buy 10 acres of compensation credits habitat for the project as the KWB only sells credits in whole acre increments. Please arrange with Cheryl Harding at KWB for acquisition of the required credits and for inclusion under the Master Permit. Once you have provided the funds, a Certificate of Inclusion will be issued to you by KWB, which provides you with the incidental take authority you need to conduct work in an area with endangered species habitat.

If for any reason your project is not started within two years of the date of this letter, this approval is no longer valid. In that case, we may require another biological survey, and will require that the project conform with our requirements as they exist at that time. In any case, you must contact us immediately if any of the following occur:

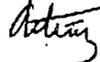
(1) the project design changes; (2) the amount or extent of incidental take is exceeded; (3) new information reveals effects to listed species or critical habitat in a manner or to an extent not considered in this letter; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease and we must be contacted immediately.

Thank you for your interest in conserving threatened and endangered species. Please contact Brian Peterson or Peter Cross at (916) 414-6600, if you have any questions regarding this letter.

Sincerely,



Vicki L. Campbell

 Chief, Conservation Planning Division

Mr. D.W. Wheeler

3

cc: Mike Mulligan, CDFG, Fresno
Bob Eller, Project Manager HEP, CEC, Sacramento
Tom Schofield, Biologist, CEC, Sacramento
Natasha Nelson, Biologist, CEC, Sacramento
David Stein, URS, Oakland
John Grattan, Grattan and Galati, Sacramento
Bill VanHerweg, Buena Vista Biological, Bakersfield
Cheryl Harding, Kern Water Bank Authority, Bakersfield
Mark Wolfe, Adams, Broadwell, Joseph & Cardozo, South San Francisco