

Attachment 3.2-5

**Letters Regarding TPP Coverage
Under the SJCMSCP**



GWF ENERGY LLC

September 6, 2001

Mr. Peter Cross
U.S. Fish and Wildlife Service
2800 Cottage Way, W-2605
Sacramento, CA 95825

SUBJECT: GWF Tracy Peaker Project
Coverage Under SJMSCP

Dear Mr. Cross:

GWF is proposing to develop the Tracy Peaker Project, a 169 MW natural gas-fired power plant on approximately 9 acres within a 40-acre parcel that is currently zoned Agricultural-40. An Application for Certification (AFC) for the project has been submitted to the California Energy Commission (CEC), who will serve as the Lead Agency under the California Environmental Quality Act (CEQA). A copy of the relevant sections from the AFC are enclosed.

Because the TPP will permanently disturb approximately 9 acres of agricultural land, GWF has proposed to mitigate this potential disturbance by providing compensation habitat under the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). The TPP site is within an area that is considered an "unmapped land use" under the SJMSCP. I am writing to request that GWF be allowed coverage under SJMSCP for procurement of this compensation acreage.

The TPP is being developed on a fast-track schedule in order to help meet the State's critical 2002 electricity shortfall. In order to meet the project timeline, we have requested that the CEC expedite the processing of our AFC. The CEC has indicated that they require confirmation from San Joaquin Council of Governments, California Department of Fish and Game, and U.S. Fish and Wildlife Service that GWF will qualify for participation in the SJMSCP before they can commence processing of our AFC. Accordingly, we are respectfully requesting your written confirmation that your agency will support the GWF TPP efforts to gain endangered species "take" permits through the HCP process administered by the SJMSCP.

We appreciate your timely response to our request. Please do not hesitate to call me at (925) 431-1443 if you have any questions.

Sincerely,

GWF ENERGY LLC



Doug Wheeler
Vice President



GWF ENERGY LLC

September 6, 2001

Mr. Banky Curtis
California Department of Fish and Game
1701 Nimbus Road, Suite "A"
Rancho Cardova, CA 95670

SUBJECT: GWF Tracy Peaker Project
Coverage Under SJMSCP

Dear Mr. Curtis:

GWF is proposing to develop the Tracy Peaker Project, a 169 MW natural gas-fired power plant on approximately 9 acres within a 40-acre parcel that is currently zoned Agricultural-40. An Application for Certification (AFC) for the project has been submitted to the California Energy Commission (CEC), who will serve as the Lead Agency under the California Environmental Quality Act (CEQA). A copy of the relevant sections from the AFC are enclosed.

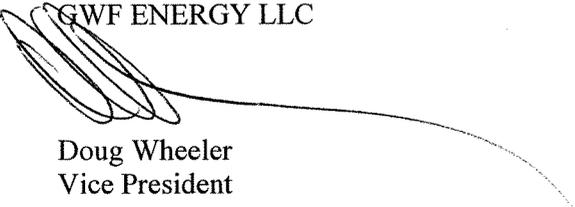
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Sincerely,

GWF ENERGY LLC



Doug Wheeler
Vice President



SAN JOAQUIN COUNCIL OF GOVERNMENTS

6 South El Dorado St., Suite 400 • Stockton, California 95202

209.468.3913 • 209.468.1084 (fax)

www.sjcog.org

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THE COUNTY OF
SAN JOAQUIN

September 6, 2001

Ms. Cheri Davis
Project Manager
California Energy Commission
1516 9th Street, MS 15
Sacramento, CA 95814-5504

Subject: GWF Tracy Peaker Project – Proposed Coverage Under SJMSCP

Dear Ms. Davis:

I am writing to acknowledge GWF's recent request to SJCOG, Inc. for coverage under the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) for the subject project.

The Tracy Peaker Project (TPP) is a proposed 169 MW natural gas-fired power plant to be located on approximately 9 acres within a 40-acre (ac.) agricultural parcel in San Joaquin County (to the southwest of Tracy). As proposed, the habitat impacts will be approximately 14.2 ac. consisting of the core power generating facility (9 ac.) and temporary construction laydown/parking area (5.2 ac.). Additional habitat impacts will result from the establishment and installation of a 1,470-foot water supply line and an access road to the site.

Under the SJMSCP, the locations of certain land uses within the County cannot be specifically forecasted. Therefore, specific activities are categorized as "unmap land uses" that are reviewed on a case-by-case basis by a Technical Advisory Committee to determine the process for SJMSCP coverage and then forwarded to SJCOG, Inc. (administrator of the SJMSCP) for approval (see Attachment 1). The TPP would be classified as a utility service project. Utility service is an activity that is covered in the "unmap land use" category and a definition is provided on Attachment 2.

GWF is proposing to mitigate the habitat impacts by paying development fees on a per-acre basis in accordance to the habitat type being converted from open space use to non-open space use. The TAC and SJCOG, Inc. can review and make a motion of TAC recommendations within 45 days upon the request for SJMSCP coverage.

If you have any further questions regarding SJMSCP coverage, please feel free to contact me.

Sincerely,

Jerry Park
Regional Planner

cc: Doug Wheeler, GWF

the review of the TAC, with the concurrence of the Permitting Agency's representative on the TAC pursuant to SJMSCP Section 8.2.1.

3.4 UNMAPPED LAND USES

Certain land uses within San Joaquin County occur over a wide area and their exact locations cannot be precisely known until submittal of a land development application to the San Joaquin County Community Development Department. For this reason, likely locations of such land uses and anticipated acreages for such land uses were predicted as a means to estimate potential Incidental Take. Predications were prepared by senior staff at the San Joaquin County Community Development Department based on their more than 25 years of planning experience with that agency. Because only likely or general locations for these land uses were known, they were not mapped on the *SJMSCP Planned Land Use Map*.

Coverage for these land uses shall be subject to a case-by-case review by the JPA's Technical Advisory Committee (TAC) to ensure that the biological impacts of the proposed projects fall are within the parameters established by the SJMSCP as originally adopted.

For land uses which are consistent with the overall biological intent of the SJMSCP and which do not introduce significant new biological conditions into the Plan area or the SJMSCP's conservation program or result in significant new or different environmental impacts, or for land uses which have impacts which are equal to or are less than those described in the SJMSCP originally adopted; then the TAC, with the concurrence of the TAC's representative from the Permitting Agencies, may permit SJMSCP Coverage for the proposed land use activity or action pursuant to a Minor Revision as described in SJMSCP Section 8.8.3 (45).

For those land uses which have an effect on the SJMSCP Covered Species and levels of Incidental Take which are greater than, but not significantly different than, those described in the SJMSCP originally adopted; coverage of the proposed land use activity or action may be permitted subject to a Minor Amendment as described in SJMSCP Section 8.8.4(D).

For those land uses which have an effect which is significantly different (i.e., greater than) that those described in the SJMSCP originally adopted, coverage of the land use may be permitted subject to a Major Amendment as described in SJMSCP Section 8.8.5(I).

The following are unmapped land uses which are SJMSCP Covered Activities subject to case-by-case review as described in the preceding paragraphs:

Table 3-2
UNMAPPED LAND USES

Activity	Project Incidental Take Acreage (in acres of Open Space to be Converted)
Golf Courses - Recreation	1,750
Religious Assembly	200
Communication Services	50
Funeral, internment services	20
Public Services - Police, Fire and similar	10
Tule/Channel Island	3
Major Impact - Landfills, hazardous Waste, Correctional Institutions, Other (e.g., composting etc.)	190
Recreation - Trails, Campgrounds	190
Recreation - Outdoor Sports Clubs	150
Utility Services	400
Miscellaneous-Museums and similar	200
Natural Gas Well Drilling/a/	800
Unmapped Mineral Resources (outside of MRZ-2 Zones)	/b/
Homesites (2,200 @ 2 acres each)	4,400
Recreation: Parks/d/, Trails	325
Total	8,688

/a/ The anticipated boundaries for natural gas well drilling are mapped within the county. However, due to the wide distribution of potential drilling areas, this category is included an "unmapped" activity.

/b/ The total Incidental Take acreage of mapped and unmapped mineral resources may not exceed 10,899 acres.

/c/ This total for unmapped activities excludes unmapped mineral resources. Incidental Take for unmapped mineral resources is subtracted from the 10,899 acres of Incidental Take allocated for mapped mineral resources.

/d/ Some parks are included within the existing boundaries of the SJMSCP Planned Land Use Map, these projects do not require additional review as described in this section prior to gaining coverage under the SJMSCP.

3.5 FUTURE LAND USE

Conversion of 109,302 acres from Open Space to non-Open Space uses are anticipated at full buildout under each of the general plans, and includes exhaustion of all identified mineral resources and construction of all anticipated transportation and other public projects in San Joaquin County between 2001 and 2051.

Future land use is anticipated to become increasingly urban in San Joaquin County with a corresponding

ATTACHMENT 2

both inside and outside of designated urban boundaries as indicated on the *SJMSCP Planned Land Use Map*. Maintenance Activities undertaken by Plan Participants on existing facilities, as described in Chapter 10, are Permitted Activities. Maintenance Activities which are Categorically Exempt pursuant to California's State CEQA Guidelines, as described in Chapter 10, are exempt from the SJMSCP compensation requirements.

4. **Projects which could affect fisheries and/or wetlands indirectly, which are located within non-jurisdictional wetlands.** Activities covered within this category are limited to the Conversion of three acres of submerged aquatic habitat, activities affecting up to three acres of Tule/Channel Island (I) habitats, and the SJMSCP's 4,790 acres⁴² of water features to be compensated pursuant to the Plan at a ratio of 3:1 (all three acres to be created) throughout the life of the SJMSCP without a Major Amendment to the SJMSCP.

Activities covered pursuant to this category shall not be located within jurisdictional wetlands, Waters of the United States, tidally influenced waters or waters occupied by fish species which are not covered by the SJMSCP (salmon, steelhead). This category is specifically intended to cover activities located within ephemeral drainages, small tributaries which are non-tidally influenced with flows below the threshold necessary to qualify as jurisdictional waters or Waters of the United States, and the upper reaches of the Calaveras River.

Activities covered in this category include: maintenance of SJAFCA levees, construction of new recreational facilities including trails and parks; construction of private-use small docks and constructing public and private use bridges and road crossings. Activities resulting in Take of water features other than submerged aquatic or "I" vegetation types may include any SJMSCP Covered Activity listed herein unless otherwise specifically prohibited by the SJMSCP (e.g., in the case of Take of known occupied riparian brush rabbit habitat).

5. Non-agricultural activities carried out by Plan Participants or Third Parties on agriculturally-zoned properties or other zoned properties located outside of boundaries indicated on the *SJMSCP Planned Land Use Map* and described in the following paragraphs. These use areas are unmapped, total 3,163 acres of anticipated Incidental Take, and are scattered throughout the County. These activities are subject to case-by-case reviews as prescribed in Section 3.4:
 - A. **Communication Services** Communication services refers to commercial or public establishments or facilities which primarily provide electronic communication of audio/visual information via cable, microwave or radio frequency transmission including communication services which require the mounting of a wireless telecommunication

⁴² The majority of activities composing this 4,790 acres will require issuance of a regional general Section 404 Federal Clean Water Act Permit or its equivalent. In the interim, activities covered in this category do not involve Section 404 of the Federal Clean Water Act until and unless a regional general permit is issued by the Corps pursuant to Section 5.6

facility on an existing building or structure (e.g., wireless communication facilities for cellular radio mobile services, paging services and personal communication services); communication services which require the construction of a new freestanding support structure for wireless telecommunication antennas and associated support equipment (e.g., wireless telecommunication mono-poles and lattice towers for cellular radio mobile services); communication services which require the construction of a new freestanding support structure for the purposes of radio or television broadcasting (e.g., radio and television broadcast towers and airport communication towers); and communication services which require the regular day-to-day presence of personnel at a site to provide the services being offered (e.g., radio and television broadcasting studios, cable TV administrative offices, and telegraph message centers).

- B. **Funeral/Interment Services:** Mortuaries, crematoriums, columbariums, mausoleums and similar services when in conjunction with, and including, cemeteries
- C. **Major Impact Projects** Major impact services are those land intensive activities which must be located away from residences or concentrations of people due to the magnitude or nature of the operation's impacts on the surrounding environment including airports not primarily serving agricultural activities, sanitary landfills, hazardous waste disposal sites, and correctional institutions. Use of the SJMSCP to provide compensation for impacts to plants, fish and wildlife created by projects within this category requires approval by the JPA with the written concurrence of the Permitting Agencies' representatives on the TAC. A Permit Amendment pursuant to either Section 8.8.3 or 8.8.4 may be required to include projects within this category (e.g., to address issues pertaining to federal involvement or other special regulatory requirements associated with these activities). SJMSCP coverage for SJMSCP Permitted Activities associated with these projects which are listed as SJMSCP Permitted Activities in SJMSCP Section 8.2.1 do not require prior written consent after a review by the Permitting Agencies [e.g., airport communication towers listed in 8.2.1(6)(A)].
- D. **Public Services:** Fire stations, police stations, public administration centers, community centers
- E. **Recreation/Golf Courses:** Campgrounds, parks, trails (coast-to-crest included), golf courses, outdoor sports clubs
- F. **Religious Assembly:** Churches
- G. **Utility Services:** Utility services refers to those facilities which provide electricity, solids, liquids, or gas through wires or pipes including utility services that are necessary to support principal development involving only minor structures (e.g., electrical distribution lines, utility poles, and pole transformers; sewer and water lines); and utility services involving major structures (e.g., natural gas transmission lines and substations).
- H. **Miscellaneous:** Museums, libraries, and hospitals

6. Non-agricultural activities carried out by Plan Participants or Third Parties on agriculturally-zoned properties or other zoned properties located outside of boundaries indicated on the *SJMSCP Planned Land Use Map* and described in the following paragraphs. These use areas are scattered throughout the County and are subject to case-by-case reviews as prescribed in Section 3.4:

- A. **Natural Gas Well Drilling;**