



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846

IN REPLY REFER TO
1-1-02-TA-618

DOCKET 01-AFC-21
DATE FEB 14 2002
RECD. FEB 20 2002

February 14, 2002

Mr. Paul C. Richins, Jr.
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Subject: Technical Assistance for the Proposed Tesla Power Plant Application For Certification (01-AFC-21), Alameda County, California

Dear Mr. Richins:

This is in response to your October 23, 2001, letter requesting guidance from the U.S. Fish and Wildlife Service regarding regulatory compliance and permitting requirements for the proposed Tesla Power Plant application for certification (01-AFC-21), in Alameda County, California. Your letter was received in our office on October 30, 2001. We have reviewed the information you have provided and believe the project may affect the federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), large-flowered fiddleneck (*Amsinckia grandiflora*), threatened California red-legged frog (*Rana aurora draytonii*), and the proposed threatened mountain plover (*Charadrius montanus*), which are protected pursuant to the Federal Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). In addition to the above mentioned species, the site may provide habitat for the California tiger salamander (*Ambystoma californiense*), a candidate for listing.

The project, as proposed, consists of the construction of a natural gas fired combustion cycle power generating plant on a 60 acre portion of a 160 acre parcel, a 0.8 mile transmission line, a 2.8 mile natural gas pipeline, and a 1.7 mile waterline.

The entire project area is considered suitable San Joaquin kit fox habitat. The primary reasons for the decline of the San Joaquin kit fox are loss, degradation, and fragmentation of habitats associated with agricultural, industrial, and urban developments.

Based on the information provided, the Service believes that the Tesla Power Plant, as proposed, would adversely affect San Joaquin kit fox for the following reasons:

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Pat Owen

1. The proposed Tesla Power Plant site is adjacent to the proposed Haera Wildlife Conservation Bank, which currently serves as a mitigation bank for burrowing owls (*Athene cunicularia*) and is obtaining permits to serve as a mitigation bank for San Joaquin kit foxes. The development of the proposed Tesla Power Plant site would isolate the Haera Wildlife Conservation Bank from the remaining San Joaquin kit fox populations, reducing its value to recovery efforts for the San Joaquin kit fox.
2. The proposed Tesla Power Plant site is in the middle of the northern population of San Joaquin kit fox, and this development may disrupt north-south and east-west dispersal of San Joaquin kit fox, which would result in further fragmentation of this population.
3. The proposed project would increase San Joaquin kit fox exposure to vehicular traffic, their number one cause of mortality.
4. As described in the materials you provided, at least 1 potential San Joaquin kit fox den would be impacted by the proposed Ravenswood transmission line and at least 17 potential San Joaquin kit fox dens would be impacted by the proposed Tesla Power Plant. The primary habitat requirement for the San Joaquin kit fox is the availability of suitable dens, as they need dens throughout the year for shelter and escape. The availability of suitable dens is also a requirement for successful reproduction. The loss of this suitable den area would both reduce this population's capacity for successful rearing of pups as well as increase the vulnerability of resident and transient adults to predation.

The Service recommends that the applicants conduct a thorough analysis of alternative sites for their proposed project and consider the selection of a site which has no more than a minimal impact to special status species. Any alternative sites should be surveyed for San Joaquin kit fox in accordance to the Service's 1999 "San Joaquin Kit Fox Survey Protocol For The Northern Range", attached to this letter. The Service also recommends that the applicants develop additional avoidance and minimization measures to reduce the impacts to special status species, including incorporating the Service's 1999 "Standardized Recommendations For Protection Of The San Joaquin Kit Fox Prior To Or During Ground Disturbance" attached to this letter. We are willing to provide further technical assistance in reviewing any alternative sites and additional avoidance and minimization measures.

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 behavior patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

Take incidental to an otherwise lawful activity may be authorized by one of two procedures. If a Federal agency is involved with the permitting, funding, or carrying out of this project, then initiation of consultation between that agency and the Service pursuant to section 7 of the Act is required. Such consultation would result in a biological opinion addressing anticipated effects of the project to listed and proposed species and may exempt a limited level of incidental take from section 9 of the Act. If the project may result in the take of listed species and no Federal agency is involved, then an "incidental take" permit pursuant to section 10(a)(1)(B) of the Act should be obtained. The Service may issue such a permit upon completion by the permit applicant of a satisfactory conservation plan for the listed species that would be affected by the project.

The material you have provided states that approval for your project would have to be obtained from several Federal agencies, including the U.S. Army Corps of Engineers and the Western Area Power Administration. This indicates that the initiation of consultation between those agencies and the Service pursuant to section 7 of the Act is required. Due to the potential for the Tesla Power Plant project, as proposed, to adversely affect San Joaquin kit fox, the appropriate Federal agency would need to complete a formal consultation pursuant to section 7 of the Act with the Service. At this time, no Federal agency has individually or jointly initiated consultation with us.

At this point you should conduct Service approved protocol surveys for appropriate listed animals and plants. Based on those results we can determine what, if any, appropriate measures are necessary to avoid impacts to listed species. We recommend you contact Mr. Harry Mossman of our staff at (916) 414-6600 for a list of listed, proposed, and candidate plant and animal species that may occur in the project area.

If you have any questions regarding this response, please contact Mike Nepstad or Dan Buford at (916) 414-6625.

Sincerely,



Jan C. Knight
Chief, Endangered Species Division

Enclosures

cc:

California Energy Commission, Sacramento, CA, (Attn: Jack W. Caswell)
California Energy Commission, Sacramento, CA, (Attn: Andria Ericson)
California Department of Fish and Game, Yountville CA, (Attn: Carl Wilcox)

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION FOR THE
TESLA POWER PROJECT
BY MIDWAY POWER LLC.

DOCKET No. 01-AFC-21
(AFC ACCEPTED 01/09/02)

PROOF OF SERVICE
(Revised 2/15/02)

I, PAT OWEN, declare that on February 20, 2002, I deposited copies of the attached TECHNICAL ASSISTANCE FOR THE PROPOSED TESLA POWER PLANT APPLICATION FOR CERTIFICATION (01-AFC-21), ALAMEDA COUNTY, CALIFORNIA in the United States mail at Sacramento, CA with first class postage thereon fully prepaid and addressed to the following:

DOCKET UNIT

Send the original signed document plus the required 12 copies to the address below:

**CALIFORNIA ENERGY COMMISSION
DOCKET UNIT, MS-4
*Attn: Docket No. 00-AFC-21
1516 Ninth Street
Sacramento, CA 95814-5512
docket@energy.state.ca.us**

* * * *

In addition to the documents sent to the Commission Docket Unit, also send individual copies of any documents to:

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Attn: Scott Busa
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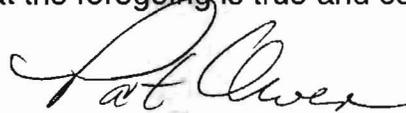
INTERESTED AGENCIES

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San Francisco Bay Region #2
1515 Clay Street, Suite 1400
Oakland, CA 94612
jch@rb2.swrcb.ca.gov

Bay Area Air Quality Management
District
Attn: Dennis Jang
939 Ellis Street
San Francisco, CA 94109
djang@baaqmd.gov

San Joaquin Valley Unified Air Pollution
Control District, Northern Region
Attn: Jim Swaney, Permit Svcs. Mgr.
4230 Kiernan Avenue
Modesto, CA 95356
jim.swaney@valleyair.org

I declare under penalty of perjury that the foregoing is true and correct.



[signature]

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FOR YOUR INFORMATION ONLY! Parties **DO NOT** mail to the following individuals. The Energy Commission Docket Unit will internally distribute documents filed in this case to the following:

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