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DOCKET	
08-AFC-11	
DATE	MAY 20 2010
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May 20, 2010

Mr. Rod Jones
Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Subject: CPV Vaca Station (08-AFC-11)
Response to USACE Letter dated March 16, 2010 by the National Marine Fisheries
Services dated May 13, 2010

Dear Mr. Jones:

Attached please find 1 copy the to the US Army Corps of Engineer letter by the National Marine Fisheries Service dated May 13, 2010 and regarding the request for consultation under Section 7 of the Endangered Species Act for issuance of a permit for the CPV Vaca Station Project (08-AFC-11).

If you have any questions about this matter, please contact me at (916) 286-0278 or Sarah Madams at (916) 286-0249.

Sincerely,

CH2M HILL

Douglas M. Davy, Ph.D.
AFC Project Manager

Attachment

cc: A. Welch (CPV)
S. Madams



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

NOA 13 2010

In response refer to:
2010/01056

Marc A. Fugler
Senior Project Manager, California Delta Branch
U.S. Army Corps of Engineers
1325 J Street
Sacramento, California 95814-2922

Dear Mr. Fugler:

This is in response to your letter of March 16, 2010, initiating consultation under section 7 of the Endangered Species Act with NOAA's National Marine Fisheries Service (NMFS) for issuance of a Department of the Army Permit (SPK-2010-00201) for the CPV Vaca Station project located near Alamo Creek, latitude 38.339016418237^o, longitude -121.898155100862^o, in Section 28, Township 6 North, Range 1 East, Solano County, California. The proposed project is a natural gas power generation plant at the intersection of Lewis and Fry roads within the city limits of Vacaville.

Your letter indicates that the U.S. Army Corps of Engineers (Corps) has determined that the proposed project may affect, but is not likely to adversely affect, Federally listed endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), threatened Central Valley steelhead (*O. mykiss*), or the designated critical habitat for these species.

Although not mentioned in the Corps initiation letter, or the applicant's biological assessment, NMFS also has jurisdiction over threatened Southern Distinct Population Segment (DPS) of North American green sturgeon (*Acipenser medirostris*). The proposed action area is outside the area known to be used by this species and outside of its critical habitat, therefore, there are no direct impacts to green sturgeon. However, cumulative effects of land development and the potential increase in impervious surface area runoff could indirectly affect water quality in Alamo Creek and the downstream Cache Slough area (green sturgeon critical habitat). Stormwater containment methods included in the design and construction Best Management Practices (BMPs) are expected to reduce or avoid this impact.

Your office did not provide a determination concerning the proposed project impacts on Essential Fish Habitat (EFH) for Pacific salmon required under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). However, the applicant's February 2010 biological assessment prepared for NMFS contained a determination that freshwater EFH for fall-run/late fall-run Chinook salmon (*O. tshawytscha*), "would not be measurably reduced". Therefore, this



letter also serves as consultation under the authority of, and in accordance with, the MSA and the provisions of the Fish and Wildlife Coordination act of 1934, as amended.

Project Description

The purpose of the proposed project is for CPV Vacaville, LLC (applicant) to construct, own, and operate a natural gas-fired, combined-cycle electrical generating facility with a capacity of 660 megawatts on 24 acres of land adjacent to the City of Vacaville's Easterly Wastewater Treatment Plant. The proposed project would provide electricity to Pacific Gas and Electric Company (PG&E) in Northern California. PG&E has solicited requests for new energy resources from qualified bidders. The site is conveniently located next to a source of recycled wastewater for cooling, a 230-kilovolt high voltage electrical transmission line, and a high pressure natural gas pipeline.

Project Features:

- A 660 megawatt natural gas-fired generating plant with 2 combustion turbine-generators, a deaerating surface condenser, and a 12-cell mechanical draft cooling tower.
- Two evaporative coolers on the inlet air system and dry low NO combustors
- Two heat recovery steam generators equipped with duct burners, NO stack emissions, and oxidation catalyst to control carbon monoxide and organic compound emissions.
- A nominal 1,000-kilowatt, diesel-fired emergency backup generator
- A water supply consisting of entirely reclaimed secondary-treated wastewater from the City of Vacaville's Easterly Wastewater Treatment Plant.
- A zero liquid discharge treatment system to process all plant wastewater not recovered for reuse by the proposed project. Small quantities of some equipment cleaning wastewater will be collected for offsite disposal. No processed wastewater will be discharged from the proposed project.

Construction Schedule:

California Energy Commission license	Early 2010
Begin construction	First quarter (spring) 2011 (30 months)
Pre-operational testing	Fourth quarter (Fall) 2012
Full scale operation	Second quarter 2013

Impacts

Direct and indirect effects were evaluated from the proposed action on Central Valley steelhead and fall/late-fall Chinook salmon. Other salmon species and green sturgeon were not considered because they occur outside the action area. The proposed project location is outside of any designated critical habitat. Direct effects evaluated in Alamo Creek were pile driving, dewatering, equipment operations, removal of riparian vegetation, and increased runoff from impervious surface areas. Since all construction impacts would occur on dry land and outside of the areas that may contain salmonids there are no direct impacts. Indirect impacts have the potential to reduce the volume of water in Alamo Creek available to migrating adult salmonids. However, this reduction in flows (from use of treated wastewater that would otherwise contribute to Alamo Creek) was not sufficient enough to dewater the creek, create a passage impediment, or measurably reduce riparian habitat. Natural flows in Alamo Creek are large enough to provide both adult and juvenile passage without the contribution of flows from the wastewater treatment plant. The proposed project has the potential to increase a small amount of stormwater runoff from the increase in impervious surface areas (currently agricultural fields). This runoff could negatively impact water quality in freshwater habitat within Alamo Creek.

The applicant has proposed the following safety measures to minimize potential construction impacts and indirect effects:

- BMPs required with a Storm Water Pollution Prevention Plan
- Avoid or minimize soil, sediment, and construction debris from directly entering and reaching any portions of Alamo Creek where salmonid habitat may be affected
- No pile driving in water
- No dewatering is necessary for construction
- No equipment will be operated in water
- Debris will be prevented from entering Alamo Creek
- Re-vegetation/restoration of any disturbed areas
- Stormwater containment methods included in BMPs

Endangered Species Act (ESA) Section 7 Consultation

NMFS concurs that the proposed CPV Vaca Station project is not likely to adversely affect, Central Valley steelhead, and the Southern DPS of North American green sturgeon or the designated critical habitat for these species. This concurrence is based on the Corps and the applicant implementing all conservation and protective measures intended to avoid or minimize adverse effects to fish and fish habitat as identified in the project description. This concludes informal consultation for the proposed action. This concurrence does not provide incidental take authorization pursuant to section 7(b)(4) and section 7(o)(2) of the ESA, as amended.

Reinitiation of consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (2) the action is substantially modified in a manner that caused

an effect to the listed species or critical habitat not considered; or (3) a new species is listed or a critical habitat designated that may be affected by the action.

Essential Fish Habitat (EFH) Consultation


Based on our review of the biological assessment and conservation and protective measures included, NMFS finds that the project activities will not adversely affect EFH for Pacific salmon. We find the project activities incorporated in the project description include conservation measures that will avoid adverse effects to EFH for Pacific salmon, as described in Amendment 14 of the Pacific Salmon Fishery Management Plan pursuant to the MSA; therefore, EFH conservation recommendations will not be provided. Written response as required under section 305(b)(4)(B) of the MSA and Federal regulations (50 CFR 600.920) will not be required. Should additional information reveal that the project may affect EFH and/or impact salmonids in a way not previously considered, or should the action be modified in a way that may cause additional effects to EFH, this determination may be reconsidered.

Fish and Wildlife Coordination Act (FWCA)

The purpose of the FWCA is to ensure that wildlife conservation receives equal consideration, and is coordinated with other aspects of water resources development [16 U.S.C. 661]. The FWCA establishes a consultation requirement for Federal agencies that undertake any action that proposes to modify any stream or other body of water for any purpose, including navigation and drainage [16 U.S.C. 662(a)]. Consistent with this consultation requirement, NMFS typically provides recommendations and comments to Federal action agencies for conserving fish and wildlife resources. The FWCA provides the opportunity to offer recommendations for the conservation of species and habitats beyond those currently managed under the ESA and MSA. Because the proposed project does not have a FWCA report, and is already designed to avoid environmental impacts to aquatic habitat within the action area, NMFS has no FWCA comments.

Please contact Bruce Oppenheim at (916) 930-3603, or via e-mail at bruce.oppenheim@noaa.gov if you have any questions concerning this project or require additional information.

Sincerely,


Rodney R. McInnis
Regional Administrator

cc: Copy to file: ARN: 151422SWR2010SA00110
NMFS-PRD. Long Beach, CA
Douglas M. Davy, CH2M Hill, 2485 Natomas Park Dr., Suite 600, Sacramento, CA 95833
Andrew Welch, CPV Vacaville, LLC, 8403 Colesville Road, Suite 915, Silver Spring,
MD 20910



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

**APPLICATION FOR CERTIFICATION
FOR THE CPV VACA STATION BY
THE CPV VACAVILLE, L.L.C.**

Docket No. 08-AFC-11

**PROOF OF SERVICE
Revised (4/14/2010)**

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DECLARATION OF SERVICE

I, Mary Finn, declare that on May 20, 2010, I served and filed copies of the attached Response to USACE Letter dated March 16, 2010 by the National Marine Fisheries Services dated May 13, 2010. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

[\[http://www.energy.ca.gov/sitingcases/vacastation/index.html\]](http://www.energy.ca.gov/sitingcases/vacastation/index.html). The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

For service to all other parties:

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery;
- by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

For filing with the Energy Commission:

- sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (preferred method);

OR

- depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 08-AFC-11
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.



Mary Finn