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Date: 4/17/2008 5:40 PM
Subject: Avenal Power Plant - ESA requirements

Jane, representing Avenal Power Project (project) has asked us to clarify by letter our requirements for this project concerning our permitting process. I trust an e-mail from me will suffice as this is not a complicated or controversial subject. The proposed project can receive Federal incidental take authorization in one of two ways - through section 7 or through section 10 of the Endangered Species Act (Act).

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Section 7 requires initiation by a Federal agency, such as the EPA, and a biological opinion to be issued by us.

The proposed project is within the service area of the Kern Water Bank Compensation Bank, which has the unique (the only one in the country, truly unique) feature of being able to bestow incidental take coverage under the Federal Endangered Species Act on a project. Avenal Power Plant is the type of project that we can include, with California Department of Fish and Game's (CDFG) concurrence, in the Kern Water Bank Master Permit. Both agencies need to be on board with this, so I have included Julie Vance in this e-mail routing.

We are willing to go either way with this project. It is too early in the project development and CEC permitting for us to authorize the sale of a specific number of credits by Kern Water Bank, but we think in principle, that this project could obtain their Federal ESA coverage through the Kern Water Bank Master Permit, issued under section 10 of the Act. To be totally clear, buying the credits at Kern Water Bank is not the only requirement under the Act. Avoidance and minimization measures that have already been discussed would need to remain a part of the project.

I understand that the applicant has decided that they are interested in using the Kern Water Bank Master Permit, and we will be happy to process this project using that mechanism. CDFG will need to agree. I hope this clarifies our requirements and meets the project's present needs for process information.

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