



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION IX**  
**75 Hawthorne Street**  
**San Francisco, CA 94105-3901**

July 10, 2008

<b>DOCKET</b>	
08-AFC-1	
<b>DATE</b>	JUL 10 2008
<b>RECD.</b>	JUL 11 2008

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

**Re: Request for Formal Consultation under Section 7 of Federal Endangered Species Act for Proposed Avenal Energy Project**

Dear Mr. Cross:

By this letter, the United States Environmental Protection Agency, Region 9 ("Region 9") requests initiation of formal consultation under Section 7 of the federal Endangered Species Act ("ESA") for the proposed Avenal Energy Project ("AEP") located in the City of Avenal, Kings County, California. Avenal Power Center, LLC ("APC") has applied to Region 9 for a Prevention of Significant Deterioration ("PSD") permit as required by Part C of the Clean Air Act and regulations at 40 C.F.R. §52.21. Region 9 is responsible for complying with ESA Section 7 requirements with respect to federal PSD permitting, and must ensure that issuance of the PSD permit to AEP is not likely to jeopardize the continued existence of endangered or threatened species, or result in the destruction or adverse modification of critical habitat of such species.

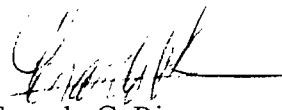
The applicant and the Region have participated in informal consultation with U.S. Fish and Wildlife Service ("FWS") regarding AEP. This request for formal consultation is made in accordance with our discussions with Ms. Shelly Buranek of your staff. In discussions among the Region, APC, and FWS, FWS indicated that formal consultation would be required because the AEP may affect the federally listed San Joaquin Kit Fox (SJFK).

APC, acting through its authorized representatives including TRC Solutions ("TRC"), compiled and submitted a Biological Assessment (BA) to the Region in the form of a Consultation Initiation Package ("Package") dated May 12, 2008. The BA is based on information in APC's Application for Certification submitted to the California Energy Commission in February 2008; specifically, Sections 2.0 (Project Description and Engineering) and 6.6 (Biological Resources) were submitted for the BA. The Package provides information about the project and its effects on listed species, as well as proposed mitigation and minimization measures. Because we understand that the FWS also received a copy of the Package, a copy of this information is not enclosed in this request for formal consultation.

In summary, pursuant to Section 7 of the ESA, we request the initiation of formal consultation for AEP to address potential impacts to the SJKF. We further request preparation of a Biological Opinion by FWS and concurrence in writing that the project is not likely to adversely affect the other federally listed endangered plant and wildlife species identified in Section 6.6 of the Biological Assessment (i.e., San Joaquin woollythreads, California jewel flower, blunt-nosed leopard lizard, tipton kangaroo rat). We also request that we receive a copy of the draft Biological Opinion for our review.

We look forward to working with you on this matter. If you have any questions, please have your staff contact Shirley F. Rivera of the Air Permits Office at (415) 972-3966; or you may contact me at (415) 972-3974.

Sincerely,

  
Gerardo C. Rios  
Chief, Air Permits Office

cc: Susan Jones, FWS (via email)  
Shelley Buranek, FWS (via email)  
Jim Rexroad, Avenal Power Center, LLC (via email)  
Joe Stenger, TRC Solutions (via email)  
Eric Walther, Sierra Research (via email)  
Michelle Woods, California Energy Commission (via email)