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May 27, 2008

Laurel Cordonnier
California Energy Commission
Environmental Office
1516 Ninth Street, MS 40
Sacramento, California 95814

DOCKET	
08-AFC-1	
DATE	MAY 27 2008
RECD.	MAY 30 2008

Subject: Avenal Energy Application for Certification

Dear Ms. Cordonnier:

This letter summarizes the Department of Fish and Game's comments brought up at a March 18, 2008, meeting between the Department, the Project applicant, and their representatives in regards to the Avenal Energy Application for Certification. This letter also serves as Department approval for the applicant to purchase mitigation credits at the Kern Water Bank (KWB).

The Department has the following comments on the Avenal Energy Application for Certification.

Incidental Take Permit: As the Project is currently described, it is unlikely to result in take (as defined by Section 86 of the Fish and Game Code) of State-listed species and therefore a State Incidental Take permit will not be required in order for this Project to comply with the California Endangered Species Act (CESA). However, if the Project design changes or State-listed species are observed using the site during the construction or operation of the plant, consultation with the Department should occur and a permit or additional avoidance, minimization, and mitigation measures may be required.

Swainson's Hawk: In regards to mitigation lands for the loss of Swainson's hawk (SWHA) foraging habitat, it is likely, pending final Project review, that the purchase of mitigation lands required by the United States Fish and Wildlife Service (Service) for kit fox compensation can be used as mitigation for loss of SWHA foraging habitat as well. It is the Department's understanding that the Project applicant is proposing to buy credits at KWB. If this occurs, it is acceptable in this case to use credits purchased in the KWB as mitigation for loss of SWHA foraging habitat.

Burrowing Owl: Pre-construction burrowing owl surveys should be conducted no more than 30 days before ground disturbance. The areas to be surveyed should include suitable habitat on-site (including the proposed transmission tower locations and

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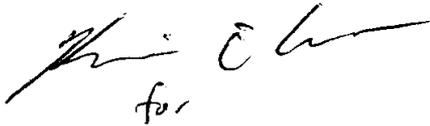
construction laydown areas) and within 150 meters (~500 feet) of the Project impact zone. The Department's "Staff Report on Burrowing Owl Mitigation" (1995) contains survey guidelines and additional information.

Tri-colored Blackbird: The tri-colored blackbird nesting period, as presented on page 6.6-31 of the Application for Certification, should be extended from mid-March through August to include potential early and late season nesters.

Kern Water Bank Approval: The applicant is proposing to mitigate the impacts of this Project by the purchase of compensation credits at Kern Water Bank, which requires written approval from the Service and the Department prior to purchase. The Department concurs that KWB is an appropriate location to compensate for the loss of habitat associated with Project implementation and that the Kern Water Bank Authority may issue a Conservation Credit Certificate for this Project. The applicant must also secure approval from the Service for purchase of KWB conservation credits and use of the Master Permit that confers take authority under the Federal Endangered Species Act to credit purchasers. Because credit purchasers are covered under the Federal KWB master permit, the Service will determine how many acres (credits) are needed to mitigate Project-related impacts. The purchase of Conservation Credits at KWB does not grant incidental take authority under CESA; as a result, incidental take authority under CESA would need to be separately secured in the event that the Project description changes and take of State-listed species could occur.

If you have any questions regarding these comments, please contact Justin Sloan, Environmental Scientist, at the address provided on this letterhead or by telephone at (559) 243-4014, extension 216.

Sincerely,

A handwritten signature in black ink, appearing to read "W. E. Loudermilk", with a small "for" written below it.

W. E. Loudermilk
Regional Manager

cc: See Page Three

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cc: Jim Rexroad
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Literature Cited

DFG. 1995. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game.