



GWF ENERGY LLC

April 19, 2002

Mr. Ben Hulse, Director
County of San Joaquin
Community Services Department
1810 E. Hazelton Avenue
Stockton, CW 95205-6232

DOCKET 08-AFC-7
DATE APR 19 2002
RECD. SEP 26 2008

Attn: Carrie Sullivan

RE: Tracy Peaker Project, AFC – 01-18 – COC Land 2

Dear Mr. Hulse:

In accordance with the proposed Condition of Certification – LAND 2 – for the proposed GWF Energy LLC Tracy Peaker Power Plant, we are required to submit for your review and comment the Agricultural Mitigation Plan that identifies the establishment of the Tracy Peaker Project Trust Fund for the preservation of farmland.

As required by the Condition of Certification, the Director shall have 30 days to review and provide written comment to the Compliance Project Manager for the California Energy Commission. The Compliance Project Manager for the Tracy Peaker Project is Mr. Christian Huntley. Mr. Huntley's address is:

California Energy Commission – Compliance
1516 9th Street MS 3000
Sacramento, CA 95814-5504

If you have any questions regarding the information provided herein, please feel free to contact either Mr. Doug Wheeler (925) 431-1443 or myself at (925) 431-1440.

Thank you for your time and consideration regarding this matter.

Respectfully,

Mark Kehoe
Director, Environmental and Safety Programs

cc. C. Huntley, California Energy Commission
D. Wheeler, GWF Energy LLC

Tracy Peaker Project
Application for Certification 01-AFC-16
Land Use

Proposed Conditions of Certification
LAND-2

To compensate for prime farmland conversion impacts (i.e. the conversion of 10.3 acres of a 40 acre parcel), the project owner will provide \$56,500 to the American Farmland Trust (AFT) to establish the Tracy Peaker Project Trust Fund. The AFT and the San Joaquin County Planning Director, in conjunction with the California Energy Commission Compliance Manager (CPM) will decide how the funds will be dispursed for the protection of farmland in San Joaquin County.

In addition, the project owner shall develop for the approval of the Energy Commission CPM an agricultural mitigation plan describing long-term management of the remaining agricultural operation on the property. The mitigation plan shall include on-site preservation of any agricultural land on the property not converted for the power generation facility and details as to how the agricultural land on the subject property not converted for the power generation facility (i.e., approximately the remaining 29.7 acres of the proposed site parcel) is to be made available for farming.

The AFT would hold the mitigation fee in trust, in an interest bearing account, for a three-year period to allow San Joaquin County to develop a mitigation program for the loss of agricultural land, through purchase of conversation easements. At the end of the three years, the AFT shall distribute the funds to San Joaquin County, or in the event that San Joaquin County has not approved a program for the loss of agricultural land, then the AFT shall be allowed to retain the funds.

Protocol: The project owner shall submit the mitigation plan for the project to the Director of the San Joaquin County Planning Department for review and comment and the CPM for review and approval. The Director will have 30 calendar days to review and approve written comments to the CPM to review for approval. The 30-day review period shall begin the day the mitigation plan is submitted to the County Planning Department by the project owner.

Verification: Sixty days prior prior to the start of site mobilization, the project owner shall provide a certified check to the AFT for \$56,500 and written verification to the CPM that the check has been provided to the AFT. The project owner shall also provide the CPM with the final agricultural plan.

Agricultural Mitigation Plan

The mitigation plan being submitted includes two principal parts, (1) a Mitigation Agreement between GWF Energy LLC and the American Farmland Trust to provide mitigation fees to acquire 10.3 acres of compensation agricultural land in the form of a permanent agricultural easement and (2) a Lease between GWF Energy LLC and Kagehiro Ranches, the adjoining land owner, to continue farming operations on the remaining 29.7 acres the acquired parcel not permanently converted to use by the Tracy Peaker Project. The following are attached to provide verification of compliance with LAND-2

1. Mitigation Agreement between GWF Energy LLC and the American Farmland Trust.
2. American Farmland Trust invoice for the Mitigation Fee
3. Copy of a wire transfer in the amount of \$98,825.00, of which the \$56,500.00 Tracy Peaker Project fee payment is included.
4. Lease between GWF Energy LLC and Kagehiro Ranches to continue farming operations on the remaining 29.7 acres of the GWF parcel.

MITIGATION AGREEMENT

THIS MITIGATION AGREEMENT, dated this 16th day of January, 2002 by and between GWF ENERGY LLC, a California limited liability corporation having an address at 4300 Railroad Avenue, Pittsburg, CA 94565 ("GWF") and THE AMERICAN FARMLAND TRUST, a District of Columbia nonprofit corporation having an address at 1200 18th Street, NW, Washington, DC 20036 ("AFT").

W I T N E S S E T H:

WHEREAS, GWF proposes to develop a 169 MW natural gas-fired power plant known as the Tracy Peaker Project (the "Project") on approximately 10.3 acres of farmland in San Joaquin County (the "Parcel"); and

WHEREAS, the Parcel has been designated by the California Department of Conservation as prime farmland; and

WHEREAS, GWF has submitted an Application for Certification of the Project to the California Energy Commission ("CEC"); and

WHEREAS, as a condition of its approval for the Project, CEC will require that the loss of prime farmland that will result from development of the Project on the Parcel be mitigated through the permanent protection of an equivalent or greater amount of prime farmland elsewhere in San Joaquin County; and

WHEREAS, CEC accepts the payment of mitigation fees to a qualified farmland conservation organization in satisfaction of this condition and these fees have been agreed upon by AFT and GWF to be five thousand dollars (\$5,000) per acre of farmland converted plus the payment of a one-time fee of five thousand (\$5,000) dollars for stewardship and monitoring; and

WHEREAS, AFT is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and meets the requirements of Section 509(a)(2) of the Code; and

WHEREAS, AFT is a "qualified organization," as such term is defined in Section 170(h)(3) of the Code, and is qualified to hold conservation easements under the laws of the State of California; and

WHEREAS, AFT is willing to assist GWF in its efforts to ensure CEC that the loss of prime farmland that will result from development of the Project on the Parcel will be mitigated through the permanent protection of an equivalent or greater amount of prime farmland elsewhere in San Joaquin County;

NOW, THEREFORE, the parties agree as follows:

1. Trust Fund.

1.1 On or before the date thirty (30) days following CEC's approval of the Project, GWF shall pay over to AFT the sum of fifty-six thousand five hundred dollars (\$56,500) by check, subject to collection. Said sum shall be referred to herein as the "Trust Fund."

1.2 AFT shall hold the Trust Fund in trust for a period of up to two years (the "Trust Period"). Any interest earned on the Trust Fund shall accrue to the benefit of AFT.

1.3 During the Trust Period, AFT shall disburse the Trust Fund for the protection of farmland in San Joaquin County, either through the acquisition of conservation easements or through other reasonable means, as directed by the Planning Director of San Joaquin County.

1.4 If the Planning Director of San Joaquin County has not directed AFT to disburse the entire Trust Fund by the end of the Trust Period, any sum remaining in the Trust Fund may be expended by AFT for the protection of farmland in San Joaquin County, either through the acquisition of conservation easements or through other reasonable means.

1.5 Any expenses incurred by AFT in connection with its use of the Trust Fund for the protection of farmland in San Joaquin County after the Trust Period shall be paid out of the Trust Fund, and AFT may set aside from the Trust Fund an amount not to exceed five thousand dollars (\$5,000) to be used as an endowment to fund the cost of monitoring and enforcing conservation easements acquired by AFT with the Trust Fund.

2. Indemnity.

2.1 GWF hereby indemnifies AFT against any losses, costs, charges, claims, liabilities or expenses (including reasonable attorneys' fees) arising from AFT's performance of its duties hereunder, including AFT's administration of the Trust Fund its and disbursement of the Trust Fund, provided such losses, costs, charges, claims, liabilities or expenses do not arise out of AFT's gross negligence or willful misconduct.

3. Entire Agreement; Modification.

3.1 This Agreement constitutes the entire agreement between GWF and AFT pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, waiver or amendment of this Agreement shall be binding unless specific and

in writing executed by the party against whom such supplement, modification, waiver or amendment is sought to be enforced.

4. Counterparts.

4.1 This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.

5. Severability.

5.1 Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

6. Governing Law.

6.1 This Agreement shall be governed by and construed in accordance with the laws of the District of Columbia.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

GWF ENERGY LLC

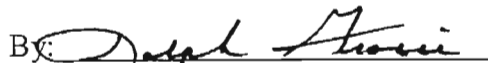


By:

Name: Douglas W. Ufford

Title: Vice-President

THE AMERICAN FARMLAND TRUST



Name: Ralph Grossi

Title: President

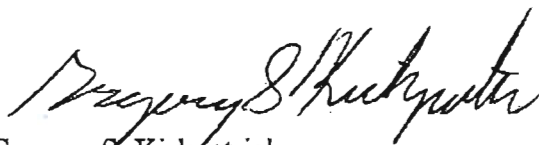
INVOICE

February 26, 2001

Doug Wheeler
GWF Energy LLC
4300 Railroad Avenue
Pittsburg, CA 94565

Re: **TRACY PEAKER PROJECT**

ITEM	DESCRIPTION	AMOUNT
Mitigation Fee	Mitigation Fee for conversion of 10.3 acres of agricultural land to urban uses for the Tracy Peaker Project (10.3 acres @ \$5,000/acre)	\$51,500.00
Endowment	Stewardship endowment for easement monitoring and enforcement	\$5,000.00
Labor	Staff costs for establishing mitigation fund and contracts Field Rep (22 hours @ \$50/hr) General Counsel (3 hours @ \$85/hr)	\$1,355.00
TOTAL DUE:		\$57,855.00



Gregory S. Kirkpatrick
California Land Protection Representative

70/98825.00/05MAR02/HENRIETTA, TRACY
AMERICAN FARMLAND TRUST

03:END

AMOUNT ENTERED: 14,098,825.00 USD
COUNT ENTERED: 2 USD
ACTION:RELEASE

SEQ	SEQNO	MSG TYPE	AMOUNT	CURR	VALDATE	CONTROL NUMBER
1:	002882	53	14,000,000.00	USD	05MAR02	* 1 APP REQ*
2:	002883	70	98,825.00	USD	05MAR02	MT-336797
TOTAL PENDING			14,000,000.00	USD		
TOTAL RELEASED			98,825.00	USD		

MTS OPTION:TRA

BANK OF AMERICA
BAMTRAC
GLOBAL MONEY TRANSFER - ENTRY
MAR 05, 2002 10:17 PST

AVAILABLE AMT LIMIT 999,901,174 USD
AVAILABLE COUNT LIMIT 998

PAST TRANSACTION ENTERED MESSAGE TYPE DOM SEQ. 002883

PLEASE ENTER Message ID / Amount <Curr Code> / Value Date / Your Reference
 XXXXXXXXXXXX / 999,999,999.99 / DDMMYY / rrrrrrrrrrrrrrrrr
 XXXXXXXXXXXX / 999,999,999.99 USD / DDMMYY / rrrrrrrrrrrrrrrrr
ENTER END to exit entry service.

01:53/10000000.00/05MAR02

02:53/4000000.00/05MAR02

03:END

AMOUNT ENTERED: 14,000,000.00 USD
COUNT ENTERED: 2 USD
ACTION:RELEASE

SEQ	SEQNO	MSG TYPE	AMOUNT	CURR	VALDATE	CONTROL NUMBER
1:	002884	53	10,000,000.00	USD	05MAR02	MT-336824
2:	002885	53	4,000,000.00	USD	05MAR02	MT-336825
TOTAL RELEASED			14,000,000.00	USD		

MTS OPTION:

LEASE

GWF ENERGY, LLC, a Delaware limited liability company, hereinafter (Lessor), hereby leases to JEPSER WEBB RANCH, LLC, a California limited liability company, hereinafter (Lessee), the real property, herein called "leased premises", in the County of San Joaquin, State of California, comprising of 30 acres, ¹more or less, described as follows:

TERM OF LEASE

1. The term of this lease shall be for a period of 1 (one) year, commencing on March 15, 2002 and ending on March 14, 2003. The Lease shall become effective upon Lessor acquiring fee Title to the Leased premises, pursuant to that certain Option Agreement by and between Lessor and Lessee dated June 22, 2001. If Lessor fails to acquire title pursuant to the Option Agreement, this Lease shall be null and void without further notice to either Lessor or Lessee.

AUTOMATIC RENEWAL

2. At the expiration of the term specified in Paragraph 1 of this lease, this lease, including all the terms and conditions within, shall be automatically renewed for an additional period of one year, and thereafter shall be automatically renewed for succeeding and consecutive one-year periods until either Lessor or Lessee gives written notice to the other, at least 120 days prior to the expiration of the term, of the termination of the lease at the end of the current one year period. The notice required by this paragraph shall be made as stated in the paragraph entitled "notices" contained in this lease.

RENT

3. As rental for the Lease premises, Lessee, shall pay Lessor the sum of \$1.00 (one dollar) for the entire parcel, per year.

EXPENSES OF LESSEE

4. During the term of this lease and any extensions thereof, Lessee shall at Lessee's own cost and expense:

a. Furnish all labor and equipment necessary to properly cultivate, grow and harvest on the leased premises, in a manner consistent with good farming practices and husbandry, all crops grown on the leased premises during the term of this lease or any renewal or extension thereof;

b. Furnish all seeds, all fertilizers and all other supplies necessary to properly

¹ It is to be noted that Lessor owns 40 acres, more or less, of which the leased premises are a part. Lessor operates a APeaker Plant@ on 10 acres, more or less, of these 40 acres. The Ground herein being Leased to Lessee is that portion of the 40 acres unused by Lessor.

plant, cultivate, grow and harvest on the leased premises in a manner consistent with good farming practices and husbandry the crops that are to be planted, grown, cultivated and harvested on the leased premises pursuant to this lease;

c. Keep and maintain all reclamation, irrigation and drainage ditches located on the leased premises open and in good condition and repair so that drainage and irrigation waters may flow freely in the ditches to and from lands adjoining the leased premises;

d. Pay all charges, promptly as they become due, for the furnishing of gas, electricity, and other public utilities (except irrigation water) to the leased premises.

EXPENSES OF LESSOR

5. During the term of this lease and any renewals or extensions thereof, Lessor shall, at Lessor's own cost and expense:

a. Pay, promptly as they become due, all taxes and assessments levied or assessed against the leased premises, excepting those taxes levied or assessed against Lessee's personal property and trade fixtures upon or about the leased premises;

b. Lessor is entitled to water from Plainview Water District. Lessor, to the extent such water is not used by Lessor, will allow Lessee, to use such water, to the extent legally allowed providing Lessee pays any and all costs associated with the use of such water.

c. Replace or repair any dwelling or permanent improvement now located on the leased premises that may be damaged or destroyed by fire, flood or any other cause not the fault and beyond the control of Lessee.

OPERATIONS ON LEASED PREMISES

6. Lessee shall carry on all of Lessee's activities specified under this Lease in accordance with good husbandry and the best practices of the farming community in which the leased premises are situated.

a. Lessee shall, at Lessee's cost and expense, comply with any and all present or future laws, ordinances, rules, regulations, requirements, and orders of federal, state, county or municipal governments that may in any way apply to the use, maintenance, operations, or production of crops on the leased premises, or the sale or disposition of those crops;

b. Lessee agrees not to apply pesticides, insecticides, fungicides, herbicides, or other chemical treatments that will have a residual effect beyond the term of this lease, or any renewals or extensions thereof, except with the prior written consent of Lessor.

WEEDS AND PESTS

7. Lessee shall prevent noxious weeds from going to seed on the leased premises, destroy them, and keep the weeds and grass cut. Lessee shall make and keep all levees on or abutting the leased premises free and clear of all growth of any kind.

DISEASE AND BLIGHT

8. Should any disease or blight of any character appear on the leased premises or in or on any crop growing or grown on the leased premises, Lessee, at Lessee's own cost and expense, shall:

a. Employ the best known methods for eradicating the disease or blight; and

b. Consult with and follow the advice of any and all experts on the subject recommended by Lessor (who have offices or reside within 50 miles of the leased premises).

WASTE OR NUISANCE

9. Lessee shall not commit, or permit others to commit, any waste upon the leased premises. Lessee shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined by California Civil Code Section 3479 on the leased premises. Lessee shall not use or permit the use of the leased premises for any unlawful purpose.

INSURANCE COVERAGE

10. Lessee shall, at all times during the term of this lease, maintain and keep in force insurance coverage with insurers approved by Lessor that will adequately protect both Lessee and Lessor against public liability and property damage upon the leased premises. The minimum coverage required by this paragraph shall be \$1,000,000.00 bodily injury per individual, \$300,000.00 per occurrence, and \$100,000.00 property damage. Proof of insurance coverage obtained by Lessee must be given to Lessor within 10 days after execution of this lease. Any contract entered into by Lessee for insurance coverage on the leased premises shall include a provision for timely notice to Lessor in the event of cancellation of coverage by the insurer. Lessee is also responsible for any workers' compensation insurance required under State law.

MAINTENANCE

11. Lessee, at its own expense, shall keep and maintain the leased premises, all improvements thereon, and all facilities appurtenant to the leased premises in good order and repair and in as safe and clean a condition as they were when received from Lessor, reasonable wear and tear excepted.

USE OF HAZARDOUS MATERIAL

12. Lessee shall not cause or permit any hazardous material to be brought upon, kept or

used in or about the premises without the prior written consent of Lessor, which Lessor shall not unreasonably withhold as long as Lessee demonstrates to Lessor's reasonable satisfaction that such hazardous material is necessary or useful to Lessee's business and will be used, kept and stored in a manner that complies with all laws, regulations and ordinances regulating any such hazardous material so brought upon or used or kept in or about the premises. If Lessee breaches the obligations stated in the preceding sentence, or if the presence of hazardous material on the premises caused or permitted by Lessee results in contamination of the premises, or if contamination of the premises by hazardous material otherwise occurs for which Lessee is legally liable to Lessor for damage resulting therefrom, then Lessee shall indemnify, defend and hold Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs (including, without limitation, reasonable attorney's fees), liabilities or losses (including, without limitation, diminution in value of the premises, damages for the loss or restriction on use of rentable or usable space or of any part of the premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorney's fees, consultant fees and expert fees) which arise during or after the lease term as a result of or relating to such contamination.

This indemnification of Lessor by Lessee includes without limitation (except with respect to existing contamination, if any, which may be present as of the date of this lease), costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of hazardous material present in the soil or ground water on or under the premises. Without limiting the foregoing, if the presence of any hazardous material on the premises caused or permitted by Lessee results in any contamination of the premises, Lessee shall promptly take all actions at its sole expense as are necessary to return the premises to the condition existing prior to the introduction of any such hazardous material to the premises; provided that Lessor's approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the premises. The foregoing indemnify shall survive the expiration or earlier termination of this lease.

As used herein the term "hazardous material" means any hazardous or toxic substance, material or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (40 CFR 172.101) or by the Environmental Protection Agency as hazardous substances, materials, and wastes that are or become regulated under any applicable local, state or federal law, regulation or ordinance.

At the commencement of this Lease, and on January 1 of each year thereafter (each such date being hereafter called "Disclosure Dates"), including January 1 of the year after the termination of this Lease, Lessee shall disclose to Lessor the names and amounts of all hazardous materials, or any combination thereof, which were stored, used or disposed of on the premises, or which Lessee intends to store, use or dispose of on the premises.

ALTERATIONS AND MECHANICS' LIENS

13. Lessee shall not make or permit any alterations or improvements to the leased

premises without the prior written consent of Lessor. Upon termination or expiration of this lease, all improvements and alterations other than trade fixtures shall be the property of Lessor, and no reimbursement to Lessee shall be required. Lessee shall remove all trade fixtures placed by Lessee on the leased premises within 30 days after the expiration of this lease.

14. Lessee shall keep the premises free and clear of any and all liens arising out of any work performed or materials furnished at the request of Lessee or obligations incurred by Lessee.

INDEMNIFICATION OF LESSOR

15. Lessee, throughout the term of this lease, shall indemnify and hold Lessor harmless from all damages, injuries, or claims arising in or about the leased premises or arising from Lessee's operations on the leased premises.

ASSIGNMENT AND SUBLEASING

16. Lessee shall not assign, transfer, or encumber this lease or any interest herein without the prior written consent of Lessor. Lessee shall not sublease all or any part of the leased premises or allow any persons other than Lessee's agents, family or employees to occupy or use all or any part of the leased premises without the prior written consent of Lessor. Lessor's consent to one assignment, sublease, occupation, or use by another person shall not be deemed to be a consent to any subsequent assignment, sublease, occupation, or use by any other person. Any assignment or subleasing without the prior written consent of Lessor shall be void.

DEFAULT BY LESSEE

17. All covenants and agreements contained in this lease are conditions to this lease. Should Lessee default in the performance of any covenant, condition, or agreement contained in this lease, Lessor may terminate this lease and re-enter and regain possession of the leased premises in the manner then provided by the unlawful detainer laws of the State of California.

FORCE MAJEURE CLAUSE

18. Should the performance of the obligations of either party under this lease be prevented or delayed by an act of God, war, civil insurrection, fire, flood, storm, strikes, lockouts, or by any law, regulation, or order by any federal, state, county or municipal authority, or by any other cause beyond the control of the party to be excused, that party's performance under this lease, to the extent it is prevented or delayed, shall be excused.

EXPENSES OF ENFORCEMENT

19. Should any litigation be commenced between the parties to this lease for the enforcement of any rights of either party against the other pursuant to the provisions of this lease, or by reason of any alleged breach of any of the provisions of this agreement, the party prevailing in the litigation shall be entitled to receive from the unsuccessful party all costs incurred in

26. The waiver of any breach of any of the provisions of this lease by Lessor shall not constitute a continuing waiver or a waiver of any subsequent breach by Lessee, either of the same or any other provision of this lease.

NO PARTNERSHIP

27. Nothing contained in this lease shall create a partnership, joint venture, or employment relationship between Lessor and Lessee. Neither Lessor or Lessee shall be liable, except as otherwise expressly provided for in this lease, for any obligations or liabilities incurred by the other.

ARBITRATION

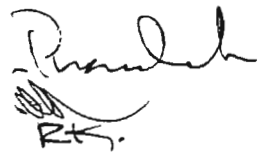
28. Any dispute that arises between lessor and lessee relating to the provisions of this lease shall be submitted to arbitration upon application by either party. The arbitration panel shall consist of three persons, one each appointed by Lessor and Lessee, and the third shall be jointly appointed by the appointees of Lessor and Lessee. The arbitration shall be conducted in compliance with Code of Civil Procedure ' ' 1280-1294.2 relating to arbitration. The cost of the arbitration shall be divided evenly between Lessor and Lessee.

COUNTERPARTS

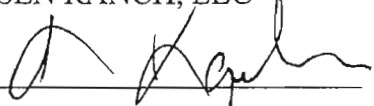
29. This Lease may be executed in any number of counterparts, each of which shall be deemed an original. For this Lease to be validly executed the parties each do not need to sign the same original document, so long as all parties have executed a Lease with all the same terms, all such documents shall comprise an Original document.

Executed on 3/15/02

GWF ENERGY, LLC
By: 

Its D.L. White, Vice President
Kogehin Ranch, Inc. 
JEPSEN RANCH, LLC RTS.

Executed on 3/18/02

By: 
Its R Kogehin President