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February 13, 2009

Mr. Ivor Benci-Woodward
Project Manager
c/o Dockets Unit, 4th Floor
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Ref: Draft Initial Comments to Avenal Energy (08-AFC-1) Preliminary Staff
Assessment Conclusions and Proposed Conditions of Certification

Dear Mr. Benci-Woodward:

Attached, on behalf of Avenal Power Center, LLC (Avenal Power Center), are two paper copies and two electronic copies of Avenal Power Center's draft initial comments to the California Energy Commission (CEC) Preliminary Staff Assessment (PSA) for Avenal Energy (08-AFC-1). One set of paper and electronic copies is provided for you, and one set of paper and electronic copies is provided for the Dockets unit. These draft initial comments address the PSA Conclusions sections and proposed conditions of certification, and are provided to facilitate discussions at the workshop scheduled for February 18, 2009. Avenal Power Center may submit additional comments following the workshop.

Avenal Power Center is in the process of confirming the acreages of temporary and permanent disturbance that will occur from the project, and expects that there will be little or no refinement needed to the previously provided acreages accompanying the response to CEC staff's Data Request No. 83. Confirmed acreages of temporary and permanent disturbance will be provided under separate cover.

If you have questions regarding the attached comments, please call me at the phone number in the letterhead, or Jim Rexroad at 713-275-6147.

Sincerely,

Joseph L. Stenger, PG, REA
Project Director
TRC Companies, Inc.

Attachment:

Comments to the Avenal Energy PSA Conclusions and Proposed Conditions of Certification

cc. Jim Rexroad, Avenal Power Center, LLC
Jane Luckhardt, Downey Brand

PROOF OF SERVICE (REVISED _____) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 2/17/09
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**COMMENTS TO THE AVENAL ENERGY PSA
CONCLUSIONS SECTIONS AND
PROPOSED CONDITIONS OF CERTIFICATION**

AIR QUALITY

General Comments

The Applicant believes that the San Joaquin Air Pollution Control District (the District) has correctly assessed the ERC package submitted as mitigation for this project. The SO_x ERCs that were evaluated by the District cover the wider area requested by California Energy Commission (CEC) staff to be the basis of the ratio analysis. It is the Applicant's understanding that the District's opinion is that the relevant emissions inventory and ambient air quality data for purposes of evaluating interpollutant trading ratios should come from the general vicinity of the new source of emissions, and not from the vicinity of the locations from whence the ERCs are derived. Subject to satisfactory resolution of the interpollutant trading ratio, the Applicant has no comments to the proposed Condition of Certifications set forth in the Air Quality Section of the Preliminary Staff Assessment (PSA).

BIOLOGY

General Comments

1. The Conclusions section (p. 4.2-25) states that staff is currently unable to identify the habitat compensation bank to be used for the project. The Applicant submits that the project will utilize either the Kern Water Bank (KWB) or the Kreyenhagen Hills Conservation Bank (KHCB) for habitat mitigation. California Department of Fish and Game (CDFG) has indicated that either of these banks will be acceptable for mitigation of impacts to the Swainson's hawk. The KWB cannot enter into an agreement with the Applicant until it is authorized to do so by U.S. Fish and Wildlife Service (USFWS). While the KHCB is able to enter into an agreement with the Applicant without USFWS authorization, the applicant would be at risk in such an agreement until such time that the USFWS formally authorizes the use of this bank. Accordingly, the Applicant will pursue an agreement with one of these banks pending USFWS acknowledgement in writing that one or both of these banks is acceptable. If the USFWS will allow either bank to be used, the Applicant's preference will be the KHCB. Either bank that is deemed acceptable to USFWS will mitigate impacts to a level that is less than significant. Therefore, there does not appear to be any need to limit the project to one or the other prior to final negotiations to secure the credits.
2. The Conclusions section (p. 4.2-25) states that staff is currently unable to finalize the exact acreage amounts that will be impacted by the project. The Applicant is rechecking the estimated temporary construction and permanent disturbance acreages with the design engineers and will provide confirmed disturbance acreages to Staff under separate cover. The Applicant has confirmed with the design engineers that pipeline installations will be completed within a 25-foot wide disturbance corridor, and that the transmission tower installations will be completed within an approximately 3,600 square foot disturbance area per tower. These limited disturbance areas are expected to be achievable due to the relatively flat terrain and considering the design of these project features and anticipated geotechnical conditions.
3. The Conclusions section (p. 4.2-25) states that staff is currently unable to determine if the potable water pipeline route will be located in wildlife habitat. The potable water line route is shown in Exhibit 92-1 provided with the response to Staff's Data Request No. 92. As stated in the response to Data Request No. 92, the potable water line will be located within the Avenal Cutoff Road right-of-way (ROW) where it is outside of the project site. The Avenal Cutoff Road ROW where the pipeline would be located does not provide wildlife habitat. The portion of the potable water pipeline that is on site will be located in existing farmland that provides habitat of limited value for some species. Both the offsite (no habitat) and onsite (limited habitat) disturbances will be accounted for in the confirmed disturbed acreage quantities to be provided by the Applicant under separate cover as identified in Comment 2, above. While the onsite portion of

the potable water pipeline will be located in existing farmland that provides habitat of limited value for some species, it will not, in itself, result in any disturbance to wildlife habitat because it will be placed in the same trench as the pipeline from backup well 24-5, within the same 25 foot wide disturbance (See Exhibit 92-1 provided with the Response to Staff's Data Request No. 92 and Exhibit 7-1 provided with the Response to Staff's Data Request No. 7).

4. The Conclusions section (p. 4.2-25) states that staff is currently unable to get an agreement between the Applicant, agencies and staff regarding the width of the setback from the canal and U.S. Bureau of Reclamation (USBR) ROW. The Applicant also has been unable to come to an agreement with USFWS on the setback, as described further in the following paragraphs.

There are no documented occurrences of kit fox on the project site or linear facility corridors. Sightings of kit fox in the region anywhere east of Interstate 5 are relatively rare; lands west of Interstate 5 are known to provide important kit fox habitat. While there are no documented occurrences of kit fox on the site, the Applicant recognizes that the USFWS has identified the USBR ROW along the canal as a likely migration pathway for kit fox based on sightings of kit fox along the canal at other locations in the region. The USBR ROW is approximately 176 feet wide adjacent to the Avenal Energy project, measured from the inside top of the canal embankment to the Avenal Energy property line. The existing USBR ROW is not currently and was not intended to be a part of Avenal Energy's mitigation for the kit fox. These lands are not controlled by Avenal Energy and they are managed and maintained by USBR. They consist of maintained non-native grasslands (AFC p 6.6-21). The Applicant has no right or authority to perform any activity on the USBR lands and the project site does not infringe on the USBR lands.

In the AFC, the applicant proposed a setback that would have resulted in the closest project features being located a minimum of approximately 124 feet from the USBR right of way. This distance, and its definition as 300 feet measured from the top inside bank of the canal, was developed based on previous discussions with USFWS and a letter from USFWS to U.S. Environmental Protection Agency (USEPA) dated March 21, 2002 previously provided to Staff and associated with a substantially identical project previously proposed at this same location. In response to discussions with USFWS in which they requested a larger setback, the Applicant reviewed the project design and determined that the fence line near this portion of the project site can be pulled in an extra 8 feet without impacting the plant footprint, providing a setback of 132 feet measured from the property line. The Applicant subsequently stated in an August 15, 2008 letter to USFWS that the project is willing to provide a buffer of 132 feet from the USBR ROW.

This 132-foot buffer would convert approximately one acre of existing active farmland that has been cleared of native vegetation for more than 50 years and

is regularly plowed, planted and harvested, into maintained grassland that would be similar to the existing habitat in the identified migration corridor. The Avenal Energy frontage along the canal ROW where the buffer would occur is the only portion of the proposed City of Avenal industrial park that is adjacent to the canal (See AFC Figure 6.9-3A) and the adjacent agriculturally zoned land bordering the canal is Williamson Act land and Prime Farmland (see AFC Figure 6.4-4A) ensuring that at least several thousand linear feet of canal frontage would likely remain under agricultural use with no hindrance to kit fox mitigation. Thus, the proposed buffer will ensure that a continuous path exists through the industrially zoned area for kit fox migration to much larger migratory paths.

The 132-foot buffer zone proposed by the project is a conservation measure offered by the Applicant. It would widen the maintained grassland habitat of the existing migration corridor even though the project will not affect the existing corridor. The proposed 132 foot setback from the identified migration corridor is more than the 100-foot setback recommended for active kit fox burrows in USFWS's *Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance* document referenced on p. 4.2-37 of the PSA (USFWS, 1999). The Applicant has requested, but not yet received from USFWS, any evidence, nor has the Applicant been able to identify any evidence, that an increased setback will materially benefit the kit fox, or that there is any basis for increasing the setback in regulatory requirements or established policy. The Applicant's efforts to identify such evidence are documented, in part, in a September 22, 2008 letter report by Bumgardner Biological Consulting previously provided to Staff. Considering that the project, as proposed, will not affect the migration corridor as it exists today, and considering an apparent absence of any scientific, regulatory or policy basis for requiring an increased buffer zone distance, Avenal believes that the proposed 132 feet setback more than adequately mitigates any potential impact to kit fox use of the canal as a migratory path between major habitat regions. The site-specific conditions at this location support this conclusion, with the proposed setback being the only location within the industrial park that borders the canal ROW, and surrounding agricultural lands being Prime Farmland and Williamson Act Lands likely remain under agricultural use and with no hindrance to kit fox mitigation.

In addition, the project has committed to separately compensate for potential impacts to the kit fox due to permanent and temporary disturbances to the farmland that will be mitigated by the project at ratios of 1.1:1 and 0.3:1, respectively, as agreed upon with USFWS, even though the farmland provides poor quality habitat for this species.

5. At the end of proposed Condition of Certification BIO-4, there is a partial sentence that appears to be either extra text, or additional text is missing.

Specific Comments

Avenal Power Center, LLC (APC) suggests that modification be considered to the proposed Conditions of Certification as shown below:

BIO-4

Verification: Biological Monitor notifies the CPM immediately (and no later than the ~~following~~ morning ~~of following~~ the incident, or Monday morning in the case of a Friday or weekend incident) of any non-compliance or a halt of any site mobilization, ground disturbance, grading, construction, and operation activities. The project owner shall notify the CPM of the circumstances and actions being taken to resolve the problem.

BIO-6

Verification: The project owner shall provide the specified document at least 60 days prior to start of any site (or related facilities) mobilization.

The CPM, ~~in consultation with~~ considering comments received from the USFWS, if any, and any other appropriate agencies, will determine the BRMIMP's acceptability within 45 days of receipt. If there are any permits that have not yet been received when the BRMIMP is first submitted, these permits shall be submitted to the CPM ~~and the USFWS~~ within five (5) days of their receipt and the BRMIMP shall be revised or supplemented to reflect the permit condition within 10 days of their receipt by the project owner. Ten days prior to site and related facilities mobilization the revised BRMIMP shall be resubmitted to the CPM.

BIO-7 Any time the project owner modifies or finalizes the project design they shall incorporate all feasible measures that avoid or minimize impacts to the local biological resources, including:

1. Design, install, and maintain transmission line poles, access roads, pulling sites, and storage and parking areas to avoid identified sensitive resources;
2. Eliminate any California Exotic Pest Plants of Concern (CalEPPC) List A species from landscaping plans;
3. Establish a plan to return the site to agricultural production after construction;
4. Prescribe a road sealant that is non-toxic to wildlife and plants that will limit dust on dirt roads;
5. Design, install, and maintain facility lighting to prevent side casting of light towards wildlife habitat;

6. Implement a ~~300~~132-foot setback from the western edge of the USBR ROW east-southwest into the Avenal Energy site and implement the "Recommended Buffer Zone Management Guidelines":
7. Install a wildlife compatible perimeter fence to allow for unobstructed and unhampered wildlife movement through the fence; and
8. Implement measures to ensure that construction disturbances do not exceed the acreage compensated for pursuant to BIO-9. ~~Do not exceed a 25-foot wide disturbance corridor for water and natural gas pipeline installation and 3,600 square foot area of temporary disturbance for transmission tower installation as stated in Exhibit 83-2 (Avenal Power 2008f).~~

BIO-8 The project owner shall implement the following measures to manage their construction site, and related facilities, in a manner to avoid or minimize impacts to the local biological resources.

1. Install temporary fencing and provide wildlife escape ramps for construction areas that contain steep walled holes or trenches if outside of an approved, permanent exclusionary fence. The temporary fence shall be hardware cloth or similar materials that are approved by USFWS. Before such holes or trenches are filled, they should be thoroughly inspected for trapped animals by the Designated Biologist or Biological Monitor;
2. Make certain all food-related trash is disposed of in closed containers and removed at least once a week from the project site;
3. Prohibit feeding of wildlife by staff and subcontractors;
4. Prohibit non-security related firearms or weapons from being brought to the site;
5. Prohibit pets from being brought to the site;
6. Report all inadvertent deaths of special-status species to the appropriate project representative. Injured animals shall be reported to CDFG and the project owner shall follow instructions that are provided by CDFG. The Sacramento USFWS Office shall be notified in writing within three working days of the accidental death or injury to a SJKF during project related activities. Contact USFWS and CDFG for specific notification procedures;
7. Minimize use of rodenticides and herbicides in the project area and prohibit the use of ~~chemicals~~rodenticides and pesticides known to cause harm to amphibians. If rodent control must be conducted, zinc phosphate or an ~~equivalent~~similar product shall be used;

8. Project-related vehicles shall observe a 20-mph speed limit in all project areas, except on county roads and State and Federal highways; this is particularly important at night when kit foxes are most active. Off-road traffic outside of designated project areas is prohibited.
9. Fence areas with sensitive species and habitat such as the USBR right-of-way, the soil berms to the south of the site, and areas of nesting tricolored and yellow-headed blackbirds to 250 feet from nearest active nest between mid-March through August;
10. Design transmission line poles, access roads, pulling sites, and storage and parking areas to avoid identified sensitive resources;
11. Establish a ~~300~~132-foot minimum buffer/avoidance zone measured from the edge of the USBR right-of-way to any project related buildings, other structures, impervious surfaces, outdoor activity areas and ornamental landscaped areas to minimize potential disturbance to the San Joaquin kit fox and other sensitive species;
12. Design and construct transmission lines and all electrical components to reduce the likelihood of electrocutions of large birds; and
13. Use hooded lights on the project facilities and face lights downward and away from the San Luis Canal.

BIO-9 The project owner shall provide habitat compensation for temporary and permanent impacts to San Joaquin kit fox and Swainson's hawk at a 1.1:1 ratio for permanent impacts and 0.3:1 ratio for temporary impacts approved by USFWS and CDFG. The same mitigation lands may be used for both species provided that it is suitable habitat for both species.

BIO-12 If burrowing owls are found during preconstruction surveys within 500 feet of the project site or linear facilities, then the CDFG burrowing owl guidelines (1995) shall be implemented as follows:

1. Monitor burrowing owl pairs within 500 feet of any activities that exceed ambient noise and/or vibration levels;
2. ~~Establish a 500-foot setback from any active burrow and c~~Construct ~~additional~~ noise/visual barriers (e.g., haystacks or plywood fencing) to shield ~~the any~~ active burrow that is within 500 feet from construction activities, unless CDFG deems such measures to not be necessary based on site-specific conditions. Post signs (in both English and Spanish) designating presence of sensitive area;

3. Passively relocate all owls occupying burrows ~~within that will be temporarily or permanently impacted by~~ the project construction footprint, if any, and implement the following CDFG take avoidance measures:
 - A. Occupied burrows shall not be disturbed during the nesting season (February 1 – August 31) unless a qualified biologist can verify through non-invasive methods that egg laying/incubation has not begun or juveniles are foraging independently and able to fly;
 - B. A qualified biologist must relocate owls, confirm that owls have left burrows prior to ground-disturbing activities, and monitor the burrows. Once evacuation is confirmed, the biologist should hand excavate burrows and then fill burrows to prevent reoccupation; and
 - C. Relocation of owls shall be approved by and conducted in consultation with CDFG.
4. Submit a Burrowing Owl Mitigation and Monitoring Plan to CDFG for review and approval prior to relocation of owls (and incorporate it into the project's BRMIMP) to CDFG and CPM for approval no less than 10 days prior to completing owl relocation and monitoring.

Verification: The project owner shall submit a report to CDFG and the CPM at least ~~30~~20 days prior to the start of site mobilization that describes when surveys were completed, observations, mitigation measures, and the results of the measures. If owls are to be relocated, the project owner shall coordinate with CDFG on the number of new burrows, their locations, and how any created burrows and compensation land will be protected for the life of the project in a Burrowing Owl Mitigation and Monitoring Plan. Within 30 days after completion of owl relocation and monitoring, and the start of ground disturbance, the project owner shall provide written verification to the CDFG and CPM that burrowing owl mitigation measures have been completed.

CULTURAL RESOURCES

General Comments

The Conclusions and Recommendations section (page, 4.3-37) states that “the proposed AE ... could have a significant adverse impact on a potentially CRHR-eligible built-environment resource, the Tesla–Midway 230-kV transmission line, possibly a constituent of the early California electrical grid, dating to the 1950s. Before staff can recommend mitigation for this potentially significant impact, staff needs more information on possible modes of avoidance of the impact which the applicant may propose.”

Changes to the Tesla-Midway 230-kV transmission line, if any, are expected to be minor in the context of the transmission line as a potential built-environment cultural resource. The specifics of the project's interconnection and changes to the existing transmission line, if any, will be wholly decided by PG&E, as previously submitted in the applicant's response to Staff's Data Request No. 81. Until the CAISO/PG&E prepares a Facilities Study, or other equivalent study as provided for in the CAISO's Open Access Transmission Tariff, for this specific project, it is uncertain whether there would be any need to modify the existing 230 kV line. The worst-case scenario anticipated by the Applicant would be the need to replace one or two towers to change the height of the conductors for a short segment of the line adjacent to the Gates substation to facilitate the crossing of the new Avenal Energy transmission line. The Applicant will be responsible for costs associated with the interconnection. In the response to Data Request No. 81, the Applicant adopted Staff's recommendation from Data Request No. 82 and committed to suggesting to PG&E that the new Avenal Energy transmission line towers be made taller or shorter, if needed, in preference to modifying the existing 230 kV line towers.

CEC staff concludes that the Tesla–Midway 230-kV transmission line, “could be potentially significant under CRHR Criterion 1—associated with events that have made a significant contribution to the broad patterns of our history—because, along with Gates Substation, it appears to be an early and essential component of the California post-WWII infant electrical grid, with two of the most important 1950s steam turbine power-generating plants, Moss Landing and Morro Bay, distributing their output through this early infrastructure”(PSA, page 4.3-25). CEC staff is uncertain of a period of significance for the Tesla–Midway 230-kV transmission line but make a tentative assignment to the 1950s (PSA, page, 4.3-25), presumably relating to the period when the two power plants came on line. Regarding the historical integrity of the transmission line, staff suggests that “[F]or Criterion 1, sufficient integrity to convey historical significance can be as minimal as just not appearing superficially anachronistic.”

The Applicant has not obtained any more information regarding the history of the Tesla–Midway 230-kV transmission line than what has been provided to CEC to-date. Additional information from the owner of the transmission line (PG&E) is unlikely to be forthcoming. The Applicant believes that the assessment of California Register of

Historic Resources (CRHR) eligibility by architectural historian Wendy Tinsley supports a conclusion that the transmission line does not appear to be historically significant and that significant changes in the infrastructure of the transmission line impair the integrity of the line under any CRHR eligibility criteria used to evaluate its historical significance.

Regardless of whether or not the transmission line is potentially CRHR eligible, the degree of impact that could potentially result from the removal of up to two existing towers would not appear to rise to the level of a significant impact. The Tesla–Midway 230-kV transmission line extends approximately 200 miles from near Buttonwillow in Kern County to the Tesla Substation in Alameda County with steel lattice towers spaced on the order of 1,100 feet apart, for a total on the order of 1,000 towers installed along the length of the transmission line. Replacing one or two original steel lattice towers would have no significant impact on the historical integrity of the transmission line.

In an effort to further alleviate Staff's concern over the potential for impact to the Tesla–Midway 230-kV transmission line, in the event that PG&E does ultimately determine that modifications to the existing line cannot be practically avoided, then the Applicant will agree to have a qualified architectural historian document any affected towers according to a modified Level III Historic American Engineering Record standard (Federal Register Vol. 68, No. 139, pages 43159-43162). CEC has made such documentation a Condition of Certification in other cases where a CRHR-eligible built-environment resource is planned for removal in conjunction with a siting case (e.g., see the Morro Bay Power Plant Project 3rd Revised Presiding Members Proposed Decision, Condition of Certification CUL-16, pages 444-445). A modified documentation process is proposed due to the transmission line not appearing to be eligible for inclusion on the National Register of Historic Places. The proposed modified Level III documentation will include representative photography of the line and individual tower types to be submitted in 5 x 7 or 8 x 10 size on archival quality paper; preparation of a site plan or linear location map of the affected segment and location of individual transmission towers within the alignment; and descriptions of the Tesla–Midway 230-kV transmission line (as can be obtained from public and non-confidential sources) as well as descriptions of each tower type installed. This modified Level III documentation will be submitted to the Avenal library and the Southern San Joaquin Valley Information Center for inclusion in their respective archives.

Specific Comments

Considering the comments above and recognizing Staff's concerns regarding the Tesla–Midway 230-kV transmission line, the Applicant proposes a new Condition of Certification, CUL-8, as follows:

CUL-8

The project owner shall suggest to PG&E in writing that, if feasible, the Avenal Energy transmission line interconnection to the Gates substation be designed to avoid changes to the existing Tesla–Midway 230-kV transmission line towers. If the Facilities Study, or other equivalent study as provided for in the CAISO's Open Access Transmission Tariff,

completed by CAISO/PG&E for the project indicates the need for modifications to the existing Tesla–Midway 230-kV transmission line towers in order for the project's new transmission line to cross the Tesla–Midway 230-kV transmission line towers, then the project owner shall document any affected towers according to a modified Level III Historic American Engineering Record standard (Federal Register Vol. 68, No. 139, pages 43159-43162). Documentation shall include: (1) representative photography of the line and individual affected towers to be submitted in 5 x 7 or 8 x 10 size on archival quality paper; (2) preparation of a site plan or linear location map of the affected segment and location of individual transmission towers within the alignment; (3) descriptions of the Tesla–Midway 230-kV transmission line as can be obtained from public and non-confidential sources; (4) descriptions of each tower type installed. This modified Level III documentation shall be submitted to the CPM, and to the Avenal library and the Southern San Joaquin Valley Information Center for inclusion in their respective archives. Documentation shall be prepared by a qualified architectural historian with training and background conforming to the U.S. Secretary of the Interior's Professional Qualifications Standards, as published in Title 36, Code of Federal Regulations, Part 61. The resume of the architectural historian shall be provided to the CPM and shall demonstrate to the satisfaction of the CPM the appropriate training and experience to effectively implement this condition.

Verification:

If the project transmission line interconnection will require modifications to the existing Tesla–Midway 230-kV transmission line towers, then:

1. No less than 90 days prior to any work on the Tesla-Midway 230-kV transmission line, the project owner shall provide to the CPM:

- A copy of the Facilities Study, or other equivalent study as provided for in the CAISO's Open Access Transmission Tariff.
- Copies of written correspondence between the project owner and PG&E documenting the project owner's attempt to encourage PG&E to design the project interconnection to avoid impacts to the Tesla–Midway 230-kV transmission line towers.
- The name and resume of a qualified architectural historian proposed to complete the transmission line documentation work. The CPM shall approve or reject the selected architectural historian within 15 days of receiving the resume.

2. No less than 30 days prior to any work on the Tesla-Midway 230-kV transmission line, the project owner shall provide a copy of the documentation report to the CPM, along with documentation that copies of the report have been submitted to the Avenal library and the Southern San Joaquin Valley Information Center.

LAND USE

General Comments

1. The Applicant disagrees with the conclusion reached by Staff regarding the impact to prime farmland. The city of Avenal definitively addressed the conversion of prime farmland when it adopted its general plan. The Applicant does not disagree with the request by Staff to provide mitigation at a one to one ratio pursuant to proposed Condition of Certification LAND-2, but suggests minor clarifications as shown below.
2. Proposed Condition of Certification LAND-2 makes reference to the acreage of long-term project disturbance. The Applicant is reviewing disturbance acreage calculations and will provide staff with confirmed disturbance acreages under separate cover.

Specific Comment

APC suggests that modification be considered to proposed Condition of Certification LAND-2 as shown below:

LAND-2 The project owner shall mitigate at a one to one ratio for the conversion of 34 acres of prime farmland as classified by the California Department of Conservation, to a non-agricultural use, for the construction of the power generation facility, switchyard, and the storm water evaporative/percolation basin. The mitigation shall consist of one of the following:

1) a mitigation fee payment to a City of Avenal or Kings County agricultural land trust or the American Farmland Trust consistent with a prepared Farmlands Mitigation Agreement. The payment amount shall be determined by contacting the local assessor's office to determine the assessed value for 34 acres of prime agricultural land; or by a real estate appraiser selected by the project owner and approved by the CPM.

2) securing the acquisition of an agricultural easement or otherwise causing the creation of an agricultural easement for other farmland in the vicinity. Easements for prime farmland would be acquired based on the California Department of Conservation's Important Farmland Classification Map, but in no case shall be less than a 1:1 ratio.

Verification: ~~Sixty (60)~~ ~~Thirty (30)~~ days prior to start of ~~construction~~ commercial operations, the project owner shall provide documentation to the CPM demonstrating compliance with one of these options. For option 1, documentation shall consist or proof of mitigation fee payment and ~~in its monthly compliance reports~~ a discussion of any land and/or easements purchased ~~in the preceding month to date~~ by the trust with the mitigation fee money provided, and the provisions to guarantee that the land managed by the trust will be ~~farmed~~ preserved for farming in perpetuity. If the total

required acreage has not been purchased by this time, then ~~if~~ this discussion shall include the schedule for purchasing ~~34 any additional required~~ acres of prime farmland and/or easements within one year of ~~start of construction as compensation for the 34 acres of prime farmland to be converted by the Avenal Energy project~~ the start of commercial operations. For option 2, the project owner shall provide to the CPM sixty (60) days prior to the start of commercial operations a copy of the deed restriction or other documentation demonstrating to the satisfaction of the CPM that the project owner has caused the creation of an in-perpetuity agricultural easement for the total required acreage.

NOISE

Specific Comment

APC suggests that modification be considered to proposed Conditions of Certification as shown below:

NOISE-2 Throughout the construction and operation of the project, the project owner shall document, investigate, evaluate, and attempt to resolve all project-related noise complaints. The project owner or authorized agent shall:

- use the Noise Complaint Resolution Form (below), or a functionally equivalent procedure acceptable to the CPM, to document and respond to each noise complaint;
- attempt to contact the person(s) making the noise complaint within 24 hours, or by 5 p.m. Monday if the complaint is received Friday through Sunday;
- conduct an investigation to determine the source of noise in the complaint;
- if the noise is project related, take all feasible measures to reduce the source of the noise; and
- submit a report documenting the complaint and actions taken. The report shall include: a complaint summary, including the final results of noise reduction efforts and, if obtainable, a signed statement by the complainant stating that the noise problem has been resolved to the complainant's satisfaction.

NOISE-4

Verification: The survey shall take place within ~~30-~~ sixty (60) days of the project first achieving a sustained output of 85 percent or greater of rated capacity. Within ~~45~~ thirty (30) days after completing the survey, the project owner shall submit a summary report of the survey to the CPM. Included in the survey report shall be a description of any additional mitigation measures necessary to achieve compliance with the above listed noise limit, and a schedule, subject to CPM approval, for implementing these measures. When these measures are in place, the project owner shall repeat the noise survey.

Within ~~45~~ thirty (30) days of completion of the new survey, the project owner shall submit to the CPM a summary report of the new noise survey, performed as described above and showing compliance with this condition.

NOISE-6 Heavy equipment operation and noisy construction work relating to any project features shall be restricted to the times delineated below:

Mondays through Fridays: 7:00 a.m. to 7:00 p.m.
Saturdays: 9:00 a.m. to 6:00 p.m.
Sundays: No Noisy Construction Allowed

SOIL AND WATER RESOURCES

General Comment

In the third bullet of the Conclusions section (p. 4.9-24) and other locations in the Soil and Water section of the PSA, Staff comments that the applicant has not demonstrated the availability of the backup water supply wells. The Applicant notes that the question about the right to use the ground water wells was raised by Westlands Water District in a letter dated May 29, 2008, and the January 12, 2009 letter from Westlands Water District retracts this question. This should eliminate the need for the third bullet in the Conclusions section, as well as eliminating the need for the phrase “[e]xcept as noted above” in the sixth bullet of the Conclusions section.

Specific Comment

APC suggests that modification be considered to proposed Condition of Certification Soil & Water-6 as shown below:

SOIL & WATER-6: The project owner shall treat all routine process waste water streams with a zero liquid discharge (ZLD) system that results in a residual solid waste. The solid waste shall be disposed of in the appropriate class of landfill suitable for the constituent concentrations in the waste. Surface or subsurface ~~disposal~~discharge of process wastewater from the Avenal Energy power plant is prohibited. The project owner shall operate the ZLD system in accordance with a ZLD management plan approved by the CPM. The ZLD management plan shall include the following elements:

TRAFFIC AND TRANSPORTATION

Specific Comments

APC suggests that modifications be considered to the proposed Conditions of Certification as shown below:

TRANS-1 The project owner shall, in coordination with the city of Avenal and Kings County, and in consultation with the Reef-Sunset Unified School District (RSUSD), develop and implement a construction traffic control plan prior to construction site mobilization. Specifically, the traffic control plan shall include the following:

- Ensure that the construction of the linears uses appropriate mitigation such as cones, signs, trailer-mounted camera, and flagmen/traffic officer to avoid unnecessary disruption of traffic flows on Avenal Cutoff Road;
- Prior to site mobilization activities, the project owner shall provide the Kings county Public Works Department for review and comment, and the CPM for review and approval, a traffic mitigation plan to maintain the existing LOS during the afternoon peak on the SR-198 eastbound ramp on Avenal Cutoff Road.
- Traffic safety measures for ingress/egress to Avenal Cutoff Road including, at minimum, a stop sign full time, and a flag person during shift changes and during heavy equipment ingress/egress.

Verification At least 90 days prior to the start of site mobilization activities, the project owner shall submit a construction traffic control plan to the city of Avenal and the Kings County Public Works Department for review and comment, and to the CPM for review and approval, to ensure that the construction of the linears and the increase in construction traffic would not adversely affect traffic flow on Avenal Cutoff Road, and would not degrade existing LOS on the SR-198 eastbound ramp at Avenal Cutoff Road. ~~The plan shall also describe how workers will be advised to avoid arriving and departing the Avenal Energy site when the school bus uses Avenal Cutoff Road.~~ The project owner shall provide RSUSD with a copy of the plan and opportunity to review and comment on the project's traffic control measures for school bus safety. The project owner shall provide the CPM with a copy of any comments received regarding the construction traffic control plan within 15 days of receipt.

TRANS-2

Verification: At least 90 days prior to the start of site mobilization, the project owner shall submit a mitigation plan for restoring Avenal Cutoff Road to its pre-project condition to the city of Avenal for review and comment, and to the CPM for review and approval.

Within 90 days following the completion of construction, the project owner shall provide photo/videotape documentation to the ~~Kings County Planning Department~~ City of Avenal, and the CPM that the damaged sections of Avenal Cutoff Road have been restored to their pre-project condition.

GEOLOGY AND PALEONTOLOGY

Specific Comments

APC suggests that modifications be considered to the proposed Conditions of Certifications as shown below:

PAL-4 Prior to ground disturbance and for the duration of construction activities involving ground disturbance, the project owner and the PRS shall prepare and conduct ~~weekly~~ CPM-approved training at a frequency to be outlined in a Worker Environmental Awareness Program (WEAP) for the following workers: project managers, construction supervisors, foremen and general workers involved with or who operate ground-disturbing equipment or tools. Workers shall not excavate in sensitive units prior to receiving CPM-approved worker training. Worker training shall consist of a CPM-approved video or in-person presentation. The training program may be combined with other training programs prepared for cultural and biological resources, hazardous materials, or other areas of interest or concern. No ground disturbance shall occur prior to CPM approval of the ~~Worker Environmental Awareness Program (WEAP)~~, unless specifically approved by the CPM.

PAL-5 The project owner shall ensure that the PRS and PRM(s) monitor consistent with the PRMMP all construction-related grading, excavation, trenching, and augering in areas where potential fossil-bearing materials have been identified, both at the site and along any constructed linear facilities associated with the project. In the event that the PRS determines ~~full time~~-monitoring can be reduced from that described in the approved PRMMP ~~is not necessary~~ in locations that were identified as potentially fossil bearing in the PRMMP, the project owner shall notify and seek the concurrence of the CPM.

VISUAL RESOURCES

General Comments

Paragraph 7 of the Conclusions section (p. 4.12-20) appears to be inconsistent with the visible plume analysis on PSA pgs. 4.12-13 and 4.12-14.

Paragraph 8 of the Conclusions section (p. 4.12-20) appears to be an overstatement based on the minority population description on PSA p. 4.8-3.

Specific Comments

APC suggests that modifications be considered to proposed Condition of Certification VIS-3 as shown below:

VIS-3 The project owner shall color and finish the surfaces of all project structures and buildings visible to the public to ensure that they: (1) minimize visual intrusion and contrast by blending with the landscape; (2) minimize glare; and (3) comply with local design policies and ordinances. The transmission line conductors and insulators shall be non-specular ~~and non-reflective, and the insulators shall be non-reflective and non-refractive~~ with low reflectance.

WASTE MANAGEMENT

Specific Comments

APC suggests that modifications be considered to the Conclusions section (p. 4.13-13 and 4.13-14) as shown below:

- ~~Evidence of past or present hazardous substance use, storage or disposal was not documented or observed on the project site during the site reconnaissance conducted for t~~The ESA conducted for the project site did not identify any evidence of the presence or likely presence of any hazardous substance on the site under conditions that would indicate an existing release, past release, or material threat of release into the ground, groundwater or surface water. This finding indicates that there is limited potential for construction crews to encounter contaminated soil or groundwater at the power plant site;
- An ESA was conducted for the project's linear corridors. The ESA conducted for the linear corridors did not identify any evidence of the presence or likely presence of any ~~Evidence of past or present hazardous substance use, storage or disposal was not documented or observed~~ within the linear corridors for the water and natural gas lines ~~the project site during the site reconnaissance conducted for the ESA~~ under conditions that would indicate an existing release, past release, or material threat of release into the ground, groundwater or surface water. However, along the transmission line corridor, the ESA indicated that soil staining was observed on the Carberry Farms property. The ESA considered the history of site use and the observation of stained surface soil and identified the Carberry Farms property as a recognized environmental condition (REC). If project elements are proposed for construction in this area, additional site evaluation should be conducted.
- The management of project wastes generated during project construction and operation would not result in significant impacts provided that staff's proposed conditions of certification are implemented;
- The volume of hazardous and non-hazardous liquid waste will ~~have not~~ have a significant impact on existing landfills or transfer and disposal facilities.

TRANSMISSION SYSTEM ENGINEERING

General Comment

With regard to the proposed Condition of Certification TSE-1, the Applicant will provide the required data as provided by the CAISO and PG&E, no later than 60 days prior to the start of construction (or a lesser number of days mutually agreed to by the Applicant and the CBO).

ALTERNATIVES

General Comment

The Alternatives section addresses an alternative project design that would move the project's storm water evaporation/percolation basin from its planned location based on biological issues and the disagreement over setback distance as discussed in the Applicant's comments to the Biological Resources section of the PSA. Moving the pond is not necessary to avoid impacts to the identified kit fox migration corridor. For further discussion, please see the Applicant's comments to the Biological Resources section of the PSA. The Applicant reserves the right to submit additional comments on the Alternatives section pending the results of the workshop and resolution of the ongoing setback distance discussion.



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA
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APPLICATION FOR CERTIFICATION
For the AVENAL ENERGY PROJECT

Docket No. 08-AFC-1
PROOF OF SERVICE

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DECLARATION OF SERVICE

I, Mineka Foggie, declare that on February 17, 2009, I served and filed copies of the attached Draft Initial Comment to Avenal Energy (08-AFC-1) Preliminary Staff Assessment Conclusions and Proposed Conditions of Certification. 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: [www.energy.ca.gov/sitingcases/_____]. 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:

 X sent electronically to all email addresses on the Proof of Service list;

 by personal delivery or by depositing in the United States mail at [location city and state] with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above 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:

OBCALIFORNIA ENERGY COMMISSION

Attn: Docket No. (08-AFC-1)

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I declare under penalty of perjury that the foregoing is true and correct.

Original Signature in Dockets
MINEKA FOGGIE