



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

30 May 2001

Ms. Jan Knight
Chief, Endangered Species Division
U.S. Fish and Wildlife Service
2800 Cottage Way, Suite W2605
Sacramento, California 95825-3901

Re: Request for Concurrence with EPA Finding of No Likely Adverse Effect under Section 7 of the ESA for Modification to Contra Costa Power Plant, Antioch, California

Dear Ms. Knight:

By this letter, the U.S. Environmental Protection Agency, Region 9 ("EPA") seeks to conclude informal consultation under Section 7 of the Endangered Species Act ("ESA") between EPA and the U.S. Fish and Wildlife Service ("FWS" or "Service") concerning the Contra Costa Power Plant Project (the "Project"). The Project involves a modification at an existing power plant to add a 530 MW natural gas-fired combined cycle combustion turbine (the "Turbine") at the existing Contra Costa Power Plant. Mirant Delta, LLC ("Mirant") has applied to the Bay Area Air Quality Management District ("BAAQMD") for a federal Prevention of Significant Deterioration ("PSD") permit for the Project, as required by Part C of the Clean Air Act and regulations at 40 C.F.R. § 52.21. Background information on the PSD program and more detailed information regarding the Project and this consultation are included below.

Background on PSD Program

Region 9 is responsible for complying with ESA Section 7 requirements with respect to federal PSD permitting. In some instances, EPA has delegated its PSD permitting authority to a state agency or air district pursuant to the PSD regulation at 40 C.F.R. § 52.21(u). In such instances, issuance of a federal PSD permit by a state agency or air district in EPA's stead is considered a federal action that may be subject to ESA requirements. (A "Delegation Agreement" establishes the roles and responsibilities for EPA and the State delegated to administer the PSD program and issue federal PSD permits in EPA's stead.)

A PSD permit for the Project is required for the modification to the existing power plant (i.e., installation of the Turbine). EPA has determined that issuance of the federal PSD permit for the Project is a federal action that may affect listed species or habitat through its construction or operation, thereby triggering ESA Section 7. Final action on this PSD permit may not occur

until EPA has determined that permit issuance will be consistent with the substantive and procedural requirements of the ESA.

Informal Consultation and Request for Concurrence under Section 7 of the ESA

EPA has been engaged in informal consultation with your office regarding the Project. We understand that you have been forwarded a copy of the California Energy Commission's Final Staff Assessment for the Project, which evaluates the environmental effects of the Project, including effects on listed species and habitat. In addition, as you are aware, Mirant previously submitted to the Service an application for an ESA Section 10 permit concerning the existing Contra Costa Power Plant. In this context, Mirant has prepared documents providing an analysis of the effects of the Contra Costa Power Plant on listed species and critical habitat, which were compiled as part of the ESA Section 10 permit application. Since EPA understands that your office already has copies of these documents, we are not forwarding them to you with this letter.

Mirant has discussed with the Service the potential impacts to species/habitat related to the Contra Costa Power Plant. The Service has identified the existing cooling water intake system at the facility as a concern, due to the potential for impingement and entrainment of the following listed threatened species: Delta smelt (*Hypomesus transpacificus*) and the Sacramento splittail (*Pogonichthys macrolepidotus*). The following listed threatened species under the National Marine Fisheries Service ("NMFS") jurisdiction also may be affected by the existing cooling water intake system: Central Valley ESU spring-run and winter-run chinook salmon (*Oncorhynchus tshawytscha*) and the Central Valley ESU Steelhead (*Oncorhynchus mykiss*). In addition, the following species are identified as occurring near the Project area but not likely to be adversely affected by the Project: San Joaquin harvest mouse (*Reithrodontomys raviventris*), California least tern (*Sterna antillarum brownii*), Sort bird's-beak (*Cordylanthus mollis ssp. mollis*), Lange's metalmark butterfly (*Apdemia mormo langei*), Contra Costa Wallflower (*Erysimum capitatum angustatum*), Antioch Dunes evening Primrose (*Oenothera deltoids howellii*), all of which are listed endangered species.

Mirant has agreed to take measures that would avoid or minimize the effects associated with the power plant, namely the installation of an Aquatic Filter Barrier to address potential impacts from the cooling water intake at the existing facility. Mirant has applied for a permit from the United States Army Corps of Engineers ("COE") for installation of the Aquatic Filter Barrier on the cooling water intake system at the Contra Costa Power Plant. By letter dated April 19, 2001, the COE requested consultation under ESA Section 7 concerning its permit action for the Aquatic Filter Barrier. Since the COE has requested consultation on a matter that specifically addresses the cooling water intake system, the FWS and NMFS will have the opportunity to address any impacts of this intake system to species or habitat through COE's ESA Section 7 consultation.

EPA has discussed with the FWS potential effects associated with PSD permit issuance for the Project. Per a discussion between Pamela Schultz (Office of Regional Counsel, EPA, Region 9), Roger Kohn (Air Division, EPA, Region 9) and Michael Thabault (FWS) on March 30, 2001, the FWS noted that its only concern with respect to the Contra Costa Power Plant was related to impacts on listed and threatened species due to the cooling water intake system.

Apart from potential impacts associated with the existing cooling water intake system, EPA believes that there are no likely adverse effects to species or habitat resulting from the addition of the new Turbine to the Contra Costa Power Plant. As noted above, the COE has requested consultation with respect to its federal permit for installation of the Aquatic Filter Barrier at the cooling water intake system. EPA believes that COE's federal action is more directly related to the area of concern (i.e., effects of cooling water intake) than EPA's air permitting action and defers to COE and the outcome of COE's Section 7 consultation to address any potential impacts associated with the cooling water intake. With respect to EPA's air permitting matter, EPA finds that, in all other regards, the Project is not likely to adversely affect listed species or critical habitat, in accordance with 50 C.F.R. §§ 402.13 and 402.14(b). I am writing to request written concurrence from the Service with this finding.

If you have any questions regarding this request, please contact Roger Kohn at (415) 744-1238.

Sincerely,



Gerardo Rios
Acting Chief, Permits Office
Air Division

cc: Mike Thabault, USFWS
Steve Hill, BAAQMD
