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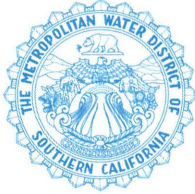
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**Comments on the Preliminary Staff Assessment for the Sonoran Energy Project
Amendment (02-AFC-1C)**

Additional submitted attachment is included below.



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Manager

February 29, 2016

California Energy Commission
Dockets Unit, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512

Comments on the Preliminary Staff Assessment for
the Sonoran Energy Project Amendment (02-AFC-1C)

As a potentially affected public agency, The Metropolitan Water District of Southern California (Metropolitan) appreciates the opportunity to provide comments on the California Energy Commission (Commission) Preliminary Staff Assessment (PSA) for the Sonoran Energy Project (SEP) Amendment (02-AFC-01). Metropolitan is a regional water wholesaler. It is comprised of 26 member public agencies serving approximately 19 million people in six counties in Southern California. One of Metropolitan's major water supplies is the Colorado River via Metropolitan's Colorado River Aqueduct (CRA). In accordance with the requirement of federal law that Colorado River may only be used pursuant to a contract with the Secretary of the Interior (43 U.S.C. § 617d), Metropolitan holds such contracts giving it an entitlement to water from the Colorado River. The CRA can deliver up to 1.2 million acre-feet of water annually.

The proposed SEP is a natural gas-fired, water-cooled, combined-cycle, 553-megawatt net electrical generating facility. The SEP would share some facilities with the existing Blythe Energy Project (BEP). Water for construction and operation of the SEP would be groundwater from either the new onsite wells (when completed) or the existing BEP water supply system. A maximum of 2,800 acre-feet of water per year would be used during operation of the SEP, based on the facility operating 7,000 hours per year. Water for sanitary purposes would either be bottled water or provided by BEP's potable water system. To meet project needs, the project owner proposes to pump up to 2,800 acre feet per year from the Palo Verde Mesa groundwater basin.

Water Resources: Potential Impacts on Colorado River and Local Water Supplies

Metropolitan is concerned about the SEP's potential direct and cumulative impacts on water supplies, specifically impacts on Colorado River and local groundwater supplies. As noted above, Metropolitan holds a contract entitlement to imported water supplies from the Colorado River. California's allocation of Colorado River water is set by federal law at 4,400,000 acre-feet per year pursuant to the Boulder Canyon Project Act (43 U.S.C. §617c). *See also, Arizona v. California* (1963) 373 U.S. 546. Metropolitan shares this allocation with other California agencies pursuant to contracts that jointly exceed the 4.4 million acre-feet allocated to California.

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Any increase in the water use by one of these agencies has the effect of reducing the California allocation available to junior priority contract holders. Palo Verde Irrigation District (PVID) holds the first priority, so its Colorado River water use necessarily affects the supply available to Metropolitan.

The fact that the SEP proposes to use groundwater from the Palo Verde Mesa groundwater basin does not avoid the impact of that water use on the Colorado River. The SEP site overlies the “Accounting Surface” area designated by U.S. Geological Survey (USGS) Scientific Investigation Report 2008-5113. The Accounting Surface is defined to represent the elevation and slope of the static water table in the river aquifer outside the flood plain and the reservoirs of the Colorado River that would exist if the water in the river aquifer were derived only from the river. The accounting surface extends outward from the edges of the flood plain or a reservoir to the subsurface boundary of the river aquifer. The USGS Report indicates that the aquifer underlying the lands is considered to be hydraulically connected to the Colorado River and groundwater withdrawn from wells located on these lands would be replaced by Colorado River water, in part or in total. Wells that have a static water-level elevation near (within ± 0.84 feet at the 95-percent confidence level), equal to, or below the elevation of the Accounting Surface are presumed to yield water that will be replaced by water from the Colorado River. Wells that have a static water-level elevation above the elevation of the Accounting Surface are presumed to yield water that will be replaced by water from precipitation and inflow from tributary valleys. This means that if it is determined by the U.S. Bureau of Reclamation (USBR) that these wells are, in fact, pumping water that will be replaced by water from the Colorado River, the use of such water would need to be accounted for as consumptive use of Colorado River water as required under the Consolidated Decree in *Arizona v. California*. All of California’s apportionment to use of Colorado River water is presently contracted for, meaning that no new water entitlements are available for uses in California.

No proposal to utilize the Colorado River water supplies available to PVID is legally or practically viable. First, PVID’s use of Colorado River water is limited by its federal contract to “potable and irrigation purposes.” 1933 PVID Water Delivery Contract, §6 (printed at Appendix 1006 in *The Hoover Dam Documents* (U.S. Government Printing Office 1948)). PVID’s Colorado River supplies are not available for industrial use and no water conservation program would suffice to make such a use legal under the terms of PVID’s contract.

Nor would any water conservation program in PVID allow the conserved water to be used by a third party that does not already hold a contract for Colorado River water. The federal water delivery contracts establish a priority system for the use of Colorado River water in California. Any reduction in water use by a senior priority holder results in a commensurate increase in the water made available for use by junior priority holders. The 2003 Quantification Settlement Agreement (QSA) among California’s Colorado River water rights holders specifically provides

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that Metropolitan's water supplies will increase or decrease according to the volume of water used by PVID. See, *Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 783-785, 789. Thus, the water savings resulting from conservation measures within PVID flow to the benefit of Metropolitan and not to a third party. Similarly, any increase in PVID's use of Colorado River water, as could result from the impact on return flows caused by SEP's pumping of groundwater, causes a commensurate reduction in Metropolitan's water supply. As the public agency which would be adversely affected by a reduction in PVID return flows to the Colorado River, Metropolitan requests that the Proposed Condition of Certification SOIL&WATER-7 be revised to include Metropolitan as one of the agencies which would be provided the proposed Water Conservation Offset Plan by the project owner for review and comment.

Page 1 of the February 23, 2016 Technical Memorandum, Sonoran Energy Project Water Conservation Plan prepared for Chris Doyle, AltaGas Sonoran Energy Inc. states that reductions in diversion rates (as a result of canal lining) result in more water in-stream, and an increase in the Colorado River water level (as a result of canal lining reducing the quantity of water diverted.) On the contrary, a reduction in the quantity of water diverted by PVID would result in a reduction in the amount of water released to the Colorado River by USBR from Parker Dam. Thus, there would be less water instream downstream of Parker Dam. Canal lining in PVID which does not result in a reduction in return flows to the Colorado River would not result in water becoming available to the SEP project owner; as noted above any water unused by PVID becomes available to Metropolitan in accordance with the 2003 QSA.

Comments on Statements in the PSA

On page 4.9-8 of the PSA, the Commission's staff states :

“If the SEP's use was specifically permitted or accounted-for with the PVID system, staff would believe that the project's use would have a reliable path towards receiving an entitlement if necessary.”

As Metropolitan stated on page 2 of its March 19, 2001, letter to Ed Bouillion of the Commission providing comments on the Presiding Member's Proposed Decision regarding the Proposed BEP, PVID's water delivery contract with the United States limits its use of Colorado River water to “irrigation and potable purposes”. Water use for a purpose of power generation is not consistent with PVID's water delivery contract.

Also, on page 4.9-8 of the PSA, the Commission's staff states:

“For instance, in some cases, land within the PVID service area is fallowed and the water saved is sold to Metropolitan Water District (MWD).”

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Metropolitan and PVID are implementing a land fallowing program in the PVID service area; however it is incorrect to describe this program as a sale of water. Rather, the fallowing reduces the Colorado River water use in PVID and Metropolitan benefits by the resulting increase in its water supplies pursuant to its contract rights and the 2003 QSA. The program agreements do not provide for any sale of water, nor do they specify a volume of water conserved by the fallowing. Metropolitan's benefit is based on the overall reduced Colorado River water use by PVID. Allowing the SEP to use groundwater that affects return flows from PVID would undermine the water supply benefits which Metropolitan has made a substantial investment of public funds in achieving.

On page 4.9-11 of the PSA, the Commission's staff states:

“Staff obtained draft terms of a fallowing agreement between landowners in Blythe and MWD, from 2004. The agreement provided the landowner with an average of \$3,250 per acre of fallowed land that could only be exercised in 10 years out of the 35-year contract. An additional payment of \$604 would be paid to the land owners during fallowing years.”

The fallowing agreement between Metropolitan and PVID landowners does provide for an initial payment, plus annual payments for the amount of fallowed acreage each year. Landowners were allowed to enroll up to 35 percent of their land in the fallowing program, but the annual acreage to be fallowed is subject to Metropolitan's call based on its water supply needs. The initial payment was based on the total enrolled acreage, and the annual payments (which are increased by an inflation factor, and are currently \$770/fallowed acre) are based on the acreage fallowed each year. It must be noted that the volume of water conserved by the fallowing program is subject to determination by USBR. Furthermore, the program does not guarantee Metropolitan any volume of conserved water; Metropolitan only benefits if PVID's Colorado River water use is reduced. Thus, Metropolitan's water supply benefit from the fallowing program can be affected by other factors affecting water use in PVID, such as increased groundwater pumping.

We look forward to receiving future documentation on this project. If we can be of further assistance, please contact Mr. Jan Matusak at (213) 217-6772 or via email at jmatusak@mwdh2o.com.

Very truly yours,



William Hasencamp

Manager of Colorado River Resources

JPM:rr