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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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**PETITION TO AMEND THE
HIGH DESERT POWER PLANT**

Docket No. 97-AFC-01C

**ENERGY COMMISSION STAFF'S PRE-HEARING CONFERENCE STATEMENT AND
EXHIBIT LIST**

On February 19, 2016, the Committee assigned to this proceeding issued a Notice of Postponed Prehearing Conference and Evidentiary Hearing, Revised Committee Schedule, and Further Orders (Notice) (TN210479). The Notice granted the California Department of Fish and Wildlife (CDFW) time to respond to the Committee Questions for Parties and other Interested Persons (Committee Questions) (TN210315), and requested that CDFW file Opening Testimony. CDFW's responses to the Committee Questions 1(a.) and 1(b.) were filed on February 29, 2016 (TN210554), and CDFW's Opening Testimony was filed on March 1, 2016 (TN210565). The Committee's Notice also requested all parties file rebuttal testimony to CDFW's Opening Testimony (TN210565) by March 8, 2016. Staff's rebuttal testimony is filed concurrently with this Prehearing Conference Statement and Exhibit List in response to the information requested in the Notice.

1. The subject areas that are complete and ready to proceed to Evidentiary Hearing.

Staff is prepared to proceed to evidentiary hearing set for March 15, 2016. Specifically, Staff is ready to go to hearing if the parties and interested agencies agree that the 2003 Memorandum of Understanding (MOU) between CDFW and Victor Valley Wastewater Reclamation Authority (VVWRA) is the proper basis for determining how much recycled

water VVWRA has to release to the Mojave River, and any surplus that can be sold by VVWRA. There are a number of disputed water supply issues, and divergent perspectives among the parties and interested agencies regarding Soil and Water. Adjudication will be required, and should include any overlap with Biological Resources.

On March 1, 2016, CDFW raised a substantive new issue concerning the effectiveness of the MOU in its Opening Testimony, indicating that there may be issues in dispute between the parties to the MOU. In particular, disagreement about habitat impacts stemming from increasing the diversion of recycled water from the Mojave River to the High Desert Power Project (HDPP) as an industrial consumptive user. If the Committee is persuaded by CDFW's testimony, more time will need to be spent to analyze water supplies and any overlapping issues with Biological Resources, and particularly for the local water agencies to resolve potential issues raised by CDFW concerning adjudication of water supplies in the basin. Staff cannot fully inform the Committee about the issues in dispute between the parties to the MOU because only CDFW has raised doubt about the effectiveness of the MOU, and perhaps also the adjudication. VVWRA has not expressed any such concerns to Staff. In summary, Staff does not believe that the MOU issues raised by CDFW are currently well-determined for adjudication. Other issues may require adjudication, such as Biological Resources, but this will not be known until they are identified at the Prehearing Conference.

Staff recommends that the Committee consider the proceeding not ready for hearing and make the best use of the Committee's time by directing the parties to a workshop during the noticed Prehearing Conference time scheduled on March 15, 2016. Should the Committee take Staff's recommendation for a workshop, Staff also requests that the Committee consider its authority to encourage participation by VVWRA, the City of Victorville, and the Mojave Water Agency (MWA).

Staff notes that the Committee's Schedule was adjusted for Biological Resources to be reopened, which did not occur previously with the Petition to Amend (PTA) since water flows to the Mojave River were assumed to be in compliance with the MOU between

CDFW and VVWRA, regardless of the resolution of the PTA. Staff's analysis assumed MOU compliance based upon similar analysis that identified water supply volumes as surplus and available in the Victorville 2 Hybrid Power Project Decision (TN47152), as well as for HDPP in the Commission's 2009 Final Order (TN54277).

For those matters not subject to dispute, Staff proposes to enter testimony into the record by declaration. The testimony and witnesses are identified below, declarations have been docketed (TN210339), and the witnesses will be presented as a panel. Staff is adding one witness for Biological Resources, Anwar Ali, Ph.D. A copy of his declaration and resume is attached.

Soil and Water Resources: Abdel-Karim Abulaban, Matthew Layton, and Paul Marshall
Biological Resources: Anwar Ali

2. The subject areas upon which staff proposes to introduce testimony in writing rather than through oral testimony.

At this time, Staff is offering testimony only in the technical area of Soil and Water Resources. Staff's witness for Biological Resources is not sponsoring written testimony; however, he will be available to answer any questions the Committee may have.

3. The subject areas that are not complete and not ready to proceed to Evidentiary Hearing.

Staff believes, based on the pre-filed testimony that Soil and Water Resources, and any related issues with Biological Resources, may not be ready to go to hearing because CDFW's Opening Testimony raises new questions about the MOU between VVWRA and CDFW. Staff's testimony relied upon the effectiveness of and adherence to the MOU by the parties. However, CDFW's Opening Testimony states that 100% recycled water use at HDPP would result in a groundwater deficit and that, "[t]his deficit may occur, even though the VVWRA discharge to the river meets the minimum required by the 2003 MOU." (Page 11, TN210565). CDFW's testimony raises questions and

concerns for Staff, and we assume for VVWRA as well. The Opening Testimony also raised questions and concerns for Staff regarding the approved water supply in the Energy Commission's Decision on the Victorville 2 Hybrid Power Project (TN47152) and the Energy Commission 2009 Order allowing recycled water use at HDPP (TN54277). All other issues identified by the time of this filing are ready to proceed to evidentiary hearing.

4. The subject areas that remain disputed and require adjudication are listed and areas of disagreement summarized as follows:

- A. Amount of recycled water available to High Desert Power Project (HDPP) and the amounts of process water needed for HDPP:
1. Projections provided by the petitioner show that projected annual recycled water amounts that exceed the project's maximum historic consumption for most years (at least 7 out of 10 years). Taking into account projected population growth in the area, the amount of recycled water is expected to increase to adequately supply HDPP. Stand-by storage could be used to supplement maximum rates that the petitioner claims can be delivered by VVWRA pumps. Storage would be filled during off-peak hours.
 2. MOU and the High Desert Power Project (HDPP): Staff has reviewed the MOU between VVWRA and CDFW, which requires that no less than 9,000 acre feet per year (AFY) of recycled water be discharged to the Mojave River, or until flow rate in the river hits 15,000 AFY. Staff's analysis of recycled water availability assumes that the MOU is effective and enforced.
 3. CDFW's Opening Testimony raises doubt about whether the MOU with VVWRA adequately prevents against groundwater deficit and thereby riparian habitat and wildlife impacts in the Transition Zone, and further questions the potential for additional reduction in recharge should HDPP be licensed to use 100% recycled water. CDFW's Opening Testimony also appears to raise questions about the status and efficacy of the basin adjudication.
 4. The petitioner believes that the project needs access to 5,000 AFY, while historical capacity factors and water use rates suggest that the maximum

annual water needs are less than 3,000 AFY and likely to decrease over the remaining life of the project. Any amount of recycled water would reduce fresh water use commensurately.

- B. Problems with using Mojave Water Agency (MWA) water: The MWA groundwater basin is an adjudicated water basin, but Staff maintains that the PTA does not place an enforceable limit on groundwater use - the PTA value of “no more than 3,090 AFY of MWA groundwater” is not a limit, but the likely maximum annual average project water use based on historical uses and operations. And the use of MWA groundwater is an indirect continuing reliance on State Water Project (SWP), since SWP water imports are being used to recharge the adjudicated water basin in addition to natural recharge due to precipitation and inter-basin flow. Lastly, the MWA assumed HDPP’s proposal to use groundwater was for emergency backup supplies – but the PTA does not condition it be so limited.

- C. Banking: The current water banking agreement is with Victorville Water District (VWD), which is part of the City of Victorville. The banking is not done by MWA. SWP water is treated by HDPP for injection into the local aquifer. Staff is proposing that the petitioner pursue a banking agreement with MWA for banking in lieu of the treatment/injection banking by VWD to reduce costs, free up treatment equipment, and increase injection rates. The petitioner is considering banking by MWA in addition to the current treatment/injection bank.

- D. Laws, Ordinances, Regulations and Standards (LORS) and State Water Policy: Petitioner’s Rebuttal Testimony argues that LORS do not compel HDPP to retrofit the existing facility to use 100% recycled water as Staff is recommending. As to the State’s water policy, HDPP’s Rebuttal Testimony (TN210301) asserts that the 2003 Integrated Energy Policy Report (IEPR) water policy, which has been in place for 13 years, should not be applicable to amendment proceedings. Staff believes that the petitioner’s request to add new sources to their menu of water supplies should be evaluated against current LORS and the current project setting. The petitioner acknowledged the applicability of the 2003 IEPR in its 2008 Petition for Modification to Use Reclaimed Water and stated that, “HDPP’s proposal to use reclaimed water at the Facility is in concert with this policy. The use of reclaimed water is in line with the goals and strategic objectives of the State of California.” (Ex. #2008, TN47547, Page 1).

- E. Environmental impacts: Staff believes use of recycled water will reduce impacts on the Delta from the use of SWP water. Staff believes that adding MWA groundwater as a source of project water will continue those impacts on the Delta as the MWA make up is imported SWP water. Staff believes that the petitioner's proposed PTA perpetuates the use of SWP and the inherent impacts.
- F. Cost of improvement to the facility: Based on information provided by petitioner, it is not clear to Staff if or how the cost of conversion would impact the project reliability or operation.

5. The identity of each witness Staff intends to sponsor at the Evidentiary Hearing, the subject area(s) about which the witnesses will testify, a brief summary of the testimony to be offered by the witnesses, qualifications of each witness, the time required to present testimony by each witness, and whether a witness seeks to testify telephonically.

If the Committee determines it is necessary, the following witnesses will be available to testify at the Evidentiary Hearing. The qualifications for each witness are included in the declarations and resumes filed on February 16, 2016 (Ex. #2007), in addition to Staff's Biological Resources witness added in this filing.

Topic:

Witnesses:

Soil & Water Resources:

Abdel-Karim Abulaban, Matthew Layton, and Paul Marshall

Biological Resources:

Anwar Ali

Staff requests 30 minutes per technical area to present the direct testimony of Staff's expert witnesses.

6. Subject areas upon which Staff desires to question Petitioner's witness(es).

Staff requests 30 minutes to cross-examine petitioner's and any other interested party's or agency's witnesses on water supplies and potential biological impacts for HDPP. At the time of this writing, Staff believes that CDFW may have witnesses present at the

hearing or on the phone. Staff has actively encouraged the VVWRA (recycled water purveyor), MWA (“Watermaster” of the adjudicated water basin), and the City of Victorville and the VWD (HDPP water purveyors) to participate in the hearings given the potential broadening of issues with the CDFW Opening Testimony. Staff has not secured commitments from these parties and asks the Committee to encourage their participation. Staff would request additional time for cross examination, if these agencies were to participate. Staff is unaware of any other witnesses or persons desiring to exercise the rights afforded to Intervenor(s) by having filed proposed evidence, testimony, and Prehearing Conference Statement(s) pursuant to the Committee’s Notice. Staff reserves the right to add cross-examination time once it has reviewed the petitioner’s and CDFW’s Prehearing Conference Statement and Exhibit List.

7. A list identifying exhibits with transaction numbers (TN) that Staff intends to offer into evidence and the technical subject areas to which they apply.

Exhibit Number	TN	Title of Document	Subject Area
2000	14407	FINAL Commission Decision on the High Desert Power Project May 2000 http://www.energy.ca.gov/sitingcases/highdesert/documents/index.html	2000 Decision
2001	47152	Victorville 2 Hybrid Power Project Final Commission Decision http://www.energy.ca.gov/2008publications/CEC-800-2008-003/CEC-800-2008-003-CMF.PDF	2008 Decision
2002	47547	Petition for Modification to Use Reclaimed Water (8/14/2008)	Soil and Water Resources
2003	51196	Staff Analysis of Proposed Modifications to Remove the Prohibition of the Use of Recycled Water for Project Operations (4/20/2009)	Soil and Water Resources

2004	54277	Order Approving Petition to Modify Soil and Water Conditions (11/30/2009)	Soil and Water Resources
2005	206321	Staff's Response to recycled water feasibility study summary report (10/9/2015)	Soil and Water Resources
2006	210083	Staff Analysis/ Opening Testimony of Proposed Petition to drought proof the project (1/29/2016)	Staff's Testimony
2007	210303	Energy Commission Staff's Rebuttal Testimony (2/12/2016)	Staff's Testimony
2008	210339	Energy Commission Staff's Declarations and Resumes (2/16/2016)	Soil and Water Resources
2009	210498	Letter from Mojave Water Agency / Supplemental Information to TN 210280 (2/22/2016)	Soil and Water Resources
2010	210503	<u>MOU between California Department of Fish and Game and the Victor Valley Wastewater Reclamation Authority (2/23/2016)</u>	Soil and Water Resources
2011	210585	Staff's <u>Answers to Committee Questions (3/1/2016)</u>	Soil and Water Resources, Biological Resources
2012	TBD	Staff's Rebuttal to CDFW's Opening Testimony (3/8/2016)	Soil and Water Resources, Biological Resources

8. Proposals for briefing deadlines, impact of scheduling conflicts, or other scheduling matters.

Staff respectfully reserves the right to augment the proposed exhibit list and the time requested for direct or cross-examination depending on the testimony filed by the applicant and any other parties, their Prehearing Conference Statements, and comments made at the Prehearing Conference.

Should any matter need briefing after evidentiary hearings, Staff proposes that Opening Briefs be due 10 days after the transcripts and Reply Briefs 7 days after the Opening Briefs.

DATED: March 8, 2016

Respectfully submitted,

Original signed by
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**DECLARATION OF
Anwar Ali**

I, **Anwar Ali**, declare as follows:

1. I am presently employed by the California Energy Commission in the Siting, Transmission and Environmental Protection Division as a **Biologist**.
2. A copy of my professional qualifications and experience is attached hereto and incorporated by reference herein.
3. I helped prepare the staff testimony on **Soil and Water Resources** as it relates to **Biological Resources**, for the **High Desert Power Plant Amendment (97-AFC-1C)**, based on my independent analysis of the Petition to Amend and supplements thereto, data from reliable documents and sources, and my professional experience and knowledge.
4. It is my professional opinion that the prepared testimony is valid and accurate with respect to the issue(s) addressed therein.
5. I am personally familiar with the facts and conclusions related in the testimony and, if called as a witness, could testify competently thereto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: March 7, 2016

Signed:  _____

At: Sacramento, California

Anwar Ali, Ph.D.

Education

Ph.D. Botany. University of California, Riverside. June 1994.

Professional Experience

January 2013 – Present. Planner III & Energy Resources Specialist III.

California Energy Commission, Siting Transmission and Environmental Protection Division.

As a first-level supervisor, perform supervisory, administrative and analytical tasks. Duties include: Supervise a staff of technical specialists (staff biologists/planner II and Energy Analysts), and consultants performing biological resources analyses; Plan, organize, direct, oversee, and coordinate a staff of biological resources in their complex analyses of energy facilities licensing, energy facilities compliance, electric transmission corridor planning, and electric transmission line licensing; Maintain rigorous analytical foundation and meticulous writing technique over all technical documents originating with the staff and ensure that technical and policy documents prepared by staff and consultants are technically adequate and accurate, consistent with Division and Commission policies, and coordinated with other technical disciplines; Ensure timely completion of staff assignments; Procure, train, and coach staff in the unit by providing direction and guidance; Independently act as an expert to analyze and advise the Commission management of most complex energy and environmental issues.

July 2012 – January 2012. Planner II (Staff Biologist).

California Energy Commission, Siting Transmission and Environmental Protection Division

As a staff biologist, primary duties included: conducting impact analyses to biological resources for power plant siting projects; evaluation of compliance with conditions of certification related to biological resource technical areas for power plant facilities; analyzing amendments and project changes to previously approved power plants evaluating compliance with accepted Conditions of Certification related to biological resource technical areas for power plant facilities; identifying, describing, and analyzing the biological issues related to electrical energy production and transmission facilities, alternative energy technologies, energy research and development, and Commission programs and policies.