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June 13, 2016

Commissioner Karen Douglas, Presiding Member
Commissioner Janea A. Scott, Associate Member
California Energy Commission
1516 Ninth Street
Sacramento, California 95814-5512

Re: High Desert Power Project (97-AFC-01C): Comments on Revised Committee Recommended Decision Granting Interim Relief to Drought-Proof the Facility

High Desert Power Project, LLC (“HDPP”) provides these comments on the *Revised Committee Recommended Decision Granting Interim Relief to Drought-Proof the Facility* (the “Recommended Decision”).

HDPP, the CEC Staff, and the California Department of Fish & Wildlife (“CDFW”) offered a Stipulation for “Interim Relief” that included percolation of State Water Project Water by the Mojave Water Agency (“MWA”) and the Watermaster (TN 211710, the “All-Party Stipulation”). Late last week, HDPP met with MWA and the Watermaster to discuss the agreements that would allow for percolation of State Water Project Water, as all parties to the Stipulation support.

The discussions were positive, and MWA staff and Watermaster staff concluded that the Percolation Conditions in the All-Party Stipulation (proposed Conditions SOIL&WATER-1, 4, 5, 6, 12, and 13) are consistent with the Judgment as administered by the Watermaster and an appropriate basis for an agreement for percolation, but proposed new Condition SOIL&WATER-22 in the Recommended Decision is not.

To be clear, HDPP, CEC Staff, and CDFW have not commented on new Condition SOIL&WATER-22. This is, in part, because the issues in the new condition are fully addressed in the All-Party Stipulation.

New Condition SOIL&WATER-22 proposes “that the amount of [water percolated by MWA] that will be available to withdraw for power plant cooling shall be calculated in the same manner as *for injected SWP water* pursuant to Conditions of Certification Soil & Water 4, 5, and 6” (emphasis added). However, the accounting for water *injected* at HDPP injection wells is simply not applicable to accounting for water that is *percolated* by MWA.

When SWP Water is percolated, the water is diverted into large percolation basins. Unlike injection at a few wellhead sites, percolation basins do not have a few, finite, injection

points. Instead, percolation is distributed over thousands of acres of percolation basins. MWA and the Watermaster also preferentially direct recharge to specific percolation areas within the Alto Subbasin in order to fulfill the Judgment's requirements to replace groundwater pumping and maintain necessary groundwater elevations. This practice allows MWA and the Watermaster to manage and protect the overall basin when they percolate water on behalf of HDPP.

Since the proposed new Condition SOIL&WATER-22's reliance on injection paradigms for percolation is inconsistent with how SWP Water is percolated and managed as required by the court-administered Judgment, HDPP proposes one of two possible actions. First, accept the Percolation Conditions in the All-Party Stipulation to include the All-Party Stipulation's language for Conditions SOIL&WATER-1, 4, 5, 6, 12, and 13.

Alternatively, HDPP does not object to the revision of new Condition SOIL&WATER-22 to reflect how the Mojave Water Agency and Watermaster accounts for water percolated in the Basin, as follows:

SOIL&WATER-22.

Until September 30, 2018, and notwithstanding the existing Soil & Water Conditions of Certification, the project owner may percolate SWP water consistent with an agreement with MWA (or modification to any existing agreement regarding SWP water banking), provided that the amount of percolated water that will be available to withdraw for power plant cooling shall be calculated ~~in the same manner as for injected SWP water pursuant to Conditions of Certification Soil & Water 4, 5, and 6~~ by MWA or the Mojave Basin Area Watermaster.

These changes would put HDPP in the same position as any other water user in this adjudicated Basin.

Thank you for your attention to these important matters.

Sincerely,



Jeffery D. Harris
Attorney for High Desert Power Project, LLC