

DOCKETED

Docket Number:	97-AFC-01C
Project Title:	High Desert Power Plant
TN #:	212262
Document Title:	Committee Orders Regarding the Scope of Future Proceedings (Scoping Order)
Description:	Scoping Order
Filer:	Darlene Burgess
Organization:	Energy Commission Hearing Office
Submitter Role:	Committee
Submission Date:	7/12/2016 4:59:50 PM
Docketed Date:	7/12/2016



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

COMMITTEE ORDERS REGARDING THE SCOPE OF FUTURE PROCEEDINGS (SCOPING ORDER)

INTRODUCTION

High Desert Power Project, LLC (Petitioner) filed a “Petition for Modification to Drought-Proof the High Desert Power Project” (Petition) on October 30, 2015. The Petition proposes amendments to the Condition of Certification SOIL & WATER-1 to maximize use of reclaimed water for cooling purposes while also creating a “Loading Sequence” for sources of water to be blended with reclaimed water at the High Desert Power Plant (HDPP).¹ The proposed changes would include a permanent authorization for the HDPP to use up to 3,090 acre-feet of groundwater per year² from the Mojave Basin on a rolling five-year average.³

On January 13, 2016, the Energy Commission appointed a Committee consisting of Karen Douglas, Commissioner and Presiding Member, and Janea A. Scott, Commissioner and Associate Member, to conduct proceedings on the Petition.⁴

In this Order, the Committee reviews the case progress and provides guidance to the parties on future activities on the Petition.

BACKGROUND

The HDPP is an 830 Megawatt (MW) natural-gas-fired, water-cooled, combined-cycle electric generating facility located in the City of Victorville in San Bernardino County.

¹ TN 206468.

² The filings in this proceeding regarding the total amount of water required for cooling purposes, as well as the amount of various types of water proposed for use—reclaimed wastewater, groundwater, or State Water Project water—vary between the parties. The ultimate resolution of these issues will be part of the further proceedings in this matter. For now, the Committee identifies amounts as set forth in the document cited. For example, the Petition uses the figure “3,090 acre-feet of groundwater per year”.

³ TN 206468 at pp. 32-33.

⁴ TN 207552.

The HDPP was certified by the Energy Commission on May 3, 2000 (the Original Decision)⁵ and began commercial operation in April 2003.

In its original Application for Certification filed in 1997, the Petitioner identified the State Water Project (SWP) as the only source of water for cooling purposes. The Energy Commission agreed with this approach and included the limitation to use SWP only as a condition of the Original Decision. SWP water would either be used directly at the power plant or, after treatment at the power plant's water treatment facility, be injected for storage into a series of seven wells located approximately six miles from the plant. This injection of water for storage is characterized as creating a "water bank." As necessary, the available balance of this stored water⁶ could then be pumped and returned to the HDPP for cooling uses.⁷ In order to effectuate this, HDPP would require a complex system of interrelated agreements to procure and bank the water.⁸ HDPP would also be required to maintain a water balance of at least 1,000 acre-feet; if the balance of the water bank was less than 1,000 acre-feet, the HDPP would be required to shut down.⁹

Using only SWP water was necessary because of the severe overdraft condition of the Mojave Basin.¹⁰ The Mojave Basin has two water-bearing units: the "Mojave River Alluvial Aquifer" and the "Regional Aquifer."¹¹ The Alluvial Aquifer supports riparian vegetation and highly productive wells. The Regional Aquifer underlies the Alluvial Aquifer and the HDPP. The two aquifers may be related, but the extent of any connection was not fully understood at the time of the Original Decision.¹²

The HDPP is located in the Alto Subarea of the Mojave Basin—one of five such subareas. The Original Decision included findings that the Mojave Basin was the subject of litigation that resulted in an adjudication of individual water production rights within the Mojave Basin. Subsequent to the Energy Commission's Original Decision, the adjudication (the Judgment) was affirmed by the California Supreme Court in August

⁵ http://www.energy.ca.gov/sitingcases/highdesert/documents/2000-05-03_HD_DECISION.PDF

⁶ Due to the complexities of the hydrogeologic system in the Mojave Basin, the Commission's conditions of certification required the use of a three-dimensional groundwater model to calculate the amount of water available for use, taking into account water banked, banked groundwater pumped, and dissipation of water after injection. *Original Decision* at 215-217; see also Condition of Certification SOIL & WATER-5, pp. 233-234.

⁷ *Original Decision* at 213-214.

⁸ *Id.* at 214-215.

⁹ *Original Decision* at 216; see also Condition of Certification SOIL & WATER-1 ("If there is no water available to be purchased from the MWA and there is no banked water available to the project, as determined pursuant to SOIL&WATER-5, no groundwater shall be pumped, and the project shall not operate.")

¹⁰ *Original Decision* at 210-213.

¹¹ *Id.* at 209.

¹² *Id.*

2000.¹³ The Mojave Water Agency (MWA) serves as Watermaster under the Judgment, and is responsible for ensuring that proper water balances are maintained in each subarea through a combination of natural supply, imported water (e.g., from SWP), water conservation, water reuse, and transfers of production allowances between producers.¹⁴ Water reuse in the Alto Subarea occurs from, among others, deliveries of treated wastewater by the Victor Valley Water Reclamation Authority (VWVRA). This reclaimed water is used to support the Mojave River and diversions of reclaimed water could present potential adverse impacts to riparian vegetation.¹⁵

During the Evidentiary Hearings leading up to the Original Decision, the Petitioner was asked a series of questions to confirm that SWP water was the only source of cooling water the HDPP would use for the proposed project. The attorney for the HDPP confirmed that if SWP water was not available, either directly or from the project's "water bank," the power plant would not operate and that HDPP was assuming the risk that there would be sufficient SWP water to operate.¹⁶

In 2008, the Petitioner submitted a petition to the Energy Commission to amend the original Conditions of Certification to allow it to use reclaimed water from VWVRA for a portion of its water needs.¹⁷ The Energy Commission granted the request on November 18, 2009, authorizing HDPP to use reclaimed water to meet up to one-third of its project cooling water needs (2009 Order).¹⁸ The 2009 Order stated one of the reasons to both allow partial use of reclaimed water and to pursue use of 100 percent reclaimed water was to limit the use of potable SWP water for cooling purposes. In addition, the 2009 Order noted that SWP water deliveries had diminished dramatically compared to estimates received when the project was originally certified in 2000, thus threatening the reliability of project operations.¹⁹

The 2009 Order further required the Petitioner to provide, by December 31, 2011, a study analyzing the feasibility of converting HDPP to 100 percent reclaimed water use.²⁰ This December deadline to provide the feasibility study was later extended to November 2014 to allow for adequate testing at the facility based on the source of the reclaimed water (treated wastewater from the City of Victorville's industrial plant or from the

¹³ *Id.* at 210. The Supreme Court's opinion on the Judgment can be found at *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 99 Cal.Rptr.2d 294, 5 P.3d 853.

¹⁴ TN 206468.

¹⁵ *Id.* at 223, 230.

¹⁶ Original Decision at 216-217, 222; Reporter's Transcript of January 27, 2000 (http://www.energy.ca.gov/sitingcases/highdesert/documents/2000-01-27_TRANSCRIPT.PDF) pp.47-48.

¹⁷ TN 47547.

¹⁸ TN 54277. The total amount of reclaimed water authorized for cooling purposes was 1,000 acre-feet.

¹⁹ *Id.* at 2.

²⁰ TN 54277.

VWRA domestic treatment plant).²¹ The feasibility study was ultimately provided to the Energy Commission on November 3, 2014, and is discussed later in this Order.²²

In April 2014, Petitioner submitted an “Amendment Petition for Alternative Water Supplies to Address Drought-related Reliability Impacts” (2014 Amendment Petition) to modify the Conditions of Certification. This 2014 Amendment Petition requested the ability to send previously used water back to the City of Victorville’s industrial wastewater treatment plant in order to improve the water quality of the reclaimed water received from that plant. The 2014 Amended Petition also sought authority to use groundwater consistent with the Judgment.²³

On September 10, 2014, the Energy Commission partially granted the 2014 Amendment Petition (2014 Amendment). The Energy Commission modified Condition of Certification SOIL&WATER-1, to allow HDPP to use no more than 2,000 acre feet of adjudicated groundwater from the Mojave River Basin, but only for two water years, 2014/2015 and 2015/2016, subject to conformity with the Judgment.²⁴ The Energy Commission further ordered the Petitioner to file, no later than November 1, 2015, a petition to amend that would implement reliable primary and backup water supplies that are consistent with state water policies, or to propose construction of an alternate cooling system, such as dry cooling. The 2014 Amendment also lifted the restriction on the amount of reclaimed water the HDPP could use.²⁵

The Petitioner provided the feasibility study required under the 2009 Amendment to the Energy Commission on November 3, 2014.²⁶ The submitted feasibility study found that Alto Subarea is no longer in a condition of overdraft and that groundwater had achieved sustainability.²⁷ The feasibility study also found that the reclaimed water available was of insufficient quality and quantity to be the exclusive source of water for cooling purposes. The feasibility study also asserted that the cost to expand its treatment facilities to treat the reclaimed water was too high to make reclaimed water the exclusive cooling water source.²⁸

Staff responded to the feasibility study on October 9, 2015.²⁹ Staff asserted that, in most cases, there are sufficient quantities of reclaimed water available to meet the cooling

²¹ TN 60649, 62362

²² TN 203306

²³ TN 202211

²⁴ The water year runs from October 1 to September 30. (TN 203108)

²⁵ TN 203108

²⁶ TN 203306

²⁷ *Id.*; see also TN 206468

²⁸ *Id.*

²⁹ TN 206321

requirements of the HDPP.³⁰ Staff also questioned the feasibility study's conclusion that providing the necessary treatment for using 100 percent reclaimed water was too high, citing the ability to upgrade or expand the existing treatment facilities.³¹ Staff also opined that the Petitioner's cost estimates were inflated.³² Staff further asserts that use of up to 1,600 acre-feet groundwater for emergency backup would be acceptable.³³ Petitioner replied to Staff's October 9, 2015, analysis on October 30, 2015, reaffirming its position that the use of 100 percent reclaimed water is not feasible.³⁴

Current Petition

The Petitioner filed the current Petition on October 30, 2015. Consistent with its position that using 100 percent reclaimed water is not feasible, the Petition seeks the institution of a "loading order" regarding the sequence in which various sources of water would be used to cool the plant. In order to effectuate the loading order, the Petition also requests that HDPP be allowed to use up to 3,090 acre-feet of groundwater per year on a five-year average basis.³⁵ The Petition cites only the 2014 Order as the reason for seeking the amendment.³⁶

Staff's analysis of the feasibility study and associated testimony filed on January 29, 2016, state that reclaimed water is sufficient in both quantity and quality for plant operations. Staff further argued that granting the Petition would result in significant environmental impacts and would make the HDPP no longer conform to applicable laws, standards, ordinances, and regulations (LORS). Staff based this conclusion on the language proposed by Petitioner that would allow the HDPP to select from many sources of fresh water (both Mojave Basin groundwater and SWP water) without an enforceable maximum limit.³⁷

In its opening testimony, CDFW contended that groundwater in the Alto Subarea is still in a condition of overdraft and that it is not in a condition of sustainability. It also argued that the proposed use of over 3,090 acre-feet of reclaimed water could have a detrimental effect on the Transition Zone of the Alto Subarea that causes a reduction in flows in the Mojave River. The reduction in the amount of reclaimed water could, CDFW

³⁰ *Id.* at 4-9

³¹ *Id.* at 10

³² *Id.* at 9-12

³³ TN 210083, "Executive Summary"

³⁴ TN 206909

³⁵ TN 206468, pp. 5, 7, 32-33

³⁶ *Id.* at 1 (High Desert Power Project, LLC ("HDPP" or "Project Owner") files this Petition for Modification ("Petition") as directed in the California Energy Commission's ("Commission") September 10, 2014 Order Approving Petition to Amend..."); 4-8

³⁷ TN 210083, pp. 6-8 (These page numbers refer to the PDF page numbers, not the numbers at the bottom of each page.)

contended, have a deleterious impact on riparian habitat near the HDPP and a concomitant impact on species reliant on that habitat. Finally, CDFW asserted that SWP water should continue to make up the majority of water used for plant cooling purposes.³⁸

March 15, 2016, Prehearing Conference/Evidentiary Hearings

On January 15, 2016, the Committee provided notice of a Prehearing Conference and Evidentiary Hearings to be held on March 15, 2016. However, during the March 15th Prehearing Conference, it became clear that the Petition was not ready for Evidentiary Hearings. The Committee, thus, turned to the consideration of limited interim relief to enable HDPP to utilize, including banking either by injection or percolation, the allocation of SWP water available to the HDPP and continue to operate after the expiration of its current use of adjudicated water on September 30, 2016.

To focus the discussion, the Committee issued “Orders after the Prehearing Conference” (March 2016 Orders) that required the Petitioner and Staff, and gave CDFW the option, to file briefs on four questions.

The Committee received opening briefs from all parties, and reply briefs from Petitioner and Staff.³⁹ The parties’ positions are outlined in the “Discussion” section below.

In order to provide interim relief, the Committee initially issued a “Committee Recommended Decision Granting Interim Relief to Drought-Proof the Facility” (Committee Recommended Decision) on May 6, 2016.⁴⁰ That Committee Recommended Decision was originally to be considered by the full Energy Commission at the May 17, 2016, Business Meeting.⁴¹ However, in response to comments received on the Committee Recommended Decision, the Committee held a Status Conference on May 23, 2016, to review its recommended interim relief.⁴² On May 27, 2016, the Committee issued a “Revised Committee Recommended Decision Granting Interim Relief to Drought-Proof the Facility” (Revised Committee Recommended Decision).⁴³

Following a Status Conference on June 2, 2016, the Committee issued a second “Revised Committee Recommended Decision Granting Interim Relief to Drought-Proof the Facility (Revised Decision).⁴⁴ On June 14, 2016, at its regular Business Meeting, the

³⁸ TN 210565

³⁹ Petitioner’s Opening Brief can be found at TN 210931; Staff’s Opening Brief can be found at TN 210929; CDFW’s Brief can be found at TN 210930; Petitioner’s Reply Brief can be found at TN 210990; and Staff’s Reply Brief can be found at TN 210986.

⁴⁰ TN 211402

⁴¹ TN 211401

⁴² TN 211481-2

⁴³ TN 211669

⁴⁴ TN TBD

full Energy Commission adopted the Revised Decision as its Interim Relief Decision.⁴⁵ The Interim Relief Decision grants the Petitioner the right to continue to use up to 2,000 acre-feet of adjudicated groundwater from the Mojave Basin in water years 2015/16 and 2016/17, ending September 30, 2017, while the proceedings on the Petition continue. The Interim Relief Decision also authorizes the use of percolation to increase the amount of water “banked” by the HDPP.

With the issue of interim relief resolved, the Committee now turns to the questions presented in the March Orders, outlines the parties’ positions as understood by the Committee, and provides direction to the parties regarding the future processing of the Petition.

DISCUSSION

Effect of Governor’s Executive Order B-29-15

As stated above, the Petition does not mention Executive Order B-29-15 as the basis for its filing.⁴⁶ The Petition instead cites to the 2014 Order and outlines the changed circumstances surrounding the availability of water supplies for the HDPP since the Original Decision.⁴⁷ However, shortly after filing the Petition, HDPP brought a motion for appointment of a Committee to oversee the proceedings on the Petition and to expedite its processing, citing Executive Order B-29-15.⁴⁸

On January 17, 2014, Governor Edmund G. Brown Jr. proclaimed a State of Emergency due to the ongoing drought in California. On April 1, 2015, the Governor issued Executive Order B-29-15, paragraph 25 of which provides:

The Energy Commission shall expedite the processing of all applications or petitions for amendments to power plant certifications issued by the Energy Commission for the purpose of securing alternate water supply necessary for continued power plant operation. Title 20, section 1769 of the California Code of Regulations is hereby waived for any such petition, and the Energy Commission is authorized to create and implement an alternative process to consider such petitions. This process may delegate amendment approval authority, as appropriate, to the Energy Commission Executive Director. The Energy Commission shall give timely notice to all relevant local, regional, and state agencies of any petition subject to this directive, and shall post on its website any such petition.⁴⁹

⁴⁵ TN 212052

⁴⁶ TN 206468 at 1-2, 4-8

⁴⁷ *Id.*

⁴⁸ TN 206534

⁴⁹ https://www.gov.ca.gov/docs/4.1.15_Executive_Order.pdf

Paragraph 26 of Executive Order B-29-15 also provides, in part, that for purposes of carrying out the directives in paragraph 25, the California Environmental Quality Act (CEQA), as contained in “Division 13 (commencing with section 21000) of the Public Resources Code and regulations adopted pursuant to that division,” is suspended until May 31, 2016.⁵⁰ The suspension continues for actions started, but not completed, before May 31, 2016, until resolved. On November 13, 2015, Governor Brown issued Executive Order B-36-15 that extended the provisions of Executive Order B-29-15 until the drought state of emergency is terminated.⁵¹ Additionally, Executive Order B-37-16 was issued on May 9, 2016, proclaiming that the orders and provisions of Executive Order B-29-15 to still be in full force and effect, except as modified, and gave additional direction to state agencies to transition temporary emergency water restrictions to permanent, long-term improvements in water use⁵².

The HDPP is a water-cooled power plant, requiring approximately 4,000-5,000 acre-feet of water each year to operate. Since its certification, the plant has sought on three occasions (including this Petition) to modify the HDPP’s Conditions of Certification to secure adequate water for plant operations as deliveries of water have been inconsistent. As a consequence, the Committee finds that consideration of the relief requested in the Petition is covered by Executive Orders B-29-15, B-29-15, and B-37-16.

Staff argues that the Petitioner has waived the application of Executive Orders B-29-15, 36-15, and 37-15 because Petitioner’s request for appointment of this Committee references California Code of Regulations, title 20, section 1769.⁵³

Interpretation of an executive order follows the same rules as applied to statutory construction. “Where the language of an executive order is clear and unambiguous, we must follow its plain meaning.”⁵⁴

In this case, the Executive Orders are clear: in considering the Petition, the Energy Commission is not bound by California Code of Regulations, title 20, section 1769, “and is authorized to create and implement an alternative process to consider [the P]etition[.]” While Petitioner may have cited to California Code of Regulations, title 20, section 1769, in seeking appointment of the Committee, the Commission order appointing the Committee makes no mention of California Code of Regulations, title 20, section 1769. Instead, the Order relies on Public Resources Code, section 25211, and California

⁵⁰ *Id.* Paragraph 26 further states that, for actions initiated prior to May 31, 2016, such as this Petition, the suspension of CEQA continues, “for the time required to complete them.”

⁵¹ https://www.gov.ca.gov/docs/11.13.15_EO_B-36-15.pdf.

⁵² https://www.gov.ca.gov/docs/5.9.16_Executive_Order.pdf. For convenience, we will refer to Executive Orders B-29-15, B-36-15, and B-37-16 collectively as the “Executive Order”.

⁵³ TN 210986, pp. 1-3.

⁵⁴ *Brown v. Chiang* (2011) 198 Cal.App. 4th 1203, 1222, 132 Cal. Rptr. 3d 48.

Code of Regulations, title 20, section 1204.⁵⁵ Nothing in the Executive Order states its application can be waived, and the Committee finds no reason to do so in these proceedings. We thus apply the Executive Order in our consideration of the Petition as a whole.

CEQA

Executive Order B-29-15 (as extended by Executive Orders B-36-15 and B-37-16) exempts power plant certification and amendments that seek to secure alternate water supplies necessary for continued power plant operation from CEQA. By finding that the Petition is subject to these Executive Orders, the Committee finds that resolving the issues presented by the Petition are exempt from the substantive and procedural requirements of CEQA.⁵⁶

Committee Discretion

In addition to suspending CEQA, Executive Order B-29-15 waives the application of California Code of Regulations, title 20, section 1769 to power plant petitions for amendment. While the Committee finds that the Petition falls within the ambit of the Executive Order, the Energy Commission must nevertheless exercise its discretion under the Warren-Alquist Act to assess the costs and benefits in approving such projects.⁵⁷ The Committee intends to prepare a written decision for consideration by the full Energy Commission that includes specific provisions under which the proposed facility will be operated to protect environmental quality and assure public health and safety, including meeting applicable standards for water quality.⁵⁸ Consistent with the Warren-Alquist Act, the Committee also intends to ensure that the proposed project meets all applicable state, local, or regional LORS, unless the facility is required for public convenience and necessity.⁵⁹ These considerations include the impacts of the facility on the environment, consumer benefits, and electric system reliability.⁶⁰

⁵⁵ TN 207552

⁵⁶ The Energy Commission conducts review under CEQA for siting matters, such as the Petition, pursuant to a certified regulatory program. However, that certified regulatory program merely addresses the processes and procedures under which we review the potential environmental impacts of our decisions; the substantive requirements of CEQA are still applicable. *Pub. Resources Code § 21080.5; CEQA Guidelines §§ 15250, 15251.*

⁵⁷ *Pub. Resources Code §§ 25523, 25525*

⁵⁸ *Pub. Resources Code §25523, subdvs. (a), (d)(1)*

⁵⁹ *Pub. Resources Code §25525*

⁶⁰ *Id.*

Vested Rights

Petitioner has argued that the Committee has no discretion in considering the Petition because it has vested rights to operate the HDPP.⁶¹ In support of this argument, Petitioner cites *Goat Hill Tavern v. City of Costa Mesa (Goat Hill)*.⁶² Under California law, developers who have obtained a permit and invested substantial resources in reliance on the permit are exempt from changes in the law that may prohibit or inhibit the exercise of the rights granted under the permit.⁶³ In *Goat Hill*, the Goat Hill Tavern had been an establishment serving food and beverages in the City of Costa Mesa (Costa Mesa) that had been in operation since 1955. At some point after the tavern opened, Costa Mesa amended the zoning code to require a conditional use permit (CUP) whenever an establishment like the tavern was within 200 feet of a residential zone. An apartment building in a residential zone abutted the tavern's parking lot.⁶⁴

In 1974, the tavern obtained a CUP to operate a beer garden. A new owner purchased the tavern in 1984 and invested approximately \$1.75 million on improvements. In addition, without obtaining any building permits or land use approvals, the new owner added a game room. After the fact, the new owner applied for, and was granted, a CUP with a six-month term.⁶⁵

After the initial CUP was granted, the CUP was renewed for three months on two occasions. The tavern owner then applied for an additional extension. In response, the Costa Mesa City Council held a public hearing regarding complaints about the tavern.⁶⁶ The City Council ultimately refused to grant a further extension of the CUP, thus requiring the business to close.⁶⁷ The court in *Goat Hill* referenced the long time that the business had been operating and that the City inconsistently applied its CUP ordinance and process. With those unique facts, the court found that a heightened level of scrutiny was required before the City's decision to withhold the CUP could be upheld.⁶⁸

Petitioner argues that applying *Goat Hill* to the Energy Commission's certification process results in the conclusion that it has a vested right to continue to operate the business of a power plant.⁶⁹

⁶¹ TN 210931, pp. 17-19

⁶² *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519

⁶³ *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 791

⁶⁴ *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th at 1522

⁶⁵ *Id.* at 1522-1523

⁶⁶ *Id.* at 1523-1524

⁶⁷ *Id.*

⁶⁸ *Id.* at 1529-1531

⁶⁹ TN 210931, pp. 17-19

Petitioner misreads *Goat Hill*. The opinion in *Goat Hill* notes that the existence of a fundamental, vested right is based on the specific facts of each case, and thoroughly discussed the applicable standard of review in such cases. It did not create or establish the standard by which to determine whether a vested right is implicated.⁷⁰

When administrative decisions restrict a property owner's return on investment, increase the cost of doing business, or reduce profits, courts generally characterize those consequences as effects on economic interests, rather than impacts on fundamental vested rights.⁷¹ Most importantly, rights vested under a government permit are not greater than those specifically granted by the permit itself.⁷²

The unique circumstances in *Goat Hill* are not present here. Instead, the Original Decision was predicated on the Petitioner's explicit assumption of the risk that SWP water would be sufficient to operate the plant, whether provided directly to the facility or through a system of banked water. That assumption of the risk was not merely an assumption or inference, but was specifically stated by the HDPP's attorney during hearings on the Original Decision.⁷³ Thus, the ability of the plant to operate is delimited by the agreed upon conditions and Petitioner has vested nothing more. Any change to the sources of water for cooling continues to be subject to the discretion of the Committee and, ultimately, the Energy Commission.

CONCLUSION

Based on the foregoing, the Committee finds that consideration of the Petition is exempt from CEQA under the terms of Executive Orders B-29-15, B-36-15, and B-37-16. This exemption from CEQA does not, however, eliminate the Committee's discretion in reviewing and analyzing the requested relief, as set forth in the Warren-Alquist Act, California Public Resources Code section 25500, et seq. Moreover, the Petitioner does not have any vested right to operate the plant beyond the terms and conditions of its existing permit.

⁷⁰ *Id.* at 1526

⁷¹ *EWAP, Inc. v. City of Los Angeles* (1997) 56 Cal.App.4th 310, 325

⁷² *Santa Monica Pines v. Rent Control Board* (1984) 35 Cal.3d 858, 866

⁷³ *Original Decision* at 216-217, 222; see also Condition of Certification SOIL & WATER-1 ("If there is no water available to be purchased from the MWA and there is no banked water available to the project, as determined pursuant to SOIL&WATER-5, no groundwater shall be pumped, and the project shall not operate."). Reporter's Transcript of January 27, 2000, at:

(http://www.energy.ca.gov/sitingcases/highdesert/documents/2000-01-27_TRANSCRIPT.PDF), pp.47-48

IT IS SO ORDERED.

Dated: July 12, 2016, at Sacramento, California

ORIGINAL SIGNED BY:

KAREN DOUGLAS
Commissioner and Presiding Member
High Desert Amendment Committee

ORIGINAL SIGNED BY:

JANEA A. SCOTT
Commissioner and Associate Member
High Desert Amendment Committee