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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

Application for Certification for the HIGH DESERT POWER PROJECT	Docket No. 97-AFC-1C

HIGH DESERT POWER PROJECT, LLC'S STATUS REPORT AND PROPOSED SCHEDULE FOR THE REMAINING PROCEEDINGS

INTRODUCTION

Pursuant to the Committee's *Notice of Committee Conference and Related Orders*[1] ("Notice"), High Desert Power Project, LLC ("HDPP" or the "Project Owner") provides the following *Status Report and Proposed Schedule for the Remaining Proceedings* related to the High Desert Power Project (the "Facility").

I. SUMMARY OF AGREEMENTS REACHED AT STAFF WORKSHOP

On May 2, 2017, CEC Staff conducted a workshop to discuss the revisions to the Conditions of Certification related to percolation and water use by the Facility. The three Parties to the amendment proceeding—the Project Owner, CEC Staff, and the California Department of Fish and Wildlife (the "Parties")—participated in the workshop. The Parties had productive and wide-ranging discussions on all issues in the workshop agenda[2] and HDPP's proposed compromise Conditions of Certification for a final decision on the Petition.[3]

With respect to the storage of State Water Project ("SWP") Water via percolation for the Facility, the Project Owner and California Department of Fish and Wildlife have agreed to the attached draft stipulation on proposed Conditions of Certification Soil&Water-4 through -6 and -13, titled *[DRAFT] Stipulation And Agreement Between High Desert Power Project, LLC, California Energy Commission Staff, And The California Department Of Fish And Wildlife On Proposed Soil&Water Conditions Of Certification For Percolation Of Water For The High Desert Power Project* (the "draft Percolation Stipulation").

To avoid any ambiguity, the CEC staff had not provided written comments on the draft Percolation Stipulation prior to submission of this Status Report and has thus not agreed to the draft Percolation Stipulation.

[1] TN#: 217625.
[2] TN#: 217254.
[3] TN#: 215784.

The draft Percolation Stipulation documents the evidence supporting approval of the storage of SWP Water via percolation for the Facility on a permanent basis. The evidence confirms that percolation can be achieved (1) without any potentially significant environmental effects using Mojave Water Agency's existing percolation infrastructure and (2) in compliance with all applicable laws, ordinances, regulations, and standards ("LORS"). The draft Percolation Stipulation includes proposed revisions to the Facility's Conditions of Certification.

II. SUMMARY OF THE SUBJECT AREAS THAT REMAIN DISPUTED

The Parties made significant progress at the workshop, but have remaining important differences regarding water supply issues and Condition of Certification Soil&Water-1, which are unrelated to the percolation of SWP Water. Specifically, the Parties have not reached agreement on the loading sequence, recycled water use percentages and limits, and related elements of Condition of Certification Soil&Water-1. If agreement can be reached, HDPP anticipates some language memorializing the Parties' intent may be added to the Verification section of Condition of Certification Soil&Water-1.

The Parties will continue to discuss revisions to Condition of Certification Soil&Water-1 and will provide an update at the June 5th Committee Conference.

III. PROPOSED SCHEDULE FOR THE REMAINING PROCEEDINGS

The draft Percolation Stipulation contains citations to the record, which demonstrates that there are no significant environmental effects associated with using Mojave Water Agency's existing percolation infrastructure and compliance with applicable LORS. Thus, the percolation issues could be fully resolved via the attached Percolation Stipulation without the need for hearings or briefing.

As to the few remaining but important issues related to Condition of Certification Soil&Water-1, HDPP believes that the Parties can further narrow their differences through additional informal discussions. Beyond just narrowing their differences, the Parties may be able to reach consensus on remaining issues related to Condition of Certification Soil&Water-1. Such consensus, if achieved, could result in a global settlement of all issues through either an additional water supply stipulation or revisions to, and renaming of, the Percolation Stipulation to include all issues.

Accordingly, HDPP recommends that the Parties continue to discuss revisions to Condition of Certification Soil&Water-1 through June 30, 2017 with a Committee Status Conference scheduled for shortly after the Fourth of July holiday. These additional discussions in June may result in either achieving consensus on all issues or the Parties' agreement to have the Committee decide a narrow subset of remaining, contested issues related to Condition of Certification Soil&Water-1. If hearings become necessary, HDPP believes that the remaining issues can be heard at a single, half-day hearing, followed by briefing on issues as directed by the Committee.

CONCLUSION

HDPP greatly appreciates the Committee's efforts to focus and expeditiously resolve this proceeding.

Respectfully submitted,

/s/

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ATTACHMENT A

[DRAFT] STIPULATION AND AGREEMENT
BETWEEN
HIGH DESERT POWER PROJECT, LLC, CALIFORNIA ENERGY COMMISSION STAFF, AND THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
ON
PROPOSED SOIL&WATER CONDITIONS OF CERTIFICATION FOR PERCOLATION OF WATER FOR THE HIGH DESERT POWER PROJECT

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

Application for Certification for the HIGH DESERT POWER PROJECT	Docket No. 97-AFC-1C

[DRAFT] STIPULATION AND AGREEMENT BETWEEN HIGH DESERT POWER PROJECT, LLC, CALIFORNIA ENERGY COMMISSION STAFF, AND THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE ON PROPOSED SOIL&WATER CONDITIONS OF CERTIFICATION FOR PERCOLATION OF WATER FOR THE HIGH DESERT POWER PROJECT

RECITALS[1]

A. On October 30, 2015, High Desert Power Project, LLC ("HDPP" or "Project Owner") filed a *Petition for Modification to Drought-Proof the High Desert Power Project* ("Petition").[2] The Petition requests interim and long-term changes to the Conditions of Certification governing water use at the High Desert Power Project ("Facility"). The Commission granted a Committee to oversee these proceedings on January 19, 2016.[3]

B. There are three parties to the amendment proceeding, the California Energy Commission ("CEC Staff"), the California Department of Fish and Wildlife ("CDFW"), and HDPP (collectively, "Parties"). By discussion, education, and negotiation, the Parties sought a compromise position, and on June 1, 2016, the Parties filed a stipulation in support of proposed amendments to Soil&Water Conditions of Certification to provide interim drought relief to the Facility.[4]

C. On June 10, 2016, the Committee issued a *Revised Committee Recommended Decision Granting Interim Relief*, which recommended the grant of interim relief subject to certain Conditions of Certification.[5] On June 14, 2016, the Commission approved most aspects of the stipulation ("June 14th Adoption Order").[6]

[1] To avoid any ambiguity, the CEC staff had not provided written comments on the draft Percolation Stipulation and has thus not agreed to the draft Percolation Stipulation.
[2] TN#: 206468.
[3] Order No. 16-0113-2a, TN#: 207552.
[4] TN#: 211710.
[5] TN#: 211790.
[6] Commission Order No. 16-0614-A (TN#: 212052).

D. On May 2, 2017, the CEC Staff conducted a workshop to discuss the long-term changes to the Conditions of Certification regarding water use. The three Parties to the amendment proceeding participated in the workshop and had a wide ranging discussion an all issues in the workshop agenda.[7] The Parties have remaining differences unrelated to the percolation of SWP Water, such as the loading order, recycled water use percentages, and other elements Condition of Certification Soil&Water-1. However, the Parties have reached agreement on the storage of SWP Water via percolation for the Facility and offer this Stipulation to the Committee on proposed Conditions of Certification Soil&Water-4, -5, -6 and -13.

Accordingly, the Parties hereby stipulate and agree as follows.

I. STIPULATION AND AGREEMENT ON EVIDENCE SUPPORTING STORAGE OF SWP WATER VIA PERCOLATION

1. The Parties stipulate and agree that the following substantial evidence in the record for this proceeding supports the storage of SWP Water via percolation for HDPP on a permanent basis:

A. The Mojave Basin Judgment is a comprehensive legal framework governing the extraction of water from and storage of water in the Mojave Basin Area. All rights to extract water from and store water in the Mojave Basin Area, including the storage and extraction of Banked SWP Water for the Facility, are subject to the exclusive and continuing legal jurisdiction of the Riverside County Superior Court pursuant to the Judgment After Trial, City of Barstow v. City of Adelanto, Riverside County Superior Court Case No. 208568 (hereinafter, "Judgment"; January 10, 1996). (TN#: 213704, Part 1; TN#: 213705, Part 2.)

B. The Court has appointed MWA as Watermaster to administer and enforce the provisions of the Judgment and any subsequent instructions or orders of the Court. (TN#: 213704, Judgment § 23.) MWA's actions undertaken as Watermaster to implement the Judgment are actions undertaken solely pursuant to judicial authority. (TN#: 213704, Judgment, § 23(c).)

C. The Watermaster regulates the storage and extraction of stored water pursuant to court-approved Rules and Regulations of the Mojave Basin Area Watermaster (the "Watermaster Rules") (TN#: 213706). Section 23 of the Watermaster Rules, Uniform Rules for Storage Agreements, sets forth the terms and conditions for parties to the Adjudication to enter into storage agreements to bank water via injection and percolation. Section 23 also sets forth the processes for applications for storage agreements; the general conditions for storage agreements; the determination of available storage capacity; and the priorities for use of available storage capacity. (TN#: 213706, Watermaster Rules, § 23.)

[7] TN#: 217254.

D. The Watermaster is obligated to determine and account for any losses of water stored pursuant to a Storage Agreement. (TN#: 213706, Watermaster Rules, § 23.F.(3).) Watermaster accounting for Storage Agreements is included in annual reports submitted for court approval. (TN#: 213702.)

E. Watermaster has approved a Storage Agreement for the percolation of water for the Facility. (TN#: 212984.) The Storage Agreement requires Watermaster to calculate additions, extractions and losses of water stored for the Facility under the Storage Agreement and maintain an annual account of all such water. (TN#: 212984, Percolated Water Storage Agreement, § E.)

F. MWA is a special act district created with a broad mission and powers to manage water resources within its boundary. (Cal. Water Code Appendix, Chapter 97-1.5, (July 21, 1960).) MWA imports SWP water for direct use by customers and to recharge the Mojave Basin. MWA has constructed and operates multiple recharge basins in the Alto Subarea where the Facility is located. (TN#: 213716, 2015 UWMP, p. 3-10, 3-32 – 3-34, 3-36 – 3-38; TN#: 213717, Mojave IRWM Plan.)

G. The construction and operation of the MWA recharge facilities has been analyzed under the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA"). The *2004 Regional Water Management Plan Program EIR* ("2004 RWMP PEIR"), adopted as the Final Program Environmental Impact Report (TN#: 213739), the *Mojave Water Agency Water Supply Reliability and Groundwater Replenishment Program Final Project Environmental Impact Report* (TN#: 213740), and *Environmental Assessment* ("EA") (TN#: 213737) and *Finding of No Significant Impact* (TN#: 213738) for the "Regional Recharge and Recovery Project (R^3), including the Oro Grande Wash Recharge Project" are examples.

2. Based on the foregoing evidence, the Parties stipulate and agree that percolation of SWP Water for HDPP and extraction of percolated water for HDPP as contemplated in this Stipulation can be accomplished in compliance with all applicable environmental, water right, water quality and other laws, ordinances, regulations and standards ("LORS").

3. Based on the foregoing evidence, the Parties stipulate and agree that the Watermaster has the expertise and legal authority to account for all amounts of water stored in the Basin via injection and percolation, all losses from storage, and all withdrawal of stored water. Accordingly, the Parties stipulate and agree that the Watermaster should be responsible for accounting of all storage, losses from storage, and withdrawal from storage on behalf of HDPP.

II. STIPULATION AND AGREEMENT ON PROPOSED REVISIONS TO SOIL&WATER CONDITIONS OF CERTIFICATION

The Parties stipulate and agree that the following revisions to the Conditions of Certification for the Facility are necessary and appropriate for the implementation of the storage

of SWP Water via percolation for HDPP on a permanent basis as contemplated in this Stipulation.

SOIL&WATER-4 ~~Injection~~ Banking Schedule

a. The project owner shall inject one thousand (1000) acre-feet of SWP water within twelve (12) months of the commencement of the projects commercial operation.

b. By the end of the four years and two months from the start of commercial operation, the project owner shall install and begin operation of a pre-injection ultraviolet (UV) disinfection system.

c. By the end of the fifth year of commercial operation, the project shall submit a report to the CPM demonstrating that HDPP has maintained an average THM concentration level consistent with the WDR permit requirements.

d. After the end of the fifth year of commercial operation, the project owner shall inject SWP water when it is available in excess of volumes needed to operate the project, up to a cumulative quantity of 13,000 acre-feet, subject to equipment capabilities and permit requirements. The amount of **injected SWP** water available to HDPP for extraction is equal to Injection minus Extraction minus Dissipation minus 1000 acre-feet, as defined in SOIL&WATER-6.

e. As an additional method to build the project's groundwater bank, the project owner will work with the Mojave Water Agency (MWA), Mojave Basin Area Watermaster, the City of Victorville or the Victorville Water District to seek a feasible agreement or modify existing agreements to allow for the banking of SWP water in the Mojave River Basin through percolation using existing MWA facilities for the sole use of HDPP at HDPP. If agreement is reached, the project shall be permitted to bank SWP water through percolation in accordance with the terms of such agreement(s). MWA shall be responsible for ensuring protection of water quality related to percolation.

VERIFICATION: The project owner shall submit an installation and operation report describing the pre-injection ultraviolet disinfection system (UV) by the end of the fourth year of commercial operation. Forecasted estimates of SWP water to be injected shall be included in the quarterly Aquifer and Storage Recovery Well Report. The project owner shall submit a UV performance report by the fifth year of commercial operation. For other related items, see the verification to Condition 5. See also the verification to Condition 12. **If the project owner, MWA, Mojave Basin Area Watermaster, City of Victorville or the Victorville Water District are able to reach an agreement or modify existing agreements regarding use of existing MWA facilities for the percolation and banking of SWP water that is feasible for the facility, the project owner shall provide a copy of such agreement or modified agreements to the CPM.**

SOIL&WATER-5 Calculation of Water Bank Balance

a. The amount of **injected,** banked groundwater available to the project shall be calculated by the CEC staff using the HDPP model, FEMFLOW3D. **The amount of percolated, banked groundwater available to the project shall be calculated by MWA or the Mojave Basin Area Watermaster.** The amount of **injected** banked groundwater available shall be updated on a calendar year basis by the CEC staff, taking into account the amount of groundwater pumped by the project during the preceding year and the amount of water banked by the project during the preceding year.

b. When calculating the amount of **injected,** banked groundwater available to the project, CEC staff shall subtract any amount of water that is produced by Victor Valley Water District (VVWD) from the project wells for purposes other than use by the project that exceeds the baseline, as defined in SOIL&WATER-17(1).

c. Each annual model run shall simulate the actual sequence of historic pumping and injection since the injection program began. From the model runs, the CEC Staff shall determine the amount of groundwater available for each new calendar year. If the amount of banked groundwater available to the project is less than one (1) year's supply plus 1,000 acre-feet, the CEC Staff shall determine the amount of groundwater available to the project on a quarterly basis.

VERIFICATION: During the period beginning eighteen (18) months after the start of rough grading and concluding at the end of the first month after one full year (12 months) of commercial operation, the project owner shall provide a monthly report to the CEC CPM and to the CDF**W** on the progress of construction of the project wells, and shall identify the amount of SWP water injected and the amount of groundwater pumped during the previous month. The CEC CPM shall provide notice that this material has been submitted to those identified on the project s compliance mailing list.

After the end of the first month after one full year (12 months) of commercial operation, the project owner shall submit to the CEC CPM and to the CDF~~G~~**W** in writing, on a quarterly basis, a monthly accounting of all groundwater pumped**,** ~~and~~ all SWP water treated and injected**, and all SWP banked through percolation by MWA** in the preceding quarter. Within thirty (30) days of receipt of the approved annual storage agreement, pursuant to **SOIL&WATER-2**, the project owner shall submit to the CEC CPM and to the CDF~~G~~**W** an annual written estimate of the anticipated amount of SWP water that will be banked and the anticipated amount of groundwater that will be pumped in the coming year. If the amount of **injected** banked groundwater available to the project is less than one (1) year's supply plus one thousand (1,000) acre-feet, quarterly estimates of anticipated injection and withdrawal will be required. The CEC CPM shall provide notice that this material has been submitted to those identified on the project s compliance mailing list.

CEC Staff shall use this information in the HDPP model to evaluate the amount of banked groundwater available and to calculate the approximate rate of decay **for the injection bank**. CEC Staff shall notify the project owner within thirty (30) days of the amount of banked groundwater available to be pumped in the new calendar year or in the next quarter, if applicable.

SOIL&WATER-6 Banked Water Available for Project Use

a. The amount of banked groundwater available to the project during the first twelve (12) months of commercial operation is the amount of SWP water injected by the project owner into the High Desert Power Project (project) wells, minus the amount of groundwater pumped by the project owner, minus the amount of dissipated groundwater, and minus any amount described in SOIL&WATER-5(b).

b. The amount of banked groundwater available to the project after the first twelve (12) months of commercial operation is**: (1) the amount of SWP water percolated in accordance with SOIL&WATER-4(e) and (2)** the amount of SWP water injected by the project owner into the project wells**,** minus the amount of groundwater pumped by the project owner, minus the amount of dissipated groundwater, minus one thousand (1,000) acre feet, and minus any amount described in SOIL&WATER-5(b).

c. During the three (3) years prior to project closure, the project owner may withdraw the balance of banked groundwater determined to be available to the project, except for one thousand (1,000) acre-feet, pursuant to SOIL&WATER-5. The project owner is not required to replace this final withdrawal of groundwater. However, during the three (3) years prior to project closure, at no time may the balance of banked groundwater decline below one thousand (1,000) acre-feet. Furthermore, there must be a remaining balance of one thousand (1,000) acre-feet banked in the groundwater system at closure, as determined to be available to the project pursuant to SOIL&WATER-5. This balance of one thousand (1,000) acre-feet must remain in the groundwater system, and the project owner, by contract or other conveyance, may not transfer the rights to this balance.

d. The project shall not operate for longer than thirty (30) years unless the Commission has approved an amendment to its license that specifically evaluates the water resources impacts of continued operation and imposes any mitigation necessary to ameliorate any identified impacts.

e. No water is available for project use if the requirements of SOIL&WATER-4 are not met by the project owner.

VERIFICATION: The project owner shall use the same verification as for **SOIL&WATER-5**; however, in addition, any facility closure plan submitted during that last three (3) years of commercial operation shall address the disposition of any remaining water available to the project, as well as the disposition of the water treatment facility.

SOIL&WATER-13

The project owner shall implement the approved water treatment and monitoring plan. All **~~banked~~ injected** SWP water shall be treated to meet local groundwater conditions as identified in Condition SOIL&WATER-12. Treatment levels may be revised by the CEC and, if applicable, by the RWQCB, based upon changes in local groundwater quality identified in the monitoring

program not attributable to the groundwater banking program. Monitoring results shall be submitted annually to the CEC CPM and, if applicable, to the RWQCB.

VERIFICATION: The project owner shall annually submit monitoring results as specified in the approved plan to the CEC CPM. The project owner shall identify any proposed changes to SWP water treatment levels for review and approval by the CEC and, if appropriate, the Lahontan RWQCB. The project owner shall notify the RWQCB, the VVWD, and the CEC CPM of the injection of any inadequately treated SWP water into the aquifer due to an upset in the treatment process or for other reasons. Monitoring results shall be submitted to the CEC CPM

~~**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.~~

~~**VERIFICATION**: If the project owner and MWA are able to reach an agreement or modify existing agreements regarding use of existing MWA facilities for the percolation of SWP water, the project owner shall provide a copy of such agreement or modified agreements, and any subsequent modifications to the CPM, within 10 days of their finalization.~~

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STIPULATION, AGREEMENT AND REQUEST FOR APPROVAL

Based upon the foregoing Recitals, Stipulations, and Agreements, the Parties request that the Committee recommend and that the full Commission approve the implementation of the storage of SWP Water via percolation for HDPP on a permanent basis as contemplated in this Stipulation by approving the requested revisions to the Conditions of Certification for the Facility.

IT IS SO STIPULATED.

DATED: May ___, 2017 HIGH DESERT POWER PROJECT, LLC

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