

## DOCKETED

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<b>Project Title:</b>	High Desert Power Plant
<b>TN #:</b>	217996
<b>Document Title:</b>	Storage Agreement Between Mojave Basic Area Watermaster and Victorville Water District
<b>Description:</b>	N/A
<b>Filer:</b>	Eric Janssen
<b>Organization:</b>	Ellison Schneider Harris & Donlan LLP
<b>Submitter Role:</b>	Applicant Representative
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**Peter J. Kiel**  
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June 8, 2017

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 Plant Project (97-AFC-01C)  
Storage Agreement Between Mojave Basin Area Watermaster and Victorville Water District

Dear Commissioners Douglas and Scott:

As requested at the June 5, 2017 Committee Conference, enclosed is a copy of the fully executed "Storage Agreement Between Mojave Basin Area Watermaster and Victorville Water District," effective July 27, 2017. This Storage Agreement authorizes the Victorville Water District to store State Water Project water in the Mojave Basin Area on behalf of the High Desert Power Project through September 30, 2018. Please contact me if you have any questions about the Storage Agreement.

Sincerely,

A handwritten signature in blue ink that reads "Peter J. Kiel".

Jeffery D. Harris  
Peter J. Kiel  
Samantha Neumyer  
Attorneys for High Desert Power Project, LLC

Enclosure



**STORAGE AGREEMENT  
BETWEEN MOJAVE BASIN AREA WATERMASTER AND  
VICTORVILLE WATER DISTRICT**

This Storage Agreement (“Agreement”) is entered into and effective this 27th day of July, 2016 between Mojave Basin Area Watermaster (“Watermaster”) and Victorville Water District (“VWD” or “Storer”) pursuant to the Judgment After Trial in *City of Barstow, et. al. vs. City of Adelanto, et al.*, Case No. 208568, Riverside County Superior Court (“Judgment”) entered on January 10, 1996, and the Rules and Regulations of the Mojave Basin Area Watermaster (“Rules”) adopted June 30, 1994, and revised December 11, 1996, March 23, 2005 and October 29, 2008 and as may be amended from time to time.

**RECITALS**

- A. The Judgment in Paragraph 24.S authorizes Watermaster to enter into Storage Agreements with any Party to the Judgment in order to accommodate the acquisition of Supplemental Water.
- B. The Judgment directs Watermaster to adopt uniformly applicable rules for Storage Agreements, which are incorporated as Section 23 of the Rules and are incorporated herein.
- C. Watermaster has considered the availability of groundwater storage capacity in each Subarea and finds that capacity is available for water to be stored pursuant to this Agreement.
- D. VWD desires to enter into a Storage Agreement with the Watermaster in the Alto Subarea of the Mojave Basin, to satisfy obligations that it might incur as a Party to the Judgment.
- E. VWD is the successor to Victor Valley Water District.
- F. This Agreement is intended to allow supplemental water to be stored in the Alto Subarea groundwater basin for later extraction by VWD for High Desert Power Project (“HDPP”). This Agreement is intended solely to address Storer’s storage and extraction of water on behalf of HDPP. Any additional uses other than stated above, will require a separate application and storage agreement between the Parties. Because this Storage Agreement is applicable only to VWD storage on behalf of HDPP, which is subject to the California Energy Commission (“CEC”) conditions, some of its terms may be inapplicable to other storage agreements.

**GENERAL CONDITIONS**

- A. **Terms per Judgment and Rules:** Defined terms used in this Agreement shall be incorporated from the Judgment and the Rules of the Watermaster, as may be amended from time to time.

- B. **Subarea Storage:** This Agreement shall be for the utilization of available groundwater storage capacity in the Alto Subarea by Storer for the pre-delivery of Supplemental Water to meet its obligations under this Agreement as a Party to the Judgment.
- C. **Party in Good Standing:** Storer is a Party to the Judgment and is presently and shall remain in good standing at all times while this Agreement is in effect. Should Storer fail, due to its fault including its failure to perform any obligation to which it is or may hereafter be held under the Judgment or the Rules, to meet its obligations under this Agreement, or to abide by the terms of the Judgment or the Rules, this Agreement shall be voidable, at the option of the Watermaster, and upon due notice issued and specific action by the Watermaster, and subject to Storer's reasonable opportunity to cure the same.
- D. **Stored Water Used to Meet Obligations:** Watermaster shall, if requested by Storer, credit stored Supplemental Water to meet Storer's future obligations incurred under this Agreement and the terms of the Judgment. Said credit shall be made upon application to the Watermaster Executive Officer in writing. Obligations of Storer from the prior Water Year outstanding after October 31 of the following Water Year may be debited from Storer's account by Watermaster to the extent necessary to eliminate the outstanding obligation. Subject to Storer's rights as referenced in this Agreement, the Judgment and the Rules and Regulations, only the Biological and Administrative Assessments under the Judgment shall be charged to Storer for water extracted by Storer under this Agreement. Watermaster shall not be responsible for the extraction, conveyance or treatment of water stored or extracted pursuant to this Agreement.
- E. **Watermaster Storage Accounting:** Watermaster shall calculate additions, extractions and losses of water stored under this Agreement, and maintain an annual account of all such water. Watermaster shall give due consideration to the operation of the Alto Subarea under the Physical Solution provisions of the Judgment when calculating additions, extractions and losses of water stored and extracted under this Agreement. The accounting by Watermaster shall consider the status of other Storage Agreements that may be in effect or under development.
- F. **Annual Loss Assessment:** Watermaster shall annually determine and account for losses in stored water, and in so doing shall assume that stored water floats on top of the native ground water supplies. Accounting for all losses of water therefore assumes stored water would spill before native supplies in the event there are losses of water that would otherwise have replenished the Subarea. Stored water losses shall have an inverse priority to that specified in Paragraph G (i.e. Third Priority stored water is the first to spill).
- G. **Delivery and Storage Priority for Supplemental Water:** Basin storage capacity and supplemental water delivery capacity vary from place to place. It will therefore be necessary for Watermaster to annually determine storage capacity available in each Subarea and to consult with the Mojave Water Agency ("MWA") to determine their ability to deliver supplemental water. Based upon this information, Watermaster shall maintain priorities for delivery and storage of Supplemental Water as follows:

- First Priority: Supplemental Water ordered by Watermaster from MWA for direct delivery to the Basin to meet the requirements of the Judgment;
- Second Priority: Supplemental Water for delivery to the Basin for storage under Storage Agreements between Watermaster and MWA;
- Third Priority: Supplemental Water for delivery to individual storage accounts of Parties to the Judgment.

- H. **Second and Third Priority:** Watermaster has entered into a second priority Storage Agreement with MWA to provide Supplemental Water to Watermaster to comply with the Judgment. Watermaster shall enter into Third Priority Storage Agreements with other Parties on the basis of the date of application to Watermaster. The priority based on date of application referenced in Rule 23D (a second priority in Rule 23D is equivalent to a third priority in this Agreement) is intended to preclude the over-subscription of storage capacity in the Basin.
- I. **Pro-rations of Limited Deliveries:** Simultaneous delivery request by more than one Party with Storage Agreements of equal priority may exceed the capacity of delivery facilities available. In this event, the facility capacity not used for First and Second priority deliveries shall be utilized to deliver water for each Third Priority Storer in proportion to their maximum annual storage *as* specified in Paragraph 2. The proportion shall be determined from each Storer's relative share (percentage) of the sum of all of the maximum annual storage under Agreement of the same (Third) priority requesting delivery.
- J. **Watermaster Controls Storage:** Watermaster and Storer acknowledge that no Party shall have any direct interest in or control over storage used under this Agreement by reason of the adjudicated right of such Party. Watermaster has sole custody and control of all groundwater storage rights in the Basin Area pursuant to the Physical Solution in the Judgment, the Rules and this Agreement.
- K. **Laws Take Precedent Over this Agreement:** This Agreement does not supersede applicable Federal, State or Local regulatory requirements. Storer shall be solely responsible to meet all current and future Federal, State or Local requirements applicable to actions or consequences facilitated by this Agreement.
- L. **Measured Losses:** Measured losses will limit the recovery of water stored under this Agreement.
- M. **Water Quality:** The quality of Supplemental Water stored pursuant to this Agreement shall not be detrimental to the Subarea in which storage will occur, or to any other Party to the Judgment.
- N. **Insurance:** Storer shall provide insurance sufficient to protect Storer and Watermaster against potential liability arising from the activities contemplated by this Agreement. Said insurance shall be satisfactory to Watermaster and shall be maintained during the life of this Agreement, including future extension or amendment.

## AGREEMENT

1. **Recitals and General Conditions:** The Recitals and General Conditions to this Agreement are incorporated in the Agreement as though set forth fully herein.
2. **Storage Limits:** Storer is hereby authorized by Watermaster to store not more than 13,000 acre-feet of Supplemental Water in the Alto Subarea of the Mojave Basin in any Water Year during the term of this Agreement. Supplemental Water stored pursuant to this Agreement and pursuant to the injection storage agreement approved in February 2002 shall not exceed an annual cumulative balance of 13,000 acre-feet.
3. **Duration of Agreement:** Storer may add to storage up to the amount specified until September 30, 2018. . The duration to store water may only be extended by action of Watermaster. If at the end of this term, Storer has any water remaining in storage, the term of this Agreement may be extended by action of Watermaster for five (5) additional years, allowing for the extraction of previously stored water. The full term of this Agreement shall not exceed thirty (30) years. Watermaster may approve, deny with cause, and reasonably condition time extensions of this Agreement if necessary to maintain consistency with changes to the Judgment. In considering whether to deny with cause any extension of this Agreement, the Watermaster shall review the implementation of this Agreement to date and determine that the Alto Subarea has sufficient capacity to accommodate the water that would be stored under such extension, that the extension will not have a substantial adverse impact on any Producer or on the Basin and shall not be arbitrary and capricious. Unless specifically so ordered by the Court, changes to the Judgment shall not impact the initial Agreement or the remaining term of any extension and shall not impact withdrawal of previously stored water to meet previously incurred obligations.
4. **Third Priority Storage:** Storer and Watermaster hereby agree that delivery under this Agreement shall have Third Priority under Paragraph G.
5. **Storage and Extraction:** Watermaster Rules and Regulations Section 23.F(1) governs storage and extraction of Supplemental Water. Watermaster will authorize the storage of such Supplemental Water provided that it will not cause the total stored water in the Alto Subarea pursuant to this Agreement to exceed the amounts set forth in Paragraph 2, above. The Storer's operations shall not have a substantial adverse impact on any Producer, as determined by the Watermaster.
6. At any renewal period, Watermaster may condition Storage Agreement renewal to require modifications to incorporate improved technology that is necessary to mitigate a deficiency in the collection and reporting of required data to the Watermaster.
7. **Quarterly Reporting Requirements:** Storer shall report the following to Watermaster by the last day of the month next succeeding the end of the relevant quarter, i.e. January 31, April 30, July 31 and October 31:
  - a. The amount of Supplemental Water which Storer placed into or withdrew from storage under the Agreement;

- b. Cumulative stored water balance of the relevant quarter;
8. **Watermaster Storage Accounting:** Watermaster shall use the reported data, along with other available data to:
- a. Perform a “First-in, First-Out” accounting of water stored under this Agreement;
  - b. Assess each proposal to store Supplemental Water under this Agreement and determine whether the potential reasonably exists for material adverse effect on other Producers within the Subarea in which storage is to occur, and whether sufficient capacity exists in that groundwater aquifer;
  - c. Determine, at least annually, any losses of Supplemental Water stored pursuant to this Agreement.
9. **Loss Factors Considered:** Watermaster shall determine at least annually any losses of Supplemental Water stored pursuant to this Storage Agreement. Watermaster shall consider herein specified factors, including priority specified in this Agreement, affecting the loss of Supplemental Water stored pursuant to this Agreement including those that may occur at the time Supplemental Water is placed into storage.
10. **Potential Special Costs:** As provided in Watermaster’s Rules and Regulations, Watermaster shall determine, annually, whether any special costs, damages or burdens have resulted from the implementation of this Agreement and shall notify Storer as to its determinations and the calculation of any amount due, and Storer shall pay such amount within thirty days.
11. **Dispute Resolution:** In the event there is a dispute between Storer and Watermaster regarding calculations, payments due, or other aspects of this Storage Agreement or its implementation that cannot be resolved, review of determinations by Watermaster shall be as per Section 36 of the Judgment. In the event any Party hereto shall commence legal proceedings against the other to enforce the terms hereof, or to declare rights hereunder, as the result of the breach of any covenant or condition of this Agreement, the prevailing Party in any such proceeding shall be entitled to recover from the losing Party his/her/its reasonable costs and attorney’s fees, incurred in connection therewith. Except as otherwise expressly provided herein, all Parties shall bear their own costs and attorney’s fees.
12. **Indemnification:** Except for resolution of disputes pursuant to Paragraph 11 above, Storer shall save and hold harmless Watermaster, its officers, agents and employees from any and all costs, damages or liability resulting from this Agreement or its implementation. Storer shall provide Watermaster with the defense, and the costs of the defense, including attorney’s fees, of any action brought against Watermaster, its officers or employees arising or alleged to arise because of such Agreement for storage of Supplemental Water.
13. **Expired and Void Agreement:** The Agreement may become void if Storer ceases to be a party in good standing pursuant to Paragraph C. An expired or void Agreement shall

mean that the Storer may no longer store Supplemental Water or extract water that has previously been stored under this Agreement, except that stored water may be extracted or credited to Storer's obligations under the Judgment within five (5) years following the date the Agreement expired or became void. Stored water not claimed by Storer within five (5) years subsequent to an expired or void Agreement shall accrue to the benefit of the storage Subarea, and not to the benefit of a specific Party or Parties.

14. **Non-Transferable:** This Agreement is not assignable or transferable, except to the lawful successor of either Party, and cannot in any way be hypothecated by Storer.
15. **Amendment:** This Agreement shall be amended only upon written agreement of the Parties.
16. **Entire Agreement:** This Agreement is the entire agreement between the Parties hereto with respect to the subject matter hereof. Any waiver, modification, consent or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by, or on behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.
17. **Notices:** Any communication, notice or demand of any kind whatsoever which either party may be required or may desire to give to or serve upon the other shall be in writing and delivered by personal service (including courier service), by facsimile communication, by Federal Express, UPS or other overnight delivery, or by registered or certified mail, postage prepaid, return receipt requested; and shall be addressed to the General Manager of the applicable agency at its principle office. Any party may change its mailing address or facsimile number for notice by written notice given to the other in the manner provided in this Section. Any such communication, notice or demand shall be deemed to have been duly given or served on the date personally served, if by personal service; on the date of confirmed dispatch, if by facsimile communication; on the day after delivery if by "overnight courier;" on the third (3rd) day after being placed in the U.S. mail, if mailed first class, whether or not registered or certified.
18. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of California. The only venue and forum for the resolution of any dispute regarding the interpretation or enforcement of this Agreement shall be in the Superior Court of the State of California in and for the County of Riverside, Central Judicial District, California, or such other forum as the Judgment may subsequently be assigned to. The Parties expressly waive the right to remove this action to Federal Court.
19. **Construction:** The language in all parts of this Agreement shall be in all cases construed simply, according to its fair meaning, and not strictly for or against any of the Parties hereto. Section headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement. References to "Paragraphs" are to Paragraphs of this Agreement, unless otherwise specifically provided.



20. **Good Faith:** The Parties agree to perform their obligations herein in “good faith” and shall do all things reasonably necessary to carry out the intent and/or to implement the terms of this Agreement.
21. **Binding Effect:** All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and to their respective representatives, agents and lawful successors.
22. **Numbers and Gender:** Whenever required by the context, as used in this Agreement, the singular number shall include the plural, and the masculine gender shall include the feminine and neuter.
23. **Continued Validity:** If any provision of this Agreement, or its application to any person, place, or circumstance, is held by a court of competent jurisdiction to be invalid, unenforceable, or void, such provision shall be enforced to the greatest extent permitted by law, and the remainder of this Agreement shall remain in full force and effect.

This Agreement is effective as of July 27, 2016 and shall remain in effect until September 30, 2018. This agreement may be further extended by action of Watermaster.

**FOR WATERMASTER:**

**FOR STORER:**



\_\_\_\_\_  
Kirby Brill, Executive Officer

Date: July 27, 2016



\_\_\_\_\_  
Douglas B. Robertson, City Manager

Date: August 11, 2016