

## DOCKETED

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Robert Sarvey  
501 W. Grant Line Rd  
Tracy, Ca. 95376  
(209) 835-7162

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

In the Matter Of:  
The Mariposa Energy Project

Docket Number 09-AFC-03C  
Mariposa Amendment

Introduction

On March 11, 2015 Mariposa Energy filed a petition for what they state is an insignificant modification of their operating license.<sup>1</sup> CEC Staff has filed its analysis indicating that the modification has no effect on the environment and that it is consistent with the original decision. Staff is wrong. The proposed modification alters assumptions from the original decision and has a significant effect on the environment. BBID the water supplier is under order from the water resources board to curtail its operations. The water supply determination in the original decision and the water conservation measures provided in the original decision no longer mitigate the projects impacts on water resources. The Commission must require Mariposa to utilize recycled water from Mountain House or Tracy to prevent a significant impact to the environment, local farmers and residents of Mountain House. The modification also inserts new traffic impacts on the degraded Bruns road that has not been restored to pre project conditions as required by the original license. I respectfully request an evidentiary hearing to address these impacts from the proposed amendment.

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<sup>1</sup> [Mariposa Energy Petition for Staff Approved Insignificant Modification](#)

## Water Resources

The proposed modification does not meet the requirements Section 1769 (a) (1) (D) which requires a discussion of the whether the modification is based on new information that changes or undermines the assumptions, rationale, findings, or other bases of the final decision, an explanation of why the change should be permitted. The Mariposa Decision concluded that despite evidence to the contrary provided by Intervenor Sarvey that BBID was capable of meeting the projects water supply needs under drought condition without impacting residents of Mountain House and local farming operations. The Mariposa Decision states;

Based on the evidence, the MEP facility will use an average of 34.8 acre-feet of fresh water per year provided that the facility runs a projected 600 total hours per year. Alternatively, should increased water be needed, the plant will use a maximum of 187 acre-feet per year during 4,000 hours of operation. **BBID confirmed that they have the ability to meet the MEP facility demand. At the evidentiary hearing, Staff's water expert reiterated in testimony that BBID has confirmed that they are able to supply the water needs of the MEP.** However, Intervenor Robert Sarvey argued that BBID's total allotment of 50,000 AFY of water was fully allocated. (Sarvey, Op. Brief, pp. 18-19). Staff's expert noted that Mountain House's allotment of 9,415 AFY was based upon the capacity of the community once it is fully developed. (3/7/11 RT 452:5 – 454:20). Mr. Sarvey points out in his brief that, according to footnote (e) of Table 5.15-2, the Mountain House Community currently uses 2,810 AFY (*Id.*) No party has offered any evidence to explain how BBID has allotted its water rights. Table 5.5-12 merely lists potential water users within the BBID. Nevertheless, the record shows that the Applicant will voluntarily fund a program designed to conserve a volume of raw water equal to the volume of water consumed by MEP annually for process needs. As a result of this commitment, MEP will not result in a net increase in consumption of raw water within BBID. Because MEP will not result in an increase in raw water consumption, we have found according to the testimony of Applicant' and Staff's experts, that MEP will have no significant impact on water supply. Notwithstanding the speculation regarding BBID's allocation of it 50,000 AFY of water, we are satisfied that BBID's ability to supply the relatively modest water needs of the MEP (35 to 187 AFY) is adequately established in the record.

BBID's water rights have been curtailed. They do not have the ability to meet the projects water supply period. The assumptions in the Decision are no longer valid. Any use of BID water will impact Mountain House residents and local farming operations. BBID's response to its water curtailment is included as attachment 1 to these comments on Staffs analysis. As BBID's response to the water board states, "However, This curtailment order will be extremely

destructive to the customers we serve including nearly 160 farmers, 15,000 Residents of the Mountain House community, and the energy projects in the area, all of which are essential to our community's vitality.<sup>2</sup> "Mountain House is facing the possibility of taps going dry because the state water board has ordered an end to pumping from the rivers and streams where the community gets its water."<sup>3</sup> "We have to cease and desist and shut down our water diversion entirely. No exceptions," Mountain House General Manager Ed Pattison said.<sup>4</sup>

Since the applicant proposes to be truck water to the Mariposa site there is no reason that Mariposa cannot procure recycled water from either Mountain House or Tracy. The city of Tracy is currently selling some of its recycled water to Westside Irrigation District at \$35 an acre foot.<sup>5</sup> The mitigation measures which were designed to offset the water resources impacts from the Mariposa Project are no longer effective as BBID is no longer diverting any water and the water conservation measures were designed around water saving from BBID's main water canal.

### Traffic and Transportation

As I stated in my petition for reconsideration of the proposed decision:

On June 1, 2011 the applicant submitted the Construction Traffic Control and Implementation Plan for the Mariposa Energy Project.<sup>1</sup> The plan calls for the use of Bruns Road as the primary access road for construction vehicles. As the plan details, "*Bruns Road is a north-south road lying along the western border of MEP and intersecting with Byron Highway to the north. An easement off of Bruns Road would provide the entrance, and therefore the direct access, to the project site.*" Since the PMPD conference the condition of Bruns Road has deteriorated due to the construction of the Greenvolts Solar Project. As stated by resident Guy Colton at the May 18<sup>th</sup> adoption hearing, "*I don't know how long it had been since you had driven Bruhns Road prior to that but it was in a*

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<sup>2</sup> [bbid.org/wp-content/uploads/2011/09/BBID-Curtailment-Response-FINAL1.pdf](http://bbid.org/wp-content/uploads/2011/09/BBID-Curtailment-Response-FINAL1.pdf)

<sup>3</sup> <http://www.cbsnews.com/news/california-drought-could-leave-mountain-house-community-without-water/>

<sup>4</sup> <http://www.cbsnews.com/news/california-drought-could-leave-mountain-house-community-without-water/>

<sup>5</sup> [http://www.ci.tracy.ca.us/documents/?d=20150303\\_Reg\\_Mins.pdf](http://www.ci.tracy.ca.us/documents/?d=20150303_Reg_Mins.pdf)

*lot worse condition than when you had driven it previously. In about six or eight weeks, the Green Volts Energy Project that's taking place a couple hundred yards down Kelso Road had literally destroyed the road. I mean literally destroyed the road. In that slalom to get around the rubble and they have patches all the way through it."*<sup>2</sup> Parts of the road have been reduced to gravel with deep ruts. The construction of the MEP will continue the degradation of that road. This is a significant impact which must be addressed. Residents must be provided a safe accessible road to their homes. I have notified the Compliance Project Manger through the public advisor but the CPM has not responded to my inquiry.<sup>6</sup>

Additional semi traffic and water trucks related to the backup water supply plan will degrade the road even further. The Staff's analysis fails to identify this as an issue and it should be examined in Staff's analysis. Staffs analysis and the applicant's petition do not present the present condition of the road and indicate if the applicant has met its burden of restoring Bruns road to the conditions that existed before construction of the original project had. My most recent trip to the project site indicates Bruns Road has not been restored to pre project status.

### Conclusion

The findings and conclusions in the original decision that BBID can supply adequate water and that the water resource impacts will be fully mitigated is no longer valid. Bruns Road has not been restored to pre project conditions and additional semi-trucks and water trucks will further degrade the road. Visual impacts of the project have not been mitigated and the new water tanks will add additional industrial visual impacts. An evidentiary hearing is requested.

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<sup>6</sup> [doCKETpublic.energy.ca.gov/PublicDocuments/Regulatory/Non%20Active%20AFC%27s/09-AFC-3%20Mariposa%20Energy/2011/June/TN%2061188%2006-07-11%20Intervenor%20R.%20Sarvey%20Petition%20for%20Reconsideration.pdf](https://doCKETpublic.energy.ca.gov/PublicDocuments/Regulatory/Non%20Active%20AFC%27s/09-AFC-3%20Mariposa%20Energy/2011/June/TN%2061188%2006-07-11%20Intervenor%20R.%20Sarvey%20Petition%20for%20Reconsideration.pdf)