



Westlands Water District

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May 29, 2008

Eileen Allen, Planning Manager
Energy Citing and Compliance Office
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

DOCKET 08-AFC-1
DATE MAY 29 2008
RECD. JUN 02 2008

SUBJECT: Westlands Water District Comments Concerning the Avenal Energy Project (08-AFC-1)

Dear Ms. Allen,

This letter is in response to Avenal Power Center, LLC's Application for Certification (AFC) for the Avenal Power Center, LLC's Avenal Energy Project. The AFC is for the construction and operation of a 600 megawatt combined-cycle electric power generating plant and ancillary facilities. The proposed project will be located within Westlands Water District, between the San Luis Canal (California Aqueduct) and the Avenal Cutoff Road, six miles northeast of the City of Avenal in Kings County, California.

Westlands Water District (District) has a few observations and comments regarding the AFC.

1. The AFC indicates that the City of Avenal will provide raw water for industrial uses to the proposed project from the city's municipal and industrial water service contract with the United States Bureau of Reclamation. Additionally, groundwater from three local wells would provide a back-up water source. Though, the City has a Contract with the United States for water service, shortage provisions within the Contract provide for reductions in supply due to hydrology and environmental restrictions. The Bureau's 2008 initial allocation to municipal and industrial contractors was 75%. The Bureau's allocation to agricultural water contractors, including Westlands Water District was only 45%. The District anticipates that ongoing restrictions on Delta pumping facilities will continue to cause reduced allocations for all contractors south of the Delta.
2. The AFC indicates that the Avenal Power Center will be located on 144 acres that have been/will be acquired. The District currently allocates water to the land in accordance with the District's rules (copy enclosed). The portion of the parcel that is developed will no longer be entitled to an allocation of water from the District. While

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the balance of the parcel will continue to be eligible to receive an allocation of water, the use of that water will be restricted to only agricultural purposes.

3. The AFC, section 6.5-7, identifies three wells that would provide back-up water supply in the event of shortages. Several years ago the ownership of the groundwater pumping facilities was transferred to the District, so that electrical power could be provided through the District's Groundwater Management Program (Program). Any agreement for groundwater use from these facilities would have to be approved by the District's Board of Directors. As noted above, the District's allocation falls well short of what is necessary to sustain crops, and the District expects that a majority of the shortfall will be made up through pumping groundwater. To date the District's Board has opposed projects that have the potential to increase demand from the groundwater basin which is currently overdrafted.

4. The District is concerned with the water use offset measures proposed in the AFC document. The document describes typical water application rates for certain crop types and suggests measures, to be taken by the landowners, which may offset the proposed increase in use of groundwater. In many cases the suggested measures have already been implemented due to existing water shortages and cropping pattern changes. Therefore the conservation measures cited may have little or no benefits.

Thank you for the opportunity to assist the California Energy Commission in this matter. If you need further assistance please contact Israel Sanchez at (559) 241-6237.

Sincerely,



Russ Freeman
Supervisor of Resources

Enclosure

ARTICLE 2. REGULATIONS FOR THE ALLOCATION AND USE OF AGRICULTURAL WATER WITHIN WESTLANDS WATER DISTRICT

2.1 PURPOSE

Westlands Water District has long-term contractual and legal entitlements with the United States for a firm supply of 1,150,000 acre-feet (AF) of Central Valley Project (CVP) water during each water year. In some years, the District may acquire additional water pursuant to its entitlements, or other water. Pursuant to District Resolution No. 128-95, the Board of Directors has adopted the following Regulations establishing the rules and procedures for allocation and use of agricultural water.

2.2 GLOSSARY OF TERMS AND DEFINITIONS

- A. agricultural water - water used for irrigation and other agricultural purposes.
- B. Agricultural Water Allocation Application and Purchase Agreement (referred to as Allocation Application) - an agreement between the District and a water user which describes the land held by the water user, the amount of water requested by the water user, and which obligates the water user to accept and pay for all water supplied by the District.
- C. allocation - amount of water ratably distributed from any source of supply to eligible District lands.
- D. Area I - lands which formed a part of Westlands Water District on June 28, 1965 (the original Westlands area), as shown on Westlands Water District Dwg. No. 582, dated December 21, 1976, revised November 1, 1986, entitled "Areas of Water Service Priority."
- E. Area II - lands which formed a part of the original Westplains Water Storage District on June 28, 1965 (the original Westplains area), as shown on Westlands Water District Dwg. No. 582, dated December 21, 1976, revised November 12, 1986, entitled "Areas of Water Service Priority."
- F. Area III - lands which became a part of Westlands Water District after July 1, 1965 (the annexed area), as shown on Westlands Water District Dwg. No. 582,

dated December 21, 1976, revised November 12, 1986, entitled "Areas of Service Priority."

- G. area entitlements - amount of contract water allocated for each District area.
- H. contract water - any water obtained under the contractual and legal entitlements including additional and interim supplies.
- I. cropland - irrigable acreage as determined by U.S. Consolidated Farm Service Agency (CFSA), formerly the ASCS, measurements.
- J. cushion - water set aside for system losses and other uses.
- K. entitlements - water provided pursuant to the contractual and legal obligations between Westlands Water District and the United States for water supply and distribution: 900,000 AF under the 1963 Contract and 250,000 AF of provisional water under the Barcellos Judgment.
- L. furnish - to deliver or provide.
- M. M&I use - the use of water for drinking, cooking, bathing, showering, dish washing, and maintaining oral hygiene or purposes of commerce, trade or industry.
- N. other water - water other than contract water.
- O. overuse - use in excess of available supply.
- P. per acre entitlement - ratable share of contract water:

The Area I entitlement is 900,000 AF divided by the number of Area I cropland acres for which Allocation Applications are timely received; the Area II entitlement is 250,000 AF divided by the number of Area II cropland acres for which Allocation Applications are timely received.
- Q. rescheduling - carryover of water for use in the next water year.
- R. system gain - an increase in water available for allocation due to the difference in relative accuracy between state operated and maintained headworks meters and District operated and maintained water delivery meters.
- S. system loss - either a direct loss or a reduction in water available for allocation because of the difference in relative accuracy between state operated and

maintained headworks meters and District operated and maintained delivery meters.

- T. transfer - assignment of water from one water user to another.
- U. unused water - available supply at the end of the water year.
- V. water user - landowner or lessee of land who has submitted and executed an Allocation Application.
- W. water year - each 12-month period that begins on March 1 and ends on the last day of February following.

2.3 CONTRACTUAL ENTITLEMENTS

- A. The entitlement of agricultural water for Area I is 900,000 AF less water set aside there from for M&I use, system losses, and other uses.
- B.
 - 1. The entitlement of agricultural water for Area II is 250,000 AF less water set aside there from for M&I use, system losses, and other uses.
 - 2. Area II's entitlement will be supplemented by any amount of the Area I entitlement not timely applied for and purchased pursuant to these Regulations.
 - 3. Any contract water in addition to the 1,150,000 AF in any water year shall be allocated to Area II until the average per acre allocation of contract water for all Area II eligible cropland is equal to the average per acre entitlement for all Area I eligible cropland.
- C. No contract water shall be allocated to Area III until the allocation of contract water for eligible cropland in Areas I and II is equal to the per acre entitlement in Area I. Additional contract water then available to Area III will be allocated until the per acre allocation is equal to the per acre entitlement in Area I.
- D. Any contract water in addition to the quantities described above will be allocated ratably on a per acre basis to satisfy timely applications first to eligible cropland in Areas I and II, then to eligible cropland in Area III, and finally on a first-come, first-served basis to all District cropland.

- E. Prior to, and in conjunction with, the calculation of per acre entitlements in any water year, the General Manager shall set aside from the available water supply the amount of water for M&I use in accordance with Article ___ of the District's Rules and Regulations, system losses, and other uses approved by the Board of Directors. The General Manager may later allocate this water according to these Regulations if it is no longer necessary for such purposes.
- F. If the United States does not provide the District with a full supply of contract water, the shortage will be proportionately applied to the area entitlements.
- G. If there is a reduction in the rate at which water can be delivered to the District because of operational or other limitations, each water user's share of the delivery rate will be equitably adjusted as determined by the General Manager.

2.4 OTHER ALLOCATION RULES AND PROCEDURES

- A. Other water obtained by the District shall be made available to all cropland in the District without regard to area priority and shall be allocated on a per acre basis, unless otherwise directed by the Board of Directors.
- B. Allocations of water shall be increased or decreased as more or less water becomes available for distribution within the District.
- C.
 - 1. System loss will be deducted first from the water set aside in each Area for such purposes, and second, from individual allocations in direct proportion to the water used by each water user.
 - 2. System gain shall be apportioned to each Area according to total use and ratably allocated to individuals on a per acre basis.
- D. Other water made available to the District specifically for direct transfer to a water user shall be allocated to the water user for whom it was intended. This water may be used or transferred within or outside of the District at the discretion of the water user, subject to applicable state and federal laws and District approval, or any conditions of use placed on the water when it was first transferred into the District.

- E. Notwithstanding any other provisions of the Regulations, water made available for specified purposes shall be distributed and used in accordance with such specified purposes.
- F. All per acre allocations of water will be made on the basis of cropland acres as determined prior to the time of the allocation. Any changes to cropland acres will be used for future allocations only, and will not be used to adjust prior allocations.
- G. In order to receive an allocation, all cropland must be eligible under Reclamation law and any applicable District Regulations.

2.5 APPLICATION FOR WATER

- A. To receive an allocation of contract water for agricultural purposes in any water year, a water user must timely apply therefore by filing an Allocation Application at a designated District office annually on or before January 15. Applications received after January 15 shall not receive an allocation unless accepted by the General Manager. Applications received after January 15 that are so accepted by the General Manager shall only be entitled to receive a proportionate share of contract water made available to the District after the date of such late application's acceptance.
- B. The General Manager may require supplemental application(s) for additional contract water or other water made available to the District.
- C. If more than one Allocation Application for the same parcel of land is received and there is a dispute between the applicants regarding who should receive the water, priority will be given to the landowner, if one of the applicants owns the land in question. If no applicant owns the land, priority will be given to the water user who can provide satisfactory evidence of the right to occupy the land and receive the water. A lease or written consent from the landowner is considered satisfactory evidence. If the dispute arises after the water has been allocated, remedy is limited to unused water.
- D. Neither contract water nor any other water will be allocated to any land for which water charges, assessments, land-based charges, or any other money owed to

the District have been delinquent for 30 days or more at the time the water is allocated.

2.6 USE AND TRANSFER OF WATER

- A. No water may be transferred out of the District without District approval.
- B. Contract or other water may be used on any eligible cropland within the District.
- C. A water user may transfer his contract or other water to another water user in any area of the District. Such transfer shall be in writing on a form provided by the General Manager.
- D. The District will not transfer water from a water user to another resulting from a change in ownership or lease of land. However, if land is transferred by a change in ownership or lease with the result that the water user no longer owns or leases any District land, the unused water shall be transferred to the water user to whom the ownership or leasehold of such land has passed unless a transfer of water is requested pursuant to these Regulations.
- E. The General Manager may restrict or prohibit the use or transfer of water allocated to any cropland if a dispute exists among landowners regarding the allocation or use of such water.
- F. Water service shall be discontinued when a water user has exhausted his available water supply.
- G. Each water user shall take reasonable steps to reuse or control tail water. The failure to do so shall constitute a waste of water.
- H. The General Manager is authorized, after oral or written notice to the water user, to lock the delivery facilities of, or discontinue water service to, any water user who violates these Regulations or Terms and Conditions for Agricultural Water Service.
- I. The unauthorized using, taking, or wasting of water is prohibited and may subject the water user to civil or criminal prosecution.

2.7 PAYMENT FOR WATER OR AGREEMENTS

No water, regardless of source, shall be made available for delivery, transfer, or any other use by a water user who fails to make required payments to the District, regardless of the source of the water user's obligation for payment. Rules for payment are set forth in the Terms and Conditions for Agricultural Water Service and other agreements, if any, between the water user and the District.

2.8 YEAR-END PROCEDURES

- A. After final water use and supply accounting is completed for the water year, the District will determine the amounts of unused water or overuse for each water user.
- B. Unused water may be rescheduled if such a program is available.
- C. A water user with unused water that cannot be rescheduled will not be relieved of the obligation to pay for the unused water. The rate paid for such unused water shall include the cost of the water and any applicable District costs.
- D. A water user with overuse will have his allocation of contract water in the following year reduced by the amount of his overuse, first from the area in which the overuse occurred and then from any area in which the water user has an allocation of contract water. If this water user is not a water user in the following year, the amount of overuse will be attributed to the cropland that had been farmed by the water user. Further, any allocation of contract water to that cropland will be reduced by the amount of overuse attributable to such cropland.

2.9 MISCELLANEOUS

- A. The General Manager is authorized and directed to do any and all things necessary to implement and effectuate these Regulations.
- B. An appeal from any decision made pursuant to these Regulations shall be made to the Finance and Administration Committee of the Board of Directors. Such appeal shall be in writing and shall be filed with the District Secretary within 15

working days after notice of the decision. The decision of the Finance and Administration Committee may be appealed to the Board of Directors. Such appeal shall be in writing and shall be filed with the District Secretary within 15 working days after notice of the decision. The decision of the Board shall be final.

- C. The General Manager shall provide notice of any changes or revision to these Regulations to all District landowners and water users.

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

**APPLICATION FOR CERTIFICATION
For the AVENAL ENERGY PROJECT**

**Docket No. 08-AFC-1
PROOF OF SERVICE**

INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-AFC-9
1516 Ninth Street, MS-14
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docket@energy.state.ca.us

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DECLARATION OF SERVICE

I, Mineka Foggie, declare that on June 2, 2008, I deposited copies of the attached Avenal Energy (08-AFC-1Westlands Water District Comments Concerning the Avenal Energy Project in the United States mail at with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.



Mineka Foggie