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08-AFC-9

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March 8, 2010

VIA ELECTRONIC MAIL AND U.S. MAIL

Felicia Miller, Siting Project Manager
California Energy Commission
1516 Ninth St.
Sacramento, CA 95814-5512

RE: Proposed Palmdale Hybrid Power Project (08-AFC-9): Comments of the Antelope Valley Groundwater Agreement Association on Preliminary Staff Assessment

Dear Ms. Miller:

Brownstein Hyatt Farber Schreck, LLP represents the Antelope Valley Groundwater Agreement Association (AGWA) and presents these comments on AGWA's behalf regarding the California Energy Commission's Preliminary Staff Assessment (PSA)¹ of the Proposed Palmdale Hybrid Power Project (the Project). AGWA appreciates the opportunity to submit comments on the PSA.

AGWA supports the Project and believes it will provide much-needed economic development for the region. However, AGWA is concerned as to how the City of Palmdale (City) and the Los Angeles County Waterworks District No. 40 (District No. 40), who are designated to supply water to the Project, can support new demands for water when they claim that sufficient water does not exist to meet present demands. The PSA does not address this issue or the availability of recycled water to supply the Project in the context of the on-going adjudication of water rights within the Antelope Valley Groundwater Basin² (the Adjudication), and thus contains inadequate analysis of water supplies available for the Project.

AGWA is composed of landowners whose properties overlie the Antelope Valley Groundwater Basin (Basin) and who have been named as defendants in Adjudication. AGWA members exercise overlying groundwater rights by extracting groundwater from the Basin for beneficial use on their properties. Under California law, these landowners have prior rights to the waters of the Basin.³ The Basin underlies the Project area and serves as water supply for both the City and District No. 40. In the

¹ California Energy Commission, Palmdale Hybrid Power Project, Preliminary Staff Assessment, Docket 08-AFC-09.

² Included actions are *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.*, Superior Court of California, County of Los Angeles, Case No. BC 325201; *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.*, Superior Court of California, County of Kern, Case No. S-1500-CV-254-348; *Wm. Bolthouse Farms, Inc. v. City of Lancaster*, *Diamond Farming Co. v. City of Lancaster*, *Diamond Farming Co. v. Palmdale Water Dist*, Superior Court of California, County of Riverside, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668.

³ *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1240; *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 924-25.

⁵ District No. 40 and City's First Amended Cross-Complaint in Los Angeles County Sup.Ct. Case No. BC32501, filed Feb. 13, 2007, attached hereto, at ¶¶ 28, 33.

PROOF OF SERVICE (REVISED 3/2/10) FILED WITH
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Adjudication, both District No. 40 and the City claim that there is insufficient water in the Basin to meet present uses⁵ and that the Basin is presently in an overdraft condition.⁶ Generally, a basin is in an overdraft condition when groundwater extractions exceed groundwater recharge. If water extractions exceed recharge in the Basin, then all waters that would recharge the Basin are necessary to support present uses.⁷

In its brief discussion of the Adjudication in support of its claim that water is available for the Project, the PSA states that "[r]eclaimed water discharged to evaporation/percolation ponds, irrigation sites, and furrowed land from the Palmdale and Lancaster WRPs does not appear to be a part of the adjudication. To the contrary, recycled water is a part of the adjudication which is precisely why Los Angeles County Sanitation Districts Nos. 14 and 20 are parties to the adjudication. In their Cross-Complaint, the Los Angeles County Sanitation Districts seek a judicial determination of the right to control recycled water in the Basin.¹² The Sanitation Districts claim that the use of recycled water directly and significantly affects the Basin and must be fully taken into account in the adjudication of all rights to water in the Basin.¹³ Thus, it is improper for the PSA to simply gloss over the adjudication and its potential effect on reliable water supplies for the Project.

In reliance on its erroneous conclusion that recycled water is not at issue in the Adjudication, the PSA concludes: "The Antelope Valley Groundwater Basin and groundwater users would benefit by the project's proposed use of recycled water. Therefore, staff believes that there would be no significant cumulative impacts to the groundwater resources in the Basin as a result of the project."¹⁴ Not only is it improper for the PSA to conclude that the use of recycled water will not have any impact on the other supplies in the Basin, this statement characterizing recycled water supply as if it is severable from total water supply concerns in the Basin signals a fundamental flaw in the PSA's analysis. The PSA should better explain the connection between recycled water and groundwater in the Basin, and the potential effect of the adjudication on Project water supplies.

Although the PSA states that staff evaluated criteria such as whether the Project will substantially deplete groundwater supplies, result in lower groundwater levels, or interfere substantially with groundwater recharge,¹⁵ the PSA does not answer these questions with any substantive discussion. The fact that the Energy Commission's certified program under CEQA exempts it from having to prepare an Environmental Impact Report highlights the need to adequately discuss *any* significant adverse effect the project may have on the environment at this time.

The PSA does not make clear how its proposed mitigation measures compensate for potential effects that the Project might have on recharge in the Basin. For example, the PSA states: "Although the use of recycled water would remove a source of groundwater recharge from the Basin, it would also remove

⁶ District No. 40 and City's First Amended Cross-Complaint, at ¶¶ 31-35.

⁷ See *In the Matter of the Petition for Extension of Time of the City of San Luis Obispo Permit 5882 (Application 10216)* (2000) Order WR 2000-13. at 25-26 [It is not in the public interest to allow additional overdraft of an impacted basin in a water-short area and any further overdraft is unacceptable].

¹² Cross-Complaint of Los Angeles County Sanitation Districts, filed Dec. 27, 2006, at ¶¶ 44-47.

¹³ Cross-Complaint of Los Angeles County Sanitation Districts, at ¶ 54.

¹⁴ PSA Vol. 2, p. 4.9-25.

¹⁵ PSA Vol. 2, pp. 4.9-10, 11.

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a source of salt and nutrient loading to the groundwater as prescribed by RWQCB orders.¹⁶ The PSA does not adequately explain how removal of a source of salt and nutrient loading mitigates removal of a source of recharge for the Basin which if the Basin is in a state of overdraft would be needed for present uses.

The failure to appropriately consider Project water supplies is further evidenced by the February 11, 2010 Public Workshop for the PSA. Early in the meeting, CEC staff stated that there was nothing major there relating to water, and explained that the staff member responsible for preparing the water analysis section had been sent home for the day because water was not anticipated to be a substantial discussion topic. The subsequent brief discussion of water supplies for the Project demonstrated that the Energy Commission has not taken water supply for the Project and its effect on the Basin seriously.

AGWA requests that the Commission address these comments and further explain its determination as to the Project's impacts on Basin water supplies and looks forward to future opportunities for comment.

Sincerely,



Michael T. Fife

¹⁶ PSA Vol. 2, p. 4.9-23.



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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APPLICATION FOR CERTIFICATION
For the PALMDALE HYBRID
POWER PROJECT

Doc et No. 08-AFC-9

PROOF OF SERVICE

(Revised 3/2/2010)

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DECLARATION OF SERVICE

I, Mineka Foggie, declare that on, March 9, 2010, I served and filed copies of the attached Proposed Palmdale Hybrid Power Project (08-AFC-9): Comments of the Antelope Valley Groundwater Agreement Association on Preliminary Staff Assessment. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

http: www.energy.ca.gov sitingcases palmdale inde .html . The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

For service to all other parties:

x sent electronically to all email addresses on the Proof of Service list;

x by personal delivery or by depositing in the United States mail at _____ with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

For filing with the Energy Commission:

x sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (preferred method);

OR

depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 08-AFC-9
1516 Ninth Street, MS-4
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I declare under penalty of perjury that the foregoing is true and correct.

Originally Signed By
Mineka Foggie