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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

**COMMENTS OF HIGH DESERT POWER PROJECT, LLC
ON THE
*COMMITTEE RECOMMENDED DECISION GRANTING INTERIM RELIEF TO
DROUGHT-PROOF THE FACILITY***

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INTRODUCTION

On May 6, 2016, the Committee in this proceeding issued the *Committee Recommended Decision Granting Interim Relief to Drought-Proof the Facility*¹ (the “Recommended Decision”) granting, in part, the request by High Desert Power Project, LLC (“HDPP”) for interim relief.

HDPP thanks the Committee for acknowledging the benefits of the High Desert Power Project (“Facility”) as one part of a multi-faceted approach to addressing electric reliability in Southern California in the wake of the Aliso Canyon gas storage and supply issues. HDPP appreciates that the Recommended Decision recognizes the need to provide interim relief to ensure the continuing operation of the Facility while the Committee reviews the *Petition for Modification to Drought-Proof the High Desert Power Project* (“Petition”). HDPP also appreciates the Committee’s recognition of the applicability of Executive Order B-29-15 (“Executive Order”) to this proceeding, as well as its conclusions on the California Environmental Quality Act (“CEQA”) issues. HDPP also appreciates the additional year granted to use MRB Water Rights, though we have concerns with the specific language of the proposed revisions to Condition of Certification SOIL&WATER-1 as discussed below. While HDPP had requested two years, the single year granted is consistent with the Committee’s stated desire to move the Petition forward to final resolution in a timely manner.

However, the revisions to Condition of Certification SOIL&WATER-1, as set forth in the Recommended Decision, do not meet the Facility’s immediate needs to secure its near term water supply. The proposed revisions to Condition of Certification SOIL&WATER-1 are *more* restrictive than the current condition and would impair, rather than enhance, the Facility’s ability to operate reliably in the coming years. HDPP opposes the adoption of the Recommended Decision as proposed unless the following changes, which are set forth in Attachment A to these Comments, are made.

¹ The *Committee Recommended Decision Granting Interim Relief to Drought-Proof the Facility* modified the May 3, 2016 *Presiding Member’s Proposed Decision Granting Interim Relief to Drought-Proof the Facility* by changing the title and adding underline and strikeout in the proposed conditions “to highlight the changes between the existing condition adopted in 2014 (TN 203108) and those made in” the Recommended Decision.

I. THE NEW CAP ON WATER USE SHOULD BE DELETED BECAUSE IT UNNECESSARILY LIMITS HDPP OPERATING CAPACITY TO EIGHTY PERCENT.

The proposed revisions to Condition of Certification SOIL&WATER-1 impose a new cap on the Facility’s overall use of water for cooling operations of 3,090 acre-feet per year (“AFY”), regardless of the source of water. The proposed cap should be eliminated, and the following language deleted from the revisions to Condition of Certification SOIL&WATER-1 proposed in the Recommended Decision:

The project owner shall use no more than 3090 AFY per year, regardless of the source of water, for plant cooling operations.

A 3,090 AFY² cap on all water supplies would meet only eighty percent (80%) of the water supply required for HDPP. Therefore, if this new cap were imposed, HDPP operations could be substantially constrained from operating 20% of the time or more.

The new cap is an unnecessary constraint on the Facility’s operating capacity. As stated in the Recommended Decision, the Facility may be called on to help mitigate any curtailment of natural gas electrical generating facilities in the Los Angeles region.³ The newly proposed cap would unnecessarily constrain the Facility’s ability to respond to reliability needs in Southern California brought on by the Aliso Canyon Supply constraints.

II. THE INTERIM “LOADING SEQUENCE” IS BOTH REDUNDANT AND COULD MAKE INTERIM RELIEF ILLUSORY BY ELIMINATING USE OF MRB WATER RIGHTS.

The Interim “Loading Sequence” should not be added to Condition of Certification SOIL&WATER-1 for three reasons. First, Condition of Certification SOIL&WATER-1 already provides for a hierarchy of water uses. Specifically, Subsection “a” of the condition already provides for the following hierarchy: Recycled Water is used first, followed by SWP Water, Banked SWP Water, and, through Water Year 2017 as revised, MRB Water Rights.⁴ The

² The Recommended Decision’s cap of 3,090 AF on all water sources is likely a misinterpretation of the Petition and HDPP’s proposed cap on *MRB Water Rights*—one of only four supplies that make up the supply diversity to ensure the continuing operations of the Facility. The Petition proposes an annual limit of 3,090 AF of MRB Water Rights measured on a five year rolling average based on a modeling assumption that twenty-percent of the water needs for the Facility under these assumptions would be met through use of Recycled Water.

³ Recommended Decision, p. 7.

⁴ SOIL&WATER1, Subsection “a” currently includes this hierarchy: “Whenever recycled waste water of quality sufficient for project operations is available to be purchased from the City of Victorville, the project owner shall use direct delivery of maximum quantities of such water for project operations. Whenever the quantity or quality of recycled waste water is not sufficient to support project operations, the project may supplement recycled water supplies with SWP water, banked SWP water from the four HDPP wells as long as the amount of water used does not exceed the amount of water determined to be available to the project pursuant to SOIL&WATER-5, and/or MRB Water Rights. The Project Owner shall consume no more than 2,000 AF of MRB Water Rights in water years 2015/2016 (October 1, 2015 – September 30, 2016) and 2016/2017 (October 1, 2016 – September 30, 2017).

* * *

proposed Interim Loading Sequence is redundant and may create opportunities for claims of inconsistency between the two provisions.

Second, the Interim Loading Sequence can be read as eliminating entirely the use of MRB Water Rights during the interim period. Maintaining the ability to utilize MRB Water Rights -- even if SWP Water is available or there is a positive balance of Banked SWP Water -- is essential to allow HDPP the flexibility to reliably operate the Facility, particularly due to the constantly changing water quality of each water source.

Specifically, Subsection 3 of the proposed Interim Loading Sequence can be read as dictating that no MRB Water Rights may be used when, as in 2016, there is SWP Water available *or* any water remaining in HDPP's groundwater bank:

3. *If there is insufficient directly available or banked SWP Water, the project owner may blend recycled waste water with MRB Water Rights to achieve the required cooling tower blowdown rate or cooling tower functionality, subject to the limitations contained above.*

In 2016, HDPP has available both SWP Water and a positive balance of Banked SWP Water. The proposed Interim Loading Sequence could be read to require that HDPP must (a) use directly available SWP Water, regardless of its quality and (b) use all Banked SWP Water, regardless of its quality, before any of the 2,000 AFY of MRB Water Rights can be utilized to meet the Facility's operational needs. The Interim Loading Sequence would eliminate the Facility operator's ability to use the best water source available to blend with Recycled Water, which unnecessarily restricts the ability to reliably operate the Facility. The unnecessarily restrictive Interim Loading Sequence could also negatively affect the HDPP's ability to build or preserve its groundwater bank.⁵

Third, as a practical matter, it is infeasible for the Facility to implement the Interim Loading Sequence on such short notice. The Facility is not designed to operate solely on Recycled Water. The Facility currently maximizes Recycled Water use, when available in sufficient qualities and quantities, by blending Recycled Water with available water sources. The Facility operator selects the appropriate water supply based on a number of considerations, including water quality, equipment limitations, and plant operational needs. The Interim Loading Sequence would inhibit operational flexibility by blindly mandating the Facility to use a certain water source without consideration of any other factors that govern water use.

HDPP needs the flexibility to blend different water sources to not only maximize Recycled Water use, but also maintain permitted cooling tower PM₁₀ emissions limits and protect the Facility's cooling systems and equipment. For these reasons, the Interim Loading Sequence does not provide interim relief and should be deleted.

⁵ For example, access to MRB Water Rights has been temporary and finite in term and therefore using that supply while preserving the more permanent, mandated Banked SWP Water for use at a later date is prudent.

III. PERCOLATION

The interim relief proposed in the Recommended Decision does not allow HDPP to add to the Facility's groundwater bank through percolation. The Commission Staff, HDPP, and the California Department of Fish and Wildlife ("CDFW") all agree that allowing HDPP to percolate SWP Water when available, as it is in 2016, is of substantial benefit to the Mojave River Basin. The sole disagreement seems to be whether the Facility should be able to have both direct injection and percolation as means for building the HDPP groundwater bank (as HDPP advocates, which is supported by CDFW) or whether percolation alone without any injection should be mandated (as the CEC Staff argues). Because HDPP is concerned with limiting the Facility's ability to utilize all mechanisms to increase its groundwater bank, HDPP is opposed to CEC Staff's proposal to eliminate injection as a means to build the groundwater bank.

The groundwater bank for the Facility is currently comprised of SWP Water that is banked by HDPP through injection. In its Petition, HDPP proposed that it be granted the ability to seek another mechanism to build its groundwater bank, through percolation using existing Mojave Water Agency ("MWA") facilities.

HDPP seeks the ability to percolate groundwater as interim relief because it has been granted an allotment of SWP for water year 2016, ending September 30, 2016. There is a limited window for HDPP to take advantage of this increased allotment, and time is of the essence for the Commission to authorize HDPP to seek an agreement to allow HDPP to bank SWP Water through percolation in existing MWA facilities. HDPP identified the percolation-related conditions in briefing that would provide the relief and allow HDPP to percolate water this year to build the water bank as a means to drought-proof the Facility (the "Percolation Conditions").

The Commission has the authority to grant this additional relief for percolation at the May 17, 2016 Business Meeting.⁶ HDPP requests that the Commission provide such relief at this meeting and approve the Percolation Conditions as proposed by HDPP in Attachment A.

CONCLUSION

HDPP appreciates the Committee efforts to provide interim relief. We thank the Committee for noting the reliability benefits of the Facility, including the potential role of the Facility in addressing electric reliability in Southern California in the wake of the Aliso Canyon gas storage issues. We also appreciate and agree with the Recommended Decision's reasoning on legal issues related to the applicability of CEQA and the Executive Order. HDPP also greatly appreciates the additional year granted for use of MRB Water Rights, if HDPP's proposed revisions are adopted.


In order to ensure effective interim relief by providing HDPP with additional flexibility and not greater restrictions, HDPP requests that the Commission: (1) delete the proposed cap on the Facility's overall use of water for cooling operations, (2) adopt HDPP's proposed revisions to

⁶ The Staff's argument that percolation should be allowed and direct injection authority repealed can be heard along with the rest of the Petition, outside the context of interim relief.

the interim relief presented in the Committee's Recommended Decision, and (3) approve the Percolation Conditions set forth in Attachment A.

May 11, 2016

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ATTACHMENT A
PROPOSED REVISIONS TO CONDITION SOIL&WATER-1
AND PROPOSED PERCOLATION CONDITIONS

HDPP's proposed revisions to Condition of Certification SOIL&WATER-1 as set forth in the Recommended Decision are shown below in double underline and double strikethrough.

SOIL&WATER-1 The only water used for project operation (except for domestic purposes) shall be State Water Project (SWP) water obtained by the project owner consistent with the provisions of the Mojave Water Agency's (MWA) Ordinance 9 and/or appropriately treated recycled waste water, and/or an alternative water supply obtained from the Mojave River Basin (MRB) consistent with the "Judgment After Trial" dated January 1996 in *City of Barstow, et al., v. City of Adelanto, et al.* (Riverside County Superior Court Case No. 208568) (collectively, "MRB Water Rights") as administered by the Watermaster (the "Judgment").

- a. Whenever recycled waste water of quality sufficient for project operations is available to be purchased from the City of Victorville, the project owner shall use direct delivery of maximum quantities of such water for project operations. Whenever the quantity or quality of recycled waste water is not sufficient to support project operations, the project may supplement recycled water supplies with SWP water, banked SWP water from the four HDPP wells as long as the amount of water used does not exceed the amount of water determined to be available to the project pursuant to SOIL&WATER-5, and/or MRB Water Rights. The Project Owner shall consume no more than 2,000 AF of MRB Water Rights in water years 2015/2016 (October 1, 2015 – September 30, 2016) and 2016/2017 (October 1, 2016 – September 30, 2017). The acquisition, use and transfer of MRB Water Rights shall comply with the Judgment and Rules and Regulations of the Watermaster.

~~The project owner shall use no more than 3090 AFY per year, regardless of the source of water, for plant cooling operations.~~

~~The project owner shall implement an interim "Loading Sequence" in the following order:~~

- ~~1. The project owner will use recycled waste water as the primary water supply, to the extent it is available and its quality is sufficient to maintain cooling tower functions and reliable operation of the facility.~~
- ~~2. If there is insufficient recycled waste water of quality or quantity sufficient to maintain cooling tower functions and reliable operation of the facility, recycled waste water may be blended with either directly available or banked SWP Water.~~
- ~~3. If there is insufficient directly available or banked SWP Water, the project owner may blend recycled waste water with MRB Water Rights to achieve the required cooling tower blowdown rate or cooling tower functionality, subject to the limitations contained above.~~

* * *

**ATTACHMENT A
PROPOSED REVISIONS TO CONDITION SOIL&WATER-1
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PERCOLATION CONDITIONS

HDPP's proposed revisions to existing SOIL&WATER-1 conditions to allow for percolation are shown below in bold, double underline, and double strikethrough.

SOIL&WATER-4 Injection 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.

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) to seek a feasible agreement or modify existing agreements to allow the project to bank SWP water in the Mojave River Basin through percolation using existing MWA facilities.

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 and MWA 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 Balance

a. The amount of banked groundwater **as injected SWP water** available to the project shall be calculated by the CEC staff using the HDPP model, FEMFLOW3D. **The amount of banked groundwater as percolated SWP water by MWA available to the project shall be calculated by MWA or the Mojave Basin Area Watermaster.** The amount of 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.

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).

ATTACHMENT A
PROPOSED REVISIONS TO CONDITION SOIL&WATER-1
AND PROPOSED PERCOLATION CONDITIONS

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 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) and (2) the amount of SWP water percolated by MWA.

SOIL&WATER-12

The project owner shall prepare and submit to the CEC CPM and, if applicable, to the Lahontan RWQCB for review and approval, a water treatment and monitoring plan that specifies the type and characteristics of the treatment processes and identify any waste streams and their disposal methods. The plan shall provide water quality values for all constituents monitored under requirements specified under California Code of Regulations, Title 22 Drinking Water Requirements, from all production wells within two (2) miles of the injection wellfield for the last five (5) years.

Verification: Ninety (90) days prior to ~~banking~~ injection of SWP water within the Regional Aquifer, the project owner shall submit to the Lahontan RWQCB and the CEC CPM a proposed statistical approach to analyzing water quality monitoring data and determining water treatment levels. The project owner shall submit the SWP water treatment and monitoring plan to the CEC CPM and, if appropriate, to the Lahontan RWQCB for review and approval. The CEC CPM s review shall be conducted in consultation with the MWA, the VVWD, and the City of Victorville. The plan submitted for review and approval shall reflect any requirements imposed by the RWQCB through a Waste Discharge Requirement.

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.