

## DOCKETED

<b>Docket Number:</b>	97-AFC-01C
<b>Project Title:</b>	High Desert Power Plant
<b>TN #:</b>	214534
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<b>Submitter Role:</b>	Committee
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<b>Docketed Date:</b>	11/21/2016



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
1-800-822-6228 – WWW.ENERGY.CA.GOV

**PETITION TO AMEND THE:  
HIGH DESERT POWER PLANT**

**Docket No. 97-AFC-01C**

## **DISCLOSURE OF COMMUNICATIONS**

**PLEASE TAKE NOTICE** that the Energy Commission Committee<sup>1</sup> (Committee) assigned to conduct proceedings on the “Petition for Modification to Drought-Proof the High Desert Power Plant” (Petition)<sup>2</sup> filed by High Desert Power Project, LLC (Petitioner) is making the communications attached to this Notice (Communications) part of the record of these proceedings pursuant to Hearing Officer Susan Cochran’s June 1, 2016, memorandum.<sup>3</sup>

The parties have 10 days after the Docketed Date of this Notice to address the Communications in writing. The Committee requests the parties to state in writing by the above-specified date whether they waive the right to challenge the proceedings based on the Communications.

Any party or interested person is invited to file comments in the Docket (in the case of a party) or as a public comment (nonparties). Comments may also be submitted electronically by visiting the website at <http://www.energy.ca.gov/sitingcases/highdesert> and clicking on the “Submit e- Comment” link in the “2015 Amendment Proceeding” box. Otherwise, written comments may be submitted by e-mailing them to [docket@energy.ca.gov](mailto:docket@energy.ca.gov), or by U.S. Mail to:

California Energy Commission  
Docket Unit  
Docket number: 97-AFC-01C  
1516 Ninth Street, MS-4  
Sacramento, CA 95614

<sup>1</sup> The Committee consists of Commissioner Karen Douglas, Presiding Member, and Commissioner Janea A. Scott, Associate Member. The full Commission made this Committee assignment at an Energy Commission Business Meeting on January 13, 2016.

<sup>2</sup> The Petition may be viewed at: <https://efiling.energy.ca.gov/getdocument.aspx?tn=206468>.

<sup>3</sup> TN 211693.

For all comments, please include the docket number and proceeding name, “**Docket No. 97-AFC-01C, High Desert Power Plant Project,**” in the subject line and on the cover page.

**PLEASE NOTE:** Your written and oral comments, attachments, and associated contact information (e.g., your address, phone, e-mail, etc.) become part of the viewable public record. Additionally, this information may become available via Google, Yahoo, and other search engines.

### **Public Participation**

Members of the public are welcome to submit written comments by DATE. It is not necessary to be an Intervenor to participate in the public process. Comments may be submitted electronically at:

<https://efiling.energy.ca.gov/Ecomment/Ecomment.aspx?docketnumber=97-AFC-01C>

Otherwise, written comments may be submitted by e-mailing them to [docket@energy.ca.gov](mailto:docket@energy.ca.gov), or by U.S. Mail to:

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**PLEASE NOTE:** Your comments, attachments, and associated contact information (e.g., your address, phone, e-mail, etc.) become part of the viewable public record. Additionally, this information may become available via internet search engines such as Google and Yahoo.

The Energy Commission’s Public Adviser’s Office is available to assist the public with understanding the proceedings and to facilitate meaningful participation. If you would like information on how to participate in this proceeding, please contact the Public Adviser, Alana Mathews, at [publicadviser@energy.ca.gov](mailto:publicadviser@energy.ca.gov) or (916) 654-4489, or toll free at (800) 822-6228.

If you have a disability and need assistance to participate, contact Poneh Jones at (916) 654-4425, or by e-mail at [poneh.jones@energy.ca.gov](mailto:poneh.jones@energy.ca.gov)

## Contact Information

Questions of a legal or procedural nature should be directed to Susan Cochran, Hearing Officer, by e-mail at [susan.cochran@energy.ca.gov](mailto:susan.cochran@energy.ca.gov) or (916) 654-3965.

Technical questions concerning the project should be addressed to Joseph Douglas, Staff Project Manager, by e-mail at [joseph.douglas@energy.ca.gov](mailto:joseph.douglas@energy.ca.gov) or (916) 653-4677.

Media inquiries should be sent to the Media and Public Communications Office at [mediaoffice@energy.ca.gov](mailto:mediaoffice@energy.ca.gov) or (916) 654-4989.

Information regarding the status of the project, as well as notices and other relevant documents pertaining to this proceeding, may be viewed on the Energy Commission's web page at <http://www.energy.ca.gov/sitingcases/highdesert/index.html>.

Dated: November 17, 2016, at Sacramento, California

ORIGINAL SIGNED BY  
\_\_\_\_\_  
KAREN DOUGLAS  
Commissioner and Presiding Member  
High Desert Amendment Committee

ORIGINAL SIGNED BY  
\_\_\_\_\_  
JANEA A. SCOTT  
Commissioner and Associate Member  
High Desert Amendment Committee



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
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**Docket No. 97-AFC-01C**

**PRESIDING MEMBER'S  
DISCLOSURE OF COMMUNICATIONS<sup>1</sup>**

Based on my best recollection, pursuant to the June 1, 2016, Memorandum issued by Hearing Officer Susan Cochran and entitled "Past Participation of Certain Committee Advisers in Previous High Desert Proceedings," I give notice of the following communications I received, and make them part of the record of this proceeding:

1. On May 12, 2016, I received the following non-privileged oral communication from Energy Commission legal counsel Caryn Holmes: during the 1997 Application for Certification proceedings for the High Desert Power Plant Project there was a conscious decision to prohibit use of groundwater and recycled water and concern about stressed conditions in the basin, timing and location of water withdrawal and, that in the current proceeding Energy Commission staff believe using recycled water is acceptable but using groundwater is not.
2. On May 23, 2016, during the closed session portion of the Committee conference, I received an oral communication from Committee consultant Linda Bond, in which she described the Mojave Water Basin. Regarding post interim relief, she indicated that we need more information about water use, water quality, percolation, and water numbers. She stated that the Mojave Water Agency annual report shows that the Memorandum of Understanding between the Victor Valley Water Reclamation Authority and the California Department of Fish and Wildlife is not working.
3. On May 23, 2016, during the closed session portion of the Committee conference, I received an oral communication from Energy Commission legal counsel Caryn Holmes regarding interim relief, in which she stated the need for more information about percolation and the rate and location of injection and take out.
4. On June 2, 2016, during the closed session portion of the Committee conference, I received an oral communication from Committee consultant Linda Bond, in which

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<sup>1</sup> In this proceeding, Caryn Holmes, Susan Cochran, Paul Kramer, and Galen Lemei serve as legal advisers to the Committee. This Disclosure of Communications provides non-privileged statements from Ms. Holmes and Ms. Cochran and is not intended to and does not waive or abrogate privileges that include, but are not limited to, the attorney-client privilege, deliberative process privilege, or attorney work product doctrine.

she explained the capabilities and limits of the FEMFLOW3D model she developed in a prior proceeding before the Energy Commission involving the High Desert power plant project.

5. On June 14, 2016, I received the following non-privileged oral communication from Energy Commission legal counsel Caryn Holmes: the Mojave River water basin has been in overdraft for years, the overdraft led to the supreme court approving adjudication, and the Mojave Water Agency is the water master in charge of accounting and making sure people meet their obligation and, it has authority to undertake recharge activities; what matters is how much, when, and where water is put in and how much, when, and where it is taken out; and, in 2000, as a result of the Energy Commission's High Desert Power Plant decision, the model (conditions of certification 4, 5, and 6) was developed to take into account these factors to ensure use of water by the project did not have a negative impact on the transition zone; riparian habitat near the plant supports some endangered species (Mojave ground squirrel, desert tortoise and birds) and depends on groundwater from the Mojave River which is underground in most places.
6. On June 17, 2016, I received a written communication from Energy Commission Hearing Officer Susan Cochran, with two attached draft documents for my approval, all of which are confidential attorney client privileged communications and attorney work product, which reportedly incorporate input from Committee consultant Linda Bond. The final iterations of the draft documents were posted in Energy Commission Docket 97-AFC-01C as follows: TN #212263 entitled "Notice of August 11, 2016 Committee Status Conference and Related Orders" and TN # 212262 entitled "Committee Orders Regarding the Scope of Future Proceedings (Scoping Order)."
7. On June 22, 2016, I received a written communication from Kristy Chew, Energy Commission Technical Adviser to the Commission on Siting Matters, transmitting a draft confidential attorney client privileged communication and attorney work product prepared by Energy Commission Hearing Officer Susan Cochran, which reportedly incorporated input from Committee consultant Linda Bond. I was not made aware of any specific language or suggestions provided by Ms. Bond. The final iteration of the draft document was posted in Energy Commission Docket 97-AFC-01C with TN # 212263 and entitled "Notice of August 11, 2016 Committee Status Conference and Related Orders."
8. On July 1, 2016, I received a written communication from Energy Commission Hearing Officer Cochran, with an attached draft document, all of which is confidential attorney client privileged communication and attorney work product, which reportedly incorporated input from Committee consultant Linda Bond. The final iteration of the draft document was posted in Energy Commission Docket 97-AFC-01C with TN # 212263 and entitled "Notice of August 11, 2016 Committee Status Conference and Related Orders."
9. On July 8, 2016, I received a written communication from Energy Commission Hearing Officer Cochran, with an attached draft document for my approval, all of which is confidential attorney client privileged communication and attorney work product, which reportedly incorporated input from Committee consultant Linda Bond.

The final iteration of the draft document was posted in Energy Commission Docket 97-AFC-01C with TN # 212262 and entitled "Committee Orders Regarding the Scope of Future Proceedings (Scoping Order)."

10. On August 09, 2016, I received a written communication from Energy Commission Hearing Officer Susan Cochran, all of which is confidential attorney client privileged communication and attorney work product except for the following statement recounting input from Committee consultant Linda Bond:

"Based on input from Linda Bond, it appears unlikely that a water balance analysis (as proposed by CDFW) would be able to predict the amount of recycled water HDPP could use without adversely impacting the Transition Zone. However, Linda does think that it would be possible to protect the habitat by developing an effective Condition of Certification (COC), as suggested by CDFW, but based on real-time monitoring triggers.

- a. If it can be established that groundwater monitoring wells in the Transition Zone are an accurate indicator of habitat conditions and recycled water discharges, a COC could combine real-time monitoring of groundwater within the Transition Zone with a modeling assessment of the project-specific incremental impact of HDPP diversion of recycled water and contain triggers for ceasing any diversion of recycled water to the project. The modeling assessment would require the development of a simple model of the Transition Zone that would be similar to the HDPP banking model of the Alto Subarea.
- b. Another alternative would be to condition HDPP's diversion of recycled water on the combined, measured amount of base flow and recycled water discharge, monitored on a monthly basis. The total amount would be based on the current requirement identified by CDFW (for example, 23,000 AFY). CDFW would identify the specific monthly requirement and if flows were in excess of this amount, HDPP could divert. We could also include a provision for CDFW to update its requirements every 5 years (or so)."

11. On August 11, 2016, during the closed session portion of the Committee conference, I received the following non-privileged oral communication from either Energy Commission legal counsel Caryn Holmes or Committee consultant Linda Bond: monitoring will tell how quickly changes to ground water will impact the river and the model is interested in how fast this happens.
12. On August 15, 2016, I received a written communication from Hearing Officer Susan Cochran with an attached draft document for my approval, all of which are confidential attorney client privileged communications and attorney work product, which reportedly incorporate input from Committee consultant Linda Bond. The final

iteration of the draft document was posted in Energy Commission Docket 97-AFC-01C with TN # 212860 as a Memorandum from Hearing Officer Cochran with the subject "Committee Conference: Technical Expert Discussion and Date Availability."

Dated: November 15, 2016, at Sacramento, California.

ORIGINAL SIGNED BY

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KAREN DOUGLAS  
Commissioner and Presiding Member  
High Desert Amendment Committee



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**Docket No. 97-AFC-01C**

**ASSOCIATE MEMBER'S  
DISCLOSURE OF COMMUNICATIONS<sup>1</sup>**

Based on my best recollection, pursuant to the June 1, 2016, Memorandum issued by Hearing Officer Susan Cochran and entitled "Past Participation of Certain Committee Advisers in Previous High Desert Proceedings," I give notice of the following communications I received and make them part of the record of this proceeding:

1. On May 23, 2016, during the closed session portion of the Committee conference, I received an oral communication from Committee consultant Linda Bond, in which she explained the complexity of the Mojave Water Basin, how the water flows within it, how long-banked water remains in a water bank, and how long it might take for water to flow from one place to another within the Mojave Water Basin. Ms. Bond also suggested questions for the Committee to ask the parties regarding potential impacts that might occur from a change in the source of water for the High Desert Power Plant. I do not recall Ms. Bond's suggested questions.
2. On May 23, 2016, during the closed session portion of the Committee conference, I received an oral communication from Energy Commission legal counsel Caryn Holmes regarding interim relief, in which she stated the need for more information about percolation and the rate and location of injection and take out.
3. On June 2, 2016, during the closed session portion of the Committee conference, I received an oral communication from Committee consultant Linda Bond, in which she explained the capabilities and limits of the FEMFLOW3D model she developed in a prior proceeding before the Energy Commission involving the High Desert power plant project. Ms. Bond indicated that the model was developed specifically to analyze how the water use at the High Desert Power Plant may impact water flows to the riparian habitat near the plant. She also indicated that the model cannot provide information about water flows throughout the Mojave Water Basin and that

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the model could be updated to provide information about the change proposed in water use at the High Desert Power Plant. Ms. Bond suggested that the various water modelers from each of the parties should get together to discuss the model.

4. On June 17, 2016, I received a written communication from Energy Commission Hearing Officer Susan Cochran, with two attached draft documents for my approval, all of which are confidential attorney client privileged communications and attorney work product, which reportedly incorporate input from Committee consultant Linda Bond. The final iterations of the draft documents were posted in Energy Commission Docket 97-AFC-01C as follows: TN # 212263 entitled "Notice of August 11, 2016 Committee Status Conference and Related Orders" and TN # 212262 entitled "Committee Orders Regarding the Scope of Future Proceedings (Scoping Order)."
5. On August 9, 2016, I received a written communication from Energy Commission Hearing Officer Susan Cochran, all of which is confidential attorney client privileged communication and attorney work product except for the following statement recounting input from Committee consultant Linda Bond:

"Based on input from Linda Bond, it appears unlikely that a water balance analysis (as proposed by CDFW) would be able to predict the amount of recycled water HDPP could use without adversely impacting the Transition Zone. However, Linda does think that it would be possible to protect the habitat by developing an effective Condition of Certification (COC), as suggested by CDFW, but based on real-time monitoring triggers.

- a. If it can be established that groundwater monitoring wells in the Transition Zone are an accurate indicator of habitat conditions and recycled water discharges, a COC could combine real-time monitoring of groundwater within the Transition Zone with a modeling assessment of the project-specific incremental impact of HDPP diversion of recycled water and contain triggers for ceasing any diversion of recycled water to the project. The modeling assessment would require the development of a simple model of the Transition Zone that would be similar to the HDPP banking model of the Alto Subarea.
- b. Another alternative would be to condition HDPP's diversion of recycled water on the combined, measured amount of base flow and recycled water discharge, monitored on a monthly basis. The total amount would be based on the current requirement identified by CDFW (for example, 23,000 AFY). CDFW would identify the specific monthly requirement and if flows were in excess of this amount, HDPP could divert. We could also include a provision for CDFW to update its requirements every 5 years (or so)."

6. On August 11, 2016, during the closed session portion of the Committee conference, I received the following non-privileged oral communication from either Energy Commission legal counsel Caryn Holmes or Committee consultant Linda Bond: monitoring will tell how quickly changes to ground water will impact the river and the model is interested in how fast this happens.
7. On August 15, 2016, I received a written communication from Hearing Officer Susan Cochran with an attached draft document for my approval, all of which are confidential attorney client privileged communications and attorney work product, which reportedly incorporate input from Committee consultant Linda Bond. The final iteration of the draft document was posted in Energy Commission Docket 97-AFC-01C with TN # 212860 as a Memorandum from Hearing Officer Cochran with the subject "Committee Conference: Technical Expert Discussion and Date Availability."

Dated: November 15, 2016, at Sacramento, California.

ORIGINAL SIGNED BY \_\_\_\_\_  
JANEA A. SCOTT  
Commissioner and Associate Member  
High Desert Amendment Committee