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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
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**PETITION TO AMEND THE:  
HIGH DESERT POWER PROJECT**

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

## **STAFF'S OPENING BRIEF ON CONDITION OF CERTIFICATION SOIL&WATER-6.d**

### **I. Introduction**

The California Energy Commission Committee (Committee) assigned to conduct proceedings on the Project Owner's Petition for Modification to Drought-Proof the High Desert Power Project (HDPP) filed "Orders After July 10, 2017, Committee Conference" on August 3, 2017. The Orders require Staff and Project Owner to answer the following question: "Has Condition of Certification SOIL&WATER-6.d been satisfied so that it is no longer relevant to the proceedings?" Staff concludes below that SOIL&WATER-6.d has not been satisfied and should not be removed from the conditions of certification applicable to the project.

### **II. Background**

The Commission Decision on the Application for Certification for the High Desert Power Project was issued on May 5, 2000. (Commission Decision, Docket No. 97-AFC-01, TN 32573.) Water Resources was "the most highly contested area in [the original] proceedings." (Commission Decision, pg. 208.) The Commission considered "extensive documentary, testimonial, and non-testimonial explanations of [parties'] disparate positions as they relate to water use within the basin, broader regional water issues and the use of imported [State Water Project] water in general, and the effects of the project upon future growth." (*Id.* at pg. 209.) This included a thorough consideration of the potential for the occurrence of growth inducing impacts from the project, for which Staff proposed Condition of Certification SOIL&WATER-6.d. (*Id.* at pg. 217-219.) As recited in the Decision, Staff's proposed condition would require "reevaluation of the groundwater study in thirty years should the project wish to continue operation."



(*Id.* at pg. 219.) Specifically, SOIL&WATER-6, Banked Water Available for Project Use, states the following:

*d. The project shall not operate for longer than thirty (30) years unless the Commission has approved an amendment to its license that specifically evaluates the water resources impacts of continued operation and imposes any mitigation necessary to ameliorate any identified impacts.*

(Commission Decision, pg. 235.) The Commission adopted Staff's proposed condition without any changes. (See Staff Testimony for February 18, 2000 Hearings on the High Desert Power Project, pg. 8).<sup>1</sup>

HDPP began commercial operation in 2003. The SOIL&WATER Conditions of Certification were amended in subsequent proceedings by Commission Orders issued in 2006, 2009, 2011, and 2014. On October 30, 2015, the current proceeding was initiated by Project Owner's Petition for Modification to Drought-Proof the High Desert Power Project. (Applicant's 2015 Petition, TN 206468.)<sup>2</sup> An order of interim relief was granted by the Energy Commission in June of 2016 to ensure HDPP's water supply during the continuation of the proceeding. (Commission Decision Granting Interim Relief, TN 212052.)

### **III. Discussion**

HDPP has not been in operation, or even licensed, for thirty years. While this fact alone supports the continued relevancy of SOIL&WATER-6.d, Staff also considered whether the Commission has approved an amendment to the license that specifically evaluates the water resource impacts of operation of the project beyond the original Decision's thirty-year operating limit. Staff's discussion follows.

a. 2006 Order Approving a Petition to Extend the Period to Inject Surface Water into the Groundwater for a Backup Water Supply.

On July 19, 2006, the Energy Commission issued an Order to amend Condition of Certification SOIL&WATER-4, Injection Schedule, "to extend the original 5-year requirement to inject a net 13,000 acre feet of surface water into the underground aquifer as a backup supply for project operations." (2006 Order, TN 37467.)<sup>3</sup> The

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<sup>1</sup> A link to a PDF of Staff's testimony is available on the High Desert Power Project Original Proceeding Legacy Documents Page at <http://www.energy.ca.gov/sitingcases/highdesert/documents/index.html>. A PDF of Staff's testimony is available at:

[http://www.energy.ca.gov/sitingcases/highdesert/documents/2000-02-14\\_STAFF\\_TESTIMONY.PDF](http://www.energy.ca.gov/sitingcases/highdesert/documents/2000-02-14_STAFF_TESTIMONY.PDF).

<sup>2</sup> Unless stated otherwise, all citations are to Docket No. 97-AFC-01C.

<sup>3</sup> A link to a PDF of the 2006 Commission Order is available on the High Desert Power Project Legacy Compliance Documents Page, at <http://www.energy.ca.gov/sitingcases/highdesert/compliance/index.html>.



Commission relied on Staff's analysis in finding that the proposed change would not result in any significant impact to public health and safety, or the environment. (2006 Staff Analysis, TN 37033.)<sup>4</sup>

Staff's analysis focused on two issues: (1) whether a revised banking schedule would result in any potentially significant impacts that are substantially different than those impacts caused by the original five-year schedule adopted in the conditions of certification; and (2) whether the water banking schedule extension was feasible. (2006 Staff Analysis, pg. 4.) The proposed amendment did not propose a change to the source of water, but merely reflected new information regarding water quality limitations of the project's operation. (*Id.* at pg. 7.) Staff concluded that "extending the period of time HDPP takes to establish the groundwater bank would not diminish the effectiveness of the water bank," and, therefore, "would not cause significant impacts that were substantially different than those caused by the original five-year schedule evaluated during the certification process." (*Id.* at pg. 12.) Staff's analysis did not include any additional evaluation of water resources impacts beyond those contained in the Commission's 2000 Decision. Instead, Staff proposed a schedule extension of fifteen years, well within the originally contemplated thirty-year operational period from the date of licensure. (*Ibid.*) The 2006 Order based on Staff's analysis does not contain the evaluation necessary to render SOIL&WATER-6.d irrelevant.

b. 2009 Order Approving a Petition to Modify Soil and Water Conditions Relating to Use of Recycled Water for Project Cooling.

On November 18, 2009, the Energy Commission approved modifications to SOIL&WATER-1 to remove the prohibition of recycled water use for project cooling and require a study to determine the feasibility of converting to up to 100 percent recycled water use and modifications to SOIL&WATER-4 to eliminate the water banking schedule. (2009 Order, TN 54277.) The Energy Commission also approved the addition of SOIL&WATER-20 and -21, to require the Project Owner to enter into an agreement with the City of Victorville to supply recycled water and to require the Project Owner to install and maintain metering devices to record the volume of recycled water used by the project. (*Id.*)

In approving the amendment, the Energy Commission relied on Staff's recycled water analysis filed in September 2009. (2009 Staff Analysis, TN 53500.) Staff's analysis did not include an evaluation of potential water resource impacts. (Staff's Rebuttal to

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A PDF of the Order is available at: [http://www.energy.ca.gov/sitingcases/highdesert/compliance/2006-07-21\\_HDPP\\_ORDER.PDF](http://www.energy.ca.gov/sitingcases/highdesert/compliance/2006-07-21_HDPP_ORDER.PDF).

<sup>4</sup> A link to a PDF of Staff's 2006 analysis is available on the High Desert Power Project Legacy Compliance Documents Page. A PDF of Staff's analysis is available at: [http://www.energy.ca.gov/sitingcases/highdesert/compliance/2006-05-30\\_NOTICE\\_HDPP\\_ABS.PDF](http://www.energy.ca.gov/sitingcases/highdesert/compliance/2006-05-30_NOTICE_HDPP_ABS.PDF).



CDFW's Opening Testimony, TN 210648, pg. 4-5.) Instead, Staff referred to the 2003 Memorandum of Understanding (MOU) between the California Department of Fish and Game and the Victor Valley Wastewater Reclamation Authority (VWVRA),<sup>5</sup> which "specifies discharge requirements that VWVRA must maintain to ensure there will be no impacts to riparian resources in the Mojave River." (2009 Staff Analysis, pg. 4; Staff's Rebuttal to CDFW's Opening Testimony, pg. 4-5.)

The California Department of Fish and Wildlife (CDFW) intervened in the proceeding in February 2016 and argued that reliance on the MOU was not adequate to ensure the maintenance and protection of riparian resources with the approval of greater diversions of recycled water to the project. (CDFW Opening Testimony, TN 210565.) In Opening Testimony filed on March 1, 2016, Kit Custis, CDFW witness, stated:

*The reduced recharge resulting from the 100% recycled water use at the HDPP will likely result in a long-term deficit in the groundwater in the Transition Zone. This deficit has the potential to lower groundwater levels and thereby impact the riparian habitat and wildlife in the Transition Zone. This deficit may occur even though the VWVRA discharge to the river meets the minimum required by the 2003 MOU. I have not seen an analysis done in the documents that I have reviewed in the docket that addresses the potential impacts from a reduction in recharge to the Transition Zone that would result from the HDPP using 100% recycled water.*

(CDFW Opening Testimony, pg. 11.) In response to CDFW's testimony, Staff affirmed that it had relied on the MOU negotiated between CDFW and VWVRA in their 2009 analysis and was unaware the MOU may be insufficient to manage recycled water discharges to protect riparian habitat. (Staff's Rebuttal to CDFW's Opening Testimony, pg. 4-8.) The MOU regulates how much recycled water must continue to discharge to the Mojave River, but does not contain a broader analysis of water resource impacts for all the project's water supplies. Although CDFW later completed a study of the diversion of recycled water to be used for project operations (CDFW study 2016, TN 214837), Staff determined that the methodology was inadequate to support the study's conclusions. The Energy Commission's 2009 Order, therefore, is not a reflection of a complete analysis of potential impacts and cannot be used to justify the removal of Condition of Certification SOIL&WATER-6.d.

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<sup>5</sup> TN 210503 contains a complete copy of the MOU.



c. 2011 Order Approving Petition to Modify Soil and Water Condition Relating to Submittal Date for Completion of a Reclaimed Water Feasibility Study.

On November 2, 2011, the Energy Commission approved Project Owner's petition to extend the date of the requested recycled water feasibility study. (2011 Order, TN 62746, pg. 1.) Due to delays in delivery of recycled water from the City of Victorville and the need to test the project's ability to use recycled water, the study period was extended from December 31, 2011 to November 1, 2013. (*Id.*) The Energy Commission adopted Staff's recommendation and approved an amendment to SOIL&WATER-1 to extend the submission date of the final feasibility report. (*Id.* at pg. 2.)

In its analysis, Staff discussed the need for Project Owner to prolong the feasibility study over a period of several seasons to ensure that variable conditions in terms of water demand and quality were studied. (2011 Staff Analysis, TN 62362, pg. 2-4.) The project started receiving and using recycled water under the 2009 amendment to the license. In this proceeding, there were no proposed changes to the nature or source of the water to be used by Project Owner. (*Id.* at pg. 6.) Staff did not re-evaluate impacts of recycled water use and, therefore, did not include a discussion of potential water resources impacts as required by SOIL&WATER-6.d.

d. 2014 Order Approving Petition to Amend to Allow HDPP to Use Alternative Water Supplies.

On September 10, 2014, the Energy Commission approved amendments to SOIL&WATER-1 to require that recycled water be used to the maximum extent feasible, to temporarily allow the use of groundwater from the adjudicated Mojave River Basin as an emergency backup source, to monitor use of water sources, and to submit a Petition to Amend by November 1, 2015 to "drought-proof" the project going forward. (2014 Order, TN 203108, pg. 3-6.) Staff's analysis, which served as the basis for the Commission's Order, rejected Project Owner's request for the use of groundwater in perpetuity. Instead, Staff recommended temporary approval of groundwater use, due to the growing unpredictability of the quality and quantities of State Water Project Water delivered to HDPP during the persistent, statewide drought. (2014 Staff Analysis, TN 203003, pg. 11-12.)

Staff's analysis weighs the policy considerations for and against allocating groundwater to HDPP. Staff considered State law and policy, which disfavors the use of potable water for nonpotable uses, and considered the risk that HDPP would have to substantially reduce operations or shut down without a stable source of backup water. (2014 Staff Analysis, pg. 12.) Staff concluded that "there *may be* circumstances under which limited use of [Mojave River Basin] groundwater as a backup may be justified and



would not result in significant impacts.” (*Ibid.*, italics added.) Without an updated accounting since the 2000 Decision of what these impacts may be or at what threshold they become significant, Staff recommended a limited 2-year, 2,000 acre-foot allotment of groundwater for HDPP. (*Ibid.*) Staff stated that the drought conditions warrant such backup groundwater supplies. (*Id.* at pg. 15.) Staff did not offer a long-term water supply solution, but continued to press the Project Owner to implement drought-proofing measures. (*Id.* at pg. 13.) Staff’s recommendation to the Commission was based on unique circumstances—not an analysis of water resources impacts after thirty years of operation—which have no bearing in the current Committee’s consideration of whether SOIL&WATER-6.d has been satisfied.

e. 2016 Commission Decision Granting Interim Relief to Drought-Proof the Facility.

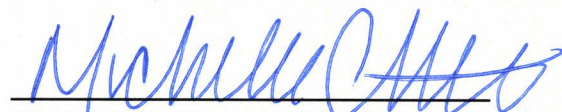
The Committee issued an Order on June 10, 2016 granting interim relief on the Project Owner’s petition allowing percolation as a water banking option, but no evaluation of water resources impacts was completed, because the Committee found that the proceeding was exempted from the California Environmental Quality Act and title 20, section 1769 of the California Code of Regulations under Executive Order B-29-15. (2016 Order, TN 212052.) The Committee explicitly exempted the amendment proceeding from the relevant impact analysis, and, therefore, the 2016 Order does not contain the requisite analysis to justify the deletion of SOIL&WATER-6.d.

#### **IV. Conclusion**

Condition of Certification SOIL&WATER-6.d requires that the Energy Commission approve an amendment that specifically evaluates water resource impacts of operation beyond thirty years, or, otherwise, cease operation of the project. The amendment decisions discussed above repeatedly granted relief requested by Project Owner; unfortunately, this made the project vulnerable to the effects of a multi-year drought, because the time to fulfill the water banking requirement was repeatedly delayed. However, none of the amendments addressed extension of project operations and supplies beyond thirty years in the future. SOIL&WATER-6.d remains applicable to the project and should not be removed from conditions of the project’s license.

Date: August 25, 2017

Respectfully submitted,



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