

STATE OF CALIFORNIA
California Energy Commission

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In the Matter of)
Application for Certification for the) Application No. 06-AFC-10
Starwood Power-Midway, LLC)
Peaking Project)

Applicant's Additional Comments to PMPD
Regarding Conformance with CEQA

As discussed extensively in Applicant's previous comments to the PMPD, Starwood is proposing to use agricultural wastewater collected from backwashing sand filled water filters located throughout the farmers fields into a larger pond for its process water use. Even without mitigation, this water source conforms to the dictates of the California Environmental Quality Act ("CEQA"). However, the PMPD asserts that use of the agricultural backwash water would result in a CEQA impact. The PMPD states:

"to avoid a CEQA-based impact to California's interest in conserving high-quality water resources over the life of the project, the Commission should require the project to use the lowest quality water reasonably available, absent a compelling showing to do differently." (PMPD, P. 220)

The use of agricultural wastewater cannot be a CEQA impact – as staff agrees there would be no significant environmental impacts from project construction and operation. There can be no CEQA-based impact from the creation of high-quality water from low-quality water. The water source complies with all LORS. There are no CEQA impacts, but it is informative to review the Commission's obligations under CEQA.

1. CEQA Requirements.

CEQA requires that the agency preparing the environmental analysis, include in its analysis document, a "consideration and discussion of mitigation measures proposed to minimize significant effects." (14 CCR 15126.4) Section (a) (1) requires that "An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy."

As Staff recognizes, there would be no significant adverse impacts associated with the agricultural backwash proposal or either of the two alternatives discussed in the Staff FSA (FSA page 4.9.19). Logically, then there should be no mitigation required, and the agricultural backwash water should be approved without restrictions.

2. CEC Implementation of CEQA.

The CEC has a Certified Regulatory Program and produces, as its Decision, a document that is considered the functional equivalent of CEQA. The PMPD is the base document for the Commission decision, which must contain analyses and conclusions appropriate with CEQA requirements. The PMPD must contain:

(b) “necessary modifications, mitigation measures, conditions, or other specific provisions relating to the manner in which the proposed facilities are to be designed, sited and operated in order to:

- (1) Protect environmental quality
- (2) Assure safe and reliable operation of the facility, and
- (3) Comply with applicable standards, ordinances, regulations or laws.”

The agricultural backwash filter water would actually result in fewer environmental impacts (See Comments to PMPD on emissions from 2000 truck loads of RO wastewater and disposal of potentially hazardous RO waste residue). Either alternative would result in safe and reliable operation of the facility and both alternatives are in compliance with LORS. Therefore, the CEC guidelines also lead to the approval of the agricultural backwash alternative without the necessity for any mitigation measures.

3. Appropriate Mitigation, if required.

If, despite evidence to the contrary, the Committee still feels that mitigation is required or that policy considerations, can be used to force a modification to the project as proposed by the Applicant, the Starwood project still complies

(a) The Starwood project would use, on average, 14 acre-feet of agricultural wastewater per year. Under its proposal, a roughly equivalent amount would be collected for agricultural use, thereby completely mitigating its own use.

(b) Although the PMPD states that the Applicant is unwilling to donate money to Westlands for its conservation efforts, the applicant has stated that the amount suggested by Staff is out of proportion to the amount of water to be used by the facility and it would make no sense to commit to this contribution without knowing if the Commission will approve the use of agricultural backwash water.

Staff stated, in the Supplemental Testimony of Dick Anderson and Somer Goulet

“Staff believes, if the high quality backwash water is used for cooling purposes by the power plant, the applicant should compensate for its use by contributing to a conservation program to conserve as much fresh water as would be used for cooling purposes by the Starwood project.” (Supp testimony. Page 1)

We agree, as the contract between Starwood and the landowner calls for a water payment in excess of the market rate to compensate the landowner for the water and provide an annuity to pay for the capital to install additional collection piping. The higher water fee funds a conservation activity by paying for the water collection piping over time. This total fee is in excess of \$50,000 per year. Again, the farmer will collect 30 AF from the new piping system and the project will use 14 AF.

To the extent the project uses less water than expected the additional unused water will be available for Baker Farms agricultural purposes. If the project requires more water, then additional piping will be installed to access additional irrigation filters. Over any two-year period the project commits to collect twice the amount of backwash filter water as it has used to operate the power plant, hence fully mitigating its use.

Respectfully submitted: December 31, 2007

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Suggested Changes to PMPD

- P.3 Water Resources “The project will use ~~the most degraded water reasonably available,~~ **either agricultural backwash water or** low-quality groundwater from the existing CalPeak well.”
- p. 213 Water Supply Policy “To assure the conservation of high-quality ~~potable~~ water, the project shall use **either agricultural backwash water or the** degraded CalPeak groundwater for plant operations such as inlet air cooling and water injection for NO_x control. The project would use bottled potable water for personnel use.

MITIGATION

The project owner shall use **either agricultural backwash water or the** Degraded CalPeak ground water for facility operation ~~to avoid potential impacts to aqueduct quality water supplies.~~

- p. 220 Water Resources-General The Commission renders its siting decisions in a public interest context where conservation of high-quality California water is increasingly more critical particularly in light on global climate change as it affects the meteorology of our region together with increasing water demand. Thus, to avoid a CEQA-based impact to California’s interest in conserving high-quality water resources *over the life of the project*, the Commission should require the project to ~~use the lowest quality water reasonably available, absent a compelling showing to do differently. Applicant has made no such showing in this case, nor has it attempted to do so. Applicant, therefore must use the degraded CalPeak well water, rather than the aqueduct derived high quality Baker Farms filter backwash water~~ **use water not appropriate for domestic, industrial, agricultural or other competing water needs, or to put forth a plan that would increase the amount of high-quality water available for the state’s uses.**

By letter of November 19, 2007 the Westlands Water District expresses its Opposition to the use of the filter backwash water, stating that “such water should be used for irrigation or other uses that are incidental to agricultural production.” Our findings and the Westlands opinion are in accord.

The Energy Commission staff testimony, revised from the FSA, would

allow the use of the Baker Farms backwash water if the Applicant were to pay money to the Westlands Water District which would in turn invest in high-quality irrigation water conservation programs. The concept is that the use of high-quality water at the power plant would be offset by irrigation water-saving technologies and practices so that the net effect on the supply is zero. (Supp. Testimony Anderson/Goulet, pp.2-6) The Applicant declines to pay the financial mitigation **amount** suggested by Staff, believing that **its contribution** to the recovery and beneficial use of the filter backwash water, **and the net gain of approximately 16 AFY of high-quality water** is, in effect, a comparable conservation effort. **We agree. Applicant testified that the agricultural backwash filter water would not be collected for re-use without the financial contribution of the Applicant, and this backwash water collection project is similar to projects funded by the Westlands Conservation fund (RT 11/19/07 RT 76:5 – 77:17)**

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~~While there are circumstances which warrant the use of water conservation programs, by applying CEQA here, the Commission finds that the use of the Baker Farms backwash water should not be allowed, even if packaged with a water conservation offset plan with the Westlands Water District. Since lower quality water is available, it is not in the public interest to potentially vest a right to use the higher quality aqueduct derived water for the 30 year or more (AFC 3-48) life of the project based on the assumption, which is not supported by any evidence in the record, that such high quality water will continue to be available for the next 30 years.~~

Water conservation programs that result in a net increase in high-quality water available to the public are consistent with state policy. Similarly, the use of lower quality aquifer water is consistent with state water policy.

This finding is, coincidentally, supported by the broader information before the Commission today (obtained in connection with the Commission's greenhouse gas reduction activities) that the supply of high-quality water will likely contract due to foreseeable climate conditions and that demand will increase. Thus, we reiterate our conclusion that ~~in the absence of a compelling showing, which has not been made in this case, the project must use the lowest quality water reasonably available, which is the CalPeak degraded water.~~ **the use of CalPeak water is acceptable because there is little or no domestic, industrial or agricultural use for the water, or agricultural backwash water, coupled with a central pond and filter system that will result in a net increase in high-quality water available for agricultural purposes.**

MITIGATION

The Project owner shall use **either agricultural backwash water**

~~or the degraded CalPeak ground water for facility operation. To avoid potential impacts to aqueduct quality water supplies.~~

p. 223 CONDITION OF CERTIFICATION

WATER RESOURCES-1: Water used for project operation for process, sanitary and landscape irrigation purposes shall be **either agricultural backwash water or groundwater** from the upper semi-confined aquifer obtained from the adjacent CalPeak well. Water use shall not exceed the annual water use limit of 136 acre-feet without prior approval by the CPM. The project owner shall monitor and record the total water used on a monthly basis.

WATER RESOURCES-2: If the project owner elects to use Baker Farms backwash filter water, the owner must insure that it collects at least twice its usage of backwash filter water over a rolling two year period. The additional amount collected and unused by the owner will be available for use by Baker Farms for agricultural purposes.

Verification: Within 90 days following the start of construction the Applicant shall submit a Water Conservation and Development Report to the CPM. This report shall contain evidence that the backwash filter project is proceeding and shall give an approximate date when the infrastructure will be complete. After the project has achieved commercial operations, the SPP will measure and report quarterly on the total amount of backwash filter water collected from Baker Farms and the amount of water used by the SPP demonstrating collection is twice its usage over a two year rolling period.

p. 263 Water
Availability

The SPP will obtain service water from **either Baker Farms agricultural backwash filter water or** an existing well that currently serves the nearby CalPeak Panoche power plant. This water will be used for plant service Water, and will be treated by reverse osmosis and demineralization and used for inlet air fogging and turbine combustion water injection. This source, combined with the onsite storage capacity, yields sufficient likelihood of a reliable supply of water

p. 265 Water Availability

The SPP will obtain service water **through either (a) a 2 mile, 3 inch, Pipeline from a central pond on Baker Farms, or (b)** via a 3-inch diameter, 1,200 foot long pipeline from an existing well that serves the nearby CalPeak Panoche power plant. This water will be used for plant service water, and will be treated by reverse osmosis and demineralization and used for inlet air fogging and turbine combustion water injection. Safety and sanitary water (showers, safety showers and eyewash stations) will be provided by self-contained water processing units. Potable water for drinking will be provided by a bottled water supplier (AFC Sec. 1.2, 1.2.4, 3.4.1, 3.4.4, 3.4.5.1.1, 3.4.9, 3.4.9.1.2, 3.11.7.2, 4.6.1). Two 75,000 gallon demineralized water storage tanks and a 75,000 gallon raw water fire water storage tank will allow the plant to continue operating for several hours in case of an interruption in water supply. (AFC Sec 3.4.1, 3.4.2, 3.4.9, 3.11.5.4). We find that ~~this source~~**-these sources**, combined with the onsite storage capacity, yields sufficient likelihood of a reliable supply of water.