

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
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May 17, 2010

Mr. Glenn Mount
General Manager
Modesto Irrigation District
P.O. Box 4060
Modesto, California 95352

Dear Mr. Mount:

This letter is to inform you that as a result of your communications to the Energy Commission's power plant siting compliance staff dated September 17, 2008, and December 5, 2008, and information provided to my staff by Jeffery Harris on July 8, 2009, concerning FMC property, I have determined that, as of this date, Modesto Irrigation District (MID) has fully complied with the language of **WATER-5**, contained in the September 19, 2001, Commission approval of MID's Small Power Plant Exemption (SPPE) to construct the Woodland II Power Plant.

In addition, on January 19, 2010, Energy Commission staff met with MID representatives and reached a mutually agreeable approach toward enforcing **WATER-5** in the future. The language memorializing that approach was included as an attachment to a letter from Jeffery Harris to Hearing Officer Gary Fay, dated February 4, 2010. I have attached the language of **REVISED WATER-5** to this letter. I have also directed the Compliance Unit staff that henceforth, the attached revised language will be used by both the Commission Compliance Unit and by MID in lieu of the original **WATER-5** language.

Sincerely,

MELISSA JONES
Executive Director

Attachment

Cc: Chairman Karen Douglas, Siting Committee
Commissioner Robert Weisenmiller, Siting Committee
Chris Marxen, Compliance Unit
Kevin Bell, Staff Counsel
Jeffery Harris, Ellison, Schneider & Harris LLP

REVISED WATER-5

Water-5: California Water Code Section 13550 states that the use of potable water for nonpotable uses (such as power plant cooling) is considered an unreasonable use of water if recycled water of adequate quality and quantity is available as defined in that Section. Commission water policy guidance provides that potable water is to be used only when other, non-potable sources would be environmentally undesirable or economically unsound. The use of potable water at WGS2 shall be discontinued if recycled water is available as defined in Section 13550. The general intent of this condition is to have WGS2 power plant owner use recycled water if it is available for the operation of this power plant.

The project owner shall provide in its annual compliance report, the status of Modesto Regional Water Treatment Plant (MRWTP) Title 22 recycled water availability and the availability of Title 22 recycled water from any other publicly owned treatment works within the District's irrigation boundaries.

Within 30 days of receipt of a Notice of Preparation prepared pursuant to 14 CCR §15802 for a Title 22 recycled water facility at MRWTP or any other publicly-owned treatment works within the District's irrigation boundaries, whichever occurs first, the Project Owner shall notify the CPM of the District's intent to evaluate the availability of recycled water for use at the WGS2. Within 90 days after the certified EIR and approval for any such facility is final and no longer subject to administrative or judicial review, the Project Owner shall evaluate the availability of recycled water for use at the WGS2 power plant project and provide the CPM with the results of that analysis (the "Availability Analysis").

If the Availability Analysis finds (1) that recycled water is available as defined by California Water Code §13550, (2) environmentally desirable (as determined in the certified EIR and approval for the water source), and (3) economically sound and feasible as determined by District's Board of Directors, recycled water shall be used for the WGS2 power plant. Regardless, the issuance of the Availability Analysis shall satisfy the District's obligations pursuant to this Condition, and the District's obligations under this Condition shall terminate with delivery of the Availability Analysis.

Verification: The Project Owner shall in its annual compliance report, provide the status of Title 22 recycled water availability at the MRTWP or any other publicly-owned treatment works within the District's irrigation boundaries.

Upon receipt of a Notice of Preparation for the Title 22 recycled water facility at the MRWTP or any other publicly owned treatment works within the District's irrigation boundaries, whichever comes first, the Project Owner shall notify the CPM of the District's intent to evaluate the availability of recycled water for use at the WGS2 power

plant project. Within 90 days after the certified EIR and approval for any such facility is final and no longer subject to administrative or judicial review, the project owner shall deliver the Availability Analysis to the CPM.

The Availability Analysis shall be based upon the provisions of Water Code §13550, which include:

- (1) The source of recycled water is of adequate quality and is available for use. In determining adequate quality, the District's Board shall consider all relevant factors, including, but not limited to, food and employee safety, and level and types of specific constituents in the recycled water affecting these uses, on a user-by-user basis. In addition, the District's Board shall consider the effect of the use of recycled water in lieu of potable water on the generation of hazardous waste and on the quality of wastewater discharges subject to regional, state, or federal permits.
- (2) The reasonable cost of furnishing recycled water to the user. In determining reasonable cost, the District's Board shall consider all relevant factors, including, but not limited to, the present and projected costs of supplying, delivering, and treating potable domestic water for these uses and the present and projected costs of supplying and delivering recycled water for these uses, and shall find that the cost of supplying the treated recycled water is comparable to, or less than, the cost of supplying potable domestic water.
- (3) The use of recycled water from the proposed source will not be detrimental to public health, as evidenced by the concurrence of the State Department of Health Services.
- (4) The use of the recycled water will not adversely affect downstream water rights, will not degrade water quality, and is determined not to be injurious to plant life, fish and wildlife.

The District's Availability Analysis shall include (1) findings as to whether recycled water is available as defined by California Water Code §13550, (2) the environmental desirability of the use of recycled water as determined in the certified EIR and approval for the water source, and (3) whether the use of recycled water is economically sound and feasible as determined by District's Board of Directors.

If the Availability Analysis determines that recycled water is available for use at the WGS2, ninety days prior to the time the project owner plans to begin use recycled water, the project owner shall submit a report to the CPM identifying the source, quality, and volume of recycled water to be used, and the start date for the use of recycled water. If the Availability Analysis determines that Title 22 recycled water is not available for use by the power plant, the project owner shall no longer be required to report on the status of Title 22 recycled water in its annual compliance report nor be required to provide any future Availability Analyses, and the District's obligations under this Condition shall terminate.

Until such time as the Availability Report has been provided pursuant to this Condition, the project owner's annual compliance report shall the following set of questions and answers:

1. Has a Notice of Preparation been issued pursuant to Public Resources Code §15082, for a Title 22 recycled water facility at the Modesto Regional Wastewater Treatment Plant or any other publicly owned treatment works within the District's irrigation boundaries?
 - a. Yes _____
 - b. No _____
2. If no, please provide a brief status of the Title 22 recycled water facility at the Modesto Regional Wastewater Treatment Plant and any other publicly owned treatment works within the District's irrigation boundaries.
3. If yes, please provide, or document that you have already provided, the Availability Analysis related to the use of recycled water at the WGS2 within 90 days after the certified EIR and approval for any such facility is final and no longer subject to administrative or judicial review.