

DOCKET

09-AFC-4

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California Energy Commission
Docket Unit
1516 Ninth Street
Sacramento, CA 95814-5512

Subject: **JOINT STIPULATION BETWEEN CCGS LLC AND STAFF – SOIL &
WATER RESOURCES AND BIOLOGICAL RESOURCES
OAKLEY GENERATING STATION
DOCKET NO. (09-AFC-4)**

Enclosed for filing with the California Energy Commission is the original of Contra Costa Generating Station LLC's Exhibit 62, **JOINT STIPULATION BETWEEN CCGS LLC AND STAFF – SOIL & WATER RESOURCES AND BIOLOGICAL RESOURCES**, for the Oakley Generating Station (09-AFC-4).

Sincerely,



Marie Mills

Scott A. Galati
GALATIBLEK LLP
455 Capitol Mall
Suite 350
Sacramento, CA 95814
(916) 441-6575

STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

Application for Certification for the
OAKLEY GENERATING STATION

DOCKET NO: 09-AFC-4

**JOINT STIPULATION BETWEEN
CCGS LLC AND STAFF – SOIL &
WATER RESOURCES AND
BIOLOGICAL RESOURCES**

INTRODUCTION

Contra Costa Generating Station LLC (CCGS LLC), a wholly owned subsidiary of Radback Energy Inc. and California Energy Commission (CEC) Staff have entered into the following joint stipulation relating to the topics of Soil & Water Resources and Biological Resources for the Oakley Generating Station (OGS) AFC Proceeding.

SUMMARY OF AGREEMENT

In an effort to minimize disputes and the amount of time required to adjudicate them at the request of CCGS LLC and Staff, on Friday, March 15, 2011 the Committee suspended the evidentiary hearing and ordered the parties to discuss disputed issues in a Workshop. The parties conducted the workshop and with the assistance of Mr. Tom Williams of the Ironhouse Sanitation District resolved the disputes. This Stipulation contains the full resolution of all disputes between CCGS LLC and Staff in the topic areas of Soil & Water Resources and Biological Resources.

SOIL & WATER RESOURCES

SOIL&WATER-4: Freshwater supplied by the potable connection with Diablo Water District (DWD) shall be used as the primary water supply for project operation for process, sanitary, and landscape irrigation purposes. Freshwater use shall not exceed the annual water-use limit of 250 acre-feet per year.

Following commencement of project operations and within eighteen (18) months of all of the following conditions being met, and assuming the CEC approves a project amendment allowing the project to use recycled water and dispose of the associated high TDS wastewater, the primary water supply for project operations including all process and landscape irrigation shall be exclusively recycled water provided by Ironhouse Sanitary District (ISD) or other entity that can provide recycled water with the same water quality as ISD as approved by the CPM:

- ISD or other entity as approved by the CPM has constructed a recycled water pipeline passing within 1 mile of the Oakley Generating Station and capable of delivering a minimum of 409 gpm of disinfected tertiary recycled water meeting Title 22 requirements to the Oakley Generating Station.
- ISD or other entity as approved by the CPM has constructed a high TDS wastewater pipeline passing within 1 mile of the Oakley Generating Station and capable of accepting a minimum of 200 gpm of wastewater having TDS and concentrations of individual constituents of up to four (4) times the TDS and concentrations of individual constituents of the recycled water supplied to the Oakley Generating Station.
- ISD or other entity as approved by the CPM has acquired the necessary easements/rights of way to extend the recycled water and high TDS wastewater pipelines to the Oakley Generating Station.
- ISD or other entity as approved by the CPM has established rates and charges for recycled water that are and will remain no greater than those of Diablo Water District for potable water.
- ISD or other entity as approved by the CPM has established rates and charges for the discharge of high TDS wastewater that are and will remain no greater than those of ISD for discharge of sanitary wastewater.

- ISD or other entity as approved by the CPM will charge no additional fees for connection to the recycled water and high TDS discharge pipelines beyond those fees paid by the project for the initial connection to the ISD sanitary sewer system.
- DWD, and ISD if another entity provides recycled water, have agreed to waive any claims regarding duplication of service with respect to the use of recycled water at the Oakley Generating Station.

Within six (6) months of all of the criteria outlined being met, the project owner shall submit an amendment pursuant to California Code of Regulations Title 20 Section 1769(a) proposing project use of recycled water.

Use of recycled water shall be limited to 280 acre-feet per year (or as determined in review of the project amendment). After the project switches to the primary recycled water supply, the backup water supply for project operation for process and landscape irrigation shall be freshwater provided by the potable connection with DWD. The use of freshwater from DWD for these purposes shall be limited to 25 acre-feet per year. The Project owner shall notify the CPM of any disruptions in the primary recycled water supply exceeding 24 hours. For any planned disruptions in the primary recycled water supply that will exceed 7 days, the Project owner shall obtain CPM approval on a water supply disruption plan that outlines the reasons and duration for the planned disruption, and the volume of secondary water that will be utilized during the planned disruption. Sanitary water shall be supplied by the potable connection with DWD. Use of groundwater other than that provided by DWD as a part of their supply is prohibited for operational uses.

Prior to using potable and recycled water for construction or operational uses, the project owner shall install and maintain metering devices as part of the water supply and distribution systems to monitor and record, in gallons per day, the total volume(s) of water supplied to OGS from DWD and ISD. Those metering devices shall be operational for the life of the project.

The project owner shall monitor and record the total water used on a monthly basis including recycled water from ISD and potable water from DWD. For calculating the annual water use, the term “year” will correspond to the date established for the annual compliance report (ACR) submittal. For the first year of operation, the project owner shall prepare an annual Water Use Summary, which will include the monthly range and monthly average of daily potable and recycled water usage in gallons per day, and total water used by the project on a monthly and annual basis in acre-feet. For subsequent years, the annual Water Use Summary shall also include the yearly range and yearly average water use by the project. The annual Water Use Summary shall be submitted to the CPM as part of the ACR.

Verification: At least sixty (60) days prior to commercial operation of OGS, the project owner shall submit to the CPM evidence that metering devices have been installed and are operational on the water supply and distribution systems. When the metering devices are serviced, tested and calibrated, the project owner shall provide a report summarizing these activities in the next annual compliance report. The project owner, in the annual compliance report, shall provide a Water Use Summary that states the source and quantity of potable and recycled water used on a monthly basis and on an annual basis in units of acre-feet. The project owner shall include in the annual compliance report information sufficient for the CPM to determine the status of the recycled water program being implemented by ISD and which criteria for use of recycled water have been met and what remains to be completed to satisfy the criteria for use of recycled water. Prior annual water use including yearly range and yearly average shall be reported in subsequent annual compliance reports (ACR).

SOIL&WATER-6: Upon project approval, the project owner shall develop and implement a Wetland E Monitoring and Adaptive Management Plan (Plan) (see **BIO-19**). The Plan shall include:

1. Monitoring of water levels within Mitigation Wetland E on a daily basis for at least one rainy season prior to construction, during construction, and during operations **until the CDFG and CPM agree that water level monitoring is no longer needed to establish that there is no adverse impact to Wetland E.** Water level monitoring shall demonstrate no adverse impacts to **Wetland E's function as wetland habitat due to changes in** ponding extent or duration as compared to pre-project conditions. ~~Adverse impacts to habitat resulting from changes in ponding extent, shall be determined by a decrease in daily water levels following similar rainfall events of 1-inch or greater or a decrease in average monthly water levels during the dry season. Adverse impacts to ponding duration shall be defined by an increase in the number of days recorded without ponding of greater than 30 days for years with similar annual rainfall.~~
2. ~~Water quality shall be sampled and analyzed quarterly. Samples shall be collected from the wetland pond and at the discharge point to Wetland E during the rainy season. Discharge samples shall be collected following rainfall events (0.5 inch or greater)~~ **the first three rainfall events of 0.5 inch or greater for each year of construction and the first five years of operation.** In addition, water quality sampling and analysis shall be required for the first three rainfall events of 0.5 inch or greater following a reported release of hazardous materials at the site. If sample analysis results exceed the Regional Water Quality Control Board (RWQCB) Benchmark Values and US Environmental Protection Agency (US EPA) Ambient Water Quality Criteria for Protection of Freshwater Aquatic Life during the first five years of operation or following a release of hazardous materials, water

quality sampling and analysis shall continue until three contiguous years of water quality analyses meet the RWQCB Benchmark Values and US EPA Water Quality Criteria. Sample analyses shall include tests for pH, Dissolved Oxygen, Total Suspended Solids, Specific Conductance, Oil & Grease, and metals (Arsenic, Chromium, Iron, Selenium, Lead, Mercury, etc.). Sample analysis results shall be compared to ~~Regional Water Quality Control Board (RWQCB)~~ Benchmark Values and ~~US Environmental Protection Agency (US EPA)~~ Ambient Water Quality Criteria for Protection of Freshwater Aquatic Life. If analysis results exceed RWQCB Benchmark values or US EPA Water Quality Criteria, contingency plans should be implemented to improve or augment the stormwater quality treatment Best Management Practices on site. The plan should describe the sampling and analysis methods proposed.

3. Contingency plans to address adverse impacts to **wetland habitat caused by changes in** the duration or extent of ponding or water quality in Wetland E **that are attributable to project operation**.
4. Identify the responsible parties and funding source(s) for the implementation of the Monitoring and Adaptive Management Plan for the life of the project.
5. Annual monitoring reports shall be submitted to the CPM for review and approval for the life of the project **or until the CPM determines reporting can be less frequent or eliminated**. If adverse impacts to the **functioning of Wetland E as wetland habitat**~~duration or extent of ponding or water quality~~ are documented, the annual monitoring report shall outline measures to be implemented to address the adverse impacts. The annual monitoring report shall provide an update on the implementation of any contingency measures identified in previous annual monitoring reports.

Verification: At least 60 days prior to the start of any construction related ground disturbance, the project owner shall submit a copy of the Draft Wetland E Monitoring and Adaptive Management Plan to the Compliance Project Manager (CPM) for review and approval, and the ~~and~~ California Department of Fish and Game (DFG), and the Central Valley RWQCB (CV RWQCB) for review and comment. The CPM will determine the plan's acceptability. At least 15 days prior to the start of any construction related ground disturbance, the project owner shall provide the CPM with the final version of the Wetland E Monitoring and Adaptive Management Plan that has been reviewed and approved by the CPM, in consultation with DFG and the CV RWQCB.

The Wetland E Monitoring and Adaptive Management Plan shall be implemented prior to construction, including a minimum of one rainy season of pre-construction data collection. During construction, the project owner shall provide all monitoring data in the monthly compliance report on the effectiveness of the drainage, erosion and sediment control measures and the results of monitoring and maintenance activities. The project owner shall submit copies to the CPM of all correspondence between the project owner and DFG

and/or the CV RWQCB ~~and/or the CV RWQCB~~ regarding the Wetland E Monitoring and Adaptive Management.

The project owner shall submit annual reports to the CPM, ~~and the DFG~~, and the CV RWQCB detailing the results of water level monitoring and water quality sampling and analysis. The annual reports shall also document all maintenance activities implemented and compliance with all goals, objectives and performance standards in the Wetland E Monitoring and Adaptive Management Plan. The annual monitoring reports shall fully describe the status of the hydrology and water quality at Wetland E and any adaptive management measures implemented. Annual monitoring reports shall be submitted for review and approval annually within 30 days of the anniversary date of the commencement of habitat improvements for the life of the project.

BIOLOGICAL RESOURCES

BIO-19 The project owner shall develop and implement a Wetland E Monitoring and Adaptive Management Plan (Plan). The plan must include monitoring methods, planting design, responsible parties, long-term management and maintenance requirements, contingency plan, and details on the funding source. The plan must be developed by the project owner in coordination with the CPM and CDFG, consistent with the stated purposes of the 1997 conservation easement on the property. The Plan will include all proposed habitat improvements and enhancement goals, objectives and performance standards developed by the applicant in coordination with CDFG (CH2MHILL 2010k). Detailed baseline maps which show the current species composition or cover of wetland vegetation as well as current extent of noxious weed cover as determined by standard vegetation sampling methods will be included in the Plan. Sampling methods would also be fully described in the Plan.

For the CPM to deem the enhancements successful:

1. The site will have 75 percent survivorship of planted coast live oak by year 5.
2. Surviving trees shall show leader growth for 2 out of the last 3 years of monitoring.
3. The site will have 75 percent survivorship of planted upland dune shrubs by year 5.
4. The native upland herbaceous species shall be established without reseeding for 2 out of the last 3 years of monitoring.
5. The site will not require watering or maintenance other than weed control after year 3.
6. The site shall not contain more than 5 percent invasive exotics (Cal-IPC rating High) after 5 years.

The project owner shall maintain wildlife habitat value and wildlife use of Wetland E. Any adverse impacts to wetland habitat caused by changes in the duration and extent of ponding or water quality will be addressed by contingency plans to be included in the Wetland E Monitoring and Adaptive Management Plan (see SOIL&WATER-6 for details). Any significant change in species composition or cover of wetland vegetation compared to pre-project conditions (based upon standard vegetation sampling techniques) shall maintain Wetland E as wetland habitat. Annual monitoring reports will be submitted for years 1, 2, 3, 4, and 5, with the first year beginning one year after the habitat improvements are implemented. If habitat improvements are not deemed successful after 5 years, the project owner will propose adaptive management measures developed in coordination with the CPM and CDFG to meet required goals, objectives, and performance standards. Annual monitoring reports shall be submitted to the CPM for review and approval for the life of the project.

For the CPM to deem this successful:

There shall be no ~~Any~~ significant change in the duration or extent of wetland ponding compared to pre-project conditions (see ~~SOIL&WATER-6~~ for details) shall be changes that are beneficial in terms of the functions and values of Wetland E as biological resources habitat.

1. ~~There shall be no Any significant change in species composition or cover of wetland vegetation compared to pre-project conditions (based upon standard vegetation sampling techniques)~~ shall be changes that are beneficial in terms of the functions and values of Wetland E as biological resources habitat.
2. ~~Annual monitoring reports will be submitted for years 1, 2, 3, 4, and 5, with the first year beginning one year after the habitat improvements are implemented. If habitat improvements are not deemed successful after 5 years, the project owner would propose adaptive management measures developed in coordination with CPM and CDFG to meet required goals, objectives and performance standards.~~

Verification: At least 60 days prior to the start of any construction-related ground disturbance the project owner shall submit a Draft Wetland E Monitoring and Adaptive Management Plan to the CPM for review and approval, and the California Department of Fish and Game (CDFG) and the CV RWQCB for review and comment.), and the Central Valley RWQCB (CV RWQCB). The CPM in consultation with CDFG and the CV RWQCB will determine the plan's acceptability. At least 15 days prior to the start of any construction-related ground disturbance, the project owner shall provide the CPM with the final version of the Wetland E Monitoring and Adaptive Management Plan that has been reviewed and approved by the CPM.

Habitat improvements shall be initiated no later than 12 months from the start of construction. Within 30 days after completion of project construction, the project

owner shall provide to the CPM for review and approval a report identifying which items of the Wetland E Monitoring and Adaptive Management Plan have been completed.

The project owner shall submit annual reports to the CPM, CDFG, and the CV RWQCB-describing planting, monitoring, and maintenance activities implemented as well as documentation of compliance with all goals, objectives and performance standards in the Wetland E Monitoring and Adaptive Management Plan. The reports shall fully describe the status of the habitat improvement at the Wetland E conservation area, and shall describe any adaptive management methods implemented. Annual monitoring reports will be submitted to the CPM for review and approval and to CDFG and CV RWQCB for review and comment for years 1, 2, 3, 4, and 5, with the first year beginning one year after the habitat improvements are implemented. The annual report for years 1, 2, 3, 4, and 5 shall be submitted within 30 days after the anniversary date of the commencement of habitat improvements. If after 5 years, habitat improvements are not deemed successful, the project owner **will** develop adaptive management measures in coordination with CPM and CDFG to meet required goals, objectives, and performance standards. **The project owner shall submit an addendum to the CPM for review and approval and to CDFG and CV RWQCB for review and comment prior to implementing adaptive management measures.** Annual monitoring reports shall be submitted as specified above within 30 days of the anniversary date of the commencement of habitat improvements for the life of the project.

The conditions of certification will ensure that the OGS will comply with all applicable laws, ordinances, regulations and standards (LORS) and will not result in significant impacts to biological resources.

STIPULATION

The undersigned hereby agree to the inclusion of Conditions of Certification **SOIL&WATER-4** and **-6** and **BIO-19** as outlined herein to replace those contained in the FSA and to delete Conditions of Certification **SOIL&WATER-8** and **-9** as a full settlement of all disputes relating to the topics of Soil & Water Resources and Biological Resources.

Dated: March 25, 2011

Agreed

/ original signed /

Scott A. Galati
Counsel to Contra Costa Generating Station, LLC

/ original signed /

Kevin W. Bell
Senior Staff Counsel, California Energy Commission



**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**

**APPLICATION FOR CERTIFICATION
FOR THE *OAKLEY GENERATING STATION***

**Docket No. 09-AFC-4
PROOF OF SERVICE
(Revised 3/21/2011)**

APPLICANT

Greg Lamberg, Sr. Vice President
RADBACK ENERGY
145 Town & Country Drive, #107
Danville, CA 94526
Greg.Lamberg@Radback.com

APPLICANT'S CONSULTANTS

Douglas Davy
CH2M HILL, Inc.
2485 Natomas Park Drive, Suite 600
Sacramento, CA 95833
ddavy@ch2m.com

COUNSEL FOR APPLICANT

Scott Galati
Marie Mills
Galati & Blek, LLP
455 Capitol Mall, Suite 350
Sacramento, CA 95814
sgalati@gb-llp.com
mmills@gb-llp.com

INTERESTED AGENCIES

California ISO
E-mail Preferred
e-recipient@caiso.com

Maifiny Vang
CA Dept. of Water Resources
State Water Project Power and
Risk Office
3310 El Camino Avenue,
RM. LL90
Sacramento, CA 95821
mvang@water.ca.gov

INTERVENORS

Robert Sarvey
501 W. Grantline Road
Tracy, CA 95376
Sarveybob@aol.com

ENERGY COMMISSION

JAMES D. BOYD
Vice Chair and Presiding Member
jboyd@energy.state.ca.us

*Sarah Michael
Adviser to Vice Chair Boyd
smichael@energy.state.ca.us

*CARLA PETERMAN
Associate and Presiding Member
cpeterma@energy.state.ca.us

*Jim Bartridge
Adviser to Commissioner Peterman
jbartrid@energy.state.ca.us

Kourtney Vaccaro
Hearing Officer
kvaccaro@energy.state.ca.us

Pierre Martinez
Siting Project Manager
pmartine@energy.state.ca.us

Kevin W. Bell
Staff Counsel
kwbell@energy.state.ca.us

Jennifer Jennings
Public Adviser
E-mail preferred
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Marie Mills, declare that on March 28, 2011, I served and filed copies of the attached **JOINT STIPULATION BETWEEN CCGS LLC AND STAFF – SOIL & WATER RESOURCES AND BIOLOGICAL RESOURCES**, dated March 25, 2011. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

[\[http://www.energy.ca.gov/sitingcases/contracosta/index.html\]](http://www.energy.ca.gov/sitingcases/contracosta/index.html). The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

- ☒ sent electronically to all email addresses on the Proof of Service list;
- ☐ by personal delivery;
- ☒ by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

- ☒ sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);

OR

- ☐ depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 09-AFC-4
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.



Marie Mills