

**State of California  
Energy Resources Conservation and  
Development Commission**

California Energy Commission

**DOCKETED  
12-CAI-04**

TN # 69109

JAN. 11 2013

In the matter of the: )  
 )  
Complaint Against Bottle Rock ) Docket No. 12-CAI-04  
Geothermal Power Plant )  
 )  
 )  
\_\_\_\_\_ )

**Prehearing Statement of Interested Agency  
California Department of Water Resources**

January 11, 2013

John Dunnigan, Senior Staff Counsel  
California Department of Water Resources  
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Attorney for the California Department of Water Resources

**State of California  
Energy Resources Conservation and  
Development Commission**

In the matter of the:	)	
	)	Docket No. 12-CAI-04
Complaint Against Bottle Rock	)	
Geothermal Power Plant	)	
_____	)	<b>California Department of Water Resources</b>
	)	<b>Prehearing Statement</b>

In a notice dated December 21, 2012, the California Energy Commission (CEC) requested parties to file a prehearing statement related to the proceedings involving the complaint against the Bottle Rock Geothermal Power Plant in preparation for a CEC Committee Hearing scheduled for January 22, 2013.

The Notice directed the parties to describe its position regarding the complaint, including:

**1. The outcome it desires, including any legal authority supporting that outcome.**

The California Department of Water Resources (DWR) desires that the 8<sup>th</sup> amendment to the "Purchase Agreement for Bottle Rock Power Plant and Assignment of Geothermal Steam Field Lease" (Purchase Agreement; Exhibit 401) remain unchanged. Included with the 8<sup>th</sup> amendment is the "Settlement Agreement and Release of Claims" (Settlement Agreement; Exhibit 410) providing DWR a complete release of liability from the Francisco Steam Field Lease in conformance with the terms approved in the original Purchase Agreement.

The Commission's May 30, 2001, Order Approving Ownership Transfer (Order), included provisions permitting DWR authority to amend the purchase agreement's provisions related to a release of liability. The Settlement Agreement conforms with the release permitted in the Order. The Order specifically cites section 2.4 of Purchase Agreement which provides in part:

"...if Seller receives a complete release of all liability under the Francisco Steam Field Lease, then Buyer may adjust the amount of the bond to the amount of an independent engineering estimate approved by Seller of the cost to decommission the Plant and Steam Field required to meet the requirements of the California Energy Commission, the County of Lake and any other regulatory agency with jurisdiction."

Neither the Order nor Purchase Agreement requires of DWR any additional approval to amend the Purchase Agreement beyond those requirements provided by the California Public Contract Code. The subject amendment is the 8<sup>th</sup> such amendment to the Purchase Agreement approved by the California Department of General Services in accordance with PCC § 10335.

In advance of executing the 8<sup>th</sup> amendment, DWR notified the CEC of its intention to proceed with implementation of the provision allowed under section 2.4 of the Purchase Agreement. DWR sent the notice to allow the CEC to evaluate any potential effects of the proposed Amendment. (Exhibit 402).

- 2. If changes to the project's Conditions of Certification are desired, proposed language for the amended conditions. Where possible, show changes to existing conditions in underline/strikeout format.**

DWR does not propose changes to the Conditions of Certification.

- 3. The identity of each witness it proposes to offer, a summary of the testimony the witness will offer, and an estimate of the time necessary for the witness' direct testimony. Direct testimony may be offered in written form if desired, provided that the witness is made available at the Hearing for cross-examination and Committee questions.**

Witness Marie Buric, Senior Land Agent, Department of Water Resources shall, if necessary, be available for the purpose of admitting records. Her declaration is attached. (Exhibit 400).

- 4. The names of each witness offered by another party for which cross-examination is desired and the estimated time required for that cross-examination.**

None anticipated at this time though DWR reserves the right to identify witnesses for cross-examination, if needed.

- 5. The amount of time the party desires for oral argument.**

Approximately 20 minutes, if needed.

#### **Other Matters:**

The Notice advises that the Committee is specifically interested in seven different issues from the parties. DWR is unaware of direct evidence bearing on these issues with the exception of item number 3:

**“3. The sale agreement between the Department of Water Resources and the project owner and subsequent amendments thereto.”**

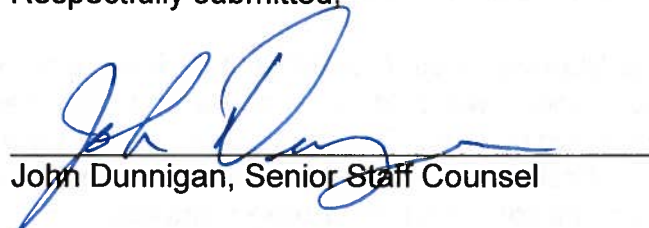
DWR has included record evidence identified in the Exhibits List responsive to item 3.

**Conclusion:**

DWR properly implemented the provisions of its Purchase Agreement for Bottle Rock Power Plant when amending the Purchase Agreement and obtaining the Settlement Agreement and Release of All Claims. In addition, DWR, acting in good faith, notified the Commission of the amendment so any effect of the amendment could be evaluated.

Date: January 11, 2013

Respectfully submitted,



John Dunnigan, Senior Staff Counsel

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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

Docket Number: 12-CAI-04

Date: 1/11/2013

Project Name: Complaint Against Bottle Rock Geothermal Power Plant

**SUBMIT ALL EXHIBIT LISTS IN WORD FORMAT OR TEXT FILE.**

**PARTY'S EXHIBIT LIST**

Party name: California Department of Water Resources

Exhibit	Docket Transaction Number	Brief Description	Offered	Admitted	Refused
400		Record Certification, Marie Buric	1/11/2013		
401		Purchase Agreement between DWR and Project Owner, dated 4/5/2001	1/11/2013		
402		Advisement Memo to CEC, dated 8/3/2012	1/11/2013		
403		First Amendment to Purchase Agreement, dated 5/31/2001	1/11/2013		
404		Second Amendment to Purchase Agreement, dated 6/14/2001	1/11/2013		
405		Third Amendment to Purchase Agreement, dated 6/21/2001	1/11/2013		
406		Fourth Amendment to Purchase Agreement, dated 6/28/2001	1/11/2013		
407		Fifth Amendment to Purchase Agreement, dated 7/6/2001	1/11/2013		
408		Sixth Amendment to Purchase Agreement, dated 7/20/2001	1/11/2013		
409		Seventh Amendment to Purchase Agreement, dated 7/27/2001	1/11/2013		
410		Eighth Amendment to Purchase Agreement, Settlement Agreement and Release of All Claims, dated 8/29/2012	1/11/2013		

**Exhibit 400**

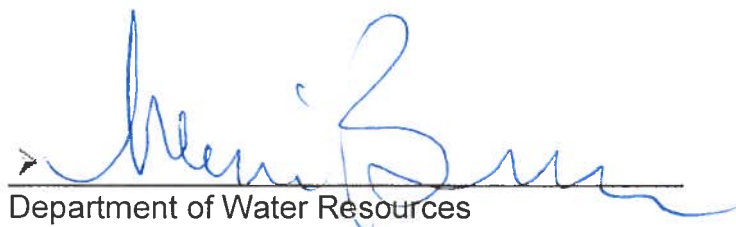
**RECORD CERTIFICATION**



I, Marie Ivanova Buric, Senior Land Agent, Real Estate Branch, of the California Department of Water Resources, and do hereby certify that the attached documents are true, full, and correct copies of the official records on file in this office.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 8, 2013, Sacramento, California.

  
Department of Water Resources

**Exhibit 401**



**PURCHASE AGREEMENT FOR BOTTLE ROCK POWER PLANT AND**

**ASSIGNMENT OF GEOTHERMAL STEAM LEASE**

This Purchase Agreement ("Agreement") is entered into as of the 5<sup>th</sup> day of April, 2001, (the "Effective Date") by and among **STATE OF CALIFORNIA, DEPARTMENT OF WATER RESOURCES** ("DWR" or "Seller") and **BOTTLE ROCK POWER CORPORATION, a California Corporation**, ("Buyer").

**WITNESSETH**

WHEREAS, Seller is the owner of that certain power plant (the "Bottle Rock Power Plant") and is the lessee of a geothermal steam field (the "Steam Field") located in the Known Geothermal Resource Area (the "Geysers") in Lake County, California which it constructed and which commenced operation in 1985 and ceased operating and was mothballed in 1990; and

WHEREAS, Seller desires to sell to Buyer and Buyer desires to purchase from Seller all of Seller's interest in and to the Bottle Rock Power Plant and Francisco Steam Field Lease as defined in 1.1(a) (ii); and

WHEREAS, the Bottle Rock Power Plant and Francisco Steam Field Lease are now no longer needed for the State Water Project operations and are maintenance burden on the SWP;

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, Buyer and Seller hereby agree as follows:

**ARTICLE I**  
**THE PURCHASED ASSETS**

**1.1    Sale and Purchase.**

(a)    On the terms and subject to the conditions hereinafter set forth, Seller does hereby agree to sell, convey, assign, transfer and deliver to Buyer on the Closing Date (as defined in Article II), and Buyer hereby agrees that Buyer shall purchase from Seller on the Closing Date, all of the interest of Seller in the following property (the "Purchased Assets"):

- (i)    The Bottle Rock Power Plant and all appurtenances thereto, including, but not limited to, the following: the steam turbine, electric generating units, gas removal system, air pollution abatement system, cooling tower condensers and transformers, all tools and equipment, spare parts for the equipment, steam wells and steam collection system, including all on substantially all of the items listed on the Schedule of Inventory attached hereto as Exhibit F, but without any warranty as to the accuracy or completeness of Schedule F.
- (ii)   Seller's rights and interests in and to that certain Geothermal Lease and Agreement dated February 25, 1975 (the "Francisco Steam Field Lease"), between Marjorie J. Francisco et al, and Geothermal Kinetics, Inc., recorded March 13, 1975, Book 789 Official

Records of Lake County, page 167, as assigned and amended from time to time.

- (iii) Seller's rights to transmit over the collector lines (the "Generation Tie Transmission Lines" from the Bottle Rock Power Plant to the point of interconnection pursuant to that certain agreement between Seller and Pacific, Gas & Electric Company, dated October 2, 1981, as amended.
  - (iv) All of Seller's access rights over High Valley Road, Lake County, California.
  - (v) All transferable permits and governmental licenses for the operation and maintenance of the above-described facilities currently held by Seller.
- (b) On the Closing Date, Buyer shall assume all obligations, debts and liabilities relating to or arising out of the Purchased Assets whether arising before or after the Closing Date, including without limitation all obligations and liabilities, (i) under Francisco Steam Field Lease, (ii) related to Generation Tie Lines, (iii) if any, to maintain and operate High Valley Road, and the gate at the junction of said road and Bottle Rock Road, (iv) under any permits or government license, and (v) with respect to environmental matters as provided in 7.1 subject only to the allocation of costs and expenses as provided in Sections 2.3.1 and 2.3.4 and Seller's obligations as provided in Section 7.2.

1.2 Transfer of Assets. Seller's interest in the Purchased Assets shall be sold, conveyed, assigned, transferred and delivered by Seller to Buyer by a Quitclaim Deed substantially in the form of Exhibit A, a Bill of Sale substantially in the form of Exhibit B hereto, and an Assignment of Geothermal Lease substantially in the form of Exhibit C hereto and by other appropriate instruments of transfer, bills of sale, endorsements and assignments as may be reasonably necessary, in form and substance reasonably satisfactory to Buyer and Seller, all to be delivered at Closing pursuant to Article VI.

1.3 Disclaimers.

(a) THE PURCHASED ASSETS ARE BEING SOLD AND SHALL BE TRANSFERRED TO BUYER "AS IS" AND "WHERE IS", AND EXCEPT FOR THE WARRANTIES AS TO TITLE AND OTHER MATTERS EXPRESSLY SET FORTH IN SECTION 3.7, SELLER DISCLAIMS ANY REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO THE CONDITION, VALUE, OR QUALITY OF THE BOTTLE ROCK POWER PLANT, STEAM FIELD OR RELATED FACILITIES OR EQUIPMENT, AS OF THE CLOSING. SELLER SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE UNDER THE UNIFORM COMMERCIAL CODE OR OTHERWISE WITH RESPECT TO THE BOTTLE ROCK POWER PLANT AND STEAM FIELD, OR ANY PART THEREOF, OR AS TO THE WORKMANSHIP OR CONDITION THEREOF, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT, OR THAT

SELLER HAS COMPLIED WITH ENVIRONMENTAL LAWS WITH RESPECT TO THE CONSTRUCTION, INSTALLATION, USE, MAINTENANCE OR OPERATION OF ALL OR ANY PART OF THE BOTTLE ROCK POWER PLANT OR STEAM FIELD. NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN MADE OR ARE MADE, AND NO RESPONSIBILITY HAS BEEN OR IS ASSUMED, BY SELLER OR BY A PERSON, FIRM, OR AGENT ACTING OR PURPORTING TO ACT ON BEHALF OF THE SELLER, AS TO THE CONDITION, REPAIR, OR FITNESS FOR USE OF THE FACILITIES OR AGREEMENT.

(b) SELLER FURTHER SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO (I) THE ACCURACY OR COMPLETENESS OF ANY RECORDS, FILES AND DOCUMENTS FURNISHED OR MADE AVAILABLE TO SELLER, (II) THE ENVIRONMENTAL CONDITION OF ALL OR ANY PART OF THE PURCHASED ASSETS, INCLUDING THE ABSENCE OF ANY HAZARDOUS SUBSTANCES, HAZARDOUS WASTES, HAZARDOUS MATERIALS OR OTHER CONTAMINATED MATERIALS ON, UNDER OR IN THE VICINITY OF THE BOTTLE ROCK POWER PLANT AND STEAM FIELD, (III) WHETHER SELLER HAS OBTAINED ALL PERMITS, LICENSES AND OTHER FORMS OF GOVERNMENTAL APPROVALS OR AUTHORIZATIONS NECESSARY OR CONVENIENT FOR THE CONSTRUCTION, INSTALLATION, OWNERSHIP, USE, MAINTENANCE AND OPERATION OF ALL OR ANY PART OF THE PURCHASED ASSETS, OR THAT ANY SUCH PERMITS HELD BY SELLER ARE VALID OR TRANSFERABLE FROM SELLER TO BUYER, AND (IV) WHETHER ANY THIRD

PARTIES HAVE ANY RIGHTS TO CONSENT TO THE TRANSFER OF ANY PART OF THE PURCHASED ASSETS.

- (c) Buyer expressly acknowledges and accepts the disclaimers set forth in Sections 1.3(a) and 1.3(b), and further acknowledges its own opportunity and duty with respect to all or any part of the Purchased Assets (i) to inspect and investigate all or any part of such property, (ii) to verify the accuracy or completeness of any information provided by Seller, (iii) to investigate and examine all environmental matters and issues, (iv) to investigate all ownership and leasehold interests in or to the Purchased Assets, (v) to obtain or secure all permits and licenses or other forms of governmental approval or authorization necessary for Buyer to own, use, maintain, operate or decommission such property, including any approvals or consents necessary for the transfer of any such permits or licenses, and (vi) ascertaining and obtaining at Buyer's sole cost and expense any consents required for the transfer of such property.

## ARTICLE II

### PURCHASE PRICE AND PAYMENT

#### 2.1 Purchase Price.

- (a) The total purchase price for the Purchased Assets (the "Purchase Price") shall be the sum of One Million Eight Hundred Thousand Dollars (\$1,800,000 U.S.) less such amounts (without interest) as Buyer has paid

under that certain Temporary Permit from DWR, dated November 9, 1999, and all of the extensions thereof that have been subsequently executed.

- (b) Buyer shall pay the Purchase Price on the Closing Date, by wire transfer of immediately available funds to the location directed by Seller, or other means reasonably acceptable to Seller.
- (c) Buyer also agrees that all power generated at the Bottle Rock Powerplant will be sold for use in the State of California.

2.2 Closing. The Closing is defined as the occurrence of the delivery of the Closing Documents, the Purchased Assets, and the Purchase Price. The Closing Date shall be as soon as possible after the execution hereof at a date and time to be mutually agreed to in writing by the Buyer and Seller, (the "Closing Date"), and the Closing will be at the office of Seller, 1416 Ninth Street, Sacramento, California 94236-0001, provided, however, in no event shall the Closing Date be later than June 1, 2001, (the "Outside Closing Date").

2.3 Closing Costs and Expenses; Allocations. Seller and Buyer have agreed upon the following allocations and responsibilities for making payment of taxes and fees and the costs of operation relating to the Purchased Assets:

2.3.1 Ad Valorem and Other Property Taxes. All ad valorem taxes, real property taxes, personal property taxes, assessments and similar obligations (and any refunds, credits and the like) relating to the Purchased Assets shall be apportioned between the parties here and shall be prorated (on the basis of a year of 365 days) as of the Closing Date. All such taxes with payment delinquent dates prior to the Closing Date shall be paid by Seller, and all such taxes with a delinquent date on or after the Closing Date shall be paid by Buyer.

2.3.2 Sales and Use Tax. All sales taxes, transfer taxes, use taxes and similar obligations arising from the sale or transfer by Seller to Buyer of all or any part of the Purchased Assets, if any, whether arising or assessed before or after the Closing Date, shall be paid by Buyer.

2.3.3 Filing Fees and Recording Costs. Buyer shall be solely responsible for all filings and recordings of any of the instruments of conveyance related to the sale or transfer of all or any part of the Purchased Assets, and for all fees, taxes and costs associated therewith, including, but not limited to, all documentary taxes, recording fees, escrow transfers and title insurance premiums. Seller shall not be liable to Buyer for any loss to Buyer arising from Buyer's failure to file or record documents correctly or promptly. Upon written request from Seller, Buyer shall promptly furnish Seller with all recording and filing information with respect to all of the instruments of conveyance recorded or otherwise filed by Buyer.

2.3.4 Allocation of Income and Costs of Operation. Subject to Section 1.1(b), all benefits, revenues, income, costs, expenses and charges associated with the ownership, use, maintenance and operation of the Purchased Assets which arise or are incurred on or after the Closing Date shall be for the account of Buyer, and all benefits, revenues, income, costs, expenses and charges which arose or were incurred before the Closing Date, shall be for the account of Seller. Buyer and Seller shall provide each other with necessary information and copies of records at reasonable times to the extent necessary to give effect to and confirm compliance with this Section 2.3.4, and shall otherwise cooperate in informing affected third parties with respect to said allocations. Any amounts owed to a party as a result of such allocation shall be paid within fifteen (15) days following the Closing Date.



2.4 Security for Decommissioning and Reclamation Liabilities. Buyer agrees to provide security in the form of a surety bond on or before the Closing Date from a firm acceptable to Seller in the initial amount of Five Million Dollars (\$5,000,000). Said security is to provide a guarantee of payment of any sums required to meet Buyer's obligations under Section 7.1 (e) of this Agreement. Said security shall consist of a surety bond which meets the following requirements:

- (a) Said surety bond shall be issued by an admitted surety insurer, as defined in subdivision (a) of Section 995 of the Code of Civil Procedure and substantially in the form of the attached Exhibit D.

Said security shall not be construed as a limitation on any obligation of Buyer to indemnify Seller. Said security shall be delivered to Seller at Closing.

Every third year after Closing, or more often at the option of Seller or Buyer, Buyer shall submit to Seller for Seller's approval an independent engineering estimate of the cost to meet the obligations of Sections 7.1 (e) of this Agreement. If such estimate (as approved by Seller) exceeds Five Million Dollars (\$5,000,000 U.S.), the Buyer shall promptly increase the security to cover the amount of the estimated cost plus twenty-five percent (25%). Buyer may reduce the amount of security to the estimated cost plus twenty-five percent (25%) if such estimated cost (as approved by Seller) has been reduced below the previous approved estimate by twenty-five percent (25%) or more. Such reduction shall provide that the amount of the security is at least twenty-five percent (25%) above the current approved estimate of cost. This security

shall remain in place until five (5) years after completion of all decommissioning at which time Buyer may terminate it, and any funds remaining shall be the property of Buyer, provided, however, if Seller receives a complete release of all liability under the Francisco Steam Field Lease, then Buyer may adjust the amount of the bond to the amount of an independent engineering estimate approved by Seller of the cost to decommission the Plant and Steam Field required to meet the requirements of the California Energy Commission, the County of Lake and any other regulatory agency with jurisdiction.

- (b) Not more than once in any one year, upon 48 hours advance written notice by Seller to the Buyer, Seller may inspect the leasehold premises to determine whether or not there is any substantial hazardous substance contamination on the property from the operation of the Power Plant or Steam Field or any related facilities. If Seller finds any such contamination, Seller may require Buyer to cease any operations causing such contamination and to clean-up and remedy all such contamination in accordance with applicable legal standards. Seller shall not incur any liability as a result of the findings of any such inspection, regardless of whether or not it discovers any such contamination, notifies Buyer of the discovery any such contamination, or takes or fails to take any action with respect to such contamination that it discovers. No such inspection by Seller shall relieve the Buyer of any liability for any contamination hereunder or at law.

- (c) The provisions of the first paragraph of this Section 2.4 notwithstanding, at closing and on a temporary basis, not to exceed one year, Buyer may elect in its discretion to substitute a letter of credit as the security required by this Section 2.4, provided, however;
- (i) said letter of credit shall be in the same amount and shall have substantially the same terms and conditions as those specified above for the surety bond,
  - (ii) the form and content must be approved prior to closing and as a condition precedent to closing by Seller, and
  - (iii) the issuer of the letter of credit must be approved prior to closing and as a condition precedent to closing by Seller.
  - (iv) if for any reason the surety bond required by this Section has not been secured by the time of the termination of the temporary letter of credit, Buyer shall immediately commence to deposit 10 percent of its gross revenue each and every month into an escrow account to be established with an escrow agent acceptable to Seller and on terms and conditions to be approved by Seller as the required security. Said deposits shall continue until said escrow account has on deposit Five Million Dollars (\$5,000,000 U.S.) at which time further deposits will cease. Provided, however, said escrow account shall be subject to the same adjustment provisions provided above for the surety bond. If the amount of required security is increased above the Five Million

Dollars (\$5,000,000 U.S.), Buyer shall deposit additional funds in the escrow account at the same rate specified above until the new limit is reached. If the amount of security required is reduced to an amount less than Five Million Dollars (\$5,000,000 U.S.). Buyer may withdraw from the escrow account the difference between the required security amount and the Five Million Dollars (\$5,000,000 U.S.) amount. Buyer may at anytime substitute the above described surety bond in place of the escrow account and may then withdraw all funds from the escrow account.

2.5 Environmental Impairment Insurance Buyer shall at or prior to the Closing have purchased a policy of liability insurance, substantially in the form attached as Exhibit E which insures Seller and Buyer against all legally insurable liability referred to in Section 7.1(e) and 7.1(f) herein (excluding fines) ("Environmental Policy"). Said Environmental Policy shall not be, and shall not be construed to be, a limitation on any obligation of Buyer to indemnify Seller. Seller, its officers and employees shall be designated as co-named insureds on the Environmental Policy. The Environmental Policy's limits of liability shall not be less than ten million dollars (\$10,000,000 U.S.). Such policy shall include, but not be limited to the following: (a) a provision that the insurer give a minimum of forty-five (45) days notice to Seller of any termination of coverage, (b) Buyer is the first named insured and is responsible for all reporting and premium payment obligations under the policy, (c) payment of all deductibles under the policy is the sole obligation of the first named insured, (d) that this contract between Buyer and Seller is listed as an "Insured Contract." An original

copy of the binder for such Environmental Policy shall be provided to Seller at Closing as a condition on precedent to closing, and an original copy of this policy shall be provided to Seller as soon as it is available. Said insurance shall be in effect at all times during operation and decommissioning of the Purchased Assets (or any part of thereof) and all facilities on the premises covered by the Francisco Steam Field Lease (the "Leased Premises"), including wells and gathering systems. Seller will not be responsible for payment of any premiums, assessments or deductibles on or under the Environmental Policy. In the event the insurance expires or is terminated Buyer shall provide to Seller at least thirty (30) days prior to such termination an original a copy of a new insurance policy that will be effective upon or prior to termination of the policy being terminated with coverage as provided herein. Should the Purchased Assets (or any material portion thereof) or the Leased Premises be transferred to another person or entity, the transferee(s) will be required to assume the Buyer's obligation to provide the foregoing insurance. If the Buyer or its transferee(s) fails to provide the foregoing insurance, Seller may, at its option, and without limiting such other rights as it may have, file suit to compel Buyer and/or such transferee(s) to provide or pay for such insurance, and compel or seek reimbursement from Buyer for any loss, damage or expense resulting therefrom.

2.6 Environmental Site Assessment. Prior to closing Buyer will contract with a qualified, independent consultant acceptable to Seller for an environmental site assessment satisfactory to Seller of the Bottle Rock Power Plant and Francisco Steam Field to determine what if any hazardous materials are present on the property. Seller shall reimburse Buyer for one-half of the

cost of this site assessment up to a maximum of fifty thousand dollars (\$50,000 U.S.), said amount to be paid to Buyer at closing upon presentation of proper invoices.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF SELLER

As of the date of this Agreement and the Closing Date, Seller represents and warrants to Buyer as follows:

3.1 Due Organization. Seller is an agency of the State of California and has all requisite power and authority to enter into and perform this Agreement and each agreement executed by Seller in connection herewith.

3.2 Authorizations. Subject to receipt of the approvals referred to in Sections 6.2(d), (e) and (f), the execution and delivery of this Agreement and all other agreements, documents and instruments to be executed by Seller in connection herewith or pursuant hereto, and the consummation by Seller of the transactions contemplated hereby, have been duly authorized and approved by all appropriate actions of Seller and constitute the legal, valid and binding obligations and acts of Seller enforceable against Seller in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application relating to or affecting the enforcement of creditors' right and by general equitable principles.

3.3 Compliance with Obligations. To Seller's knowledge, Seller has received no notices of default or claims that Seller is in material breach with respect to any lease or land rights comprising any part of the Purchased Assets.

3.4 Material Permit Violations. To Seller's knowledge, (i) Seller has not received any notice of any violation of any permit or permit condition for any permit or license relating to the Purchased Assets that remains unresolved, (ii) Seller has not received notice of any pending or threatened investigations or inquiries from any federal, state or local government agency having jurisdiction over the Purchased Assets for any failure to comply with applicable law relating to the Purchased Assets, (iii) Seller has not received notice of any order, decree, decision or requirement issued by any federal, state or local government agency having jurisdiction over all or any part of the Purchased Assets that would change or alter the use or operation of all or any material part of the Purchased Assets in any material respect from that which existed on the Effective Date.

3.5 Pending Proceedings. To Seller's knowledge, there are no suits, actions, proceedings, or investigations pending or threatened against or affecting Seller or any of its assets, which, if determined or resolved adversely to Seller, could (i) prohibit or restrain the performance of this Agreement or the consummation of the transactions contemplated by this Agreement, (ii) result in a judgment for damages by reason of this Agreement or the consummation of the transactions contemplated by this Agreement, or (iii) have a material adverse affect on Seller's title to all or any part of the Purchased Assets or the value thereof, or on the continued operation of the Bottle Rock Power Plant.

3.6 Broker's or Finder's Fees. The negotiations relating to this Agreement and the transactions contemplated hereby have been conducted on behalf of Seller in such manner as not to give rise to any claim against Buyer as a result of any act of Seller or otherwise for a finder's fee, brokerage commission, or other like payment to any person.

3.7 Title to Purchased Assets. Seller is the lawful owner of the Purchased Assets consisting of major equipment items and is the lessee under the Francisco Steamfield Lease, free and clear of any and all liens and encumbrances created by or through Seller, except (i) current taxes, if any, which may be due and payable but not yet delinquent which shall be prorated at closing, (ii) minor imperfections or conditions, none of which will materially detract from the value or materially impair the uses of the Purchased Assets.

3.8 No Pending or Threatened Environmental Claims. To Seller's knowledge, Seller has not received notice of any proceeding or inquiry commenced and pending or threatened by any federal, state or local government agency or by any private party against Seller relating to the Purchased Assets asserting a violation of any environmental law.

3.9 Delivery of Records. Subject to Section 1.3, Seller has delivered or made available to Buyer before the Closing Date all material maintenance records and other written information relating to the use, maintenance and operation of the facilities involved in this Agreement, to the extent such maintenance records and other written information are in the possession of Seller or have been received by Seller before the Closing Date.

3.10 Survival of Representations and Warranties. All of the representations and warranties contained in this Article III shall survive the execution and delivery of this Agreement and the Closing for a period of [eighteen (18) months], regardless of any investigation made by the parties hereto.



## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES OF BUYER

As of the date of this Agreement and the Closing Date, Buyer represents and warrants to Seller as follows:

4.1 Due Organization. Buyer is a California corporation duly organized and validly existing and in good standing under the laws of the State of California, is duly qualified to do business, and is in good standing under the laws of the State of California.

4.2 Authorizations. Buyer has full power and authority to execute and perform this Agreement and each agreement executed in connection herewith in accordance with their terms. This Agreement and each Agreement executed in connection herewith constitutes the valid and binding obligations of Buyer enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application relating to or affecting the enforcement of creditors' rights and by general equitable principles. The execution, delivery and performance of this Agreement by Buyer and all transactions contemplated hereby have been fully and validly authorized in accordance with applicable law.

4.3 Compliance with Obligations. Neither the execution and delivery of this Agreement, any other agreement executed by Buyer in connection herewith, nor the consummation of the transactions contemplated hereby, will (a) conflict with or constitute a breach or result in a violation of any of the terms and provisions of the articles of incorporation, by laws or other organizational documents of Buyer, (b) conflict with or constitute a breach of or

constitute a default under, or an event which (with or without notice or lapse of time or both) would be a breach of, or default under, or give rise to any right of termination or acceleration under, any existing loan agreement, or other agreement, instrument or undertaking to which Buyer is a party, or by which Buyer is bound, which would materially and adversely affect the ability of Buyer to perform its obligations under this Agreement or such other agreements, (c) constitute a violation of any law, regulation, judgment, order or decree applicable to Buyer or (d) require any consent, approval, action, authorization, order, license or permit from any federal, state, local, or other governmental authority or person having authority over Buyer.

4.4 Broker's or Finder's Fee. The negotiations relating to this Agreement and the transactions contemplated hereby have been conducted on behalf of Buyer in such manner to not to give rise to any claim against Seller as a result of any act of Buyer or otherwise for a finder's fee, brokerage commission, or other like payment to any person.

4.5 Pending Proceedings. To Buyer's knowledge, there are no actions, suits or proceedings pending or threatened against Buyer which, if decided unfavorably, could (i) prohibit or restrain the performance of this Agreement or the consummation of the transactions contemplated by this Agreement, (ii) result in a judgment for damages by reason of this Agreement or the consummation of the transactions contemplated by this Agreement, or (iii) have or may have a material adverse affect as to all or any part of the Purchased Assets or the value thereof, or the continued operation of the Bottle Rock Power Plant.

4.6 Bankruptcy. No petition in bankruptcy (voluntarily or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under federal or state bankruptcy laws is pending or, to Buyer's knowledge, threatened against Buyer.

4.7 Buyer's Inspection. In making its decision to proceed with the purchase of the Purchased Assets, with the sole exception of the express representations and warranties of Seller set forth in Article 3, Buyer has relied solely on its own independent inspections and investigations of the Purchased Assets in full recognition of the disclaimers of Seller set forth in Section 1.3, and that there have been no other representations and warranties by or on behalf of Seller except as expressly set forth in Article 3. Buyer further acknowledges that Seller has provided it with access to all of the Purchased Assets and has satisfactorily responded to all questions of Buyer regarding the Purchased Assets.

4.8 Knowledge and Experience. Buyer and its owner and representatives have (i) designed and constructed, or caused to be designed and constructed, electrical generating power plants, (ii) evaluated for purchase and purchased electrical generating power plants that were designed, constructed and operated by others before being acquired by Buyer, and (iii) sufficient funds to purchase, operate and maintain the Purchased Assets, including sufficient funds for Decommissioning.

4.9 Survival of Warranties. All of the representations and warranties contained in this Article III shall survive the execution and delivery of this Agreement and Closing for a period of eighteen (18) months regardless of any investigation made by the parties hereto.

## ARTICLE V

### ADDITIONAL COVENANTS AND OBLIGATIONS OF PARTIES

5.1 Seller's Obligations Prior to Closing. Seller shall perform or otherwise comply with each of the following obligations and responsibilities during the period between the date of this Agreement and the Closing:

5.1.1 Notice Regarding Inaccuracies and Breaches. Seller shall promptly notify Buyer in writing if Seller becomes aware of (i) any fact or condition which makes untrue, or shows to have been untrue, any representation or warranty of Seller or Buyer, or (ii) Seller's failure in any material respect to perform or comply with any provision of this Agreement.

5.1.2 Access to Information. Seller shall provide Buyer with reasonable access to the Purchased Assets and all records, files and documents relating to the Purchased Assets; provided however that such access will be (i) provided with Seller's prior concurrence, (ii) accomplished in a manner designed to avoid any disruption in operations, and (iii) subject to Section 5.5.

5.1.3 Maintenance of the Purchased Assets. Seller shall maintain the Purchased Assets in their current "mothballed" condition as of the date of this Agreement, normal wear and tear excepted, in accordance with existing agreements and usual and customary prudent utility practices, and shall not utilize or transfer any spare parts or other controllable inventory comprising the Purchased Assets subsequent to the date of this Agreement for any purpose whatsoever other than in accordance with usual and customary prudent utility practices.

5.1.4 Certificate of Assets. Seller shall provide Buyer with certificate of Seller certifying the validity of its rights, title and interest to the Purchased Assets.

5.1.5 Other Actions. Seller shall undertake all other actions required of Seller under this Agreement as reasonably necessary to allow the transactions contemplated by this Agreement to close on the Closing Date, or as soon thereafter as is reasonably practicable.

5.2 Buyer's Obligations Prior to Closing. Buyer shall perform or otherwise comply with each of the following obligations and responsibilities during the period between the date of this Agreement and the Closing:

5.2.1 Notice Regarding Inaccuracies and Breaches. Buyer shall promptly notify Seller in writing if Buyer becomes aware of (i) any fact or condition which makes untrue, or shows to have been untrue, any representation or warranty of Seller or Buyer, or (ii) Buyer's failure in any material respect to perform or comply with any provision of this Agreement.

5.2.2 Permits and Consents. Buyer shall exercise commercially reasonable efforts to obtain (i) the transfer to Buyer of all Seller permits, licenses and other governmental approvals or authorizations comprising a part of the Purchased Assets that can legally be transferred to Buyer, (ii) all additional permits, licenses and other governmental approvals or authorizations necessary for Buyer to own, use, maintain and operate the Purchased Assets from and after the Closing, and (iii) any other required consents to the transfer from Seller to Buyer of all or any part of the Purchased Assets.

5.2.3 Other Actions. Buyer shall undertake all other actions required of Buyer under this Agreement as reasonably necessary to allow the transactions contemplated by this Agreement to close on the Closing Date, or as soon thereafter as is reasonably practicable.

5.3 Further Assurances.

(a) If at any time after the Closing Date further assignments, conveyances, or assurances in law are reasonably necessary to vest, perfect or confirm of record title to any of the Purchased Assets, or otherwise to carry out the provisions hereof, each party shall, upon the reasonable request of the other party, execute and deliver any and all deeds, assignments, powers of attorney and assurances in law, and to do all things reasonably necessary to vest, perfect or confirm title to such Purchased Assets, and otherwise to carry out the provisions hereof.

(b) Each party covenants and agrees to transfer and deliver to the other party, from time to time, any cash or other property, that such party may receive after the Closing Date in respect of any of the Purchased Assets which is attributable to the period in which the other party owned the Purchased Assets, including any amounts payable as interest in respect thereof.

5.4 Simultaneous Deliveries. All documents to be executed and delivered by the parties at the Closing shall be deemed to have been taken and executed simultaneously, and no documents shall be deemed executed or delivered until all have been executed and delivered.

5.5 Confidentiality. Each party and its representatives shall, pursuant to the provisions hereof, be privy to the valuable confidential and proprietary information of the other relating the purchase and sale of the Purchased Assets which has not been disclosed to any other person, firm, or corporation, except those under an obligation to retain it as confidential. Each party and its officers, directors, employees, attorneys, agents, representatives, and affiliates shall keep all such information of the other confidential until the Closing Date and, if this transaction does not close for any reason, whether or not for cause, on or before the Outside Closing Date, each party agrees promptly to return to the other all documentary information, notes, pictures and

drawings, and all copies thereof without retaining a copy. Neither party shall issue any press release or other publicity regarding this Agreement or the transaction contemplated hereby until two (2) business days shall have elapsed from the date a party shall have first furnished the other a copy of a draft thereof. Each party shall afford the other party the opportunity to comment on such publicity and, to the extent reasonably possible, shall accommodate the other party's comments. The foregoing provision of this Section 5.5 shall not apply to a disclosure required by applicable laws or governmental regulation.

5.6 Actions During Interim Period. Neither Seller nor Buyer shall take any action which would cause any of the representations and warranties made by Seller or Buyer in this Agreement not to be true and correct in all material respects and as of the Closing Date with the same force and effect as if made on and as of the Closing Date.

## ARTICLE VI

### CONDITIONS TO CLOSING

6.1 Conditions Precedent to Obligations of Buyer. The obligations of Buyer to consummate the transactions provided for in this Agreement are, at the option of Buyer, subject to the satisfaction of the following conditions as of the Closing Date, the compliance with which Buyer may waive in writing:

(a) Each of the representations and warranties of Seller contained in Article III hereof shall have been true and correct in all material respects when made, and shall be true and correct in all material respects, as of the Closing Date, with the same force and effect as if the same had been made on and as of the Closing Date;

(b) Seller shall not be in default on any of its obligations hereunder;

(c) No order of any court shall have been entered which enjoins or restrains the sale by Seller of any of the Purchased Assets to Buyer, nor shall any action be commenced, the resultant effect of which would be to enjoin and restrain the sale by Seller of any of the Purchased Assets to Buyer;

(d) The approval of the California Energy Commission and all other approvals and consents required from any federal, state or local government agency approving the transfer of the Purchased Assets from Seller to Buyer shall have been obtained on terms reasonably satisfactory to Buyer;

(e) All consents from third parties not a party to this Agreement required for the transfer of the Purchased Assets from Seller to Buyer, including but not limited to the Francisco Steamfield Lease, shall have been obtained on terms reasonably satisfactory to Buyer; and

(f) Seller shall have delivered, or caused to be delivered, to Buyer at the Closing the following:

(i) A Quitclaim Deed in the substantially in the form of Exhibit A. attached hereto, duly executed and acknowledged by Seller, conveying Seller's interest in High Valley Road to the Buyer;

(ii) A Bill of Sale in the form of Exhibit B attached hereto, duly executed by Seller;

(iii) A counterpart of the Assignment and Assumption Agreement in the form of Exhibit C attached hereto, duly executed by Seller.



- (iv) A certificate of Seller certifying the validity of its interest to the Purchased Assets.
- (v) A certificate of Seller certifying that each of the representation made by Seller herein are true and correct in all material respects as of the Closing Date and will have the same force and effect as if made on and as of the Closing Date.
- (vi) Such other good and sufficient instruments of transfer and conveyance as may be reasonably necessary in form and substance reasonably satisfactory to Buyer and Seller, duly executed by Seller;
- (vii) Written instructions for payment of the Purchase Price; and
- (viii) Such other documents and instruments as may be reasonably necessary to effectuate the terms of this Agreement.
- (ix) Payment for its share of the cost of the site assessment report secured under Section 2.6 of this Agreement.
- (x) The Outside Closing Date shall not have occurred.

6.2 Conditions Precedent to Obligations of Seller. The obligations of Seller to consummate the transactions provided for in this Agreement are, at the option of Seller, subject to the satisfaction of the following conditions as of the Closing Date, the compliance with which Seller may waive in writing:

- (a) Each of the representations and warranties of Buyer contained in Article IV hereof shall have been true and correct in all material respects, when made, and shall be true

and correct in all material respects as of the Closing Date, with the same effect as if the same had been made on and as of the Closing Date;

(b) Buyer shall not be in default on any of its obligations hereunder;

(c) No order of any court shall have been entered which enjoins or restrains the sale by Seller of any of the Purchased Assets to Buyer, nor shall any action be commenced, the resultant effect of which would be to enjoin and restrain the sale by Seller of any of the Purchased Assets to Buyer;

(d) The approval of the California Energy Commission and all other approvals and consents required from any federal, state or local government agency approving the transfer of the Purchased Assets from Seller to Buyer shall have been obtained on terms reasonably satisfactory to Seller;

(e) All consents from third parties not a party to this Agreement required for the transfer of the Purchased Assets from Seller to Buyer shall have been obtained on terms reasonably satisfactory to Seller;

(f) Seller shall have received the consent of the Department of General Services of the State of California to sell and transfer the Purchased Assets to Buyer;

(g) Buyer shall have delivered, or caused to be delivered, to Seller at the Closing, the following:

- (i) The Purchase Price in accordance with Section 6. 1(g)(vi);
- (ii) A counterpart of the Assignment and Assumption Agreement in the form of Exhibit C attached hereto, duly signed by Buyer.
- (iii) Evidence of the insurance coverage required by Section 2.5.

- (iv) The security required by Section 2.4 of this Agreement;
  - (v) A certificate of good standing of Buyer dated within thirty (30) days before closing, issued by the Secretary of State of California;
  - (vi) An incumbency and specimen signature certificate with respect to the authorized person of Buyer executing this Agreement and any other document delivered hereunder on behalf of Buyer; and
  - (vii) A certificate of Buyer certifying that each of the representations made by Buyer herein are true and correct in all material respects as of the Closing Date and will have the same force and effect as if made on and as of the Closing Date, and
  - (viii) A copy of the site assessment report secured under Section 2.6 of this Agreement.
  - (ix) Such other documents and instruments as may be reasonably necessary to consummate or effectuate the transactions contemplated by this Agreement; and
- (h) The Outside Closing Date shall not have occurred.

6.3 Termination. This Agreement, and the obligations of the parties hereunder, may be terminated on or before the Closing Date (or other date, as specified below).

- (a) By mutual written consent of Buyer and Seller;
- (b) By Buyer, if the conditions set forth in Section 6.1 of this Agreement have not been met or have not been waived by Buyer by the required dates therefor, by delivering written notice thereof to Seller;

(c) By Seller, if the conditions set forth in Section 6.2 of this Agreement have not been met or have not been waived by Seller by the required dates therefor, by delivering written notice thereof to Buyer; or

In the event this Agreement is terminated pursuant to this Section 6.3, each party shall comply with their obligations respecting confidentiality contained in Section 5.5 of this Agreement and, except for the obligations of the parties respecting confidentiality contained in Section 5.5, neither party shall have any liability or further obligation to the other under this Agreement.

## ARTICLE VII

### POST CLOSING OBLIGATIONS

7.1 Buyer's Obligations. From and after the Closing Date, Buyer shall be solely responsible and liable for the following:

(a) All costs associated with the ownership, use, maintenance and operation of the Purchased Assets;

(b) Any personal injury or death or damage to any property directly or indirectly arising or resulting from the ownership, use, maintenance and operation of the Purchased Assets;

(c) Full performance and compliance with all of the provisions, conditions, limitations and requirements of all permits, licenses and other forms of governmental approvals and authorizations comprising the Purchased Assets and otherwise relating to the Purchased Assets;

(d) Full performance and full compliance with all provisions, covenants, conditions, restrictions, limitations, obligations and the like contained in any leases, licenses, easements, rights-of-way and other land rights comprising a part of the Purchased Assets;

(e) Full responsibility and sole obligation for Decommissioning the Bottle Rock Power Plant, Francisco Steam Field and for all site restoration, including any restoration and remediation obligations associated with any land rights comprising the Purchased Assets;

(f) All environmental liability of any kind or nature, including fines, damages associated with injuries to persons or property, costs of investigation, response costs, abatement costs, penalties and the like, and responsibility for all environmental cleanup and remediation of every kind and character associated in any way with the Purchased Assets, regardless of whether the same (i) arose prior to Closing or arises subsequent to Closing, (ii) was caused by Seller or Seller's agents, including without limitation the active or passive negligence, gross negligence, recklessness, willful misconduct or illegal conduct of or attributable to Seller or Seller's agents, (iii) is suffered or asserted by Buyer or any third parties, either private or governmental, or (iv) is asserted under Federal or State statutory or common law, environmental or otherwise, now in effect or hereafter amended or enacted; and

(g) Filing of all appropriate forms, declarations and/or bonds with federal, state and local governmental agencies as required relative to Buyer's assumption of the ownership, use, maintenance and operation of the Purchased Assets, all at Buyer's sole cost and expense.

7.2 Seller's Obligations. From and after the Closing Date, Seller shall be solely responsible and liable for the following:

(a) Any costs associated with the ownership, use and maintenance of the Purchased Assets prior to Closing, except for costs associated with environmental liabilities assumed by Buyer pursuant to Section 7.1;

(b) Any personal injury or death or damage to any property other than the Purchased Assets occurring prior to Closing that directly or indirectly resulted from the ownership, use, maintenance or operation of the Bottle Rock Power Plant prior to Closing, except with respect to environmental liabilities assumed by Buyer pursuant to Section 7.1;

(c) All liability directly resulting from any hazardous substances, hazardous wastes, hazardous materials or other contaminated materials as defined by environmental law that were once located on, generated at, or were a part of the Purchased Assets but were removed and transferred (by means other than migration) by or on behalf of Seller prior to Closing to an off-site location that is not part of the Purchased Assets; and

(d) Delivery to Buyer on or promptly after Closing of all files, records and documents concerning the Purchased Assets that Seller is obligated to make available to Buyer pursuant to Section 5.1, including, but not limited to, work orders and original mylar "as built" drawings to the extent Seller has such items in its possession. Buyer shall maintain such files, records and documents for a period of five (5) years following the Closing; provided, however, Buyer may be relieved of such obligation in whole or in part by providing written notice to Seller of its desire to divest itself of such files, records and documents and providing to Seller a reasonable opportunity, but not less than thirty (30) days to take possession of the same.

## ARTICLE VIII

### INDEMNIFICATIONS

8.1 Indemnification by Buyer. Buyer shall indemnify Seller and its officers and employees and each of its successors and assigns, and hold such parties harmless from, against and in respect of any and all costs, losses, claims, liabilities, fines, penalties, damages and expenses (including interest which may be imposed in connection therewith, and court costs and reasonable fees and disbursements of counsel) incurred by any of them:

(a) Attributable to any state of facts or events occurring or arising on or after Closing with respect to the Purchased Assets;

(b) Arising from any material breach of any of the representations and warranties of Buyer or of any covenant or agreement of Buyer in this Agreement or any document delivered in connection with the transactions contemplated hereby; and

(c) Attributable to or arising out of environmental liabilities assumed by Buyer in Section 7.1 of this Agreement, whether occurring or arising before or after the Closing.

8.2 Indemnification by Seller. Subject to the provisions of Water Code Section 11454, Seller shall indemnify Buyer and its officers and employees and each of its successors and assigns, and hold such parties harmless from, against and in respect of any and all costs, losses, claims, liabilities, fines, penalties, damages and expenses (including interest which may be imposed in connection therewith, and court costs and reasonable fees and disbursements of counsel) incurred by any of them:

(a) Arising from any material breach of any of the representations and warranties of Seller or of any covenant or agreement of Seller in this Agreement or any document delivered in connection with the transactions contemplated hereby; and

(b) Attributable to or arising out of environmental liabilities assumed by Seller pursuant Section 7.2(c) of this Agreement.

8.3 Right to Defend, Etc. Within a reasonable time after the written assertion against any party entitled to indemnification pursuant to Section 8.1 or 8.2 of this Agreement (an “Indemnified Party”) by a third person of a claim or liability which would entitle the Indemnified Party to indemnification under Section 8.1 or 8.2, as the case may be, the Indemnified Party shall give written notice of the claim to the party obligated to indemnify it (the “Indemnifying Party”). Failure to give such notice, or delay materially prejudicial to the interests of the Indemnifying Party, shall relieve the Indemnifying Party of any obligation of indemnification with respect to such claim or liability. Upon receipt of timely notice, the Indemnifying Party shall undertake the responsibility for the defense of such claim, at its own expense. The Indemnified Party shall have the right to participate at its own expense and through counsel of its own choosing in contesting and defending against any such claim and in any litigation, proceedings, or settlement negotiations with respect thereto. If, within fifteen (15) days after delivery of the notice of claim by the Indemnified Party, the Indemnifying Party fails to advise the Indemnified Party of its agreement to contest and defend against any such claim, or if the Indemnifying Party does not participate in such litigation, proceeding or settlement negotiations, for any reason, then the Indemnified Party shall have the right, at the Indemnifying Party's expense, to take such action as the Indemnified Party deems appropriate to defend, contest, settle or compromise any such claim



or liability, and the Indemnifying Party agrees to be bound by any and all rulings, judgments, compromises, and settlements reached by the Indemnified Party in good faith, in the same manner as if the Indemnifying Party participated therein.

8.4 Payment. The Indemnifying Party agrees to reimburse each Indemnified Party pursuant to this Article VIII within thirty (30) days after presentation of an itemized statement of damages incurred by such Indemnified Party, provided the Indemnified Party has first complied with Section 8.3 hereof.

8.5 Settlement. Except as provided in Section 8.3, no Indemnified Party shall be entitled to indemnification under this Article VIII if such Indemnified Party voluntarily makes any payment in respect of, settles or offers to settle, or consents to any compromise or admits liability with respect to, any third party claim without the prior consent (which consent shall not be unreasonably withheld) of the Indemnifying Party.

## ARTICLE IX

### LIMITATION OF LIABILITY

9.1 Consequential Damages. Except for damages awarded to third parties which are covered by the express indemnification obligations of the parties hereunder, in no event shall either Seller or Buyer be liable to the other party, either individually or jointly and irrespective of whether alleged to be as a result of breach of contract, breach of warranty, tort liability (including negligence), strict liability, or any other legal theory, and whether arising before or after Closing, for special, indirect, consequential, punitive or exemplary damages of any nature whatsoever.

**ARTICLE X**  
**MISCELLANEOUS**

10.1 Survival. All representations and warranties shall survive the Closing Date as set forth above. The provisions of Sections 2.1(c), 2.4 and 2.5 shall survive the Closing Date until the later of completion of Decommissioning and the expiration of Buyer's indemnity obligations. The covenants and agreements for indemnification set forth herein shall survive the Closing Date and for a period of five years (5) after the completion of all decommissioning.

10.2 Successors and Assigns. This Agreement shall inure to the benefit of Buyer and Seller and shall be binding upon the parties hereto, their respective successors, administrators and assigns. Notwithstanding the foregoing, neither this Agreement nor any interest therein, may be assigned by Buyer to any person, firm or entity without the prior written consent thereto of Seller and any attempted assignment without such consent shall be void and a breach of this Agreement. In addition, any transferee's of Buyer (or any transferees of such transferees) shall assume all obligations of Buyer that survive the closing, including without limitation the obligations under Section 2.4, 2.5, 7.1 and 8.1) hereof.

10.3 Waivers. The waiver of any breach of any term or conditions of this Agreement shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

10.4 Time of Essence. The parties acknowledge and agree that time is of the essence in the performance of this Agreement.

10.5 Bulk Sale Law. Buyer and Seller each waive compliance by the other under any applicable bulk sale or similar law.

10.6 Definitions and Captions. As used herein, all capitalized terms shall have the meanings ascribed to them in this Agreement (such meanings to be equally applicable to both singular or plural form of the term defined). Captions and headings used in this Agreement are for convenience only and do not in any way effect, limit, amplify or modify the terms or provisions hereof.

10.7 Notices. Any notice required or permitted hereunder shall be in writing and shall be valid and sufficient when (i) delivered personally, (ii) five (5) days after it is deposited in the United States mail as registered or certified, return receipt requested, postage prepaid, or (iii) upon receipt when delivered by reputable overnight courier (e.g. Federal Express or DHL), and addressed to the other party as follows or to such other address as specified in writing after closing:

If to Seller:                Director  
                                     Department of Water Resources  
                                     1416 Ninth Street  
                                     P.O. Box 942836  
                                     Sacramento, CA 94236-0001

If to Buyer:                Ronald E. Suess, President  
                                     Bottle Rock Power Corporation.  
                                     725 Farmer's Lane, Suite 8  
                                     Santa Rosa, CA 95405

10.8 Applicable Law. This Agreement is executed in California and shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to conflicts of law principles.

10.9 Choice of Forum. The parties hereto agree and intend that the proper forum for any litigation of any disputes or controversies arising out of or related to this Agreement shall be the appropriate courts of the State of California located in the County of Sacramento.

10.10 Interpretation. This Agreement shall be construed in accordance with its fair meaning and neither for nor against either party. Each party acknowledges that it has been advised by counsel of its choosing in the premises.

10.11 Attorneys' Fees. If either party files any action or brings any arbitration proceeding against the other arising out of this Agreement, or is made a party to any action or proceeding brought by any third party in connection herewith, then as between Buyer and Seller, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable attorneys' fees to be fixed by court at trial and on appeal or by the arbitration panel. The "prevailing party" shall be the party who is entitled to recover its costs of suit whether or not a suit proceeds to final judgment. A party not entitled to recover its costs shall not recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to its costs or attorneys' fees.

10.12 Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions of this agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement.

10.13 Entirety. This Agreement, together with the Exhibits hereto, embodies the entire agreement and understanding among the parties and supersedes all prior agreements and understandings, if any, relating to the subject matter hereof Exhibits and Schedules referred to herein are incorporated by this reference.

10.14 Amendments. This Agreement may be amended only by an instrument in writing executed by Buyer and Seller and approved by the California Department of General Services and supplemented only by documents delivered or to be delivered in accordance with the express terms hereof.

10.15 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

10.16 Expenses of Transaction. Whether or not the transactions contemplated hereby are consummated, each of the parties hereto shall pay its own expenses (including attorneys' fees) in connection with the negotiation and delivery of this Agreement and the consummation of the transactions contemplated hereby.

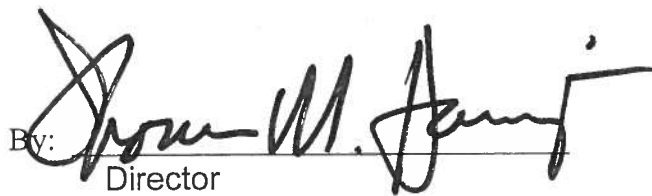
SIGNATURES ARE ON NEXT PAGE

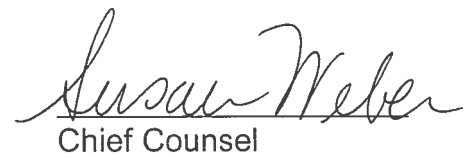
IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Agreement as of the day and year set forth above.

**SELLER:**

**STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES**

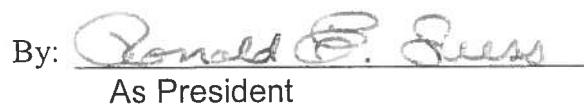
**Approved for Form and  
Sufficiency**

By:   
Director

  
Chief Counsel

**BUYER:**

**BOTTLE ROCK POWER CORPORATION**

By:   
As President



## LIST OF EXHIBITS

Exhibit A	Quitclaim Deed
Exhibit B	Bill of Sale
Exhibit C	Assignment of Steam Field Lease
Exhibit D	Surety Bond
Exhibit E	Environmental Insurance Policy
Exhibit F	Schedule of Inventory

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO:

## DEPARTMENT OF WATER RESOURCES

Division of Land and Right of Way

Real Estate Branch

1416 9th Street, Room 425

Sacramento, California 95814

SPACE ABOVE THIS LINE FOR RECORDER'S USE —

3 11-040-01, 07, 08, 11, 24, 27, 28, 29, 43, 44  
 002-47, 13-003-01, 13-049-01, 02, 03, 04, 05, 07, 08

(HIGH VALLEY ROAD)

Project BOTTLE ROCK POWER PLANT

# DIRECTOR'S QUITCLAIM DEED

Parcel No. GT-6-A, GT-7-A, GT-8-A, GT-9-A,  
 GT-10-A, GT-11-A, GT-12-A, GT-13-A, GT-13-B,  
 GT-14-A, GT-15-A, GT-16-A, GT-17-A, GT-17-B,  
 GT-18-A, GT-19-A, GT-20-A, and GT-22-A  
 Maps GN-51A-0002, 0002-1, 0003, and 0004

The STATE OF CALIFORNIA, acting by and through its Director of Water Resources, quitclaims to  
 Bottle Rock Power Corporation, a California corporation.

all that real property in County of Lake

State of California, described as:

DWR Parcel No.	Area	Estate
GT-6-A	0.38 acre	Nonexclusive easement and right of way with the right to construct, reconstruct, improve, and maintain a roadway
GT-7-A	0.17 acre	"
GT-8-A	0.17 acre	"
GT-9-A	0.08 acre	"
GT-10-A	0.16 acre	"
GT-11-A	0.07 acre	"
GT-12-A	0.14 acre	"
GT-13-A	0.13 acre	"
GT-13-B	0.41 acre	"
GT-14-A	0.10 acre	"
GT-15-A	1.40 acres	"
GT-16-A	0.19 acre	"
GT-17-A	0.12 acre	"
GT-17-B	0.03 acre	"
GT-18-A	0.07 acre	"
GT-19-A	0.11 acre	"
GT-20-A	0.17 acre	"
GT-22-A	0.003 acre	"
	3.903 acres	



Parcels described as follows:

Those nonexclusive perpetual easements and rights of way for High Valley Road, being in the unincorporated area of the County of Lake, State of California, and described in the EASEMENT DEEDS to the State of California, Department of Water Resources, listed as follows:

- GT-6-A        (DWR Parcel No. GT-6)  
Recorded June 8, 1981  
Book 1093, Page 217, Official Records of said Lake County  
0.38 acre.
- GT-7-A        (DWR Parcel No. GT-7)  
Recorded June 8, 1981  
Book 1093, Page 125, Official Records of said Lake County  
0.17 acre.
- GT-8-A        (DWR Parcel No. GT-8)  
Recorded October 7, 1982  
Book 1152, Page 469, Official Records of Lake County  
0.17 acre.
- GT-9-A        (DWR Parcel No. GT-9)  
Recorded July 6, 1981  
Book 1097, Page 93, Official Records of Lake County  
0.08 acre.
- GT-10-A       (DWR Parcel No. GT-10)  
Recorded June 12, 1981  
Book 1094, Page 302, Official Records of Lake County  
0.16 acre.
- GT-11-A       (DWR Parcel No. GT-11)  
Recorded May 6, 1981  
Book 1088, Page 369, Official Records of Lake County  
0.07 acre.
- GT-12-A       (DWR Parcel No. GT-12)  
Recorded June 8, 1981  
Book 1093, Page 212, Official Records of Lake County  
0.14 acre.
- GT-13-A       (DWR Parcel No. GT-13)  
Recorded August 27, 1981  
Book 1104, Page 263, Official Records of Lake County  
0.13 acre.
- GT-13-B       (DWR Parcel No. GT-13, Unit B)  
Recorded August 27, 1981  
Book 1104, Page 263, Official Records of Lake County  
0.41 acre.

GT-14-A (DWR Parcel No. GT-14)  
Recorded August 19, 1981  
Book 1103, Page 277, Official Records of Lake County  
0.10 acre.

GT-15-A (DWR Parcel No. GT-15)  
Recorded June 2, 1981  
Book 1092, Page 366, Official Records of Lake County  
1.40 acres.

GT-16-A (DWR Parcel No. GT-16)  
Recorded November 6, 1981  
Book 1113, Page 677, Official Records of Lake County  
0.19 acre.

GT-17-A (DWR Parcel No. GT-17, Unit A)  
Recorded June 25, 1981  
Book 1095, Page 678, Official Records of Lake County  
0.12 acre.

GT-17-B (DWR Parcel No. GT-17, Unit B)  
Recorded June 25, 1981  
Book 1095, Page 678, Official Records of Lake County  
0.03 acre.

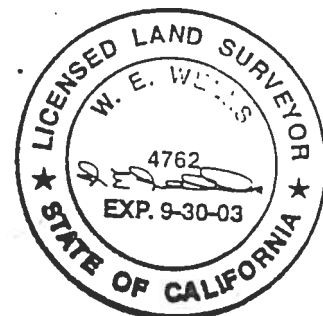
GT-18-A (DWR Parcel No. GT-18)  
Recorded July 16, 1981  
Book 1099, Page 70, Official Records of Lake County  
0.07 acre.

GT-19-A (DWR Parcel No. GT-19)  
Recorded June 2, 1981  
Book 1092, Page 375, Official Records of Lake County  
0.11 acre.

GT-20-A (DWR Parcel No. GT-20)  
Recorded March 23, 1982  
Book 1128, Page 185, Official Records of Lake County  
0.17 acre.

GT-22-A (DWR Parcel No. GT-22)  
Recorded September 18, 1981  
Book 1107, Page 200, Official Records of Lake County  
0.003 acre.

Said parcels contain a total area of 3.903 acres, more or less.



All liens and encumbrances of record.

Director of Water Resources has determined that the said real property was acquired for State water development purposes and is no longer necessary, and is not being used for water development purposes.

Authority is executed pursuant to the authority vested in the Director of Water Resources by law.

\_\_\_\_\_, 20\_\_\_\_

STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES

DIRECTOR OF WATER RESOURCES

STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO } SS.

\_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_  
personally appeared \_\_\_\_\_

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are  
described to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(Seal)

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE STATE OF CALIFORNIA

## **Exhibit "B"**

### **BILL OF SALE**

KNOW ALL MEN BY THESE PRESENTS:

THAT THE STATE OF CALIFORNIA, DEPARTMENT OF WATER RESOURCES (SELLER) of the sum of One Dollar (\$1.00) and for other good and valuable consideration paid to it by Bottle Rock Power Corporation, a California corporation, ("Buyer"), the receipt and sufficiency of which is hereby acknowledged, do hereby convey and sell to Buyer, its successors and assign, certain equipment pursuant to the Purchase Agreement for Bottle Rock Powerplant and Assignment of Geothermal Lease dated \_\_\_\_\_, 2001 ("Agreement") and subject to the terms and conditions contained therein, being more specifically describe as follows:

The Bottle Rock Power Plant and all of the appurtenances thereto, including but not limited to the following: the steam turbine, electric generating unit, gas removal system, abatement system, cooling tower condensers, transformers and all tools and equipment, space parts for equipment, steam wells, steam collection system, and all other buildings and equipment related to the steam field ("Facilities").

TO HAVE AND TO HOLD the same unto said Buyer, its successors and assigns forever.

SELLER, BY THIS INSTRUMENT, MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, EXCEPT (1) THAT SELLER WARRANTS THAT IT HAS GOOD AND MARKETABLE TITLE TO THE FACILITIES AND THAT SAID FACILITIES WILL BE FREE AND CLEAR OF ANY AND ALL LIENS AND ENCUMBRANCES ON THE CLOSING DATE, EXCEPT AS PROVIDED IN THE AGREEMENT.

FURTHER, SELLER MAKES NO WARRANTY AS TO THE MERCHANTABILITY OR FINES FOR ANY PARTICULAR PURPOSE OF SAID FACILITIES, IT BEING UNDERSTOOD THAT BUYER IS PURCHASING THE SAID FACILITIES ON AN "AS-IS" AND "WHERE IS" BASIS.

By acceptance hereof, Buyer assumes all risk of loss relating to the said Facilities howsoever arising, after the date hereof except as specifically provided in the Agreement. Buyer will hold Seller harmless from losses, damages, claims, liabilities and expenses, including legal fees, arising out of the ownership, leasing or use of the said Facilities in accordance in it's obligations under the Agreement.

Notwithstanding anything herein to the contrary, this Bill of Sale and the conveyances contemplated hereby are and shall be deemed to be on and subject to all of the terms and conditions of the Agreement. Nothing herein shall reduce, limit, impair or supersede any of the representations, warranties, covenants, obligations rights or remedies of either party under the Agreement shall control.

In the event of legal action to enforce or interpret this Bill of sale or any provision thereof, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the other party.

This Bill of Sales shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns.

This Bill of Sale shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, SELLER has caused this instrument to be executed by its duly authorized representatives as of this \_\_\_\_ Day of \_\_\_\_\_, 2001.

SELLER

STATE OF CALIFORNIA,  
DEPARTMENT OF WATER RESOURCES

By: \_\_\_\_\_  
Director

ACCEPTED:

BUYER

BOTTLE ROCK POWER CORPORATION

By: \_\_\_\_\_  
President

Exhibit C

## ASSIGNMENT OF GEOTHERMAL LEASE

[illegible]

KNOW ALL PERSONS BY THESE PRESENTS, that for good and valuable consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, the California Department of Water Resources (DWR), and agency of the State of California, does hereby sell, transfer, assign, and convey to Bottle Rock Power Corporation, a California Corporation, (Bottle Rock Power), its successors and assigns all of its right, title and interest as lessee or successor lessee under that certain Geothermal Lease and Agreement granted on February 25, 1975 by Marjorie J. Francisco, Margaret Hodges, formerly Margaret Stewart, Valentine R. Coleman, Vera Boriak, Victor V. Coleman, Florence M. Miles, and Franklin D. Coleman, as recorded on March 13, 1975 at page 167 of Book 789 of the official records of the Recorder of Lake County, California, as assigned and amended from time to time in and to that certain property described on Attachment 1 of this Assignment.

This Assignment is subject to all of the terms and provisions of the above-referenced lease, to all existing royalties, overriding royalties and other burdens to which said lease is presently burdened, and to all other matters of record affecting said lease. Bottle Rock Power, its successors and assigns hereby assumes and agrees to

perform all the obligations, agreements, duties, and covenants, express or implied,  
imposed upon DWR as to said lease.

The terms and provisions of this assignment shall be binding upon and inure to  
the benefit of DWR and BOTTLE ROCK POWER, their heirs, successors and assigns.

IN WITNESS WHEREOF, DWR AND BOTTLE ROCK POWER. Have executed  
this instrument on this \_\_\_\_\_ Day of \_\_\_\_\_, 2001.

BOTTLE ROCK POWER

By: \_\_\_\_\_

CALIFORNIA DEPARTMENT OF WATER  
RESOURCES, AN AGENCY OF THE  
STATE OF CALIFORNIA

By: \_\_\_\_\_  
Thomas M. Hannigan  
Director

[Signatures must be acknowledged by a Notary.]

Attachment 1

To

ASSIGNMENT OF GEOTHERMAL LEASE

DATED \_\_\_\_\_, 2000

Francisco Lease Description

**Lands:**

Township 11 North, Range 8 West, M.D.M.,  
Lake County, California.

Parcel 1:

Section 5: Lots 5,6, 9 and 10 of said Section.

Parcel 2:

Section 6: Lot 10 of said Section:

EXCEPTING THEREFROM the following:

Beginning at the Southwest corner of Lot 10  
and running North 608.6 feet; thence east 715  
feet; thence South 608.6 feet; and thence  
Westerly 715 feet to the place of the  
beginning.



Parcel 3:

Section 5: N-1/2 of SW-1/4 of said  
Section 5.

Section 6: N-1/2 of SE-1/4 of said Section 6.

Containing a total of 350 acres, more or less.

## SURETY BOND

KNOW ALL PERSONS BY THESE PRESENTS THAT THE UNDERSIGNEDS ATTEST TO THE FOLLOWING:

Bottle Rock Power Corporation, 725 Farmer's Lane, Suite 8, Santa Rosa, California 95405, a corporation organized and existing under the laws of the State of California, as PRINCIPAL, and Surety Company, whose address is \_\_\_\_\_, organized and existing under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of California, as SURETY, are held and firmly bound unto the California Department of Water Resources (OBLIGEE) in the penal sum of Five Million Dollars (\$5,000,000 USD) for the payment of which we hereby bind ourselves, our successors, and assigns.

*Whereas*, the above named PRINCIPAL has entered into the Purchase Agreement for Bottle Rock Power Plant and Assignment of Geothermal Steam Lease ("Purchase Agreement") with OBLIGEE and has compelled itself to fulfill and to complete the obligations as stated in Sections 2.4 and 7.1(e) of said Purchase Agreement;

*Whereas*, a demand has been made upon PRINCIPAL by OBLIGEE in the Purchase Agreement for security to insure compliance by the PRINCIPAL with the obligations of said Purchase Agreement, and this surety bond is executed and tendered in accordance with the provisions of the Purchase Agreement which is an Insured Contract hereunder;

*Whereas*, PRINCIPAL has chosen to file this performance surety bond as a guarantee that the decommissioning of the Bottle Rock Power Plant and related facilities and the reclamation of the land used or disturbed during the geothermal operations will be completed as required by Sections 2.4 and 7.1(e) of said Purchase Agreement;

*Whereas*, the SURETY and their successors and assigns agree to guarantee the obligation and to indemnify the OBLIGEE from the failure of the PRINCIPAL to complete the decommissioning of the Bottle Rock Power Plant and related facilities and reclamation of the land used or disturbed during the geothermal operations in conformity with Sections 2.4 and 7.1(e) as specified in the Purchase Agreement, not to exceed the maximum amount of the penal sum of this bond;

*Whereas*, SURETY, as part of the obligation secured by this bond, agrees that costs and reasonable expenses and fees, including reasonable attorney fees incurred by OBLIGEE in successfully enforcing such obligation against SURETY, all to be taxed as costs and included in any judgment rendered, shall be included in the penal sum specified in this bond;

*Whereas*, obligations guaranteed by this surety bond shall be in effect for the lands described in the Geothermal Steam Lease which are subject to Section 7.1(e) upon which operations by PRINCIPAL will have been conducted;

THE TERMS AND CONDITIONS OF THIS SURETY BOND ARE:

1. If PRINCIPAL faithfully completes all obligations set forth in Section 7.1(e) of the Purchase Agreement and all conditions contained therein, then this bond obligation shall be void; otherwise, it will remain in full force and effect as follows:

(a) beginning on the date of the Closing of the Purchase Agreement between PRINCIPAL and OBLIGEE and extending until all decommissioning and reclamation work pursuant to Section 7.1(e) has been completed; or

(b) beginning on the date of the Closing of the Purchase Agreement between PRINCIPAL and OBLIGEE and continuing until the bond is released or replaced with OBLIGEE's approval;

(c) beginning on the date of the Closing of the Purchase Agreement between PRINCIPAL and OBLIGEE and continuing until the bond is replaced with OBLIGEE's approval by another form of security.

2. The failure of PRINCIPAL to fulfill the obligations specified in Purchase Agreement Sections 7.1(e) shall result in forfeiture of this surety bond according to the instructions of this document and obligate SURETY to perform its bond commitments within thirty (30) days of the forfeiture for the benefit of the OBLIGEE.

3. The amount of SURETY's liability hereunder may be adjusted as provided in Section 2.4 of said Purchase Agreement, which adjustment may be reflected by the use of an Increase Rider or a Decrease Rider.

4. The SURETY hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the obligations as stated in Sections 7.1(e) of the Purchase Agreement, or any other provision of the Purchase Agreement, or to the work to be performed thereunder or the specifications accompanying the same, or the acceptance or retention by OBLIGEE of additional security for such obligations, or the agreement by OBLIGEE to subordinate, compromise or release any such security, or the release by OBLIGEE of PRINCIPAL of any part of all its liability under such Sections 7.1(e) or the acceptance, substitution or release of one or more guarantors, endorsers or sureties, shall in any way affect SURETY's obligation on this bond, and SURETY does hereby waive notice of any such change, extension of time, alteration, addition or

other matters, and all rights under Section 2845 of the Civil Code of California and agree that they are not a condition precedent to SURETY's obligations hereunder. SURETY authorizes OBLIGEE at any time in its discretion to reasonably alter any of the terms of the Reclamation Plan, to take and to hold any additional or substituted security for PRINCIPAL's obligations thereunder and to subordinate, compromise, or release any security, to release PRINCIPAL of its liability for all or any part of the work or performance required under the Reclamation Plan, to release, substitute, or add any one or more guarantors, endorsers, or sureties, and to assign this surety bond in whole or in part.

5. SURETY hereby waives:

- (a) Any defense of exoneration based on any impairment of SURETY's rights or remedies against PRINCIPAL, including any rights of subrogation;
- (b) All rights, liabilities and defenses based on any legal disability of PRINCIPAL or any discharge or limitation of the liability of the PRINCIPAL to OBLIGEE, whether consensual or arising by operation of law, or by reason of any bankruptcy, insolvency or debtor-relief proceeding, or from any other cause or defense, including without limitation any claim of disability, offset, demand or defense that PRINCIPAL may assert or claim under the Purchase Agreement;
- (c) All rights, including those arising under Section 2809 of the California Civil Code, to reduce SURETY's obligation in proportion to any reduction in the obligations of PRINCIPAL so that OBLIGEE shall at all times have first dollar coverage under this surety bond;
- (d) All rights, including rights under Section 2845 of the California Civil Code, to require OBLIGEE to pursue PRINCIPAL, any other person, any other security that OBLIGEE may hold, or any other remedy whatsoever before proceeding against SURETY hereunder;
- (e) All rights of reimbursement or subrogation, all rights to enforce any remedy that OBLIGEE or SURETY may have against PRINCIPAL, and all rights to participate in any security held by OBLIGEE with respect to PRINCIPAL's obligations, but only until all amounts and performance required under Section 7.1(e) of the Purchase Agreement have been paid or performed in full.
- (f) Any obligation of OBLIGEE to advise SURETY of the financial condition of PRINCIPAL or any other circumstances affecting PRINCIPAL's ability to perform its obligations under Sections 7.1(e) of the Purchase Agreement, and;

(g) Presentment, diligence, demand, protest, dishonor, and any notices thereof or of nonpayment, or any other notices of any kind except as expressly set forth herein.

6. SURETY'S obligations hereunder are independent and separate of those of PRINCIPAL, and OBLIGEE may demand performance by SURETY and may bring a separate action against SURETY without first exhausting any security or remedy against PRINCIPAL or exercising any other right or remedy under the Purchase Agreement or first pursuing or exhausting any other security for the obligations of or remedy against PRINCIPAL,

PROVIDED, HOWEVER, subject to the provisions of Section 5(e) above and after all amounts and performance required under Sections 7.1(e) and 7.1(f) of the Purchase Agreement have been indefensibly paid or performed in full, SURETY shall be subrogated to the rights of OBLIGEE against PRINCIPAL, including the right to enforce any remedy that OBLIGEE may have against PRINCIPAL, and to participate in any security held by OBLIGEE with respect to PRINCIPAL's obligations which has not been applied by OBLIGEE to the satisfaction of amounts owed or performance due by PRINCIPAL to OBLIGEE and which OBLIGEE in its discretion has determined that it does not need to retain to secure any other amounts or performance owed or owing by PRINCIPAL to OBLIGEE.

7. The SURETY will give prompt notice to the PRINCIPAL and the OBLIGEE of any notice received or action filed alleging the insolvency of the SURETY, or alleging any violations or regulatory requirements which would result in suspension or revocation of the SURETY'S license to do business.

8. In the event that the SURETY becomes unable to fulfill its obligations under this surety bond for any reason, notice shall be given immediately to the PRINCIPAL and the OBLIGEE.

9. Upon the incapacity of the SURETY by reason of bankruptcy, insolvency, or suspension or revocation of its license, the PRINCIPAL shall be deemed to be without bond coverage and subject to enforcement actions by OBLIGEE. No termination, cancellation or expiration of this surety bond for any reason whatsoever, including for nonpayment of premiums, shall be valid or effective unless OBLIGEE has received not less than thirty (30) days prior written notice thereof. In addition:

(a) If SURETY or OBLIGEE serves written notice of SURETY's incapacity to perform to PRINCIPAL and OBLIGEE, the PRINCIPAL shall within fifteen (15) working days of said written notice submit a letter of credit or a replacement surety bond assuming all liabilities hereof and in an amount no less than the penal sum hereof which shall

be satisfactory to OBLIGEE, or the PRINCIPAL shall be subject to enforcement actions by OBLIGEE; and;

(b) If, at the time that the written notice described in Section 9(a) above is given, either all work required under the Reclamation Plan has not been fully and finally completed or PRINCIPAL fails to provide the letter of credit or replacement surety bond as provided in Section 9(a) above, PRINCIPAL shall immediately and without further notice be deemed to be in default of its obligations thereunder, and OBLIGEE shall be entitled to immediately make demand under this surety bond for the payment and performance of all uncompleted obligations and requirements of the Reclamation Plan, and;

(c) PRINCIPAL shall in all events remain liable for all work and workmanship performed, obligations under, and liabilities incurred in connection with Section 7.1(e) of the Purchase Agreement;

10. No delay or failure by OBLIGEE to exercise any right or remedy against PRINCIPAL or SURETY will be construed as a waiver of that right or remedy. All such rights or remedies are cumulative, but SURETY's liability hereunder shall not exceed the penal sum hereof. The obligations hereunder are subject to waiver, release, or amendment only by OBLIGEE, acting alone and in writing. No waiver, release, or amendment of any provision hereof is effective without the written consent of OBLIGEE.

11. If any provision of this surety bond is determined by a court or other forum of competent jurisdiction to be invalid or unenforceable, such provision shall not affect the validity or enforceability of any other provision.

12. This surety bond shall be governed by California law. The prevailing party in any action brought under or arising out of this surety bond shall be entitled to its reasonable attorney's fees. Any action brought hereunder shall be brought in the state or federal courts located in Sacramento, California.

*IN WITNESS WHEREOF*, the seal and signature of PRINCIPAL and SURETY are hereto affixed and attested to by their duly authorized officials on the dates set forth below.

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

SURETY

BOTTLE ROCK POWER CORPORATION

By \_\_\_\_\_

By \_\_\_\_\_

Title: \_\_\_\_\_

as President

SEAL

SEAL

## Exhibit E



**AIG Environmental™**  
Two Rincon Center  
121 Spear Street  
San Francisco, CA 94105  
415.836.2700  
415.836.3149/3150 (Fax)

March 28, 2001

Deborah Potts  
ABD Insurance Services  
765 Baywood Drive, #340  
Petaluma, CA 94954

**RE: BOTTLE ROCK POWER CORPORATION  
COMMERCIAL POLLUTION LEGAL LIABILITY  
PRELIMINARY BINDER**

Dear Debbie:

The following is our proforma binder confirmation for the above referenced insured for sudden and gradual pollution conditions, offered using the American International Specialty Lines Insurance Company form # 72385(1/00.) **No coverage is afforded or bound by this preliminary binder.** A separate binder will be issued upon receipt of an order to bind coverage.

**Policy Period:** April 16, 2001 to April 16, 2006 (These dates are contingent upon receipt of an order to bind)

**Policy Number:** Draft

Limits of Liability	Deductible	5 Yr. Premium
\$10,000,000 Each Incident. \$10,000,000 Aggregate Limit	\$25,000	\$137,592

**Note: The premiums do not include surplus lines taxes and fees.**

**Note: The limits are shared throughout the policy period and are not reinstated.**

**Commission:** 10%

**Waste Disposal Retrodate:** not covered

**Note: If the Insured has this exposure and wishes to purchase this coverage, please notify the underwriter prior to binding. This coverage will need to be underwritten and subject to an AP.**

**I. THE FOLLOWING COVERAGES ARE AUTOMATICALLY PROVIDED WITHIN THE COMMERCIAL POLICY FORM:**

- Onsite cleanup costs of pollution conditions discovered by the Insured at an Insured's property. A third-party claim does not have to be made for onsite cleanup coverage to apply.
- Coverage for preexisting onsite and offsite exposures



- Third-party claims for bodily injury, property damage, and cleanup costs from pollution conditions. Coverage includes onsite and offsite exposures.
- Defense within the limits
- PIER II Free Value-Added Service

**NEW FOR 2000:** In order to facilitate an immediate response to our facility Insured's significant pollution incidents, AIG Environmental now includes the **Pollution Incident and Environmental Response Program (PIER II)**. To report an emergency response incident, AIG Environmental Insureds can call a Toll-free number 7-days-a-week, 24-hours-a-day.

**PIER II** provides the following benefits to the Insured:

- Rapid notification through the Toll-free Telephone Number;
- A nationwide network of Emergency and Secondary Response Companies;
- Helps Insureds respond quickly and effectively to emergencies;
- Offers Insureds access to an advisory board composed of industry experts; and
- Assists in minimizing the cost and duration of an environmental accident.

It is a fact that in environmental emergencies, the first hours are the most critical in trying to minimize property damage and environmental harm. **PIER II** gives the Insured the ability to initiate the emergency response with one phone call, thus potentially saving thousands of dollars. **PIER II** is provided *at no additional cost to the Insured*. It's part of AIG Environmental's commitment to our insured to provide the best products and service.

*This preliminary binder does not specify all the terms and conditions of the PLL Commercial Policy. Please read the insurance policy to familiarize yourself with our coverage provisions.*

## II. THE FOLLOWING ENDORSEMENTS WILL APPLY:

- If a multi-year option is chosen, the Minimum Earned Premium Endorsement will apply (25% at binding and 100% at first anniversary). #73579 (9/99)
- The Natural Resource Damage Endorsement will apply. This endorsement specifically includes coverage for natural resource damage under the definition of Property Damage. #76006 (5/00)
- The Aggregate Deductible Endorsement Each Incident Maintenance Deductible will apply. #72389 (12/98)
  - Aggregate Deductible: \$75,000
  - Each Maintenance Deductible: \$10,000
- The Incident Reporting Endorsement will apply. #73379 (7/99)
- The Change In Material Use of Insured Properties Exclusion Endorsement will apply. #73417 (8/99)

/ The Named Insured Endorsement will apply naming State of California Department of Water Resources. #63305 (8/95)

/ The Schedule of Insured Contracts Endorsement will apply. #72320 (7/00)

-Purchase Agreement For Bottlerock Power Plant And Assignment of Geothermal Steam Lease

Note: Coverage will be subject to receipt and review of the final signed contract within fifteen (15) days of binding. Any changes made to the contract is subject to review, and coverage under this endorsement may be denied.

### III. THE ABOVE INDICATION IS SUBJECT TO THE FOLLOWING:

- Receipt and review of the following within five (5) days of binding.
  - 1) An original signed and completed Pollution Legal Liability Application
  - 2) An AIG Telephone Survey, conducted by AIG Environmental. (completed 1/25/01)

*The premium, terms, and conditions outlined in this letter may be amended based on the information obtained from the application and phone survey.*

- 1999-2000 financial statements within five (5) days of binding.
- We reserve the right to conduct a site assessment, by AIG Environmental Management, at our cost, during the policy period.

Upon receipt of an order to bind the policy will be issued by American International Specialty Lines Agency, Inc., which is a member of American International Group and is not covered by the State Guarantee Association. The carrier will be American International Specialty Lines Insurance Company, a member of the AIG group.

If coverage is bound, the premium must be remitted to American International Surplus Lines Agency, Inc., within thirty (30) days of the effective date of the policy, or within fifteen (15) days of billing, whichever is later. It is your responsibility to follow the surplus lines laws of the applicable state, and in particular to see that the appropriate premium tax is collected and paid.

**Please note that coverage is not bound or afforded by this preliminary binder.** In order to bind coverage we must receive a written order to bind. Please call with your comments or questions. I appreciate the opportunity to work on this account with you.

Regards,

Pauline Lowe  
Middle Market Risk Analyst  
AIG Environmental - San Francisco Region



A Member Company  
of American International Group, Inc.

**AMERICAN INTERNATIONAL  
SPECIALTY LINES INSURANCE COMPANY**

A Capital Stock Insurance Company  
(herein called the Company)  
175 Water Street, Twelfth Floor  
New York, New York 10038

**COMMERCIAL POLLUTION LEGAL LIABILITY**

**DECLARATIONS**

**NOTICE:** THIS IS A CLAIMS-MADE AND REPORTED POLICY - PLEASE READ CAREFULLY. THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED FOR LEGAL DEFENSE. AMOUNTS INCURRED FOR LEGAL DEFENSE SHALL BE APPLIED AGAINST THE DEDUCTIBLE AMOUNT.

**POLICY NUMBER: DRAFT**

- Item 1: NAMED INSURED: BOTTLE ROCK POWER CORPORATION  
ADDRESS: 725 FARMERS LANE, SUITE 11  
SANTA ROSA, CA 95405
- Item 2: POLICY PERIOD: FROM APRIL 16, 2001 TO APRIL 16, 2006  
(THESE DATES ARE CONTINGENT UPON RECEIPT OF AN ORDER TO BIND)  
12:01 A.M. Standard Time at the address of the Named Insured shown above
- Item 3: LIMITS OF LIABILITY, up to : \$ 10,000,000 Each Incident  
\$ 10,000,000 Policy Aggregate
- Item 4: DEDUCTIBLE: \$ 25,000 Each Incident
- Item 5: POLICY PREMIUM: \$ 137,592
- Item 6: WASTE DISPOSAL RETROACTIVE DATE: NOT COVERED
- Broker: ABD INSURANCE SERVICES  
765 BAYWOOD DRIVE, SUITE #340  
PETALUMA, CA 94954

**AUTHORIZED REPRESENTATIVE**  
or countersignature (in states where applicable)

## FORMS SCHEDULE

Named Insured: BOTTLE ROCK POWER CORPORATION

Policy No.: PLC DRAFT

Effective 12:01 A.M.: APRIL 16, 2001

Endorsement Number	Form Name	Form Number/ Edition Date
	Declarations Page	72384
	Notice of Loss	
	Policy	72385
1	Minimum Earned Premium	73579
2	Natural Resource Damage	76066
3	Aggregate Deductible	72389
4	Incident Reporting	73379
5	Change in Material	73417
6	Named Insured(s)	66305
7	Schedule of Insured Contracts	72320

## ENDORSEMENT NO. 1

This endorsement, effective 12:01AM, APRIL 6, 2001  
Forms a part of Policy No: PLC DRAFT  
Issued to: BOTTLE ROCK POWER CORPORATION  
By: American International Specialty Lines Insurance Company

MINIMUM EARNED PREMIUM ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

It is hereby agreed that the following minimum earned premiums will apply when providing multi-year programs.

Binding Coverage	Minimum Premium Earned	25%
First Anniversary	Minimum Premium Earned	100%

Cancellation of the Policy during the first year will be subject to a return premium on a pro-rata basis after applying the minimum premium earned. The premium will be 100% earned at the first anniversary of the effective date of the Policy.

All other terms, conditions and exclusions shall remain the same.

AUTHORIZED REPRESENTATIVE  
or countersignature (in states where applicable)

## ENDORSEMENT NO. 2

This endorsement, effective 12:01AM, APRIL 6, 2001  
Forms a part of Policy No: PLC DRAFT  
Issued to: BOTTLEROCK POWER CORPORATION  
By: American International Specialty Lines Insurance Company

NATURAL RESOURCE DAMAGE ENDORSEMENT

## THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

1. It is hereby agreed that Section III. DEFINITIONS, paragraph O., Property Damage, is deleted in its entirety and replaced with the following:

O. Property Damage means:

- (1) Physical injury to or destruction of tangible property of parties other than the Insured, including the resulting loss of use or value thereof;
- (2) Loss of use, but not loss of value, of tangible property of parties other than the Insured that has not been physically injured or destroyed; and
- (3) Natural Resource Damage.

Property Damage does not include Clean-Up Costs.

2. The following is added to Section III. DEFINITIONS:

Natural Resource Damage means physical injury to or destruction of, including the resulting loss of value of, land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)), any state or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

All other terms, conditions and exclusions shall remain the same.

AUTHORIZED REPRESENTATIVE

or countersignature (in states where applicable)

**ENDORSEMENT NO. 3**

This endorsement, effective 12:01AM, APRIL 6, 2001  
Forms a part of Policy No: PLC DRAFT  
Issued to: BOTTLEROCK POWER CORPORATION  
By: American International Specialty Lines Insurance Company

**AGGREGATE DEDUCTIBLE ENDORSEMENT**  
**EACH INCIDENT MAINTENANCE DEDUCTIBLE**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

1. It is hereby agreed that the following is added to the Declarations, Item 4:

Aggregate Deductible  
\$75,000

Each Incident Maintenance Deductible  
\$10,000

2. Section IV. **LIMIT OF LIABILITY AND DEDUCTIBLE**, Paragraph C., is deleted in its entirety and replaced with the following:

- C. Subject to Paragraphs A. and B. above, this Policy is to pay covered **Clean-Up Costs or Loss**, as the case may be, in excess of the Deductible amount stated in Item 4 of the Declarations, up to but not exceeding the "Each Incident" limit of liability. Once the **Named Insured** pays deductible amounts which in the aggregate equal the amount shown in the Declarations, Item 4, "Aggregate Deductible" as shown above, the Deductible-Each Incident will no longer apply but will be subject to an incident Maintenance Deductible as shown above. The Deductible amount applies to all **Clean-Up Costs or Loss** arising from the same, related or continuous **Pollution Conditions**.

The Insured shall promptly reimburse the Company for advancing any element of **Clean-Up Costs or Loss** falling within the Deductible.

All other terms, conditions and exclusions remain the same.

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE  
or countersignature (in states where applicable)

**ENDORSEMENT NO. 4**

This endorsement, effective 12:01AM, APRIL 6, 2001  
Forms a part of Policy No: PLC DRAFT  
Issued to: BOTTLEROCK POWER CORPORATION  
By: American International Specialty Lines Insurance Company

**INCIDENT REPORTING ENDORSEMENT**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

It is hereby agreed that the following is added to Section VI. NOTICE REQUIREMENTS AND CLAIM PROVISIONS.

**D. NOTICE OF POSSIBLE CLAIM**

1. If during the Policy Period, the Insured first becomes aware of Pollution Conditions which it reasonably expects may result in Clean-Up Costs or a Claim, the Insured may provide written notice to the Company during the Policy Period containing all the information required under paragraph 2) below. Any Claim subsequently made against the Insured and reported to the Company within five (5) years after the end of the Policy Period of this policy or any continuous, uninterrupted renewal thereof, shall be deemed to have been first made and reported during the Policy Period of this policy. Such Claim shall be subject to the terms, conditions and limits of coverage of this policy.
2. It is a condition precedent to the coverage afforded by this clause that written notice under paragraph 1) above contain all of the following information: (a) the cause of the Pollution Conditions; (b) the Insured Property upon which the Pollution Conditions took place; (c) the Bodily Injury, Property Damage or Clean-Up Costs which has resulted or may result from such Pollution Conditions; (d) the Insured(s) which may be subject to the Claim and any potential claimant(s); (e) all engineering information available on the Pollution Conditions and any other information that the Company deems reasonably necessary; and (f) the circumstances by which and the date the Insured first became aware of the potential Claim.

All other terms, conditions and exclusions shall remain the same.

**AUTHORIZED REPRESENTATIVE**  
or countersignature (in states where applicable)



# ENDORSEMENT NO. 5

This endorsement, effective 12:01AM, APRIL 6, 2001

Forms a part of Policy No: PLC DRAFT

Issued to: BOTTLEROCK POWER CORPORATION

By: American International Specialty Lines Insurance Company

## CHANGE IN MATERIAL USE OF INSURED PROPERTY(IES) EXCLUSION

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

It is hereby agreed that the following exclusion is added to Section II. EXCLUSIONS:

arising from a material change in use of the Insured Property(ies).

All other terms, conditions and exclusions shall remain the same.

AUTHORIZED REPRESENTATIVE  
or countersignature (in states where applicable)

ENDORSEMENT NO. 6

This endorsement, effective 12:01AM, APRIL 6, 2001  
Forms a part of Policy No: PLC DRAFT  
Issued to: BOTTLEROCK POWER CORPORATION  
By: American International Specialty Lines Insurance Company

NAMED INSURED(S) ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

It is hereby agreed that the following entity(ies) is (are) included as Named Insured(s), in Item 1 of the Declarations, but solely as respects liability arising out of the ownership, operation, maintenance or use of the Insured Property(ies) designated in Item 5 of the Declarations. The first Named Insured, if any, previously designated in Item 1 of the Declarations shall remain unchanged as such.

NAMED INSURED(S)

State of California Department of Water Resources

All other terms, conditions and exclusions remain the same.

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE  
or countersignature (in states where applicable)

**ENDORSEMENT NO. 7**

This endorsement, effective 12:01AM, APRIL 6, 2001  
Forms a part of Policy No: PLC DRAFT  
Issued to: BOTTLE ROCK POWER CORPORATION  
By: American International Specialty Lines Insurance Company

**SCHEDULE OF INSURED CONTRACTS**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

It is hereby agreed that the following are scheduled as Insured Contracts to this policy:

**INSURED CONTRACTS**

Purchase Agreement for Bottlerock Power Plant and Assignment of Geothermal Steam Lease  
(Note: Coverage will be subject to receipt and review of the final signed contract within fifteen (15) days of binding. Any changes made to the contract is subject to review, and coverage under this endorsement may be denied.

All other terms, conditions and exclusions remain the same.

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE  
or countersignature (in states where applicable)

**AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY**

(A Capital Stock Company, herein called the Company)

175 Water Street, Twelfth Floor

New York, New York 10038

**COMMERCIAL POLLUTION LEGAL LIABILITY POLICY**

THIS IS A CLAIMS MADE AND REPORTED POLICY. THIS POLICY HAS CERTAIN PROVISIONS AND REQUIREMENTS UNIQUE TO IT AND MAY BE DIFFERENT FROM OTHER POLICIES THE INSURED MAY HAVE PURCHASED. DEFINED TERMS APPEAR IN BOLD FACE TYPE.

In consideration of the payment of the premium, in reliance upon the statements in the Declarations and Application made a part hereof and subject to all the terms of this Policy, the Company agrees with the Named Insured as follows:

**I. INSURING AGREEMENTS**

A. To pay **Clean-Up Costs** on behalf of the Insured, on or under the **Insured Property**, if such **Clean-Up Costs** are sustained solely by reason of the discovery by the Insured during the **Policy Period** of **Pollution Conditions** on or under the **Insured Property**, provided:

1. The discovery of such **Pollution Conditions** is reported to the Company in writing during the **Policy Period** or within thirty (30) days thereafter by the Insured and in accordance with Section VI. of the Policy;

Discovery of such **Pollution Conditions** happens when any director or officer or any employee with management responsibility of the Insured, or in the case of a proprietorship or partnership, an owner or general partner, becomes aware of **Pollution Conditions**; and

2. Such **Pollution Conditions** have been reported to the appropriate governmental agency in compliance with applicable **Environmental Laws**, in effect as of the date of discovery.

B. To pay **Loss** on behalf of the Insured that the Insured is legally obligated to pay as a result of **Claims** first made against the Insured and reported to the Company, in writing, during the **Policy Period**, or during the **Extended Reporting Period** if applicable, for **Bodily Injury**, **Property Damage** or **Clean-Up Costs** resulting from **Pollution Conditions**.

C. To have the right and the duty to defend any **Claims** as described in Paragraph B. above. The Company's duty to defend or continue defending, and to pay any **Loss**, shall cease once the applicable limit of liability, as described in Section IV., "Limit of Liability and Deductible," has been exhausted. Defense costs, charges and expenses, are included in the definition of **Loss** as described in Section III. "Definitions," Paragraph K., reduce the applicable limit of liability, as described in Section IV., and are included within the **Deductible** amount shown in Item 4 of the Declarations.

**II. EXCLUSIONS**

This insurance does not apply to **Clean-Up Costs** or **Claims**:

- A. arising from **Pollution Conditions** existing prior to the inception date of this Policy and not disclosed in the application for this Policy, if any **Responsible Insured** knew or reasonably could have expected that

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such Pollution Conditions could give rise to Clean-Up Costs or a Claim under this Policy.

- B. due to or for any punitive, exemplary or the multiplied portion of multiple damages, or any civil or administrative fines, penalties or assessments, except where such damages, fines, penalties or assessments are insurable by applicable law; or any criminal fines, penalties or assessments.
- C. arising under any worker's compensation, unemployment compensation or disability benefits law or similar law.
- D. due to Bodily Injury to an employee of the Insured or its parent, subsidiary or affiliate arising out of and in the course of employment by the Insured or its parent, subsidiary or affiliate; however this exclusion does not apply to liability assumed under an Insured Contract.
- E. arising as a result of liability of others assumed by the Insured under any contract or agreement, unless the liability of the Insured would have attached in the absence of such contract or agreement or the contract or agreement is an Insured Contract.
- F. for Property Damage to goods or products manufactured, sold, handled or distributed by the Insured arising out of such goods or products or any part thereof, or due to Property Damage to work performed by, or on behalf of the Insured arising out of the work or any portion thereof.
- G. arising from Pollution Conditions that result from an intentional or illegal act or omission of a Responsible Insured, if he or she knew or reasonably could have expected that Pollution Conditions would result.
- H. arising from Pollution Conditions based upon or attributable to a Responsible Insured's intentional, willful or deliberate noncompliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body.
- I. for costs, charges or expenses incurred by the Insured for goods supplied or services performed by the staff or salaried employees of the Insured, or its parent, subsidiary or affiliate, except if in response to an emergency or pursuant to Environmental Laws which require immediate remediation of Pollution Conditions, or unless such costs, charges or expenses are incurred with the prior written approval of the Company in its sole discretion.
- J. for Property Damage to property at any time owned, leased, rented, occupied or loaned to the Insured.
- K. arising from the presence of asbestos or any asbestos-containing materials or lead-based paint installed or applied in, on or to any building or other structure.
- L. arising out of Waste Disposal Activities which took place prior to the Waste Disposal Retroactive Date stated in Item 6 of the Declarations.
- M. arising out of professional services performed or rendered by the Named Insured, including but not limited to, recommendations, opinions and strategies rendered for architectural, consulting and engineering work, such as drawings, designs, maps, reports, surveys, change orders, plan specifications, assessment work, remedy selections, site maintenance equipment selection, and supervisory, inspection or engineering service.
- N. arising from the Insured's Products after possession of such Insured's Products have been relinquished to others by the Insured or others trading under its name.
- O. by any Insured against any other person or entity who is also an Insured under this Policy.
- P. arising from Pollution Conditions resulting from any Identified Underground Storage Tank unless satisfactory integrity test results (Company approved method) are received and approved by and are on

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file with the Company, and such Identified Underground Storage Tanks are scheduled in the Policy by endorsement.

- Q. for **Property Damage** to any **Automobile**, rolling stock, **Vessel** or aircraft utilized during the transportation of the Insured's Products or Waste. This exclusion does not apply to Claims arising from the Insured's negligence.
- R. arising from **Pollution Conditions** at any property the Insured first acquires, leases, rents or occupies after the inception date of this Policy, unless coverage for such property is specifically endorsed to this Policy.
- S. arising from **Pollution Conditions** at any property owned, leased, rented or occupied by the Insured, which the Insured sold, leased, gave away, abandoned or relinquished operational control prior to the inception date of this Policy.

### III. DEFINITIONS

- A. **Automobile** means a land motor vehicle, trailer or semi-trailer licensed for travel on public roads, including any machinery or apparatus attached thereto.
- B. **Bodily Injury** means physical injury, or sickness, disease, mental anguish or emotional distress sustained by any person, including death resulting therefrom.
- C. **Claim** means a written demand received by the Insured seeking a remedy and alleging liability or responsibility on the part of the Insured for **Loss**.
- D. **Clean-Up Costs** means expenses, including reasonable and necessary legal expenses incurred with the Company's written consent, incurred in the investigation, removal, remediation including monitoring, or disposal of soil, surfacewater, groundwater or other contamination:
  - (1) to the extent required by **Environmental Laws**, or specifically mandated by court order, the government or any political subdivision of the United States of America or any state thereof, or Canada or any province thereof duly acting under the authority of **Environmental Laws**; or
  - (2) which have been actually incurred by the government or any political subdivision of the United States of America or any state thereof or Canada or any province thereof, or by third parties.
- E. **Environmental Laws** means any applicable federal, state, provincial or local law under which the Insured has or may have an obligation to incur **Clean-Up Costs**.
- F. **Identified Underground Storage Tank** is an **Underground Storage Tank**, the existence of which was known by any Insured prior to the inception date of this Policy, including **Underground Storage Tanks** which have been removed. An **Underground Storage Tank** is any tank, including associated underground piping connected to the tank, that has at least ten percent (10%) of its volume below ground.
- G. **Insured** means the **Named Insured**, and any past or present director, officer, partner or employee thereof, including a temporary or leased employee, while acting within the scope of his/her duties as such.
- H. **Insured Contract** means:
  - (1) A contract for a lease of premises.
  - (2) That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under

which you assume the tort liability of another party to pay for **Bodily Injury, Property Damage or Clean-Up Costs** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

- (3) A contract or agreement submitted to and approved by the Company, and listed in a Schedule to this Policy.

Paragraph (2) does not include that part of any contract or agreement that indemnifies an architect, engineer or surveyor for injury or damage arising out of:

- (a) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the **Bodily Injury, Property Damage or Clean-Up Costs**.

I. **Insured's Products** means goods or products manufactured, sold, handled or distributed by the Insured or others trading under the Insured's name, and includes containers (other than **Automobiles**, rolling stock, **Vessels** or aircraft), materials, parts or equipment furnished in connection therewith, and includes warranties or representations made at any time with respect to the fitness, quality, durability, performance or use thereof, or the failure to provide warnings or instructions.

J. **Insured Property** means real property owned, leased, rented or occupied by the Insured.

K. **Loss** means (1) monetary awards or settlements of compensatory damages arising from **Bodily Injury or Property Damage**; (2) costs, charges and expenses incurred in the defense, investigation or adjustment of Claims for such compensatory damages or for **Clean-Up Costs**; or (3) **Clean-Up Costs**.

L. **Named Insured** means the person or entity designated as such in Item 1 of the Declarations.

M. **Policy Period** means the period set forth in Item 2 of the Declarations, or any shorter period as a result of cancellation of this Policy.

N. **Pollution Conditions** means the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical Waste and Waste materials into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment.

O. **Property Damage** means:

- (1) Physical injury to or destruction of tangible property of parties other than the Insured, including the resulting loss of use or value thereof; and
- (2) Loss of use, but not loss of value, of tangible property of parties other than the Insured that has not been physically injured or destroyed.

**Property Damage** does not include **Clean-Up Costs**.

P. **Responsible Insured** means any employee of the Named Insured responsible for environmental affairs, control or compliance, or any manager, supervisor, officer, director or partner of the Named Insured.

Q. **Vessel** means any watercraft or other conveyance used or capable of being used as a means of transportation on water, whether self-propelled or otherwise, and includes barges and tugs.

R. **Waste** means waste generated by the Named Insured, including any property in which the wastes are

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contained (other than Automobiles, rolling stock, Vessels or aircrafts), and including materials to be recycled, reconditioned or reclaimed.

- S. **Waste Disposal Activities** means the transportation, processing, treatment or disposal, or the arranging for the transportation, processing, treatment or disposal of Waste.

#### IV. LIMIT OF LIABILITY AND DEDUCTIBLE

- A. The Company's total liability for all **Clean-Up Costs** under Insuring Agreement I.A. and all **Loss** under Insuring Agreement I.B. combined, and including the Extended Reporting Period, if applicable, shall not exceed the "Policy Aggregate" shown in Item 3 of the Declarations. The purchase by the Named Insured of an Extended Reporting Period pursuant to Section V. shall not serve to reinstate or increase the Policy Aggregate of this Policy.
- B. (1) Subject to Paragraph A. above, the Company's total liability for all **Clean-Up Costs** under Insuring Agreement I.A. and **Loss** under Insuring Agreement I.B. combined, arising from the same, continuous or related **Pollution Conditions** shall not exceed the "Each Incident" limit of liability stated in Item 3 of the Declarations.
- (2) If the Insured first discovers **Pollution Conditions** during the Policy Period and reports them to the Company in accordance with Section VI., all continuous or related **Pollution Conditions** first discovered by the Named Insured and reported to the Company under a subsequent Commercial Pollution Legal Liability Policy issued by the Company or its affiliate providing substantially the same coverage as this Policy shall be deemed to have been first discovered and reported during this Policy Period.
- (3) If a Claim for **Bodily Injury, Property Damage or Clean-Up Costs** is first made against the Insured and reported to the Company during the Policy Period, all **Claims for Bodily Injury, Property Damage or Clean-Up Costs**, arising from the same, continuous or related **Pollution Conditions** which are first made against the Insured and reported to the Company under a subsequent Pollution Legal Liability Policy issued by the Company or its affiliate providing substantially the same coverage as this Policy, shall be deemed to have been first made and reported during the Policy Period of this Policy.
- C. Subject to Paragraphs A. and B. above, this Policy is to pay covered **Clean-Up Costs** or **Loss**, as the case may be, in excess of the Deductible amount stated in Item 4 of the Declarations, up to but not exceeding the "Each Incident" limit of liability. The Deductible amount applies to all **Clean-Up Costs** or **Loss** arising from the same, related or continuous **Pollution Conditions**.

The Insured shall promptly reimburse the Company for advancing any element of **Clean-Up Costs** or **Loss** falling within the Deductible.

#### V. EXTENDED REPORTING PERIOD

The Named Insured shall be entitled to an Automatic Extended Reporting Period, and (with certain exceptions as described in paragraph B. of this Section) be entitled to purchase an Optional Extended Reporting Period Endorsement for Insuring Agreement I.B., upon termination of coverage as defined in Paragraph B.(3) of this Section. Neither the Automatic nor the Optional Extended Reporting Period shall reinstate or increase any of the limits of liability of this Policy.

##### A. Automatic Extended Reporting Period

Provided (i) that the Named Insured has not purchased any other insurance to replace this insurance and which applies to **Clean-Up Costs** or a Claim otherwise covered hereunder, and (ii) the Named Insured has not purchased the Optional Extended Reporting Period available under paragraph B. below, the Named Insured shall have the right to the following: a period of sixty (60) days following the



effective date of such termination of coverage in which to provide written notice to the Company of Claims first made and reported within the Automatic Extended Reporting Period.

A Claim first made and reported within the Automatic Extended Reporting Period will be deemed to have been made on the last day of the Policy Period, provided that the Claim arises from Pollution Conditions that commenced before the end of the Policy Period and is otherwise covered by this Policy. The Automatic Extended Reporting Period in its entirety shall not apply if the Optional Extended Reporting Period becomes effective.

#### B. Optional Extended Reporting Period

The Named Insured shall be entitled to purchase an Optional Extended Reporting Period upon termination of coverage as defined herein (except in the event of nonpayment of premium), as follows:

- (1) A Claim first made and reported within the Optional Extended Reporting Period, if purchased in accordance with the provisions contained in Paragraph (2) below, will be deemed to have been made on the last day of the Policy Period, provided that the Claim arises from Pollution Conditions that commenced before the end of the Policy Period and is otherwise covered by this Policy.
- (2) The Company shall issue an endorsement providing an Optional Extended Reporting Period of up to forty (40) months from termination of coverage hereunder, provided that the Named Insured:
  - a. makes a written request for such endorsement which the Company receives within thirty (30) days after termination of coverage as defined herein; and
  - b. pays the additional premium when due. If that additional premium is paid when due, the Extended Reporting Period may not be canceled, provided that all other terms and conditions of the Policy are met.
- (3) Termination of coverage occurs at the time of cancellation or nonrenewal of this Policy by the Named Insured or by the Company.
- (4) The Optional Extended Reporting Period is available to the Named Insured for not more than 200% of the full annual Policy premium.

#### VI. NOTICE REQUIREMENTS AND CLAIM PROVISIONS

It is a condition precedent to any rights afforded under this Policy that the Insured provide the Company with notice of Pollution Conditions as follows:

##### A. NOTICE OF POLLUTION CONDITIONS

- (1) In the event of Pollution Conditions under Insuring Agreement I.A., the Insured shall give written notice to:

Manager, Pollution Insurance Products Unit  
AIG Technical Services, Inc.  
Environmental Claims Department  
80 Pine Street, Sixth Floor  
New York, New York 10005

and

Division Attorney - Pollution Legal Liability

American International Specialty Lines Insurance Company  
175 Water Street, Twelfth Floor  
New York, New York 10038

or other address(es) as substituted by the Company in writing.

- (2) The notice required by Paragraph (1) shall include at a minimum, information sufficient to identify the **Named Insured**, the **Insured Property**, the names of persons with knowledge of the **Pollution Conditions**, and all known and reasonably obtainable information regarding the time, place, cause, nature of and other circumstances of the **Pollution Conditions**. Written notice shall be made on a notice of loss form supplied by the Company.

Notice of Pollution Conditions may only be provided by the Insured and may not be delegated to third parties. It is not a defense to this condition precedent that the Company learned of the **Pollution Conditions** through any independent means.

**B. DUTIES OF THE INSURED IN THE EVENT OF CLAIMS ARISING FROM POLLUTION CONDITIONS**

- (1) In the event of a **Claim**, the Insured shall give the Company's representative(s) as identified in this paragraph written notice as soon as practicable, but in any event during the **Policy Period** or **Extended Reporting Period**, if applicable.

All Claims shall be reported to:

Manager, Pollution Insurance Products Unit  
AIG Technical Services, Inc.  
Environmental Claims Department  
80 Pine Street, Sixth Floor  
New York, New York 10005

and

Division Attorney - Pollution Legal Liability  
American International Specialty Lines Insurance Company  
175 Water Street, Twelfth Floor  
New York, New York 10038

or other address(es) as substituted by the Company in writing.

- (2) The Insured shall furnish information at the request of the Company. When a **Claim** has been made, the Insured shall forward to the Company as soon as practicable after receipt, or receipt by its representative or agent, the following:

- a. All correspondence between the Insured and any third party claimant;
- b. All demands, summons, notices or other processes or papers filed with a court of law, administrative agency or an investigative body;
- c. All technical reports, laboratory data, field notes or any other documents generated by persons hired by the Insured to investigate or remediate **Pollution Conditions**;
- d. All expert reports, investigations and data collected by experts retained by the

Insured, whether or not the Insured intends to use the material for any purpose; and

- e. Any other information developed or discovered by the Insured concerning the Claim, whether or not deemed by the Insured to be relevant to the Claim.
- (3) No costs, charges or expenses shall be incurred in the defense or investigation of Claims without the Company's consent, which shall not be unreasonably withheld.
  - (4) If the Insured refuses to consent to any settlement recommended by the Company and acceptable to the claimant, the Company's duty to defend the Insured shall then cease and the Insured shall thereafter negotiate or defend such Claim independently of the Company and the Company's liability shall not exceed the amount, less the Deductible or any outstanding Deductible balance, for which the Claim could have been settled if such recommendation was consented to.
  - (5) The Company shall have the right but not the duty to participate in decisions regarding cleanup of Pollution Conditions or to assume direct control over all aspects of such cleanup and the adjustment of any Claim up to the limit of liability. In the case of the exercise of this right, the Insured, on demand of the Company, shall promptly reimburse the Company for any element of Loss the Company advances falling within the Insured's Deductible, pursuant to Section IV.
  - (6) The Insured shall cooperate with the Company to the fullest extent possible by providing the assistance necessary to adjust, investigate and defend the Claim, and shall participate in discussions regarding clean-up or performance of a clean-up should the Company exercise its rights under Paragraph (5) of this Section VI.B. The Insured agrees to provide the Company free access to interview any employee, agent, representative or independent contractor of the Insured and review any documents of the Insured concerning the Claim.
  - (7) In the event the Insured is entitled by law to select independent counsel to defend the Insured at the Company's expense, the attorney fees and all other litigation expenses the Company must pay to that counsel are limited to the rates the Company would actually pay to counsel that the Company retains in the ordinary course of business in the defense of similar Claims in the community where the Claim arose or is being defended.

Additionally, the Company may exercise the right to require that such counsel have certain minimum qualifications with respect to their competency, including experience in defending Claims similar to the one pending against the Insured, and to require such counsel to have errors and omissions insurance coverage. As respects any such counsel, the Insured agrees that counsel will timely respond to the Company's request for information regarding the Claim.

Furthermore, the Insured may at anytime, by its signed consent, freely and fully waive its right to select independent counsel.

#### C. RIGHTS OF THE COMPANY AND DUTIES OF THE INSURED IN THE EVENT OF POLLUTION CONDITIONS

- (1) The Company's Rights.
  - a. The Company shall have the right but not the duty to clean-up or mitigate Pollution Conditions on or under the Insured Property upon receiving notice as provided in Section VI. of this Policy.
  - b. Allocation of Sums Expended. Any sums expended by the Company under Paragraph (1)a. of this Section VI.C. will be deemed incurred or expended by the Insured and shall

be applied against the limits of coverage under this Policy.

- (2) The Named Insured shall have the duty to clean-up Pollution Conditions on or under the Insured Property to the extent required by Environmental Laws by retaining competent professional(s) or contractor(s) mutually acceptable to the Company and the Named Insured. The Company shall have the right but not the duty to review and approve all aspects of any such clean-up. The Named Insured shall notify the Company of actions and measures taken pursuant to this paragraph.

## VII. TERRITORY

This Policy only applies to Claims arising from Pollution Conditions in the United States, its territories or possessions, or Canada and only if such Claims are made or brought in the United States, its territories or possessions, or Canada.

## VIII. CONDITIONS

- A. **Inspection and Audit** - The Company shall be permitted but not obligated to inspect, sample and monitor on a continuing basis the Insured's property or operations, at any time. Neither the Company's right to make inspections, sample and monitor, nor the actual undertaking thereof nor any report thereon, shall constitute an undertaking, on behalf of the Insured or others, to determine or warrant that property or operations are safe, healthful or conform to acceptable engineering practice or are in compliance with any law, rule or regulation.
- B. **Cancellation** - This Policy may be cancelled by the Named Insured by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. This Policy may be cancelled by the Company only for the reasons stated below by mailing to the Named Insured at the address shown in the Policy, written notice stating when not less than 60 days (10 days for nonpayment of premium) thereafter such cancellation shall be effective. Proof of mailing of such notice shall be sufficient proof of notice.
1. Material misrepresentation by the Insured;
  2. The Insured's failure to comply with the terms, conditions or contractual obligations under this policy, including failure to pay any Deductible when due;
  3. Failure to pay any premium when due;
  4. A change in operations at an Insured Property during the Policy Period which materially increases a risk covered under this Policy.

The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the Policy Period. Delivery of such written notice either by the Named Insured or by the Company shall be equivalent to mailing. If the Named Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment may be either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

- C. **Representations** - By acceptance of this Policy, the Insured agrees that the statements in the Declarations and Application are their agreements and representations, that this Policy is issued in reliance upon the truth of such representations, and that this Policy embodies all agreements existing between the Insured and the Company or any of its agents relating to this insurance.
- D. **Action Against Company** - No action shall lie against the Company, unless as a condition precedent

thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Company.

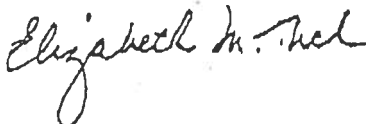
Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the Company as a party to any action against the Insured to determine the Insured's liability, nor shall the Company be impleaded by the Insured or his legal representative. Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligations hereunder.

- E. **Assignment** - This Policy shall not be assigned without the prior written consent of the Company. Assignment of interest under this Policy shall not bind the Company until its consent is endorsed thereon.
- F. **Subrogation** - In the event of any payment under this Policy, the Company shall be subrogated to all the Insured's rights of recovery therefor against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights including without limitation, assignment of the Insured's rights against any person or organization who caused Pollution Conditions on account of which the Company made any payment under this Policy. The Insured shall do nothing to prejudice the Company's rights under this paragraph. Any recovery as a result of subrogation proceedings arising out of the payment of Clean-Up Costs or Loss covered under this Policy shall accrue first to the Insured to the extent of any payments in excess of the limit of coverage; then to the Company to the extent of its payment under the Policy; and then to the Insured to the extent of its Deductible. Expenses incurred in such subrogation proceedings shall be apportioned among the interested parties in the recovery in the proportion that each interested party's share in the recovery bears to the total recovery.
- G. **Changes** - Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy.
- H. **Sole Agent** - The Named Insured first listed in Item 1 of the Declarations shall act on behalf of all other Insureds, if any, for the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this Policy, giving and receiving notice of cancellation or nonrenewal, and the exercise of the rights provided in the Extended Reporting Period clause.
- I. **Other Insurance**
- (1) **Primary Insurance**
- This insurance is primary. Our obligations are not affected unless any other insurance applicable to Clean-Up Costs or Loss covered under this Policy is also primary. Then, we will share with all that other insurance by the method described in (2) below.
- (2) **Method of Sharing**
- If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.
- If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

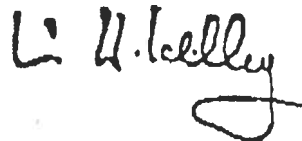
- J. **Service of Suit** - It is agreed that in the event of failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon Counsel, Legal Department, American International Specialty Lines Insurance Company, 70 Pine Street, New York, New York 10270, or his or her representative, and that in any suit instituted against the Company upon this contract, the Company will abide by the final decision of such court or of any appellate court in the event of any appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the Company hereby designates the Superintendent, Commissioner, or Director of Insurance, other officer specified for that purpose in the statute, or his or her successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above named counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

IN WITNESS WHEREOF, the Company has caused this Policy to be signed by its president and secretary and signed on the Declarations page by a duly authorized representative or countersigned in states where applicable.



Elizabeth M. Tuck, Secretary



Kevin Kelley, President

## **Exhibit F**

### **Bottle Rock Power Plant and Steamfield Schedule of Assets (Non-Exhaustive)**

#### ***Power Plant Assets***

- Concrete Power House (Turbine Building)
- Fuji Turbine-Generator System
- Lubricating Oil System (Includes Existing Volume of Lube Oil)
- Control Room Equipment and All Telecommunications Equipment
- Motor Control System
- Emergency Battery Bank
- Emergency Electrical Generators (Diesel) and Associated Buildings
- Electrical Substation (13.8 kv to 230 kv Transformer and Switch Gear)
- Electrical Transformers, Potential Ground Switches, Circuit Breakers and All Other Related Electrical Systems
- Heat Extraction System (Main, Inter, and After Condensers)
- Turbine Bypass Condensing System
- Research-Cottrell Five Cell Counter-Flow Cooling Tower
- Condensate and Circulating Water Pumping Systems and All Other Ancillary Pumps
- Peabody Designed Stretford H<sub>2</sub>S Abatement System
- Stretford Control Building, Controls, and Associated Analytical Laboratory
- Stretford Sulphur Co-Product Management System
- Secondary Abatement System with All Related Storage Tanks and Pumps
- Main Steam Emergency Exhaust Muffler System
- Plant Yard Fixtures, Improvements, and Various Out-Buildings
- All Spare Parts on the Premises (Including but not limited to the Spare Turbine Rotor, Diaphragms, Gear Boxes, Condenser Tubes) and All Special Tools

#### ***Steamfield Assets***

- Fourteen (14) Production Steam Wells on Three (3) Different Pads
- Two (2) Liquid Re-Injection Wells
- Steam Gathering and Transmission Piping (Approximately 3.5 Miles Total)
- Steamfield Control Building, Shop, Lay Down Yard, and Various Out-Buildings
- Wellhead Valves of Various Sizes
- Motorized Main Steam Stop Valves

#### ***Related Assets***

- All Instruction Manuals, Engineering Data Books, and Parts Catalogues
- All Diagrams and Drawings (Including All Piping and Instrument Drawings)
- All Plant and Steamfield Performance Records

Exhibit 402



AUG 3 2012

Robert Weisenmiller, Chairman  
California Energy Commission  
1516 Ninth Street  
Sacramento, California 95814

**Amendment to Purchase Agreement for the Bottle Rock Power Plant and Geothermal Steam Lease**

This memo is to advise your agency that the Department of Water Resources (DWR) is planning to amend the "Purchase Agreement for the Bottle Rock Power Plant and the assignment of Geothermal Steam Lease," dated April 5, 2001 by the deletion of Sections 2.4 and 2.5 in exchange for a release of any liability of DWR to Bottle Rock Power or the owners of the geothermal steam.

We have enclosed a copy of the contract so that you may evaluate any potential effects on your agency by this proposed amendment.

If you have any comments please e-mail me at [ccrothers@water.ca.gov](mailto:ccrothers@water.ca.gov) or contact me by phone.

**Original Signed By**

Cathy Crothers  
Chief Counsel  
(916) 653-5613

cc: Chris Marxen  
California Energy Commission  
Compliance Office  
1516 Ninth Street  
Sacramento, California 95814

County of Lake  
Attention: Department of Public Works  
255 N. Forbes Street  
Lakeport, California 95453

Enclosure

BJames:LBosalis  
S:\JAMES, BOB\Correspondence\Bottle Rock\9045 memo R Weisenmiller CA Energy Commission Bottle Rock Am.doc

**Exhibit 403**

**FIRST AMENDMENT  
TO THE  
PURCHASE AGREEMENT FOR BOTTLE ROCK POWER PLANT AND  
ASSIGNMENT OF GEOTHERMAL STEAM LEASE**

Pursuant to Paragraph 10.14 of the above-entitled Purchase Agreement, the **STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES** and **BOTTLE ROCK POWER CORPORATION**, a California Corporation, do hereby agree to amend said Purchase Agreement as follows:

1. The aforesaid Purchase Agreement shall be amended in that the date specified in the last line of Paragraph 2.2 as the "Outside Closing Date" shall be changed and amended from June 1, 2001, to June 15, 2001.

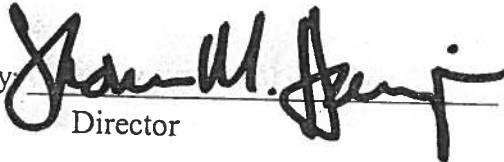
2. In all other respects, the aforesaid Purchase Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this document as of May 31, 2001.

**SELLER:**

**STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES**


**Approved for Form and  
Sufficiency**

By:   
Director

  
Chief Counsel

**BUYER:**

**BOTTLE ROCK POWER CORPORATION**

By:   
As President



---

Exhibit 404

**SECOND AMENDMENT  
TO THE  
PURCHASE AGREEMENT FOR BOTTLE ROCK POWER PLANT AND  
ASSIGNMENT OF GEOTHERMAL STEAM LEASE**

Pursuant to Paragraph 10.14 of the above-entitled Purchase Agreement, the **STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES** and **BOTTLE ROCK POWER CORPORATION**, a California Corporation, do hereby agree to amend said Purchase Agreement as follows:


1. The aforesaid Purchase Agreement (as previously amended by the First Amendment) shall be amended in that the date specified in the last line of Paragraph 2.2 as the "Outside Closing Date" shall be changed and amended from June 15, 2001, to June 22, 2001.

2. In all other respects, the aforesaid Purchase Agreement shall remain unchanged and in full force and effect.

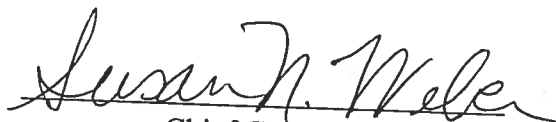
IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this document as of June 14, 2001.

**SELLER:**

**STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES**

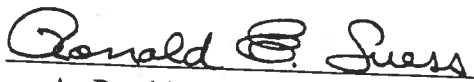
By:   
Director

**Approved for Form and  
Sufficiency**

  
Chief Counsel

**BUYER:**

**BOTTLE ROCK POWER CORPORATION**

By:   
As President

**APPROVED**  
Department of General Services  
  
By  
Assistant Chief  
Real Estate Services Section

**Exhibit 405**

**THIRD AMENDMENT  
TO THE  
PURCHASE AGREEMENT FOR BOTTLE ROCK POWER PLANT AND  
ASSIGNMENT OF GEOTHERMAL STEAM LEASE**

Pursuant to Paragraph 10.14 of the above-entitled Purchase Agreement, the **STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES** and **BOTTLE ROCK POWER CORPORATION**, a California Corporation, do hereby agree to amend said Purchase Agreement as follows:

1. The aforesaid Purchase Agreement (as previously amended by the First Amendment and the Second Amendment) shall be amended in that the date specified in the last line of Paragraph 2.2 as the "Outside Closing Date" shall be changed and amended from June 22, 2001, to June 29, 2001.
2. In all other respects, the aforesaid Purchase Agreement shall remain unchanged and in full force and effect.

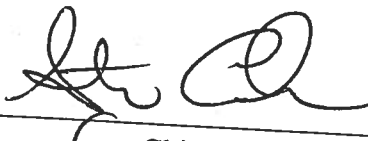
IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this document as of June 21, 2001.

**SELLER:**

**STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES**

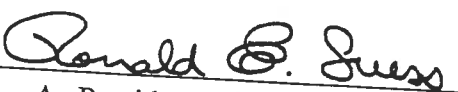
By:   
Director

Approved for Form and  
Sufficiency

  
for Chief Counsel

**BUYER:**

**BOTTLE ROCK POWER CORPORATION**

By:   
As President



**Exhibit 406**



**FOURTH AMENDMENT  
TO THE  
PURCHASE AGREEMENT FOR BOTTLE ROCK POWER PLANT AND  
ASSIGNMENT OF GEOTHERMAL STEAM LEASE**

Pursuant to Paragraph 10.14 of the above-entitled Purchase Agreement, the **STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES** and **BOTTLE ROCK POWER CORPORATION**, a California Corporation, do hereby agree to amend said Purchase Agreement as follows:

1. The aforesaid Purchase Agreement (as previously amended by the First Amendment and the Second Amendment) shall be amended in that the date specified in the last line of Paragraph 2.2 as the "Outside Closing Date" shall be changed and amended from June 29, 2001, to July 6, 2001.
2. In all other respects, the aforesaid Purchase Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this document as of July 6, 2001.

**SELLER:**

**STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES**

By: *Lucinda Chapman*  
Director

**Approved for Form and  
Sufficiency**

*Deirdre B. [Signature]*  
Chief Counsel

**BUYER:**

**BOTTLE ROCK POWER CORPORATION**

By: *Ronald E. Sues*  
As President



TR 010283 467

**Exhibit 407**

**FIFTH AMENDMENT  
TO THE  
PURCHASE AGREEMENT FOR BOTTLE ROCK POWER PLANT AND  
ASSIGNMENT OF GEOTHERMAL STEAM LEASE**

Pursuant to Paragraph 10.14 of the above-entitled Purchase Agreement, the **STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES** and **BOTTLE ROCK POWER CORPORATION**, a California Corporation, do hereby agree to amend said Purchase Agreement as follows:

1. The aforesaid Purchase Agreement (as previously amended by the First Amendment and the Second Amendment) shall be amended in that the date specified in the last line of Paragraph 2.2 as the "Outside Closing Date" shall be changed and amended from July 6, 2001, to July 20, 2001.

2. In all other respects, the aforesaid Purchase Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this document as of July 6, 2001.

**SELLER:**

**STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES**

By: \_\_\_\_\_

for Director

Approved for Form and  
Sufficiency

\_\_\_\_\_  
Susan Weber  
Chief Counsel

**BUYER:**

**BOTTLE ROCK POWER CORPORATION**

By: \_\_\_\_\_

As President

Ronald E. Suss



TR 01028 B YCP

**Exhibit 408**

**SIXTH AMENDMENT  
TO THE  
PURCHASE AGREEMENT FOR BOTTLE ROCK POWER PLANT AND  
ASSIGNMENT OF GEOTHERMAL STEAM LEASE**

Pursuant to Paragraph 10.14 of the above-entitled Purchase Agreement, the **STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES** and **BOTTLE ROCK POWER CORPORATION**, a California Corporation, do hereby agree to amend said Purchase Agreement as follows:

1. The aforesaid Purchase Agreement (as previously amended by the First Amendment and the Second Amendment) shall be amended in that the date specified in the last line of Paragraph 2.2 as the "Outside Closing Date" shall be changed and amended from July 20 2001, to July 27, 2001.
2. In all other respects, the aforesaid Purchase Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this document as of July 20, 2001.

**SELLER:**

**STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES**

By: Stephen I. Kashivada  
for Director

Approved for Form and  
Sufficiency

Susan Weber  
Chief Counsel

**BUYER:**

**BOTTLE ROCK POWER CORPORATION**

By: Ronald E. Guess  
As President



TR 0102813 MCT

**Exhibit 409**

**SEVENTH AMENDMENT  
TO THE  
PURCHASE AGREEMENT FOR BOTTLE ROCK POWER PLANT AND  
ASSIGNMENT OF GEOTHERMAL STEAM LEASE**

Pursuant to Paragraph 10.14 of the above-entitled Purchase Agreement, the STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES and BOTTLE ROCK POWER CORPORATION, a California Corporation, do hereby agree to amend said Purchase Agreement as follows:

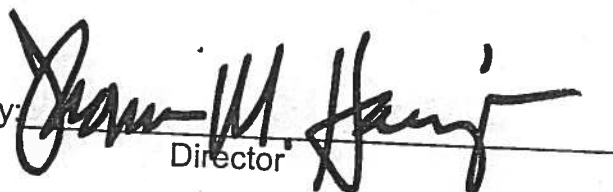
1. In consideration of the payment of Twenty-Five Thousand Dollars (\$25,000.00) by Buyer, the aforesaid Purchase Agreement (as previously amended by the First through the Sixth Amendments) shall be amended in that the date specified in the last line of Paragraph 2.2 as the "Outside Closing Date" shall be changed and amended from July 27, 2001, to August 21, 2001.

2. In all other respects, the aforesaid Purchase Agreement shall remain unchanged and in full force and effect.

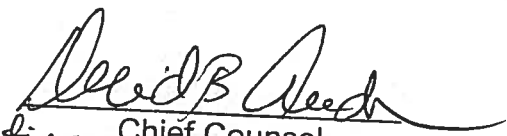
IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this document as of July 27, 2001.

**SELLER:**

**STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES**

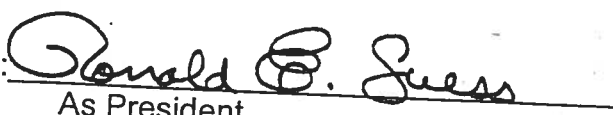
By:   
Director

**Approved for Form  
and Sufficiency**

  
Acting Chief Counsel

**BUYER:**

**BOTTLE ROCK POWER CORPORATION**

By:   
As President



TR 01028B

**Exhibit 410**



EIGHTH AMENDMENT  
TO THE  
PURCHASE AGREEMENT FOR BOTTLE ROCK POWER PLANT AND  
ASSIGNMENT OF GEOTHERMAL STEAM LEASE

Pursuant to Section 10.14 of the above-entitled Purchase Agreement, the STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES ("DWR" or "Seller") and BOTTLE ROCK POWER, LLC a Delaware limited liability company ("Buyer"), successor to BOTTLE ROCK POWER CORPORATION, a California Corporation, do hereby agree as follows:

1. Subject to DWR's receipt of a fully executed copy of that certain Settlement Agreement and Release of Claims by and among DWR, Buyer, and V. V. & J. Coleman, LLC, entered into of even date herewith, Buyer and Seller hereby amend the Purchase Agreement as set forth herein.
2. Sections 2.4 and 2.5 are hereby deleted from the Purchase Agreement and replaced with the following:
  - 2.4 Buyer shall furnish to Seller a full release of any responsibility of Seller to the "Lessor" as defined in and determined pursuant to that certain Geothermal Lease and Agreement granted on February 25, 1975, which release shall be substantially in the form attached as Exhibit G.
  - 2.5 [INTENTIONALLY OMITTED].
3. Section 7.1(e) of the Purchase Agreement is hereby amended and replaced with the following:
  - (e) Full responsibility and sole obligation for Decommissioning the Bottle Rock Power Plant, Francisco Steam Field and for all site restoration, including any restoration and remediation obligations associated with any land rights comprising the Purchased Assets, as may be triggered by property owners and/or regulatory authorities, rests with Bottle Rock Power Corporation;
4. The references to Sections 2.4 and 2.5 in Sections 10.1 and 10.2 of the Purchase Agreement are hereby deleted therefrom.
5. Exhibits D and E are hereby deleted in their entirety from the Purchase Agreement.
6. Exhibit G to this Amendment is hereby appended to the Purchase Agreement as Exhibit G thereof.

7. In all other respects the aforesaid Purchase Agreement shall remain unchanged and in full force and effect.

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have  
executed the document as of ~~July~~ <sup>August</sup>, 2012.

SELLER:

STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES

By: [Signature]  
Director

Approved as to Form  
and Sufficiency:

[Signature]  
Chief Counsel

BUYER:

BOTTLE ROCK POWER, LLC

By: [Signature]  
As President



**Exhibit G**

**Settlement Agreement and Release of Claims**

**[see attached]**

## **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

1. This SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS ("Agreement") is made by and among the STATE OF CALIFORNIA by and through the DEPARTMENT OF WATER RESOURCES (the "State" or "DWR"), V. V. & J. COLEMAN, LLC ("Coleman"), and BOTTLE ROCK POWER, LLC ("Bottle Rock").
2. Coleman, DWR, and Bottle Rock are sometimes collectively referred to as the "Parties" and each of the parties is sometimes referred to as a "Party." The Parties hereby agree as follows:

### **Recitals**

3. Coleman is the owner of certain real property in Lake County, State of California, (the "Coleman Property"), described in the attached Exhibit A. Bottle Rock owns and operates the facilities ("Facilities") located on the Coleman Property for which Bottle Rock is the present lessee under the February 25, 1975, GEOTHERMAL LEASE AGREEMENT, as amended ("Lease"). DWR is a former owner of the Facilities and lessee under the said Lease.
4. Pursuant to that certain Purchase Agreement for Bottle Rock Power Plant and Assignment of Geothermal Steam Lease by and between DWR and Bottle Rock (as successor-in-interest to Bottle Rock Power Corporation), dated as of April 5, 2001, as amended ("Purchase Agreement"), DWR sold and Bottle Rock purchased DWR's rights and interests in and to the Facilities and the Lease.
5. Coleman hereby represents that it is the sole owner of the subject Coleman Property.

### **Release**

6. **Release of Coleman Claims.** This Agreement is entered into voluntarily to settle any actual or potential claims and risks, whether known or unknown, Coleman has or may have against DWR or the State. In exchange for consideration by Bottle Rock this Agreement is accepted as full compromise, settlement and satisfaction of, and as sole consideration for the release and discharge of, all actions, claims and demands against DWR or the State which Coleman has or may have relating to the February 25, 1975, GEOTHERMAL LEASE AGREEMENT, including Section 16, as well

as any other claim or demand, known or unknown, present or in the future, related to the Lease or Facilities or any other documents relating to the property described in Exhibit A.

7. Discharge. Coleman and each of its owners, for themselves and on behalf of their successors, assigns, shareholders, members, parent entities, subsidiary entities, agents, directors, managers, officers and representatives, hereby release, acquit and forever discharge DWR and the State of and from any and all manner of actions, causes of actions, suits, debts, conveyances, agreements, damages, claims, liabilities, costs, expenses, demands, attorneys' fees and obligations of whatever nature, whether at law or in equity, whether based in tort, contract, or any other theory of recovery, known or unknown, anticipated or unanticipated, and however arising or accruing, which Coleman now has or may claim to have against DWR and/or the State, and which shall or may have accrued prior to the date of this Agreement related to the Lease or Facilities or any other documents relating to the property described in Exhibit A.
8. Release of Bottle Rock Section 2.4 Bond Obligations. In consideration of Coleman's release of DWR as set forth in Sections 6 and 7, DWR hereby releases Bottle Rock of its obligations regarding that certain Surety Bond No. 1039706, dated February 15, 2012 ("Surety Bond"), and in conjunction with its execution of this Agreement DWR shall (i) execute that certain release letter attached hereto as Exhibit B ("Release Letter") and (ii) send to LEXON Insurance Company, 256 Jackson Meadows Drive, Suite 201, Hermitage, TN 37076, (A) one (1) executed original of the Release Letter and (B) the original Surety Bond. As of the date hereof, DWR is aware of no claims DWR has or may have against the Surety Bond or otherwise arising under Section 2.4 of the Purchase Agreement.
9. Indemnity. Coleman agrees to indemnify, hold harmless, and defend the other Parties hereto from and against any and all actions, causes of action, liabilities, loss or expense (including attorneys' fees) reasonably incurred in the future by them, or any of them by reason of any inaccuracy in Coleman's representation that it is the owner of the Property on which the Facilities are located and that no other person is entitled to an interest in any claim or interest.
10. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.
11. Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither this Agreement nor any of the rights or obligations hereunder may

be assigned without the prior written consent of the other Parties except that Coleman may assign all of its respective rights and obligations under this Agreement to any successor(s) in interest to the fee title of the Property.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of laws provisions.
13. General Release. Each Party hereby waives any and all rights or benefits that it may have under Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."
14. Jurisdiction and Venue. The Parties hereby consent to the exclusive jurisdiction of the state courts sitting in California in the venue of Sacramento County in any action on a claim arising out of, under or in connection with this Agreement or the transactions contemplated by this Agreement.
15. Entire Agreement. This Agreement along with the exhibits attached hereto and the agreements referenced herein constitute the entire agreement of the parties hereto with reference to the subject matter hereof and supersedes any and all agreements, either oral or written, between the parties hereto with respect to its subject matter. Each Party acknowledges that no representation, inducements, promises, or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.
16. Amendment and Waivers. This Agreement may be amended only by a written agreement executed by all Parties. Any amendment effected in accordance with this section will be binding upon all Parties and each of their respective successors and assigns. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. No waiver granted under this Agreement as to any one provision herein shall constitute a subsequent waiver of such provision or of any other provision herein, nor shall it constitute the waiver of any performance other than the actual performance specifically waived.

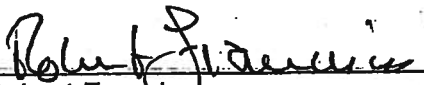
17. Third Parties. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties and their successors and permitted assigns, any rights or remedies under or by reason of this Agreement.
18. Costs and Attorneys' Fees. In the event that any action, suit or other proceeding is instituted concerning or arising out of this Agreement or any transaction contemplated hereunder, the prevailing Party shall recover all of such party's costs and attorneys' fees incurred in each such action, suit or other proceeding, including any and all appeals or petitions there from.
19. Authority to Enter into Agreements. Each Party hereby represents and warrants to the other Parties that such Party has full power and authority to enter into the Agreement and all other documents and agreements to be executed and delivered in connection herewith, to execute and deliver this Agreement and to perform and observe its terms and provisions. This Agreement is subject to final approval by the California Department of General Services.
20. Authority of Persons Executing Documents. Each Party hereby represents and warrants to the other Parties that this Agreement has been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of such Party.

*[Remainder of page intentionally left blank]*



THE PARTIES have executed this Agreement by their respective authorized representatives and made effective as of the date last written below.

**V. V. & J. COLEMAN, LLC**

  
Robert Francisco,  
President and CEO

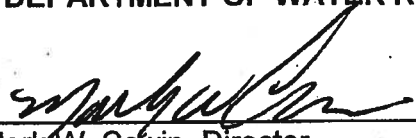
7/27/12  
Date

**BOTTLE ROCK POWER, LLC**

\_\_\_\_\_  
Brian Harms, President

\_\_\_\_\_  
Date

**STATE OF CALIFORNIA by and through the  
DEPARTMENT OF WATER RESOURCES**

  
Mark W. Cowin, Director

8/14/2012  
Date

THE PARTIES have executed this Agreement by their respective authorized representatives and made effective as of the date last written below.

**V. V. & J. COLEMAN, LLC**

\_\_\_\_\_  
Robert Francisco,  
President and CEO

\_\_\_\_\_  
Date

**BOTTLE ROCK POWER, LLC**

Brian Harms  
\_\_\_\_\_  
Brian Harms, President

7/25/12  
\_\_\_\_\_  
Date

**STATE OF CALIFORNIA by and through the  
DEPARTMENT OF WATER RESOURCES**

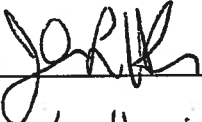

\_\_\_\_\_  
Mark W. Cowin, Director

\_\_\_\_\_  
Date

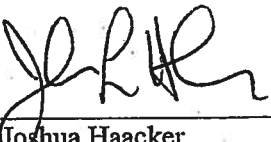
## INCUMBENCY CERTIFICATE

I, Joshua Haacker, Secretary of Bottle Rock Power, LLC, a Delaware limited liability company (the "Company") do hereby certify, on behalf of the Company and not individually, that:

1. The person whose name, title and signature appear below ("Authorized Person") is duly elected or appointed and currently holds the office indicated below, and is further specifically qualified and authorized, on behalf of the Company, to execute and deliver any settlement agreement and release of claims and all related documents, including, but not limited to, schedules, attachments, exhibits, riders, and certificates to be entered into by and among the State of California by and through the Department of Water Resources, V. V. & J. Coleman, LLC, and the Company (collectively, the "Authorized Documents");
2. The Company shall be bound by any Authorized Document that is executed and delivered by the Authorized Person; and
3. The signature below is the true, correct and genuine signature of the below-named person:

Authorized Signature: 	
Print Name: Joshua L. Haacker	Brian Harms
Title: Secretary	President

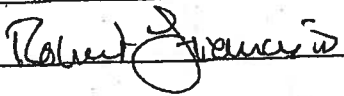

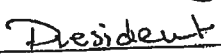
IN WITNESS WHEREOF, the undersigned does hereby execute this Incumbency Certificate as of July 18, 2012.

  
Joshua Haacker  
Secretary  
Bottle Rock Power, LLC


## INCUMBENCY CERTIFICATE

I, Rodney Boriack, member of the Management Committee of V.V. & J. Coleman, LLC, a California limited liability company (the "Company") do hereby certify, on behalf of the Company and not individually, that:

1. The person whose name, title and signature appear below ("Authorized Person") is duly elected or appointed and currently holds the office indicated below, and is further specifically qualified and authorized, on behalf of the Company, to execute and deliver any settlement agreement and release of claims and all related documents, including, but not limited to, schedules, attachments, exhibits, riders, and certificates to be entered into by and among the State of California by and through the Department of Water Resources, Bottle Rock Power, LLC and the Company (collectively, the "Authorized Documents");
2. The Company shall be bound by any Authorized Document that is executed and delivered by the Authorized Person; and
3. The signature below is the true, correct and genuine signature of the below-named person:

Authorized Signature:	
Print Name: 	Robert Francisco
Title: 	President and CEO

IN WITNESS WHEREOF, the undersigned does hereby execute this Incumbency Certificate as of July 21, 2012.

  
Rodney Boriack  
Member, Management Committee  
V.V. & J. Coleman, LLC

## **Exhibit A**

### **Legal Description of the Coleman Property**

Township 11 North, Range 8 West, M.D.M.

**Parcel 1:**

Section 5: Lots 5, 6, 9 and 10 of said section.

**Parcel 2:**

Section 6: Lot 10 of said section; EXCEPTING THEREFROM the following:

Beginning at the Southwest corner of Lot 10 and running  
North 608.6 feet; thence East 715 feet; thence South 608.6 feet; and thence  
westerly 715 feet to the place of beginning.

**Parcel 3:**

Section 5: N  $\frac{1}{2}$  of SW  $\frac{1}{4}$  of said section 5.

Section 6: N  $\frac{1}{2}$  of SE  $\frac{1}{4}$  of said section 6.

Containing a total of 350 acres, more or less.

**Exhibit B**

Date:

LEXON Insurance Company  
256 Jackson Meadows Drive - Suite 201  
Hermitage, TN 37076

Re: Surety Company: LEXON Insurance Company  
Bond Number: 1039706  
Principal: Bottle Rock Power Corporation  
Obligee: California Department of Water Resources

Gentlemen:

LEXON Insurance Company issued the above-referenced performance bond in our favor as the obligee. We are returning herewith the original performance bond provided by LEXON Insurance Company. We return this bond with the understanding that the obligation has been met in its entirety and the corresponding bond is now null and void and that we can never make any claim against the bond, including any claim based upon any events occurring before this date.

We acknowledge that LEXON Insurance Company intends to rely upon this letter and our release of its bond as part of any decision to return to its principal any collateral that LEXON Insurance Company may hold as security to cover any loss or expense under its bond.

I represent to LEXON Insurance Company that I have the authority on behalf of the obligee to return this bond and to bind the obligee to the terms of this letter.

Sincerely,

State of California - Department of Water Resources



**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**

**IN THE MATTER OF THE  
COMPLAINT AGAINST THE  
BOTTLE ROCK GEOTHERMAL POWER PLANT**

**Docket No. 12-CAI-04  
PROOF OF SERVICE  
(12/21/2012)**

**SERVICE LIST:**

**COMPLAINANT**

David Coleman  
3733 Canon Avenue  
Oakland, CA 94602  
redandcurly@yahoo.com

**COMPLAINANT'S COUNSEL**

Donald B. Mooney  
129 C St #2  
Davis, CA 95616  
dbmooney@dcn.org

**RESPONDENT/PROJECT OWNER**

Bottle Rock Power, LLC  
Brian Harms  
General Manager  
7385 High Valley Road  
P.O. Box 326  
Cobb, CA 95426  
bharms@bottlerockpower.com

**PROJECT OWNER'S COUNSEL**

Stoel Rives, LLP  
John A. McKinsey  
Kristen T. Castaños  
500 Capitol Mall, Suite 1600  
Sacramento, CA 95814  
jamckinsey@stoel.com  
kcastanos@stoel.com

**PROJECT LANDOWNER**

V.V. & J. Coleman LLC  
c/o Mark Peterson  
Diepenbrock Elkin LLP  
500 Capitol Mall, Suite 2200  
Sacramento, CA 95814  
mpeterson@diepenbrock.com

**INTERESTED AGENCIES**

California ISO  
e-recipient@caiso.com

Department of Water Resources  
John Dunnigan  
Senior Staff Counsel  
1416 Ninth Street, Room 1104  
Sacramento, CA 95814  
jdunniga@water.ca.gov

Department of Conservation  
Division of Oil, Gas, &  
Geothermal Resources  
Elizabeth Johnson  
Geothermal Officer  
801 K Street, MS 20-20  
Sacramento, CA 95814  
ljohnson@consrv.ca.gov

Lake County Community  
Development Department  
Planning Division  
c/o Will Evans  
Richard Coel  
255 North Forbes Street  
Lakeport, CA 95453  
will.evans@lakecountyca.gov  
richard.coel@lakecountyca.gov

**ENERGY COMMISSION –  
PUBLIC ADVISER**

Jennifer Jennings  
Public Adviser  
publicadviser@energy.ca.gov

**COMMISSION DOCKET UNIT  
CALIFORNIA ENERGY COMMISSION  
– DOCKET UNIT**

Attn: Docket No. 12-CAI-04  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
docket@energy.ca.gov

**OTHER ENERGY COMMISSION  
PARTICIPANTS (LISTED FOR  
CONVENIENCE ONLY):**

*After docketing, the Docket Unit will  
provide a copy to the persons listed  
below. Do not send copies of  
documents to these persons unless  
specifically directed to do so.*

KAREN DOUGLAS  
Commissioner and Presiding Member  
ROBERT B. WEISENMILLER  
Chair and Associate Member  
Galen Lemei  
Adviser to Presiding Member  
Jennifer Nelson  
Adviser to Presiding Member  
Sekita Grant  
Adviser to Associate Member  
Eileen Allen  
Commissioners' Technical  
Adviser for Facility Siting  
Paul Kramer  
Chief Hearing Adviser  
Camille Remy-Obad  
Compliance Project Manager  
Kevin W. Bell  
Staff Counsel

### DECLARATION OF SERVICE

I, Laura L. Boosalis, declare that on January 11, 2013, I served and filed copies of the attached Prehearing Statement of Interested Agency California Department of Water Resources, Complaint Against Bottle Rock Geothermal Power Plant, Docket No. 12-CAI-04, dated January 11, 2013. This document is accompanied by the most recent Proof of Service list, which I copied from the web page for this project at: <http://www.energy.ca.gov/sitingcases/bottlerock/documents/index.html#cai-04>.

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, as appropriate, in the following manner:

**(Check one)**

**For service to all other parties and filing with the Docket Unit at the Energy Commission:**

  X   I e-mailed the document to all e-mail addresses on the Service List above.

       Instead of e-mailing the document, I personally delivered it or deposited it in the US mail with first class postage to all of the persons on the Service List for whom a mailing address is given.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am over the age of 18 years.

Dated: January 11, 2013

  
\_\_\_\_\_  
Laura L. Boosalis