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DOCKET

08-AFC-9

DATE	July 18 2011
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July 18, 2011

AFC Committee
California Energy Commission Docket Unit
1516 Ninth Street, MS-4
Sacramento, CA 95814

RE: Docket No. 08-AFC-9: Antelope Valley Groundwater Agreement Association Comments on Presiding Member's Proposed Decision for Palmdale Hybrid Power Project

Dear Members of the AFC Committee:

Brownstein Hyatt Farber Schreck, LLP represents the Antelope Valley Groundwater Agreement Association ("AGWA") and presents these comments on AGWA's behalf regarding the California Energy Commission Presiding Member's Proposed Decision ("Proposed Decision")¹ for the Palmdale Hybrid Power Project (the "Project"). AGWA appreciates the opportunity to submit comments on the Proposed Decision.

As indicated in prior comments by AGWA filed March 8, 2010 on the Preliminary Staff Assessment ("PSA") for the Project, AGWA is composed of landowners whose property overlies the Antelope Valley Groundwater Basin ("Basin"). The rights to the Basin's groundwater continue to be the subject of a Basin-wide adjudication (the "Adjudication").² AGWA members exercise overlying groundwater rights by extracting groundwater from the Basin for beneficial use on their properties, and have been named as defendants in the Adjudication.

As stated in the Proposed Decision, the Basin underlies the Project area and serves as water supply for both the City of Palmdale ("City") and Los Angeles County Waterworks District No. 40 ("District No. 40"). In the Adjudication, both District No. 40 and the City claim that there is currently insufficient water in the Basin to meet present uses³ and that the Basin is presently in an overdraft condition.⁴ While the Proposed Decision briefly mentions the Adjudication and some of the claims made by the parties thereto, the Proposed Decision fails to account for recent developments in the Adjudication that suggest there will be insufficient water supply for the Project without further cutbacks to other parties' groundwater use in the Basin. This cumulative impact to water supply in the Basin is not analyzed or

¹ California Energy Commission, Palmdale Hybrid Power Project, Presiding Member's Proposed Decision, Docket 08-AFC-09.

² Included actions are *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.*, Superior Court of California, County of Los Angeles, Case No. BC 325201; *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.*, Superior Court of California, County of Kern, Case No. S-1500-CV-254-348; *Wm. Bolthouse Farms, Inc. v. City of Lancaster*, *Diamond Farming Co. v. City of Lancaster*, *Diamond Farming Co. v. Palmdale Water Dist*, Superior Court of California, County of Riverside, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668

³ District No. 40 and City's First Amended Cross-Complaint in Los Angeles County Sup.Ct. Case No. BC32501, filed Feb. 13, 2007, attached hereto, at ¶¶ 28, 33.

⁴ District No. 40 and City's First Amended Cross-Complaint, at ¶¶ 31-35.

discussed in the Proposed Decision, and on this basis AGWA objects to the Proposed Decision as written.

The Proposed Decision concludes that the Project does not "have the potential to induce erosion and sedimentation, adversely affect water supplies, and degrade water quality."⁵ The Project proposes using secondary-treated water for construction and tertiary treated water for plant operations. District No. 40 would supply this water under an agreement between the City's and the City of Lancaster's water treatment plants. Ultimately with regards to supply, relying largely in part on the Commission's own prior staff assessment, the Proposed Decision concludes that, "Based on current recycled water demands, there will be a sufficient volume of tertiary-treated water available from the Waterworks to supply the PHPP's water demand."⁶

Referring to AGWA's and other landowner parties' prior comments on the PSA, the Proposed Decision acknowledges that many litigants in the Adjudication believe that at least a portion of the water reclaimed by the Palmdale and Lancaster Water Reclamation Plants should be used to recharge the Basin, due to limited supplies and competing water right interests.⁷ Despite AGWA's concerns about recycled water use and the need to recharge the Basin, the Commission concluded that "While the PHPP will be a new water user and would consume/evaporate the water, the PHPP will efficiently use the recycled water it receives. There will be no wastewater discharged from the PHPP. In addition, a portion of the recycled water used for municipal and industrial purposes will be reclaimed again for further reuse. This is a desirable and efficient use of water."⁸ Based on this conclusion, the Proposed Decision finds no significant impact to water supply in the Basin.⁹

The Proposed Decision fails to account for more recent developments in the Adjudication that directly bear on an evaluation of water supply for the Project. On July 13, 2011, the Superior Court finalized a decision in what is known as "Phase III," declaring that the total safe yield of the groundwater supply from the Basin is 110,000 acre-feet per year.¹⁰ As argued by AGWA in prior comments, portions of this 110,000 acre-feet of safe yield are comprised of return flows from municipal wastewater. To the extent the Project plans on using recycled water, the Project will consume a portion of these return flows and result in a lower safe yield than that adjudicated by the Court.

Based on evidence presented by Los Angeles County Waterworks at the recent safe yield trial resulting in the Court's Phase III Decision, there is simply not enough water -- groundwater, imported water and recycled water -- to meet all current demands in the Basin.¹¹ AGWA protests the Proposed Decision as written, because the only way there will be sufficient recycled water supplies for the Project is if other existing water users cut back their water use. The Proposed Decision should address the impacts of the Project to other water users in the Basin before it is presented for approval by the Commission.

⁵ Proposed Decision, 7.2-1.

⁶ Proposed Decision, 7.2-7.

⁷ Proposed Decision, 7.2-7.

⁸ Proposed Decision, 7.2-8.

⁹ See Proposed Decision, 7.2-1.

¹⁰ Superior Court of California, Los Angeles County, Lead Case No. BC 325 201, Statement of Decision, Phase III Trial (July 13, 2011), pp. 9-10 (a copy of which is attached hereto as Exhibit A).

¹¹ See, e.g., Statement of Decision, Phase III Trial, pp. 6, 8.

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Sincerely,

A handwritten signature in black ink, appearing to read "Ryan C. Drake", with a long horizontal flourish extending to the right.

Ryan C. Drake