



**CALIFORNIA
ENERGY
COMMISSION**

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<p>ERRATA TO PRESIDING MEMBER'S PROPOSED DECISION</p>
<p>STARWOOD POWER PROJECT APPLICATION FOR CERTIFICATION DOCKET NO. 06-AFC-10</p>

Following its public hearing to receive comments on the Presiding Member's Proposed Decision (PMPD), dated December 11, 2007, the Committee offers the following Errata to accompany the PMPD for the consideration of the full Commission as the Commission's Decision. Minor, non-substantive typographical and other corrections, which are not enumerated in this Errata, were also made to the PMPD.

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WATER RESOURCES – Summary of Findings and Conditions

	<i>POWER PLANT SITE</i>	<i>CUMULATIVE IMPACTS</i>	<i>LORS COMPLIANCE</i>
Water Supply Policy	MITIGATION	NONE	YES
<p>To assure the conservation of high-quality potable water, the project shall use <u>either agricultural backwash water or the degraded CalPeak groundwater for plant operations such as inlet air cooling and water injection for NOx control. The project would use bottled potable water for personnel use.</u></p> <p>MITIGATION</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> The project owner shall use <u>either agricultural backwash water or the degraded CalPeak groundwater for facility operation to avoid potential life-of-the-project impacts to aqueduct-quality water supplies. Condition: WATER RESOURCES-1</u> <input checked="" type="checkbox"/> <u>If backwash water is used, the project owner will ensure that at least half of the amount of recovered backwash water is made available to Baker Farms for agricultural uses. Condition WATER RESOURCES-3.</u> 			

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The Commission renders its siting decisions in a public interest context where conservation of high-quality California water is increasingly more critical particularly in light of global climate change as it affects the meteorology of our region together with increasing water

demand. Thus, to avoid a CEQA-based impact to California's interest in conserving high-quality water resources *over the life of the project*, the Commission should require the project to use the lowest quality water reasonably available, absent a compelling showing to do differently. ~~Applicant has made no such showing in this case, nor has it attempted to do so. Applicant, therefore, must use the degraded CalPeak well water, rather than the aqueduct-derived high-quality Baker Farms filter backwash water.~~

By its letter of November 19, 2007, the Westlands Water District expressed its opposition to the use of the filter backwash water, stating that "such water should be used for irrigation or other uses that are incidental to agricultural production." ~~Our finding and the Westlands opinion are in accord.~~

The Energy Commission staff testimony, revised from its FSA, would allow the use of the Baker Farms backwash water if the Applicant were to pay money to the Westlands Water District which would in turn invest in high-quality irrigation water conservation programs. The concept is that the use of high-quality water at the power plant would be offset by irrigation water-saving technologies and practices so that the net effect on the supply of high-quality water is zero. (Supp. Testimony Anderson/Goulet, pp. 2-6) The Applicant declines to pay the amount of financial mitigation suggested by Staff, believing that its recovery and beneficial use of the filter backwash water is, in effect, a comparable conservation effort. (11/19/07 RT 76:18 – 77:23)

At the January 3, 2008, Committee's public hearing to receive comments on the Presiding Member's Proposed Decision, the Applicant requested that the evidentiary record be reopened to receive evidence of the terms of the Applicant's contract with Baker Farms for the backwash water, which had been referred to in its comments urging the Commission to accept the use of the backwash water. The Committee accepted into the record the contract, submitted under the Commission's provisions for confidentiality, and heard the Applicant's witness, Richard Weiss, describe pertinent portions of the contract as well as the Applicant's commitments regarding the availability of recovered backwash water for agricultural uses.

The Applicant and Baker Farms entered into a 7-year contract for Baker Farms to supply backwash water, whereby the Applicant will pay an above-market price to finance Baker's construction of the recovery and holding system. Currently and foreseeably, recovery of the backwash water is not economic for Baker Farms. The contract is subject to termination with 2-years' notice and, if not terminated, will continue for a term not to exceed 15 years, which is the duration of the project's Power Purchase Agreement with PG&E. If the contract were terminated prior to its term, the Applicant would revert to the use of the degraded Calpeak well water. All project equipment is designed to use the degraded well water, if necessary, although the project evaporation pond would have to be lined.

The holding pond for recovered backwash water is initially sized at 30 acre-feet per year (AFY), although sufficient space is available to expand to hold 80 AFY. The recovery and holding system will be in service for the summer of 2008, almost a year before project operation. The Applicant commits that, on a rolling 3-year average, the project will not use more than 50-percent of the recovered backwash water, and the remainder will be available

to Baker Farms for agricultural uses. As initially constructed, the project would consume 14 AFY of recovered backwash water while making 16 AFY of recovered backwash water available to Baker Farms for agricultural use. The Applicant will use a metering system to verify the recovery and distribution of backwash water. (1/03/08 RT)

At the same hearing, the Commission staff voiced support for the Committee's existing discussion and findings in the PMPD. A representative from the Westlands Water District reiterated the position stated in its November 19, 2007, letter. We note that Condition **WATER RESOURCES-2** requires Westlands' approval for use of the backwash water.

Due to the current circumstance which makes recovery of its own backwash water uneconomic for Baker Farms, the Commission finds that the Applicant's proposal, embodied in the Baker Farms' contract and its commitments to make available for agricultural use more of the backwash water than is to be consumed for project purposes, is a sufficient showing to allow the project's use of the backwash water, notwithstanding the availability of the degraded Calpeak well water. The term of the contract, as well as its 2-year cancellation provision, allay Commission concerns that our approval of the project would lock-in the project's use of this high quality water over the 30-year life of the project and compromise future regulatory flexibility in the event of a material change of circumstances in the availability of the high quality, aqueduct-derived water which ultimately is the source of this backwash water.

Moreover, by making more recovered backwash water available for agriculture than is to be used in the project, the Applicant's commitments amount to an agricultural water conservation offset effort, since the evidence shows it to be highly unlikely in the short term that this backwash water would otherwise be recovered.

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

This finding is, coincidentally, supported by the broader information before the Commission today (obtained in connection with the Commission's greenhouse gas reduction activities) that the supply of this high-quality water will likely contract due to foreseeable climate conditions and that demand will increase. Thus, we reiterate our conclusion that, ~~in the absence of a compelling showing, which has not been made in this case, the project must use the lowest quality water reasonably available, which is the CalPeak degraded well water~~ under the terms of the contract in this proceeding, project use of recovered agricultural backwash water coupled with the net increase in the amount of such high-quality water for agricultural purposes will not adversely impact California's interest in conserving the State's

high-quality water resources. Nor, alternatively, will the project's use of the degraded Calpeak well water cause such an adverse impact.

MITIGATION

- The project owner shall use either agricultural backwash water or the degraded CalPeak groundwater for facility operation to avoid potential life-of-the-project impacts to aqueduct-quality water supplies. Condition: **WATER RESOURCES-1.**
- If backwash water is used, the project owner will ensure that at least half of the amount of recovered backwash water is made available to Baker Farms for agricultural uses. Condition **WATER RESOURCES-3.**

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WATER RESOURCES-1: Water used for project operation for process, sanitary and landscape irrigation purposes shall be groundwater from the upper semi-confined aquifer obtained from the adjacent CalPeak well and/or Baker Farms irrigation water filter backwash (backwash water). Water use shall not exceed the annual water-use limit of 136 acre-feet without prior approval by the CPM. The project owner shall monitor and record the total water used on a monthly basis. If the amount of water to be used will exceed 136 acre-feet per year during any annual reporting period, the project owner shall provide a written request and explanation for the anticipated water-use increase to the CPM sixty (60) days prior to the date when the water-use limit is expected to be exceeded. If the project owner can demonstrate that the requested increase is necessary and is not caused by wasteful practices or malfunctions in the water processing systems, the CPM shall approve an up to one-year increase in the water-use limit for the period requested.

Verification: The project owner, in the annual compliance report, shall provide a water-accounting summary that states the source and quantity of water used on a monthly basis in units of gallons and on an annual basis in units of acre-feet. If the amount of water that is to be used will exceed 136 acre-feet per year during any single annual reporting period, the project owner shall provide a written request and explanation for the anticipated water-use increase to the CPM 60 days prior to the date when the water use limit is expected to be exceeded. The CPM shall review the request and may approve an increase in the water-use limit for the period requested.

WATER RESOURCES-2: Prior to construction of a water pipeline from Baker Farms' backwash water pond to the Starwood site, the project owner will provide a letter for Westlands Water District, signed by an authorized officer of Westlands Water District, that states that it is permissible for Baker Farms to provide backwash water for use at Starwood (an industrial power plant). If such a letter cannot be provided to the CPM, the project owner is not permitted to use backwash water and shall use semi-confined aquifer water.

Verification: Prior to construction activities associated with the backwash water pipeline from Baker Farms to the project site, the project owner will submit to the CPM a signed letter from Westlands Water District stating that it is permissible for Baker Farms to provide backwash water to the project.

WATER RESOURCES-3: In the event Applicant determines that its source of water is Baker Farms backwash water, Applicant shall:

- (a) Provide the CPM with a copy of the agreement between Baker Farms and the Applicant which demonstrates the payments to be made to Baker Farms and the obligation of Baker Farms to construct and operate the pipe and pump system used to gather the backwash water at a central holding pond.
- (b) Provide the CPM with evidence that the pipe and pumping infrastructure will be operational for the Summer 2008 period.
- (c) Ensure that under no circumstances Applicant uses an amount of backwash water greater than 50% (on a rolling 3-year average) of the water collected. The remaining 50% or more will be made available for agricultural purposes.
- (d) Provide the CPM with a schematic of the collection system and pond system demonstrating collection and ponding capacity of 30 AF or more.
- (e) Install three meters: (1) to measure the Applicant's usage of backwash filter water usage (pond to plant), (2) to measure the amount of water usage for irrigation (pond to irrigation supply system), and (3) to measure backwash filter water into the pond.

Verification: Applicant will provide CPM copy of the contract between Applicant and Baker Farms and plans for pump and piping infrastructure prior to ground disturbance. If contract is amended, Applicant will provide CPM a copy within 90 days. CPM will inspect installation of all meters. Applicant will collect data from the meters and submit to the CPM a monthly summary to be compiled in the annual compliance report.

WATER RESOURCES-4: The 7-year existing backwash filter water contract between Baker Farms and Applicant requires a 2-year notice before termination. In the event this contract is not renewed or is terminated pursuant to notice, Applicant will proceed to modify project to accept the upper aquifer water. This includes the installation of a double-lined wastewater retention pond.

Verification: Applicant will provide notice to CPM and appropriate modification plans within 90 days upon receiving notice of termination of the contract with Baker Farms.

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WASTE-6 Prior to the construction of a water pipeline from Baker Farm's backwash water pond to the Starwood site, the project owner shall provide a protocol and soil sampling plan to the CPM for review and approval. The plan should include a figure showing the proposed alignment for the water pipeline and indicate the

location and depth where two samples would be collected. Identify the contaminants that will be analyzed in each discrete sample and the laboratory proposed to do the analysis.

Verification: No less than 30 days prior to the start of site mobilization, after the soil sampling plan is approved, the project owner shall complete the sampling and analyses and submit the certified laboratory report of the findings to the CPM.

Dated: January 10, 2008

**ENERGY RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION**

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