DOCKET
09-AFC-3
DATE NOV 23 2009
RECD. NOV 24 2009

RUSSELL KAGEHIRO
President
Division VI

FELIX MUSCO
Vice President
Division V

SANDRA FREDRICKSON
Director
Division I

GERALD TENNANT
Director
Division II

TIM MAGGIORE
Director
Division III

CHARLES TUSO
Division VII

JEFF BROWN
Director
Division IX

RICK GILMORE
General Manager
Secretary

November 23, 2009

Commissioner Julia Levin
Presiding Member, Mariposa Energy Project Siting Committee
California Energy Resources Conservation and Development Commission
1516 Ninth Street
Sacramento, CA 95814

Re: Mariposa Energy Project, Docket No. 09-AFC-3

Dear Commissioner Levin:

This letter is written on behalf of Byron Bethany Irrigation District (BBID or District) to provide the Commission with some background information regarding the District and its role relative to the Mariposa Energy Project (MEP). BBID also seeks to respond to some of the issues regarding water service for the MEP that arose at the recent public informational hearing on the project.

BBID is a multi-county special district formed under the provisions of the California Water Code, section 20500 et seq. It is an independent public agency governed by an elected board of directors. There are currently seven members of the Board of Directors, each representing various parts of the District.

The District was established for the purpose of providing water service to lands within Alameda County, Contra Costa County and San Joaquin County. Although BBID was formed as an irrigation district, it is statutorily authorized to serve water to lands within its boundaries for any beneficial use, including municipal and industrial use. (Water Code, § 22076.) BBID is currently wholesaling water to Mountain House Community Services District for municipal purposes and to the City of Tracy. The District is also serving a number of industrial users of water within its boundaries, including Musco Family Olive Company.

BBID has separate service areas utilizing different sources of water to meet the water demands of its landowners and residents. Raw Water Service Area No. 1 is located within San Joaquin County as well and outside

7995 Bruns Road • Byron, California 94514-0160
Telephone (209) 835-0375• Fax (209) 835-2869

of the Central Valley Project Service Area (CVPSA). The CVPSA is located entirely within San Joaquin County. The District operates using water acquired by contract with the U.S. Bureau of Reclamation to serve lands within this service area.

The Byron Service Area wherein the MEP is located is served pursuant to water entitlements acquired by BBID on May 18, 1914. The Mountain House Community Services District is located in Raw Water Service Area No. 1. While Mountain House is within San Joaquin County it is served with water obtained pursuant to BBID's pre-1914 water rights. These early water rights were claimed under a notice of appropriation for irrigation and domestic purposes and derive from California common law and civil code. BBID's pre-1914 water rights are not under the jurisdiction of the State Water Resources Control Board.

BBID's original diversion was on Italian Slough, a tributary of Old River. In 1964, after the California Department of Water Resources (DWR) destroyed a portion of the District's lateral canal as part of the construction of the Harvey O. Banks Pumping Plant, DWR consented through agreement with BBID to the permanent and perpetual use of the District, without cost, of DWR's facilities. Pursuant to the 1964 agreement, BBID installed two pumping plants on the Harvey O. Banks Pumping Plant Intake Channel, downstream from DWR's Skinner Fish Screen Facilities, and moved its point of diversion from Italian Slough to the intake channel. As a result of the close proximity of their diversions, BBID and DWR entered into an agreement in 2003 defining their respective operations and their relative rights and responsibilities. Under the agreement the uses of water made by BBID cannot be disturbed or challenged by DWR or can the District claim any right against DWR provided the agreement remains in full force and effect.

BBID has vigorously defended its water rights and has historically maintained excellent water service for its customers. Safeguarding its water rights, it's most valuable asset, and the continued maintenance and development of district facilities are key policy objectives for the Board of Directors. With planned urbanization in portions of the District, and the natural evolution of the District from a purely agricultural/industrial user base to an agricultural/industrial/municipal water supplier, there is the need to build upon the District's long history of wise water use. The integration of available recycled water supplies is a logical extension of the

7995 Bruns Road • Byron, California 94514-0160
Telephone (209) 835-0375• Fax (209) 835-2869

District's water services to its customers, particularly industrial customers such as the MEP.

To that end, BBID conducted a Recycled Water Feasibility Study in 2001 to determine the feasibility of incorporating recycled water into its overall water resources mix. The study concluded that an assortment of recycled water supplies potentially exist in a wide geographic area around the District. Significant institutional issues and increased costs make the use of recycled water supplies from outside the boundaries of the District prohibitive. Thus, the Recycled Water Feasibility Study recommended that the District pursue the development of a recycled water program using recycled water from the Mountain House Community Services District.

Based upon the finding of the Recycled Water Feasibility Study, the Board of Directors for BBID adopted a Recycled Water Policy. The Board of Directors recognizes that it is sound public policy to develop recycled water through technologically, economically and environmentally feasible projects. The District's Recycled Water Policy expressly contemplates that BBID will negotiate the purchase of recycled water from developments such as the Mountain House Community Services District (MHCSD). Furthermore, BBID's policy commits the District to undertake cooperative planning studies with producers of recycled water to determine options to further the effective use of recycled water within BBID. When the District's Recycled Water Policy is fully implemented it will increase flexibility in the District's operations and will improve the reliability of the District's overall existing supplies.

In 2008, Diamond Generating Corporation approached BBID with a request to supply water to the MEP. BBID determined that it has an adequate water supply based upon its pre-1914 water rights to meet the projected demands of the MEP. BBID is prepared, however, to utilize recycled water to meet the water demands of the MEP provided that a sufficiently reliable supply of tertiary treated water may be obtained from MHCSD[1] at a reasonable cost. Furthermore, allocation of recycled water for use at the MEP must also make sense from a District-wide perspective. There are a number of factors that need to be taken into consideration by the District before allocating and constructing the necessary infrastructure

[1] It should be noted that the MEP is outside the boundaries of the MHCSD and, in accordance with Article 11, Section 9 of the California Constitution, MHCSD may not directly serve recycled water outside its boundaries without the consent of BBID.

7995 Bruns Road • Byron, California 94514-0160
Telephone (209) 835-0375• Fax (209) 835-2869

to deliver recycled water to any particular user. If there is a limited source of recycled water available, there may be more cost-effective uses within the District for that particular source of water. Accordingly, it is the District's legal responsibility to make important resource allocation decisions when determining the best use of its water supplies for the benefit of all of its customers.

Because the District's service arrangements with Diamond Generating Corporation will be pursuant to a water service agreement, no permit from the District is required to provide service. Therefore, the provisions of Public Resources Code section 25500 et seq. do not preempt the water arrangements between the District and its customers. Nevertheless, BBID looks forward to working with the Commission during this process. The District is prepared to cooperate fully in providing any additional information requested by either Commission or the Energy Commission staff.

Very truly yours,

Rick Gilmore
General Manager

cc: Paul M. Sensibaugh, General Manager
Mountain House Community Services District
Sandra K. Dunn, Somach, Simmons and Dunn
Bo Buchynsky, Diamond Generation
Attached Service List

7995 Bruns Road • Byron, California 94514-0160
Telephone (209) 835-0375• Fax (209) 835-2869

DECLARATION OF SERVICE

I, S. Bentley, declare that on 11/24/09, I served and filed copies of the attached letter to Commissioner Levin dated 11/23/09. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [http://www.energy.ca.gov/sitingcases/mariposa/index.html].
The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(*Check all that Apply*)

For service to all other parties:

X sent electronically to all email addresses on the Proof of Service list;

___ by personal delivery or by depositing in the United States mail at Sacramento, California, with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

For filing with the Energy Commission:

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

OR

_____depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 09-AFC-3
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

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

Susan Bentley

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION
FOR THE *MARIPOSA ENERGY PROJECT*
(MEP)

Docket No. 09-AFC-3

PROOF OF SERVICE
(Revised 10/29/09)

APPLICANT

Bo Buchynsky
Diamond Generating Corporation
333 South Grand Avenue, #1570
Los Angeles, California 90071
b.buchynsky@dgc-us.com

APPLICANT'S CONSULTANTS

Doug Urry
2485 Natomas Park Dr #600
Sacramento, CA 95833-2975
Doug.Urry@CH2M.com

COUNSEL FOR APPLICANT

Gregg Wheatland
Ellison, Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816-5905
glw@eslawfirm.com

INTERESTED AGENCIES

California ISO
e-recipient@caiso.com

INTERVENORS

*** Mr. Robert Sarvey**
501 W. Grantline Road
Tracy, California 95376
Sarveybob@aol.com

ENERGY COMMISSION

JULIA LEVIN
Commissioner and Presiding Member
jlevin@energy.state.ca.us

JEFFREY D. BYRON
Commissioner and Associate Member
jbyron@energy.state.ca.us

Kenneth Celli
Hearing Officer
kcelli@energy.state.ca.us

Craig Hoffman
Siting Project Manager
choffman@energy.state.ca.us

Kerry Willis
Staff Counsel
kwillis@energy.state.ca.us

Public Adviser's Office
publicadviser@energy.state.ca.us

*indicates change