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General Manager
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Rick Gilmore

October 6, 2010

Mr. Craig Hoffman
Project Manager
California Energy Commission
Siting, Transmission and Environmental Protection Division
1516 Ninth Street, MS 15
Sacramento, CA 95814

Subject: Mariposa Energy Project, Clarification of Water supply with Byron Bethany Irrigation District.

Dear Mr. Hoffman:

Byron Bethany Irrigation District (BBID or District) would like to advise you that recent inquiries and docketed conversation records with Alameda County Zone 7 Water Agency (Zone 7) and Contra Costa Water District (CCWD) regarding potential water conservation programs for the Mariposa Energy Project (Mariposa or MEP) contains incorrect statements about the water source proposed for Mariposa. Moreover, it is the District's understanding that Mr. Dundon with CCWD was misquoted regarding potential water quality impacts and has already requested that the record be corrected.

To clarify the water source, BBID's Central Valley Project (CVP) water service contract with the Bureau of Reclamation, referenced in the conversation records noted above, is not relevant to MEP as it is not the proposed source of water supply. As noted in the District's November 23, 2009 correspondence to Commissioner Julia Levin, the proposed source of MEP's water will be BBID's pre-1914 water supply which will be diverted from Canal 45 as described in Section 5.15.2.1.1 of the Application for Certification (AFC).

With regard to water conservation measures, BBID understands that the California Energy Commission (CEC) is considering imposing a significant per-acre-foot charge for all fresh water utilized by MEP, and intends to deliver the funds to either Zone 7 or CCWD, not BBID, to support "water conservation" programs within these agencies. The diversion and beneficial use of water is not regulated by the CEC, and it is questionable whether the CEC can impose any type of fee for the diversion and use of water at facilities like MEP. Moreover, the imposition on the right to divert water, a property right under California law, likely runs afoul of Article XIIIA of the California Constitution. Assuming the CEC has any authority to impose any such fee, the fees contemplated here do not

relate to any benefit conferred upon, or burden imposed by BBID or the MEP. Indeed, BBID already holds rights to this water and the use of this water at the MEP is for a reasonable and beneficial use. Furthermore, the imposition of such a fee is unnecessary given BBID's own water conservation improvement program.

In closing, although it appears Mariposa has already implemented water conservation into the project design, BBID intends to establish a water rate structure which will include a proportional conservation fee sufficient to fund BBID's water conservation program. The District expects the fee to be developed based on actual water use and not based on a one-time fee. This format will ensure that the conservation measures are consistent with the magnitude of water use.

If you have any questions, please contact me directly.

Sincerely,

Rick Gilmore
General Manager

C: Board of Directors
Sandra Dunn, General Counsel
Bo Buchynsky, Diamond Generating Corporation
G.F. Duerig, General Manager, Alameda-Zone 7 Water Agency
Greg Gartrell, Assistant General Manager, Contra Costa Water District