
APPENDIX M

WATER DISTRICT LETTER

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August 13, 2001

Mr. Hal Crossley
General Manager
Rosedale-Rio Bravo Water Storage District
P.O. Box 867
Bakersfield, CA 93302

Re: TESLA Power Plant Water Supply

Dear Sirs:

The purpose of this letter is to set forth the intentions on the basis of which Midway Power LLC ("MPL"), is willing to proceed with the preparation of a lease agreement and related documentation ("Definitive Agreements"), as set forth below, with respect to the lease of water from Rosedale-Rio Bravo Water Storage District ("Rosedale") (possibly in connection with Buena Vista Water Storage District ["Buena Vista"] at Rosedale's option ("Supplier") and transfer such water to the Alameda County Flood Control and Water Conservation District ("Zone 7").

Although neither Supplier nor MPL is bound in any way to proceed with the lease of the water until final and completed documents are executed by the parties, we intend for this letter to summarize the current status of our ongoing negotiations concerning the basic terms of the Definitive Agreements which will set forth in greater detail the terms and conditions of this letter and such other terms and conditions as are mutually agreed upon by the parties.

1. Description. Zone 7 will lease from Supplier for MPL's benefit and deliver to MPL at the turnout on the California Aqueduct south of the Bethany Reservoir ("Delivery Location"), a firm water supply of six thousand four hundred (6,400) acre-feet ("AF") per year for use by MPL at a power plant to be sited within Zone 7.
2. Mechanism. Supplier will lease and deliver exportable local groundwater and surface water (the "Water") to the Delivery Location by utilizing an exchange of State Water Project ("SWP") deliveries among itself, the Kern County Water Agency ("KCWA") and Zone 7. No SWP water will be transferred and no additional annual diversion into the California Aqueduct shall occur. Supplier will be responsible for paying any costs associated with delivery to the Delivery Location.

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3. Term. Supplier's obligation to deliver the water shall terminate in 2035 concurrent with the expiration of the KCWA existing SWP entitlement contract, with a right of first refusal in favor of Zone 7 on MPL's behalf at MPL's sole and absolute discretion to renew for a like term on mutually-acceptable terms to be negotiated prior to expiration of the initial term.

4. Payment. MPL shall make semi-annual or more frequent lease payments with an annual settling-up payment to Zone 7 upon commencement of water delivery. Zone 7 shall make payments to Supplier.

5. MPL's Responsibilities. MPL shall be solely responsible for arranging with the California Department of Water Resources ("DWR") and Zone 7 the selection and construction of all turnout facilities necessary for MPL to receive delivery of the water at the Delivery Location, and for all costs and fees related thereto.

6. Supplier's Responsibilities. Supplier is responsible for arranging, including the payment of any costs or fees, the exchange of water with KCWA, Zone 7 and the DWR. Supplier shall be responsible to make whatever arrangements are necessary to assure a firm, reliable annual supply is available at the Delivery Location for MPL to use on the schedule needed by MPL. However, should occasional environmental conditions in the Delta temporarily disrupt the ability to deliver water to the Delivery Location, Supplier will waive the Exchange Fee component of its price for the period of the temporary disruption.

7. No Impact on Zone 7. MPL shall reimburse Zone 7 for any and all costs incurred from the transaction relating to due diligence and administration, and for any costs associated with mitigating any impact on Zone 7's existing water supply and water delivery obligations.

8. Conditions Precedent. MPL's obligation to consummate the transactions contemplated under the Definitive Agreements will be subject to the satisfaction of the following conditions (the "Conditions Precedent").

8.1. Due Diligence. Supplier shall provide MPL with information by September 15, 2001, sufficient to demonstrate Supplier's possession and ability to export six thousand four hundred (6,400) AF per year of local groundwater and/or surface water to the Delivery Location during varying hydrological conditions, including drought. MPL will have until ninety (90) days following the receipt of the foregoing (the "Contingency Date") to review and approve or disapprove the same.

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8.2. Environmental Review and CEC Approvals. MPL shall be responsible for causing the necessary environmental review to be conducted at its cost. Supplier agrees to reasonably cooperate and make its own personnel and resources available without charge to assist. MPL shall be solely responsible for obtaining California Energy Commission ("CEC") approval for the power plant and shall bear all costs associated with same. Supplier agrees to reasonably cooperate and testify in support of the power plant, if requested to do so. On or before October 31, 2002, the CEC shall have approved the construction of the power plant.

8.3. Consent of Zone 7, KCWA and DWR. On or before the Contingency Date, Zone 7, KCWA and DWR shall have approved of the transactions contemplated by the Definitive Agreements. Supplier, Zone 7, KCWA and DWR shall have executed all necessary exchange agreements necessary to permit delivery of the water at the Delivery Location commencing at the start of the fourth quarter, 2003.

8.4. Failure of Conditions Precedent. If the foregoing Conditions Precedent are not satisfactory to MPL, as determined in its sole and absolute discretion, or waived by MPL within the respective time periods set forth above, MPL will have the right to terminate the lease agreement.

9. Preparation of Definitive Agreements. Following Supplier's acceptance of the terms and conditions contained herein, MPL will prepare and deliver to Supplier drafts of the Definitive Agreements that will incorporate the terms and conditions of this letter. Supplier and MPL hereby agree to negotiate in good faith the Definitive Agreements in accordance with the terms and conditions set forth in this letter and such other terms and conditions relating to the sale and acquisition of the Water as may be required by the parties. In the event the parties fail to execute the Definitive Agreements within ninety (90) days following the date of Supplier's execution hereof, either party may terminate negotiations with respect to the lease of the Water.

10. Force Majeure. Supplier's obligation to deliver the water at the Delivery Location shall be temporarily suspended in the event of an unexpected event (like an earthquake or other natural disaster) or other acts of God that disrupt delivery to the Delivery Location through the California Aqueduct. During such suspension, MPL's payment obligation shall be forgiven. Suppliers shall use reasonable best efforts to find a deliverable replacement supply and/or implement a cure to the disruption event. Supplier's reasonable best efforts are limited to spending up to the value of the water as specified in the lease agreement (price per acre-foot of water paid by MPL in the given year of the agreement in which the force majeure event occurs) to provide a replacement supply or other cure. Hydrologic conditions (including drought) and/or unexpected events which disrupt Supplier's recharge and/or extraction facilities in Kern County

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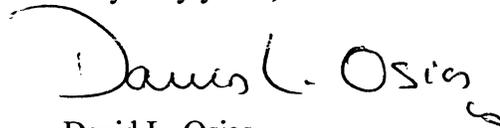
are expressly excluded as force majeure events and shall not be the basis to disrupt deliveries to the Delivery Location.

11. Purpose of Letter. The purpose of this letter is to set forth the basic terms and conditions of a proposed transaction and to establish the basis upon which the parties can negotiate the Definitive Agreements. The parties specifically acknowledge that (i) this letter does not, except for the obligation of good faith negotiations provided in paragraphs 8 and 9 above, constitute a binding contractual obligation to lease the Water, and (ii) the parties shall not be bound to lease the Water until the Definitive Agreements are mutually executed and delivered.

12. Authority. Each of the undersigned individuals, by his/her execution of this letter on behalf of Supplier and MPL, as applicable, represents and warrants to the other that he/she has the legal power, right and actual authority to execute this letter and negotiate the terms of the lease of the Water. It is understood by all parties that the Board of Directors of the Supplier must approve the Definitive Agreements.

If the foregoing meets with your approval and you are willing to proceed with the negotiations for the Definitive Agreements upon the basis set forth herein, please indicate your acceptance of the foregoing by executing the copy of this letter which has been enclosed and delivering it to Allen Matkins Leck Gamble & Mallory LLP, 501 West Broadway, 9th Floor, San Diego, California 92101, Attn: David L. Osias, on or before August 3, 2001. If this letter is not so executed and received on or before August 3, 2001, the terms set forth in this letter shall be null and void.

Very truly yours,



David L. Osias

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AGREED AND ACCEPTED:

ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT

By 
Hal Crossley

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Its General Manager
Dated August 13, 2001