



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
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IN THE MATTER OF:

APPLICATION FOR CERTIFICATION FOR THE  
***VICTORVILLE 2 HYBRID POWER PROJECT***

DOCKET No. 07-AFC-1

ADDENDUM TO ERRATA AND REVISIONS  
TO THE PRESIDING MEMBER'S PROPOSED DECISION

This Addendum to the Errata and Revisions issued June 30, 2008 shows the revisions described in items 1, 4, and 19 of the Errata and Revisions. In addition, the Committee has now received final and complete versions of Conditions of Certification BIO-10 and BIO-12, and the revisions to those Conditions are shown below.

AIR QUALITY

1. Pages 105 and 106:

**Air Quality Table 4** shows that the project does not cause any new violations of PM<sub>2.5</sub>, NO<sub>2</sub>, CO or SO<sub>2</sub> air quality standards even with worst case ambient concentrations recorded. The project, however, would contribute to existing violations of the state 24-hour and annual PM<sub>10</sub>, ~~the federal 24-hour PM<sub>2.5</sub>~~ air quality standards, and the state 1-hour and the federal 8-hour ozone standards. Therefore, we adopt Conditions of Certification requiring mitigation in the form of emission reduction credits for particulate matter and its precursors, and ozone and its precursors, as part of this Decision. The project's particulate matter less than 10 microns emissions contribution would be mitigated to a level that is less than significant by surrender of valid emission reduction credits generated by the paving of local roads.

**Air Quality Table 4  
Project Operation Emission Impacts**

Pollutants	Avg. Period	Impacts ( $\mu\text{g}/\text{m}^3$ )	Background ( $\mu\text{g}/\text{m}^3$ )	Total Impacts ( $\mu\text{g}/\text{m}^3$ )	Standard ( $\mu\text{g}/\text{m}^3$ )	Percent of Standard
NO <sub>2</sub>	1-hour (start-up)	243	169	412	470 <sup>1</sup>	88%
	1-hour (steady state) <sup>3</sup>	240	169	409	470 <sup>1</sup>	87%
	Annual	0.3	41	41.3	100 <sup>2</sup>	41%
SO <sub>2</sub>	1-hour	1.5	31	32.5	655 <sup>1</sup>	5%
	24-hour	0.3	16	16.3	105 <sup>1</sup>	16%
CO	1-hour	635.7	3,680	4315.7	23,000 <sup>1</sup>	19%
	8-hour	301	2,178	2480	10,000 <sup>1</sup>	25%
PM <sub>10</sub>	24-hour	5.9	181	186.9	50 <sup>1</sup>	<b>370%</b>
	Annual	0.3	<u>3034</u>	<u>30.3 34.3</u>	20 <sup>1</sup>	<b>152%</b>
PM <sub>2.5</sub>	24-hour	5.9	<u>20.038</u>	<u>25.9 43.9</u>	35 <sup>2</sup>	<u>74</u> 125%
	Annual	<u>0.2 0.3</u>	<u>10.8 13.9</u>	<u>11.0 14.2</u>	12 <sup>1</sup>	<u>98</u> 118%

Notes: 1. State standards; 2. Federal standards; 3. Including impacts from fire pump engine.

(Ex 200, p. 4.1-14; Ex. 210; Applicant's Prehearing Conference Statement, p. 5)

4. Page 108: Intervenor CURE's Arguments Regarding District Rule 1406

We briefly address the contentions of Intervenor CURE. First, CURE argues that road paving ERC's may not legally be used by the Applicant because District Rule 1406 (Rule), allowing the use of such credits, has not yet been approved by the USEPA. This issue has been thoroughly briefed by Staff, the Applicant, and CURE. Although the Rule has not been approved by the EPA, the evidence shows that it is currently under review by the EPA. CURE offers no evidence or argument upon which we could base a finding that the EPA is unlikely to approve Rule 1406. In fact, CURE's arguments against the current use of Rule 1406 appear to be based entirely upon speculation that EPA may take a long time to review and approve the Rule. Such speculation—particularly in the absence of any facts tending to show that EPA will not ultimately approve the Rule--cannot form the basis for disapproving the Applicant's emissions mitigation plans, which were approved by the District in its Final Determination of Compliance issued on January 10, 2008. Further, the EPA itself allows issuance of permits to construct and operate as long as, by the time the source of emissions is to

commence operations, sufficient offsetting emissions reductions have been obtained. [42 USC 7503(a)(1)(A).] Condition of Certification AQ-SC9 requires the project owner to pave unpaved local roads sufficient to provide emission reduction credits of 132.7 tons per year prior to the start of construction. ~~Our review of the briefs and the relevant law leads us inescapably to the conclusion that CURE's arguments lack both legal and factual support. There is nothing in the record that would support a finding that EPA is unlikely to approve the Rule, yet EPA disapproval would be the only justification for denying City's request to take advantage of the Rule.~~

CURE cites Public Resources Code section 25523, highlighting its requirement that the Commission "...require as a condition of certification that the applicant obtain any required emission offsets within the time required by the applicable district rules, consistent with any applicable federal and state laws and regulations, and prior to the commencement of the operation of the proposed facility." The Applicant has obtained District approval for the use of road paving credits, conditioned upon the road paving being completed before the commencement of construction. See MDAQMD Final Determination of Compliance (FDOC), Exhibit 202, p. 12. The District has previously allowed the use of road paving PM<sub>10</sub> reductions for new source review actions, and supports the use of road paving to offset natural gas PM<sub>10</sub> emissions within a PM<sub>10</sub> nonattainment area. (Id.)

District Rule 1302 sets forth the District's requirements for use of offsets. The Rule is consistent in requiring that offsets be in place, that is, actually reducing emissions, for each Nonattainment Air Pollutant, prior to the commencement of construction. For example, Rule 1302(C)(5)(b)(v) requires that offsets be obtained prior to the commencement of construction. Rule 1302(D)(5)(b)(ii) requires that any increase in emissions for each Nonattainment Air Pollutant have been properly offset prior to Beginning Actual Construction. The District has determined, through its FDOC, that PM<sub>10</sub> has been properly offset because the applicant will pave sufficient roads to offset the project's PM<sub>10</sub> emissions. Specifically, the District stated: "The MDAQMD has determined that the proposed project, after application of the permit conditions (including BACT/LAER requirements), given below, will comply with all applicable

MDAQMD Rules and Regulations.” (Ex. 202, p. 17.) Condition of Certification **AQ-SC9**, which we adopt, requires that the applicant complete all such paving no later than 15 days prior to the commencement of construction, and thereby ensures that these offsets have been properly obtained, and that project PM<sub>10</sub> emissions have been offset prior to the commencement of construction.

CURE also argues that there will be environmental impacts from the road paving itself which may negate, in whole or in part, any emissions offsets due to the reduction in PM<sub>10</sub> resulting from road paving. Initially, we note that CURE has not submitted any evidence in support of this contention; CURE submitted briefs arguing its position, but CURE’s briefs, and the entire record, are devoid of any evidence upon which we could base a finding in support of CURE’s contentions. However, Staff submitted the testimony of Tuan Ngo, P.E. (Ex. 200, section 4.1) with respect to Air Quality. We summarize Mr. Ngo’s uncontroverted testimony addressing these indirect impact concerns as follows:

- The emissions from equipment used in the paving of the roads are one time and short-term. Road paving will be complete before construction begins. Both the paved and unpaved roads would need to be maintained, thus emissions from maintenance would occur whether or not the roads were paved.
- The area around the project site is largely desert land, which lacks urban development, i.e., tall buildings; thus urban heat island effect is not expected.
- The area proposed for road paving encompasses approximately 400 square miles and is typical of the desert. This area would typically have an albedo<sup>1</sup> of approximately 0.4 (in simple terms, one can think of it as if 40% of the light shining on this surface would be reflected). New asphalt surfaces such as roads, would have an albedo of about 0.04, and would approach 0.12 as they aged. Staff estimated that approximately 10 to 15 miles of roads need to be paved to

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<sup>1</sup> Albedo is a unit ratio (between 0 and 1) of how much electromagnetic energy, such as light, a surface reflects. When electromagnetic energy, such as light, hits a surface, it must either be absorbed into or be reflected by the surface. For example, when light hits a typical mirror, almost all the light is reflected; thus the mirror’s albedo is approaching 1.

provide sufficient PM<sub>10</sub> emission reductions necessary to mitigate the project PM<sub>10</sub> emissions. This would amount to approximately 0.11 square-mile of new asphalt surface, which replaces the same amount of desert land in the area. With this information, staff estimated that the area's albedo would decrease by about 0.0001, which is two orders of magnitude less than the accuracy of the albedo measurement instrument. Such a change cannot affect the temperature variation of the area, thus no heat island effect is expected.

- Condition **AQ-SC9** requires that the applicant provide a list of candidate roads and actual tests that measure daily average vehicle count and silt content. It also requires that all identified roads shall be paved to the standards for paved roads in the city or county where they are located. Staff has recommended full mitigation of 132.7 tons per year of PM<sub>10</sub> (**AQ-SC9**), by requiring the City to identify roads to be paved, to conduct actual tests (silt content and traffic count) prior to actual paving, and pave those identified roads. This method would provide an accurate amount of PM<sub>10</sub> emissions reduction credits, and is consistent with the Federal guidelines. The proposed project's PM<sub>10</sub> emissions chemical impacts are analyzed in the Public Health section of this analysis, which concluded that the toxic air emissions from this project would not cause any short or long-term significant health effects.

The evidence in the record fully supports our finding that Condition of Certification **AQ-SC9**, requiring the Applicant to pave sufficient unpaved roads to offset 132.7 tons per year of PM<sub>10</sub>, will effectively mitigate the project's PM<sub>10</sub> impacts, reducing those impacts to below the level of significance. We therefore deny CURE's request that we "require the City to identify an alternate source of federally enforceable PM<sub>10</sub> offsets prior to the Commission certifying the Project."

## **BIOLOGICAL RESOURCES**

10. Pages 194 – 195:

### ***Nesting or Migratory Bird Surveys and Impact Avoidance***

**BIO-10** The project owner shall implement the following measures to avoid or minimize impacts to nesting birds:

1. If ground disturbance activities will occur when birds, including but not limited to Le Conte's thrasher and loggerhead shrike, could be nesting on the power plant site, complete a pre-construction survey for nesting birds in the project area 30 days prior to the start of initial ground disturbance activities to assess presence and need for mitigation. Consult USFWS and CDFG if needed to determine an appropriate survey period.
2. Complete a pre-construction survey for other nesting birds in the remainder of the project area (e.g., linear facilities) during an appropriate survey period determined in consultation with USFWS and CDFG and no less than 30 days prior to the start of initial ground disturbance activities.
3. If active, occupied nests are found, schedule work outside nesting and fledging periods. If this is not possible, fence the nest site a minimum of 200 feet (500 feet for federally or state-listed species and/or raptors) in all directions. This area shall not be disturbed until after September 15 and/or until the nest becomes inactive. These species include southwestern willow flycatcher, least Bell's vireo, western yellow-bird cuckoo, and other special-status birds that could nest in riparian habitat associated with the Mojave River. See BIO-18 for additional requirements related to drainages and riparian areas.
4. Common raven nests in desert tortoise habitat shall be removed as part of desert tortoise mitigation during the non-nesting period in consultation with USFWS and CDFG.

**Verification:** At least ~~60~~<sup>45</sup> days prior to start of any project-related ground disturbance activities, the project owner shall provide the CPM with the final version of the BRMIMP, which includes ~~nesting bird survey results and~~ any necessary impact avoidance measures. All modifications to the approved BRMIMP must be made only after review and approval by the CPM in consultation with CDFG and USFWS.

11. Pages 197 – 201:

### **Desert Tortoise Impact Avoidance and Minimization Measures**

**BIO-12** The project owner shall incorporate all terms and conditions from the USFWS (2008a) Biological Opinion and the requirements identified in the final desert

tortoise translocation plan submitted May 8, 2008, with the exceptions noted below in the Handling and Monitoring and Reporting sections, as well as subsequent plan revisions into the project's final BRMIMP. The BRMIMP will also include the mitigation measures identified in Biological Resources section 6.4 and Appendix H of the AFC (Victorville 2007a), responses to data requests (ENSR 2007d), and the Draft Biological Assessment (ENSR 2007b) unless they conflict with terms and conditions required in the Biological Opinion, final desert tortoise translocation plan, below, or elsewhere in the conditions of certification. In the case of an apparent conflict in mitigation measures, the project owner shall prior to completion of the final BRMIMP notify the CPM, who will confer with USFWS and CDFG, and then clarify and resolve the differences.

The revised final desert tortoise translocation plan shall be resubmitted after the BRMIMP is approved by the CPM, and shall be consistent with the requirements of the approved BRMIMP and of this condition of certification. If there are additional changes to the BRMIMP affecting the desert tortoise translocation plan, the CPM may require modification and resubmittal of the desert tortoise translocation plan to reflect those changes.

The project owner shall ensure the following measures are implemented:

### **Fencing**

1. Fence the construction areas and permanent facilities with desert tortoise-proof fencing prior to mobilization in undeveloped areas. Gate(s) shall be desert tortoise proof as well. Gate(s) shall remain closed except for the immediate passage of vehicles. High use gate(s) will be maintained and have monthly examinations.
2. The fences will be maintained and checked on a daily basis to ensure the integrity of the fence is maintained. The Designated Biologist shall be present onsite to monitor construction and determine fence placement during fence installation.
3. Following fencing, a trained tortoise biologist shall search the interior and exterior of the fenced area areas for tortoises.
4. Temporary fencing during construction along roads shall be installed at the direction of the Designated Biologist, and a biological monitor shall be on call for wildlife issues. Limit fence encroachment into relatively undisturbed desert tortoise, Mohave ground squirrel, and burrowing owl habitat while minimizing the potential for animals becoming trapped on the road side of the fence. The applicant shall account for the fence encroachment acreage in the final habitat disturbance calculations and provide any resulting, additional compensation habitat that would be

required. At road intersections, extend the main fence at right angles along the edge of the intersecting road for 30 feet to discourage desert tortoises from following the main fenceline from directly crossing the intersecting road.

### **Handling**

5. Collection, holding, and translocation of tortoises shall comply with the Desert Tortoise Council (1994, revised 1999) handling protocol (i.e., Guidelines for Handling Desert Tortoises during Construction Projects prepared for the USFWS) that ensures their health and safety.
6. Tortoises shall be kept upright at all times and handled in a secure but gentle manner to minimize stress including the possibility of voiding the bladder.
7. Tortoise burrows shall be excavated using hand tools under the supervision of the Designated Biologist. Excavations are permitted only ~~prior to 12:00 noon and~~ within the temperature guidelines established in the Biological Opinion. To prevent re-entry by a tortoise, all burrows in the construction zone that do not contain tortoises shall be collapsed.
8. Instruct all employees and contractors to look under vehicles and equipment for the presence of protected species prior to movement. No equipment will be moved until the animal has left voluntarily or it is removed by a biologist authorized to do so. Any time a vehicle is parked, the ground around and under the vehicle will be inspected for desert tortoises and other wildlife before the vehicle is moved.
9. The Designated Biologist shall follow the Desert Tortoise Council guidelines for proper handling of desert tortoise. If a desert tortoise is observed in an active work area on the project site, whether above ground, or in a burrow, ~~or in an open trench,~~ it will be left to move on its own. If this does not occur within 15 minutes, the Designated Biologist can remove and relocate the tortoise into undisturbed habitat (i.e., at least 1,000 feet outside of the transmission line right-of-way, in a temporary holding area, or permanent translocation site). Desert tortoises that are found above ground or in a trench and need to be moved from harm's way shall be placed in the shade of a ~~large, marked~~ shrub and continually monitored to ensure their continued safety. All desert tortoises removed from burrows will be placed in an unoccupied burrow of approximately the same size as the one from which it was removed. If an existing burrow is unavailable, the Designated Biologist will construct or direct the construction of a burrow of similar shape, size, depth, and orientation as the original burrow. The project owner shall monitor desert tortoises moved during inactive periods for at least two days after

placement in the new burrows to ensure their safety. The Designated Biologist will be allowed some judgment and discretion to ensure that survival of the desert tortoise is likely.

Notwithstanding the final desert tortoise translocation plan, submitted May 8, 2008, the following item shall be completed and reflected in the revised plan:

10. No desert tortoises shall be handled or moved prior to Energy Commission licensing of the project. Delete all references to these activities occurring on dates/months prior to this event in the translocation plan text and schedules. ~~Change the schedule on page 27 of the plan (i.e., delete May and June) and other references throughout to reflect this limitation.~~

### **Monitoring and Reporting**

11. Report all encounters with federally- or state-listed species to the Designated Biologist, who will record the following information for the monthly compliance report: (1) species name; (2) location (global positioning system coordinates, narrative and maps) and dates of observations; (3) general condition and health, including injuries and state of healing; (4) diagnostic markings, including identification numbers or markers; and (5) locations moved from and to.

Notwithstanding the final desert tortoise translocation plan, submitted May 8, 2008, the following items shall be completed and reflected in the revised plan:

12. Monitor survivorship of translocated tortoises for at least 18 months, and report the results in consultation with the CPM, CDFG, and USFWS. This work shall encompass monitoring in all four seasons and be timed to include two spring seasons. This will allow a meaningful assessment of spring emergence from burrows in consideration of the atypical fall translocation time. References to the previous 12-month monitoring period shall be changed to 18 months throughout the plan.
13. Tortoises fitted with transmitters shall be monitored at least every other week during the active seasons, and more frequently, as needed following release and following hibernation ~~because most movement will likely occur shortly after release. due to unfamiliarity with the new location.~~ Once tortoises become more established or are moving shorter distances such that they are less likely to be lost, the frequency of monitoring can be changed to monthly. Approval of any change in monitoring frequency will be acquired from appropriate agencies monthly. Following translocation and a planned telemetry survivorship monitoring period of at least 18 months, transmitters shall be removed. ~~(page 25 of plan).~~

14. All other desert tortoises observed or encountered while tracking translocated tortoises will be recorded, but not handled, and marked with identifying numbers and processed for general health parameters and identifying features (e.g., sex, size, distinguishing marks/scars) will be noted. Their location using GPS will also be recorded. All translocated animals found during a dawn to dusk search will be monitored monthly to include two consecutive spring seasons, between September 2008 and April 2010, after which transmitters will be removed. If translocated desert tortoises animals are not located in the one-day monitoring, continue searching until they are located. This might require multiple days depending on the ease or difficulty in locating the animals. ~~(page 48 of plan).~~

### **Translocation Site**

15. The translocation site selected shall support suitable desert tortoise habitat, including appropriate cover and forage.
16. No sensitive biological resources, including other special-status species sensitive habitats or unique vegetation assemblages, shall be disturbed during translocation activities and site preparation, such as artificial/nest burrow installation and juvenile desert tortoise release pen construction.
17. Existing roads or pedestrian access where roads are lacking shall be used to transport desert tortoises to the translocation site and monitor translocation success.

**Verification:** At least 30 days prior to the start of any site or related facilities mobilization activities, the project owner shall incorporate the associated terms and conditions of this condition of certification into the project's BRMIMP, and implement them.

### **SOIL AND WATER RESOURCES**

19. Pages 212-214: Project Water Supply and Treatment

The proposed project will be located in the Mojave Basin. The Mojave Basin is situated about 80 miles from Los Angeles and is part of the Mojave Desert Region. The Mojave Water Agency (MWA) defines the Mojave Basin as the surface-water drainage basin of the Mojave River, which encompasses about 3,800 square miles. (Ex. 200, p. 4.9-6.)

The natural water resources of the Mojave Basin are extremely limited. The Mojave River is the primary natural source of both surface water and groundwater recharge for the region. However, the river is usually dry. Flows are unpredictable and unreliable. Due to the nature of flow in the Mojave River, groundwater has served as the primary water supply for the region. Groundwater use began for agriculture in the 1800s and has accelerated in recent years with rapid urban growth as people relocated from the Los Angeles area. With the development of groundwater, regional water use has exceeded natural recharge, resulting in reductions in stream flow and groundwater recharge, declines in groundwater levels and groundwater overdraft. (Id.)

In 1990, the city of Barstow and the Southern California Water Company initiated a lawsuit that alleged that upstream groundwater production had overdrafted the Mojave River groundwater basin. This lawsuit led to the Adjudication of the Mojave Basin. A settlement was reached in 1996, to which over 200 parties agreed and specified a “physical solution” intended (1) to ensure that downstream users are not adversely affected by upstream use, (2) to raise money to purchase imported water supplies, (3) to encourage water conservation, and (4) to maintain and conserve the riparian resources of the Mojave River. Regional water use and implementation of the Adjudication is now managed by the court-appointed watermaster, the Mojave Water Agency. (Id.)

The Adjudication established a minimum flow requirement in order to maintain riparian habitat in the Mojave River and to support the transmission of storm flows to the downstream subareas. Storm flows are important to downstream communities, such as Barstow, because these flows are the primary source of the groundwater recharge in the lower subareas.

Recycled water is discharged into the Mojave River by the Victor Valley Water Reclamation Authority (VWVRA) in compliance with a Memorandum of Understanding with the California Department of Fish and Game (CDFG) dated June 27, 2003. The current balance of recycled water, which represents excess, unsold supply, is for the most part discharged to the river. That discharge, added to natural flows, has been

sufficient to meet the requirements of the Adjudication without the need for imported surface water. (Ex. 200, p. 4.9-7.)

State water policy, set forth in State Water Resources Control Board Resolution 77-1, encourages and promotes the use of recycled water for non-potable uses. SWRCB Resolution 75-58 states that fresh inland waters should only be used for power plant cooling if other sources or other methods of cooling would be environmentally undesirable or economically unsound. The Energy Commission has adopted a similar policy. California Water Code section 13551 requires the water resources of the state to be put to highest use of which they are capable. Section 13552.6 specifically identifies power plant cooling tower use as a wasteful or unreasonable use of fresh water when recycled or other degraded water is reasonably available. Thus, the Victorville 2 project must use recycled or other degraded water if it is to comply with state law and policy.

Soil and Water **Table 1** summarizes the proposed project's water needs. The Victorville 2 project would have two sources of water. Recycled water would be the primary water supply for project process needs during operations, and groundwater that serves local municipal needs would be used to meet the project's potable water demands. Groundwater is also proposed to be used as the project's operational backup water supply. (Ex. 200, p. 4.9-14.) Victorville Water, a division of the city of Victorville, which operates the area's domestic groundwater supply system, would provide ~~both~~ the potable groundwater supply. ~~and~~ Recycled water would be supplied by VVWRA. A 1.5-mile pipeline will be constructed from the VVWRA treatment plant to the Victorville 2 project to supply recycled water to the project. Water will be trucked from the treatment plant to the Victorville 2 construction site for dust suppression until the pipeline is constructed. (Ex. 200, p. 4.9-15.) During construction, recycled water would be used to meet the all of the project's non-potable water demands, including for dust suppression and compaction. During the first stage of construction grading for the power block area, the Applicant estimates that the daily maximum water demand would be 65,000 gallons per day (gpd). During the next stage for grading of the solar field, average daily water

use would increase to a maximum of 650,000 gpd. During non-grading construction periods, the average daily water demand would be about 58,000 gpd. (*Id.*)

During operations, recycled water would be used for cooling, other process needs, mirror washing, fire protection and landscaping. The Applicant estimates plant operations will require a maximum annual water supply of 3,150 AFY, including 46 AFY for mirror washing. The average maximum daily rate would be 2,603 gallons per minute (gpm) and the peak daily rate would be 2,965 gpm. The effect of the project’s recycled water use would be to reduce return flows and thereby remove water from the basin’s hydrologic system. Recycled water used by the project, except for landscape irrigation, would be completely consumed through evaporation. (*Id.*)

### Soil & Water - Table 1

**Victorville 2’s Annual Water Needs**

Water Use	Maximum Annual Use (acre-feet/year)	Water Supply Source	Water Supplier
<b>Process Water<sup>1</sup></b>	3,150	Recycled Water	Victor Valley Water Reclamation Authority (VWRA) <sup>2</sup>
<b>Process Water Backup Supply</b>	45 <sup>3</sup>	Groundwater	Victorville Water <sup>4</sup>
<b>Potable Water</b>	3.6	Groundwater	Victorville Water <sup>4</sup>

<sup>1</sup> Operational process water uses include cooling, other process needs, fire protection and landscaping. Potable groundwater will serve as the backup water supply for the project’s process demands.

<sup>2</sup> City of Victorville has an agreement to purchase all VWRA recycled water production in excess of required discharges to the Mojave River

<sup>3</sup> The Applicant’s worst-case assumption is that the backup water demand would be no more than 45 acre-feet annually (Data Request 78).

<sup>4</sup> City of Victorville purchased the Victor Valley Water District, the primary potable water supplier to the city of Victorville, on August 15, 2007. The new name for this service provider is Victorville Water.

(Ex. 200, p. 4.9-16.)

VVWRA is increasing its production of recycled water. Any excess is discharged to the Mojave River. The nearby High Desert Power Plant (HDPP), which currently uses California Water Project water in conjunction with an aquifer storage and recovery program, is anticipated to may begin use of VVWRA recycled water in the near future. HDPP initiated negotiations with the city of Victorville in 2005 to purchase a maximum of 1,750 acre-feet of recycled water annually. Use of recycled water by HDPP would require the review and approval of a project amendment by the Energy Commission, which has not been filed by the owner of HDPP. However, it is reasonable to assume that such an amendment would be permitted and that HDPP would begin using recycled water by 2009. (Ex. 200, p. 4.9-34.)

With the additional use of recycled water by HDPP, there would initially be a slight 2-year reduction in the amount of excess recycled water discharged to the Mojave River during 2010 and 2011, as compared to 2007. However, beginning in 2012, recycled water discharges to the Mojave River would again exceed baseline excess discharges of 6,600 acre-feet as estimated for 2007, owing to the increase of recycled water production attributable to new business and residential developments in the city of Victorville. (Ex. 200, p. 4.9-30.)

Project use of recycled water would not be growth-inducing because it would have no effect on regional population growth or housing development. In addition, discharges to the Mojave River from the VVWRA facility would not be reduced below baseline levels. To ensure that recycled water use will not exceed the amount evaluated and permitted by the Energy Commission, we adopt Condition of Certification **SOIL & WATER-7**, which establishes the project's annual water-use limit and specifies requirements for the metering and reporting of recycled water use. (Ex. 200, p. 4.9-32.)

Although the project's use of recycled water would reduce the amount of recycled water available for other uses, we find that this is not a substantial adverse impact.

Furthermore, the amount of available recycled water product is expected to increase as the area population grows, further lessening the extent of any impact. In addition, state law and policy mandate the use of recycled water by the project.

The Applicant proposes to comply with Titles 17 and 22 of the California Code of Regulations, which address the use of recycled water. Under these regulations, the project owner is required to prepare an Engineer's Report describing the production, distribution and use of recycled water and to obtain review and approval from DHS. The Engineer's Report will verify that VVWRA's recycled water meets the standards for unrestricted use and that the plumbing constructed for the Victorville 2 project is inspected for prevention of backflow and cross connection with the potable water supply. We adopt Condition of Certification **SOIL & WATER-5** to monitor and ensure compliance with DHS requirements. (Ex. 200, p. 4.9-41.)

Dated on July 11, 2008, at Sacramento, California.

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JAMES D. BOYD  
Vice Chair and Presiding Committee Member  
Victorville AFC Committee

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JACKALYNE PFANNENSTIEL  
Chairman and Associate Committee Member  
Victorville AFC Committee