

UPDATED Item 2

April 11, 2018, California Energy Commission Business Meeting

Item 2. HIGH DESERT POWER PLANT PETITION TO AMEND (97-AFC-01C)

Committee Recommended Decision:

<https://efiling.energy.ca.gov/getdocument.aspx?tn=223006>

Errata to the Committee Recommended Decision:

<https://efiling.energy.ca.gov/getdocument.aspx?tn=223167>

Proposed Commission Adoption Order:

<https://efiling.energy.ca.gov/getdocument.aspx?tn=223168>

List of Documents filed in the High Desert Power Plant Petition to Amend, including any filed after this list was created on April 3,

2018: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=97-AFC-01C>

Project Web page: <http://www.energy.ca.gov/sitingcases/highdesert>



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

PETITION TO AMEND THE:

HIGH DESERT POWER PLANT

Docket No. 97-AFC-01C

ERRATA TO THE COMMITTEE RECOMMENDED DECISION

After reviewing the comments submitted by the parties, agencies, and members of the public, we incorporate the following changes¹ into the March 20, 2018, Committee Recommended Decision (Recommended Decision)² for the High Desert Power Plant:

1. On page 1, second paragraph, the second sentence should read as follows:

These conditions create new standards for the sources and uses of water for HDPP cooling needs; make permanent the HDPP's use of percolation for banking State Water Project (SWP) water; and impose certain ~~penalties~~ **offset remedies** for failing to meet or exceeding the use of recycled water.

2. On page 9, first bullet point, third sentence, should read as follows:

If Petitioner, Staff, and CDFW agree that the failure to meet the standards was in the control of Petitioner, HDPP would pay monetary ~~penalties~~ **offset remedies** to CDFW that would be used to mitigate the adverse biological impacts of the HDPP or to protect, conserve, restore, enhance, manage, and maintain fish, wildlife, native plants, or their habitats.

3. Page 10, second full bullet point, should read as follows:

- **SOIL&WATER-3, -8, -9, -10, -11, -15, -16, -19, and -22**: Deleted as the matters contained in them have been satisfied.

4. On page 14, the last two full sentences of the first paragraph should read as follows:

Finally, if during the meet and confer process, the parties agree that the reason for failing to meet water usage targets was in the control of the Petitioner, then certain monetary ~~penalties~~ **offset remedies** would apply. The money generated from these ~~penalties~~ **offset remedies** would be

¹ Where text is revised, additions are shown in **bold underline**, and deletions are shown in ~~strikeout~~.

² TN 223006.

deposited into a special account created by CDFW to acquire water to support the mesquite bosque habitat area.

5. On page 14, the first sentence of the first full paragraph should read as follows:

We find that the imposition and implementation of Condition of Certification **SOIL&WATER-1**, as set forth in Exhibit A to this Decision, ensures a proper balance of recycled water and banked water; maintains levels sufficient to support the bosque habitat and its dependent species; and provides a mitigation measure (the payment of ~~penalties~~ **offset remedies** to acquire alternate water) in the event that operation of the HDPP may impact the bosque.

6. On page 15, at the end of the last paragraph before heading C, "Calculation of Banked Water," add the following text:

Existing Conditions of Certification SOIL&WATER-11, SOIL&WATER-12, and SOIL&WATER-13 require HDPP to obtain various permits and to provide and implement treatment and monitoring plans regarding the injection and percolation of SWP water into the local groundwater aquifer, to the water agencies charged with oversight of the groundwater aquifer, including MWA and the Lahontan Regional Water Quality Control Board. These conditions have been applied to the HDPP since its original approval and will ensure that, as required by section 1769, the HDPP will continue to comply with all applicable LORS.

7. On page 17, the first sentence of the paragraph under "Conditions of Certification Update," should read as follows:

We also take this opportunity to show that Conditions of Certification **SOIL&WATER-3, -8, -9, -10, -11, -15, -16, -19, and -22**, have been satisfied.

8. On page 18, Findings of Fact and Conclusions of Law #5 should read as follows:

5. The matters contained in Conditions of Certification **SOIL&WATER-3, -8, -9, -10, -11, -15, -16, -19, and -22** have been satisfied.

9. In Exhibit "A", Condition of Certification **SOIL&WATER-1**, Section B, subparagraph c, should read as follows:

Shall meet a minimum of 20 percent of annual cooling water needs. Calculation of cooling water needs shall be done on an annual basis. The "Average Annual Recycled Water Blend Percentage" shall be calculated on a three-year rolling **average** basis and shall exclude periods recycled water is not available or is not of sufficient quality.

10. In Exhibit "A", Condition of Certification **SOIL&WATER-1**, Section C, subparagraph 2, should read as follows:

In the event that the Project Owner, CPM, and CDFW determine that the failure to use the minimum Average Annual Recycled Water Blend Percentage or exceedance of use of either the Maximum Annual Recycled Water Use or the Average Annual Recycled Water Use was within the control of the Project Owner, the penalties offset remedies set forth in subparagraph (D), below, shall apply.

11. In Exhibit "A", Condition of Certification **SOIL&WATER-1**, the title to Section D, should read as follows: **PENALTIES OFFSET REMEDIES**

12. In Exhibit "A", Condition of Certification **SOIL&WATER-4**, the second to the last sentence of the "Verification" should read as follows:

The Project Owner shall provide to the CPM and to CDFW a copy of any agreement(s) with MWA, Mojave Basin Area Watermaster, City of Victorville, or the Victorville Water District, relating to the percolation and injection banking of SWP water.

13. In Exhibit "A", Condition of Certification **SOIL&WATER-6**, Paragraph(A) should read as follows:

The amount of banked groundwater available to the project after the first twelve (12) months of commercial operation is: (1) the amount of SWP water percolated in accordance with **SOIL&WATER-4(b)**; and (2) the amount of SWP water injected in accordance with **SOIL&WATER-4(a)**, minus the amount of groundwater pumped by the Project Owner, minus the amount of dissipated groundwater losses, minus one thousand (1,000) acre feet, and minus any amount described in **SOIL&WATER-5(b)**.

14. In Exhibit "A", Condition of Certification **SOIL&WATER-12**, the title of the condition should read as follows:

Preparation of Water Treatment and Monitoring Plan

15. In Exhibit "A", Condition of Certification **SOIL&WATER-13**, the title of the condition should read as follows:

Implementation of Water Treatment and Monitoring Plan

16. In Exhibit "A", Condition of Certification **SOIL&WATER-17**, paragraph (1)(a), the second sentence should read as follows:

The contract shall state that any water produced by VWD pursuant to ~~(ii)~~ **1(b)**, above shall be included in subsequent calculations of the baseline only if that production does not exceed the baseline for the calendar year in which the production occurs, as required by this Condition.

Dated: April 9, 2018, at Sacramento, California

ORIGINAL SIGNED BY:

KAREN DOUGLAS
Commissioner and Presiding Member
High Desert Amendment Committee

ORIGINAL SIGNED BY:

JANEA A. SCOTT
Commissioner and Associate Member
High Desert Amendment Committee



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PETITION TO AMEND THE:

HIGH DESERT POWER PLANT

Order No. 18-0411-2

Docket No. 97-AFC-01C

[PROPOSED] COMMISSION ADOPTION ORDER

This Commission Order adopts the Committee Recommended Decision Granting the Petition to Drought-Proof the Facility, filed on March 20, 2018,¹ and the Errata to the Committee Recommended Decision, filed on April 9, 2018,² as further modified as described below, as the Commission Decision for the Petition to Amend the High Desert Power Plant. The Commission Decision is based upon the record of these proceedings and takes into consideration the comments received prior to and during the April 11, 2018, Business Meeting. The Commission Decision contains a summary of the proceedings, the information presented, and the rationale for the findings reached and conditions imposed.

The requirements contained in the Commission Decision ensure that the High Desert Power Plant will continue to be designed, sited, and operated in a manner to protect environmental quality, assure public health and safety, and operate in a safe and reliable manner.

FINDINGS

The Commission hereby adopts the following findings, pursuant to Executive Order B-29-15,³ the Warren-Alquist Act (California Public Resources Code section 25000 et seq.), and the Energy Commission Regulations (California Code of Regulations, Title 20), in addition to those contained in the Commission Decision:

1. Executive Order B-29-15, as extended by Executive Orders B-36-15⁴ and B-37-16⁵, exempts amendments to power plant licenses that seek to secure alternative water supplies to ensure continued power plant operations from the California

¹ TN 223006.

² TN 223167.

³ Executive Order B-29-15 was issued by Governor Edmund G. Brown Jr. on April 1, 2015 and may be found at: https://www.gov.ca.gov/docs/4.1.15_Executive_Order.pdf.

⁴ https://www.gov.ca.gov/wp-content/uploads/2017/08/11.13.15_EO_B-36-15.pdf.

⁵ https://www.gov.ca.gov/wp-content/uploads/2017/09/5.9.16_Attested_Drought_Order.pdf.

Environmental Quality Act and certain aspects of Title 20, section 1769 of the California Code of Regulations.

2. The High Desert Power Plant amendment is an application by an operating power plant to secure alternate water supplies to ensure continued power plant operations. The Commission Decision is therefore exempt from the California Environmental Quality Act, as set forth in Executive Orders B-29-15, B-36-15, and B-37-16.
3. Implementation of the Conditions of Certification contained in the Commission Decision will ensure that the High Desert Power Plant will be designed, sited, and continue to operate in conformity with applicable local, regional, state, and federal laws, ordinances, regulations, and standards, including applicable public health and safety standards, and air and water quality standards.
4. Implementation of the Conditions of Certification contained in the Commission Decision will ensure protection of environmental quality and assure reasonably safe and reliable operation of the facility.
5. The High Desert Power Plant amendment is beneficial to the public, applicant, and intervenors by providing an alternative source of power to the Los Angeles region if the Aliso Canyon Natural Gas storage facility is not available.
6. There have been changes in circumstances since the approval of the High Desert Power Plant that necessitate that the Energy Commission amend the sources and use of cooling water for the High Desert Power Plant and to ensure its continued operation in future drought events.

ORDER

Therefore, the Commission **ORDERS** the following:

1. The Committee Recommended Decision filed on March 20, 2018 (TN 223006), and the Errata to the Committee Recommended Decision filed on April 9, 2018 (TN TBD), and as further modified in Attachment "A", is hereby adopted as the Commission Decision and incorporated by reference into this Order.
2. The High Desert Power Plant as described in the Commission Decision is hereby granted an amended certificate to continue operation of the project as described.
3. The approval of the High Desert Power Plant amendment is subject to the timely performance of the Conditions of Certification and Compliance Verifications. The Conditions and Compliance Verifications are integrated with this Order and are not severable therefrom. While the project owner may delegate the performance of a Condition or Verification, the duty to ensure adequate performance of a Condition or Verification may not be delegated.
4. This Order is adopted, issued, effective, and final on the date this Order is docketed.

5. The Hearing and Policy Unit of the Chief Counsel's Office shall incorporate this order, the Committee Recommended Decision, the Errata to the Committee Recommended Decision, and any modifications contained in this Order, into a single document. Publication of that compilation shall not affect the adoption, effective, issuance, or final dates of this Order established in paragraph 4, above.
6. Reconsideration of this Order is governed by Public Resources Code, section 25530.
7. Judicial review of this Order is governed by Public Resources Code, section 25531.
8. The Commission hereby adopts the amended Conditions of Certification, Compliance Verifications, and associated dispute resolution procedures set forth in the original 2000 Commission Decision, and amendments thereto, as its mitigation monitoring program required by Public Resources Code section 25532. All Conditions take effect immediately upon adoption.
9. The Executive Director of the Commission shall transmit a Notice of Exemption to the Office of Planning and Research.

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the California Energy Commission held on April 11, 2018.

AYE:

NAY:

ABSENT:

ABSTAIN:

Cody Goldthrite
Secretariat

ATTACHMENT A

ADDITIONAL MODIFICATIONS TO COMMITTEE PROPOSED DECISION AND ERRATA TO THE COMMITTEE PROPOSED DECISION ADOPTED AT THE APRIL 11, 2018, ENERGY COMMISSION BUSINESS MEETING

No additional modifications were adopted at the April 11, 2018, Energy Commission Business Meeting. [If additional modifications are adopted, they will replace the previous sentence.]