



Torrance County
RESOLUTION NO. 2007-16

DECLARING THE INTENT OF THE COUNTY OF TORRANCE, NEW MEXICO, ACTING THROUGH ITS BOARD OF COUNTY COMMISSIONERS SUBJECT TO THE SATISFACTION OF CERTAIN CONDITIONS, TO ISSUE INDUSTRIAL REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$94,000,000.00 IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION, INSTALLATION AND EQUIPPING OF A PROPOSED BIOMASS FUELED GENERATION POWER PLANT PROJECT FOR THE GENERATION OF ELECTRICITY FOR SALE PURSUANT TO A POWER PURCHASE AGREEMENT, FOR THE PURPOSE OF INDUCING WESTERN WATER & POWER PRODUCTION LIMITED, LLC (TOGETHER WITH ITS SUCCESSORS) TO LOCATE CERTAIN OF ITS OPERATIONS IN THE COUNTY, BUT OUTSIDE THE BOUNDARIES OF ANY INCORPORATED MUNICIPALITY IN THE STATE, AS DESCRIBED IN THE PROJECT PLAN; AND PROVIDING FOR CERTAIN OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, the County of Torrance (the "**County**"), State of New Mexico (the "**State**") is a political subdivision of the State duly organized and existing pursuant to the Constitution and laws of the State; and

WHEREAS, the Torrance County Board of County Commissioners (the "**Commission**") is the governing body of the County; and

WHEREAS, pursuant to the County Industrial Revenue Bond Act, Chapter 4, Article 59, New Mexico Statutes Annotated, 1978 Compilation, as amended (the "**Act**"), the County is authorized to acquire industrial revenue projects to be located within the County, but not within the boundaries of any incorporated municipality in the State, for the purpose of promoting industry and trade by inducing manufacturing, industrial and commercial enterprises to locate or expand in the State, promoting the use of the agricultural products and natural resources of the State, and promoting a sound and proper balance in the State between agriculture, commerce and industry; and

WHEREAS, Western Water & Power Production Limited, LLC, a New Mexico limited liability company (together with its successors, the "**Company**"), has presented to the County a proposal (the "**Project Plan**") whereby the County will acquire in accordance with the Act certain land located within the County (the "**Project Site**"), and will cause to be constructed, installed and equipped for the benefit of the Company certain buildings, facilities and other improvements on the Project Site for the purpose of generating, through the implementation of renewable biomass fueled generation technology, electrical power for sale on the wholesale market, which Project Site, together with such improvements and as so equipped, will constitute a project (the "**Project**") as defined in the Act; and

WHEREAS, the Project Plan proposes the issuance by the County of its Industrial Revenue Bonds (Estancia Basin Biomass Power Plant Project) Series 2007 (the "**Bonds**") under

the Act in an aggregate principal amount not to exceed \$94,000,000.00 to finance all or part of the costs of acquisition, construction, installation and equipping of the Project and certain costs in connection with the authorization, issuance and sale of the Bonds; and

WHEREAS, the issuance of the Bonds by the County to finance all or a part of the Project will constitute one of the inducements whereby the Company on behalf of the County will determine to acquire land and acquire, construct and equip a commercial facility in the County; and

WHEREAS, the County desires to indicate its intent, subject to the conditions provided in Section 6 below, to proceed with the issuance of the Bonds for the financing of the Project pursuant to the terms of an ordinance (the "**Bond Ordinance**"); and

WHEREAS, the County and the Company understand that the adoption of this Resolution (the "**Resolution**") shall not obligate the County to issue the Bonds or obligate the Company to proceed with the Project, except pursuant to the terms of a Bond Ordinance and, if necessary, a pricing resolution (the "**Pricing Resolution**") to be adopted by the County and related bond documents in form satisfactory to the County as presented by the Company prior to the issuance of the Bonds.

BE IT RESOLVED BY THE COUNTY COMMISSION OF THE COUNTY OF TORRANCE, THE GOVERNING BODY OF THE COUNTY:

Section 1 Ratification. All actions (not inconsistent with the provisions hereof) heretofore taken by the Commission and the officers and officials of the County, related to the purpose of this Resolution are ratified, approved and confirmed.

Section 2 Project. The Commission has been informed that:

A. The Project will consist of approximately 50 acres of land together with buildings and equipment and related improvements for the use of a bubbling bed fluidized combustor coupled with a conventional steam turbine generator to generate electrical power, produced from renewable biomass energy resources, for sale pursuant to a Power Purchase Agreement with Public Service Company of New Mexico and which will not provide utility service to the public at retail.

B. The Project will not constitute public utility plant, property or facilities as defined in the New Mexico Public Utility Act.

C. The maximum aggregate face amount of the obligations to be issued with respect to the Project is \$94,000,000.00.

D. The initial developer and operator of the Project will be the Company.

E. The Project will be located on land in the Estancia Valley near Willard, New Mexico, on an approximately 50 acre parcel situated within the Northeast Quarter of Section 10, T.5N., R.8E., N.M.P.M., Torrance County, New Mexico, and being more

particularly described as "the Northwest Corner of said Track, Whence the North One-Forth Corner of said Section 10 Bears N00*02'24" E and is 852.21 Feet Distant; Thence from the above said point of beginning, N90*00'00" a distance of 1198.70 Feet to the Northeast Corner; Thence S00*00'00" E a Distance of 1181.72 Feet to the Southeast Corner; Thence S 89*35'25" W a Distance of 1200 Feet to the Southwest Corner: Thence N00*02'24" E a Distance of 1820.30 Feet to the Point and Place of Beginning, and Containing an area of 50.0000 Acres, More of Less," all of which is within the geographic limits of the County, but not within the boundaries of any incorporated municipality in the State.

Section 3 Intent to Issue Bonds. In order to promote the local health and general welfare, safety, convenience and prosperity of the inhabitants of the County, it is the Commission's intent to take all necessary and advisable steps to effect the issuance of the Bonds, in a principal amount not to exceed \$94,000,000.00 in order to defray part or all of the costs of the acquisition, construction, installation and equipping of the Project, provided that this expression of intent is conditioned upon the issuance of the Bonds on or before one year from the date of the adoption of this Resolution, and further provided that issuance of the Bonds is subject to the conditions described in Section 6 hereof.

Section 4 No Pecuniary Liability of the County or its Agents. The Bonds shall not constitute a debt or indebtedness of the County within the meaning of any provision or limitation of the Constitution or statutes of the State. Nothing in this Resolution or in any other instrument shall be considered as obligating the County to any pecuniary liability or as constituting a charge upon the general credit of the County or against its general revenues or its taxing power, it being understood that no costs are to be borne by the County and that all costs incurred by the County in connection with or as a consequence of the issuance and sale of the Bonds and the construction and operation of the Project will be promptly reimbursed by the Company. The Bonds shall not impose any pecuniary liability on the agents of the County, including its Manager and Commission.

Section 5 State Tax Matters. The Company, as agent for the County and consistent with New Mexico Taxation and Revenue Department Regulation 3 NMAC 2.212.22, will acquire the Project. The Company will, consistent with State law and as agent for the County, apply to the New Mexico Taxation and Revenue Department for Type 9 Nontaxable Transaction Certificates (the "**Certificates**"). The Company will deliver a Certificate to each person selling tangible personal property to the Company for the Project as applicable under the New Mexico Gross Receipts and Compensating Tax Act. For this purpose, by adoption of this Resolution, the County authorizes the Company to act as agent for the County. The Company shall not use the Certificates other than for the purchase of capital equipment and other tangible personal property, nor shall the Company use such Certificates after the completion of the Project. This Resolution is intended to be an "inducement resolution" as that term is used in, and for the purposes of, New Mexico Taxation and Revenue Department Regulation 3 NMAC 2.212.22.

Section 6 Issuance of Bonds Conditioned upon Full Review and Approval. The issuance of the Bonds and the execution and delivery of any documents to which the County is a party in connection therewith shall be subject to the approval and authorization by the Commission pursuant to the Bond Ordinance following reasonable public notice of the time, date and place of the public hearing be held on the proposed adoption of the Bond Ordinance and

adoption of the Pricing Resolution, if applicable, by the Commission. In connection with this Resolution, the Commission understands that the Company is not obligated to proceed with the Project and additionally, the Commission has been informed that a failure or refusal of the Commission, however arising, to adopt the Bond Ordinance will have the effect of voiding any benefits to the Company under the Act, including voiding the Certificates issued to the Company for Project purchases and making such purchases subject to whatever tax would be due if the Certificates had not been issued.

Section 7 Authorized Actions. The County Manager and other appropriate County officials are hereby authorized and empowered to take such steps and to do such things as may be necessary to achieve the purposes of this Resolution.

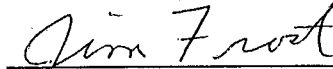
Section 8 Severance Clause. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 9 Headings. Titles of sections in this Resolution are included for convenience only, and shall not be construed as modifying the text.

Section 10 Repealer. All orders and resolutions, or parts thereof, in conflict with this Resolution are hereby repealed; however, this repealer shall not be construed to revive any order, resolution or part thereof, heretofore repealed.

Passed, Approved, Signed and Adopted this 14th day of March, 2007.

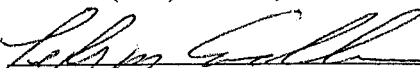
TORRANCE COUNTY COMMISSION



Jim Frost, District 1

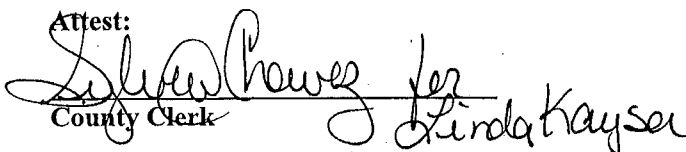


Paul M. (Tito) Chavez, District 2



LeRoy M. Candelaria, District 3

Attest:


County Clerk