



Board Agenda Item 42

DATE: January 6, 2026

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Reclamation Agreement, Escrow Agreement, and Limited Access Easement for the Midway BESS and Panoche BESS projects.

RECOMMENDED ACTION(S):

1. **Approve and authorize the Chairman to execute a 35-year Reclamation Agreement, including the reclamation plan, Exhibit A thereto, with CalPeak Power Panoche, LLC and Midway BESS, LLC, the project applicants (collectively, the Applicant), to implement project mitigation measures and specific conditions of approval placed on Unclassified Conditional Use Permit (CUP) Nos. 3800 and 3801 for two Battery Energy Storage facilities (the Project) encompassing approximately 25.4 acres. The project sites are located on the south side of W. Panoche Road, approximately three-quarters of a mile from its intersection with S. Fairfax Avenue, and approximately twelve miles southwest of the City of Mendota in unincorporated Fresno County; and**
2. **If your Board approves Recommended Action 1 above, approve and authorize the Chairman to execute the Escrow Agreement with United Security Bank, as the Escrow Agent to accept a cash deposit of \$1,768,731.95 as the Applicant's initial security to the County for the Reclamation Agreement, and to identify the County's initially designated representatives who are authorized on behalf of the County to initiate and approve transactions of all types for the escrow account established under the Escrow Agreement (each, a County Representative); and**
3. **Authorize the Director of Public Works and Planning (Director) to give any notice on behalf of the County, under the Escrow Agreement, including providing any revised Form of Sight Draft (Exhibit A-1 to the Escrow Agreement) and/or any revised Certificate as to Authorized Signatures-County of Fresno (Exhibit A-2 to the Escrow Agreement) (the Revised Form of Authorized Signatures), as applicable, to the Escrow Agent with respect to any County Representatives having a title change or erroneous signature, or to identify any replacement County Representative or any County Representative who has been replaced, as the case may be; and**
4. **Authorize each County Representative who may be identified by the Director in any notices given to the Escrow Agent, and any related Revised Form of Sight Draft and/or Revised Form of Authorized Signatures, in Recommended Action 3, to execute any supplemental certificate substantially in the form of the Revised Form of Authorized Signatures, and to provide any of their identifying information, including any updated or corrected information, as the case may be; and**

- 5. Authorize the Director, following your Board's approval of Recommended Action 1, to accept the grant of limited access easement to the County from the owners of the property upon which the Project will be situated for purposes of any Reclamation (defined in the Reclamation Agreement) by the County including its contractors, officers, agents, employees, and representatives, if and to the extent the County elects to do so.**

On April 24, 2025, the Planning Commission approved Unclassified Conditional Use Permit Nos. 3800 and 3801, and adopted the Mitigated Negative Declaration (MND) based on Initial Study (IS) No. 8579, which authorized the construction and operation of two battery energy storage (BESS) facilities on an approximately 24-acre portion of a 91.33-acre parcel in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District. This item pertains to a location in District 1.

ALTERNATIVE ACTION(S):

Your Board may reject the recommended action and provided staff with further directions.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended actions. The Applicant has a reimbursement agreement with the County to pay for all staff costs associated with processing the Project. The Applicant is required to provide a cash deposit of \$1,768,731.95 as it's security to the County for the Reclamation Agreement, pursuant to the Escrow Agreement. The Applicant is also required under the Reclamation Agreement to make annual cash deposits into the escrow account for the Escrow Agreement based on the Construction Cost Index reported in the Engineering News Record. At the end of the 35-year Project life, if the Project is decommissioned, dismantled, and removed by the Applicant, and the Project site is returned to pre-Project condition as determined by the Department of Public Works and Planning, the funds under the Escrow Agreement will be released to the Applicant.

DISCUSSION:

Overview - The project's Anticipated Generation and Storage of Electricity:

The project identified in CUP Nos. 3800 and 3801 would consist of two battery energy storage facilities, the Midway BESS consisting of approximately 120 megawatt hours of energy storage capacity; and the Panoche BESS, consisting of approximately 57 megawatt hours of energy storage capacity. According to the Applicant, both of the proposed facilities, once operational will be capable of supplying electrical energy to the grid through the existing CalPeak Panoche Peaker Plant and the Midway Peaker Plant, which are adjacent to the project site.

Planning Commission Approvals:

On April 24, 2025, the Planning Commission approved CUP Nos. 3800 and 3801 and adopted the mitigated negative declaration based on Initial Study No. 8579, to construct, operate, maintain and ultimately provide for the decommissioning of two independently operating Battery Energy Storage System (BESS) facilities, and their associated infrastructure.

Planning Commission's Conditions of Approval:

The Planning Commission's approval of CUP 3800 and 3801 includes conditions that require the Applicant or its successor(s)-in-interest to adhere to a Reclamation Plan submitted to and approved by the County, and requires the Applicant to enter into a Reclamation Agreement and provide financial assurances in the form of cash security, and to ensure restoration of the property, on which the Project is situated, back to

agricultural uses when the CUP expires, or the Project is abandoned.

The amount of the financial assurance under the reclamation agreement shall (1) initially cover the project owner's cost of performing its obligations under the Reclamation Agreement, which is based on the cost estimate provided by the project owner to and approved by the County, and the final County of Fresno-approved design of the Project, shall be provided to the County by the project owner, and (2) be automatically increased annually due to increases in costs, using the Engineering News Record Construction Cost Index. This initial cost estimate will consider any project components other than improvements, that are expected to be left in place at the request of and for the benefit of the subsequent landowner as long as the improvements are directly supportive of restoring the site to a viable agricultural use (e.g., access roads, electrical lines, O&M building).

The Reclamation Plan:

On April 30, 2025, the County accepted and approved the Applicant's draft reclamation plan. The reclamation plan is referred to in this agenda as the "Reclamation Plan" and is attached as an exhibit to the recommended Reclamation Agreement. The Reclamation Plan details the steps to be taken by the Applicant or its successor-in-interest to decommission and dismantle the Project at the end of its useful life and return the underlying Project site to its pre-project condition. The Reclamation Plan also contains an engineer's cost estimate for such work, expressed in 2025 dollars in the amount of \$1,768,731.95.

Your Board's approval of the Recommended Actions would authorize the approval and execution of the recommended Reclamation Agreement, and authorize a financial assurance for the Reclamation Agreement in the form of a cash deposit under the Escrow Agreement in the amount of \$1,768,731.95, which provides funds to be available to the County in the event that the Applicant does not perform the provisions called for in the Reclamation Plan and Reclamation Agreement, and the County elects to perform those provisions.

The term of the recommended Reclamation Agreement is based on the anticipated operational period of the Project, expected to be 35 years. Any extension beyond that time period would require an additional CUP application to be approved and may require additional agreements governing reclamation and financial security.

Recommended Action 1 - Approve and execute the Reclamation Agreement:

The primary purpose and benefit of the recommended Reclamation Agreement is:

1. To give the County and the Applicant an agreed-upon process for the Applicant to complete the Reclamation of the Project and Project site under the Reclamation Plan; and
2. For the Applicant to maintain a financial assurance to the County, in the form of cash deposits, in case of "Project Cessation" (defined below) and a default of the Applicant or its successor-in-interest under the recommended Reclamation Agreement; in such case, within twelve (12) months of any Projects Cessation, as reasonably determined by the Director, and the County undertaking the default remedies under the recommended Reclamation Agreement, the County may elect to draw upon such financial assurance and perform the Applicant's Reclamation obligations using the amount of funds available to the County under such financial assurance.
 "Project Cessation" is defined as any of the following: (i) there has not been substantial development of the Project within two (2) years following the County Planning Commission's approval of CUP Nos. 3800 and 3801; (ii) the Project, or a substantial portion thereof, has not, following completion of construction of the Project, produced electricity for at least six (6) consecutive months within a twelve (12) month period, or for three hundred sixty-five (365) non-consecutive days within any twenty four (24) month period, during the term of the Reclamation Agreement; (iii) the expiration or early termination of CUP Nos. 3800-3801; or (iv) thirty-five (35) years from the commencement of

operation of the Project in its entirety.

The Reclamation Agreement allows the Applicant, without the County's consent, to transfer the Reclamation Agreement, but only in its entirety, to any entity or person that becomes the sole permittee under CUP Nos. 3800-3801, provided that certain conditions are met, such as the Applicant giving the County at least 30 days' prior notice of the transfer, and the transferee executes an assignment and assumption agreement in a form and substance reasonably satisfactory to the County.

In the event of default under the Reclamation Agreement by the Applicant or its successor-in-interest (for example), if the Applicant fails to reclaim the Project and Project site after the end of its useful life, declares bankruptcy, or abandons the Project; the County, if it elects, may undertake the default remedies under the recommended Reclamation Agreement and draw on the cash under the Escrow Agreement and undertake reclamation of the Project and Project site in substantial conformity with the Reclamation Plan. Drawing on the funds under the Escrow Agreement, however, will not obligate the County to continue or complete the Reclamation Plan beyond the amount of such funds so drawn. The County may also use a portion of such proceeds for the County's reasonable administrative and overhead costs in connection with such Reclamation of the Project and Project site pursuant to the Reclamation Plan, as well as for the County's reasonable costs, if any, that the County needs to incur to obtain immediate, reasonable access to the Project and Project Site.

The Reclamation Agreement further requires that the Applicant furnish a grant of limited access easement in favor of the County from the record owner of the property upon which the Project is to be situated. This easement will allow the County access to any property upon which the Project is constructed for the purpose of performing reclamation of the Project and Project site, should the County elect to do so upon a default by Applicant or its successor-in-interest.

The approval and execution of the Escrow Agreement (Recommended Action 2) is conditioned on your Board's approval of the recommended Reclamation Agreement (Recommended Action 1) because the Escrow Agreement references the Reclamation by its specific date.

Recommended Action 2 - Approve and execute the Escrow Agreement with the Applicant and the Escrow Agent to accept an initial deposit of \$ 1,768,731.95 as security to the County for the Reclamation Agreement.

If Recommended Action 1 is approved, the Applicant is required to enter into an escrow agreement with the County and a qualified financial institution (i.e., an Escrow Agent). The Applicant has proposed United Security Bank to serve as their Escrow Agent, and to receive the deposit of the financial assurances and cash deposit of \$ 1,768,731.95 to be held in an escrow account governed by the Escrow Agreement. The Escrow Agreement provides funds that the County could, per the Reclamation Agreement, draw upon to perform reclamation of the Project and Project site in the event of a default under the Reclamation Agreement by Applicant or its successor-in-interest.

Recommended Actions 3 and 4 - Authorize the Director to give any notice on behalf of the County to the Escrow Agent and authorize each County Representative who may be identified by the Director in any such notice, to execute any supplemental certificate substantially in the form of the Revised Form of Authorized Signatures:

Your Board's approval of Recommended Action 3 would permit the Director to identify County Representatives having a title change or erroneous signature, or to identify any replacement County Representative or any County Representative who has been replaced, as the case may be. Your Board's approval of Recommended Action 4 would authorize those County Representatives to provide appropriate identifying information and to execute the appropriate document to accomplish such notice by the Director. Initially, such County Representatives are:

- Director of the Department of Public Works and Planning;
- Planning and Resource Management Officer of the Department of Public Works and Planning;
- County Administrative Officer; and
- Auditor-Controller/Treasurer-Tax Collector.

Recommended Action 5 - Authorize the Director to accept grant of access easement:

Your Board's approval of Recommended Action No. 5 would authorize the Director to accept the Grant of Limited Access Easement (form of which is attached as Exhibit C to the Reclamation Agreement) from the owners of the Project site and the right-of-way connecting the Project site to a public highway. The easement would allow the County, including its contractors and representatives, a nonexclusive access easement over, under, on, and across the property for the purpose of carrying out Reclamation of the Project and Project site in substantial conformity with the Reclamation Plans, in the event of a default under the Reclamation Agreement by the Applicant or its successor-in-interest, if the County elects to undertake such reclamation.

Environmental Review:

On April 24, 2025, the Planning Commission adopted IS and MND No. 8579 for the Project consistent with the California Environmental Quality Act (California Public Resources Code, Division 13, section 21000 et seq.), including the implementing CEQA Guidelines thereunder (Title 14, Division 6, Chapter 3, California Code of Regulations, section 15000 et seq.) (collectively, the California Environmental Quality Act, including such CEQA Guidelines thereunder are "CEQA"). Mitigation measures adopted pursuant to that IS/MND required that the Applicant take measures, including the Recommended Actions, to mitigate impacts from the Project. The Recommended Actions are in the furtherance of those mitigation measures and are within the scope of the Project's IS/MND.

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Reclamation Agreement
On file with Clerk - Escrow Agreement

CAO ANALYST:

Maria Valencia