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## Via Email ([public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov))/U.S. Mail

February 26, 2013

President Michael R. Peevey  
Commissioner Michel Peter Florio  
Commissioner Catherine J.K. Sandoval  
Commissioner Mark J. Ferron  
Commissioner Carla J. Peterman  
c/o CPUC Public Advisor  
Public Utilities Commission  
State of California  
505 Van Ness Avenue, Room 2103  
San Francisco, CA 94102



### **Re: Support for Proposed Decision/Alternate Proposed Decision in Application # 11-05-023**

Dear Commissioners:

I am writing to you on behalf of HomeFed Corporation. HomeFed is a public company engaged, directly and through subsidiaries, in the investment in and development of master planned communities and residential real estate projects. The executive office of the Company is located at 1903 Wright Place, Suite 220, Carlsbad, California 92008.

The Company's current development projects include three master-planned communities in San Diego County, California, and one in Virginia Beach, Virginia. HomeFed's San Elijo Hills project, a master-planned community located in the City of San Marcos in San Diego County, California, is an innovative award winning community of approximately 3,500 homes and apartments, as well as a commercial and residential Towncenter. HomeFed owns 2,600 acres of land in Santee, California known as Fanita Ranch. Fanita Ranch is located approximately two miles from the proposed Quail Brush Power facility. HomeFed has plans to develop Fanita Ranch as a master planned community with residential, commercial and recreational uses. Most of the acreage will be preserved as open space.

Allen Matkins Leck Gamble Mallory & Natsis LLP  
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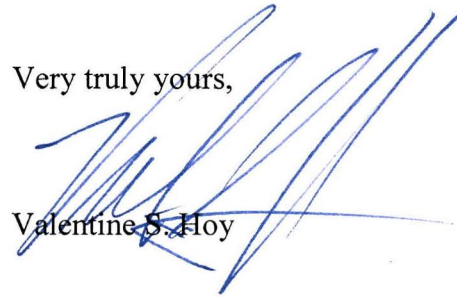
President Michael R. Peevey

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HomeFed Corporation wishes to express its support for the Proposed Decision of Administrative Law Judge Yaknin and the Alternate Proposed Decision of Commissioner Ferron to deny San Diego Gas & Electric authority to enter into a purchase power tolling agreement with Quail Brush Power. HomeFed respectfully submits that it is in the public interest to deny the application with prejudice as to the proposed Quail Brush Power contract. The proposed Quail Brush power plant would conflict with the surrounding land uses and be detrimental to the planned community and open space uses at Fanita Ranch. The record in this matter already contains a full discussion of the many reasons why denial of the Quail Brush Power contract is in the public interest. Rather than repeat those reasons here, we incorporate by this reference all of the reasons set forth in a December 7, 2012 letter submitted by Sheppard Mullin Richter & Hampton on behalf of Pardee Homes.

Very truly yours,



Valentine S. Hoy

VSH:gst  
Enclosure

cc: California Energy Commission

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December 7, 2012

File Number: 08C8-100232

## VIA E-MAIL

President Michael R. Peevey  
Commissioner Timothy Alan Simon  
Commissioner Mike Florio  
Commissioner Catherine J.K. Sandoval  
Commissioner Mark J. Ferron  
Public Utilities Commission  
State of California  
505 Van Ness Avenue  
San Francisco, CA 94102

Re: Application 11-05-023 -- Support for Administrative Law Judge Yacknin's Proposed Decision and Commissioner Ferron's Alternate Proposed Decision to Deny San Diego Gas & Electric (SDG&E) Authority to Enter into a Purchase Power Tolling Agreement with Quail Brush Power.

Dear Commissioners:

I am writing on behalf of my client, Pardee Homes ("Pardee") to express support for the recent Proposed Decision of Administrative Law Judge Yacknin and the Alternate Proposed Decision by Commissioner Ferron to deny San Diego Gas & Electric (SDG&E) the authority to enter into a purchase power tolling agreement (PPTA) with Quail Brush Power and to ask that the California Public Utilities Commission deny the application to grant the authority with prejudice.

With offices in Los Angeles, San Diego, and the Inland Empire, Pardee has been developing and constructing homes in California since 1921, with a focus on environmental stewardship and corporate responsibility to the community. It has earned the National Association of Home Builders Green Building Corporate Advocate of the Year Award for green and sustainable building practices and grassroots activities that aim to help transform the home building industry, as well as Builder Magazine's America's Best Builder for overall performance by a homebuilding company and the Hearthstone Builder Humanitarian Award for a lifetime commitment to philanthropy.

Pardee has been working with the City of San Diego ("City") for nearly ten years on the design and implementation of its proposed Castlerock project, which includes approximately 430 units and is located in the City just north of State Route 52 near the City of Santee border and adjacent to the proposed Quail Brush Power Plant. The Project's Draft EIR has been circulated and public hearings to approve the project are anticipated for the first quarter of 2013. The East

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Elliott Community Plan, adopted in 1971 and last updated in 2002, designates the 203-acre Castlerock project site for residential development and Pardee is dedicating 90 of those acres to the City for the Mission Trails Regional Park. In contrast, the Quail Brush project is incompatible with the long-standing plans for open space and limited development in the East Elliott Community Plan.

## Background

While Administrative Law Judge Yacknin ("ALJ Yacknin") and Commissioner Ferron differ in their recommendations regarding whether or not to grant SDG&E authority to enter into a Power Purchase Tolling Agreement ("PPTA") with the 45 MW Escondido Energy Center, they were united in recommending denial of authority for SDG&E to enter into a PPTA with the 100 MW Quail Brush Power Plant or the 305 MW Pio Pico Energy Center. Pardee strongly supports the united recommendation to deny authority to enter into a PPTA with Quail Brush because, among other reasons, the Quail Brush project's land use is incompatible with its proposed location in the open space region of San Diego's East Elliott Community Planning Area, a fact that caused the City Council to vote unanimously not to initiate Quail Brush's proposed community plan amendment.

We note ALJ Yacknin and Commissioner Ferron also agreed on there was a potential need for SDG&E to procure 343 MW by 2018 (the "Local Capacity Requirement") to meet the local capacity requirement and that SDG&E could reapply for authority to enter into a PPTA with Quail Brush or Pio Pico. However, if the PPTA for the 35 MW Escondido Energy Center is approved as Commissioner Ferron recommends, then there are many other ways the Commission can meet the total 343 MW procurement need without the Quail Brush Project. The California Energy Commission ("CEC") has already approved the Escondido Energy Center. In contrast, the CEC would have to grant a rare override of San Diego's Laws, Ordinances, Regulations, and Standards ("LORS") in order to approve Quail Brush given the City's denial of Quail Brush's community plan amendment initiation. Accordingly, we respectfully request that the CPUC deny the application for a PPTA with Quail Brush *with prejudice* in order to focus priority on CEC-approved projects that can meet the 343 MW local capacity requirement. This request is also supported by the recommendations' acknowledgement that the prospects San Diego will need more than 343 MW is minimal given that it is based on the assumption that the Encina Power Station will retire by 2018 and that the CPUC is currently reviewing the type of power sources needed to support intermittent renewable energy sources. The recommendations correctly state that SDG&E should not assume carbon-emitting, gas-fired peaker plants are needed to provide such support, particularly ones constructed on open space lands rather than existing generation sites.

The analysis that follows provides more details regarding (I) why Encina Power Station's retirement in 2018 is an overly conservative assumption; (II) how Governor Brown's Clean Energy Jobs Plan and the loading order priorities of energy efficiency, demand reduction, distributed generation, and renewable energy make it unlikely Quail Brush's fossil-fuel resources will be needed; (III) how pending improvements to San Diego's transmission system or transmission planning tools make it unlikely Quail Brush's resources will be needed; and (IV)

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the land use and environmental problems with the Quail Brush project that make a CEC override of San Diego's LORS unlikely.

## Analysis

### I. Encina Power Station May Not Retire in 2018

SDG&E assigned a zero percent probability that either the Encina Power Station would remain in operation or NRG would obtain the final approvals to repower the plant through the Carlsbad Energy Center Project (CECP). This is contrary to CAISO position that the Encina Power Station should not be retired until the site is repowered and that at least 150 MW of local power will be required from the site. The proposed 558 MW CECP has also earned the CEC's approval earlier this year. Even if the CECP is not constructed, NRG is actively pursuing an alternative compliance plan with the State Water Resources Control Board to allow it to continue generation into 2018. In contrast to NRG's considerable momentum for generating between 150 MW and 558 MW of power from the Encina site, the Quail Brush project has received no support from its regulators and faces an uphill battle to obtain a CEC override. Therefore, even though 558 MW is a strong possibility, if one makes a conservative estimate that the Encina site will generate only 150 MW of capacity, then Quail Brush's proposed 100 MW capacity is not needed to satisfy the Local Capacity Requirement.

In fact, even if one were to conclude that peaker plant-type technology that ramps up energy production is the preferred back up when intermittent renewable energy sources are unavailable, there is no reason to retire all generation at the Encina Power Station site and locate new peaker plants in San Diego's open space lands. As NRG testified, the CECP contains similar technology that can ramp up a wider range of electricity than the Quail Brush project. (NRG Opening Brief at 5-10.) Therefore, superior service can be provided at the Encina site without disturbing new open space lands. Commissioner Ferron's reasons for recommending the CPUC award SDG&E authority to enter into a PPTA with the Escondido Energy Center are true for Encina as well. He states, "this project is a repowering of an existing facility. The Commission has a history of encouraging the increased efficiency and repowering of existing facilities. [FN] The repowered facility can take advantage of existing natural gas connections and will have relatively lower emissions associated with energy." (Alternate Proposed Decision at 18-19.) Likewise, the Environmental Justice Alliance notes that the first factor SDG&E is supposed to use in distinguishing among bids is whether or not the project will be constructed on a Brownfield or a Greenfield and that Quail Brush is a disfavored Greenfield project. (Environmental Justice Alliance Opening Brief at 39.)

### II. Governor Brown's Clean Energy Jobs Program and the Loading Order Priorities of Energy Efficiency, Demand Reduction, Distributed Generation, and Renewable Energy Make it Unlikely Quail Brush Will be Needed:

Governor Brown has articulated an aggressive Clean Energy Jobs Program that will make development of the Quail Brush Project unnecessary. At the heart, of the Clean Energy Jobs Program is the Governor's commitment that the 33% Renewable Portfolio Standard set for 2020

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“is a floor, not a ceiling” and the statewide goal to develop 12,000 MW of distributed renewable electricity generation, 6,500 MW of Combined Heat and Power systems, along with 8,000 MW of large scale renewables and related transmission using expedited permitting. (See, [http://gov.ca.gov/docs/Clean\\_Energy\\_Plan.pdf](http://gov.ca.gov/docs/Clean_Energy_Plan.pdf).) Also important to the Local Capacity Requirement calculation and determination of whether the Quail Brush project is needed is the Clean Energy Jobs Program goal to address five percent (5%) of utilities peak loads through peak load management techniques and energy storage, to require zero net energy new homes by 2020 and new commercial buildings by 2030, and develop stronger appliance efficiency standards. (Id.) In recent years, the Commission has approved budgets of \$278 million for energy efficiency and \$117 million for demand response. (D.09-09-047; D.12-040-045.) Accordingly the funding and commitment are there to implement the plan.

Consistent with Governor Brown’s commitment to expanding the state’s energy conservation, distributed generation and renewable energy portfolio, the CPUC and state legislature have already determined that the priority for energy procurement plans must be energy efficiency, demand response, and renewables, before efficient fossil-fuel resources. (D.07-12-052 at 9; D.12-04-045 at 206; PUC Sec. 454.5(b)(9)(C).) As the CPUC has clarified, the loading order priorities apply to “all procurement,” with no exception for procurement to satisfy Local Capacity Requirements. (D.12-01-033 at 17.) If an exception were made, then it would render the loading order requirement in PUC Section 454.5 meaningless because the highest priorities in the order (energy efficiency, demand response, and distributed generation forms of renewable energy), by definition, are locally driven and directly affect the Local Capacity Requirements. In order to avoid over-procurement, the loading order priorities must be taken into account in establishing San Diego’s Local Capacity Requirements.

As the Division of Ratepayer Advocates (“DRA”) points out in its brief, SDG&E assumed a zero percent probability that any future additional renewable or distributed resources will appear within SDG&E’s service territory except one Commission-approved distributed generation contract. (DRA Opening Brief at 16.) Governor Brown’s statewide commitment to developing additional distributed generation is 12,000 MW by 2020, and the San Diego region’s share is 1,180 MW (708 MW peak load). (DRA Opening Brief at 16-17.) While SDG&E has testified it will meet whatever goal is adopted in the Governor’s plan, in this proceeding, SDG&E projects only a 321 MW peak load reduction from distributed generation. (DRA Opening Brief at 16-17.) Because SDG&E 321 MW reduction significantly underestimates the reductions from distributed generation by 387 MW, Local Capacity Requirements in 2018 will not require the Quail Brush project.

Permanently removing Quail Brush from the CPUC’s 2018 timetable for reviewing PPTA’s would foster more investments in energy efficiency and demand reduction programs signaling to SDG&E that its planning efforts to meet the Local Capacity Requirement should not be wasted on procurement programs for fossil-fuel projects that cannot be constructed without a low-probability CEC override.

### III. Pending Improvements to San Diego's Transmission System or Transmission Planning Tools Make it Unlikely Quail Brush Will be Needed.

As the DRA points out, the prospects San Diego will need Quail Brush's 100 MW is further diminished by improvements to San Diego's transmission system or small changes to CAISO's planned forecasts. For example, there is no need for the 100 MW facility if (1) the CPUC follows its legal requirement to implement the loading order, which CAISO's forecast failed to implement; (2) a 230 to 500 KV line connecting the SDG&E system to the Southern California Edison system is constructed; (3) a moderate level of distributed generation facilities were constructed; (4) CAISO implements other upgrades to San Diego's transmission lines that CAISO predicts are likely to occur; or (5) SDG&E receives approval of its Special Protection System for controlled load dropping in the next year. (DRA Opening Brief at 22 – 35.) The magnitude of Local Capacity Requirement reductions produced by any one of the above measures would make construction of the Quail Brush project unnecessary.

### IV. Land Use and Environmental Problems with Quail Brush Make CEC Override Unlikely

Under the Warren-Alquist Act, if the California Energy Commission wishes to approve a proposed project that does not conform to state or local laws, ordinances, regulations, or standards (LORS), the CEC cannot license the project unless it determines that (1) the project is required for "public convenience and necessity," and (2) there are not "more prudent and feasible means of achieving such public convenience and necessity". (Pub. Res. Code § 25525; 20 Cal. Code Reg., § 1752(k).) This determination must be based on the totality of the evidence of record and must consider environmental impacts, consumer benefits and electrical system reliability. In essence, a project's lack of conformity with LORS must be balanced against its anticipated benefits. All of the CEC's override findings must be supported by substantial evidence in the record. (14 Cal. Code Reg. §§ 15091(b), 15093(b).)

LORS overrides are rare. Out of approximately 70 applications since 1996, the CEC has only overridden LORS five times -- Metcalf (99-AFC-3), Los Esteros 2 (03-AFC-2), El Segundo (00-AFC-14), Morro Bay (06-AFC-6), and Carlsbad Energy Center (07-AFC-06). The CEC has repeatedly stated that it considers a LORS override "an extraordinary measure which... must be done in as limited a manner as possible." (Final Decision, Eastshore Energy Center, October 8, 2008, p. 453.)

#### A. Overrides Are Rare When There Are Other Projects That Can Enhance the Electrical System's Reliability.

Among the factors the CEC has used in the past to override LORS is when the project is the only identified project capable of providing the generation before the system requires the capacity to maintain its reliability. In the Metcalf project override, the CEC stated, "Moreover, the evidence shows that the area's supply-demand imbalance and the need to augment electrical system reliability in the south Bay and the greater Bay Area require prompt action. The evidence establishes that the MEC is a substantial positive step in this regard, and is in fact the only identified major generation project capable of becoming reality within the near-term

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future.” (Metcalf Final Decision, September 24, 2001, page 468.) For all the reasons discussed above, Quail Brush is not the only major generation project capable of becoming a reality in the near-term future. CEC and Encinitas have all been approved by the CEC without the need for an override and have capacity sufficient to meet the Local Capacity Requirements, even without energy efficiency, demand reduction, and distributive generation, or transmission system upgrades.

## B. Overrides are rare where land use plan is long established.

In 1997, the Multiple Species Conservation Program identified the majority of East Elliott as Multiple Habitat Planning Area (MHPA), where preservation of the natural habitat would be pursued. The East Elliott Community Plan was amended at that time to designate the MHPA as open space. Areas outside of the MHPA and that are part of the East Elliott Community Planning Area include the 474-acre Sycamore Landfill, the 203.64-acre Castlerock project site and an 8-acre area at SR-52 and Mast Boulevard, designated for office use.

As part of the Castlerock project, Pardee Homes has made a long-term commitment to the preservation of the Mission Trails Regional Park to help ensure that San Diegans of future generations will be able to continue to enjoy one of San Diego’s premier natural habitats, through the planned dedication of more than 90 acres of open space to the City complete with multi-purpose trails. In addition, the Sycamore Landfill Project, which was approved by the City of San Diego on September 17, 2012 includes a closure plan that will one day convert the landfill into recreational space for Mission Trails Regional Park. In contrast, the Quail Brush Power Plant is not identified in the East Elliott Community Plan and, if approved, will impact the current and future plans in East Elliott for the Mission Trails Regional Park, which violates San Diego’s LORS.

The CEC has made override findings for projects that violate LORS where a project initially complied with LORS, but the local agency amended its LORS in an attempt to “block” the project. (Carlsbad Energy Center Project , 07-AFC-06, Finding 4.) In contrast, the Quail Brush project selected a project site and site alternatives that from the outset violated the City’s long-term land use plan for East Elliott.

The project site, Alternative B site (366-070-31) and Alternative C site (366-031-11) are all located in the City of San Diego’s MHPA and were zoned RS-1-8. (See, Sycamore EIR at Figure 5.1-2.) The Alternative A site (366-080-57) was zoned RS-1-8 and proposed for rezoning to IH-2-1 and removal from the MHPA only as part of the Sycamore Landfill approval, which specifically limited the landfill’s development of the Alternative A site to the already disturbed portions of the site, and whose landfill project description indicated the balance of the site would remain undisturbed. (See, Sycamore EIR at Figures 5.1-2, 5.5-5, 3-3.)

## C. Biological Impacts

Review of the biological technical report and supporting documents completed for Quail Brush reveal that it requires extensive revisions to be considered adequate. As currently presented,



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the information and analysis is inconsistent, contradictory and confusing. Moreover, the nexus between impacts and mitigation is unclear. For these reasons, described in more detail below and in a memorandum from RECON, attached hereto as Exhibit A, we believe it is unlikely that the CEC will override the City's decision not to initiate a community plan amendment to allow construction within the City's open space areas.

The application, while admitting it is required to comply with City of San Diego's regulation, diverges from City Standards, which consequently resulted in underestimated biological impacts. Namely, the application utilized the County's definition of "native grassland" instead of the City's. This use underestimates native grassland (Tier I habitat) and undervalues the habitat as non-native grasslands (Tier IIIb habitat). The application also inconsistently identifies protected or special-status species and provides conflicting information regarding ecological factors.

The application also contains a number of inconsistent statements regarding biological impacts and mitigation measures such that any decision based upon the application would be arbitrary and capricious. Among other incorrect statements, the wildlife discussions are inconsistent and prohibit a meaningful discussion of the direct/indirect impacts. Additionally, the application's stated Jurisdictional Delineation does not cover the entire study area and is inconsistent with existing City-approved delineations.

The application also anticipates construction in mitigation land, which will result in a double biological impact. This construction will violate open space easements recorded over the mitigation parcels and eliminate the intended goal of conservation. Also, the application's format makes it impossible to verify if impacts to the MHPA will be mitigated. Specifically, the application focuses on primary impacts. Secondary impacts to threatened species that utilize plants in the region are not addressed. An adequate evaluation of the significance of the project impacts should not only determine at what thresholds impacts begin to occur, but should attempt to assess the degree and type of impact based on expected cumulative levels of operational nitrogen deposition. The application lacks information on the anticipated impact to plant species in the vicinity of the power plant, particularly species of concern which are already anticipated to experience significant project impacts requiring mitigation. Moreover, the application omits an analysis of the secondary impacts to animal species that rely on project site plant species likely to be impacted by nitrogen deposition.

Additionally, state and federally recognized plant and animal species of special concern ("SSC") exist within the East Elliott region but it is unclear the extent of the project's impacts on these species. Furthermore, it is unclear how proposed mitigations would reduce impacts to any SSCs. To be sufficient, Quail Brush should be required to conduct a population survey for each SSC at the proposed project site and any region potentially impacted by construction or operation. This survey should include a sighting report and density estimate for this species at the proposed project location.

The proposed project will impact plant and animal species that are federally and locally recognized as "threatened" or "endangered" State and federal take authorizations may have to

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be obtained. Other listed species, as well as vernal pool branchiopods, may be subject to “take” as a result of the project. The application lacks any evidence or supporting documents that the Quail Brush has obtained the necessary approval from the United States Fish and Wildlife Service (“USFWS”) and California Department of Fish and Game (“CDFG”) regarding potential impacts to the state and federally listed species.

The Mission Trails Regional Park Master Plan Update (“TRPMPU”) is in process and proposing inclusion of the entire East Elliott Community Planning Area within the park boundaries. The application does not explain how the project will be compatible with the TRPMPU.

Lastly, the mitigation measures are inadequate. Specifically, a number of the mitigation measures require a biologist but the application lacks (i) the criteria for selecting a qualified biologist and (ii) information relating to the biologist’s responsibilities. Additionally, a number of the mitigation measures lack performance criteria, resulting in insufficient information to provide an adequate assessment of mitigation effectiveness.

## D. Air Quality Impacts

The Quail Brush project inconsistently and inadequately analyzes its air quality impacts. This insufficient analysis consequently resulted in deficient mitigation measures. For these reasons, described in more detail below and in a memorandum from SRA, attached hereto as Exhibit B, we believe it is unlikely that the CEC will override the City’s decision not to initiate a community plan amendment for Quail Brush.

Namely, Quail Brush used incorrect technical data and methodologies when addressing impacts and mitigation. Accordingly, the use of this information will lead to incorrect conclusions and will underestimate the necessary mitigation. First, meteorological data from the Kearny Mesa monitoring station was used to conduct the dispersion modeling analysis, which has appreciably different characteristics from the Quail Brush Project site. Second, the NO<sub>2</sub>/NO<sub>x</sub> ratio used in the modeling analysis for the Wartsila engines is 1.15 percent, while the USEPA database would indicate that the ratio should be higher for most internal combustion engines – ranging from 3 percent to 24 percent. This was subsequently revised in the analysis submitted to the CEC on October 31, 2012, where an 18.5% ratio was assumed. Third, given that Quail Brush stated NO<sub>2</sub> impact during commissioning and startup are close to the federal standard, and that the NO<sub>2</sub>/NO<sub>x</sub> ratio used in the analysis is very low, the impacts are underestimated.

Additionally, Quail Brush fails to identify or analyze significant impacts. For example, the application contains no analysis of PM<sub>10</sub> and PM<sub>2.5</sub> impacts under commissioning or startup conditions. Moreover, the application does not include models of the annual average concentrations for the combustion portion of PM<sub>10</sub> emissions from construction equipment or determine the carcinogenic risk for the construction period from these modeled emissions.

Lastly, Quail Brush determined that no significant health impacts are expected during construction despite omitting discussion of dust suppression and potential diesel particulate impacts on sensitive receptors or residents near the facility. This position is inconsistent with current protocols that require many facilities to include construction impacts in their health risk

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assessments.

## E. Greenhouse Gas Impacts

The Quail Brush project estimates greenhouse gas emissions would be approximately 200,000 metric tons of carbon dioxide equivalents ("GHG"). Nevertheless, the applicant wrote to the City of San Diego that "[t]he proposed Project would 'reduce the City's overall carbon dioxide footprint by improving energy efficiency... and assist in the City's goal to 'be prepared for, and able to adapt to adverse climate change.'... The proposed Project would also help allow less efficient older power plants to operate less and ultimately retire. Thus, a failure to construct more efficient generation facilities such as the Project will likely result in continued reliance by San Diego and California on older, less efficient, less environmentally friendly facilities."

In *Center for Biological Diversity v. City of Desert Hot Springs* (Riverside Sup. Ct. Case No. RIC 464585 [August 6, 2008]), the Court rejected similar claims that a large subdivision project would have a "beneficial impact on CO2 emissions" because the homes would be more energy efficient and located near relatively uncongested freeways. The relative energy efficiency of a project does not determine whether or not a project makes a cumulatively considerable contribution to global warming. The existing condition at the site is the appropriate baseline for measuring a project's GHG impact. (Pub. Res. Code 15064.4(b)(1).) Therefore, unless the project proposes to be constructed on a site that is already emitting 200,000 metric tons of GHG or its project description specifically proposes to decommission a less efficient older power plant, then it does not "reduce the City's overall carbon dioxide footprint." For example, NRG could make such a claim with regards to decommissioning the Encina Power Station and repowering it into a more GHG-efficient facility because the Encina Power Station site currently produces GHG emissions.

## F. Fire Hazard Impacts

The Quail Brush project is located in an area classified by the California Department of Forestry as a "Very High Fire Severity Zone." The project submitted a Fire Protection Plan (FPP) that is deficient in protecting health and safety and the environment and violates San Diego LORS.

First, the project plans to create a future Emergency Action Program/Plan for its onsite workers. This promise to provide a future plan without any commitment that the plan will achieve a particular performance standard fails to provide any enforceable mechanism to deliver fire hazard mitigation or EMS service that would allow the Commission to conclude the plan reduces these hazards to below a significant level. Furthermore, it denies the public the opportunity to participate in assessing the impacts of such a plan drafted behind closed doors.

Second, the application fails to discuss what mechanisms it must use to ensure there is no encroachment into sensitive biological areas during brush management operations, what protocol Quail Brush must follow if sensitive species are discovered, or whether or not barriers will be constructed to reduce noise levels to sensitive species that may be nesting near the site.

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Third, evacuation routes are necessary to protect public safety, but the brush management exhibit on page 28 of the FPP does not show any brush management along the access road. With flame lengths reaching 33.6 feet and no brush management alongside the road, there is no safe escape from the plant outside the reach of the flames. The FPP clearly states that there is no plan for shelter-in-place safe room, only that one is being considered. That is not a commitment to mitigation the Commission can rely on.

Fourth, even if brush management were added along the road, there is no analysis of the new, secondary biological impacts such brush management would have on the environment. Therefore, the biological impacts of this unsafe project are underestimated.

Fifth, the FPP states that it cannot rely on fire service from Santee given that there is no long-term mutual aid agreement between Santee and San Diego. It also states that San Diego's area fire trucks cannot meet the City's fire response times stated in San Diego's General Plan. (FPP at p. 31.) Therefore, contrary to FPP's statement that the FPP satisfies San Diego's LORS (FPP at p. 37), it does not. The FPP attempts to salvage its analysis by stating that there is on-site fire suppression equipment the workers can use, but if the Emergency Response Plan is for the workers to evacuate the site (FPP at p. 30), then the plant will be left unprotected while San Diego's fire trucks take an extra-long time to try to reach the site. Therefore, without a commitment to use it until the San Diego Fire Service arrives, there is no evidence that the on-site fire suppression equipment provides a functional equivalent level of protection as a plant located within San Diego's response times.

Sixth, the brush management exhibit on page 28 of the FPP does not show the brush management zone around the perimeter of the site. It is only on one side. The western side has a fire protection wall, but there is no analysis whether such walls provide sufficient protection against 33.6 foot flames. There is only an analysis of how the brush management zone on one side of the project protects the plant from 33.6 foot flames. (FPP at p. 29.)

Finally, there is no detail in the FPP explaining why the plant is not subject to explosion from its storage of hazardous materials on site and/or from embers that can fly much farther than a 100-foot brush management zone. Accordingly, a decision to permit and construct a facility in this location creates an increased risk of the number and intensity of fire and explosions in a Very High Fire Severity Zone creating a significant impact on the environment.

For all these reasons, the FPP is inadequate and reveals additional reasons why the Project does not comply with San Diego LORS.

## G. Visual Impacts

Located near the Mission Trails Park, a well-recognized open space preserve, the construction of a power plant would have intense visual impacts on the area. These impacts are not adequately addressed or mitigated in the application. This is inconsistent with City guidelines and requirements. At the time of proposed project decommissioning, the application states that the project will not necessarily be dismantled and restored to existing conditions. It states that it

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might be “mothballed,” but does not address the visual impacts from such an action. CEQA requires an analysis of the “whole of the action” to avoid understating the environmental impacts of project, which includes analyzing the impacts from all stages of the project – site preparation, construction, operation, and decommissioning. For these reasons, we believe it is unlikely that the CEC will override the City of San Diego’s decision not to initiate a community plan amendment.

## H. Noise Impacts

The Quail Brush project inconsistently and inadequately analyzes its noise impacts. This insufficient analysis results in deficient mitigation measures. For these reasons, described in more detail below, we believe it is unlikely that the CEC will override the City’s decision not to initiate a community plan designation.

The project site is located adjacent to a large open space area that is home to endangered and threatened wildlife and plant species. The application focuses on noise impacts to residents, while largely ignoring noise impacts on wildlife in and around the proposed project site and the need to mitigate for such impacts. This omission creates an inadequate analysis of the project’s noise impacts. The current description of the project’s noise mitigation is insufficient to provide an adequate assessment of mitigation’s effectiveness.

The application also largely fails to address impulsive sound sources (e.g. jack-hammers) associated with the construction or operation of the proposed project and the potential for flushing (birds) or site abandonment (all animals) as a function of distance from impulsive sources. The application should include a discussion of the mitigation required to ensure impacts to species of concern observed near the project location are insignificant.

Baseline ambient noise levels are measured over relatively short period of time (2 days). This does not adequately account for temporal variations in the ambient noise. Longer term noise recordings are required to adequately evaluate baseline noise and variability. To be adequate, Quail Brush will need to collect additional noise data at previous receptor sites and extend the duration of the recordings.

## Conclusion

In conclusion, for all the reasons discussed above, we respectfully request that the CPUC deny the application for authority to enter into a PPTA with Quail Brush *with prejudice* in order to focus priority on the CEC-approved projects (Encinitas Energy Center and CECP) that can meet the 343 MW local capacity requirement, on implementation of the legislature’s mandate first to procure energy capacity through energy efficiency, demand reduction, renewables, and then traditional generation; and on transmission system upgrades. We support the united recommendation of ALJ Yacknin and Commissioner Ferron not to authorize the PPTA for Quail Brush, but believe that some projects, like Quail Brush, have so little support and so little

# SheppardMullin

CPUC Commissioners  
December 7, 2012  
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probability of receiving permitting approvals that eliminating them from further consideration is the best way to advance San Diego's energy debate.

Sincerely,

A handwritten signature in cursive script that reads "John Ponder".

John E. Ponder  
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:407616137.8

# EXHIBIT A

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2033 East Grant Road  
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# RECON

*An Employee-Owned Company*

November 21, 2012

Mr. John Ponder  
Sheppard Mullin Richter & Hampton LLP  
501 W. Broadway, 19th Floor  
San Diego, CA 92101

Reference: Quail Brush Generation Project Biological Report Review (RECON Number 6926)

Dear Mr. Ponder:

This letter report describes the findings of RECON's review of the biological reports prepared for the Quail Brush Generation Project. The associated project site is located north of the San Clemente Canyon Freeway (State Route 52), east of Medina Drive, and east of Sycamore Landfill Road, adjacent to the Sycamore Canyon Landfill, within the City of San Diego. The primary documents reviewed consist of the following:

- *Biological Resources Survey Report, Cogentrix Quail Brush Generation Project.* Prepared by Tetra Tech EC, Inc. August 6, 2012. Includes the following survey reports as attachments:
  - *Focused Survey for Sensitive Plant Species, Cogentrix Quail Brush Generation Project.* Prepared by Tetra Tech EC, Inc. July 21, 2012.
  - *Quino Checkerspot Butterfly Protocol; Survey Report, Cogentrix Quail Brush Generation Project.* Prepared by Tetra Tech EC, Inc. June 1, 2012.
  - *Coastal California Gnatcatcher Protocol Survey Report, Cogentrix Quail Brush Generation Project.* Prepared by Tetra Tech EC, Inc. June 8, 2012.
- *Preliminary Jurisdictional Delineation Report, Cogentrix Quail Brush Generation Project.* Prepared by Tetra Tech EC, Inc. August 16, 2011.



## **Biological Resources Survey Report (October 15, 2012)**

### **1. Report Format and Organization**

- The report format is a hybrid of the City of San Diego's Biology Guidelines report format and County of San Diego's Report Format & Content Requirements. As the project is located in the City of San Diego, would be relying on the City of San Diego MSCP Subarea Plan, and was conducted pursuant to City of San Diego requirements per page 1, it should follow the City of San Diego's Biology Guidelines (2004), Significance Determination Guidelines (2011), and vegetation mapping requirements (e.g., community names). The organization of the report also results in redundancy, and makes it difficult to locate information, and follow the correlation between impacts, significance of impacts, and mitigation measures.

### **2. Pardee Parcels**

- Several of the parcels within the survey area and project impact area are under Pardee ownership, including 366-08-030, 366-08-102, 366-08-103, 366-08-105, 366-08-022 and 366-09-029. Some of these parcels are a part of Pardee's Castlerock project, and/or are proposed to be dedicated open space to satisfy mitigation requirements for their project. If the Quail Brush Generation Projects impact these parcels, it would conflict with Pardee's use of these parcels as biological mitigation.

### **3. Sensitive Plants**

- In addition to those lists of sensitive plants identified on page 19, the City of San Diego list of sensitive plants (e.g., narrow endemics) should also be utilized to determine which plants are considered sensitive in accordance with the City of San Diego Biology Guidelines.

### **4. Habitat Descriptions (Section 3.2.3) (pages 27 to 51)**

- Some of these vegetation community names are not consistent with the City of San Diego Biology Guidelines, such as "non-vegetated channel". The report should be consistent with the City of San Diego terminology and requirements.
- Since chamise chaparral is typically dominated by one species, the text indicating that this community would diversify over time should be eliminated or explained more thoroughly.
- The last sentence under "Granitic Chamise Chaparral with Non-Native Grassland" is unclear. Please clarify what diversity the sentence is referring to and if the comparison is being made to typical habitat or to habitat within the survey area.
- The report uses a 20 percent native grassland species coverage to define the native grassland habitat. This is the County standard. Typically, the City uses a 10 percent native grassland coverage percentage on a case-by-case basis to define areas of native grassland habitat. Utilization of the County definition may underestimate native grassland (a Tier I habitat) and undervalue the habitat as a non-native grassland (Tier IIIb habitat). For example, this report identifies the portion of the western study area within Pardee's Castlerock project site as primarily non-native grassland, but the City-approved Biological Resource Assessment completed by NRC (dated October 11, 2012) prepared for the Castlerock project, which uses 10 percent coverage to define native grassland, maps much of this area as native grassland.

- The City of San Diego equivalent of “Non-vegetated Channel” is “Natural Flood Channel,” which is a wetland habitat type and not a “landscape feature” as identified in the report.

#### **5. Wildlife Discussions**

- Page 2, Table D-2, and other pages indicate that least Bell’s vireo has a moderate to high potential to be present within the study area, while page 58 states this species does not have potential to occur within the study area. If this species has a moderate to high potential to occur within the study area or within 500 feet of construction activities, a focused survey should be completed to adequately assess presence and potential direct/indirect impacts. The report should be revised to be consistent.
- It is unclear on page 61 if yellow-breasted chat is considered absent from the site due to lack of suitable habitat. Clarify.
- It is unclear whether San Diego black-tailed jackrabbit is present or absent from the site due to conflicting statements on page 62. Clarify.

#### **6. Jurisdictional Delineation**

- Exhibit 7 includes more area than documented in the 2011 Jurisdictional Delineation Report. Also, the Jurisdictional Delineation report prepared by Glenn Lukos Associates for the Castlerock project (May 15, 2012) has documented jurisdictional waters within the western study area that are not identified on Exhibit 7. Revise the jurisdictional delineation to cover the entire study area and to be consistent with existing City-approved delineations.

#### **7. MHPA Analysis**

- The Supplement 3 analysis states that the project design would encroach upon 25 percent of the total parcel area, and then conflictingly states the project would be above the 25 percent MHPA encroachment limit (page 70). Clarify whether or not Supplement 3 surpasses the 25 percent MHPA encroachment limit, and discuss the significance of the impact.

#### **8. Indirect Impacts**

- Page 78. Incidental take of species covered by the MSCP Subarea Plan, such as willowy monardella and San Diego ambrosia, are only covered outside the MHPA. Within the MHPA, impacts to these species are considered significant and require mitigation. Thus, nitrogen deposit impacts to these species should be considered potentially significant, and appropriately avoided or mitigated.
- Indirect noise impacts to coastal California gnatcatcher and least Bell’s vireo are identified as less than significant in the report. However, due to the presence of coastal California gnatcatcher in the immediate vicinity, potential exists for coastal California gnatcatcher to establish within MHPA coastal sage scrub habitat within the study area. Coastal sage scrub habitat appears to be adjacent to the temporary and permanent construction areas. Construction activities, therefore, may have potential to indirectly impact coastal California gnatcatcher within the MHPA. In accordance with the City’s Biological Guidelines, construction activities that may affect coastal California gnatcatcher within the MHPA shall be restricted to outside the coastal California gnatcatcher breeding season (March 1 to August 15).

As indicated Section 5.1.2, the project has a potential indirect construction impact to least Bell's vireo. In accordance with the City's Biological Guidelines, construction activities that may affect this species shall be restricted to outside the breeding season (March 15 to September 15).

- To be consistent with the mitigation section and impact information within this report, this section should discuss and identify potentially significant indirect impacts to nesting raptors and birds covered by the California Fish and Game Code and Migratory Bird Treaty Act.
- Address other potential indirect impacts to biological resources in accordance with Biology Guidelines and CEQA Significance Determination Thresholds, such as lighting, intrusion, barriers, loss of wetland buffers, and brush management impacts.

## 9. Cumulative Impacts

- The sentence "For instance, the residential development will reduce the number of small rodents, sensitive bird species, and much higher quality coastal sage scrub" includes inaccuracies. While not implicitly stated, it appears this is referencing Pardee's Castlerock project, which has determined that impacts to non-sensitive rodents would be less than significant. In addition, the Castlerock project is not anticipated to reduce the number of sensitive bird species present in the area. The Castlerock project area includes coastal sage scrub habitat of similar quality compared to that within the Quail Brush Generation Project study area and surrounding vacant East Elliott area. The cumulative impact section should be revised to more accurately justify the conclusion being made for the Quail Brush project's contributions to cumulative effects.

## 10. Impact Significance and Mitigation (Section 5)

- Exhibits 9a, 9b-1, and 9b-2 are missing vegetation mapping for portions of the study area. Revise to provide complete mapping that accurately reflects the study area to allow for complete impact and mitigation analysis.
- Page 93 incorrectly indicates that project upland impacts are less than 0.10 acre to individual Tier levels, and are less than significant. The MSCP states "total upland impacts (Tiers I-IIIB) less than 0.1 acre are considered not significant and do not require mitigation." *Total* upland impacts of the project are greater than 0.1 acre, and therefore all the project upland (including the Tier I native grassland) impacts are significant and require mitigation.
- Section 5.1.1 should more clearly state the significant habitat impacts. The acreages of habitat impacts that are considered significant should be directly stated, and the Tier levels should be indicated in all tables, considering Tier levels indicate significance. It is currently difficult to discern which impacts are being considered significant to determine if the mitigation being provided is adequate to reduce impacts to below a level of significance.
- It is stated that Supplement 2 may impact San Diego goldenstar within the Sycamore Landfill conservation area, and that BIO-2 would provide mitigation for this impact (page 93-94). However, BIO-2 does not include San Diego goldenstar mitigation. If impacts are occurring to an active mitigation area, the mitigation ratio required would be higher than the standard mitigation ratio. Goldenstar mitigation should be added to BIO-2 at the appropriate mitigation ratio.

- As indicated above, there is a potential for coastal California gnatcatcher impacts to occur within the MHPA within the study area. The coastal California gnatcatcher discussion on page 94 should be revised to identify a potential impact to coastal California gnatcatcher, and mitigation should be provided in accordance with the City's Biology Guidelines.
- The analysis states "There is a possibility that construction noise could indirectly impact this area", which is referring to occupied least Bell's vireo habitat (page 95). The analysis dismisses this impact based on existing periodic elevated noise levels from trucks. Either additional information should be provided to support the conclusion that the project construction has no potential indirect to this species, or mitigation should be provided for this impact. Per the Biology Guidelines, if a project "may" impact least Bell's vireo, grading should be restricted within the breeding season (March 15 – September 15). Measures such as construction outside of the breeding season or noise barriers may be necessary to avoid impacts.
- Due to the report organization, the MHPA Boundary Adjustment impacts and mitigation is difficult to follow, and it is not possible to verify if impacts are mitigated. The MHPA Boundary Adjustment discussion (pages 98-99) should include location, habitats, and quality of the proposed exchange parcels. Information in Section 5.2.1 should be moved to this discussion instead of imbedded in the mitigation measures. The equivalency analysis should include habitat acreages of each habitat/tier type instead of percentages to verify that the land swap provides the equivalent habitat value and quantity. Also, the types of habitat for the exchange should be of equivalent functions and values to ensure covered species do not experience habitat loss as a result of the boundary adjustment. Based on the discussion on pages 106 to 107, the analysis does not verify if the boundary line adjustment results in an MHPA preserve equivalent to the existing preserve. A swap that reduces non-native grassland and increases coastal sage scrub and chamise chaparral is not necessarily in compliance with the City of San Diego requirements under the MSCP Subarea Plan. Such a swap would result in a loss of raptor foraging habitat and would potentially result in loss of functions and values for covered species. While this may be "uptiering", the uptiering should be completed in a manner that preserves the overall functions and values for covered species. For example, swapping out non-native grassland for native grassland would preserve the raptor foraging functions and value.
- To ensure consistency with the Biology Guidelines mitigation requirements, MM BIO-1 (page 100) should be revised to include mitigation for the 0.06 acre of native grassland and, based on the mitigation ratios indicated, require all the mitigation identified to be located within the MHPA.
- Methods of conveyance and preservation in perpetuity of the mitigation land shall be identified as mitigation to ensure ongoing preservation per the City's Biological Guidelines.
- It is unclear how much acreage and what type of habitat is being provided to mitigate the MHPA boundary adjustment, and which mitigation is being provided for the direct project habitat impacts in MM BIO-1 (pages 100 to 107). Thus, it is not possible to determine if the mitigation provided reduces the project impacts to below a level of significance.
- The second paragraph in MM BIO-2 should be revised from "calculated following the completion of the project site installation..." to "determined prior to site clearing and include transplantation of all barrel cacti individuals present within the impact area."

The transplantation of the species must occur prior to project construction activities to ensure impacts are less than significant.

- MM BIO-3 should be revised to require construction activities avoid the coastal California gnatcatcher and least Bell's vireo season, or otherwise ensure that impacts to these bird species during the nesting season would be mitigated to below a level of significance (i.e., require noise monitoring during construction and noise attenuation measures, if necessary).
- A mitigation measure requiring the weed eradication program discussed in Section 5.2.6 should be identified to mitigate the potential impacts to Quino checkerspot butterfly habitat. This plan shall be subject to the review and approval by the City of San Diego as well as the USFWS, considering this species is federally-listed.

#### **11. Miscellaneous Comments**

- Page 1 indicates 15 special-status plant species have potential to occur within the survey area, while page 53 states there are 22 special-status plant species with potential to occur.
- Page 53. CNPS has changed their designations from "CNPS List" to "California Rare Plant Rank."
- The report should cite survey and jurisdictional delineation reports to support statements.
- The proper name is "San Diego goldenstar", not "San Diego golden star" or "San Diego goldenstars."

#### **Focused Surveys**

- Provide complete in-text citations for the City MSCP Subarea Plan (1997).
- Refer to the comments identified above for the Biological Technical Report regarding vegetation mapping, CNPS Rank, San Diego goldenstar common name, etc.

#### **Jurisdictional Delineation (August 16, 2011)**

##### **1. San Diego River**

- Throughout the report, it is stated that the San Diego River is a Traditional Navigable Water (TNW). The Army Corps of Engineers (ACOE) has not made a determination that it is a TNW. The ACOE has identified it as a Relatively Permanent Water (RPW).

##### **2. Significant Nexus**

- The report contains substantial significant nexus analysis that is inconsistent in places, and seems unnecessary. Clearly the drainages are jurisdictional through their connection to an RPW that connects to a TNW. The Pre-Jurisdictional Determination Form included in the report suggests that the applicant accepts the jurisdictional delineation; therefore, there is no need to demonstrate that a significant nexus exists.

### **3. Survey Area**

- The report should be updated to include the entire study area identified in the Biological Technical Report. This includes the area of the proposed gen-tie lines that extends east to the SDG&E substation.

### **4. ACOE Delineation Manual Consistency**

- Page 11 should be revised to identify the ACOE and RWQCB area that extends to the Ordinary High Water Mark. Revise the sentence to read "Width measurements for potential USACE and RWQCB jurisdiction were taken using the extent of the ordinary high water mark or active floodplain".
- If feature 1B does not meet the hydric soils parameter, it does not meet all three qualifying parameters and is not a potential jurisdictional wetland. Clarify why this is considered a potential jurisdictional wetland.

### **5. Conflicting Information**

- On pages 21, 24, and 25, the Ecological Factors sections conflict with the Significant Nexus Determination discussions. For each Features 1B, 2, and 3, the first states that the feature would be "unlikely to contribute to a significant amount of sediments and pollutants," while the Significant Nexus Determination statements that follow (pages 19, 21, 22, 24, 25) state that the "substances [sediments] will therefore have a more than insubstantial or speculative effect on the chemical, physical, and biological integrity of a TNW." This is contradictory and unsubstantiated.
- The photographs referenced in Appendix C do not support the connectivity statement for Wetland A on the top of page 23.
- Figure 6 A shows Feature 3 as having an OHWM width range of 3 to 12 feet, but the text on page 25 states the average OHWM width is 3 feet.

### **6. Delineation Forms Incomplete or Inaccurate**

- Each identified segment of a feature listed (e.g., Feature 1A, 1B, 2) should be identified on the Preliminary Jurisdictional Determination Form. The linear feet and Cowardin Class should also be identified for each Feature segment listed.
- Sample 1B-1 Wetland Determination Form hydrology section appears to be inaccurate. Drift deposits are Riverine and a Secondary Indicator instead of a Primary Nonriverine Indicator. Wetland Hydrology is not considered present since this sample does not meet the indicator requirements.
- Sample 1B-3 Wetland Determination Form contradicts other information regarding if hydric soils are present and if the sampled area is within a wetland. Also, there are six (not three) dominant species listed under vegetation that are OBL, FACW, or FAC, and, therefore, 100 percent of the dominant species are OBL, FACW, or FAC. The Prevalence Index Worksheet and Hydrophytic Vegetation Indicator sections should be updated accordingly.
- Sample 3-1 Wetland Determination Form lists vegetation species within the channel, but then states there is no vegetation within the channel. These species should be used to fill out the Dominance Test worksheet, Prevalence Index worksheet, and Hydrophytic Vegetation Indicator sections.

Mr. John Ponder  
Page 8  
November 21, 2012

### **Conclusions**

Review of the biological technical report and supporting documents completed for the Quail Brush Generation project require revisions to be considered adequate. As currently presented, the information is often confusing, and the nexus between impacts and mitigation is unclear. The biological technical report must be consistent with the City of San Diego's biology report format and biology guidelines. Survey areas across reports are not consistent and include information for parcels that may be inaccurate.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gerry Scheid".

Gerry Scheid  
Senior Biologist

GAS:sjg

# EXHIBIT B





Scientific Resources Associated  
1328 Kaimalino Lane  
San Diego, CA 92109

# Memorandum

**To:** John Ponder

**From:** Valorie Thompson

Sheppard Mullen Richter & Hampton

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**Re:** Quail Brush AQ Analysis

**Date:** November 21, 2012

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**Urgent**     **For Review**     **Please Comment**     **Please Reply**     **Please Recycle**

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As you requested, SRA has conducted a preliminary review of the Air Quality Analysis, Public Health Analysis, and Revised NO<sub>2</sub> Analysis prepared for the Quail Brush Power Plant project in Santee, California. Preliminary comments are provided below. SRA may provide additional comments on the analysis upon further review and discussions with the SDAPCD.

## Section 4.7

1. The plant will just fall under the SDAPCD's major source thresholds, with 44.8 tpy of NO<sub>x</sub> and 46.5 tpy of ROG. Other facilities have been required by the CEC to obtain offsets as mitigation under CEQA regardless of whether the rules require offsets.
  2. Page 4.7-12 – the applicant is proposing that equipment meets applicable USEPA and California emission standards. Many projects in California are requiring equipment to meet Tier 3 emission standards – for example, the Ports, airport authorities, etc. Many projects are also required to use soil stabilizers to reduce fugitive dust emissions rather than simply watering.
  3. Page 4.7-20 – the applicant used meteorological data from the Kearny Mesa monitoring station to conduct the dispersion modeling analysis. Kearny Mesa is located 9 miles west of the site in an area that is characterized by flat terrain. The Kearny Mesa site is also developed,
-

which may affect the meteorological characteristics of its site. In contrast, the Quail Brush location is in a rural area (as stated in Section 4.7, Page 4.7-15), and is surrounded by terrain that is appreciably different from the Kearny Mesa site. Under PSD regulations, applicants should collect a year's worth of on-site meteorological data if representative data are unavailable. Given the location of the project and the presence of terrain in the immediate vicinity of the site, including as noted in the discussion on Page 4.7-23, Cowles Mountain and Fortuna Mountain. It is important to note that the two terrain features identified in the report lie between the Kearny Mesa Monitoring Station and the Quail Brush site; therefore, these terrain features may influence meteorology at one location while not affecting the other depending on wind direction. The Mission Trails area, where the project site is located, is characterized by ridges and valleys that are not present at the Kearny Mesa location. These ridges and valleys could have an effect on the meteorological characteristics of the site that is not reflected in the Kearny Mesa data.

4. Page 4.7-21 – the NO<sub>2</sub>/NO<sub>x</sub> ratio used in the modeling analysis for the Wartsila engines is 1.15 percent. This is a very small ratio. The section cites “published data provided by the San Joaquin Valley SDAPCD”, but no reference to published data is provided. The USEPA database ([http://www.epa.gov/ttn/scram/no2\\_isr\\_database.htm](http://www.epa.gov/ttn/scram/no2_isr_database.htm)) would indicate that the ratio should be higher for most internal combustion engines – ranging from 3 percent to 24 percent. This was subsequently revised in the analysis submitted to the CEC on October 31, 2012, where an 18.5% ratio was assumed. No source test data were provided, and no further justification was supplied. This issue was also identified by the CEC.
5. Page 4.7-37 – the NO<sub>2</sub> impact during commissioning and startup is very close to the federal standard – as shown in Table 4.7-24, the impact plus background is 182.7 µg/m<sup>3</sup> versus a standard of 188 µg/m<sup>3</sup> for startups, and as stated on Page 4.7-37, the impact is 160.14 µg/m<sup>3</sup> for commissioning of only three engines. It is not clear whether the AERMOD results for commissioning included background NO<sub>2</sub> concentrations. It is also unclear how background concentrations were included in the modeling analysis, given that the maximum 1-hour background for the previous four-year period shown in Table 4.7-17 is 0.087 ppm (163 µg/m<sup>3</sup>). Given that the impacts are close to the standard, and that the NO<sub>2</sub>/NO<sub>x</sub> ratio used in the analysis is very low, impacts may be underestimated.

6. Page 4.7-35 – under normal operating conditions, the PM<sub>10</sub> and PM<sub>2.5</sub> impacts plus background concentrations exceed the ambient air quality standards. There is no analysis of PM<sub>10</sub> and PM<sub>2.5</sub> impacts under commissioning or startup conditions (unless startups are included in the normal operating conditions). This is a significant impact that was not identified in the section.

#### Section 4.8

1. Page 4.8-5 – the discussion of construction impacts does not include an evaluation of potential diesel particulate impacts on sensitive receptors or residents near the facility. The statement is made that no significant health impacts are expected during construction. Many facilities are now required to include construction impacts in their health risk assessments; the County of San Diego requires an evaluation of these impacts in its CEQA guidelines.

#### Revised NO<sub>2</sub> analysis

1. The revised NO<sub>2</sub> analysis was conducted using hourly background NO<sub>2</sub> data to calculate the maximum impact. The EPA recommends a “first tier” assumption of adding the overall highest 1-hour NO<sub>2</sub> background concentration to the impact, and requires justification of use of alternative methodologies. No such justification was provided in the analysis. Some discussion was provided, including a statement that the Kearny Mesa monitoring station experiences high NO<sub>2</sub> concentrations due to its proximity to State Route 52. The proposed project site is also in proximity to State Route 52. No justification for the use of hour-by-hour NO<sub>2</sub> background data was provided.

([http://www.epa.gov/ttn/scram/guidance/clarification/ClarificationMemo\\_Appendix W\\_Hourly-NO2-NAAQS\\_FINAL\\_06-28-2010.pdf](http://www.epa.gov/ttn/scram/guidance/clarification/ClarificationMemo_Appendix_W_Hourly-NO2-NAAQS_FINAL_06-28-2010.pdf))