

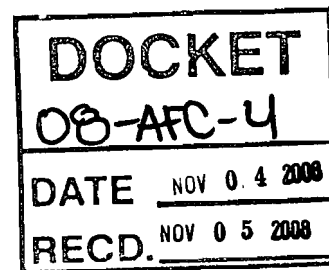
From: "Anthony J Arand" <Tony@envirepel.com>
To: "Ken Celli" <Kcelli@energy.state.ca.us>, <JLuckhardt@DowneyBrand.com>, <...
CC: "Felicia Miller" <Fmiller@energy.state.ca.us>
Date: 11/4/2008 8:26 PM
Subject: Gregory Canyon Letter from Olivenhain water district.
Attachments: GCL Olivenhain letter, Oct 08.pdf

Mr. Celli,

Please accept this letter as just another point of reference to my previous comments that the Gregory Canyon Landfill project is not in any position to support Orange Grove's easement request as they cannot afford to risk the \$40 million plus they have invested in thier landfill project by jeapordizing thier only mitigation strategy.

Sincerely,

Anthony Arand



Board of Directors

Susan J. Varty, *President*
Robert F. Topolovac, *Vice President*
Mark A. Muir, *Treasurer*
Jacob J. Krauss, *Secretary*
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General Manager
Kimberly A. Thorner
General Counsel
Wesley Peltzer

1966 Olivenhain Road, Encinitas, California 92024 | Phone (760) 753-6466 | Fax (760) 753-5640 | www.omwd.com

October 29, 2008

VIA OVERNIGHT MAIL

Jerry Riessen
3 Embarcadero Center, Suite 2360
San Francisco, CA 94111

Richard Chase
249 South Highway 101
Suite #377
Solana Beach, CA 92075

William E. Hutton
Law Offices of E. William Hutton, P.C.
21st Century Plaza
6303 Owensmouth Avenue, 10th Floor
Woodland Hills, CA 91367

Re: Olivenhain-Gregory Canyon Recycled Water Agreement

Dear Mr. Riessen, Mr. Chase and Mr. Hutton:

As you know on March 15, 2006 the Olivenhain Municipal Water District ("Olivenhain") and Gregory Canyon LTD entered into a written contract for Gregory Canyon to purchase up to 230 acre-feet per year of recycled water from the District. Under the terms of this executed agreement, Olivenhain agreed to sell and Gregory Canyon agreed to purchase up to 230 acre feet per year of tertiary recycled water from Olivenhain for a term of up to 60 years. (Recycled Agreement ¶1). Olivenhain has recently discovered that Gregory Canyon has now approached the Rincon del Diablo Municipal Water District and requested that it enter into a contract with Gregory Canyon for purchase of the 193 acre feet of water needed by Gregory Canyon for the Gregory Canyon landfill. In fact, on October 14, 2008 Rincon and Gregory Canyon agreed to enter into a memorandum of understanding for Rincon to complete a feasibility analysis to provide recycled water for the landfill. Under the terms of this executed memorandum, the parties agreed to negotiate in good faith a definitive agreement for design and construction of a recycled water truck loading station and for delivery of recycled water to Gregory Canyon. We are providing with this letter a copy of the October 14, 2008 approval of this agreement by Rincon and Gregory Canyon.



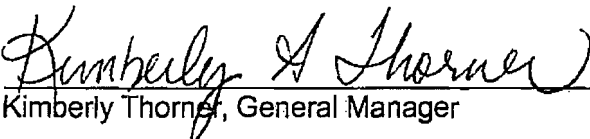
Jerry Riessen
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Olivenhain has no objections to Gregory Canyon entering into a contract with Rincon to provide it with the recycled water needed for the Gregory Canyon landfill and actually believes it would be in the best interests of both Olivenhain and Gregory Canyon for Gregory Canyon to purchase its recycled water through Rincon. However, Olivenhain does not want to reserve this recycled water for Gregory Canyon when it is apparent that Gregory Canyon now wishes to purchase this recycled water from Rincon.

This letter is therefore to notify you that the recycled water contract executed between Olivenhain and Gregory Canyon on March 15, 2006 will be terminated as of November 10, 2008 unless Olivenhain receives written assurances from Gregory Canyon by no later than November 10, 2008 that Gregory Canyon will purchase all of its recycled water for the landfill solely from Olivenhain and will discontinue all further steps and actions to purchase this recycled water from Rincon. Given the shortage of potable water that presently exists in San Diego County, it is vitally important that Olivenhain's recycled water be made available to users who truly need it so that scarce potable water resources can be conserved.

Sincerely,

OLIVENHAIN MUNICIPAL WATER DISTRICT

By: 
Kimberly Thorne, General Manager

Enclosure

cc: OMWD Board of Directors

ACTION

October 14, 2008

SECTION 2: OPERATIONS; ENGINEERING & LONG-RANGE PLANNING

- 2-C: Authorize General Manager to Enter into Agreement with Gregory Canyon LTD. LLC, for Purposes to Explore Feasibility of Using Recycled Water from Rincon del Diablo Municipal Water District for Dust Control, Construction, and Other Approved Functions at the Landfill Site**

PURPOSE / RECOMMENDATION:

That the Board of Directors authorizes the General Manager to negotiate and execute an agreement with Gregory Canyon LTD. LLC (Gregory Canyon), to explore the feasibility of using recycled water from Rincon del Diablo Municipal Water District (Rincon) for dust control, construction and other approved functions at the landfill site. The scope of this agreement is to limit exposure to both parties, by conducting through due diligence, and be reimbursed by Gregory Canyon.

PREVIOUS BOARD ACTION(S):

None.

BACKGROUND / DISCUSSION:

Gregory Canyon owns a landfill in Northeast San Diego County, outside of Rincon's boundaries. Gregory Canyon is in need of recycled water for use on the project for dust control, landscape irrigation, liner construction, and other related activities on the site. Rincon is the nearest source of recycled water in sufficient quantities to fulfill this need.

In this proposal, Rincon and Gregory Canyon seek to explore the feasibility of Rincon providing this water. There may be permitting or legal hurdles, which must be fully investigated before final recommendations or conclusions can be reached, by either Rincon or Gregory Canyon. To avoid impact on our current customers, Gregory Canyon shall reimburse Rincon for the expenses necessary to determine the feasibility. In addition to pursuing a waste discharge permit, independent of the City of Escondido, we have identified design and construction issues specific for this purpose, as likely projects related meeting this need. There may be other liability factors related to the application of recycled water on this site, or transportation impacts, and other considerations not fully investigated, or even identified yet. We anticipate legal and management review also taking considerable time. This agreement is needed to

develop a comprehensive approach before reviewing the costs and merits of the future supply agreement.

Once completed a recycled water-dispensing site could be a major advantage for the area to use recycled water on construction sites, or for other purposes that "trucked" water might be advantageous. Such as a quick fill station for fire response vehicles where roadway widths and structural capability are designed in. This would reduce the demand for potable water and an appropriate drought response tool.

MEMORANDUM OF UNDERSTANDING

RECYCLED WATER

This Memorandum of Understanding is entered into this 14 day of October, 2008 by and between the **RINCON DEL DIABLO MUNICIPAL WATER DISTRICT**, a municipal water district organized and operating pursuant to California Water Code §71000 et seq., with its principal place of business at 1920 North Iris Lane, Escondido, CA 92026 ("District") and the **GREGORY CANYON LTD. LLC**, a California Limited Liability Company, with its principal place of business at Three Embarcadero Center, San Francisco, CA 94111 ("Gregory Canyon").

RECITALS

Gregory Canyon owns a Class 3 solid waste landfill in Northeast San Diego County, outside of the District's service area. As part of this landfill project, Gregory Canyon is in need of recycled water for dust control, landscape irrigation, liner construction, and other activities within the boundary of the project.

The District is a public agency serving recycled water in San Diego County. The District procures recycled water from other public agencies within the County of San Diego.

The District and Gregory Canyon desire to explore the feasibility of the District supplying up to 193 acre-feet per year of recycled water to Gregory Canyon trucks at a future recycled water truck loading station to be constructed by the District.

If the District determines it is feasible to construct and operate a recycled water truck loading station, the parties agree to negotiate in good faith a definitive agreement for design and construction of a recycled water truck loading station and for delivery of recycled water to Gregory Canyon, in accordance with the preliminary terms and conditions set forth herein.

This Memorandum of Agreement is non-binding on both parties except as expressly provided herein, and does not commit the District to enter into a definitive agreement with Gregory Canyon or undertake any activities related to the design, construction or operation of a recycled water truck loading station.

NOW, THEREFORE, for good and valuable consideration, the parties set forth the following terms and conditions.

1. **Feasibility Analysis.** The District would conduct an analysis of the feasibility of constructing and operating a recycled water truck loading station to deliver recycled water to Gregory Canyon and other potential users, such as residential and commercial developers or contractors. The District believes that there may be both a short-term and long-term need in San Diego County to provide for delivery of recycled water by truck, for dust control, landscape irrigation, manufacture of construction materials, or commercial/industrial operations.
2. **Environmental Review.** Following completion of the feasibility analysis, if the District, in its sole discretion, determines that construction and operation of a recycled water truck loading station is feasible, the District would undertake any required environmental

impact review under the California Environmental Quality Act (CEQA), which may include potential impacts arising from construction and operation of the recycled water truck loading station, and deliveries of recycled water by truck. The District, either itself or through its consultants, would undertake this review. Gregory Canyon would assist the District with respect to selection of consultants, provide any information reasonably required to perform the environmental analysis, and supply other assistance requested by the District, at Gregory Canyon's sole cost and expense.

3. Permits and Approvals. The District would apply for any permits required in connection with construction and operation of the recycled water truck loading facility, and delivery of recycled water by truck. The District, either itself or through its consultants, would prepare any applications and work with any agencies to promptly obtain any permits and approvals. Gregory Canyon would assist the District with respect to selection of consultants to perform the analysis, provide any information reasonably required to obtain the required permits or approvals, and supply other assistance requested by the District, at Gregory Canyon's sole cost and expense.
4. Reimbursement of Costs Incurred by District. During the term of this Memorandum of Understanding, Gregory Canyon agrees to reimburse the District for its reasonable costs in undertaking the actions described in Sections 1, 2 and 3 above, including but not limited to staff time and out of pocket expenses. Within ten (10) days of execution of this Memorandum of Understanding, Gregory Canyon will submit an initial payment to District in the amount of Twenty Thousand Dollars (\$20,000.00) (the "Fund"), as an initial deposit to defray the District's costs. The District will provide Gregory Canyon with a monthly statement of costs incurred. Thereafter, if the balance of the Fund as indicated in any monthly statement becomes Five Thousand Dollars (\$5,000.00) or less, Gregory Canyon will replenish the Fund by payment of Ten Thousand Dollars (\$10,000.00) within twenty (20) days of receipt of such monthly statement. Notwithstanding the above, Gregory Canyon is not responsible for reimbursing the District for any costs incurred beyond Forty Thousand Dollars (\$40,000.00) in the aggregate without the consent of Gregory Canyon, which consent will not be withheld unreasonably. Notwithstanding any provision in this Memorandum of Understanding to the contrary, the above provisions are binding on Gregory Canyon during the term hereof, subject to Gregory Canyon's right to terminate this Memorandum of Understanding in accordance with Section 7, and shall survive the expiration or other termination of this Memorandum of Understanding. Gregory Canyon will not be responsible for any reasonably avoidable costs incurred by the District following termination, and District will make reasonable efforts to not incur any new expenses following receipt of the thirty (30) days' notice of termination from Gregory Canyon.
5. District's and GCL's Obligations. Both District and Gregory Canyon acknowledge and agree that no provision of this Memorandum of Understanding obligates the District to undertake the feasibility analysis, conduct any environmental review, apply for or obtain any required permits or approvals, enter into a definitive agreement with Gregory Canyon, or construct and operate a recycled water truck loading station. The District may, in its sole discretion (except as provided in Section 6), determine whether to undertake any of these activities. Except as expressly provided herein, no provision of this Memorandum of Understanding is binding on either party.

6. Negotiation of Definitive Agreement; Preliminary Terms and Conditions. Following a determination by the District to proceed with design, construction and operation of a recycled water loading station, the District and Gregory Canyon agree to negotiate in good faith for a definitive agreement for the delivery of recycled water to Gregory Canyon. While acknowledging that the terms and condition of the definitive agreement may change as the result of any required environmental review process and the terms and conditions of any required permits and approvals, the essential terms and conditions of any definitive agreement may include the following:
- a. Gregory Canyon could obtain up to 205,000 gallons of recycled water per operating day, or up to 193 acre-feet per year. Since deliveries of the daily maximum amount of recycled water will be infrequent, Gregory Canyon will provide the District annually with an estimate of recycled water deliveries, by timing and amount, and promptly notify the District if there is a significant (10% or greater) change in its estimates.
 - b. Gregory Canyon will arrange for and provide all trucks used for delivery of recycled water to Gregory Canyon. Gregory Canyon will be solely responsible for the use and transportation of all recycled water once it has been delivered at the recycled water truck loading station.
 - c. All recycled water sold to Gregory Canyon will meet the requirements of the State of California for Title 22 tertiary treated recycled water.
 - d. The District will use reasonable efforts to ensure that the recycled water delivered will consist of Title 22 tertiary treated wastewater effluent.
 - e. The recycled water delivered to Gregory Canyon will be used exclusively at the Gregory Canyon landfill site, for non-potable uses in connection with construction or operation of the landfill project. Gregory Canyon will not re-sell any delivered recycled water to a third party.
 - f. Gregory Canyon will be responsible for reimbursing the District for costs incurred in the design and construction of the recycled water truck loading station. However, the District will make reasonable efforts to allocate the cost of design and construction between Gregory Canyon and other potential users.
 - g. The term of the agreement will be for sixty (60) years, and may be extended by Gregory Canyon to coincide with the completion of the closure/post-closure maintenance period for the landfill.
 - h. The charges for recycled water shall be at a uniform rate established by the District from time to time for delivery of recycled water.
 - i. Other normal and customary terms and conditions, including indemnification by Gregory Canyon related to any legal challenges to the definitive agreement or use of the recycled water by Gregory Canyon.
 - j. Gregory Canyon will make all required documentation and areas within its site available to District personnel and its consultants and/or regulatory personnel as necessary for inspection to comply with permit conditions imposed upon the District.

Notwithstanding any provision in this Memorandum of Understanding to the contrary, once the District has determined that construction of a recycled water truck loading station is feasible, the required environmental review has been completed, and required permits and approvals have been obtained, the obligation to negotiate in good faith with respect to a definitive agreement is binding on both the District and Gregory Canyon.

7. Term of Memorandum of Understanding. This Memorandum of Understanding shall become effective as of the latest date of execution by both parties, and shall expire on December 31, 2009. Notwithstanding the above, either party may at any time, without cause, terminate this Memorandum of Understanding upon thirty (30) days written notice to the other.
8. Completion of CEQA Review. Both parties acknowledge and agree that the obligations of the parties to undertake any action that could have an effect on the environment, including but not limited to execution of a definitive agreement, are conditioned on District's completion of any environmental review required by CEQA, and the expiration of the applicable period for any challenge to the adequacy of District's compliance with CEQA without any challenge being filed.
9. Indemnification. Gregory Canyon agrees to defend and indemnify the District and its members, agents, directors, officers, employees, attorneys and contractors, from any loss, cost, damage, suit, liability, claim, settlement cost and expense (collectively, "Claim") arising from, caused by, or related to the District's approval, entry into, or execution of this Memorandum of Understanding, except where arising from the negligence or willful misconduct of the District. In addition, Gregory Canyon agrees to reimburse the District for all court costs and attorneys' fees that the District may be required to pay on its own behalf. Once the defense of any Claim is assumed by Gregory Canyon, at its sole discretion the District may participate at its own expense in the defense of any such Claim. The District agrees to notify Gregory Canyon promptly of any Claim and to cooperate fully in the defense. Notwithstanding any provision herein to the contrary, this provision is binding on Gregory Canyon and shall survive the expiration or other termination of this Memorandum of Understanding.
10. Miscellaneous Provisions.
 - a. California Law. This Memorandum of Understanding shall be governed by and interpreted in accordance with the laws of the State of California, excluding any choice of law provisions.
 - b. Modification. This Memorandum of Understanding may not be altered in whole or in part except by a modification, in writing, executed by all the parties.
 - c. Entire Agreement. This Memorandum of Understanding represents the entire understanding between the parties with respect to the subject matter hereof. Any prior correspondence, memoranda, or agreements, whether or not such correspondence, memoranda, or agreements are in conflict with this Memorandum of Understanding, are intended to be replaced in total.

- d. Counterparts and Facsimile Signatures. This Memorandum of Understanding may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures shall be permitted and shall be treated as original signatures for all purposes.
- e. Notices. All notices to be given under this Memorandum of Understanding may be delivered by first class mail or overnight delivery service to the addresses set forth above, or by facsimile.

Dated: _____, 2008

RINCON DEL DIABLO MUNICIPAL WATER
DISTRICT, a Municipal Water District

By: _____
Mitchell S. Dion, General Manager

Dated: _____, 2008

GREGORY CANYON LTD. LLC, a California Limited
Liability Company

By: _____
Jerry A. Riessen, President