

**State of California
Energy Resources Conservation and Development Commission**

In the Matter of:)	Docket No. 08-AFC-4
)	
Application for Certification)	STAFF'S RESPONSE TO THE
<u>for the Orange Grove Energy Project</u>)	COUNTY OF SAN DIEGO'S
		COMMENT LETTER

By email dated March 30, 2009, the Orange Grove Committee directed parties to comment on a letter dated March 18, 2009, which contained comments by the County of San Diego Department of Environmental Health Land and Water Quality Division, regarding the Presiding Member's Proposed Decision (PMPD). In addition, the Committee requested parties to address the need to remove the Orange Grove Project from the April 8, 2009, business meeting. For the reasons discussed below staff finds the Conditions of Certification as described in the PMPD to be more than adequate to meet the concerns raised by the County and therefore the Orange Grove Project should remain on the April 8, 2009, agenda.

THE COUNTY WILL NOT BE ISSUING A PERMIT FOR THE ORANGE GROVE ONSITE WASTE WATER TREATMENT SYSTEM BUT WILL BE PROVIDING COMMENTS

The County of San Diego generally has regulatory oversight to permit onsite waste water treatment systems such as the system proposed by the Orange Grove Project. In this case the county's permitting authority is subsumed by the Energy Commission's exclusive jurisdiction to license thermal power plants. (Pub. Resources Code § 25500) Rather than issuing a permit, the County will be reviewing the project for consistency with regulations and providing comments on system design to Commission staff. Staff appreciates the comment letter and anticipates working with the County to ensure adequate levels of public health protection associated with the project's water use.

Staff notes that Condition of Certification Soil & Water 11 specifically requires the applicant to comply with all San Diego County Onsite Wastewater Treatment System ordinance requirements for construction and operation of the project's sanitary waste septic system and leach field. The County will be given adequate opportunity to work with the applicant and Commission staff to ensure an appropriate wastewater system is designed and that its operation does not pose a public health risk.

II ADEQUACY OF THE POTABLE WATER SUPPLY

In its letter the County finds that Orange Grove's proposed delivery of potable water via trucks not an adequate source, since it is not reliable and that there are health risks associated with possible contamination as part of the trucking process. While purity of the trucked in potable water might be an issue in a situation where the water is intended for consumption, in the case of the Orange Grove project, bottled water will be used for drinking water as well as for hand washing. During the portions of the year when the Orange Grove peaking generation facility is needed, the potable water will be used for industrial purposes such as emissions control, power augmentation, and fire protection. It is important to note that this potable water is to be used at an industrial facility with restricted access which will be staffed by trained employees. The public will not have access to this water. (PMPD Finding 20 p. 301)

The County points to no specific law, county code or regulation which defines what an "adequate source" of potable water is. Indeed, the letter states, "Our Department does not consider trucked in water to be an adequate potable water supply..." This would indicate the County may have a general policy regarding the quality of water transported by tanker truck, but there is no specific regulation on how to determine "adequate source." Therefore, it is up to the Commission to determine, given the entire project, whether trucked in water is an adequate and reliable source of potable water supply. (Pub. Resources Code § 25500)

As part of its independent environmental review, staff has already determined that the water supplies the project will be using meet reliability standards and that onsite storage coupled with delivery of potable water and recycled water will allow the facility to operate even under drought conditions. (PMPD Findings, pp. 91, 299-302)

Furthermore, Commission staff expects to work with the County during the post-certification, pre-construction phase of the project to ensure that the intent of the county's septic system requirements is met.

III THE PROJECT WILL COMPLY WITH RELEVANT PLUMBING CODES

The County stated that bottled water will not be approved for the potable water needs for this project because Chapter 6 of the California Plumbing Code requires all plumbing fixtures to be provided with an adequate supply of potable running water and for the supply to be pressurized at a minimum pressure of 15 psi.

California Plumbing Code chapter 6 section 601.1 states: "Except where not deemed necessary for safety or sanitation by the Authority Having Jurisdiction, each plumbing fixture shall be provided with an adequate supply of potable running water piped thereto in an approved manner, so arranged as to flush and

keep it in a clean and sanitary condition without danger of backflow or cross-connection.”

In this case the Commission would be the authority having jurisdiction and therefore can determine whether the project’s designed adequately addressed potable water use. (Pub. Resources Code § 25500) Staff analyzed public health and found no issues regarding the facility’s water use. (PMPD Public Health Findings, pp 205-206).

Finally, specifications including water pressure can be addressed through final engineering design which the county will be able to review and provide comments on prior to any Commission compliance staff approval.

In addition, staff believes that the applicant intends to use self contained eye washes and emergency showers which are readily available on the market and designed specifically to make the use of bottled water convenient for sanitary purposes. These devices would contain their own flushing fluid and would be refilled as necessary, thereby eliminating the need for potable water at the required pressure and flow rate for those project uses.

IV HUMAN CONTACT WITH RECYCLED WATER IS NOT PROHIBITED BY STATE HEALTH STANDARDS

The County indicates that recycled water will also not be approved in a manner that allows human contact due to the potential for adverse health risks. The County may be unaware that the project will be using disinfected tertiary treated recycled water which is safe enough to come into contact with humans. The evidentiary record is clear that disinfected tertiary treated recycled water has dozens of uses including: (1) Irrigation of food crops, including all edible root crops, where the recycled water comes into contact with the edible portion of the crop, (2) Irrigation of parks and playgrounds, (3) Irrigation of school yards, (4) Irrigation of residential landscaping, (5) Irrigation of unrestricted access golf courses, (6) decorative fountains, (7) and even swimming pools. (Cal. Code Regs., tit. 22. §§ 60304-60307)

The Commission encourages the use of recycled water to the maximum level feasible and after performing an extensive analysis on water sources and public health, staff has found that the project’s use of recycled water is appropriate and desirable. (PMPD Findings, pp 205-206, 299-302)

V

TWO CONDITIONS OF CERTIFICATION EXIST TO ADDRESS
HEALTH AND SAFETY CONCERNS FROM THE USE OF RECYCLED WATER

Condition of Certification Soil & Water 8 states:

The Orange Grove Project, (OGP) shall comply with all recycled water use requirements established in Title 22 and Title 17 of the California Code of Regulations (CCR) and any applicable local recycled water use ordinances. Prior to delivery of recycled water to the OGP for any purpose, the project owner shall submit a Title 22 Engineer's Report, along with copies of any review comments on the report from the California Department of Public Health (CDPH) and the San Diego RWQCB, for review and approval by the CPM.

Condition 8 requires the project owner to provide a report regarding its compliance with the CDPH's Title 22 requirements for water treatment and quality, and any CDPH comments, thus ensuring that the recycled water is appropriately disinfected for the intended use. The Condition not only ensures a recycled water supply which meets state standards but also contains reporting requirements so all relevant governmental agencies are apprised of the water quality.

Condition of Certification Soil & Water 9 states:

Prior to the start of project construction, the project owner shall ensure that project use of recycled water in lieu of potable water for landscaping, fire protection, facility wash down, safety showers/eye wash, sanitary systems, and any other non-turbine water uses will comply with all applicable laws, ordinances, regulations and standards, and identify what operational changes would be necessary if recycled water is used in the raw water storage tank during interruptions of potable water supplies.

The County expressed concern over the use of recycled water for various applications. Soil & Water 9 exists to ensure that if recycled water is used in lieu of potable water, the recycled water meets all applicable law and regulations. This would include state and local health and safety requirements for the use of recycled water.

VI
THE ORANGE GROVE PROJECT SHOULD REMAIN ON THE
APRIL 8, 2008 BUSINESS MEETING AGENDA

The concerns raised by the County in its comment letter have already been addressed by staff either through its independent analysis or as part of Conditions of Certification. In addition specific design details of the onsite wastewater treatment system can be reviewed by the County during the post-certification, pre-construction phase. The Commission's technical staff and CPM would be available to discuss any County questions or comments. Staff finds no compelling reason to delay the Commission decision on this project.

Date: April 2, 2009

Respectfully submitted,



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**APPLICATION FOR CERTIFICATION
ORANGE GROVE POWER
PLANT PROJECT**

**DOCKET No. 08-AFC -4
PROOF OF SERVICE**
(Revised 2/17/09)

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DECLARATION OF SERVICE

I, Pamela Guinn, declare that on 4/2/09, I served and filed copies of the attached
STAFF'S RESPONSE TO THE COUNTY OF SAN DIEGO'S COMMENT LETTER

The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:
[www.energy.ca.gov/sitingcases/orangegrovepeaker]. The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

sent electronically to all email addresses on the Proof of Service list;

by personal delivery or by depositing in the United States mail at Sacramento, CA with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (**preferred method**);

OR

depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 08-AFC-4
1516 Ninth Street, MS-4
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I declare under penalty of perjury that the foregoing is true and correct.

Pamela Guinn