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April 10, 2009

State of California Energy Resources
Conservation & Development Commission
1516 Ninth Street
Sacramento, CA 95814

DOCKET	
08-AFC-4	
DATE	<u>April 10 2009</u>
RECD.	<u>April 24 2009</u>

Attention: Ken Celli

Dear Commissioners,

AS YOU KNOW, I have been appointed as an "intervenor" in the Orange Grove Power Plant Project (OGP) Docket No. 08-AFC-4 by the California Energy Commission (CEC). I receive all documents related to this power plant project. I am recognized as an expert by the CEC in the field of water and wastewater engineering.

On April 4, 2009 I received documents from both the CEC and the OGP Attorneys which were responding to the San Diego Department of Environmental Health, Land and Water Quality Division regarding the fact that the County will NOT be issuing a permit for the Orange Grove Onsite Waste Water Treatment System. The pertinent CEC response pages 1 and 3 are located in ENCLOSURE 1. On page 3 of Enclosure 1, under the title "IV-HUMAN CONTACT WITH RECYCLED WATER IS NOT PROHIBITED BY STATE HEALTH STANDARDS", the statement that "The County may be unaware that the project will be using **disinfected tertiary treated recycled water** which is safe enough to come in contact with humans" **IS FALSE**. This is a manipulation of words and the insertion of a word into a legal definition to confuse the reader by implication. There is no term or definition for "DISINFECTED TERTIARY **TREATED** RECYCLED WATER" in the California Health Laws Related to Recycled Water (CHLRRW), Title 22, June 2001 Edition, Sections 60304-60307 for its usage as defined in the above referenced ENCLOSURE 1. Sections 60304-60307 of the CHLRRW, Title 22 defines uses **only** for the following:

1. Disinfected tertiary recycled water defined in Section 60301.230 CHLRRW, Title 22, June 2001 Edition. (not disinfected tertiary **treated** recycled water)
2. Disinfected secondary -2.2 recycled water defined in Section 60301.220, CHLRRW, Title 22, June 2001 Edition.
3. Disinfected secondary -23 recycled water defined in Section 60301.225, CHLRRW, Title 22, June 2001 Edition.
4. Un-disinfected secondary recycled water defined in Section 60301.900, CHLRRW, Title 22, June 2001 Edition.

In addition there is no definition in Sections 60304-60307 allowing the use of any of the above defined disinfected or un-disinfected recycled waters for swimming pools. The

California Health Laws Related to Recycled Water are not Standards as implied by the CEC Attorney, they are California law. Nowhere in the CHLRRW, Title 22, 2001 Edition can the term “Disinfected tertiary treated recycled water” be found. How can one lawfully use something that does not exist in the eyes of California law, namely: CHLRRW.

In the attached pertinent pages 1 and 10 of the Orange Grove Energy Attorney’s document (see ENCLOSURE 2) the statement on Page 10 under the title “The Project As Proposed Already Incorporates Mechanisms for Operating During interruptions to Potable Water Supplies”, sentence number 2 states “The Projects potable water option agreement with FPUD requires that in times of drought, Disinfected Tertiary Recycled Water be substituted for certain uses” **IS A DELIBERATE FALSEHOOD**. ENCLOSURE 3 is a pertinent copy of the “Potable Water Option Agreement, COVENANTS. Section 5 is titled “Drought Water supply shortages etc.”, Sentence # 4 of this section states. “For every day or partial day that the District restricts potable water access, Orange Grove shall receive an incremental increase in the reservation of “tertiary treated recycled water” under its Recycled Water Supply Agreement.” Please note that “tertiary TREATED recycled water” is not, I repeat, is not “Disinfected Tertiary Recycled Water” per CHLRRW, Title 22, June 2001 Edition as stated in the OGP Attorney’s statement above. Please note that California Health Laws are laws that must be obeyed and “tertiary treated recycled water” as stated in this Potable Water Option Agreement does not exist in the CHLRRW, Title 22, June 2001 Edition. Therefore, how can one lawfully supply something that does not exist in the eyes of the law, specifically the California Health Laws Related to Recycled Water?

I believe that trying to manipulate California law by using similar terms and/or injecting words into a lawful definition to achieve an unlawful objective is a violation of the law just as robbing a bank is, and should be treated just as severely. The CEC and the OGP can cause serious injury to the health of California workers and the general public if allowed to utilize their deceptive practices.

Please stop this assault on the California Health Laws and protect the safety of the health of California workers and of the general public and please distribute this communication to the commissioners.



Archie McPhee



Enclosure 1

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)

← FALSE

NOT SO

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)

**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.

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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.

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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Enclosure 2

(Id.) Orange Grove does not hold a right to the water in the aquifer south of SR-76. For these reasons, groundwater would not provide a reliable supply.

E. The Project As Proposed Already Incorporates Mechanisms for Operating During Interruptions to Potable Water Supplies.

As described in the PMPD, a lack of potable water at the Project site is already addressed. (PMPD at 289-230.) The Project's potable water option agreement with FPUD requires that in times of drought, Disinfected Tertiary Recycled Water be substituted for certain uses. (PMPD at 289.) Orange Grove anticipates that FPUD will declare that such a drought condition exists sometime during the summer of 2009. (3/16/09 RT at 41:21-42:17.) Condition of Certification SOIL & WATER-9 requires the Project owner to "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 LORS, 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." (PMPD at 308-309.) Therefore, the Project will only be able to use recycled water for these purposes as permitted by law. The Project is incorporating such facility design and operational changes as are necessary to respond to SOIL & WATER-9 now, rather than as provided for in the Verification (30 days prior to the start of project operation).

F. Residual Chlorine will be Addressed in the Engineering Report.

The DEH Letter further identifies residual chlorine as a parameter that will need to be addressed for the onsite septic system to assure that the system functions properly. (DEH Letter at 2.)

Orange Grove intends to address this issue through the Engineering Report required by SOIL & WATER-8. (PMPD at 308.) The residual chlorine content of the Disinfected Tertiary Recycled Water is expected to be low when the water is received and, since chlorine is unstable, residual chlorine is expected to be near zero concentration by the time water reaches the septic system. Orange Grove expects that that the Engineering Report will adequately demonstrate that

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA**

**APPLICATION FOR
CERTIFICATION FOR THE
ORANGE GROVE POWER PLANT
PROJECT BY ORANGE GROVE
ENERGY, LP**

**DOCKET NO. 08-AFC-4
(AFC filed 06/20/08)**

**ORANGE GROVE ENERGY, L.P.'s RESPONSE TO COMMENTS BY THE
COUNTY OF SAN DIEGO DEPARTMENT OF ENVIRONMENTAL HEALTH,
LAND AND WATER QUALITY DIVISION**

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April 2, 2009

Enclosure 3

5. Drought, Water supply shortage, water emergency and Incremental Recycled Water Reservation. In the event a drought, a water supply shortage or a water emergency [as determined by the District in its reasonable discretion] limits the District's ability to deliver potable water, the District may prohibit access to the potable water Point of Delivery. At any time that the District prohibits annexations to the District due to water supply concerns, the District will prohibit access to the potable water Point of Delivery. The District shall notify Orange Grove of any restrictions at least 24 hours in advance of their taking effect. For every day or partial day that the District restricts potable water access, Orange Grove shall receive an incremental increase in the reservation of tertiary treated recycled water under its Recycled Water Supply Agreement. The incremental increase in the reservation of tertiary treated recycled water shall be 62 acre-ft less the amount of potable water that has already been delivered in a calendar year.
6. Remedies for Breach. In the event of a breach of any term or provision of this Agreement by either party, both parties shall have all rights and remedies granted by California law. Nothing contained in this Agreement shall be construed as limiting any of the rights and remedies of either parties upon any breach of a term or provision of this Agreement.
7. Installation of Improvements, Priority of Use. As a material term of this Agreement, Orange Grove shall pay for all new capital facilities that will be necessary to fill Orange Grove's trucks at the Delivery Site. These improvements include at a minimum, but are not limited to approximately 200' feet of 14' wide asphalt road way, water handling facilities including 6-inch meter necessary to fill the trucks, concrete loading pad, and other ancillary appurtenances as may be required by the District in its sole discretion (collectively, the "New Facilities"). It is anticipated that the 14' wide road would provide sufficient width for trucks transporting the potable water for Orange Grove. These improvements are currently estimated to cost _____ dollars (\$ _____), however in no case are the costs for the improvements limited to this amount. The District shall be responsible for constructing the New Facilities. The District shall construct the New Facilities within four (4) months after the date of this Agreement. All improvements determined necessary by the District must be completed prior to commencing deliveries, and no hauling will be allowed until all necessary regulatory permits (if any) are acquired by Orange Grove. Orange Grove shall deposit the engineer's estimate of the aforementioned facilities within 90 days in advance of construction of the facilities. Such deposits shall solely be used for the costs of constructing the New Facilities. Upon completion of construction of the New Facilities, any amounts remaining will be returned to Orange Grove within thirty (30) days after the completion of construction and payment of all invoices relating to construction. If construction costs exceed the amount deposited by Orange Grove, Orange Grove shall pay such additional costs after being notified by the District of any such additional costs. Orange Grove shall have exclusive use of the water filling station and meter and

C-O-V-E-N-A-N-T-S

1. Sale of Potable Water by District. The District agrees to sell and Orange Grove agrees to purchase, commencing on the Agreement Start Date, up to 62 acre feet per year of potable water for a term of 25 years and 2 months. The District shall bill Orange Grove on a monthly basis for actual water used, plus monthly fixed charges. A late charge equivalent to one and one half percent (1½ %) per month shall be levied for each day invoiced amounts are not paid following the due date.

2. Fees Paid to District and the Price For Potable Water and Future Price Increases. The commodity price for the potable water sold by the District to Orange Grove shall be at the published rate for construction meters set by the District Board of Directors from time to time, in its sole discretion. The construction rate for customers inside the District as of June 23rd, 2008 is \$2.95 per thousand gallons. The District makes no guarantee about future price increases and intends to sell potable water to Orange Grove at a rate established for customers inside the District's formal boundaries. The potable water commodity rate to be paid by Orange Grove shall include a capacity charge/premium charge for payment to acquire new capacity equal to [REDACTED] of the commodity rate for customers inside the District. Orange Grove's total commodity rate shall therefore be [REDACTED] of the commodity rate paid by customers with construction meters inside the District's boundaries. Orange Grove will also pay a monthly system access charge for the meter which is set for their use at the Delivery Site, currently \$373.50 per month for a 6-inch meter. This monthly system access charge is subject to increases in the future and shall be at the rate set by the District Board of Directors, in its sole discretion and is payable regardless of the quantity of potable water delivered. The monthly system access fee shall be paid in advance on the date of execution of this agreement and invoiced on a monthly basis thereafter. A late charge equivalent to one and one half percent (1½ %) per month shall be levied for each day (pro rated) the fee is paid following the due date.

In addition to the price for the potable water set by the District, an additional monthly independent fixed fee equal to Orange Grove's cost for [REDACTED] gallons ([REDACTED] x construction rate x [REDACTED]) shall be paid by Orange Grove to the District above and beyond the rate charged for the potable water. Both parties agree that this monthly fee is an independent fee paid to District for the guarantee of a long term supply and is payable upon execution of this agreement and on a monthly basis thereafter. This payment shall be paid upon execution of this agreement and invoiced monthly thereafter by the District. A late charge equivalent to one and one half percent (1½ %) per month shall be levied for each day (pro rated) the fee is paid following the due date.

3. Responsibility and Indemnity for Potable Water after Delivery. Orange Grove recognizes that by entering into this Agreement, Orange Grove is solely

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