

June 5, 2003

California Energy Commission  
Office of Chief Counsel  
1516 9<sup>th</sup> Street, MS 14  
Sacramento, CA 95814-5512

**Subject: Revised Presiding Member's Proposed Decision--Recycled Water and  
Emergency Response**

Commissioners:

Pursuant to Commission's direction on June 3, 2003, the Mountain House Community Services District (MHCS D) is submitting the following information regarding the conditions of approval for the East Altamont Energy Center (EAEC). We ask that you consider revising your recommendations accordingly.

In the Water Recycling Act of 1991, the Legislature found among other things that the State is subject to periodic drought, the development of traditional water resources has not kept pace with the State's population, and "[t]he environmental benefits of recycled water include a reduced demand for water in the Sacramento-San Joaquin Delta which is otherwise needed to maintain water quality, reduced discharge or waste into the ocean, and the enhancement of groundwater basins, recreation, fisheries, and wetlands." Water Code Section 13576.

Clearly, the use of recycled reclaimed water in cooling towers is one of the highest and best uses of tertiary wastewater effluent. Any condition that does not provide for the EAEC utilizing all recycled water made available from the MHCS D is flawed. State Water Resources Control Board Resolution 75-58.

The Bethany-Byron Irrigation District (BBID) does not have reclaimed wastewater and is unable to provide it to the EAEC project. The MHCS D has a tertiary wastewater treatment plant and is able to provide recycled water consistent with the strong policy of the State. Only the MHCS D can provide recycled water at a cost comparable to or less than the cost of supplying raw water.

The MHCSO has a permit to discharge its wastewater into the Delta. A condition on the EAEC project that requires the use of MHCSO treated wastewater as recycled water benefits the State.

Any claim that BBID is a municipal corporation under California Constitution article XI, section 9 is misplaced. See *Turlock Irrigation District v. Hetrick* (1999) 71 Cal.App. 4<sup>th</sup> 948, limiting irrigation districts to their statutory powers. BBID does not have the power to provide sewage disposal without an election and complying with statutory requirements. Water Code Section 22170. BBID does not provide reclaimed wastewater, and BBID does not have recycled water.

BBID mistakenly attempts to invoke the provision of the Public Utility Service Duplication Act. The Service Duplication Act applies to privately owned public utilities. BBID is not a privately owned public utility; it is a public agency formed pursuant to the irrigation district law. Water Code Section 20500 et seq.

There is an exception in the Service Duplication Act that pertains to political subdivisions that provide water service. That exception does not apply to BBID. Public Utilities Code Section 1505.5 precludes the extension of service within an existing district when the same type of service is already being provided. BBID does not provide wastewater treatment service to produce recycled water within its district nor is BBID providing recycled water services from treated wastewater. BBID does not provide the same type of service as the MHCSO. As such, BBID's assertion that it is the only entity available to provide recycled water to the EAEC is erroneous.

The CEC should recognize that the MHCSO is the only feasible provider of wastewater to the EAEC. The CEC should condition the project to take all the recycled wastewater available from the MHCSO and require EAEC to enter into a water supply agreement with MHCSO.

The size of the pipeline should be based on the necessary capacity to deliver all of the available recycled wastewater from the MHCSO at buildout of the community. A pump station, adequate pumps and accessories, including backup emergency power supply should be required.

Emergency response is another concern of the MHCSO. The MHCSO will have the only concentrated population downwind of the EAEC. Any fire, chemical spills or poisonous flumes may impact the new community. Any immediate medical care response involving accidents or trauma will undoubtedly come first from the MHCSO due to its geographical location.

Any EAEC safety or emergency response impact directly or indirectly affecting the MHCSO community should be mitigated at minimum by compensation for services provided, and specifically by the construction and maintenance of an emergency facility and the providing of equipment and supplies. The current MHCSO provider for these

services is Tracy Fire at 100% cost to the MHCSD. Such compensation would be channeled to the MHCSD affected provider.

Attached are suggested revisions to certain conditions that pertain to the above assertions. There may be other conditions that are related yet not thoroughly analyzed by the MHCSD on such short notice.

Respectfully submitted,

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General Manager

c: Mike McGrew, County Counsel

## Attachment

Reference: Findings and Conclusions of the Revised Presiding Member's Proposed Decision

- 15) The availability of recycled water is not controlled by BBID; it is owned and controlled by the MHCSD.
- 16) Again, BBID cannot make recycled water available, and only the MHCSD can make recycled water available by the year 2005.
- 17) The words "and BBID" should be eliminated.
- 25) Delete Finding.
- 26) The last sentence is erroneous. The MHCSD has an existing river discharge permit. That existing permit does have a condition requiring testing prior to implementation, however the MHCSD has already demonstrated complete land reuse infeasibility. The MHCSD presently has the option to implement partial reuse on lands north of Bryon Rd.
- 28) Although MHCSD agrees with the State of California that the highest and best use of tertiary-treated wastewater is for use in cooling towers, the statement is false. The MHCSD does have plans to install re-use infrastructure on lands north of Byron Rd. for golf courses, parks, etc., and not to reuse effluent on lands outside the development.

Reference: Conditions of Certification - Soils & Water (starting at page 364)

- 5) The size of the pipeline should be based on the necessary capacity to deliver all of the available recycled wastewater from the MHCSD at buildout of the community. A pump station, adequate pumps and accessories, including backup emergency power supply should be required. The last sentence in the first paragraph should be revised to read: ".....offered to it by the MHCSD at a cost.....". The words "and recycled" in the last sentence in the last paragraph should be deleted. A new last sentence should be added to read: "Prior to commencing operations, owner shall submit a signed copy of a water supply agreement with the MHCSD setting forth the rates and conditions for recycled water supply."
- 6) (part d) The words "and pump facility" should be inserted after the word "pipeline".

Revise Fire and Emergency Services condition:

Any EAEC safety or emergency response impact directly or indirectly affecting the MHCSD community should be mitigated at minimum by compensation for services provided, and specifically by the construction and maintenance of an emergency facility and the providing of equipment and supplies.