

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



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In the Matter of Application of Golden Hills Sanitation Co., Inc., A California corporation, for a Certificate of Public Convenience and Necessity to Maintain and Operate an existing Public Utility Wastewater System for the Golden Hills Community Near Tehachapi in Kern County and to Affirm Rates for Service and Issue Stock.

Application No. A0808011  
(filed August 19, 2008)

**AB LAND DEVELOPMENT, INC.'S BRIEF RE  
CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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Pursuant to the September 11, 2009 Scoping Memo and Ruling of Assigned Commissioner, AB Land Development, Inc. (“AB Land”) hereby submits its Opening brief on the issue of whether granting a CPCN requires new reviews under California’s Environmental Quality Act (“CEQA”) [Pub Res C. §§21000 *et seq.*].

**I. INTRODUCTION**

Golden Hills Sanitation Co., Inc.’s (“Applicant”) application No. 08-08-011 (“Application”) and amendment thereto dated July 12, 2009 (“Amendment”) essentially brush aside CEQA, pretending that no review is necessary here. Yet it is undeniable that Applicant’s facility is part of a larger reclamation project that has failed, and that what exists today bears no resemblance to what was envisioned by the limited CEQA review undertaken more than 25 years ago.

Under the facts and law applicable here, the Commission cannot follow Applicant’s suggestion to turn a blind eye to this significant and legally required step in the CPCN process. CEQA requires new and thorough consideration not only of Applicant’s existing

operations, but also of the future anticipated expansions, additions and extensions the Application spells out as part of the larger project.

**II. DESPITE ASSERTIONS OTHERWISE, CEQA CERTAINLY APPLIES TO THE APPLICATION. EVEN THE AMENDED APPLICATION INDICATES THE PLAN TO DOUBLE THE PLANT’S OUTPUT AND TO ADD THE LONG OVERDUE ALTERNATIVE DISCHARGE SITE**

CEQA is an important law in California, and cannot be brushed aside here as Applicant suggests. The CEQA process is triggered by an application for a public agency approval or by an agency’s decision to consider a project, and the definition of “project” is broad to enable maximum protection of the environment. *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1188-89. “The purpose of CEQA in general is well established: ‘to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.’” *Id.* at 1220 (quoting *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259).

Activity is a project covered by CEQA if it is directly undertaken by a public agency, supported by a public agency, or involves issuance of entitlement for use by a public agency, and has the potential to result in a physical change to the environment, directly or ultimately. Pub. Res. C. §21065; 14 Cal Code Regs §15378. Private activities are subject to CEQA if they involve government participation, financing or authorization. Pub. Res. C. §21065(b)-(c); 14 Cal Code Regs §15002(c), 15377. Activities that involve public agency authorization include the issuance of a lease, permit, license, certificate or other entitlement for use. Pub. Res. C. §21065(c); 14 Cal Code Regs §15378(a)(3). Issuance of such an authorization for a private activity triggers CEQA’s requirements even though the activity had been conducted under a prior permit or authorization. *Azusa Land, supra*, 52 Cal.App.4th at 1190.

Under clear law, issuance of a Certificate of Public Necessity by the PUC is a project under CEQA. *See* 20 Cal. Code Regs. § 2.4 (requiring CEQA compliance in connection with PUC applications). And despite Applicant’s assertions otherwise, there is no exemption that applies. Applicant provides no support for the bald assertion that the “general exemption”

applies and, without more, the conclusion is without support. Nor is there an explanation of how an “existing facility” seeking government approval is exempt merely by virtue of its pre-existence, regardless of the size of the project – the assertion flies in the face of the entire body of CEQA law. *See, Azusa Land, supra*. Again, without more, the conclusion is unsupported.

**A. CEQA Consideration Cannot be “Phased” or Piecemealed, as Applicant Suggests.**

Under clear California law, a public agency may not “piecemeal” or divide a single project into smaller individual subprojects to avoid responsibility for considering the environmental impact of the project as a whole. *Orinda Ass’n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145. CEQA “‘cannot be avoided by chopping up proposed projects into bite-sized pieces’ which, when taken individually, may have no significant adverse effect on the environment.” *Tuolumne County Citizens For Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1223 (citation omitted). Consideration of a project must include all foreseeable aspects, and certainly all of those predicted by the project proponent, and must include all reasonably foreseeable environmental impacts that will result from the whole project. *See, e.g., Bozung v. LAFCO* (1975) 13 Cal.3d 263, 277, *superseded by statute on other grounds, as recognized in National Resources Defense Council, Inc. v. City of Los Angeles* (2002) 103 Cal. App. 4th 268, 271 n.2.

Here, Applicant has clearly indicated that the prayed for PUC Certificate of Public Necessity is just the first step in Applicant’s plans for this project – indeed the original Application spelled out the whole project, including:

1. Applicant intends to double the capacity of the plant. The Application at page 15 seeks “Authority to expand the plant and the effluent lines to handle 200,000 gallons per day as authorized by the 1981 Regional Water Board order.” At page 12, the Application explains “Expansion of the facility will eventually be deemed necessary given the areas of growth projection.” And the Amendment, at pages 10-11, confirms the intended

expansion.

2. Applicant intends to construct a new discharge site on adjacent lands, comprised of “85 acres (34ha) of useable meadow property owned by the District in Brite Creek Canyon.” [Amendment, p. 21] “The Applicant is prepared to implement all necessary diligence to utilize Brite Creek Canyon.” [Amendment, p. 22]
3. The Applicant intends to significantly expand its service area. [See, Amendment, p. 1].

Though these aspects of the “whole project” are made clear in Applicant’s first Application filed herein, and thus all must be considered together here, Applicant has even gone ahead and spelled out its current plan to piecemeal or chop up the approvals sought from the Commission, in violation of CEQA law:

“[I]t has become clear to GHSC that its original application combined multiple authorizations that should have been sought separately by individual application, the first of which is the instant application, as amended herein, seeking a CPCN for its existing service.” [Amendment, p. 3-4] “Once the CPCN is granted, GHSC will be in a better position to determine, if at all, whether, how, and to what extent any further, formal requested changes to its existing service and rates should be undertaken.” [Amendment, p. 4]

The “project” under consideration by the Commission must include the whole project, as foretold by Applicant. Nothing short of full CEQA review, including full evaluation of potential impacts on Tom Sawyer Lake resulting from the whole project, is required.

**B. The Limited CEQA review Applicant underwent nearly 30 years ago does not prevent CEQA review now. To the contrary, CEQA review is required by the predicted changes in the project as well as the changed and unforeseen circumstances surrounding it.**

Applicant’s assertion that the Commission should rely upon and accept the prior limited CEQA review is entirely without support in the law for several reasons, all falling squarely within California Public Resources Code Section 21166:

“When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.

(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.

(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.” Cal. Pub. Res. C. §21166

First, the limited CEQA documents attached to the Amendment confirm that none of the people involved in the implementation of this project, including those seeking and providing any CEQA review, foresaw the changes in circumstances that render this reclamation project a failure. All assumed the District would end up owning and operating the facility, not Applicant, whose mismanagement resulted in the long list of violations through the years. Nobody foresaw the golf course would fail, eliminating a critical component of the intended reclamation project. Nobody foresaw the devastation that would come to the Lake resulting from the decades of effluent deposit, and subsequent evaporation, leaving behind the solids and salts that render the Lake all but unusable. Nobody foresaw the numerous violations of RWQCB standards impacting the quality of water in the Lake. All of these are significant facts unknown, and unknowable, at the time the initial limited CEQA review took place.

For that matter, the “Checklist” included with the CEQA documents attached to the Amendment indicates at page 12 that there would be no “change in the amount of surface water in any body,” no “discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen or turbidity,” and no “change in the quality of ground waters...” These assumptions, along with the assumption that a golf

course would support reclamation of the water, were all included in the CEQA review, and they were either false or at least inaccurate assumptions at the time (undermining the prior review), or they are changed circumstances now, requiring CEQA review for the current approval sought.

“[T]he Guidelines clarify that the new information justifying a subsequent EIR must be of ‘substantial importance’ and must show that the project will have ‘significant effects not discussed in the previous EIR or negative declaration,’ that ‘[s]ignificant effects previously examined will be substantially more severe’ than stated in the prior review, or that new mitigation measures now exist, or are now feasible, but are not being adopted by the project’s proponents.” *Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041, 1057-58 (citations omitted).

What was considered in the limited CEQA process bears no resemblance to what has actually occurred, and to what exists now in this failed reclamation project.

“A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” 14 Cal.Code Regs. §15300.2(c).

Second, the existing project that Applicant constructed does not even conform to what was originally envisioned and reviewed in that limited CEQA review (indeed, this is one of the reasons why the District refused to take over ownership of it – See, Exhibit D hereto, October 17, 2001 letter from District to Applicant)<sup>1</sup>. And according to the RWQCB, the reclamation project as a whole no longer matches the WRRs describing it (which no doubt formed the basis of the original CEQA review) [*see*, Exhibit B hereto, bates 0059]. In light of the change in circumstances surrounding operation of the plant, and impacting the reclamation project as a whole, this project bears no resemblance to what was envisioned and analyzed decades ago.

Third, compared to the current status of the project, the substantial changes Applicant predicts for its future (discussed above – doubling the capacity, increasing the service

<sup>1</sup> To avoid confusion in reviewing the various briefs filed by AB Land, Exhibits previously filed with earlier AB Land Briefs are attached behind the same identifying tabs as previously. Only those Exhibits referenced herein are attached hereto, and accordingly, there are gaps in the Exhibits (e.g., there is no Exhibit “A” attached hereto).

area, etc.), were certainly not analyzed in the limited review, and they trigger additional CEQA review under Section 21166.

Finally, with respect to any suggested exemption for “existing facilities,” the failure of the project to adhere to the WRRs and WDRs, and the proposed modifications to the project foretold by Applicant, particularly given the severe change in circumstances, certainly render any such exemption (if it did exist) inapplicable. *See, e.g., County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795.

For all these reasons, 14 Cal. Code Regs §§15061(b) and §15301 do not apply.

### **III. CONCLUSION**

Under clear California law, CEQA review is required, and AB Land respectfully requests that the Commission reject the application until such time as Applicant complies with all of the requirements of that important law.

DATED: October 14, 2009

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**CERTIFICATE OF SERVICE**

I, Lani A. Nonato, certify:

I am employed in the County of Los Angeles, California, am over eighteen years of age and am not a party to the within entitled cause. My business address is Hill, Farrer & Burrill LLP, 300 South Grand Avenue, 37th Floor, Los Angeles, CA 90071.

On October 14, 2009, I caused the following to be served:

**AB LAND DEVELOPMENT, INC'S BRIEF RE CALIFORNIA ENVIRONMENTAL  
QUALITY ACT**

On the following parties:

**SEE ATTACHED SERVICE LIST**

I served the document by electronic mail delivery to all parties on the October 14, 2009 service list who have provided the Commission with an electronic mail address and by first class mail on parties.

*/s/*

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Lani A. Nonato

**SERVICE LIST**  
**(As of August 6, 2009)**  
**APPLICATION NO. A0808011**

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