

Rodriguez, Melanie

From: Janet Doherty <janetdoherty15@gmail.com>
Sent: Monday, August 12, 2024 1:53 PM
To: Rodriguez, Melanie
Cc: jennifernormoyle123@gmail.com; karen@karenmaki.com
Subject: Non-agenda comments for 8.19.2024 Port of Stockton Commissioner meeting

CAUTION: This email originated from outside the Port. Please exercise caution.

Regarding the proposed GSNR wood pellet production plan: this project threatens public health, an economically disadvantaged Stockton population, the climate, and our forests. But in chief: climate leadership requires rapidly cutting emissions and California should not promote this destructive, polluting project.

Wood pellets are polluting, expensive, and an inefficient energy source. Burning wood to generate electricity produces more carbon emissions than coal per unit of electricity produced. It inefficiently uses a product which, while technically renewable, will take decades to grow back. Greenhouse gas emissions would be emitted at every step of the project: cutting forests, trucking trees long distances, chipping wood and producing pellets, transporting pellets hundreds of miles to ports by truck, and shipping pellets to be burned overseas, yet this is somehow supposed to be an "environmentally conscious" project!? Please join in the refusal to concede that this is an acceptable use of our precious California forests. This project is largely dependent on logging in national forests to provide wood for the pellet mills.

The project would support removal of trees of any type and size within a 100-mile radius of each pellet facility to manufacture more than one million metric tons of pellets every year, damaging sensitive habitat near and in our state parks. Who provides over-sight to make sure GSNR doesn't destroy valuable habitat, leaving barren hills?

We would like to know how the Stockton advocacy community and public will be able to participate and have their concerns addressed by enforceable measures in lease agreements.

--
Janet Doherty
Sacramento, CA
916-248-6257

Rodriguez, Melanie

From: Hilda Cabello-Garcia <hildacabellogarcia@gmail.com>
Sent: Monday, August 12, 2024 6:07 PM
To: Rodriguez, Melanie
Subject: Opinion on Golden State Natural Resources

CAUTION: This email originated from outside the Port. Please exercise caution.

Dear Port of Stockton Commissioners,

My name is Hilda and I oppose Golden State Natural Resources' (GSNR) project and bid for an export terminal because we are a disadvantaged community under AB 617 in a nonattainment air quality zone. I am a youth raised near the Port of Stockton and I know that this project will cause even more harm to the health of our community. The GSNR project will increase air pollution during a time when we are doing everything we can to reduce air emissions.

1. I ask the Port of Stockton to not enter into any agreement with GSNR.

2. I ask the Port of Stockton to partner with residents to develop a sustainable strategic plan that will not further harm resident's health while allowing for economic growth.

Thank you for your time,
Hilda Cabello-Garcia

Rodriguez, Melanie

From: Katrina Tomas <ktomas@earthjustice.org>
Sent: Friday, August 16, 2024 2:56 PM
To: CEQA; Cashman, Jason; Rodriguez, Melanie
Cc: Nina Robertson; Joseph Griffin; Katrina Tomas
Subject: Coalition Comment Letter for 8.19.24 Commission Meeting
Attachments: 2024-0816 Coalition Response to Port of Stockton 8.13 Staff Report.pdf

CAUTION: This email originated from outside the Port. Please exercise caution.

Good afternoon,

Please find attached for submission Earthjustice, Center for Biological Diversity, Sierra Club, and Little Manila Rising's Comments on the Port of Stockton's August 13, 2024 staff report and response to comments for the proposed BayoTech Project (Agenda Item 10 for the August 19, 2024 Port of Stockton Board of Commissioners Meeting).

A copy of this letter will also be sent via U.S. mail. Please contact me if you are unable to access the attached comment letter.

Thank you,

Katrina

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EARTHJUSTICE



SIERRA CLUB
DELTA-SIERRA GROUP
MOTHER LODGE CHAPTER



August 16, 2024

Via E-Mail and U.S. Mail

Jason Cashman
Environmental and Regulatory Affairs
Manager
Port of Stockton
2201 West Washington Street
Stockton, CA 95203
ccqa@stocktonport.com

RE: Port of Stockton's Response to Comments on the Final Recirculated IS/MND for the Proposed BayoTech Project

Dear Mr. Cashman:

We submit this letter in response to the Port of Stockton's staff report, dated August 13, 2024 and publicly released August 15, 2024 ("August 13 staff report") responding to comments on the Final Initial Study-Mitigated Negative Declaration ("Final IS-MND") for the BayoTech Hydrogen Production and Filling Facility Project ("Project").¹

As an initial matter, the Port's legal arguments pertaining to the timeliness of public participation are incorrect. As we explained in a letter to Port staff on July 31, 2024 (attached as **Exhibit A**), comments alleging noncompliance with CEQA can be "presented to the public agency orally or in writing by any person during the public comment period provided . . . or prior to the close of the public hearing on the project before the issuance of a notice of determination."² The hearing for this Project has not yet concluded. Any comments raising

¹ We refer throughout these comments to the Recirculated IS-MND, Final IS-MND, and associated appendices located here: <https://www.portofstockton.com/ccqa-documents/>; <https://www.portofstockton.com/wp-content/uploads/2024/06/Final-Initial-Study-Mitigated-Negative-Declaration-for-the-Port-of-Stockton-BayoTech-Hydrogen-Production-and-Filling-Facility-Project-20240606-1.pdf> (Final IS-MND); <https://www.portofstockton.com/wp-content/uploads/2024/03/Recirculated-Draft-Initial-Study-Mitigate-Negative-Declaration.pdf> (Recirculated IS-MND).

² Pub. Resources Code § 21177, subd. (a) (emphasis added).

environmental objections submitted prior to the Commission’s vote on Project approvals, in writing or orally, are part of the record the Commission must consider in making its decision.³

Accordingly, under the plain letter of the law, the comments of Earthjustice, Center for Biological Diversity, Sierra Club, and Little Manila Rising (together, “Coalition”) on the Final IS-MND were timely submitted prior to the July 15, 2024 Port of Stockton Board of Commissioners meeting (“Coalition’s July 15 Comments”).⁴ Contrary to assertions made by Port counsel, these comments enhance, and do not detract from, the administrative process for stakeholders to engage fully with substantive and procedural aspects of this Project—a Project that is likely to impact the community and emit greenhouse gases, undermining state goals and policies, including Stockton’s ability to act consistently with its own emissions reduction and land use planning.

The Port’s substantive response to the Coalition’s July 15 Comments, though inadequate, demonstrates the seriousness of the Coalition’s comments and the contributions that the comments made to this administrative process and the Port’s own decision making. As the August 13 staff report affirms, “[t]horoughly reviewing and responding to comments received is necessary to enable the Board of Port Commissioners to make a determination on the proposed BayoTech project based on the entire record.”⁵ Port counsel further affirms that the Port “takes seriously its duty to consider potential environmental impacts raised by the public.”⁶ This duty necessarily requires the Port to consider all issues raised in the Coalition’s timely-submitted July 15 Comments and to encourage public participation that, like the Coalition’s comments, provide important information to the Port. Unfounded and incendiary accusations against public commenters, such as those contained in Port counsel’s “guidance” to the Port, do not assist the Port in fulfilling this important duty.

Furthermore, it is simply not the case, as improperly asserted in the “guidance” of Port counsel, that “the period of time for public comments has now passed and under administrative law practice no new public comments can be received.”⁷ No authority is cited to support this assertion. That is because there is none. As explained above, under the California Environmental Quality Act (“CEQA”), the record is not closed until the hearing concludes.⁸

³ See Pub. Res. Code § 21177, subd. (a).

⁴ The contents and appendices for the Coalition’s July 15 Comments, as well as prior comments made by the Sierra Club, Little Manila Rising, and the Center for Biological Diversity submitted to the Port of Stockton, are incorporated by reference into these comments.

⁵ Interoffice Memo from Jason Cashman to Krik DeJesus, Re: Response to Comments on the Final Recirculated IS/MND for the Proposed BayoTech Project (Aug. 13, 2024) (“August 13 Staff Report”) at 1.

⁶ August 13 Staff Report at 3.

⁷ August 13 Staff Report at 3, n.2.

⁸ Pub. Resources Code § 21177, subd. (a) (emphasis added); See also Exhibit A, which provides additional information as to why this submission is timely and why consideration is required in CEQA.

In addition, throughout the Port's substantive response to the Coalition's July 15 Comments, dated August 7, 2024 ("August 7 Response"), the Port confuses the applicable law and incorrectly asserts that the Port has conducted an adequate environmental review for this Project. While we acknowledge the Port's attention to our comments, its responses do not resolve any of the many issues identified in the Coalition's July 15 Comments. Therefore, all concerns and arguments raised in the Coalition's July 15 Comments remain relevant and we therefore reassert those comments by reference here. Below we expand in detail on some of the most glaring issues.

For these reasons, we respectfully urge the Port to comply with its legal obligations to consider public comments until the hearing concludes, including the Coalition's July 15 Comments and these comments, and to complete a full Environmental Impact Report ("EIR") as required by CEQA.⁹

I. The Project description and environmental setting remain inadequate.

The Port fails to address all issues raised in the Coalition's July 15 Comments related to the IS-MND's inaccurate Project description and environmental setting, thus all concerns and arguments articulated in that letter remain valid. Indeed, despite the Port's contention to the contrary, the CEQA Guidelines require an initial study to describe a proposed project and its environmental setting.¹⁰ Project descriptions should contain all details that are essential components of a project since "an accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity."¹¹ Here, the Final IS-MND does not adequately describe the Project, the need for the Project, or the Project's environmental setting because it omits key details that are essential for accurately assessing the Project's environmental impacts, as described in the Coalition's July 15 Comments.¹² The Port's August 7 Response does not justify or cure these deficiencies.

For example, the Project description does not articulate a need for the Project and the Port's response to comments continues to erroneously premise the "project need" on the flawed

⁹ In the August 13 Staff Report, Staff proposes ADOPTING THE FINAL IS/MND FOR THE PROJECT, INCLUDING ALL FEASIBLE MITIGATION MEASURES, WITH CONSIDERATION OF THE MITIGATION MONITORING AND REPORTING PROGRAM (MMRP). The July 15, 2024 Staff Report states that "Pursuant to AB 3180, a Mitigation Monitoring and Reporting Program (MMRP) has been prepared and is accompanied by the associated report forms used to verify compliance with individual mitigation measures identified as part of the IS/MND. The MMRP is included as Attachment B." However, contrary to what staff indicate, that Staff Report does not appear to contain an Attachment B or otherwise include a complete MMRP document. Commenters request clarification from the Port as to what document includes the complete contents of the final MMRP. Further, to the extent its entire contents have not already been disclosed to the public and made available for comment, commenters request that the Port publish the MMRP and provide the public with the opportunity to comment on it.

¹⁰ CEQA Guidelines § 15063, subd.(d)(1).

¹¹ *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 731.

¹² Coalition July 15 Comments at 3 – 6.

assertion that the hydrogen produced by the Project will reduce greenhouse gas emissions. Not so. Fossil-generated hydrogen—like that which would be produced by this Project—will not decrease reliance on fossil fuels and will not decrease air pollution, including greenhouse gas emissions. Furthermore, as mentioned in prior comments, the Final IS-MND’s environmental setting is deficient for numerous reasons, including its omission of the nearby DTE energy biomass plant and failure to disclose current conditions of the Port of Stockton gas infrastructure pipelines. The Port does not respond to either of these comments. Its other responses are also inadequate and do not address issues raised by the Coalition’s July 15 Comments. For these reasons, and the reasons further articulated in prior comments, the incomplete description of the Project and its environmental setting are unlawful under CEQA.

II. The Port continues to inadequately disclose and mitigate air emissions impacts.

The Port fails to address all issues raised in the Coalition’s July 15 Comments related to air quality and therefore all the concerns and arguments articulated in those comments remain valid. We provide more detail on two specific issues below.

A. The basis for the truck emissions estimates remains unclear, and the Port contradicts its prior rationale.

The Port continues to fail to justify its PM-10 estimate of .76 tons per year (“tpy”) and contradicts prior statements justifying the basis for this estimate. The Port’s Response states:

“The reduction in PM levels between the first Draft IS/MND and Recirculated Draft IS/MND is due to the condition of the access roadway during operations. In the previous analysis, it was assumed that approximately 10% of the access road to the site was unpaved, and therefore, PM emissions would be generated by road dust. However, based on updated construction plan, 100% of the access road would be paved. Therefore, the PM10 emissions was reduced from 12.20 tpy to 0.76 tpy.”

This explanation conflicts with what the Port stated in response to the Center for Biological Diversity’s comments on the Draft IS/MND’s estimate of 12.2 tpy. In relevant part the Port stated:

“s]ince the release of the Draft IS/MND, BayoTech has reached a commercial agreement to procure and operate zero-emission trucks. Hydrogen transport would be made in part using hydrogen powered fuel cell electric vehicles (HFCEV) trucks—not solely diesel trucks as reported in the Draft IS/MND. Therefore, emissions associated with the number of truck trips would be less than reported. The Recirculated Draft IS/MND has been updated to incorporate this change.”

The Port thus affirms that it was the “commercial agreement to procure and operate zero-emission trucks” that provided the basis for its change of the PM-10 from 12.2 tpy to .76 tpy, not changes to the access road surfacing.

The IS-MND and Air Quality analysis included as Appendix C to the Recirculated IS-MND likewise does not explain the .76 tpy PM-10 estimate in relation to truck technology and road surface type. To the extent that information is included in modeling spreadsheets, it is not in a form accessible and understandable to the public.

The Port has an obligation to explain to the public the basis for its estimates of air pollutants and respond accurately to public comments. The Port has not done so here, and the Coalition's concerns about particulate matter pollution remain.

Relatedly, we further note that confusion and contradictory information about BayoTech's truck fleet persists. Slide 10 of the Staff presentation made at the July 15 Port of Stockton Board of Commissioners meeting states that "[BayoTech]-owned trucks will be hydrogen fuel trucks." This is contradicted by the Port's August 7 Response which states that "[a]lthough BayoTech has indicated that they will use zero-emission trucks for a portion of their deliveries, BayoTech has not been able to provide the Port with the specific number of truck trips that would be made by zero-emission trucks."¹³ Further, ENG-MM-2 states that "BayoTech will also use zero-emission trucks for at least 50% of its deliveries."¹⁴

The Port's contradictory statements about whether and to what extent the Project will use zero-emissions vehicles instead of fossil-fueled vehicles thwarts public understanding of the Project and its potential impacts, thus contravening the letter and spirit of CEQA. As previously noted in the Coalition's July 15 Comments, this lack of disclosure is particularly concerning given the toxic and carcinogenic impacts of diesel PM and the fact that the project is located in a community already overburdened by air pollution from trucks relating to Port lease operations.

B. The Port continues to fail to account for reasonably foreseeable emissions impacts from Project hydrogen.

In its August 7 Response, the Port states that "the end use of the hydrogen is generally known based on general markets for hydrogen today, including the transportation and power industries, but the end users could change based on the broader future and unknown market and technology changes."¹⁵ On this basis it claims that any estimate of end use emissions are too speculative and not required by CEQA.

As previously explained in the Coalition's July 15 Comments, the Port has an obligation to accurately and transparently estimate all reasonably foreseeable emissions impacts from the use of the Project hydrogen. The obligation exists even if the exact composition of end uses are unknown at this time. Here, the Port admits that the end uses are "generally known" and that the Project's hydrogen could go to a variety of end uses, including end uses that increase pollution. Indeed, as we previously pointed out, 60% of hydrogen produced in the United States goes to

¹³ August 7 Response at 12.

¹⁴ Recirculated IS-MND at 57.

¹⁵ August 7 Response at 13.

petroleum refining, and the Port does not contest this fact in its August 7 Response. The Port's failure to account for reasonably foreseeable emissions impacts from Project hydrogen end uses violates CEQA.

Notably, the Port states that a primary reason why the Project is consistent with state goals is the *benefits* that will flow *from the use of Project hydrogen* to replace diesel fuel in trucks.¹⁶ The Port's July 15 staff report goes so far as to estimate that the Project would replace "50 diesel trucks that average 300 miles/trip" and that it thus "will avoid: 84 tons/year of NOx; 2 tons/year of particulate matter; and 8,000 tons/year."¹⁷ The Port's decision to tout the purported benefits of certain end uses of Project hydrogen while at the same time proclaiming it is too speculative to estimate potential emission increases from other "generally known" end uses is inconsistent and contradictory and thwarts public understanding of the Project's reasonably foreseeable impacts.

III. The Port's greenhouse gas analysis and mitigation remains inadequate.

The Port fails to address all issues raised in the Coalition's July 15 Comments related to greenhouse gas ("GHG") impacts. Therefore, all of the concerns and arguments articulated in those comments remain valid. We provide more detail on four specific issues below.

A. The impacts of hydrogen leakage remain inadequately analyzed.

The Port fails to address the GHG impacts of hydrogen leakage during transport of Project hydrogen and in end uses. The Port states that it need not provide a leakage estimate because commenters have not shown that such an impact is significant, but that is not the standard in CEQA. The Port, not the public, has an obligation to examine potential impacts. As explained in the Coalition's July 15 Comments, which cites numerous recent scientific sources, hydrogen is highly prone to leakage, and this fact warrants analysis of potential leakage during transport.

In addition, for the reasons stated above in Section II.B, the Port is obligated to estimate reasonably foreseeable GHG impacts including leakage from end uses which, as the Port admits, are "generally known." And for the reasons stated in Section II.A, the Port's explanation of the basis for its GHG estimates from mobile sources remains inadequate and inconsistent with prior representations by the Port that it assumed zero-emissions trucks.

¹⁶ See, e.g., Recirculated IS-MND at 1, 76.

¹⁷ Interoffice Memo from Jason Cashman to Krik DeJesus, Re: PUBLIC HEARING – BayoTech Hydrogen Production and Filling Facility Project; Ordinance No. 262, Stockton Port District Lease No. 2024-06 with BayoTech Inc.; 5 acres located at 3034 Navy Drive, Stockton (July 15, 2024) ("July 15 Staff Report") at 3.

Finally, while we appreciate the Port additional description of the systems test for assessing leakage from the storage pods, the general description does not explain how the Port arrived at the leakage estimates presented in the IS/MND and is thus deficient.

B. The Port continues to fail to evaluate emissions from mitigation measures.

The Port's response regarding its failure to evaluate impacts of its claimed GHG mitigation measure GHG-MM-1 is deficient. The Port cannot rely on the fact that it will use "book and claim" crediting under the Low Carbon Fuel Standard ("LCFS") to skirt this obligation.

First, the Port cannot on the one hand assert that it is mitigating Project GHGs by using book-and-claim renewable natural gas ("RNG") credits, and on the other hand claim that there are no real world effects from these credits.

Second, the Port's attempt to seek cover from the California Air Resources Board's ("CARB") CEQA review of the LCFS cannot stand. As the Port itself admits, it will not participate in the LCFS at this time. The Port acknowledges that it would be improper double-counting to use RNG credits as CEQA mitigation and to sell its hydrogen into the LCFS market. Therefore, it is not the case that "secondary impacts from the production of RNG [that the Project would use as GHG mitigation] has already been accounted for under CEQA." Indeed, even if the LCFS CEQA analysis were applicable here, which it is not, the LCFS environmental analysis itself makes clear that it is at the programmatic level and that individual projects must undergo their own review.¹⁸

Finally, the Port and BayoTech have stated in numerous contexts that the Project will attempt to purchase direct RNG in the future. Thus, the Port's current reliance on book-and-claim credits does not excuse it from analyzing the impacts of direct purchase of RNG.

C. The Port's continued reliance on book-and-claim renewable natural gas as GHG mitigation violates CEQA.

The Port's persistent reference to the LCFS in defense of its invalid GHG mitigation fails to acknowledge key facts presented by Dr. Cheryl Laskowski, former branch chief of the LCFS, in a letter contained in Exhibit F to the Coalition's July 15 Comments. All of the issues identified by Dr. Laskowski and in those comments remain unresolved. We respond below to particular statements made in the Port's inadequate response.

¹⁸ See CARB, Final Environmental Analysis, Appendix D (Sept. 17, 2018), <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2018/lcfs18/finalca.pdf> ("Specific development projects undertaken in response to the Proposed Amendments would undergo required project level environmental review and compliance processes.")

1. The Port continues to fail to explain how the proposed use of RNG credits results in additional GHG reductions.

The Port incorrectly states “the offset credits align with existing California Cap-and-Trade regulations and LCFS for GHG emissions reductions” and that “[t]his alignment ensures that the credits contribute to real and additional environmental benefits beyond what is required by law.”

As an initial matter, it is unclear to what “the offset credits” refers. LCFS credits are not “offset” credits, but a compliance mechanism in the LCFS regulation. Moreover, the LCFS is not a regulation based on additionality. In fact, it is clear that projects selling RNG into the LCFS do not need to be developed for the purpose of generating LCFS credits (as previously cited from the LCFS regulation documents in the Coalition’s July 15 Comments). By contrast, under CEQA, additionality is a core requirement of any GHG mitigation.¹⁹ As explained in the Coalition’s July 15 Comments, CEQA mitigation requires carbon reductions that would not have occurred *but for* the project. The Project, if using offsets, must ensure additionality is met to comply with CEQA. The Port does not do so here.

2. The Port continues to fail to explain how the proposed use of RNG credits results in real and verifiable GHG reductions.

The Port statement on how it will calculate and verify actual GHG reductions are also contradictory and invalid.

First, the Port improperly conflates different regulations, including Cap-and-Trade, LCFS, and the Mandatory Reporting Regulation and provides no support for its proposed use of book-and-claim RNG credits as CEQA mitigation. Listing these regulations, the Port references a commitment to the “requirements set by CARB” without any recognition that CARB’s requirements vary significantly across programs and are developed for the purpose of each regulation. As explained in the Coalition’s July 15 Comments, credits are not fungible across California programs or as carbon offsets merely by being called “credits.” Each type of credit has specific protocols under which it can be created and verified. The Port has failed to acknowledge that CARB’s various programs are distinct from each other and from CEQA mitigation requirements.

Second, as previously noted in the Coalition’s July 15 Comments, the carbon intensity (“CI”) in LCFS is not for use outside of the LCFS Program. The Port therefore cannot “leverage” the LCFS “framework” for CEQA project mitigation as it purports to do. As stated previously, the LCFS evaluates the CI based on use as a transportation fuel in California; because the Project

¹⁹ See *Golden Door Props., LLC v. County of San Diego* (2020) 50 Cal. App. 5th 467 (holding CEQA mitigation must be “real, permanent, quantifiable, verifiable, enforceable, and additional to any GHG emission reduction otherwise required by law or regulation, and any other GHG emission reduction that otherwise would occur.”)

will direct its hydrogen to multiple uses, it cannot import the LCFS's CI methodology. The Port's citation of LCFS-assigned CI scores is thus entirely inapt. The Port states that "credit values are calculated accounting for the carbon intensity of the mode of production compared to the fuel it would replace." It is entirely unclear how this calculation would be made for the Project's hydrogen. As already explained, GHG offsets adhere to specific protocols and methodologies that are separate from the LCFS. Therefore, contrary to the Port's assertions, the "rigorous standards of the LCFS" cannot and will not "ensure that the RNG credits used are real, quantifiable, and verifiable."

Third, the Port does not provide sufficient information about who would calculate and verify credit values and whether that method would comply with CEQA GHG mitigation requirements. The Port states that "[a]ll offset credits will be verified by accredited third-party organizations to ensure they meet the stringent requirements set by California GHG Emission Reporting regulations." The Port provides no additional detail as to who these verifiers will be or how they will ensure CEQA GHG mitigation requirements (which are entirely separate from "California GHG Emission Reporting regulations") are fulfilled.

Finally, the Port repeats its assertion that "[d]iscussions were held with CARB to confirm the validity of book-and-claim," implying that such discussions render its proposed GHG mitigation valid under CEQA in CARB's eyes. As explained in the Coalition's July 15 Comments, "discussions" with CARB do not indicate CARB endorsement of the project's use of LCFS credits for CEQA mitigation purposes.²⁰

D. The Port's August 7 Response does not explain how the Project will contribute to attainment of state climate goals.

In its August 7 Response, the Port fails to address the fact that the Project will always be GHG positive and out of alignment with State GHG reduction goals. CEQA Guidelines require consistency with state climate goals and strategies and consideration of those policies when determining GHG significance.²¹ Because the Port has failed to demonstrate this consistency here, it violates CEQA.

²⁰ Also worth noting is the fact that California's hydrogen hub (ARCHES) specifically disavows the approach proposed by the Project—i.e. pairing of fossil methane with biomethane credits. On its FAQ webpage, ARCHES states in no uncertain terms that "ARCHES hub projects will not include the use of plastics, dairy biogas, or fossil methane paired with biomethane credits." ARCHES, Publications, FAQ re "What does the commitment to green hydrogen mean?," <https://archesh2.org/publications/>. (also attached as **Exhibit B**). On July 15, 2024, the Governor's Office of Business and Economic Development, which is the lead for ARCHES, submitted to the Port a letter of support for the Project, but that support appears based on a misapprehension that the proposed Project will "utilize woody biomass" to create hydrogen. Since the Project does not contemplate use of woody biomass and relies exclusively on fossil methane paired with biomethane credits, it does not meet ARCHES criteria for support.

²¹ CEQA Guidelines §§ 15183.5(b) and 15064.4(b)(3).

IV. The Port continues to inadequately disclose and mitigate Environmental Justice impacts.

The proposed Project will be located adjacent to a community with some of worst air pollution in the state, yet the Port continues to avoid addressing or disclosing foreseeable environmental justice impacts to the Stockton community. Notably, and as explained in prior comments, the Port's Health Risk Assessment ("HRA") fails to fully quantify diesel particulate matter emissions or the specific emissions for various toxic air contaminants.²²

The Port does not offer any quantification in its response to comments. Additionally, the Port offers no explanation as to why the HRA does not examine how the emissions it calculated could affect human health in Stockton. The HRA does not put the impacts from Project pollutants like NOx in the context of existing public health problems in the region. Instead, the Port merely acknowledges that NOx contributes to atmospheric nitrogen dioxide, is a precursor to ozone formation, and a precursor to the formation of particulate matter.²³ Without more context or information, including the ways in which NOx harm human health, it is unclear how the Port is abiding by requirements and standards for a health risk assessment in an environmental justice community.

V. The Port continues to avoid analyzing cumulative impacts.

The CEQA Guidelines mandate *all* assessments of environmental impacts to include an analysis of cumulative impacts that "take[s] account of the whole action involved."²⁴ Courts have rejected negative declarations, such as this one, that fail to analyze cumulative impacts.²⁵

Indeed, a mitigated negative declaration must "[e]xplain[] the reasons for determining that potentially significant effects would not be significant."²⁶ A proper cumulative impacts analysis considers the incremental impact of a project in the context of the impacts of past, present, and reasonably foreseeable future projects.²⁷ The analysis of a project's own impacts is an inquiry that is distinct from considering the project's cumulative impacts.²⁸

²² Coalition July 15 Comments at 25- 27.

²³ August 7 Response at 45-46.

²⁴ CEQA Guidelines, § 15355, Appendix G.

²⁵ *San Bernardino Valley Audubon Society v. Metropolitan Water Dist. of Southern Cal.* (1999) 71 Cal.App.4th 382, 386, 399.

²⁶ CEQA Guidelines, § 15063, subd. (c)(3)(C).

²⁷ *Id.* at § 15065, subd. (a)(3); *Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 118 ("[T]he guiding criterion on the subject of cumulative impact is whether any additional effect caused by the proposed project should be considered significant given the existing cumulative effect.").

²⁸ *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d at 719-721 (holding that relatively small air quality impacts from a project do not eliminate the need to consider the project's combined impacts with other development).

Analysis of the Project's cumulative air quality impacts is especially crucial here because the Project is located in a community that already suffers from some of the worst air pollution in the state.²⁹ Further, even if the Port is correct, which it is not, that the Project's air quality impacts are not significant in isolation, they become more concerning when combined with the pollution produced by other nearby industrial sites such as the nearby Pelican Renewables ethanol plant and proposed carbon capture and sequestration project and the DTE Energy biomass plant, as well as the Port's own ongoing operations. The Port does not consider whether the Project's impacts in combination with other sources of air pollution will have cumulative impacts on nearby sensitive receptors that could be significant. The Port must prepare an EIR to investigate this question.

VI. The Port continues to inadequately analyze consistency with applicable land use plans.

The Port dismisses comments regarding the Project's inconsistency with applicable land use plans such as the Stockton General Plan, Stockton Climate Action Plan, and the Community Emissions Reduction Program because such an analysis is allegedly only required in an EIR. Again, this is wrong. CEQA Guidelines make clear that an initial study must examine whether a project "would be consistent with existing zoning, plans, and other applicable land use controls."³⁰ The Port has not done so here.

The Port's response to comments fail to analyze or justify the Project's inconsistency with several General Plan policies, as further explained in the Coalition's July 15 Comments. For example, SAF-4.1 "require[s] the construction and operation of new development to implement the best practices that reduce air pollutant emissions."³¹ Yet the Port has not instituted any requirements, merely making it a "goal" to implement best pollution mitigating practices. Moreover, the CH-2.3 which seeks to "focus on reducing the unique and compounded environmental impacts and risks in disadvantaged communities" by, among other things, "build[ing] ties with disadvantaged communities to ensure that local residents can make significant contributions to planning decisions."³² Nowhere in the IS-MND does the Project reduce or even analyze impacts to environmental justice communities adjacent to the Port.

Additionally, the Project is inconsistent with both the Stockton Climate Action Plan and the Community Emissions Reduction Program ("CERP"), developed by the community per AB 617.³³ Fossil-generated hydrogen, like this Project proposes, prolongs the use of fossil fuels and

²⁹ See Coalition July 15 Comments at 24 – 25.

³⁰ CEQA Guidelines, § 15063, subd. (d)(5).

³¹ City of Stockton, *Envision Stockton 2040 General Plan* (December 2018) (hereinafter "General Plan") at 5-24, https://cms3.revize.com/revize/stockton/Documents/Business/Planning%20&%20Engineering/General%20Plan/Adopted_Plan.pdf.

³² General Plan at 6-7.

³³ Health & Saf. Code § 44391.2.

diverts attention and resources from clean renewable energy. Yet, the Port does not justify how fossil-generated energy sources are compatible with policies that seek to reduce community greenhouse gas emissions.³⁴ Both the CERP and Stockton Climate Action Plan contain overarching goals and targets designed to alleviate the pollution and health problems burdening the community. The IS-MND should describe whether the Project overall is consistent with these plans. Additionally, and more specifically, the IS-MND should evaluate whether the Project's anticipated construction and operational impacts would advance or obstruct the CERP's air quality goals or its emissions reductions targets for diesel particulate matter, particulate matter 2.5, and cancer risk exposure. Additionally, the IS-MND should evaluate the feasibility of incorporating as many of the strategies identified in the CERP and Climate Action Plan as possible, either as project features or as mitigation measures.

Since the IS-MND fails to discuss the Project's consistency with the policies contained in these applicable land use plans, the Port's assessment of land use impacts is flawed and violates CEQA.

VII. Conclusion

We urge the Port to comply with its legal obligation to uphold the public's right to provide comment until the hearing concludes and to adequately disclose, analyze, and mitigate the environmental impacts of the Project prior to its approval. The Port's August 7 Response to comments do not cure any of the deficiencies identified in the Final IS-MND by the Coalition's July 15 Comments and its exhibits. The Port's Board of Commissioners should therefore deny all Project approvals, reject the Final IS-MND, and require an EIR to fully, and adequately, analyze all the Project's foreseeable impacts.

Sincerely,

Katrina Tomas
Associate Attorney
Nina Robertson
Senior Attorney
Earthjustice

John Fleming, PhD
Senior Scientist, Climate Law Institute
Center for Biological Diversity

³⁴ See City of Stockton, Climate Action Plan (August 2014), https://cms3.revize.com/revize/stockton/Documents/Government/City%20Manager/Sustainability/Climate_Action_Plan_August_2014.pdf at 3-39.

Gloria Estefani Alonso Cruz
Environmental Justice Advocacy Coordinator
Little Manila Rising

Mary Elizabeth, M.S., R.E.H.S.
Conservation Chair, Delta Sierra Group
Margo Praus
Chair, Delta Sierra Group
Sierra Club, Delta-Sierra Group

Exhibit A



July 31, 2024

Melanie Rodriguez
Board Secretary
Port of Stockton
2201 West Washington Street
Stockton, CA 95203
mrodriguez@stocktonport.com

RE: Public Comment and Participation on the BayoTech Hydrogen Production and Filling Facility Project

Dear Melanie Rodriguez:

Earthjustice together with the Center for Biological Diversity, Sierra Club, and Little Manila Rising (together, “Coalition”) submitted a comment letter on the Final Initial Study-Mitigated Negative Declaration for the BayoTech Hydrogen Production and Filling Facility Project (“Project”) prior to the July 15 Port of Stockton Board of Commissioners meeting. The Coalition’s comments were submitted in good faith to apprise the Port of inadequacies with its environmental review and urge the Port to complete a full Environmental Impact Report as required under the California Environmental Quality Act (“CEQA”). These comments were timely and properly submitted to the Port and must be included as part of the record of proceedings for this Project.

According to CEQA, comments alleging noncompliance with CEQA can be “presented to the public agency orally or in writing by any person during the public comment period provided . . . or prior to the close of the public hearing on the project before the issuance of a notice of determination.” (Pub. Resources Code § 21177, subd. (a) (emphasis added).) Indeed, courts have made clear that the public’s role in the environmental review process does not end when the public comment period for the environmental document expires. (*Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 926-28; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1199.) “[I]f a public hearing is conducted on project approval, then new environmental objections could be made until close of this hearing.” (*Bakersfield Citizens*, 124 Cal.App.4th at 1199.)

The hearing for this Project has not yet concluded. At the July 15 meeting, Commissioners unanimously voted to continue the hearing on the Project until August 19. Public hearings are not closed until the agency has voted on the item, and the Commission cannot declare otherwise. Accordingly, any comments raising environmental objections submitted prior to the Commission’s vote on Project approvals, in writing or orally, are part of the record the Commission must consider in making its decision. (*See* Pub. Res. Code § 21177, subd. (a).) Moreover, the Port cannot discourage public comment on the Project prior to the vote on this Project without violating the Brown Act’s open meeting requirements. (*See* Gov. Code § 54954.3.)



EARTHJUSTICE

Even if the meeting had not been continued, any comments submitted before and at the July 15 Commission meeting would have been timely for consideration and part of the record. (*Tracy First*, 177 Cal.App.4th at 926-928.) The Coalition's comment letter was indeed timely submitted prior to the close of the July 15 Commission meeting. (See Gov. Code § 54953, subd. (e)(2)(C).)

Thank you for your attention to this matter.

Sincerely,

Katrina Tomas
Associate Attorney
Earthjustice

cc:

Jason Cashman, Environmental & Regulatory Affairs Manager
Port of Stockton
jcashman@stocktonport.com
ccqa@stocktonport.com

Exhibit B

Handouts

About ARCHES

Fact Sheet

Hydrogen FAQ

Community Benefits

Presentations

ARCHES Community Stakeholder Meeting co-hosted with the DOE, October 25, 2023 ([slides here](#))

ARCHES presentation at the Annual Merit Review conference May 9, 2024 ([slides here](#))

White Papers

ARCHES white papers were written by the ARCHES working groups who met to discuss California's hydrogen market liftoff between 2022-2024. These documents are living documents and are expected to be updated regularly. These white papers reflect the voices of over 400 ARCHES members and constitute what is needed for overall market liftoff, by no means limited by the scope of the ARCHES DOE H2Hub.

You can read ARCHES' white papers [here](#)

Policy



ARCHES' role in policy is to educate decision-makers on the effects of proposed policy on the hydrogen market in California, for both the larger California ecosystem as well as the DOE H2Hub.

You can read our public comment letters on 45V [here](#)

Hub Proposal

In accordance with the US. DOE-OCED's funding opportunity announcement (FOA), ARCHES submitted its hub proposal in April 2023. This submission primarily consisted of a 100-page "technical volume" and a 25-page "community benefits plan.

Read more about these documents and view the originals:

[Read the full Technical Volume](#)

[Read the full Community Benefits Pathways](#)

FAQ

What is ARCHES?



How do I join ARCHES?



What happens once I join?



May I add additional members of my organization to the ARCHES mailing lists?



I signed up but am not getting any emails from ARCHES.



What steps will ARCHES take to ensure public transparency with the application process and the potential development of hubs?



Will community members and representatives of community groups be



compensated? If so, how will compensation be evaluated and paid?

How does ARCHES plan to create and maintain meaningful partnerships with community, EJ, and environmental advocates? +

How will the ARCHES decision-making process work? +

What role will community, EJ, and environmental advocates have in those decisions and in the governance of ARCHES? +

Will ARCHES meetings be conducted under Bagley-Keene, Brown Act, or other open meeting requirements/provisions? +

Who will have access to ARCHES information, and how will ARCHES balance the need for transparency and confidential business information? +

What does the commitment to green hydrogen mean? Will all projects use only electrolytic hydrogen generated from additional or excess sustainable and renewable sources from day one, and retire the Renewable Energy Credits associated with the electricity? +

Why does ARCHES focus on the term "clean, renewable" instead of "green" hydrogen? +

What will be the project selection criteria, and how will projects get selected and prioritized? +

What guarantees will there be in the Community Benefits Plan, and how will they be enforced? +

How will potential hydrogen leaks be mitigated, monitored, and rectified? +

Would ARCHES potentially fund the replacement of existing turbines with+ turbines that can operate on hydrogen-methane blends, but that cannot operate on pure hydrogen?

Is ARCHES considering power plant projects that combust hydrogen, and+ if so, will these increase polluting emissions like NOx in surrounding communities?

How will ARCHES hub ensure that its projects that utilize electrolysis do + not worsen California's drought?

Will ARCHES hub electrolysis projects increase the risk of electricity + shortages during peak demand periods?

Will ARCHES DOE hub include projects that blend hydrogen and natural + gas in pipelines?

How will ARCHES hub ensure safety? +

Is hydrogen a greenhouse gas that contributes to climate change? +

Will ARCHES DOE hub include projects that use hydrogen in residential + homes?

Are there better, safer alternatives than hydrogen based solutions for + decarbonizing the applications that would be deployed in the ARCHES hub?

Will ARCHES hub include projects in which hydrogen is used to produce + ammonia?

Is ARCHES making any long-term financial partnerships or engagements +

with community and/or environmental groups during this effort?

ARCHES Partners

ARCHES partners include leaders in energy research, communities, trades, utilities, for-profit companies and nongovernmental organizations. Those interested in joining this growing network are asked to sign and submit a Non-Disclosure Agreement.



JOIN THE NETWORK

ABOUT ARCHES

- › [About](#)
- › [Community Benefits](#)
- › [Our Network](#)
- › [Contact](#)

NEWS

- › [Meetings](#)
- › [FAQ](#)
- › [Latest Updates](#)
- › [Join The Network](#)

Social

Legal

- › [Terms Of Service](#)
- › [Privacy Policy](#)



To: Port of Stockton Commissioners
From: Mary Elizabeth, M.S., R.E.H.S.
Date: 8.19.2024
Re: Wildfire Mitigation Plan

Last month I submitted correspondence on non-agenda items regarding a wood pellet fire at the Port of Savannah in Georgia, USA that happened on 7.13.2024 in an underground conveyor belt on which wood pellets were transported and involved the storage domes.¹ This is not the first wood pellet fire that has happened at Georgia ports, as three years earlier there was a fire at the other Georgia deepwater port, the Port of Brunswick which involved stored wood pellets that was expected to cost the City of Brunswick \$250,000.² The Georgia Department of Insurance and Fire have identified decomposing wood pellets that spontaneously combusted as the cause.³

While the Port of Stockton is not located in a wildfire zone, contingencies should be incorporated to consider DTE the 45MW Biomass incinerator that stores decomposing wood feed at the Port of Stockton, as shown. Drying of these wood piles, resulting from increased temperatures, will increase flammability and should be considered for the 320,000 tons of woody biomass' stored and combusted annually. Climate Change is NOW!

Hopefully, the Port will not approve the lease of GSNR which would involve storing and exporting 1 million metric tons of dried wood pellets that are even more flammable than existing wood piles.



¹ Non-agenda item comments submitted to Port Commissioners 7.15.2024 by MEElizabeth

² ABC news video and news article

³ <https://www.firstcoastnews.com/article/news/local/brunswick-wood-pellet-warehouse-fire-cause-new-report/77-99de15a4-1e52-4884-8f2d-cbf7d9e79a0f>



Port of Stockton Commissioners and Staff
2201 West Washington Street
Stockton, California 95203
Via email to mrodriguez@stocktonport.com

8.19.2024

Re: Certification of Final BayoTech Hydrogen Production Project Recirculated
IS/MND and Lease Agreement

We, the undersigned, have submitted comments on the first BayoTech Initial Study/Mitigated Negative Declaration (IS/MND) in July 2023, on the Recirculated BayoTech IS/MND in April 2024, or July 2024 when this item was first considered by Port Commissioners.

We request a full Environmental Impact Report analysis in accordance with CEQA for projects that have the potential to significantly impact the environment. We request that the Port Commissioners not approve a 10 year lease with BayoTech with two 5 year options for a fossil gas hydrogen production facility at the Port of Stockton.

We have been consistently asking for a full environmental impact report because the analysis of impacts and mitigation measures proposed is inadequate for all the reasons laid out multiple time as documented in the following correspondence:

- July 2023 [IS/MND BayoTech Comment Letter collective](#)
- June 2023 [Comment Letter Center for Biological Diversity](#)
- November 2024 [Comment Letter Community Benefit Collective](#)
- April 2024 [POS Recirculated BayoTech Comment Letter collective](#)
- April 2024 [Comment Letter Restore the Delta](#)
- April 2024 [Comment Letter Center for Biological Diversity](#)
- July 2024 [POS Final BayoTech_collective_wattach.pdf](#)
- July 2024 [Earthjustice collective with attachments](#)
- August 2024 [Earthjustice collect with attachments](#)

We appreciate Port staff's efforts to take all comments seriously and the time it takes to review comments and prepare responses. The CEQA process and public hearings take information presented under consideration before the end of the process and public

hearings. The Port of Stockton Commission voted after all the information was presented on July 15, 2024, to extend the time prior to making a decision until Port staff had reviewed the information submitted. As the lead CEQA agency, the Port of Stockton Commission has the power to postpone decisions. This is not the case for those presenting information to the Port of Stockton Commission, not in the employ of the Port.

On Wednesday, 8.14.2024 at 5:13 the Port staff sent out the 8.19.2024 agenda to the interested parties list but the agenda and associated staff reports were not posted yet on the website, so only notice was provided. Some time on Thursday August 15, 2024, the staff report was posted and made available to the public. The staff report was dated August 13, 2024, included the analysis from Port Counsel, Steve Herum, draft responses to comments dated August 7, 2024, and consisted of 84 pages. Environmental justice advocates do not have the option to extend the review time so that each response to comments included in those 84 pages could be responded to specifically. Many of those responses were similar to responses to the July 2023 and April 2024 comments. The same outstanding issues regarding greenhouse gas emission mitigation, air pollutants, and safety persist as well as deficiencies relating to the fact that no cumulative impact analyses were performed to characterize additive impacts that the project will have on the Stockton community.

Technical and legal responses were prepared by Earthjustice in collaboration with the Center for Biological Diversity, Little Manilla Rising and the Sierra Club in July 2024 and August 2024 linked herein for your consideration. None of the content in the Port staff report dated August 13, 2024, was previously made available to the public, unlike the environmental justice comments submitted to the Port of Stockton Commission on July 15, 2024 which Port Counsel seems to object to as “unfair” and “unconscionable”. These terms used by representatives of the Commission fail to recognize that as the lead CEQA agency, you all had the power to extend the hearing so that you all could consider all the information before making a decision.

What follows is evidence that Port staff at various levels have systematically made efforts that seemingly are deliberate to ignore comments and concerns of the environmental justice community. The 8.15.2024 legal analysis and guidance provided by Staff Counsel, Mr. Steve Herum indicating that environmental justice comments provided in a timely manner for the Port of Stockton Commission’s consideration were not allowed called to mind, another final environmental impact analysis certification back in 2020, the Nustar project.

Steve Herum working for the Port as Port Counsel seemingly did not object when on April 6, 2020, the Port of Stockton Commission approved and certified a Final EIR without releasing the FEIR document to the public prior to consideration by the Port of Stockton Commission. Phone calls were made on 4.3.2020, following the observation on the posted agenda that the Final EIR certification would be considered, to obtain a copy of the FEIR to review prior to the Port Commission’s consideration. The Delta-Sierra Club had submitted comments on the Draft EIR for the NuStar project and was planning on reviewing the FEIR and preparing comments for the consideration of the Port of Stockton

Commissioners. On 4.3.2020 a California Public Records Act request was made for the agenda item information that was considered by the Port of Stockton Commission on 4.6.2020. On 4.7.2020, Jason Cashman forwarded two separate emails with the FEIR and MMP documents, probably responding to phone calls to him and his staff on 4.3.2020 in efforts to obtain the information which the Port Commission was to consider. On 4.13.2020, Melissa Whitener responded to the 4.3.2020 California Public Records Act request with a scan of the public notice made in the newspaper. All of this when COVID lockdown had been initiated. Additionally, the agenda specifically restricted public comments to 250 words which were submitted by the Delta-Sierra Group of the Sierra Club and other environmental justice advocates.¹

When the Port of Stockton Commission certified the Final EIR they attested to the facts that:

- (1) The final EIR has been completed in compliance with CEQA;
- (2) The final EIR was presented to the decision-making body of the lead agency, and that the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project.²

The Brown Act sets criteria for release of information for which the agencies subject to the Brown Act abide, including release of information provided to a majority of the decision makers:

Agendas or any other writings, except for records exempt from disclosure under section 6254 of the Public Records Act, distributed to all or a majority of the members of a legislative body for discussion or consideration at a public meeting are disclosable to the public upon request, and shall be made available without delay to members of the public in accordance with the provisions of section 54957.5.

If materials are provided prior to a meeting, the materials should, upon request and without delay, be made available to the public upon request at the time of distribution to the body. (§ 54957.5(a).)

In addition, members of the public may request in writing that the agenda or all of the documents comprising the meeting packet be mailed to them for a cost not to exceed the actual cost of providing the service. (§ 54954.1.) Upon receipt of such a written request, the agency shall mail the requested documents, provided that they are not exempt from disclosure pursuant to section 6254, to the requester at the time the agenda is posted or when the documents are provided to a majority of the members of the legislative body, whichever occurs first. The request must be renewed annually and failure of the requester to receive such documents does not invalidate any action which was the subject of the records.

The Act requires that agendas, agenda packets, and other writings distributed to members of a legislative body be made available in appropriate alternative formats to persons with a disability and that the agendas include information on the

¹ [4.6.2020 Environmental Justice Comments regarding Port Commission consideration of NuStar Final EIR](#)

² https://www.califaep.org/docs/CEQA_Handbook_2023_final.pdf

availability of disability-related aids or services to enable the person to participate in the public meeting consistent with the Americans with Disabilities Act. (§§ 54954.1, 54954.2, 54957.5.) Legislative bodies may go beyond the minimal requirements of the Act and provide greater public access to their meetings. (§ 54953.7.)³

In the case of NuStar, opportunities for the public to provide comments on an item being considered by the Port of Stockton Commission was prevented because the material considered was not provided to the public in advance of the meeting when the item was considered and the length of comments was limited to 250 words. While the Port has seemed to make some progress regarding information availability on the website and agenda page, efforts to squash and minimize environmental justice concerns continue. We suggest that a policy be developed when considering responses to environmental justice concerns and some specific goals be established to improve the environmental quality of Stockton that has been impacted by Port operations for generations.

Please accept these comments and those linked, instead of attached, as you consider whether or not a full EIR is required to address significant impacts from the project, including cumulative impacts. Taking action now will affect the community long into the future including community health and wellbeing. Our region already has some of the worst air quality in the nation, negatively affecting the health of residents and climate change is NOW! Increasing use of fossil fuel will only increase the rate of climate change.

BayoTech must provide a full environmental impact report for this project, rather than rely on an inadequate negative declaration analysis with some mitigation. A full environmental impact analysis pursuant to CEQA is needed to fully calculate the effect on our community and fully mitigate those impacts. The disadvantaged community residents and the elementary school in the vicinity must be considered and protected.

We urge you to not certify the draft Final BayoTech Hydrogen Projection Project Recirculated IS/MND and to require a full environmental impact analysis pursuant to CEQA and postpone finalizing any lease agreements for the BayoTech hydrogen production project until such time as a full environmental analysis has been performed.

Sincerely,

Mary Elizabeth, Delta-Sierra Group, melizabeth.sierra@gmail.com

Shoshana Wechsler, Sunflower Alliance, swechs@sonic.net

Jan Warren, Interfaith Climate Action Network of Contra Costa County, jtxwarren@gmail.com

Julie Dunning, Tree Stockton Foundation, jdsunshine3@att.net

Esperanza Vielma, Environmental Justice Coalition for Water. espe@ejc4w.org

Patricia Barrett, Mineral Baths Community Gardens, patricia_barrett@hotmail.com

³ <https://oag.ca.gov/system/files/media/the-brown-act.pdf>

From: Davis Harper <davis@restorethedelta.org>

Sent: Monday, August 19, 2024 2:09 PM

Cc: Barbara Barrigan-Parrilla <barbara@restorethedelta.org>; Wingfield, Jeff <jwingfield@stocktonport.com>; DeJesus, Kirk <kdejesus@stocktonport.com>; Esther Mburu <esther@restorethedelta.org>; Cashman, Jason <icashman@stocktonport.com>

Subject: Encouraging financially responsible planning for Port hydrogen projects

CAUTION: This email originated from outside the Port. Please exercise caution.

Dear Commissioners,

As we've stated in [past comment letters](#), Restore the Delta recognizes and appreciates the Port of Stockton's efforts to create a commercially available hydrogen supply in the region, but we encourage that those efforts be based on sound financial planning and an understanding of changing energy markets. We are concerned that a lease agreement with BayoTech (re Item 10 on today's Stockton Port District Commission Meeting agenda), could result in stranded assets and high remediation costs that may present barriers to future industrial development at the site. New hydrogen projects cannot rely on private demand alone; fossil based projects, in particular, will continue to be more and more difficult to justify financially as public incentives for such projects are phased out and stricter GHG compliance measures are implemented.

Public incentives do not favor fossil gas-based hydrogen production. We've already outlined that steam methane reforming (SMR), the proposed technology for the BayoTech facility, is ineligible as a hydrogen production method under the [proposed federal hydrogen production tax credit](#). Additionally, the California Air Resources Board has [proposed](#) to remove fossil-gas based hydrogen as an eligible source for CARB's Low Carbon Fuel Standard credits, effective January 1, 2031, per subsection 95482(h).

Public compliance measures for greenhouse gas emissions are poised to impact fossil fuel markets. The US EPA has begun implementing [new fees on methane emissions](#), which will surely impact natural gas prices that have already been skyrocketing in California. With these regulatory developments, the fiscal success of BayoTech's project at the Port hinges on a rapid shift in its feedstock to biomethane, otherwise known as renewable natural gas. BayoTech, however, has offered no detailed plan or commitments to shifting to renewable natural gas, which is at present significantly more expensive than traditional natural gas. Further, there's no clear pathway for a robust regional biomethane market due to sourcing uncertainties under state climate mandates. California's Short-Lived Climate Pollutant Reduction Strategy mandates a 40% methane emissions reduction by 2030 through efforts to divert organic waste from landfills and clean up dairy and livestock manure management practices; such measures will effectively reduce the amount of biomethane available for capture and conversion to hydrogen via SMR, which itself is a questionable use of biomethane from both a cost and energy efficiency perspective, as compared to using it for onsite electricity generation.

We can plan and debate more proactively the role hydrogen should play in decarbonizing our regional economy, however, we are firm that unabated steam methane reforming is not a wise investment choice for maximizing the Port's real estate assets. We urge you to delay this decision until a comprehensive environmental impact report and financial analysis can be completed to guide the development of a fiscally responsible hydrogen production strategy.

Thanks for your consideration.

--

Best regards,

Davis Harper

Program Manager, Carbon & Energy

Restore the Delta

2616 Pacific Ave #4296

Stockton, CA 95204

(209) 936-0797

pronouns: he/him

Rodriguez, Melanie

From: caresponsible <caresponsible@proton.me>
Sent: Monday, August 19, 2024 2:34 PM
To: Rodriguez, Melanie
Subject: Public Comment: Electric Utility 2024-26 Wildfire Mitigation Plan

CAUTION: This email originated from outside the Port. Please exercise caution.

Dear M Rodriguez:

Wildfire prevention at our ports, especially the Port of Stockton, is important for community safety, worker safety, supply chain integrity, and the free flow of goods in and out of California.

Your Consent Item B wisely assesses the enterprise-wide safety risks unique to the San Joaquin Operational Area. We believe that item B #2 (on page 16) is particularly important for your Wildfire Mitigation Plan: Fire or explosion – aboard a product carrier or at a facility.

As you know, Golden State Natural Resources is proposing the construction of storage domes at the Port of Stockton that would contain up to 70,000 metric tons of wood pellets.

<https://goldenstatenaturalresources.com/port-of-stockton/>

We believe such a plan poses an unacceptable fire and explosion risk and should be rejected.

As you're no doubt aware, more than 109 organizations sent a letter to Golden State Finance Authority (GSFA) expressing concerns about this aspect of the plan as well as many other concerns, including the debunked scientific claims on which the plan is based.

In a letter sent to Golden State Finance Authority on June 30, 2023, they stated the following:

"We are particularly concerned about the unacceptable public health and safety harms that the GSNR wood pellet project would pose to the port community of Stockton. Wood pellet storage and handling operations at ports create substantial fire and explosion hazards.¹ Wood pellet piles are prone to spontaneous combustion, and fine wood dust released during pellet production, transportation and handling can "pose catastrophic fire and explosion hazards."² Repeated fires and explosions at wood pellet storage silos at ports across the Southeastern US have harmed residents with air pollution from fires that have burned for days, weeks, or months, and have injured or killed workers. As one of many examples, a fire at a wood pellet storage silo at Port Arthur, Texas, burned for 102 days in 2017, sending smoke into the adjacent neighborhoods and causing the hospitalization of many residents.³"

¹ See e.g., Environmental Integrity Project, Dirty Deception: How the Wood Biomass Industry Skirts the Clean Air Act (April 2018), <https://environmentalintegrity.org/wp-content/uploads/2017/02/Biomass-Report.pdf>

² <https://www.osha.gov/news/newsreleases/region2/03132013-0>

³ <https://www.courthousenews.com/residents-go-court-months-long-texas-plant-fire/>

We agree with these sentiments and urge you to ban all pellet storage facilities at the Port of Stockton and in the City of Stockton.

Thank you for your consideration,

Californians for Responsible Renewable Energy