

## **Public Comments Submitted**

Matthew Marshall, E.D.  
and  
Board of Directors  
RCEA  
633 Third St.  
Eureka, CA 95501

3/10/17

Dear Matthew and RCEA Board Members,

We are a group of residents from Blue Lake and the surrounding area concerned with the Blue Lake Power (BLP) biomass power plant. At your Feb. 27, 2017 Board meeting, the Board directed staff to "Explore 5-year contract options for one or both other [biomass] facilities [BLP and DG-Fairhaven]". The information submitted with this letter is intended to illustrate for the Board the numerous problems with BLP, and to encourage the Board to eliminate BLP from any consideration as a source of power for the Community Choice Energy program, *now or in the future*.

We want to emphasize that we strongly support the Community Choice Energy (CCE) program and the RePower Humboldt initiative. In fact, it is because of our support for the CCE that we are presenting these facts about BLP. BLP's poor record has stirred significant public opposition, reflected in a front page Times-Standard article ("Rancheria, Residents Oppose Biomass Plant", 11/18/16). In addition, over 150 people that live and work in Blue Lake have signed a petition, presented to the Blue Lake City Council in January, urging them to terminate the City's ground lease with BLP. A power purchase contract with BLP would involve RCEA and the CCE program in this controversy, which could have very deleterious effects on the public's opinion of the program and the opt-out rates, thereby jeopardizing the entire CCE program.

Regarding BLP, we would like the Board to note the following:

- The BLP facility is poorly located – in a constricted valley with regular air flow patterns that carry pollutants from the plant directly into the dense residential population areas immediately adjacent to the plant, including Blue Lake Rancheria tribal land.
- BLP is an unreliable source. The facility is over 35 years old, was idle for a decade during which it was allowed to deteriorate, and in the last six years, has been operated on severely constrained budget resulting in ever-increasing deferred maintenance and repair. The facility has not been operational since May, 2015. Three attempts to restart since June, 2016 have all resulted in major mechanical failures within a few hours causing complete shutdown. Even when operating, BLP regularly experienced a very high number of breakdown events: according to AQMD public records, 13 breakdown events occurred during the last 13 weeks of 2015, and 46 events occurred between 7/15/2013 and 5/18/2014; essentially about once a week.

- BLP has not demonstrated an ability to operate cleanly or in compliance with environmental regulations. The 59 breakdown events noted above all resulted in excess pollutant emissions. Other AQMD actions recite that 123 violations occurred in one 14 week period. BLP continues to be classified as a High Priority Violator by the AQMD.
- The EPA sued BLP for Clean Air Act violations. A Consent Decree regarding that federal lawsuit was entered on Feb. 23, 2017. Among other things, the Consent Decree requires the installation of new pollution control equipment with an estimated cost of \$800,000 – \$1.4MM.
- BLP has not been financially viable at any time since restarting in 2010, in spite of the fact that during most of this time, they had a Power Purchase Agreement with Sempra Energy paying \$100/MW. As of this writing, BLP is currently in arrears to the City of Blue Lake for its quarterly lease payment which was due January 1 (approx. \$28,000), and to the AQMD for its Annual Supplemental Air Monitoring fee (approx. \$15,000). During the EPA lawsuit, the government examined BLP's tax returns. Court documents (Order re Motion to Enter Consent Decree, Dkt 46, pg 14-15) state:

“the company was not profitable in ... three years [before current shut down] and had substantial negative cash flow from operations. Further, the company was technically insolvent (current assets less than current liabilities)....”

BLP has consistently failed to meet financial and contractual obligations, including over a year of complete default on the ground lease, water bills and settlement agreements with the City of Blue Lake, acquiring numerous mechanics liens, a six-figure default judgment in US District Court in Oregon, and generating broad distrust in the local vendor community, many of whom are holding unpaid obligations by BLP. In addition, BLP has been unable to attract traditional commercial lending or investment capital. Going to the secondary and derivative capital markets typically comes with a very high cost and extreme conditions. With such conditions, it is not hard to imagine a default leading to a completely disinterested, non-local financing entity taking control of the facility.

Under these extreme financial constraints, it is difficult to imagine how they will be able to fund the pollution control upgrades required by the Consent Decree.
- BLP has a pending federal lawsuit relating to violations of the Clean Water Act. (US District Court, Northern District of California, Case 3:16-cv-04905, Ecological Rights Foundation v. Blue Lake Power, et.al.)
- The Blue Lake Rancheria Tribe has petitioned the EPA, on a government-to-government basis, to permanently revoke BLP's operating permit, on the basis of their continuous inability to operate cleanly or within the law.
- BLP currently has only a single employee and no experienced crew. Prior to the most recent layoff in December, 2016, employee turnover, from Plant Manager on down, was

very high, resulting in staff frequently having little or no experience with this difficult to operate facility. The current “managing partner” lives in the Midwest, is rarely on site, and is an attorney, not a biomass expert.

- New information recently uncovered by the Blue Lake Rancheria indicates that the computer modeling upon which original permitting was granted may have been based on erroneous assumptions: the modeling assumed the plant was located on a flat plain rather than in a constrained valley, and stack emission velocities were apparently grossly underestimated.

In addition to these facts regarding BLP, RCEA heard directly from Humboldt county residents about their concerns regarding biomass in general, and Blue Lake Power specifically, during their CCE Community Meeting in July 2016. (RCEA Board Packet, August, 2016, pg. 22-28.) We would hope that the results of the public engagement process that was undertaken in development of the CCE program priorities will be honored, especially as it reflects the public’s concerns with BLP in particular.

We would also like to note that there seems to be a serious flaw in RCEA’s assessment methodology of Qualitative Factors for biomass facilities. In the table presented in the Feb. 27 Board packet, the Qualitative Factors score for BLP and Fairhaven is nearly identical at 5 years. The differences between the two plants could not be greater: Fairhaven has a long record with no regulatory violations, a very experienced plant manager and crew, a well-maintained, efficient and operational facility, and is located in an open air shed away from population centers. BLP is just the opposite on all counts. These facilities are not comparable now, nor could they be in five years. The Qualitative Factors scores at the 3 and 5 year marks must be in error.

In short, Blue Lake Power’s problems are insurmountable and irredeemable, and association with it would present an unacceptable risk for the Community Choice Energy program. In order to protect and defend the CCE program and RCEA’s credibility and commitment to community engagement, and to protect the health and wellbeing of Blue Lake residents and the Blue Lake Rancheria Tribe, we call on you to ensure that Blue Lake Power not be included in any power portfolio, regardless of offered power cost, now or in the future.

Thank you for your time and work on the RCEA Board.

Sincerely,

Kit Mann	Rebecca Zettler	Emily Walter	Trevor Estlow
Mat Isaac	Heather Equinoss	Tee Griffin	Steve Spain
Marnin Robbins	Lin Glen	Merritt Perry	Karina Green
Kristina Walker	Roxanne Rothery		

Group Contact: Kit Mann, 139 Applewood Ln, PO Box 567, Blue Lake, CA 95525, 707 834 4892

---

**From:** Wendy Ring [mailto:wring123@gmail.com]  
**Sent:** Sunday, March 05, 2017 4:11 PM  
**To:** Matthew Marshall  
**Subject:** Nox Nox is no joke

Dear RCEA Board Member,

As a public official it is important for you to understand there is no confusion about nitrogen oxides in the report *Biomass Energy and Health in Humboldt County*. Our very own county health officer called it "a well written assessment".

#### **The science in a nutshell**

Briefly, **NOx** is a category of pollutants that includes NO and NO2, like lunchmeat is a category that includes salami and baloney. **NOx** is [harmful to human health](#) and data on NOx emissions from power plants is collected by our Air Quality Management District and reported to the California Air Resource Board. N2O is laughing gas, nitrous oxide. It is counted separately from NOx as a greenhouse gas and was not included in the health report because its emissions not have a direct effect on public health.

NO2 has 1 nitrogen atom and 2 oxygens. It affects health and is in the report under NOx. N2O has two nitrogen atoms and 1 oxygen. It doesn't and isn't. No confusion there.

#### **NOx schmox, Who cares?**

NOx is not the most harmful pollutant emitted from our biomass plants but if confusion is being sowed over N's and O's to discredit a report on air pollution and health, that's a serious matter. Over one third of Humboldt County residents are vulnerable to harm from biomass pollution. *Biomass Energy and Health in Humboldt County* explains which of our neighbors and family members are vulnerable, what kind of harm they might suffer, and the impact this has on the broader community.

#### **See for yourself**

To see the Humboldt County power plant emissions which were included in the report: go to [Air Resource Board's Facility Search](#), select Humboldt for the county, "submit", and then "next set" at the bottom of each page until you've seen all 5 pages. Our biomass emissions stick out from the list like a big dirty sore thumb. I averaged emissions over a few years for the report since our plants operate off and on, so the numbers you see will not match figures for individual years. You can clearly see that the pollutant is NOx, not N2O.

I realize there are other issues to consider in relation to local biomass energy, but from the health perspective, the verdict is clear. I encourage you to read the report (attached) and contact me if you have any further questions.

Thanks,

Wendy Ring MD, MPH  
845-2466

---

---

**From:** Jana Ganion [mailto:jana.ganion@bluelakerancheria-nsn.gov]

**Sent:** Tuesday, March 14, 2017 9:47 AM

**To:** Jana Ganion

**Subject:** FW: Supplemental Information to the Community Choice Energy Board of Managers

Good Morning Community Choice Energy (CCE) Board Members,

As you deliberate the future strategy around local biomass power purchases -- and including biomass within the "renewable" category in your programs -- the Blue Lake Rancheria Tribe respectfully submits this supplemental update (attached and below).

The Tribe seeks to ensure the CCE Board has ongoing information for specifically considering Blue Lake Power's qualifications as a reliable power supplier, and the dangerous health and environmental impacts Blue Lake Power presents to the Mad River valley when this plant is operating.

This update is in addition to the two sets of information the Tribe has previously sent to RCEA to be distributed to the CCE Board (copies of a Clean Water Act lawsuit filed by Ecological Rights Foundation against Blue Lake Power, and documents on Blue Lake Power's violations, settlement agreements, and payment defaults). If you haven't received these materials, please let me know and I can resend them. They are quite substantial.

The Tribe's central concern is that Blue Lake Power's out-of-compliance operation has deposited literally tons of black soot over the Mad River valley region for many years --- and importantly, in far greater quantities than allowed by law.

Why is it important to stop this pollution? Because black soot (particulate matter) emissions cause respiratory illness, shortened lifespans, and death -- this is no exaggeration, ~9,000 people die from exactly this kind of pollution in California alone each year (see EPA's "Quantitative Health Risk Assessment for Particulate Matter" and [https://www.arb.ca.gov/research/health/pm-mort/pm-report\\_2010.pdf](https://www.arb.ca.gov/research/health/pm-mort/pm-report_2010.pdf).)

We can no longer ignore the effects of the black soot emissions and fly ash from Blue Lake Power as a mere inconvenience. We know that Blue Lake Power's pollution -- especially the very tiny particles that get deep into the lungs and bloodstream -- is clearly dangerous to human health. Blue Lake Power is less than ½ mile from the Tribe, it is within the City of Blue Lake which has ~1,300 residents, and it is less than ½ mile from Blue Lake School which has hundreds of students.

And though it looks like we have fresh air outside, Humboldt is one of very few regions that are in "non-attainment" for air pollution, meaning, our air is not meeting healthy standards.

Over the Tribe's - and others' - strenuous objections Blue Lake Power's negotiated Consent Decree was approved by the Court about two weeks ago. Among many other concerns, the information used to calculate pollution limits for Blue Lake Power's permit are plainly inaccurate. (Please see "BLP Air Quality Concerns" attached.) These mistakes were not corrected by the Consent Decree.

These are just a few of the technical errors:

- The North Coast Unified Air Quality Management District ("District") conducted modeling for Blue Lake Power (relatively rare for facilities of that size, and a financial benefit for Blue Lake Power) and used a model which is no longer the EPA-approved.
- The District modeling did not address particulate matter emissions [PM10] at all, which is required. And PM2.5 – the very fine particles that are the most dangerous to human health are not considered anywhere.
- The District documented an unrealistic gas exit velocity, using a value of 0.01 feet per second – this means flue gas would need almost 3 hours to pass through the 100 ft. stack. The EPA default value is = sixteen (16) feet per second, which is 1,600 times greater than the District's figure.
- The District used "infinitely flat" terrain to model air flows in a complex river valley, where the surrounding hills rise to over 1,000 feet within ~1-2 miles of the plant stack.
- The District's calculations do not include existing background pollutants/toxins, which must also be included in assessments of facility impacts. And as a reminder, this region is listed as "non-attainment" for PM10.
- In non-attainment areas, offsets (financial payments) are required. Blue Lake Power has not been required to purchase offsets.

As you may also know, the Blue Lake Rancheria Tribe has petitioned EPA Region 9 to revoke Blue Lake Power's Title V Permit to, among other things, correct these mistakes. The Tribe is urging the EPA to carefully consider that the information used to craft the current permit, and the new Consent Decree, is flatly incorrect. When accurate information is used, it shows that any operation of Blue Lake Power creates violations of the National and California air quality standards at its permitted emission levels (both its current permit and the new Consent Decree).

The EPA is reviewing that petition now, but they have not given a timeline for a decision. If they grant the petition, Blue Lake Power's current permit would be revoked or terminated, and they would have the opportunity to apply for a new permit. It is the Tribe's hope that Blue Lake Power is required to apply for a new permit, and in the process two critical items would be accomplished:

- 1) The correct modeling would be used, the correct data would be gathered, and the latest air quality and other standards would be used to set permitted pollution limits that are consistent with the law; and,
- 2) The \$800,000.00 in facility upgrades called for under the Consent Decree (Brian Wilson's comments to the CCE Board in the last meeting) would be included and required to be completed before any restart.

There are many other issues with this plant. Currently the Tribe understands that Blue Lake Power is in arrears \$28,000 to the City of Blue Lake, and month(s) late on their water and utility payments to the City. Blue Lake Power was also late on a settlement agreement payment to the City that they have since paid (one of the potential results of late payment under that agreement is immediate payment in full of yet another set of payment defaults).

Blue Lake Power has also not paid their required Title V Permit fees and GHG fees to the North Coast Unified Air Quality Management District ("District") of about ~\$15,000. The District in turn has allowed Blue Lake Power to delay its payments multiple times, and has waived late fee penalties multiple times. Non-payment of these required fees is important for two reasons. First, per the District rules, a "Permittee Default" allows the District to "immediately notify the applicant that its [Permit] has expired

and that further operation of the subject equipment without a valid permit is prohibited.” Certainly the District’s enabling of months of delays on required payments and late fee waivers – multiple times – creates a significant financial benefit for Blue Lake Power in terms of delayed compliance.

Given its history of financial defaults, the Tribe questions how Blue Lake Power will pay for \$800,000 in required upgrades, when it apparently cannot currently pay its rent, its water bill, and its required permit fees?

Here are just a few additional points for the CCE Board to consider for their power purchase decision-making:

- Blue Lake Power’s black soot and other emissions create a critically serious health hazard for the Mad River valley. This cannot continue.
- Blue Lake Power’s inaccurate permitted pollution limits create ongoing violations of law. This allows Blue Lake Power to create serious health hazards at all times, and sends a message to the biomass industry that they can do the same.
- If the EPA and the District let Blue Lake Power’s faulty permit stand, then similar Title V Permits based on accurate data would be discriminatory against those biomass power plants who have to operate to a higher standard. In other words, Blue Lake Power’s relaxed permit and non-compliant operation gives it a competitive advantage. And Blue Lake Power’s “willful negligence” (District statement), non-compliant operations and/or business activities very likely rise to violations of California Business and Professional Code 17200, which prevents unfair business practices.
- Blue Lake Power’s various settlement agreements, consent decrees, and chronic payment defaults reflect shaky financial and operational position (Blue Lake Power characterized itself in very tenuous financial shape to the Department of Justice, in order to get its current violation penalties dramatically reduced.)
- In addition to air pollution, each year, tons of particulates from Blue Lake Power also deposit in the Mad River, listed as impaired for sediment under Section 303(d) of the Clean Water Act, and these particulates certainly degrade habitat for endangered and threatened species – including many fish species. (NOAA recently released the Coastal Multispecies Final Recovery Plan, [http://www.westcoast.fisheries.noaa.gov/protected\\_species/salmon\\_steelhead/recovery\\_planning\\_and\\_implementation/north\\_central\\_california\\_coast/coastal\\_multispecies\\_recovery\\_plan.html](http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/north_central_california_coast/coastal_multispecies_recovery_plan.html), which lists the Mad River as essential to several “A” population species. This underscores the urgency to ensure that pollution from Blue Lake Power does not further degrade this already impaired waterway.)
- The Tribe is not alone in its concerns. There is a petition submitted to the City Council of the City of Blue Lake, signed by over 150 people, to revoke Blue Lake Power’s land lease.
- With the CCE letters arriving in people’s homes, the Tribe is receiving calls from citizens and citizen groups in several areas of the region (such as Arcata and Eureka) who are concerned about the health impacts of biomass and questioning whether to opt out. We are urging these people to contact the CCE Board, EPA, CalEPA, CARB, and the District with their concerns, so you may have heard from them.



- And as you may also be aware, Nancy Diamond is legal counsel for the District in the Blue Lake Power *U.S. v BLP* lawsuit and Consent Decree and related matters. As the Tribe understands it, Ms. Diamond was a central participant to the negotiations that resulted in the Consent Decree (essentially settling Blue Lake Power's avoidance of their initial permit application requirements). Ms. Diamond also provided counsel to the City of Blue Lake on Blue Lake Power matters until the City Council (at the request of its residents) determined they should obtain separate counsel for these matters. If Ms. Diamond is providing legal counsel to the CCE regarding biomass contracting it would be important for the CCE Board and to understand her various points of involvement with the Blue Lake Power matter, and be certain there are no conflicts of interest.
- Biomass power is declining in competitiveness, due to erosion of public support because of health impacts and the lower cost of solar and wind and battery storage.

All statements made here are supported by publicly-available information.

- The Tribe respectfully requests the CCE to not subsidize a polluting source of power, especially Blue Lake Power, a "high priority violator" and proven bad actor both operationally and financially.

The Tribe looks forward to contributing to dialogue around biomass power, and we thank you for your kind attention.

Please do not hesitate to contact me with questions, and I can be available to attend the next CCE Board meeting if the Board would like more information and/or a presentation.

Sincerely,

Jana

Jana Ganion | Sustainability Director  
Blue Lake Rancheria, California (a federally recognized tribal government)  
[O] 707.668.5101 x1044  
[E] [jganion@bluelakerancheria-nsn.gov](mailto:jganion@bluelakerancheria-nsn.gov)  
[F] 707.668.4272  
PO Box 428, Blue Lake, CA 95525  
[www.bluelakerancheria-nsn.gov](http://www.bluelakerancheria-nsn.gov)  
A White House "Climate Action Champion"  
PG&E "Integration Award"

---

***Note: Referenced attachments provided digitally to the RCEA Board and available on request from RCEA staff.***