

**COUNTY OF SANTA BARBARA
PLANNING AND DEVELOPMENT**

MEMORANDUM

TO: Board of Supervisors

FROM: Steve Chase, Deputy Director

DATE: September 5, 2002

RE: Staff response to additional appeal information filed by Nuevo and Tosco

On July 1, 2002, Nuevo Energy Company and Tosco Refining Company filed appeals of the Planning Commission's decisions on the following three projects:

Tranquillon Ridge Project (94-DP-027 RV02)
LOGP Produced Water Treatment Plant Upgrade/Expansion (94-DP-027 RV04)
Sisquoc Pipeline Bi-Directional Flow Project (91-DP-003 RV05)

Staff's responses to these appeals are included in the Board letter dated August 22, 2002. On August 23, 2002, Nuevo and Tosco submitted additional information regarding their appeals of the three projects. Nuevo submitted two letters dated August 21, 2002, one for each of its two appeals. Tosco submitted a letter dated August 23, 2002 addressing its appeal. Staff has reviewed the additional information, and is providing your board with additional comments (Attachment A).

First, many of the comments made by Nuevo and Tosco in the new submittals reiterate comments they have previously made. The Final EIR for the Tranquillon Ridge Project (01-EIR-04) includes a response for every comment submitted by the appellants during the environmental review process. The EIR responds to the following issues raised by the appellants in their August submittals:

- the economic impacts of the Tranquillon Ridge Project
- the environmental benefits of production in California
- the environmental baseline used in the EIR

Since the project is not being recommended for approval, and CEQA does not apply to projects that are denied, staff is not recommending that the EIR be certified. However, staff has reviewed and considered the evidence of the EIR and in part relies on such evidence as the basis for the responses to Nuevo's appeal comments.

Also, the following issues raised by the appellants have been addressed in the record of the Planning Commission hearing on June 20, 2002, either in the staff reports for the three projects, or as part of the oral testimony:

- Nuevo’s appeal of the Court Injunction associated with the 1997 Spill Settlement
- the mitigation measures

In addition to the supplemental information provided by the appellants, the Minerals Management Service has provided comments regarding Table 7 of the Planning Commission Staff Report (report dated June 6, 2002). Table 7 illustrates how the County has played a vital role in ensuring the safe operation of the Point Pedernales Project. Pursuant to the additional information provided by the MMS, the following correction is provided to Table 7, item 10:

| requirement | comparison | comments |
|---|--|---|
| 10. Maximum allowable operating pressure (“MAOP”) for the pipelines | The County (via Nuevo’s SIMQAP) specifies MAOP’s for the crude oil, gas, and produced water return pipelines. MMS and DOT does not specify an MAOP for the produced water return pipeline. | County has established MAOP’s for all of the Point Pedernales pipelines (Nuevo SIMQAP, 2002). County calculated the MAOP for the crude oil pipeline as per the procedures specified by the American National Standard Institute (ANSI B31G; Manual for Determining the Remaining Strength of Corroding Pipelines)(conference calls on December 5, 1997 between Torch, MMS, SLC, SBC, and Tuboscope). |

MMS’ letter, dated August 27, 2002, is included herein as Attachment B. Additional staff responses to the points raised in the MMS letter are included in Attachment C. The consent decree referenced in staff’s letter responding to the MMS is included as Attachment D.

As noted above, detailed responses to the issues raised in the applicants’ July 1, 2002 appeal letters are included in the August 22, 2002 Board Letters. In addition to the responses that are already part of the public record, staff offers the attached responses.

Attachment A: staff responses to additional information from appellants

Attachment B: letter from MMS dated August 27, 2002

Attachment C: staff letter dated September 5, 2002 responding to MMS

Attachment D: Consent Decree in *United States, State of California et al v. Torch et al.* Case No. 02-3977

Attachment A

**STAFF RESPONSE TO ADDITIONAL INFORMATION
SUBMITTED REGARDING THE TRANQUILLON RIDGE APPEAL
(LETTER FROM NUEVO DATED 8/21/02)**

| PAGE | APPELLANT'S COMMENT | STAFF RESPONSE |
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| 1 | Each planning commissioner said they would vote for the project, but for the pending litigation. | This statement is incorrect. The Planning Commission did not take any action, and did not make findings to support any action. The motion to conceptually approve the project failed on a 2-2 vote. Furthermore, at least one commissioner expressed concern about the project regarding the precedent of new oil and gas leasing within State Waters. |
| 1 | The pending court case was initiated by the County. | The County and Nuevo settled the civil penalty portion of the case in 2001. Nuevo preserved its right to appeal the issue of whether County's permit is preempted by federal law. Nuevo alone has appealed this portion of the case. |
| 1 | The Commission's decision was not based on anything negative in the EIR. | All motions on the project, including denial and conceptual approval, failed. Therefore, the Commission did not take an action on the project and the project was denied by default. The staff report for the project and the findings for denial prepared by staff did identify the project's significant environmental impacts and the extension of life of the existing significant impacts as one of the reasons the project was recommended for denial. |
| 1 | If the jurisdictional appeal were set aside, the Staff Report and P/C were in favor of the project. | This statement is inconsistent with the findings recommended by staff for this project. The recommendation for denial is based on all of the project issues before the County. These issues include the applicant's appeal of the county's jurisdiction over existing permit conditions, coupled with concerns regarding the significant environmental effects of the project, the extension of life of existing significant environmental impacts, concerns regarding the integrity of the pipeline, and the project's poor compliance record. The Planning Commission did not make findings for the project. |
| 2 | The mitigation suggested by staff is already being handled by state and federal agencies. | Table 7 in the planning commission staff report itemizes several significant instances in which County permit conditions and enforcement actions have provided safety benefits beyond what is required by other agencies. |

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| 2 | Nuevo has accepted 182 conditions in the Point Pedernales permit. | This number includes the conditions (including the “P” conditions) that Nuevo is currently challenging in its litigation. In addition, Nuevo has historically violated several conditions of its existing permit and is currently operating under an “enforceable schedule to comply”. Nuevo’s comment is inconsistent with its own litigation stance. |
| 3 | For every barrel of oil produced in California, one less barrel is tankered in. | A response to this comment is provided on pages 9-26 through 9-29 of the FEIR. There is no evidence to support the contention that production from Tranquillon Ridge would directly reduce tankering into California. |
| 4 | By developing Tranquillon Ridge, 400 fewer tankers will cross into California’s coastal waters. | A response to this comment is provided on pages 9-26 through 9-29 of the FEIR. There is no evidence to support the contention that production from Tranquillon Ridge would directly reduce tankering into California. |
| 4 | The County came into settlement discussions asking for \$75 million in damages | This statement is false. The District Attorney noted that Nuevo’s exposure for its acts that violated its permit was \$75 million. The DA/County settled for \$1,000,000, an amount very close to the first settlement figure put forth by the DA/County. |
| 5 | Other agencies concluded that 163 barrels of crude oil spilled in 1997. | The State concluded that the diesel and corrosion inhibitor “pill” spilled. The County concluded that since the pill had spilled, so had the 1242+ barrels of crude oil that were located between the rupture and the pill. |
| 5 | Both the County and Nuevo agreed that the injunction would be appealed. | This statement is false. Neither the County nor the DA has ever encouraged Nuevo to pursue its appeal. Nuevo alone is appealing the injunctive portion of the settlement. |
| 5 | The County incorrectly assumes that other agencies will not enforce mitigation measures. | Table 7 in the Planning Commission staff report itemizes several significant instances in which County permit conditions and enforcement actions have provided safety benefits in addition to or beyond what is required by other agencies. |

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| 5 | If the County does not have jurisdiction to impose conditions on the platform and pipeline operations, then such measures are infeasible. | In approving the Point Pedernales projects, the County has relied on the applicants' explicit acceptance of all permit conditions, including those now contested by Nuevo. Torch's acceptance was submitted in writing, and contained a "knowing and voluntary waiver of any objections thereto." (John Deacon, 8/16/96.) In any event, the mitigation measures are clearly technically feasible because they were implemented for many years. Nuevo is in fact bound to these conditions to this day by order of the trial court. Further, similar mitigation measures are routinely implemented on such other projects as Exxon and Point Arguello. |
| 6 | Only the Energy Division is unwilling to participate in devising a multi-jurisdictional agreement. | The direction to County staff has been not to negotiate away requirements that already exist in the Nuevo Point Pedernales permit. The applicant agreed to implement the relevant conditions as a part of its acceptance of the benefits of the permit. |
| 6 | County staff is concluding that other agencies are incapable of enforcing the EIR's conditions and mitigations. | Table 7 in the Planning Commission staff report itemizes several significant instances in which County permit conditions and enforcement actions have provided safety benefits in addition to or beyond what is required by other agencies. |
| 6-7 | Permitted levels should be used as the environmental baseline from which impacts are measured. | This issue is thoroughly discussed in the FEIR (including Appendix J). Most importantly, the appellant's discussion fails to note that existing permit condition A-12 limits production to the federal Point Pedernales Unit. Finally, this point is not ripe until the EIR is certified. |
| 7 | The Sacate project is nearly identical to Tranquillon Ridge. | This statement is incorrect. Both the Exxon EIR and the Exxon permit included Sacate production. Neither the Point Pedernales EIR nor the permit addressed production from a state lease. A full response is provided in the August 22, 2002 Board letter. |
| 8 | Nuevo objects to four of the mitigation measures identified in the FEIR. | This comment is not applicable. Since the project is recommended for denial, the staff report does not address mitigation measures that would be required for the project. |

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| 8 | Mitigation measure TB6d would require the creation of a new fourth wildlife care group. | These issues are not ripe since the project is recommended for denial. However, as discussed at the June 20, 2002 Planning Commission hearing, this measure is intended to fund a local facility to handle oiled wildlife, not to create a new wildlife care group. During the 1997 Torch oil spill, some oiled wildlife was transported great distances for treatment. Treatment of oiled wildlife at a local facility would reduce stress on the animals and could thereby increase both the success of treatment and survival rates. |
| 9 | <p>Nuevo has two objections to mitigation measure OWR-2:</p> <p>A. Nuevo wants to use a 120 second interval for leak detection, and</p> <p>B. Nuevo wants to avoid automatic shutdowns.</p> | <p>These issues are not ripe since the project is recommended for denial. However, staff notes the following:</p> <p>A. The Nuevo and Tosco pipelines operate differently. The 5-second timing interval for leak detection is relevant and appropriate for the Nuevo pipeline. Torch operators stated that the unexplained low-pressure shutdown that occurred when the pipeline ruptured in 1997 was the first such shutdown. This fact provides evidence that the Nuevo pipeline is not required to operate within parameters so sensitive that the system is plagued with false alarms.</p> <p>B. The protocol Nuevo references here (SSRRC approval of manual shutdowns, as opposed to automatic shutdowns), was approved for cases of SCADA failure. This protocol does not apply to low-pressure situations.</p> |
| 9 | Nuevo has concerns about mitigation measure MB1b, which would require the assessment of baseline oiling conditions within the project's spill zone. | This issue is not ripe as a permit issue since the project is recommended for denial. However, the Energy Division is currently proceeding with an assessment of baseline oiling conditions using grant funds. This assessment includes depositional beaches throughout the County's Coastal Zone. Pursuant to the most recent Torch Point Pedernales Condition Effectiveness Study, an assessment of baseline oiling conditions within the Point Pedernales spill zone is required to comply with Condition G-1 of Nuevo's existing Point Pedernales permit. After the grant funds are expended, Nuevo and other permittees may be required to fund a portion of the completion of the baseline oiling assessment. |

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| 9 | Mitigation measure MB-4, which would require trained mammal observers on supply boats, is not needed. | This issue is not ripe since the project is recommended for denial. However, the County's consulting biologists concluded that this measure would help to reduce the project's impacts on marine mammals to the maximum extent feasible. The consultant cites a recent accident in which a young whale had its tail severed by a boat. |
| 10-11 | Nuevo requests a new dispute resolution process. | This issue is not ripe since the project is recommended for denial. In any event, as Nuevo's letter notes, Condition C-1 already provides for a dispute resolution process. The County believes that the existing dispute resolution process is appropriate. The County does not believe it would be appropriate to agree to binding arbitration for compliance disputes that may occur in the future. The determination of what constitutes violation of a permit or zoning requirements would be rightfully made by the County. |

**STAFF RESPONSE TO ADDITIONAL INFORMATION
SUBMITTED REGARDING THE LOGP PRODUCED WATER APPEAL
(LETTER FROM NUEVO DATED 8/21/02)**

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| 1 | Nuevo appealed the P/C decision due to concerns over the certification of the Tranquillon Ridge EIR, a document that it believes has a flawed baseline. | The baseline for the Tranquillon Ridge project is not relevant to the approved LOGP produced water upgrades. The baseline for the water treatment project is injection of produced water into deep reservoirs, both on and offshore. This baseline has no relevance to crude oil throughput levels. Furthermore, Nuevo repeatedly represented to the County that the water treatment modification project was a separate and distinct project driven by a requirement to meet EPA's NPDES discharge standards. |
| 2 | The County used a three-fold justification for not using permitted capacity as the baseline from which environmental impacts are measured. | Again, this comment is not relevant to the approval of the water treatment facility upgrade. Furthermore, the comment is inaccurate. The County's identification of the appropriate environmental baseline took into account the three factors cited by Nuevo, as well as a significant factor that Nuevo overlooks. That additional factor is Condition A-12 of the existing Nuevo Point Pedernales permit, which limits production to the federal Point Pedernales Unit. Also, the original Point Pedernales EIR did not assess the impacts of production from a lease in State Waters. |
| 2 | The Sacate project is roughly equivalent to the Tranquillon Ridge project. Therefore, the imposition of rigorous environmental review requirements for Tranquillon Ridge is arbitrary and unfair. | Again, this comment is not relevant to the approval of the water treatment facility upgrade. Furthermore, this statement is incorrect. Both the Exxon EIR and the Exxon permit addressed and made provision for Sacate production. Neither the Point Pedernales EIR nor the permit addressed production from a state lease. The staff report prepared for the Board of Supervisors' consideration of the Tranquillon Ridge appeal (Board letter dated 8/22/02) discusses this issue in greater depth. |

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| 3 | The law does not allow for a "production baseline". | Again, this comment is not relevant to the approval of the water treatment facility upgrade. Furthermore, the EIR did not involve use of a "special" baseline. The County's development of the appropriate baseline from which the project's impacts would be measured followed the CEQA guideline (section 15125a) that baseline conditions are normally the physical environmental conditions as they exist at the time a Notice of Preparation is published. At the time of the NOP, production averaged 7300 bpd. This level was used for the baseline from which the project's impacts are measured. Current production levels are lower than 7,000 bpd. Baseline issues are addressed more thoroughly in the EIR (including Appendix J) and the Tranquillon Ridge staff report. |
| 4 | If the correct baseline had been used, the project would have few if any measurable impacts. | If the comment is in reference to the baseline for Tranquillon Ridge, it is irrelevant to the baseline determination for the produced water project. For the latter, the FEIR in fact concludes that the wastewater treatment project would have "few new environmental impacts, and no new significant impacts" (LOGP Produced Water treatment Project staff report, p. 2-3). |

**STAFF RESPONSE TO ADDITIONAL INFORMATION
SUBMITTED REGARDING THE SISQUOC PIPELINE APPEAL
(LETTER FROM TOSCO DATED 8/23/02)**

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| 1-2 | Tosco appealed the P/C decision due to concerns over the certification of the Tranquillon Ridge EIR, a document that it believes uses an inappropriate baseline. | The baseline for the Tranquillon Ridge EIR is not relevant to the Sisquoc Pipeline Bi-directional flow project. At the time the NOP was published for the project, the pipeline was operating at its permitted level of 40,000 bpd. Therefore, the baseline was assumed to be 40,000 bpd. This baseline has no relevance to Point Pedernales crude oil throughput levels. |
| 2 | Use of an inappropriate baseline requires that unnecessary and burdensome mitigation measures be imposed on Tosco's pipeline facilities. | Again, comments on the Tranquillon Ridge baseline are not relevant to approval of the pipeline bi-directional flow project. No new environmental impacts were identified for the Sisquoc Pipeline Bi-directional flow project (P/C staff report, p. 10). Therefore, staff has not identified any necessary additional mitigation measures for this project. |
| 2; 4-5 | Tosco continues to provide mitigation based on the permitted 36,000 bpd throughput level. Refunds should be made for monies paid in excess of that caused by the level of actual production. | <p>This comment pertains not to the Sisquoc Pipeline Bi-Directional Flow project but to the Tosco Pt. Pedernales Pipeline, which is involved in the Tranquillon Ridge application.</p> <p>The 36,000 bpd throughput was based on the applicant's project description. Correspondingly, the mitigation measures were based on this proposed production level. The applicant has the option to reduce the permitted level through a revision to its Final Development Plan. If such a revision were to reduce project impacts, mitigation responsibilities could potentially be reduced.</p> |
| 2 | The County used a three-fold justification for not using permitted capacity as the baseline from which environmental impacts are measured. | Again, comments on the Tranquillon Ridge baseline are not relevant to approval of the pipeline bi-directional flow project. In any event, the County's identification of the appropriate environmental baseline took into account the three factors cited by Tosco, as well as a significant factor that Tosco overlooks. That additional factor is Condition A-12 of the existing Nuevo Point Pedernales permit, which limits production to the federal Point Pedernales Unit. Also, the original Point Pedernales EIR did not assess the impacts of production from a lease in State Waters. Baseline issues are addressed more thoroughly in the EIR and the Tranquillon Ridge staff report. |

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| 3 | The Sacate project is nearly identical to the Tranquillon Ridge project. Therefore, the imposition of rigorous environmental review requirements for Tranquillon Ridge is arbitrary and unfair. | Again, comments on the Tranquillon Ridge baseline are not relevant to approval of the pipeline bi-directional flow project. In any event, this statement is incorrect. Both the Exxon EIR and the Exxon permit addressed and made provision for Sacate production. Neither the Point Pedernales EIR nor the permit addressed production from a state lease. The staff report prepared for the Board of Supervisors' consideration of the Tranquillon Ridge appeal discusses this issue in greater depth. |
| 3 | The law does not allow for a "production baseline". | Again, comments on the Tranquillon Ridge baseline are not relevant to approval of the pipeline bi-directional flow project. The EIR did not involve use of a "special" baseline. The County's development of the appropriate baseline from which the project's impacts would be measured followed the CEQA guideline (section 15125a) that baseline conditions are normally the physical environmental conditions as they exist at the time a Notice of Preparation is published. At the time of the NOP, production averaged 7,300 bpd. This level was used for the baseline from which the project's impacts are measured. Current production levels are lower than 7,000 bpd. Baseline issues are addressed more thoroughly in the EIR and the Tranquillon Ridge staff report. |
| 4 | Per <i>Benton</i> , baseline is the project as permitted, even if the entitlements have not been exercised. | Again, comments on the Tranquillon Ridge baseline are not relevant to approval of the pipeline bi-directional flow project. In any event, the entitlements for developing the Point Pedernales project have been exercised. Development of the onshore facilities and the federal portion of the Point Pedernales Field received final discretionary approval from the County in 1986. Oil production from the existing Point Pedernales Project commenced in 1987, and peaked at 25,000 bpd in the late 1980's. Oil production has been declining since that time (ref. the production curve on page 2-6 of the FEIR). Since the time when the NOP was issued in 2000, which established the EIR baseline of 7,300 bpd, production levels have continued to decline, and currently average less than 7,000 bpd. Nuevo has no entitlements to produce from the Tranquillon Ridge field, and no entitlements to process oil and gas from this field at the existing onshore facilities. |

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| 4 | The life of Tosco's Point Pedernales pipeline is not based on the life of Platform Irene or the LOGP facility. | The portion of Tosco's Point Pedernales pipeline between the LOGP and the Orcutt Pump Station is only used to move oil from the LOGP. If the LOGP were to shut down, this portion of the pipeline would cease to operate. Therefore, the Tranquillon Ridge project would extend the life of this portion of the Tosco Point Pedernales pipeline. |

September 5, 2002

Mr. Thomas Dunaway
Regional Supervisor
United States Department of the Interior
Minerals Management Service
Pacific OCS Region
770 Paseo Camarillo
Camarillo, CA 93010-6064

RE: Table 7 of the June 20, 2002 Planning Commission Staff Report for the Tranquillon Ridge Project.

Dear Mr. Dunaway:

Thank you for your August 27, 2002 letter clarifying the Mineral Management Service's role in regulating the Pt. Pedernales project. We welcome the additional information provided and where appropriate we have corrected Table 7 of our June 20, 2002 Planning Commission staff report to reflect this additional information. In particular as noted below, we have revised item # 10 of the table to show that the MMS does regulate the maximum allowable operating pressure of the produced water pipelines. We have reviewed the additional information provided, and while this information clarifies MMS regulations it does not appear to warrant any additional changes to the analysis contained in Table 7. Specific responses to each of the items are provided below.

Item 1. Internal inspection of crude oil and gas pipelines (i.e., smart pigging)

In May 2002, County staff contacted MMS staff to ascertain the MMS requirements for internal pipeline inspections. The description of MMS internal inspection requirements in Table 7 is based on the information provided by MMS to the County at that time. In addition, on two occasions, most recently in October 2001, MMS staff contacted the County and suggested reducing the pigging frequency for this pipeline from annually to every two years. While corrosion rates have slowed, the pipeline continues to show a significant level of internal corrosion and metal loss.

The County has required annual internal inspection of this pipeline since it went into service in 1987. The County believes the condition of the Nuevo Point Pedernales pipeline warrants annual pigging. Comparatively, this pipeline shows significantly more corrosion-related anomalies than any of the other OCS pipelines off the County's coast. In particular the onshore portion of the pipeline has shown greater than 30 and 40 percent metal loss in numerous locations.

Item 5. Prohibition on blocking safety devices out of service following a low pressure condition that may indicate a leak or rupture of the crude oil pipeline

Based on your letter, as well as previous conversations with MMS staff, our understanding is that MMS considers the platform operator's actions on the night of September 28, 1997 to have been part of a pipeline start up operation rather than a restart after a low-pressure shutdown. This interpretation renders the county and federal prohibitions against blocking safety devices out of service meaningless. The County disagrees with the MMS interpretation. Moreover, as a part of the recent federal penalty settlement on the 1997 spill, the Department of the Interior concluded that operator's actions to bypass the safety devices and restart the shipping pumps were in violation of the Outer Continental Land Shelf Act (ref. Consent Decree in *United States, State of California et al v. Torch et al.* Case No. 02-3977, included herein as Attachment D). Similar to the County spill settlement, the federal settlement sets forth an injunction prohibiting restarts after low-pressure shutdowns until after a leak or rupture is ruled out. Finally, Torch/Nuevo was not operating pursuant to its County-approved operating manual that would have prohibited the restart with out visually inspecting for a leak after the low-pressure shutdown.

Item 6. Welding procedures

The County appreciates the additional clarification regarding this item. However, to our knowledge MMS did not identify such requirements, during any of the 1997, 1999, and 2001 flange replacements. Nuevo's correction in the welding procedures in 1999 and 2001 was done pursuant to County permit conditions and comments specifically made by our Building and Safety Division.

Item 7. Hydrogen Sulfide monitoring near gas pipelines

The MMS response confirms the information provided in Table 7.

Item 8. SCADA system

The County recently required Nuevo to revise its safety plans (SIMQAP) to provide for an immediate shutdown of the pipeline in the event of a SCADA system failure. The County added this requirement because during a recent SCADA system failure, the pipeline remained in service for some time. Based on your letter, it is our understanding that the MMS requires only notification if the SCADA system fails. Thus, the County's conditions provide an added level of safety with regards to upset conditions.

Item 10. Maximum Allowable Operating Pressure (MAOP) for the pipelines

Your comment has been noted and the information corrected in Table 7 as a part of the Board Letter for the Tranquillon Ridge appeal.

Item 11. Produced water return pipeline

Thank you for the clarification regarding the MMS requirements. However, as of March 2002, there were no such low-pressure shutdown valves in place. As a part of the County's SIMQAP audit of the Point Pedernales Facilities, the County has required the installation of low-pressure alarm and shutdown capabilities for the produced water pipeline. Nuevo has recently installed the equipment and completed the programming to provide the shutdown capabilities pursuant to the County's requirements.

In closing, we believe that your comments and Table 7 of our staff report demonstrates the critical role that all of the regulatory agencies, including the County, play in ensuring the safe operation of the Point Pedernales project. We look forward to working closely and cooperatively with you in the future on this and other OCS projects off of Santa Barbara County's coast. Please do not hesitate contacting me if you have any additional comments.

Sincerely,

Steve Chase
Deputy Director

Cc: Alice McCurdy, Energy Division
Joddi Leipner, Energy Division
John Deacon, Nuevo Energy Company
Jay Sheth, RBE

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