

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
BOND FINANCING PROGRAM
Meeting Date: October 27, 2010
Request for Approval of a Bond Issuance Date Extension

Prepared by: *Doreen Smith*

Applicant: BioFuels Energy, LLC and/or its Affiliates	Amount Requested: \$14,800,000
	Application No.: 00818(SB)
	Allocation Resolution No.: 08-242-07
Project	Prior Actions: IR 09-02
Location: San Diego	Approved 02/25/09
(San Diego County)	FR 499
	Approved 06/23/10

Summary. BioFuels Energy, LLC and/or its Affiliates (the “Company”) received \$14,800,000 in tax exempt bond allocation the “Allocation Resolution” from the CPCFA board on June 23, 2010. The Allocation Resolution stated that the Bonds for the project needed to be issued by CPCFA by the close of business on September 23, 2010 (Attachment A). Per the Company’s request, the CPCFA Executive Director, under his Delegation Authority and California Debt Limit Allocation Committee (CDLAC) procedures, extended the expiration date to October 27, 2010.

The Company currently requests an additional extension to the bond issuance date.

Based on the project’s circumstances and in accordance with CDLAC procedures, this project qualifies for an extension to the issuance deadline to January 25, 2011.

Staff Recommendation. Staff recommends approval of a bond issuance date extension to January 25, 2011 for Allocation Resolution Number 08-242-07 for BioFuels Energy, LLC and/or its Affiliates.

Attachment A
THE CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

RESOLUTION NO. 08-242-07

**A RESOLUTION DEDICATING FOR USE OF A PORTION OF THE 2008 STATE
CEILING ON QUALIFIED PRIVATE ACTIVITY BONDS FOR AN
EXEMPT FACILITY PROJECT**

WHEREAS, the California Pollution Control Financing Authority (“CPCFA”) has received an application (“Application”) from BioFuels Energy, LLC (“Project Sponsor”) for approval of the issuance of revenue bonds; and

WHEREAS, on June 23, 2010, CPCFA approved Final Resolution No. 499 (“Final Resolution”) authorizing the issuance of up to \$14,800,000 of its solid waste disposal revenue bonds (BioFuels Energy, LLC Project) Series 2010A and Series 2010B (“Bonds”); and

WHEREAS, in seeking CPCFA approval of the Final Resolution, the Project Sponsor represented certain facts and information concerning the project to CPCFA which were relied upon by CPCFA in approving the Final Resolution; and

WHEREAS, the California Debt Limit Allocation Committee (“CDLAC”) has previously transferred to CPCFA a portion of the 2008 State Ceiling on Qualified Private Activity Bonds pursuant to Section 146 of the Internal Revenue Code of 1986, as amended, for use by CPCFA to issue bonds or other obligations in a manner consistent with CDLAC’s policies and procedures. Accordingly, capitalized terms not otherwise defined shall have the meanings ascribed to them in the “Procedures of the California Debt Limit Allocation Committee Implementing the Allocation of State Ceiling on Private Activity Bonds” (“CDLAC Procedures”); and

WHEREAS, it is appropriate for CPCFA to confirm the use of a portion of the 2008 State Ceiling on Qualified Private Activity Bonds allocated to CPCFA (“CPCFA Allocation”) to the issuance of the Bonds as set forth in the Final Resolution;

NOW, THEREFORE, CPCFA resolves as follows:

Section 1. CPCFA Allocation in the amount of \$14,800,000 is hereby dedicated to the issuance of the Bonds. The dedicated CPCFA Allocation may be used only by the Project Sponsor and only for the issuance of Bonds for the Project, as specifically described in Exhibit A, and consistent with the terms of the Final Resolution. All of the terms and conditions of Exhibit A, and the Final Resolution are incorporated herein as though set forth in full (this resolution, the Final Resolution and Exhibit A, collectively “Resolution”).

Section 2. The terms and conditions of this Resolution shall be incorporated in appropriate documents relating to the Bonds, and the Project Sponsor and all its respective successors and assignees, will be bound by such terms and conditions.

Attachment A

Section 3. Any modification to the Project made prior to the issuance of the Bonds must be reported to the Executive Director and shall require reconsideration by the CPCFA before the Allocation may be used for the Project.

Section 4. The CPCFA Allocation dedicated by this Resolution shall automatically revert to CPCFA unless the Bonds for the Project have been issued by CPCFA by the close of business on **September 23, 2010**. In a case of extreme hardship, the Executive Director may extend this date by up to five (5) business days.

Section 5. Within twenty-four (24) hours of issuing the Bonds, CPCFA shall notify CDLAC by facsimile communication to the fax number listed in Section 24 of the CDLAC Procedures that the Bonds have been issued. This facsimile notice shall identify the Project Sponsor, the project or program, the date and amount of the Bonds issued.

Section 6. Within fifteen (15) calendar days of the Bond closing, CPCFA or its counsel shall formally transmit to CDLAC information regarding the issuance of the Bonds by submitting a completed Report of Action Taken in a form prescribed by and made available by CDLAC.

Section 7. Any differences between the amount of Bonds issued and the amount of the CPCFA Allocation dedicated in Section 1 of this Resolution shall automatically revert to CPCFA. If at any time prior to the expiration date set forth in Section 7 hereof the Project Sponsor determines that part or all of the CPCFA Allocation dedicated in Section 1 of this Resolution will not be required by the Project by that date, the Project Sponsor shall promptly give notice to CPCFA.

Section 8. In consideration of the CPCFA Allocation dedicated in Section 1 of this resolution, the Project Sponsor shall comply with all of the terms and conditions contained in this Resolution and ensure that these terms and conditions are included in the documents related to the Bonds. Further, the Project Sponsor expressly agrees that the terms and conditions of this Resolution may be enforced by CDLAC or CPCFA through an action for specific performance or any other available remedy, provided however, that CDLAC and CPCFA agree not to take such action or enforce any such remedy that would be materially adverse to the interests of Bondholders. In addition, CPCFA shall ensure that the Bond documents, as appropriate, expressly provide that CDLAC is a third party beneficiary of the terms and conditions set forth in this Resolution.

Section 9. The Project Sponsor or its successor-in-interest shall provide certifications of compliance with the terms and conditions set forth in this Resolution when reasonably requested by CDLAC or CPCFA.

Section 10. This Resolution shall take effect immediately upon its adoption.

Attachment A
RESOLUTION NO. 08-242-07
(AN EXEMPT FACILITY PROJECT)
EXHIBIT A

1. Project Sponsor: BioFuels Energy, LLC
2. Application #: 00818(SB)
3. Project User: BioFuels Energy, LLC
4. Project Name: BioFuels Energy, LLC
5. Location: San Diego County
6. Private Placement Agent: George K. Baum & Company
7. The Private Placement Agent at the time of issuance will be the same as represented in the application.
8. Amount of Allocation: \$14,800,000