

March 20, 2000March 16, 2000

Dear Rick:

You asked for comments, and so I will respond to your e-mail and proposed revised conditions.

I hope you will forgive my cynicism but I am extremely concerned about the Energy Commission process. Is it open to the public as mandated by the Warren Alquist act, or does the Energy Commission process involve deals behind closed doors? There is little question in my mind that this change is prompted, not by staff's independent evaluation of the evidence provided in the public record but instead by some type of pressure from the applicant or other communications which may of themselves be improper.

I'd like to start by attempting to set the record straight, at least the record I am a party to. The issue of CEQA and a "Will Serve Letter". At the first Public Hearing, where I attempted to get subpoena's issued; discussion about the necessity of those Subpoenas was set in the record. but perhaps more importantly the issue of the "Will Serve" and CEQA analysis that was required from the "Non Party" agencies..

Starting on page 122 to page 139 and 285 to 296 of the 9/16/99 hearing on the need for the subpoena, then concluding at the beginning of the afternoon hearing with:

HEARING OFFICER VALKOSKY: Will you as part of your testimony and exhibits on water issues supply a "will serve letter" or its equivalent?

MR. THOMPSON: My . . . understanding is that **we cannot get a will serve letter until the CEQA process is complete.**{emphasis added} . . . As the process unfolds and we have the proper environmental data before the agency and they make a decision, we will get one and submit it into the record.

HEARING OFFICER VALKOSKY: Do you have any indication what the agency believes proper environmental documentation to be. . . the Presiding Members Proposed Decision or . . . the Commission Decision.

MR. THOMPSON: I am not sure. . . the Presiding Members proposed report. . . which I would urge them, or a final decision.

It takes little effort to see what the Applicant and at least two of the Agencies had in mind from the start, the problem is as the process has unfolded we have found that proper environmental data has not been provided or studied.

Your e-mail's introductory comments stated that . . . based on the evidence presented at the February 18, 2000 hearing in Victorville, staff believes it is appropriate to clarify these conditions. This is interesting. Exactly what evidence is the staff referring to? Could it be the conclusive testimony by yourself, Jack Beinschroth and Bob Almond that

the facilities and pipelines are over designed by over 200%? Is it that this conclusive evidence demonstrates that the issues of "Cumulative" as well as "Growth Inducing Impacts" associated with this over sizing has never been studied, even though it has been continuously brought before the Energy Commission for nearly a year?

Perhaps it was your review of staff s "Brief", that stated the conditions had to be mandated to assure compliance, that gave you pause to be "retrospective". How can, staff change its mind after filing its own Brief defending its proposed condition excluding Victor Valley Water District s (VVWD) ownership of project wells?

Your statement that Staff now, ". . believes that VVWD s uses HDPP wells to supply domestic needs after project closure during years 1 through 30 has a low probability of resulting in growth inducing impacts, **because the conditions that are likely to lead to the projects failure** will also lead contribute to higher water rates", is but one of a myriad of possibilities that may result from a proper CEQA analysis of cumulative and growth inducing impacts. After all, my argument was that the project is growth inducing. Given my argument, the question begs itself - if we only have a limited supply of water, where is the water coming to cure the overdraft and provide for growth? How can the limited supply be equitably achieved on a regional basis? These are the questions staff continues to avoid. Because these are the conditions that **"are likely to lead to the projects failure. . ."** , if the plant is unreliable, perhaps we should reopen the case to discuss this.

Staff s attempt to change the staff s testimony and now conclude that growth inducing impacts due to VVWD s use of HDPP wells after closure are too speculative to warrant the excluding VVWD s ownership of the wells, appears to be a direct response to applicant s Brief which addresses "Speculation." Applicant presented no evidence, direct testimony or cross-examination on the staff s "Speculation". Actually staff s testimony is that the Project has a high probability of failure due to water issues.

The e-mail then goes on to state a Second reason for Staff s apparent "Reflection", also apparently in response to the Applicants Brief; that staff agrees VVWD s use of the water treatment facility to inject water into the ground water aquifer for recharge of the groundwater aquifer or bank water as a contingency to mitigate future drought conditions could create a benefit to the local community and to the environment. Staff may be right that the local community could benefit. But local benefits are not the issue before the CEC at the present time. What happens if per chance Victorville captures all of the water entitlement and there is nothing left for the other communities to grow on.

Your e-mail overlooks the critical and un-refuted evidence of Jack Beinschroth and Bob Almond on limited water supplies, a further ramp down to 50% in the Alto Basin and a requirement of all of the MWA entitlement to the current allocation just to cure the overdraft. Further the testimony that the "Water Treatment Facility" will be able to provide treated water directly into the main distribution facility of VVWD. Although Mr. Welch testified HDPP would not treat the water to drinking water standards, Staff s testimony was the conditions state they are required to. Is that bad? Perhaps not. But the

issues of "Regional Use" of water and correcting the overdraft is. The use of the State's water for 100% consumption when 50% of the imported water is supposed to be used as Return Flow is inexcusable. Staff has constantly taken the position that the CEC is only studying and approving the use of water for HDPP and no other use. Time after time, at workshops and with Linda Bond, you told me that I simply did not understand the process. Why? Because staff's approval simply did not cover any other use of the water. All of your studies and your own testimony validate that.

It was only after the perjured testimony of High Desert's witness Welch and Randy Hill, which Fish and Game brought out and my evidence of the VVWD hearings proved the "Contract" allowed for other uses. Read Mr. Hills and Welch's words, "only in the case of an emergency"; . . . "there are no other agreements". Now, five months later, the agreement is that VVWD can use the wells, pipelines and treatment facilities that are "oversized", anytime they want, as long they meet the CEC conditions. Your conditions have never been reviewed for any "other" uses, your own testimony.

One very important condition that Staff briefly glosses over is banking will require a storage agreement between the Watermaster and VVWD [this is only one of five agreements and is integral to the Water Storage and Recovery Agreement you are proposing to approve]. How can you approve a signed agreement, which requires a further agreement, which you acknowledge, has not had CEQA? Your own words; "to approve the storage agreement the lead agency will need to assess the environmental consequences of such banking pursuant to Mojave Water Agency (MWA) Ordinance 9 and the California Environmental Quality Act (CEQA)". The evidence from both of these Agencies in this case is that they intend to use the PMPD for their CEQA Equivalent. Of course staff could provide a condition stating that neither VVWD nor MWA can use the PMPD as the CEQA equivalent. But would the condition protect the public? Remember HDPP bought the elections of these local political bodies for \$100,000, so thus even with that condition HDPP expects to get the result they want.

Your e-mail reiterates "the Energy Commission's evaluation of the HDPP water plan clearly does not address any additional storage or withdrawal, **or direct use** proposed by VVWD, and therefore, the CEC will not approve such storage as part of its decision on the HDPP. Sorry although you say that, the conditions you propose do not say it. Both VVWD and HDPP's review as they have told you, they intend to use the PMPD as their equivalent, look at the evidence in this case.

Your conclusion that, staff does not believe that the Energy Commission's decision should foreclose the possibility of VVWD's use of water treatment facility for groundwater banking, provided that the appropriate water storage agreement (which conforms with CEQA) has been issued by the Watermaster, puts the proverbial 'cart before the horse'. You cannot certify this project unless and until the proper CEQA analysis has been conducted that demonstrates the **"entire water project"**; being proposed to support the HDPP for its entire lifetime has been adequately studied. It has not! It would seem that even Mr. Thompson certainly agreed with that when he stated **"we cannot get a will serve letter until the CEQA process is complete"**.

The record in this siting case has been closed - TWICE. Are you now proposing to open the record again? What new evidence is the staff proposing? You have cited none. Would you agree and support opening the record for the public to present vital information about an a new \$75 Million Dollar, 50,000,000 gallon per day treatment plant that Victor Valley Water District is proposing to Build? Or additional new evidence and examination of all of Staff's Witness on Reliability?

You have raised so many new arguments before we even see the Revised PMPD. Don't you think we should see Revised PMPD? Perhaps you already know? I'd like to know what the PMPD is going to say about Dry Cooling and Reliability. What is the new comment period going to be? Will there be a new hearing on the comments? Will there be a separate hearing in Victorville on your proposal to reopen?

I know of no legal tribunal where people say something under oath and then when it doesn't suit them, get to change their mind, except of course President Clinton. That's what you now propose. In the November hearings staff position was that the use of water was exclusive to HDPP, we proved that was not the case and the PMPD so states. On the date of the hearing February 18, 2000 staff testified that the project owner shall retain ownership of all project facilities, including the water pipeline, the project wells and the treatment facility. A mere 30 days later, the staff changes its mind. Again, I know of no judge who would allow such a process which allows floating "trial balloons" of testimony to see if it is okay, and when it isn't okay, tries another balloon.

What becomes a matter of concern to me is staff's role as an "independent analyst" given the fact that there are numerous siting cases "in the queue." Add the fact that High Desert has utilized more than twice the usual time required to process an application due to applicant changes and failure to provide information as needed. To the best of my knowledge the CEC still does not know what plant they intend to build.

Why, after reaching the conclusion that certain conditions must be met, is staff going back and revisiting the issue? Isn't there a time-crunch for other cases? It would appear that staff's independent view that growth inducing impacts, and my insistence that the "cumulative impacts" have not been studied, indeed exist and have been lobbied away to a new position of "reflection."

I'm sure you are not surprised that I disagree with your approach. If you and the applicant attempt to reopen the record to get your point revisited, I will request a full evidentiary hearing to recall my witnesses, provide new witnesses and evidence and if necessary to revise the testimony and evidence.

Just as a reminder, I'm not opposed to a the power plant per se. It's the water issue and the applicant's mis-use of a scarce resource as well as an unfair treatment of existing local residents that have kept me in the Energy Commission process. If you revise staff's testimony to mandate dry cooling, which is the only way to provide a reliable source of electricity from this plant you will get my support.

IN THE END - YOU STILL DO NOT HAVE AS EVIDENCE BEFORE YOU THE KEY ELEMENT OF A RELIABLE WATER COOLED POWER PLANT:

AN UNINTERRUPTABLE WILL SERVE LETTER

That means that you do not have a RELIABLE power plant being constructed, you cannot certify it.

Since you sent an e-mail, I'm assuming that you are asking for an informal response.

Respectfully

Gary Ledford

P.S. As an aside, I made a motion to exclude the "Brief" filed by VVWD and the motion was denied. The basis for the denial was, "while not a formal "Party", they are a public agency with a material interest in and knowledge of the project water supply plan.

I hope your memory is as good as mine, I attempted to use "discovery" to find out about the plan early in the proceedings, I submitted discovery requests to both MWA and VVWD and you know what I received, "nothing". The reason given was they were not "Parties" and did not have to respond.

I then attempted to subpoena Mr. Cauoette and was proposing one to Mr. Hill and others from MWA and you know what happened, the subpoena was denied, or as the Committee stated - "deferred".

Mr. Hill was then, either applicants "witness" or nobodies, but he never submitted any "Prepared Testimony" as required under your rules.

I simply do not know how this "Hide the Ball" can continue to work; the Public has one set of rules and Public Agencies another. By the way, I do not think that is what the Act says.

I also filed a motion early in the process to mandate a full CEQA analysis on the Regional Water Issues, that was also denied, had it of been approved the process would be complete.