

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA**

**COMPLAINT OF GARY LEDFORD ON
HIGH DESERT POWER PROJECT
WATER ISSUES**

**DOCKET No. 97-AFC-1C (C1)
COMPLAINT-1**

**LEDFORD OBJECTIONS TO CEC
PROPOSED DECISION ON THE COMPLAINT
REQUEST FOR RECONSIDERATION**

Complainant Ledford was ambushed in a Noticed Pre-Hearing Conference to review prepared Exhibits and “Position Statements” two days in advance of a Noticed “Evidentiary Hearing” on Order of this Commission. At the time of the Pre-Hearing conference the “Committee” abused it’s discretion by “Dismissing” portions of the Complaint and later the entire complaint and all related matters in their entirety. While the caption states it is a “Proposed Decision” the absence of the Ordered Evidentiary Hearing makes the conclusionary statements inaccurate. The Pre-hearing Conference was not a Motion for Summary Judgment, it was simply to identify witnesses and attempt to Stipulate to certain issues.

The Committee has no such authorization to summarily dismiss complaint’s right to a fair and impartial evidentiary hearing. The Committee may only recommend, yet the language in the Proposed decision is not advisory, such as the committee “recommends”. The language is conclusionary and led other agencies to make decisions as if the matter were fully resolved.

- The allegations regarding Condition 1e are therefore dismissed with prejudice.
- We therefore dismiss the allegations regarding Condition 2 without prejudice.
- The allegations in the Complaint concerning Condition 17(1) are dismissed with prejudice.
- We therefore dismiss the allegations regarding Condition 19 without prejudice.
- We therefore revise the verification language to be consistent with the Condition as follows:
- We therefore find no new evidence that HDPP intends to use SWP water for purposes other than project needs.

- Since we uphold the Committee’s ruling and dismiss all the allegations in the Complaint, the subpoena requests are moot and we need not consider them.
- The allegations concerning noncompliance with Condition 11 are therefore dismissed without prejudice.
- Complainant’s Motion to Show Cause is denied.

Generally the “Committee” based the dismissal on the basis that Ledford had not presented a **Prima Facie Case**. Complainant disagrees. Complainant’s “Position Statement” is incorporated herein by reference as though it was set forth in full.

A. LEDFORD PRESENTED “The Prima facie Case”

A prima facie case is one that at first glance presents sufficient evidence for the plaintiff to win. Such a case must be refuted in some way by the defendant for him to have a chance of prevailing at trial. The term is (Latin) A legal presumption which means "on the face of it" or "at first sight". Law-makers will often use this device to establish that if a certain set of facts are proven, then another fact is established prima facie.

B. LEDFORD WAS DENIED DUE PROCESS.

Ledford, an Intervenor in the certification proceeding, filed the Complaint alleging that the High Desert Power Project violated or intended to violate certain Conditions of Certification related to the project’s water supply plan.

This Commission agreed that a “**prima facie case**” had been established, when it issued its Order to have an evidentiary hearing.

Please take notice that the Committee will conduct an evidentiary hearing on the Complaint as follows:

WEDNESDAY, JANUARY 16, 2001, CONTINUED TO THURSDAY, JANUARY 17, 2001, IF NEEDED - BEGINNING AT 10 A.M. - CITY OF VICTORVILLE - CITY COUNCIL CHAMBERS - 14343 CIVIC DRIVE - VICTORVILLE, CA 92393

The Committee without complying with the Commission’s order is proposing to this commission that Ledford’s proposed testimony and exhibits do not establish **prima facie evidence** of noncompliance with the Conditions. The Committee summarily

concludes without the “**Evidentiary Hearing**” that “We find that the High Desert Power Project either has complied with the Conditions or the date for compliance has not yet occurred.” **and** “We therefore dismiss the Complaint in its entirety.” The Committee does not have the authority to “**dismiss**” the complaint - only to recommend an action.

Yet based on the Committee’s alleged “dismissal”, HDPP was able to advise the State Water Resources Control Board Lahonton Region [Lahonton] that Ledford’s Complaint had been “Dismissed”. Therefore in the Lahonton deliberations on issuing a “Waiver”, they were given inaccurate information as to the “Status of the Complaint” – conversely this Commission is given misinformation of the status of the “Waiver” before the Lahonton Board. Since the “Committee’s” alleged dismissal, the CEQA analysis by Lahonton has changed at least twice, since the Pre-hearing Conference, once after the Public Hearing was “closed.”

C. Condition 12 – The Condition that requires the Water Treatment Facility to treat water to Background levels.

Condition 12 requires HDPP to submit a water treatment and monitoring plan that specifies the type and characteristics of the treatment processes and identifies any waste streams and their disposal methods. Condition 12 requires that treatment of water prior to injection must be “to levels approaching background water quality levels of the receiving aquifer or shall meet drinking water standards, whichever is more protective.” The verification to Condition 12 requires submittal of the water treatment plan ninety days prior to banking SWP water.

Complainant Ledford’s **Prima Facie** case is that HDPP is constructing a Water Treatment Plant that does not comply with **the “Final Approved Plans”** HDPP submitted and approved by this Commission – this **Fact** is uncontested. Further that the plant they are building is not consistent with the equipment specified by the applicant and its engineers in the testimony in the record. By not using the “**approved**” water treatment facilities that the proposed treatment will not result in water approaching background water quality levels – this **Fact** is uncontested. Specifically, Complainant contends that Condition 12 requires and that HDPP’s “**final design drawings of the project’s water supply facilities to the CPM, for review and approval, thirty days before commencing construction**” is reverse osmosis (RO) as the method to treat SWP water prior to injection. This is exactly the method of water treatment that HDPP Executives, Engineering Witness and CEC Staff testified they would construct. In fact

under sworn testimony HDPP's witness Andy Welch testified that the water treated would be "essentially identical in quality":

"At the time we prepared this AFC the plan was to pump groundwater and to discharge water at the Rock Springs outlet. So, this is not the same anymore. The current issue is to inject treated state water project water into the regional aquifer that is essentially identical in quality. So this doesn't apply."

(10/7/99 RT 213) [See also CEC Exhibit 121, 122 and 131]

The committee contends HDPP only discussed RO during the certification proceeding and that neither the Commission Decision nor Condition 12 requires the implementation of a specific design for water treatment and only establishes a performance approach that must meet certain water quality standards. No place in the CEQA equivalent document does the Commission allow for the "degradation" of water. No Place in the Decision are "Alternative" methods of treatment discussed. Noting the LORS Section of the Decision under SWRCB Res 68-16, degradation is specifically prohibited.

"The Porter-Cologne Water Quality Control Act requires a waste discharge for injection of surface water into a groundwater aquifer to ensure the protection of groundwater quality. SWRCB Policy 68-16, Statement of Policy with Respect to Maintaining High Quality of Waters in California, requires any discharge to existing high quality waters to meet waste discharge requirements. These requirements will ensure that pollution will not occur and the highest water quality will be maintained."

There is no question that **HDPP's final design drawings** of its water supply facilities, which were filed on March 27, 2001, included RO as the water treatment method. (Exhibit L to Respondent's Answer.) and Exhibit "A" attached hereto. Required RO to bring the injected water to "Background Water Quality" levels, thereby ensuring that ". . .pollution **will not** occur and the **highest water quality will be maintained.**

Subsequently, and without notice to anyone HDPP revised its plans and began construction on a different water treatment plant. This change came only a few weeks after the CEC approved construction of the power plant. The unapproved Water Treatment Plant remains under construction and during the WDR review process without any approval of the plans from the CEC.

D. This change of water treatment constitutes a CHANGE in the conditions.

HDPP's new proposal to use the conventional water treatment method that will not remove any total dissolved solids (TDS) and will degrade ground water quality is an uncontested **Fact**. This is a CHANGE in the water treatment process approved by this commission. The Lahonton proposed findings state:

"1. . . .The receiving ground water at the point of injection will be degraded over time due to increases of inorganic constituents, primarily. Total dissolved solids (TDS) which are considered a Waste."

Commission staff makes conclusionary statements, but provides no evidence or witness that can be examined so that informed decisions can be made. CEC staff confirms that the RO process was initially considered to achieve TDS levels equivalent to the groundwater in the injection area, the **facts** are, no other water treatment method was ever proposed by HDPP, considered or studied by either HDPP or the CEC Staff.

The Committee acknowledges that the language of Condition 12 is ambiguous. Complainant argues that HDPP's water treatment method should result in levels not **exceeding** background water quality levels for TDS and that any degradation of the aquifer (changing TDS levels) violates the sworn testimony of the witnesses, and exhibit's in the record which lead to the Condition.

The simple operative words of the condition are explicit; Condition 12, i.e., water treatment **must** attain "levels approaching background water quality levels... or shall meet drinking water standards, *whichever is more protective*."

To clarify this requirement, Complainant simply requests that the Commission conduct an evidentiary hearing and review the record, TDS removal is mandated by the evidence and testimony and more conclusively by the "**Final Approved Plans**" submitted by HDPP to the CEC and which plans were subsequently "**Approved**".

The treatment plant must also deal with Public Health. Originally, Lahonton Staff found that the Ultra-Violate [UV] method of treating the bypass water would be sufficient to meet DHS requirements. Only an evidentiary hearing will satisfy inquiries about all of the proposed "Changes".

IN THE END - IT'S ALL A MATTER OF MONEY

Although, the Lahonton Board finally heard this matter on February 13 & 14, of 2002, it was not in the form of an evidentiary hearing. The Board made up of eight

members initially voted 4-4 to approve a conditional waiver. With this vote the waiver would have been denied and therefore the HDPP could **NOT** have complied with the condition under any time frame.

Only after the “Public Meeting” was “closed” and the vote was taken, and the public left the meeting room, did HDPP meet with Lahonton Staff. After more than one hour, the Lahonton Board [without reopening the matter and allowing for further Public Testimony], allowed HDPP to make a revised proposal. The new proposal [not presently available to Complainant in written form] is alleged to fund \$500,000 for a study on TDS on a Regional Basis, plus 50% of any additional costs over \$500,000. The conclusive result of this action is an admission by HDPP that a Study was required. However with this change and no public input the Lahonton Board voted 7-1 to approve the waiver.

In order to approve a “Waiver” Lahonton had to make “findings” that are contrary to the findings made by this Commission,

(1) that the degradation of the water was in the interests of all of the people of the state of California. It does not - it only benefits HDPP by saving HDPP up to \$50,000,000, over the life of the project. The **Prima Facie Evidence** before the commission is on page 2 of the Waiver, **Finding 6**.

“Reverse osmosis was identified in the anti-degradation analysis as the **best available technology** for removing TDS in the SWP water prior to injection **to ensure there is no degradation**. The capital costs to install a reverse osmosis system capable of removing 83 mg,/L of TDS in 4,000 AF of water per year is \$2,900,000 with associated operation and maintenance costs of \$954,000 per year. Additionally, increased purchases of SWP water, to compensate for reverse osmosis brine reject water, are estimated at \$556,000 per year and increased waste disposal costs of the salt removed are estimated at \$564,000 per year.”

By being allowed to make this change HDPP will save \$2,900,000 in capital costs, plus approximately \$2,000,000 in operational costs per year. The only benefit is to HDPP and its bottom line.

(2) that the degradation will not unreasonably affect the present and **anticipated** beneficial uses – of the water, yet no cumulative impacts study was made on the excess capacity of the Water Treatment Plant, which VVWD intends to use and is allowed to use under the CEC Conditions.

(3) will not result in water quality less than prescribed in the Basin Plan; fails to address the cumulative impacts associated with the full life of the maximum capacity of

the Water Treatment plant that “**will degrade the water**”.

(4) that dischargers **must use the best practicable treatment or control to avoid pollution or nuisance and maintain the highest water quality consistent** with the maximum benefit to the people of the state. Lahonton findings that the project would provide growth and stimulate the economy [a finding that is contrary to Condition 19], which was supposed to be imposed on the project to ensure it would not make it growth inducing, and therefore no “Growth Inducement Study” was required are in conflict, and will require further developments before Lahonton. Finally, the Alternative Dry Cooling financial impacts were a part of the Dry Cooling Studies and HDPP agreed to the more expensive water treatment process in order to fully protect the ground water quality.

E. The Complaint - Condition 1e – THE PIPELINES ARE VERSIZED

Complainant Ledford established a “**Prima Facie**” case that the project’s water supply pipeline is oversized and will allow excess water to be treated for non-HDPP purposes, with the cumulative evidence in the record by the CEC Staff, new evidence from Jack Beinschroth and the New Engineering documents from Mojave Water Agency and un-answered E-Mail from Norm Caouette of MWA and a lack of engineering data from HDPP to examine witnesses on, the Committee cannot make the findings they allege.

Complainant Ledford asserts that the water treatment facilities have the capacity to treat more water than necessary for project use. The HDPP provides “**Prima Facie**” evidence in their own exhibits that the equipment for treating water is over-designed. The Complainant witness testified in the original hearings that the pipelines were over designed and Condition 1e states: “**The projects water supply facilities shall be appropriately sized to meet project needs.**” With the following verification: “The Project owner shall provide final **drawings** of the project’s water supply **facilities** to the CPM for review and approval, thirty days before commencing project construction.”

The Final Approved Drawings – [such as they are] and stipulated to by the parties are attached hereto as Exhibit “A” . These final approved drawings clearly show a Reverse Osmosis Water Treatment Plant, and the primary equipment as being able to treat 6,900 gpm or over 11,000 acre-feet per year. The Water Treatment Plant is over designed for the HDPP1’s use. Mr. Caouette E-Mail substantiates Ledford’s claim, as **Prima Facie** evidence that MWA believes there is excess capacity in the line which they can use. Exhibit “B” Attached hereto.

These final approved drawings of a Multi-million dollar water treatment and injection well field consist of no engineering design whatsoever, only a single line schematic, some numeric detail on filtration process and an equipment list. Yet with this information the Compliance Division of this Commission issued a will proceed order that with this set of final approved “**water supply facilities**” drawings and others the entire Plant could commence construction in May 2001.

The final approved drawings in relation to the sizing of the pipelines are silent as to their design capacity and the record in this case when fully reviewed along with additional testimony and cross-examination will demonstrate the pipelines are over designed even for peak capacity of the operation of the Water Treatment Plant. Ledford is entitled to an evidentiary hearing based on the “**prima facie evidence.**”

While the Conditions of Certification collectively attempt to ensure that HDPP’s use of water is limited to project needs. Condition 17 requires the Aquifer Storage and Recovery Agreement to establish baseline water production of neighboring wells and HDPP wells may not exceed that production in the combined use of its wells and neighboring wells. The recently approved Water Storage Agreement is silent on this condition.

Condition 19 prevents use of the HDPP water treatment facility for purposes other than project needs, however since the approval of the HDPP – VVWD submitted a Water Storage Agreement for 130,000 acre-feet of water and then withdrew it. Why?

As the Committee states “[t]he verification for Condition 1e, HDPP submitted its final design drawings of the project’s water supply facilities thirty days prior to commencing construction. HDPP cannot now build a different treatment plant without some type of prior approval, yet none has been given.

As opposed to dismissing, after a proper evidentiary hearing the finding should be that Complainant correctly states that HDPP is not constructing the Water Treatment Plant that was in the “**Final Approved Design Drawings of the Water Supply Facilities**” To dismiss with prejudice is an abuse of discretion.

F. Condition 2 – The Water Storage Agreement

Condition 2 requires HDPP to submit a Water Storage Agreement (WSA) between the Mojave Water Agency and the Victor Valley Water District prior to initiation of any groundwater banking. The parties stipulated that groundwater banking would not commence until approximately September 2002.

Not just any agreement – one that complies with the conditions. The Order of the Commission allowed evidence on this matter to be submitted even though the time for compliance had not run. The proposed decision to “dismiss” without an evidentiary hearing is an abuse of discretion.

G. Condition 17(1) – The Aquifer Storage and Recovery Agreement

Condition 17(1) requires HDPP to enter into an Aquifer Storage and Recovery Agreement (ASRA) with the Victor Valley Water District (VVWD). The ASRA shall prohibit VVWD from producing or allowing others to produce water from project wells for purposes other than use by the HDPP. The verification to this Condition requires HDPP to submit the ASRA prior to commencing project construction. HDPP submitted a ASRA to the Commission in February 2000, when it was received as Exhibit 145 in the certification proceeding, that ASRA does not comply with Condition 17, this in an uncontested **Fact**.

Complainant Ledford has pointed the Committee to the transcripts of the proceeding that established the witnesses for both VVWD and HDPP testified under oath the agreement is null and void.

The **Prima Facie** evidence on this matter was provided by Lorraine White and Caryn Homes CEC staff members as Exhibit “B” to the original complaint. The Conditions were subsequently revised by the Commission upon adoption of the certification decision in May 2000 – this **Fact** is uncontested.

Complainant provides a **Prima Facie** case that the VVWD voided the ASRA with HDPP and VVWD’s testimony in the hearings before the Committee as well as the memorandum by Staff. Respondent HDPP and the VVWD attempt to justify the non-compliance with the condition that the ASRA remains in effect and each submitted letters to the Commission in October 2001, long after the required compliance was to take place. Nowhere to date in any of the proposed compliance documents including the recently filed “Codicils” have VVWD or HDPP demonstrated that requisite Board actions were taken to give authority to approving this modification. As your own staff stated:

“[T]his means that the Commission's final conditions would likely be held by a court to not be part of the contract between the district and the project owner. {emphasis added}”

The allegations in the Complaint concerning Condition 17(1) are accurate – there was no “approved ASRA prior to commencing construction and a dismissal with prejudice is an abuse of discretion. Perhaps the proposed “Fix” with a “Codicil” will fulfill the condition, but the fix is not timely and the Complaint is validly founded in **Fact**.

H. Condition 19 – Condition is supposed to limit ANY use of HDPP water treatment facilities.

Condition 19 provides that HDPP shall limit any use of its water treatment facilities by the VVWD or another entity for purposes other than banking water for the HDPP. Further, HDPP shall not allow VVWD or another entity to use the treatment facilities for treatment of water that is injected and then recovered by VVWD unless the Mojave Water Agency (MWA) and the VVWD have entered a WSA agreement for which a California Environmental Quality Act (CEQA) review has been completed in accordance with MWA Ordinance 9.

Complainant asks for an evidentiary hearing on the conduct of the parties. The new **Prima Facie** evidence is that VVWD is mining or overdrafting its portion of the Regional Aquifer by over 12,000 acre feet per year. Further as Exhibit “A” to complaint demonstrated the VVWD over the “life” of the HDPP project will need to treat and store up to 130,000 acre-feet of water per year. Further evidence is provided by a Study conducted since the certification of the HDPP by Parsons Engineering that over the next twenty years VVWD alone will need over 50,000 acre-feet of water just to meet obligations to customers in its growing customer base.

Yet, VVWD and HDPP would like the CEC and others to believe that after spending up to ten million dollars on a water treatment and supply facility, that half of its capacity will lie idle for 25 years. It defies common sense and the condition is simply eye wash for the true intent of the parties.

The WSA described in Condition 19 does not exist. The allegations of noncompliance with Condition 19 are not speculative based on the **Prima Facie** evidence and Complainant is entitled to an evidentiary hearing before an unbiased judicial body to make a proper determination.

I. Noncompliance with Conditions 11 – Committee proposes Changing the Condition after the CEC has already made a “Final Approval of the Water Facility Plans”

Condition 11 requires HDPP to submit an approved Waste Discharge Requirement (WDR) *prior to the start of groundwater banking* unless the Lahontan RWQCB waives the waste discharge requirement. The verification requires a copy of the WDR *within sixty days of the start of rough grading*. The condition was fully satisfied with the submission of the **Final Approved Plans**.

As late as August of 2001, Jay Cass of the Lahontan Regional Board staff stated. **“In order to keep this item on the September [2001] RB meeting agenda your project will have to propose no ground water degradation.”** This was four months after construction had commenced on the Plant.

The Committee wants to amend the Condition “[T]o clarify the time for filing the WDR, the Committee states language of the Condition controls.” The Committee alleges the Commission adopted the Condition based upon the evidentiary record, which reflects consultation with the parties and the relevant water agencies, which the **Prima Facie** evidence indicates required the RO process. Complainant is entitled to have an evidentiary hearing on the non-compliance and a stay order should be granted on amending any condition without reopening the hearings on water and water quality.

The undisputed **Prima Facie** evidence is that HDPP submitted to Lahontan RWQCB a new or revised Report of Waste Discharge (RWD) and Antidegradation Analysis in May 2001 **after** the CEC **Approved the final plans for the water treatment facility and HDPP commenced construction on the water treatment plant.**

Without any approvals for the changes HDPP provided supplemental information on June 20, 2001, June 29, 2001, and July 30, 2001, as well as a supplement to the Antidegradation Analysis on August 23, 2001 all of which were deemed to be incomplete by Lahontan Board Staff. Subsequently, the Lahontan staff prepared a draft Conditional Waiver of WDR for the RWQCB’s consideration.

The Lahontan staff failed to review the entire record or to complete a proper cumulative impacts study when recommending the Conditional Waiver of WDR. Lahontan staff also attempted to prepare a draft CEQA addendum to address potential environmental impacts of the groundwater banking proposal, but it ignores the foundational material in the CEC record. The draft CEQA addendum does not analyze the cumulative effects of the idle water treatment plant, but does find that HDPP’s new treatment process will degrade the ground water with “waste”.

The committee’s finding that the construction of the Water Treatment Plant with final approved plans requiring the RO process is in compliance defies common sense. As of the date of filing the complaint HDPP was clearly out of compliance, even as of

the date of the committee's attempt to find that Lahonton may approve something in the future, it still does not change what the **Final Approved** Plans require.

The proposed findings are an abuse of discretion and the Complainant is entitled to a full evidentiary hearing and proper findings by an objective and unbiased judicial body.

J. Complainant's Discovery Requests – CEC Staff has deliberately “Stone Walled” and “Hid the Ball” on Complainant's Discovery Requests

On December 20, 2001, Complainant filed several requests for subpoenas to compel witnesses to attend the evidentiary hearing scheduled in this matter. On December 28, 2001, Complainant filed an “Ex Party (sic) Motion to Show Cause...” to compel Commission staff to provide documents, which Staff had removed from compliance files on alleged grounds of privilege.

The Committee states it did not have enough information to rule on the subpoena requests or the motion, which would have allowed for timely discovery of relevant matters raised by the **Prima Facie** case. The requests were ignored. At the Preheating Conference on January 14, 2002, only two days before the Committee improperly canceled the evidentiary hearing and subsequently dismissed several of the allegations in the Complaint. (See Jan. 14, 2002, Committee Ruling on the Pleadings.) The Committee had no authority to cancel the evidentiary hearings or dismiss anything, only to make recommendations to the full commission.

The **Prima Facie Case**, demonstrated that the Complainant had a rightful cause to bring this Complaint and for a judicial determination of the **Facts**, by an unbiased judicial body. He also has under the Order of the Commission the right to conduct discovery, a right denied. Either as member of the public through proper Public Records Requests or by Subpoena, as a Civil Complainant. As the Committee admits records were withheld from the Complainant.

Further the Complainant requested to depose or informally interview the CEC Staff and made a special trip over two days to the Commission to conduct discovery under an order of the Committee which was “Clarified” to prevent such interviews only after the Complainants arrival at the Commission.

Complainant is entitled to a hearing on his Motion to Compel the production of documents. Complainant also filed a PRA request with Energy Commission staff for documents in the compliance files. Staff provided some of the documents requested except for certain documents they deemed privileged by staff attorneys, which they

would not disclose the number of documents or the nature of them, only “certain documents were withheld”. The Motion to Show Cause, demonstrated that the public interest requires disclosure of those documents. Staff contends that the redacted documents are protected from disclosure either by attorney-client privilege or deliberative process privilege, which protects internal communications, notes, and other evidence of the agency decision-making process.

All of the documents that were withheld need to be fully identified and the Commission should hold an “in Camera” review to determine if any of the documents would be better made available to the Public in accordance with the law.

K. The Commission should make the following - Findings and Conclusions

1. Complainant has established a Prima Facie case by evidence from CEC Staff, Jack Beinschroth and the Mojave Water Agency, that the engineering design of the HDPP’s water supply pipelines and water treatment facilities are over sized to meet only project needs. Based on this Prima Facie evidence Complainant may proceed to prove up his allegations.
2. The Aquifer Storage and Recovery Agreement specifically allows for VVWD to store water for its own use. The Prima Facie evidence is that VVWD submitted to the Mojave Water Agency a proposed Agreement to Store up to 130,000 acre feet of water per year as shown in Complainant’s Exhibit “A” attached to his complaint. Complainant shall have the right to proceed to prove up his allegations.
3. Complainant’s Prima Facie Case concerning noncompliance with Conditions Soil and Water 1e and 17(1) are supported by CEC staff’s memorandum signed by Lorraine While and Caryn Homes, and their memorandum is supported by the record.
4. HDPP is presently constructing a Water Treatment Plant; however the plant they are constructing is not the Plant which the CEC issued final approved for. This water treatment facility is for an Ultrafiltration Process and not a Reverse Osmosis plant as shown in the **Final Approved Plans** by this commission. Although HDPP submitted its approval in time HDPP is in violation of the condition since it changed the treatment process without the prior approval of this commission.
5. At the time the complaint was filed HDPP was out of compliance 17(1). Complainant desires to provide additional evidence that the proposed “Codicil” still does make the agreement comply with the condition.

**L. The Complainant Requests the Full Commission Adopt the following
Appropriate Ruling**

- The allegations regarding noncompliance with Conditions of Certification Soil & Water 13 are dismissed without prejudice in accordance with the Stipulation of the Parties.
- The Complainant has established a Prima Facie Case on each of the other matters raised before this Commission and is entitled to a full evidentiary hearing.
- The Complaint shall be heard by the full commission at a date and time to be specified.
- Complainant's discovery requests are approved, Staff shall provide all documents in its files related to this matter and Complainant shall be allowed to interview CEC Staff Witness or proposed Witness at dates and times mutually agreeable to the Complainant and CEC Staff.

RESPECTFULLY SUBMITTED:

Dated: February 20, 2002 - Apple Valley, California.

-original signed by-

GARY A LEDFORD
Complainant and Intervenor
In Pro per

**Before the Energy Resources Conservation and Development Commission
OF THE STATE OF CALIFORNIA**

COMPLAINT OF GARY LEDFORD ON)	DOCKET No. 97-AFC-1C (C1)
HIGH DESERT POWER PROJECT)	PROOF OF SERVICE
WATER ISSUES)	[REVISED 12/04/01]
_____)	

I, Gary Ledford declare that on February 20, 2002, I deposited copies of the attached **LEDFORD OBJECTIONS TO CEC PROPOSED DECISION ON THE COMPLAINT REQUEST FOR RECONSIDERATION** in the United States mail in Apple Valley, CA with first class postage thereon fully prepaid, and/or by Federal Express to the following:

DOCKET UNIT

The original signed document plus the required 12 copies to the Energy Commission Docket Unit:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 97-AFC-1 (C1)
Docket Unit, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512

Individual copies of all documents to the parties:

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*Revisions to POS List, i.e. updates, additions6 and/or deletions

I declare that under penalty of perjury that the foregoing is true and correct.

(Signature)