

Energy Resources Conservation  
And Development Commission

In the Matter of: ) Docket No. 97-AFC-1  
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)  
The Application for Certification )  
For the High Desert Power Project [HDPP] )  
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**REPLY TO APPLICANT [HDPP]  
MOTION TO EXCLUDE PROFFERED EVIDENCE**

Intervenor Gary Ledford hereby replies to Applicant's Motion to Exclude Evidence based on the law and facts discussed below. While applicant's objections might be more acceptable in a formal courtroom, the administrative process at the Energy Commission specifically does not require adherence to formal rules of evidence. Instead, the following regulations apply to Energy Commission hearings:

**Title 20 CCR Section 1211. Submission of Exhibits; Filing.**

Any exhibits, including charts, graphs, maps, and other documents relevant to testimony or comments may be submitted to the presiding member at any hearing, or, subject to the discretion of the presiding member . . ."

NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

**Title 20 CCR Section 1212. Rules of Evidence.**

The following rules of evidence shall apply to any adjudicatory proceeding of the commission and in such other proceedings as the commission may determine by order.

- (a) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant non cumulative evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

- (b) Oral or written testimony offered by any party shall be under oath.
- (c) Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matters relevant to the issues in the proceeding, and to rebut evidence against such party.
- (d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objections in civil actions.

The presiding member may establish such additional rules as necessary for the orderly conduct of the proceeding.

NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

The newly filed staff testimony of Energy Commission's project manager Rick Buell identifies unresolved problems in the area of water usage and growth inducing impacts that have not been analyzed. The testimony of Mr. Beinschroth and Mr. Almond supports the testimony of Mr. Buell and more importantly describes many irregularities in applicant's proposed use of water.

The findings in Mr. Buell's Testimony supported by Intervenor's proposed testimony demonstrates that the true scope of the High Desert Power Project proposal was to provide water for the redevelopment of George Air Force Base and explains why the Energy Commission Committee cannot accept the VVWD's Aquifer Storage and Recovery Agreement. Further, the decision-makers in this case, who must make findings of fact about water usage and growth inducing impacts need full disclosure of all facts relevant to these critical topics, not just the picture the applicant wants to paint.

Pages 57-65 of the transcript of the last hearing is attached hereto as Exhibit "A." It explains in detail what the Energy Commission Committee meant when they said the evidentiary record would be re-opened. In summary, Exhibit A provides:

Dry Cooling: "On dry cooling. . .we will afford staff the opportunity to offer additional evidence on that area. And when I say staff, I'm including all parties. [HT pg. 58 3-18]

Water: "Insofar as the water agreement is concerned we will reopen to examine the final aquifer storage and recover agreement from the Victor Valley Water District. The three chief areas of concern under there . . .so in any testimony from the parties the Committee would expect the issue of growth inducing impacts to also {emphasis added} be addressed. [HT pg. 58 - 59]

JPL: Hearing Officer Valkosky: "The time frame proposed by the Committee . . .February 17<sup>th</sup> here in Victorville . . .does that create a undue difficulties for anyone?" [HT pg. 61]

Gary Ledford: "For anything that I know of at this point. It would be okay. If the applicant come up with some new stuff, it wouldn't. **And the only other restricting area would be if we were able to get a witness from JPL in and testify about the droughts.**" [HT pg. 63-64]

New facts about the use of water and the cumulative and growth inducing impacts are surfacing daily. The record must include the new evidence and testimony about these facts.

While the Energy Commission Committee did not approve Intervenor's specific motion to re-open, the intent of the dialogue between Hearing Officer Valkoski and the Parties was to present any testimony or evidence on water that related to the proposed agreement with VVWD, that also changes daily. It was after all Intervenor who has brought to the attention of the Committee the issues of Growth Inducement and Cumulative impacts.

Referring the Committee specifically to the new testimony of Staff:

1. CEC staff identified based on Mr. Gary A. Ledford's comments on the Presiding Member's Proposed Decision (PMPD) and motion opposing the applicant's motion to reopen the record, several additional concerns about the terms of the Aquifer Storage Agreement, clarity of staff's conditions of certification, and potential growth inducing impacts resulting from implementation of the Agreement. These are as follows:
  - a. The term of the agreement is 80 years (section 27.1 of the Agreement). Staff's assessment of ground water impacts was based on 30 years, which was the expected project life identified in the AFC.

- b. If no additional storage is provided, other than that required in the conditions of certification, it is possible that the ground water bank will be depleted at 30 years.
- c. In order to consider this agreement the applicant should be required to update the ground water study and provide additional banking, if the applicant intends to operate beyond 30 years.
- d. Certain aspects of the Agreement create growth inducing impacts.
- e. All of the project's water related facilities are oversized.
- f. The Agreement (section 15) allows for VVWD's use of HDPP facilities. VVWD's use of HDPP facilities are growth inducing since this would provide an increased water supply for VVWD, thereby removing an obstacle to growth.
- g. The magnitude of the growth inducing impacts has not been estimated by staff.
- h. The most significant effect is created by VVWD's use of the HDPP water treatment facilities, since this provides VVWD access to State Water Project (SWP) water, which is currently not available to VVWD. Increased water supply for VVWD potentially leads to new residential, commercial, agriculture or industrial development in the Victor Valley area.
- i. This new growth potentially results in increased air emissions, wastewater and waste production, impacts on ground water (see Table 1), traffic, and impacts on community services.
- j. The environmental consequences of these impacts have not been addressed in the HDPP proceeding.
- k. Staff has not had the time necessary to provide estimates of the magnitude of these impacts in this testimony, given the fact that this issue arose after the conclusion of the October 1999 hearings.

Perhaps the most germane and what this Intervenor has stated and briefed for months is that "these impacts have not been addressed in the HDPP proceeding."

Further this Intervenor received today comments from Fish and Game, agreeing with CEC Staff's testimony and stating that:

"DFG did not understand that HDPP planned to give ownership and use of project water facilities to VVWD until a draft Aquifer Storage and Recovery

Agreement was circulated at the Commissions October 7, 1999 hearing. At that time, VVWD represented that it only intended to use project wells on an emergency basis. The applicant and VVWD have since proposed new long-term uses, but have not explored the environmental consequences of these uses. Commission staff accurately states in its testimony that use of the treatment plant for non-project purposes has not been analyzed and could induce growth."

On the issue of JPL, this evidence goes directly to the conditions that are presently being proposed, which this Intervenor has never agreed to and like all other issues related to water, seem to change daily. This evidence gives a clear indication that banking water for three years just might not be long enough, but more importantly how valuable our water resource for the future population of the Valley are.

On the issue of Campaign Contributions, this evidence is extremely valid, due to the fact that the two primary public agencies that have to approve two contracts that effect water and water banking have to "Vote" on these contracts. This committee and the full commission need to know the level that new power producers will go to in this unregulated market to "Buy" elections. The evidence is relevant to the Victor Valley Water District Contract that would need to be re-voted on, and its subsidiary agreement [within the bounds of the Aquifer Storage and Recovery Agreement] the Water Storage Agreement with MWA.

Intervenor respectfully submits the law and regulations under which the Energy Commission operates allow the admission of Intervenor's proposed testimony. The evidence proffered is fully within the guidelines established by this Energy Commission Committee and is in conformance with the relative rules of evidence.

February 17, 2000

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GARY A. LEDFORD  
PARTY IN INTERVENTION  
IN PRO PER

Gary A. Intervenor  
11401 Apple Valley Road  
Apple Valley, California 92308  
(760)-240-1111  
Fax (760)-240-3609

**STATE OF CALIFORNIA**

Energy Resources Conservation  
And Development Commission

In the Matter of: ) Docket No. 97-AFC-1  
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)  
The Application for Certification ) PROOF OF SERVICE  
For the High Desert Power Project [HDPP] )  
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I Kathie Mergal declare that on \_\_\_\_\_, I deposited copies of the attached **O**  
**REPLY TO MOTION TO EXCLUDE PROFFERED EVIDENCE**, in the United  
States mail in Apple Valley California with first class postage thereon fully prepaid and  
addressed to the following:

Signed original document plus 11 copies to the following address:

California Energy Commission  
Docket Unit  
1516 Ninth Street, MS 4  
Sacramento, CA 95814

In addition to the documents sent to the Commission Docket Unit, individual copies of all  
documents were sent to:

R.L. (Rick) Wolfinger, Vice President  
High Desert Power Project LLC  
250 West Pratt Street  
Baltimore, MD 21201-2423

Thomas M. Barnett  
Vice President and Project Manager

High Desert power Project, LLC  
3501 Jamboree Road  
South Tower, Suite 606  
Newport Beach, CA 92660

Andrew C. Welch, P.E., Project Manager  
High Desert power Project LLC  
3501 Jamboree Road  
South Tower, Suite 606  
Newport Beach, CA 92660

Allan J. Thompson  
21 "C" Orinda Way, #314  
Orinda, California 94563

Ms. Amy Cuellar (Steck)  
Resource Management International, Inc.  
3100 Zinfandel Dr. Ste. 600  
Sacramento, CA 95670-6026

Janine G. Kelly  
Envirosense  
19257 Dunbridge Way  
Gaithersburg, MD 20879

### **Intervenors**

California Unions for Reliable Energy (CURE)  
Marc D. Joseph  
Adams, Broadwell & Joseph  
651 Gateway Blvd., Ste 900  
So. San Francisco, CA 94080

Christopher T. Ellison  
Ellison & Schneider  
2015 H Street  
Sacramento, CA 95814

Carolyn A. Baker  
Edson & Modisette  
925 L Street, Ste. 1490  
Sacramento, CA 95814

### **Interested Parties**

The Electricity Oversight Board  
Gary Heath, Executive Director  
1516 Ninth Street  
Sacramento, CA 95814

Steven M. Marvis  
California Independent System Operator  
151 Blue Ravine Road  
Folsom, CA 95630

Curt Taucher  
California Department of Fish and Game  
Region V – Environmental Services  
330 Golden Gate Shore, suite 50  
Long Beach, CA 90802

Rebecca Jones  
California Department of Fish and Game  
Region V – Environmental Services  
36431 – 41<sup>st</sup> Street  
Palmdale, CA 93552

Nancee Murry  
CDFG – Legal Affairs Division  
1416 Ninth Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

Thomas W. Bilhorn  
Earth Sciences Consultants  
18174 Viceroy Drive  
San Diego, CA 92128

Air Resources Board  
Robert Giorgis, project Assessment Branch  
P.O. Box 2815, 2020 L Street  
Sacramento, CA 95814

Added 3/21/99  
Charles Fryxell  
Air Pollution Control Officer  
Mojave Desert AQMD  
15428 Civic Drive, Suite 200  
Victorville, CA 92392

Brad Foster  
3658 O'Banion road

Yuba City, CA 95993

**Interested Organizations**

Southern California Edison  
Attn: Ted H Heath, P.E.  
2131 Walnut Grove Avenue  
Rosemead, CA 91770

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

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Kathie Mergal