

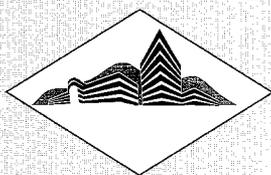
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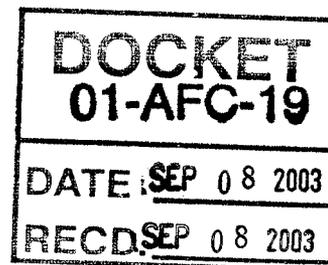
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September 8, 2003

Via Hand Delivery

California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512



Re: SMUD Cosumnes Power Plant Project
Application for Certification
Docket No. 01-AFC-19

Dear Chair and Members of the Commission:

This office has been retained by Mrs. Matilda A. Mancebo, the owner of the 234 acres of active farmland located adjacent to Arno Road in the unincorporated area of Sacramento (APN Nos: 134-0480-044 and 134-0280-042). Mrs. Mancebo's property is one of those affected by the proposed alignment of the natural gas line to supply the proposed Cosumnes Power Plant. The purpose of this letter is to request that the Commission delay taking final action on the Presiding Member's Proposed Decision until the Commission has thoroughly investigated and satisfied Mrs. Mancebo's concerns regarding the natural gas line alignment and location of one of the three proposed valve stations on her property.

Not only has SMUD failed to address Mrs. Mancebo's concerns from the standpoint of why her farm has been singled out for such significant practical effects, but SMUD has further failed to comply with the California Environmental Quality Act ("CEQA"), which mandates adequate analysis of land use and water quality impacts of the pipeline alignment and location of the valve stations, and requires an adequate alternatives analysis of the same. Absent the inclusion of such an analysis, this Commission has not been presented with sufficient information to render an informed decision on this project, and therefore certification of this EIR under this scenario would violate the very tenants of CEQA.

This EIR is completely devoid of analysis of the land use impacts of the pipeline alignment and feasible alternative alignments for the line, which would reduce these impacts to a less than significant level. The EIR states that the "majority of the 26-mile long natural gas line would be constructed in existing public right-of-way ... A portion of the gas line would cross lands used for agricultural and natural preservation purposes." (EIR, p. 115). What the EIR fails to discuss is the impacts on that portion of land over which the line is proposed to cross. For Mrs. Mancebo's property, the impacts are substantial. SMUD proposes a 35-foot easement along the *entire* frontage of Mrs. Mancebo's 234 acres. The pipeline would literally cross over two existing wells: one domestic well and one irrigation well. It will cross over the one and only road access onto the farm. The easement deed that SMUD has prepared expressly prohibits Mrs. Mancebo from utilizing her property to its highest and best use. Specifically, the easement deed prohibits the following:

Asset Preservation	•	Commercial Real Estate	•	Environmental
General Business	•	Real Estate Financing	•	Litigation

“Grantor [Mancebo] agrees and covenants that it will not impound water, plant vineyards or orchards, or deep rooted crops, deep rip the soil, construct wells, buildings or structures of any type whatsoever within the Easement.”
(Copy of Easement is attached hereto as Attachment “A”.)

While SMUD has flagrantly shrugged their shoulders at Mrs. Mancebo’s concerns and discounted the impacts of the easement, the truth is that any other farmer has the constitutional right to decide what types of crops to grow and to utilize his/her property for a range of agricultural uses. This pipeline would restrict Mrs. Mancebo’s choices of how to utilize her farmland, and that environmental impact has not been analyzed in this EIR.

Furthermore, the fact that this pipeline will impact two wells has not been analyzed in the Water Quality and Soils chapter of this EIR. In fact, ***absolutely nothing has been disclosed about this potential impact.*** What happens if, during the trenching and installation of the pipeline, the construction workers damage the domestic well? What if that damage causes contamination of the well and the underlying aquifer? The answer is unknown, because absent adequate environmental analysis, one does not reach the discussion of mitigation.

The location of the valve stations has also been conveniently glossed over. The EIR states that the three valve stations “will be located along the pipeline near major roadway intersection.” (EIR, p. 115.) What the EIR fails to mention is that *all three* valve stations are proposed to be located on private property. One valve station is proposed on the Mancebo property.

An EIR should, when looked at as a whole, provide a reasonable, good faith disclosure and analysis of environmental impacts that will enable decision makers to consider the environmental consequences of the project before it is approved. (CEQA Guidelines section 15151; Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal. (1988) 47 Cal.3d 376, 392.) The analysis of land use impacts of the proposed pipeline is clearly inadequate. Specifically, this EIR identifies a conflict with any applicable land use plan or policy as a significant effect to land use. The EIR concludes that since “the *majority* of the pipeline would be underground and placed within or adjacent of existing easements, the proposed gas pipeline would not preclude or unduly restrict existing or future surrounding land uses.” (EIR, p. 118.) This clearly begs the question: What about those areas where the pipeline is not within or adjacent to existing easements?

As noted above, the very prohibitions set forth in the proposed easement for the Mancebo farm is substantial evidence that certain farm uses will be precluded, or at the very least unduly restricted. Yet the EIR is totally silent on this portion of the analysis. As a result, there is no legal basis upon which the EIR can support the conclusion that there are no land use impacts from the proposed project. Courts have held that an unsubstantiated conclusion that an impact is not significant, without supporting information or explanatory analysis, is insufficient. Some

foundation for a determination of insignificance *must* be disclosed. (San Joaquin Raptor/Wildlife Rescue Ctr. V. County of Stanislaus (1994) 27 Cal.App.4th 713.) The result of the EIR's failure to investigate the land use impacts of the proposed pipeline alignment suffers from the same deficiency which the court in San Joaquin Raptor found fatal. In that case, the court held that the EIR's finding on wetland impacts was inadequate because the EIR did not reflect any investigation into the presence and extent of wetlands. (San Joaquin Raptor 27 Cal.App.4th at 728.) In this case, SMUD's failure to investigate the impacts on land use for the portion of the pipeline that is not proposed within existing right-of-way rendered the EIR's land use analysis and findings wholly inadequate.

In addition, the EIR's alternatives analysis is woefully inadequate because it has totally omitted any analysis of feasible alternatives for the pipeline alignment. As this Commission is well aware, CEQA requires a lead agency to analyze a reasonable range of feasible alternatives (14 Cal. Code Regs Sections 15126.6(a).) While the EIR analyzes alternative sites for the actual power plant, *it utterly fails to analyze any alternatives to the gas line alignment*. This enormous oversight renders this EIR fatally flawed. While portions of the pipeline are proposed within the County right of way in Arno Road, inexplicably SMUD has elected to run the pipeline through other property owners' land, including that of Mrs. Mancebo. It should be noted for the record that Arno Road is a County of Sacramento roadway. Mrs. Mancebo's property fronts Arno Road. The only "explanation" that SMUD has provided to date as to why they refuse to put this portion of the pipeline within the roadway is that it is too expensive. However, this argument fails to meet the test of infeasibility under CEQA.

Under CEQA, a determination that an environmentally superior alternative is economically infeasible must be supported by evidence showing that the additional costs or lost profits would make the project impractical. (Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 737.) Since beginning their discussions with the property owners impacted by this pipeline, SMUD has realigned some portions of the pipeline into the County right-of-way, including but not limited to the property owned by a legislative aid to Congressman Pombo. If certain property owners were granted this consideration, why are others, such as Mrs. Mancebo, not granted the same consideration? Of course, under CEQA, we do not even get to that question because of the total omission of any alternatives analysis for the pipeline.

It should also be noted that no alternatives analysis was completed on the location of the three valve stations. Each of these stations further impacts agricultural lands, and each is coincidentally owned by elderly women: Barbara Morse is in her 80s; Rowena Rupay is a retired school teacher; and Mrs. Mancebo is a 60-year-old widow. In the case of Mrs. Mancebo, there is a potentially feasible alternative location for this valve station, which location is generally depicted in Attachment 2 to this letter. This alternative location is non-irrigated, bare land and is adjacent to the freeway overpass. This three-acre property is already designated as part of the pipeline alignment, and is therefore already impacted. The location on Mrs.

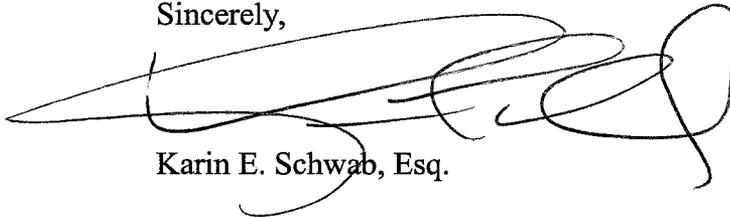
Mancebo's property will further impede current existing farming practices in this portion of her property, due to the restrictions that SMUD will impose on discing, farming and irrigation. These are impacts that were not even analyzed in the EIR, much less this alternative.

Beyond the issues of inadequate CEQA analysis for this project, there is an equitable issue that the Commission must address. Since this project began, there has been a series of "exceptions" made by SMUD on the alignment of the pipeline. *While SMUD continues to tell Mrs. Mancebo that it is too expensive to put the pipeline within the County road right-of-way, it has realigned the pipeline to do just that for other property owners.* In addition to the property owned by Congressman's Pombo's aid, other exceptions have been made by SMUD, with a reversal of its position that it is too expensive to put the pipeline in the County road right-of-way. Apparently, when faced with vineyards and ponds, that position has been waived. When faced with other agricultural land, SMUD has stood hard and fast. In Sacramento County, there are numerous policies for the preservation of agricultural land. Mrs. Mancebo's property is also subject to the Williamson Act, which statutorily recognizes prime agricultural land. Distinctions are not made in state law between the types of crops grown on these lands in order to classify the soil as prime agricultural land. Exceptions are not made in state law as to how some prime agricultural land is treated versus others. We must ask ourselves, how can SMUD unilaterally decide to impact some agricultural land and not others, if state law and County ordinances do not permit this?

We respectfully ask that this Commission continue these proceedings, and direct staff to prepare a proper and adequate analysis of the pipeline alignment and location of the valve stations, which not only fully discloses all of the necessary information under CEQA, but respects each individual owner's property rights the same.

Your consideration of this request is appreciated.

Sincerely,



Karin E. Schwab, Esq.

cc: Client
Hon. Don Nottoli

No fee for recordation
Govt. Code Sec 6103
RECORD AT REQUEST OF AND RETURN TO:
Sacramento Municipal Utility District
Attention: Real Estate Services - B 304
P. O. Box 15830
Sacramento, CA 95852-1830

NO COUNTY TRANSFER TAX DUE
PER GOV'T CODE SEC. 11922

SMUD BY: _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

A.P.N. Ptn. 134-0280-044 and 134-0280-042

R/W Order: 508/56

GRANT OF RIGHT OF WAY AND EASEMENT

Matilda A. Mancebo as Surviving Joint Tenant, "Grantor", does hereby grant, sell and convey to **SACRAMENTO MUNICIPAL UTILITY DISTRICT, a municipal utility district**, "Grantee", its successors and assigns, an exclusive right-of-way and easement ("Easement") to:

locate, survey, construct, operate, maintain, repair, replace, remove, inspect and protect a natural gas pipeline or pipelines, cathodic equipment, valves, metering equipment and all necessary fixtures and appurtenances; and

underground electrical and communication systems consisting of, but not limited to wires, cables, splicing, switching, terminal, and pull boxes, underground conduits, and all necessary above and below ground fixtures and appurtenances,

all the above being hereinafter collectively referred to as the "Facilities", over, under and upon that certain real property situate in the County of Sacramento, State of California, described herein.

All that portion of Tract 76, as shown on the Map of Rancho San Jon de los Moquelumnes showing the land awarded to all parties interested in said Rancho according to the Decree in the section of John F. McCauley plaintiff, vs. Obed Harvey, et al, defendants, Suite No.12890, Judgment No. 8577, in the District Court of the 6th Judicial District of the State of California, in and for the County of Sacramento, described as:

COMMENCING at the Southeast corner of Tract No. 72 of said Rancho San Jon de los Moquelumnes (Said Tract No. 72 being designated as J.O. Kane 104 acres); thence along the Southerly line of said Tract No. 72, West 1,226.70 feet; thence at a right angle South 1,425.70 feet to the country road, thence along the North line of said county road, East 1,226.70 feet; thence at a right angle, North 1,417.3 feet to the Point of Commencement.

APN: 134-0280-044

AS TO PARCEL ONE:

Parcel No.1: Tract No.72 of Rancho San Jon de los Moquelumnes, as designated in the Commissioner's Report in the partition suit of John F. McCauley vs. Obed Harvey and others, Suite No 12890, Decree No. 8577 in the District Court of the

6th Judicial District of the State of California, in and for the County of Sacramento, particularly described as follows:

BEGINNING at a white post marked "O'Kane and McCauley" in a mound at the point 20 chains East and 2.40 chains North of the quarter section corner between sections 33 and 34, Township 6 North, Range 6 East, Mount Diablo Base and Meridian, run East 59.50 chains, set a white post marked "Kane", "McCauley" and "Road" in a mound on West side of the public road; thence North along west side of Public road, 17.60 chains to white post marked "Kane" and "Cottroll"; thence West 59.50 chains to white post marked "McCauley", "Kane" and "T. Randolph" in mound; thence South 17.60 chains to place of beginning.

Parcel No.2: All that portion of the John F. McCauley Tract No. 76 of the Rancho San Jon de los Moquelumnes in Section 34, Township 6 North, Range 6 East, Mount Diablo Base and Meridian, bounded as follows, to wit:

BEGINNING at a point on the Southerly line of the J.O. Kane tract No. 72, as shown and designated in the Decree of Partition in the Action of John F. McCauley vs Obed Harvey, and others, {Number 12890} and {2nd Series} in the District Court of the Sixth Judicial District, County of Sacramento, State of California, distant thereon 1,226.7 feet westerly from Southeast corner of said J.O. Kane Tract 72; thence Westerly and along said Southerly line of J.O. Kane Tract 72; a distance of 2700.3 feet; thence at right angles Southerly 1,445.4 feet to the County Road; thence, Easterly and along said County Road 2,700.3 feet and thence at right angles Northerly 1,425.7 feet to the place of beginning.

Parcel No.3: All that portion of Tract No. 76, as shown on the Map of Rancho San Jon de los Moquelumnes showing the land awarded to all parties interested in said Rancho according to the Decree in the section of John F. McCauley plaintiff, vs. Obed Harvey, et al, defendants, Suit No. 12890, Judgement No. 8577, in the District Court of the 6th Judicial District of the State of California, in and for the County of Sacramento, described as:

COMMENCING at the Southeast corner of Tract No. 72 of said Rancho San Jon de los Moquelumnes (said Tract No. 72 being designated as J.O. Kane 104 acres); thence along the Southerly line of said Tract No. 72, West 1,226.70 feet; thence at a right angle South 1,425.70 feet to the County Road, thence along the North line of said County Road, East 1,226.70 feet; thence at a right angle, North 1,417.3 feet to the point of commencement.

APN: 134-0280-042

The route of said Easement shall be as described in Exhibit "A" attached hereto and hereby made a part hereof.

This Easement conveys to Grantee the right of ingress and egress to and from, and access on and within said Easement, with the right to use existing and future roads for the purpose of exercising and performing all the rights and privileges granted herein. During temporary periods Grantee may use such portions of the property along and adjacent to said Easement as may be reasonably necessary in connection with the construction, maintenance, repair, removal or replacement of the Facilities.

Grantee shall have the right to trim, cut or remove, without payment of damages, all trees, brush, foliage or other obstructions that may, in the Grantee's opinion, endanger, hinder or conflict Grantee's exercise of the rights granted herein.

Grantee agrees that within a reasonable time following the completion of its work and subject to weather and/or soil conditions, Grantee shall, as near as practicable, restore said Easement to its original contour and condition. Grantee agrees to compensate Grantor for damages, which directly result from its work, including loss of timber, growing crops, pasture and livestock. Any other recognizable damages to other real or personal property that resulted from its work shall be repaired by Grantee.

Grantee may assign the Easement, either in whole or in part, subject to the terms of this grant. Any such assignment shall be deemed to be a covenant running with the land and to be binding upon Grantor, its heirs, legal representatives and successors in interest.

Grantee may at any time permanently abandon the Easement and, at its discretion, may remove or abandon in place the Facilities constructed on it. Upon such abandonment action, Grantee may, at its discretion, execute and record a quitclaim deed of the Easement whereupon the Easement with all rights and privileges mutually granted shall be fully canceled and terminated.

Grantor reserves the right to use and enjoy said property except for the purposes granted in this Easement. Grantor shall have the right to cultivate, work, plow, harvest and use the land granted within the Easement so long as it shall not hinder, conflict or interfere with Grantee's surface or subsurface rights or hinder its ability to operate, maintain and protect its Facilities.

Grantor agrees and covenants that it will not impound water, plant vineyards or orchards, or deep rooted crops, deep rip the soil, construct wells, buildings or structures of any type whatsoever within the Easement. This shall be a covenant running with the land and shall be binding on Grantor, its heirs, successors in interest, and assigns.

Grantor agrees and covenants that no road or change in surface grade, shall be constructed, created or maintained within the Easement without the prior express written approval of Grantee.

Grantee shall indemnify and hold Grantor harmless from and against any and all loss, damage, or injury which may result from the construction, operation and maintenance of the Facilities; provided, however, that said loss, damage, or injury does not arise out of or result from the actions of the Grantor, its agents, employees, or invitees.

Grantor agrees to indemnify Grantee against any environmental liability that predates the date of this Easement or is caused by the Grantor's actions or inactions.

Grantor shall not grant any other right of way or easement within the Easement to any third party, firm or corporation without the prior express written consent of Grantee.

Grantor shall not cross fence the Easement without the prior express written consent of Grantee.

It is mutually understood and agreed that this Easement and the attached Exhibits, as written, cover and include all of the agreements and stipulations between the parties and that no representations or statements, verbal or written, have been made modifying, adding to or changing the terms of this Easement.

The terms, conditions, and provisions of this Easement shall extend to and be binding upon the heirs, executors, administrators, personal representatives, successors in interest, and assigns of the parties hereto.

Grantor:

Matilda A. Mancebo

Date: _____

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO)

Certificate of Acceptance
Attached to R/W

This is to certify that the SACRAMENTO MUNICIPAL UTILITY DISTRICT, a municipal utility district, hereby accepts for public purposes the interest in real property conveyed by the foregoing deed or grant and consents to the recordation thereof. The undersigned officer is authorized to execute this acceptance and consent pursuant to authority conferred by Resolution No. 89-6-11, adopted by said District's Board of Directors on June 20, 1989.

Dated: _____

Keith D. Shorey
Supervisor, Real Estate Services

STATE OF CALIFORNIA)
) SS
COUNTY OF)

On _____, 200__ before me, the undersigned Notary Public, personally appeared _____, personally known to me, or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public, State of California

STATE OF CALIFORNIA)
) SS
COUNTY OF)

On _____, 200__ before me, the undersigned Notary Public, personally appeared _____, personally known to me, or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public, State of California

Attachment B

Aerial Map 11 x 17

Available in Dockets