

State of California
State Energy Resources Conservation and Development Commission

In the Matter of:)
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 Mariposa Energy Project)
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 _____)

Docket # 09-AFC-03

Rajesh Dighe-Opening Brief

DOCKET	
09-AFC-3	
DATE	<u>MAR 27 2011</u>
RECD.	<u>MAR 28 2011</u>

Date: Mar 27-2011
 From: Rajesh Dighe

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OPENING BRIEF BY RAJESH DIGHE

Introduction

In the Notice dated March 24-2011, Committee gave extension to all parties to file briefs due 3:00 PM on Wednesday, March 30, 2011. In response, Intervener Rajesh Dighe submits this brief.

Rajesh Dighe, participated during the 3 day hearing conducted on Feb 24, Feb 25 and Mar 07, 2011 Evidentiary Hearings of Mariposa Energy Project application – 09-AFC-03. He submitted evidence into the record which were primarily focused on Socio-Economic Effects and Environmental Justice concerns caused by Mariposa Power Plant on Mountain House.

The applicant, Mariposa Energy LLC (referred to as “the Applicant” in this brief) has failed to meet his burden of proof that the facility will not cause any significant adverse environmental effects under CEQA, and the facility will comply with all the applicable federal, state and local laws, ordinances, regulations and standards (“LORS”).

This brief will further go into details in explaining the facts how “*Social Economic and Environmental Justice Analysis*” never happened.

This brief will bring out “factual records” on how the “Applicant” failed to meet his burden on multiple critical sections of the environmental analysis.

Applicant and Staff have not been careful on the data fed into Air Quality models, The analysis in “Land Use”, “Alternatives” and “Aviation Safety” studies also fell short.

In areas like”Worker and Safety”, “Soil and Water”, this brief will elucidate “facts” to identify “applicant’s” laziness to not pursue “intervener” identified concerns more than 1 year as part of data request.

Repeatedly you will see as explained by factual evidence in this brief how “Applicant” and on occasion s “Staff” witnesses respond with unclear answers during cross examinations which clearly prove lack of knowledge, and urge to analyze and study critical environmental topics around Social Economic, Land Use, Aviation, Safety, Environmental Justice, Air Quality sections. The brief has also attempted to cite exact location in the record while discussing the environmental analysis.

Socio-Economic & Environmental Justice

In *Transcript March 07*, applicant has stipulated that it is the applicant’s burden to be in compliance with federal, state and local laws and regulations. Below sections will attempt to get facts out in the brief and will prove how this burden of Socio-Economic and Environmental Justice was never met by the applicant.

Below is hearing Officer Ken Celli- Citation from *Transcript of Mar-07-2011- p-6 line 11*. Socio Economic Hearing which has on the record. See facts high-lighted.

11 With regard to environmental justice, section
12 **65040.12 subsection E of the Government Code** defines
13 environmental justice to mean fair treatment of people of
14 **all races**, cultures, and incomes with respect to the
15 regulations -- with respect to the development, adoption,
16 implementation, and enforcement of environmental laws,
17 regulations, and policies.
18 In addition, federal guidelines encourage
19 governmental agencies to incorporate environmental justice
20 principles and the environmental review of this project.
21 The record usually contains demographic screening
22 conducted in accordance with the National Environmental
23 Policy Act. The purpose of the demographic screening is
24 to determine whether there exists some minority or low
25 income population within a six-mile radius of the project.
1 Minority populations exist for purposes of an
2 environmental justice analysis where **either: One, the**
3 **minority population of the affected area is greater than**
4 **50 percent of the affected areas general population** or;

5 two, the minority population percentage of the area is
6 meaningfully greater than the minority population
7 percentage in the general population while other
8 appropriate unit of geographic analysis of one or more
9 U.S. Census blocks in the effected area show a minority
10 population greater than 50 percent.
11 Minority individuals for purposes of this hearing
12 are those who are members of the following population
13 groups: American Indian, Alaska native, Asian or Pacific
14 Islander, Black, not of Hispanic origin, or Hispanic.
15 A poverty level population determination is
16 generally based on the U.S. Census.

Also from *Transcript of March 7, p-7*, Officer Ken Celli statement

17 Please note -- and I'm saying this for the
18 benefits of Mr. Dighe and Mr. Singh who I think are going
19 to take the lead today on socioeconomics -- **that the**
20 evidence must establish a significant impact before
21 triggering an inquiry into whether the impact
22 disproportionately affects minority or low income
23 populations. So did you get that? Thank you.

Above statements are interesting. It is chicken and egg problem.

Let me explain. *Transcript, Mar 7, p 32*, Dr Yusuf (Applicant Witness and Expert in Socio Economic and Environmental Justice-EJ) mentioned EJ as a multi-step process involving below steps.

- 1) Identifying **minority or low income population as precursor to Environmental Justice.**
- 2) Impact analysis on resource areas.

16) DR. YUSUF: So typically when I look at
17 environmental justice analysis, what I do is there are
18 three different things that one has to do according to the
19 methodology. **The first one is to identify the presence of**
20 a minority or low income population, because that's what
21 the environmental justice regulations call for.
22 And so what we do is we use the Census U.S.
23 Census data, the Census block, which is the smallest unit,
24 and we determine if there is a presence of a minority or a
25 low income population. In the case of this project, we
1 evaluated -- and this is a requirement by CSE, a six-mile
2 radius. Within that six-mile radius, our data showed that
3 there were 15 out of 112. A Census block said we included
4 in the data that actually had minority populations that

5 are above 50 percent. That the presence of a minority
6 population and -- and there was no low income population
7 I'm sorry to say. The presence of a minority population
8 does not necessarily by itself indicate that there is an
9 environmental justice issue.
10 The second part is then to **find out from impact**
11 **analysis done in either resource areas --**

Nothing was brought into the record by the applicant to prove that **“low income or minority population did not exist around MEP”**.

It is very clear from above that the applicant nicely dodged the ball of EJ by saying, **“there is no significant impact because of MEP on Minority Mountain House Community and hence there is no EJ issue”**

Important and subtle points which cannot be overlooked are:

- a) Applicant failed to meet his burden of proof since his Step 1) analysis was erroneous. Applicant used the year 2000 Census data and did not recognize Mountain House as Minority Community.
- b) Generally speaking, CEC applicant has motivations to show no-significant impact of his project on neighboring residential community. The reason being his business goals of constructing the power plant and by mitigating significant impacts.
- c) Because of his erroneous Step1) applicant did not have technical sections in his analysis which highlighted to minority community while explaining the environmental impacts. There has always been an implicit assumption that there is no EJ issue.

Applicant and Staff smartly during workshops, hearings pushed the burden on Rajesh Dighe, Jass Singh to prove the significant environmental impact by questioning them on finding the ***“evidence for significant environmental impact to consider EJ”***.

Infact, the hearing record has no evidence which includes mention of minority community as a factor in the Staff and Applicant’s environmental analysis and resource study.

Hence once can factually conclude:

“There is no sufficient evidence on the record which affirmatively can prove that there will be no significant environmental impact of MEP on a minority Mountain House Community”

Facts to prove above point

Transcript Mar 7, p-11, line 16, Applicant’s Socio-Economic experts- Dr Yusuf and Dr. Priestly admit below:

- a) They admitted on not knowing that there were no business activities in Mountain House
- b) They admitted they were not aware of high property taxes and water bills in Mountain House. Rajesh Dighe Opening Testimony had mentioned this. Since they did not know about these facts means applicant failed to meet his burden in understanding and analyzing the current struggles and burden foreclosure crisis and detail impacts of MEP on Mountain House Community.
- c) They never talked to a single person in Mountain House
- d) They did not take into consideration the mind set of 10,000 residents living 2.5 miles close the proposed site.
- e) They wrongly took year 2000 census data to identify if Mountain House was minority community.
- f) They admitted that they knew Mountain House did not exist in Year 2000 and still based their Socio and EJ study and analysis on year 2000 census data.

The above facts clearly show how careless applicant’s experts were while studying Mountain House and understanding its demographics and mind set of people and putting their analysis on effects of MEP on Mountain House.

Applicant in spite of knowing his US census data was in-accurate stuck to his view point in not identifying Mountain House Minority community and never categorized his Environmental study and analysis with EJ details.

Applicant MISSED FUNDAMENTAL Socio Economic and EJ analysis

The appropriate fundamental core Socio and EJ analysis never happened. Actually applicant handcuffed himself and Staff from making it practically impossible to do accurate analysis by not questioning Staff and his experts while using the US Census 2000 data (Mountain House did not exist in year 2000).

Specifically, the year 2010 census data was never consulted and never relied upon which is available in other forms (As mentioned in Exhibit 803). Applicant has not met his burden of proof in doing accurate Socio-Economic and EJ analysis. Staff nor the applicant ever mentioned in their analysis that the accurate US Census 2010 report will be available soon (weeks after March 2011 – Socio – Economic hearing).

Please note, that accurate US 2010 Census data is now available.

http://www.census.gov/newsroom/releases/archives/2010_census/cb11-cn125.html.

Applicant had the option to wait for accurate US 2010 Census data. However applicant chose not to wait causing his Socio study inaccurate.

Applicant failed to recognize the minority based Mountain House community. Applicant chose the wrong US Census 2000 data which as mentioned earlier made it impossible to analyze the Social Economic analysis. Again applicant has failed to meet the burden and relied on data which was invalid. This caused a big hole in applicant analysis whose deep repercussions on other environmental impacts analysis sections are evident which miss considerations and mentions to minority community in technical sections of both applicant and staff report.

As a result all of the remaining technical analysis was conducted inappropriately and can be looked at as flawed.

Applicant's analysis on Air Quality, Land Use, Hazardous Materials, Alternatives, Health Impact, Traffic and Transportation never took into consideration the existence of minority 10,000 Mountain House community populations.

Applicant literally has written out the existence of a big 10,000 population community in all the environmental analysis

Applicant has made conclusory statements and hasn't met his burden of proof since the applicant cannot answer his own below question:

“What is the environmental impact of MEP on Minority Mountain House EJ Community”.

Applicant has not done his due diligence on this Socio Economic and EJ topic.

Hence Intervener Rajesh Dighe questions the correctness, accuracy and validity of applicant's environmental analysis. The record fails to show applicant's evidence of no significant MEP impact since applicant's record on impact analysis never considered proper out-reach, environmental study with minority community perspective. Applicant's minority analysis was conducted inappropriately and hence his subsequent environmental analysis remains erroneous and fails due process of law in wrongly stating no significant impact and EJ issue because of MEP.

Examples:

Out Reach was not Proper

English was the only language used for out-reach. No efforts were made by Applicant and Staff in attempting to translate environmental facts, health impacts, socio-economic reports to the huge Asian Mountain House population. So fundamentally out reached was flawed. In-fact one can even say it never happened.

If you read the *Transcript Mar 07, Socio Economic* hearing it becomes evident that applicant and Staff assumed minority community but still decided to ignore it.

Minority Community Language issue

Intervener Rajesh Dighe had to take personal efforts in talking to the community residents for past more than 1 year to explain MEP project. Community definitely has residents with multiple Asian languages.

None of notices, health impacts explanations, Staff assessments were translated. (Record clearly shows no attempts were made by Staff and Applicant).

Infact, Rajesh Dighe was never contacted by Staff and Applicant and asked about language barrier topic. (*Refer Transcript Mar 7*)

It is known to Applicant, Staff and Committee that Intervener Rajesh Dighe had requested lots of workshops in Mountain House. None happened.

Staff for the record mentioned during the Socio-Economic hearing about multiple workshops. I am sorry let me emphasize it again and it is in record as well.

NO PUBLIC WORKSHOP HAPPENED IN MOUNTAIN HOUSE.

There was also mention on the record that one public workshop happened in Mountain House. For technical correctness. It wasn't a workshop. It was sole public adviser- Jennifer Jennings visit to Mountain House back in Aug-2010 to explain MEP application process. It was arranged in the community by Rajesh Dighe in his personal time and with his personal out-reach efforts. No notice of this hearing of send by applicant nor CEC Staff.

Again let me put some facts here. THIS EFFORT OF ORGANIZING the meeting was done not by STAFF.

I, Rajesh Dighe went out of the way to gather individuals so that they can understand MEP proposal near Mountain House.

Applicant nor the Staff helped me going door to door.

Staff did not translate any notices. Rajesh Dighe had to walk 100's and 100's of door to door homes, spent money printing flyers, notices, explaining MEP.

Rajesh had to talk to Chinese, Vietnamese, Filipino, Mexican, Punjabi, Urdu, Malayalam, Tamil, Afghani, Pakistani who speak multi-language residents.

It was difficult for Rajesh Dighe to explain below environmental and technical impacts to residents. Staff nor the CEC Staff helped him.

“Natural gas power plant topics,

Alternative discussions.

“Converse on residents health concerns.....”.

The record has no evidence on Staff nor applicant expert meeting the burden which was unknowingly been lifted by Rajesh Dighe.

On many occasions intervener Rajesh Dighe could not even express and communicate with residents because of language barrier (since the community has huge non-english speaking residents).

Since MEP workshops schedules and conference details were in English it was impossible to out-reach all residents by even going door to door - as done by Rajesh Dighe.

Neither staff nor the applicant helped Rajesh Dighe in out-reach. It is clearly seen from the record how superficial the applicant were in understanding the minority community. The applicant witnesses clearly testified saying they did not talk to even single Mountain House resident.

What kind of environmental and socio-economic analysis happens without proper community out-reach?

For the record Rajesh Dighe mentioned multiple times to Staff and Public Adviser that Byron Irrigation district is not the right place to execute public workshops if they have to reach to Mountain House residents.

Still the applicant and Staff failed to communicate the right location for out-reach to the committee. Committee ended up denying workshops, Socio-Economic hearing in Mountain House.

Mountain House Residents could not participate to their heart full during the Socio-Economic hearing and could not put things in the record because the date of

and time of public comment period for the hearing which happened more than 60 miles from Mountain House community in Sacramento.

Additionally, there was **no notice on public comment period for the March 7 hearing**. At this moment to APPLICANT/STAFF relied on Rajesh Dighe's personal resident contacts to communicate the right hearing public comment details to residents around Socio-Economic hearing.

Hence I repeat applicant has failed to meet his burden of proof and has pushed majority of his Socio-eco tasks of out-reach burden upon intervener (s).

Environmental Analysis and Impact on Mountain House

Environmental analysis did not consider the impact on mountain house.

Traffic and Transportation

Traffic study was not conducted. Grant line is a busy commute road for Mountain House. People rely on that as major commuter road. Hearing records lack detail report on fundamental traffic flow pattern during construction and post construction scenarios. This is a burden on Mountain House community. Since Mountain House did not exist in year 2000 and applicant used census 2000 data such an important traffic analysis was apparently deemed un-necessary.

Storm Water Discharge

Storm water discharge was not analyzed with perspective of 10,000 community residents in living in Mountain House. Run-off into Mountain House because of removal of grass land and grading are not well understood from the record. In-fact there is no direct mention on impacts of water run-offs and potential impacts on Mountain House 40,000 residents (potential future resident count as per the Mountain House master plan) in the record. Applicant again did not meet the burden the proof.

Emergency Response

The issue of emergency response was never fully addressed.

Applicant never accounted for the fact that if a disaster happens and Mountain House and Tracy Fire had to respond to a life-threatening scenario wherein disaster at MEP site ends up causing rumbling effects to nearby Mountain House community triggering fires in resident homes, what will be the consequences.

Intervener Rajesh Dighe, questioned applicant during workshops and applicant the above specific scenario. Applicant shut Rajesh off in his conversations and never took the question seriously. Hence applicant failed to meet his burden of proof.

True serious analysis and modeling around emergency responses capacity handling using real life data on Tracy and Mountain House fire departments personnel, Fire-trucks, financial capacity of MHCSD never happen.

Only when Mr Robert Sarvey (intervener) started questioning applicant during pre-hearing conference that the applicant started looking into mitigation with Tracy Fire. Cutting the mitigation “check” to Tracy fire and putting the burden on Mountain House has again been the failed strategy of the applicant. Just to be clear the talks between Tracy Fire and applicant on mitigation seem not reach any conclusive agreements.

Gas Pipeline Safety

Serious analysis was never done. From the record it is clear the applicant and staff kept on asking for “evidence from parties (interveners) for proving significant impact on pipeline explosion”.

So basically, applicant again did not meet the burden. Repetitive requests to the applicant to pursue fetching PG&E test reports, maintenance records of PG&E’s old gas line 002 has been un-successful. Applicant again has failed to meet his burden in doing detailed environmental impact analysis.

Applicant witness has clearly during the cross-examinations admitted in not analyzing the ground conditions of gas pipe lines. Thoroughly understanding the current conditions of PG&E pipe line 002 was never considered by the applicant.

Interveners have made this request during pre-hearing and during public workshop. Applicant conclusory statements and applicant requesting Mr. Sarvey for “evidence of pipeline issues” and not doing thorough risk assessment himself fails him from his burden of safety assessment.

Applicant has always has always relied and took into consideration data which is beneficial to his end analysis in proving less significant impact.

Record clearly shows Mariposa Energy LLC always has tried to bring in data into the record which helps applicant's view point. But whenever intervenor has asked tough real questions around safety, applicant witness has hide behind statements like:

“MEP does not cause significant impact on topic XYZ”. Essentially making me conclude again applicant has failed in his burden of proof.

Frankly, applicant cannot just choose data which is in his favor. But exclude factual data which is not in his favor.

There is no foundation for the applicant to say Line 002 is safe. Since it is a conclusory statement.

Applicant has nothing on the record which shows applicant experts have attempted to study testing reports of line 002. Throughout the process conclusory statement where made by the applicant which had no foundation in his analysis of line 002.

Staff Testimony on Socio Economic not factual and erroneous

On page 69 – of March 07 transcript during direct questioning Staff witness Ford fails to provide factual evidence that MEP will not have socio-economic significant impact. Staff also relied on year 2000 census data and has no evidence on the record to prove there is no language barrier issue in Mountain House. Intervener Jass Singh has clearly put real facts on record via Exhibit 803 around true racial demographics of Mountain House.

On Page 65, of March 07 transcript Mr. Craig Hoffman, has literally made a joke by stating Mountain House is an affluent community. There is no basis in his statements. He has not brought anything on the record to prove his point. All his income numbers on Mountain House are baseless. They are factually wrong and he has nothing on record to prove them accurate. Infact, Intervener Rajesh Dighe has on record facts around how Mountain House Community has been devastated by Foreclosure crisis and is struggling in paying their bills, under water mortgages, huge property taxes. More than 90% of people have suffered more than 50% property devaluation. (Refer to Rajesh Dighe Exhibits 604)

On Page 67, of March 07 transcripts Mr. Craig Hoffman, further happily makes a direct statement on out-reach which is bogus. Staff has not put in sufficient efforts in translating notices and reaching Mountain House residents. In spite of repetitive requests to Staff by Rajesh Dighe to conduct Mountain House CEC public workshops, Staff has failed to conduct even a single workshop in Mountain House.

Intervener Rajesh Dighe's day/night personal time and effort around outreach caused the seen resident turn out during Mandatory Conference and ensuing MEP Hearings.

Staff has not helped him. There is no evidence in the record which proves that the out-reach was done to minority community which has huge minority population (64%) which includes 36% Asian. Staff never considered EJ as an issue.

One Page 70, 71, of March 07 transcript, Staff witness Mr. Craig Hoffman, clearly stipulates that "more than 50% minority population" is needed to recognize minority population. Mr. Craig Hoffman has clearly admitted that he relied on the technical staff who guided him saying there is "no significant impact" on minority population or infact any population hence EJ was never done.

On Page 78, of March 07 transcript, Staff witness Ms. Stennick clearly admits the environmental analysis as 3 step process:

- a) Identify potential impact areas.
- b) Determine potential minority population
- c) Determine whether there will be significant on population.

Now, it is important to note that Staff similar to Applicant wrongly concluded their answers to all steps a) b) and c) mentioned above. By not recognizing Mountain House as minority community, Staff similar to applicant also used US census 2000 data which is the year when Mountain House did not exist. Hence Staff's conclusion of a) and b) was factually wrong and hence all their future technical analysis never incorporated minority community impact consideration. Hence one again we end up concluding that EJ issue was missed by CEC Staff as well.

On Page 79, of March 07 transcript, Staff witness Ms. Stennick clearly admits that Staff has not met the Governor's Office of Planning and Research on minority

community nor met the minority leaders of Mountain House. Hence applicant has not met his burden.

On Page 81, Line 17 of March 07 transcript, Staff witness Mr. Craig Hoffman has clearly admitted that it is the entire commission's determination as to whether the project will have significant impact. Staff technical people only give their analysis.

Basically, it is important to understand how Staff wrongly "took Staff technical assessment as the final word to determine has/has no significant impact – step c) above. In fact both Staff and Applicant happily decided "no significant impact" in step c) and essentially bypassed the EJ analysis.

On Page 83, March 07 transcript, Staff witness Ms. Stennick admits Staff did not do public health analysis when analyzing socio-economic. Essentially, minority population emergency room visit studies, their current health status has been analyzed.

Minority community's current Cancer, Asthma, respiratory genetic symptoms were not well understood. Mountain House community has residents coming from all parts of the world. Applicant nor Staff has no evidence or research data done on racial minorities to encapsulate their health situations. The huge Mountain House Asian community (elderly citizen, children, hard working kids parents) who typically come developing Asian countries have different health issues. Nothing was analyzed and even studied by applicant nor the staff.

Applicant did not help Staff as well on this topic. Hence applicant has not met his burden of proof in doing his Socio-Economic and EJ analysis.

On Page 89, March 07 transcript, MS Stennick admits there is potential devaluation of property values because of Power Plants. Staff agreeing to such a devaluation impact report which show values diminishing for 5 years, but then Staff still continuing to put statements on record saying: "MEP has no significant impact on foreclosure plagued and struggling Mountain House" is not fair.

On Page 96, March 07 transcript, Mr. Stennick explains that she knew about 10,000 Mountain House minority community and her year 2000 data was flawed but she continued to ignore the fact since she believed there will not be any potential un-mitigated significant impact.

On Page 97, March 07 transcript, Ms. Stennick further explains **how minority population study was done for purpose of need of translation.**

NOW LET ME PUT 2 and 2 together. From Rajesh Dighe exhibits (600, 601,602, 603, 604, 605, 606, 607, 608, 609) which are on record (Mountain House is beyond any doubts a foreclosure crisis epicenter of USA.). And Staff has clearly admitted and agrees to the study where there is potential 5 year devaluation of property values because of MEP. Hence any logical brain will conclude beyond doubt that MEP has potential socio economic impact on Mountain House foreclosure minority community.

This further again proves how MEP will significantly impact socio economically minority Mountain House Community and I request committee to deny this application till an alternate power generation facility is found further away from residential community which does not cause Environmental Justice issue.

From above it clear that Staff has silently ignored recognizing Mountain House as minority community during Staff Assessment (Environmental report) giving undue advantage to the applicant who has hence failed to meet the burden of translating the record and environmental impacts to Mountain House minority community.

Detailed Public Participation of Mountain House has hence been hampered and hence I request committee to deny this MEP application which would prevent Environmental Justice (EJ) issue on Minority and foreclosure stricken Mountain House residential community.

On page 106, 107, of Marc 07 transcript, Ms. Stennick makes contradictory statement when asked “Whether she believed MEP will effect prices of home in Mountain House?” She had clearly admitted on Page 89, to the devaluation study of home prices.

She clearly acknowledges she has never been in Mountain House as part of Socio study which is interesting since it is very important to understand the surrounding nature of Mountain House while doing Socio-Economic study. And she and othe members of her team also missed this important aspect of her task where she did not do a mind-set study of people buying homes in Mountain House. Residents here have shown green energy likings and want to see environmental friendly backyard not a power plant (Refer to Exhibit 600)

On Page 111, March 07 transcript, Ms. Stennick admits for the record “Mountain House is not a minority community ?” This again is factually wrong since she used year 2000 census whose validity and relevance is questionable since Mountain House did not exist until year 2003.

Again this clearly proves that STAFF failed to recognize Mountain House as minority community.

One page 117, March 07 transcript, Mr Hoffman admits he picked up information of community income numbers for determining it is affluent and makes \$100k and more, college graduate percentages from Mountain House Community web site.

If is amazing how Staff silently decides to ignore about the presence of minority community and nicely picks up un-proven numbers on community web site for proving Staff’s point that it is a not a EJ community. For the record, there is no evidence on the record which proves the above numbers are factually accurate. For the record once again I live in this Mountain House. Isn’t it a general rationale thinking that analysis should not purely rely on just resident community blogs for coming to critical environmental EJ analysis – test points.

Page 122 of March 07 transcript, Ms Stennick clearly admits as per CEQA they had to do study whether MEP will cause growth inducing or disruption of community ? And they claimed they did that study.

However from all the above it is very clear there was very low focus on really understanding racial distribution and current situation of Mountain House, MHCS D finances and how MPE will cause disruption to Mountain House community (financially, economically, environmentally). There is nothing on the record which proves there will be no disruption caused by MEP.

Hence applicant has again failed to meet his burden to prove as per CEQA, whether Mariposa Power plant will not disrupt the Mountain House community. Infact Mariposa Energy (Applicant) has ignored Mountain House from all the environmental analysis.

On page 128, of March 07 transcript, Staff Counsel Willis states for the record they did not conduct EJ study and did not identify EJ section in their reports.

Let me explain. This is what happened. Staff “believed there was not an impact” and played the 09-AFC-03 application review “game” reversely. Upfront they wrongly determined “no impact”, “no minority community”, and hence never actually ended up doing EJ analysis.

It doesn’t make sense for Staff to just reply on their technical sections and assume there will no significant impact.

Staff has already admitted in the record that “MEP Committee is the one who decides whether MEP would cause significant environmental impact”.

Such a reverse play by assuming “no significant impact” and then not conducting minority identification and staying away from translation and out-reach efforts has clearly happened during MEP application process.

Since applicant agreed to what Staff did, applicant has failed to abide EJ laws and meet his burden of proof.

On page 138, of March 07 hearing, Staff Mr. Craig Hoffman mentioned that EJ section in each of the technical section of environment report which would have been necessary if Mountain was rightly classified as EJ community.

On page 140, of March 07 hearing, Staff Mr. Craig Hoffman explains how the out-reach would have been different if Mountain House was recognized as EJ community. This has not happened.

From all the above it is clear such a section never was added to any of the technical sections of Staff MEP environmental report. Hence all technical sections are erroneous and invalid. Applicant has again shown lack of evidence in meeting his burden of proof.

On Page 144, of March 07 hearing, Staff Mr Craig Hoffman has put on the record that only Staff mailed notice to Mountain House Library and clearly assumed residents will read them.

This is clearly a poor out-reach effort from Staff and Applicant towards a minority Mountain House community. Hence clearly proves once again applicant has not

met his burden in educating minority community and keeping EJ community aware of notices, workshops and environmental and health impacts caused by MEP.

Land Use

Land use section of this brief will refer to pages in Transcript of MEP Feb 24,2011 hearing. I will only mention page numbers. Should help readers.

Measure D- Intention to keep space open and limit new industrial development

On Page 28, Mr. Lopez – Alameda County Representative admits to the fact that Measure D was passed ostensibly to curb growth and to limit ability for new residential, new commercial and new industrial development to occur in unincorporated non-urban growth boundary areas of Alameda county and desire to keep space open.

MEP falls under year 2000 voter approved initiative - Measure D

On Page 28, Mr Lopez had admitted this.

How is MEP a public infrastructure?

On Page 29, line 17-20, Mr Lopez for the record mentions that MEP will be public infrastructure and agrees Measure D has put restrictions on land use and development intensity.

Alameda County is abusing voter approved Measure D by wrongly categorizing MEP as public, limited and permissible infrastructure (more on this coming down the brief)

What is the key need of the public around the MEP site?

On Page 29, Mr Lopez is suggesting MEP is a public infrastructure since it provides key needs of public which is “electricity”.

There is no evidence in the record which suggests area around MEP has electricity outage. Also applicant has not met his burden of proof in explaining which residents in Alameda County (Measure D approved residents) or regional residents are suffering electricity outages.

There is no evidence on the record which proves MEP is current regional need.

How can new Peaker Plant be not a new development?

Again on Page 28, Mr Lopez clearly puts on the record new development will violate Measure D.

Then now if you think how would Applicant and Alameda County make MEP consistent with ECAP? It was easy for Alameda County to do this. Simply put below statement on the record.

“Peaker Plant is not a new development” !!!!!

I like to point it out to the committee a simple fact that:

MEP is not an existing facility.

So what it is?

Ofcourse, it is a new Peaker Plant development on the proposed site which involves construction of new industrial facility.

Again please note it is **new peaker power plant development** on the proposed site.

And since MEP involves new industrial development it clearly violates Measure D by definition.

Applicant has not met his burden of proof in analyzing Measure D initiative properly.

MEP violates Williamson Act Contract

Page 32, Line 10, Mr Lopez admits that parcel falls under Williamson contract.

Justification given to make the land compatible with Williamson Contract is highly superficial. Applicant and Alameda County has not met his burden of proof.

Saying the 146 acre land adjacent the industrial facility will be watered to have same number of cattle grazing as before is not a convincing statement.

It is factually clear that open grazing current private land under Williamson Act Contract will be now a host a public infrastructure making a mockery of Williamson Act which governs private land owner

<http://www.conservation.ca.gov/dlrp/lca/Pages/Index.aspx>

See below excerpt taken from above Williamson Act official web page.

*The California Land Conservation Act of 1965--commonly referred to as the Williamson Act--enables local governments to enter into contracts with **private landowners** for the purpose of **restricting specific parcels of land to agricultural or related open space use**. In return, landowners receive property tax assessments which are much lower than normal because they are based upon farming and open space uses as opposed to full market value. Local governments receive an annual subvention of forgone property tax revenues from the state via the Open Space Subvention Act of 1971.*

Alameda County is trying to make the land compatible with Williamson Act by reseeding the lay down and providing permanent water resources on the parcel.

However from above definition of Williamson Act it clearly shows the proposed parcel is “**restricted land to agricultural or related open space use**”. See above.

Hence as explained above, MEP will be violating Williamson Act.

MEP violates Policy 13

On Page 34, line 23 Mr. Lopez defines Infrastructure as per ECAP and adds words not in the ECAP specifically see in red – as a provider of energy power.

See Mr Lopez’s infrastructure definition:

23 MR. LOPEZ: Sure. That definition is here.
24 Infrastructure shall include public facilities, community
25 facilities and all structures and development necessary to
1 the provision of public services and utilities **as a**
2 provider of energy power. I think it's very clear this is
3 a public service.

However see below excerpt from ECAP:

<http://www.acgov.org/cda/planning/generalplans/documents/EastCountyAreaPlancombined.pdf>

Policy 13: The County shall not provide nor authorize public facilities or other infrastructure in excess of that needed for permissible development consistent with the Initiative. This policy shall not bar 1) new, expanded or replacement infrastructure necessary to create adequate service for the East County, 2) maintenance, repair or improvements of public facilities which do not increase capacity, and 3) infrastructure such as pipelines, canals, and power transmission lines which have no excessive growth-inducing effect on the East County area and have permit conditions to ensure that no service can be provided beyond that consistent with development allowed by the Initiative.

“Infrastructure” shall include public facilities, community facilities, and all structures and development necessary to the provision of public services and utilities.

NOTE: ECAP has no specific mention **of provider of energy power**.

Alameda County representative is misguiding the committee with wrong wordings.

Applicant has not met his burden in evaluating statements of Alameda County for accuracy and hence not met his burden of proof.

Infact, ECAP has special policies for Wind Farms. See ECAP excerpt below. Policies like 168 clearly indicate ECAP authors and Measure D authors recognized Wind farms as clean energy and allowed these clean infrastructures after putting

below policies. There is no mention in ECAP around natural gas fired power plants and there are no policies in ECAP around natural gas power plant. It is very clear ECAP never wanted non-clean power generation to spread around ECAP governed agriculture lands.

Wind Farms

Goal: To maximize the production of wind generated energy.

Policies

Policy 168: The County shall recognize the importance of **windpower** as a clean, renewable source of energy.

Policy 169: The County shall allow for continued operation, new development, redevelopment, and expansion of existing and planned **windfarm facilities** within the limits of environmental constraints.

Policy 170: The County shall protect **nearby existing uses** from potential traffic, noise, dust, visual, and other impacts generated by the construction and operation of windfarm facilities.

Policy 171: The County shall work with the wind energy industry, public utilities, other agencies, and energy experts to monitor **trends in wind energy** developments, technology, and environmental safeguards.

Policy 172: The County shall establish a **mitigation program** to minimize the impacts of wind turbine operations on bird populations.

It would be factually wrong to conclude that ECAP allowed for natural gas fired power plant construction and put restrictions and mentions on Wind Power.

ECAP never wanted natural gas fired power plants in open space large parcel agriculture lands as the one under discussion for MEP site.

Also definition of Large Parcel Infrastructure straight from ECAP is pasted below.

No where you will see mention around natural gas fired power plants as compatible use. Infact one can clearly see how ECAP and Measure D authors want to preserve the open space Williamson lands for agricultural usage and extended it with public usage like – recreation, parks. Look at the wordings it

is very clear authors of ECAP and Measure D, wanted land use compatible with agriculture.

***Large Parcel Agriculture** requires a minimum parcel size of 100 acres, except as provided in Programs 40 and 41. The maximum building intensity for non-residential buildings shall be .01 FAR (floor area ratio) but not less than 20,000 square feet. Where permitted, greenhouses shall have a maximum intensity of .025. One single family home per parcel is allowed provided that all other County standards are met for adequate road access, sewer and water facilities, building envelope location, visual protection, and public services. Residential and residential accessory buildings shall have a maximum floor space of 12,000 square feet. Additional residential units may be allowed if they are occupied by farm employees required to reside on-site. Apart from infrastructure under Policy 13, all buildings shall be located on a contiguous development envelope not to exceed 2 acres except they may be located outside the envelope if necessary for security reasons or, if structures for agricultural use, necessary for agricultural use. Subject to the provisions of the Initiative, this designation permits agricultural uses, agricultural processing facilities (for example wineries, olive presses), limited agricultural support service uses (for example animal feed facilities, silos, stables, and feed stores), secondary residential units, visitor-serving commercial facilities (by way of illustration, tasting rooms, fruit stands, bed and breakfast inns), recreational uses, public and quasi-public uses, solid waste landfills and related waste management facilities, quarries, **windfarms and related facilities, utility corridors, and similar uses compatible with agriculture**. Different provisions may apply in the South Livermore Valley Plan Area, or in the North Livermore Intensive Agriculture Area.

MEP violates policy 54

On page 37, line 19, Mr Lopez categorizes MEP as a public infrastructure outside the urban growth boundary. Hence does not violate policy 54.

Excuse me....He silently forgets to ignore current Mountain House 10,000 residential population which is 2.5 miles close to proposed MEP site. Mountain House is an urban cluster. And as per Mountain House master plan this Mountain House population in coming decades is going to grow to about 40,000 homes. With average of 3 person in each home. That will be about 120,000 population close to MEP.

Definition of Urban Population as per Wikipedia:

http://en.wikipedia.org/wiki/Urban_area

In the [United States](#) there are two categories of urban area. The term *urbanized area* denotes an urban area of 50,000 or more people. Urban areas under 50,000 people are called *urban clusters*. Urbanized areas were first delineated in the United States in the 1950 census, while urban clusters were added in the 2000 census. There are 1,371 [urban areas and urban clusters](#) with more than 10,000 people.

The U.S. Census Bureau defines an urban area as: "Core census block groups or [blocks](#) that have a population density of at least 1,000 people per square mile (386 per square kilometer) and surrounding census blocks that have an overall density of at least 500 people per square mile (193 per square kilometer)."

Hence as explained above, MEP violates policy 54

MEP is not consistent with Large Parcel Agriculture use and violates Policy 218

On page 40, line 17, Mr Lopez tries to justify MEP usage on large parcel agriculture saying it is outside the urban growth boundary and facility is public or quasi public use.

On page 42, Mr Lopez justifies MEP outside the urban growth population and hence consistent with Policy 218.

Above I have clearly explained how MEP falls in 2.5 miles radius of urban cluster of Mountain House and hence it is no way outside the urban growth boundary.

Also just saying the energy facility a public facility or a quasi public use without actually showing that it is needed violates Policy 13 and essential Large parcel agriculture use.

Hence from above explanation we can factually conclude that MEP violates Large Parcel Agricultural use and Policy 218

MEP violates Policy 76

On Page 42, Line 20 Mr Lopez admits that Alameda County has reviewed MEP application to strike the potential financial benefit coming out of the project to Alameda County. They have not worked together with the San Joaquin County and hence have violated the Policy 76.

A big urban cluster of Mountain House which is a minority community has been over looked. The Air quality permit was also pursued by the applicant from BAAQMD agency.

However there are very few Alameda County residents who are sensory receptors to MEP pollution.

Mountain House Community has 3 elementary schools which are about 2.5 miles and will be the closest environmentally impacted residential urban cluster.

Applicant and Alameda County should have worked with San Joaquin County and San Joaquin Air Quality Board for getting Air permit. They instead chose to get the permit from BAAQMD.

None of such burden was met by applicant. Hence MEP has clearly violated Policy 76

MEP Project financially benefits Alameda County

Intervener Rajesh Dighe's questions on PG&E Demand and Supply and need for power in Alameda County was never asked by Hearing Officer to Alameda County. The reason given was this falls under CEC jurisdiction.

Hence it is proven that Alameda County did not do demand and supply analysis and need of power is not what can be used as a justification for constructing the so-called MEP public service infrastructure. How can Policy 13 of ECAP be valid when the need never was analyzed and hence Policy 13 is getting violated?

Also Mr Lopez explained below financial county benefit and hence the interest of Alameda County in striking the MEP project deal.

6 \$1.2 million to cover three specific items:
7 \$600,000 for a health care facility or youth center in the
8 Tri Valley area; \$150,000 for the county's climate action
9 plan and other environmental review, CEQA review, and
10 other efforts related to alternative energy, energy
11 efficiency, or greenhouse gas reduction; 450,000 for the
12 unincorporated East County Pace program. The Pace program
13 is a program promoted by the State of California to allow
14 installations of solar panels on residential property.
15 That installation -- the cost of that installation is
16 spread out over a 20-year plan and recouped through
17 property tax. That funding from Mariposa would help us to
18 administer and to create that program in an eastern
19 Alameda County.
20 The other part to the cooperation agreement
21 relates to mostly permitting and expediting and obligates
22 the county to respond in a timely fashion to request for
23 easements for encroachment permits and as well as for the
24 delivery of county services and the approval of permits.
25 So in sum, the cooperation agreement approved by
1 the Board of Supervisors of Alameda County covers not just
2 sort of who's going to do what, but also stipulates the
3 mitigation payments to the county of Alameda and what
4 those payments are to be used for.

From above explanation it becomes clear how Alameda County is using dual standards when viewing power plant applications and there proposed locations.

Alameda County "opposed" East Shore Power Plant-Hayward on grounds of Air Quality, Environmental Justice, Traffic and Transportation, Land Use.

Now when faced with exactly similar situation they decide to support the MEP power plant since as Mr Lopez admitted in the record MEP has obvious financial benefits to Alameda County. Also note, CEC had denied East Shore Power Plant.

In above circumstances, intervener Rajesh Dighe requests the committee to make fair justice to Minority Mountain House community and deny application 09-AFC-03 as un-fair use of Large Parcel Agriculture land for financial benefits.

The applicant has failed to justify how this power plant will comply with ECAP and Measure D in such a close proximity of urban cluster of Mountain House.

Infact, Alameda County is putting an environmental nuisance and burden on Mountain House residents for their financial benefit as seen in the record.

On Page 56, Mr Lopez has admitted that Alameda County has not even consulted with Public Health division around MEP. Their role of being a host community they negotiated a cooperation agreement with MEP for the benefit of Alameda County.

MEP goes against Alameda County's CAP (Climate Action Plan)

On Page 64, line 8, Mr Jensen admits that CAP plans to reduce CO2 emissions by about 238 metric tons per year. However, MEP will end up emitting about 440 to 500 metric tons of GHG emissions. This will burden Alameda County with more emissions per year. **Infact cause environmental nuisance on top of minority Mountain House Community.**

Alameda County opposed power plants close to Urban areas.

On Page 67, Line 25, Mr Lopez admits Alameda County opposed Russell City and East shore because of Urban areas.

However incase of MEP, Alameda county is doing exactly the opposite since they see financial benefit.

Need for Power was not analyzed by Alameda County.

On Page 68, line 16, Mr Lopez admits that need for power was analyzed by County. But then he also admitted that this public service was needed for the Alameda County and justified the construction as public service.

The applicant has failed to meet his burden to prove the need for this public energy service

Spot Fire Response Time to MEP site

On Page 74, line 6, Alameda County Representative Mr Lopez admits that county considered 20 to 25 mins of fire response time from Livermore – Alameda County as sufficient time as per fire protection plan.

Please note Mountain House community Fire department is 8 mins away from this site. Negligence in not considering closer regional Mountain House fire department resources which would help reducing response time during fire circumstances shows incorrect strategic safety planning attitude of the applicant and Alameda County towards worker safety.

MEP is inconsistent with Contra Costa Land Use plan

Page 80, Line 14 puts in record that MEP violates Contra Costa Land Use plan. Mr Jensen also admits on Page 79 that Alameda County did not create an Airport Protection Plan as per Airport Land Use handbook.

It is interesting because they did that Protection Plan for their Livermore and Hayward Airport.

From day one, the project was pursued for Alameda County's benefit and applicant favored it so did not show interest in doing the right thing in pursuing a protection plan for Byron Airport.

There is no sufficient evidence that MEP is a public service. Hence violates ECAP Policy 13

Alameda county has repeated numerous times MEP is a public infrastructure.

However from Page 90 it becomes clear that Mr Lopez also agrees MEP is not a public company and MEP sells power to PG&E which is a private utility.

Hence from above clear statements around business entities – wherein we have non-public MEP LLC, selling services to private utility –PG&E we can conclude Alameda County is factually wrong and trying its best to make MEP compliant with ECAP but failing to do so by attempting to categorize a non-public MEP entity which sells energy services to private utility PG&E as “public service”.

ECAP prohibits residential development

On Page 95, line 13, Mr Lopez admits that residential development is prohibited. However it is very interesting that ECAP actually has no provision and policies as mentioned earlier to construct natural gas power plant. Mr Lopez for obvious reasons does not mention about that in the record.

Alameda County has always made arguments and emphasized on sections of ECAP which favors its position in supporting MEP project approval.

Williamson Act and electrical facility

For the record I went through entire Williamson Act. It never mentions anything to the regard to allow “electric facility”

Applicant has failed to explain “Land Restoration Plan”.

From all the pages and pages of this brief it is clear Alameda County and MEP have financial benefit to get this power plant approved.

Intervener Rajesh Dighe wants to bring in front of the committee that applicant has failed to meet his burden by not explaining how he will restore the proposed agricultural site grazing land to its current conditions 10, 20 ,30 years from today.

I recommend entire committee to be thoughtful and do right forecasting and planning for the future agricultural food needs in California.

Technology changes very fast and today's software and agriculture engineering can become outdated and who know tomorrow we might see agricultural technology advancing rapidly. We need to protect our environment and not deplete its natural agricultural resources in California.

At that time we might end up in a situation around reversing the MEP site for agricultural use.

The proponent (applicant) fails to show sufficient factual plan to allow State of California on how one can convert the MEP site back to current condition of large parcel agricultural land.

I request the committee to plan diligently over this "critical agriculture land" in Alameda county which voters want to preserve with the intention of open space and have fair intentions on possibility of some sort of farming. Alameda County is being (currently) too narrow minded in its out-look and hastily putting its local version of LORS governing Williamson Contract to make compatible use of Williamson Act (Government Code Section 51238.1(a).)

I understand the current condition of the land is "open space and non –grazing land", however in the context of the natural gas power plant construction (MEP application), Intervener Rajesh Dighe recommends CEC to deny the application since applicant has failed in his burden to provide detail land restoration plan for reversing the current entire land and bringing it back to its current grazing land conditions.

MEP will permanently damage Williamson Act agriculture soil

Since this land is zoned for large parcel agriculture the current mitigation fails to justify why Alameda County is okay with just mitigating with sufficient cattle grazing count on remaining part of the parcel but still damaging the site soil with power plant constructions and operation run off.

Hence CEC should look at alternate sites for its power generation.

Is Williamson Act Contract getting cancelled or not-renewed?

From the hearing and answers given by Alameda County it not clear whether the current land owner is planning for cancelling, not-renewing his Williamson Act Contract with Alameda County. So for the application consideration committee definitely needs to assume that the applicant has no plans to cancel or not renew the Williamson Act Contract. But it should be put in the record as clear fact and as an agreement that Williamson Act Contract with Alameda will never be cancelled going forward on this land.

The county has continually expressed consistency with Williamson Act Contract. However, applicant has not shown sufficient evidence on doing research in finding alternate locations not bound by Williamson Act contract.

Hence applicant has failed due process of law in meeting his burden of proof.

Applicant's dual perspective for similar power generation facility

On Page 116, Applicant expert Mr. Martinelli says "Cogen facility" is not a public facility. But then he continues to press on "Mariposa as a Public facility" since it has power purchase agreement.

Duct Firing capabilities in East Altamont

On page 117, Mr Martinelli's testifies that he does not know what duct firing capabilities are and he is not aware of East Altamont getting designed with 200 to 250 MW of duct firing capability.

For the record Duct firing is used with heat recovery steam generators (HRSG) Such duct firing systems introduce additional burners to provide additional energy to the HRSG, which produces more steam and hence increases the output of the [steam turbine](#). Generally, duct firing provides electrical output at lower capital cost. It is therefore often utilized for **peaking operations**.

Hence Exhibit 67, page 6 of Mar Martinelli's testimony in-accurately compares Mariposa Peaker facility to East Altamont Energy center capabilities and missed the duct firing capabilities which assist peaking operations.

Applicant says "Refinery NOT OKAY" but "Peaker plant OKAY" as per ECAP

It is interesting to note that on page 119, Mr Martinelli expresses concerns on constructing refinery on MEP proposed site saying it would be an “industrial use” and not comply with ECAP.

But adds it is okay for Mariposa to build “Peaker Power Plant”.

Rajesh Dighe likes to point to the committee that “Peaker Power Plant” is also a “industrial facility”. Many parties have agreed to the record during corss – examinations. Similar to MEP, oil refinery (for discussion) would provide gasoline to the public similar to MEP power plant hence can be looked at as public service.

However, applicant expert Mr. Martinelli looks at Refinery and Peaker Power Plant very differently even though they have similar public service providing capabilities.

The applicant hence has not met his burden of proof in explaining why he feels MEP will not violate ECAP.

Applicant latter agrees MEP is an “industrial infrastructure” then starts qualifying it with little basis as “permissible infrastructure”

Page 127, line 21, Mr Martinelli has admitted that MEP is a “industrial infrastructure”. Then start qualifying it as “permissible infrastructure” to make it consistent with ECAP.

Applicant clearly is making statement which starts suggesting their vague facts and attempts to categorize MEP compatible use of Measure D. But the applicant arguments start to fail in real content.

MEP has no conditions and permits to which it can strongly justify Policy 13- requirement of permissible infrastructure

Applicant has failed to meet the burden in explaining and proving why there are no conditions and permits to which one can validate Policy 13 to ensure no service can be provided consistent with development allowed by the initiative.

Applicant has failed to answer question:

“If MEP is not constructed will Eastern County not continue to get sufficient electricity?”

Not knowing answer to this very specific targeted important question of Policy 13- causes the applicant to not meet his burden of proof.

Hence the applicant should be denied for reasons of lack of applicant’s research and understanding of the ECAP and Measure D.

Public “Need and Necessary” factor of Policy 13 never answered by applicant

Page 129, 130 you will clearly see Mr Martinelli (applicant) failing to meet his burden in proving why this facility is necessary? What part of electricity need is necessary? Also on the record as stated in this brief earlier you will clearly find both Alameda County and Applicant have failed to meet their burden in doing due-diligence and putting in record the electricity need analysis.

THERE WAS NO “NEED OR NECESSARY” aspect of analysis done by the applicant.

Hence applicant has never successfully done need and necessary aspect of Policy 13 questions.

Hence applicant has again failed to justify compliance with “public need and necessary needs for provisioning of public services and utilities” of Policy 13.

Nowhere in the ECAP there is an explicit mention of power plants being permissible infrastructures. However applicant has continually over the course of the hearing made that assertion with no basis.

MEP violates ECAP – Maximum building intensity FAR of .01

Straight quote from ECAP below we clearly see the building intensity should be .01.

***Large Parcel Agriculture** requires a minimum parcel size of 100 acres, except as provided in Programs 40 and 41. **The**

maximum building intensity for non-residential buildings shall be .01 FAR (floor area ratio) feet. Where permitted, greenhouses shall have a maximum intensity

Let's do the calculation:

Parcel size is 158 acres
.01 of 158 acres is = 1.58 acres

Mariposa is planning to use 10 acres.

Isn't Mariposa violating the FAR of .01 as per ECAP on the proposed site?

Electricity facility as compatible use

Exhibit 20 of the applicant – Letter from Department of Conservation clearly says:

“Because the contracted land in question **will continue to have an agricultural use** (grazing), the conclusion that the proposed use is compatible is based on the provisions contained in Government Code”

§51238.1. (a) Uses approved on contracted lands shall be consistent with all of the following principles of compatibility:

(1) The use will not significantly compromise **the long-term productive agricultural capability** of the subject contracted parcel or parcels or on other contracted lands in agricultural preserves

My argument as mentioned earlier as well is, applicant has failed in his burden to prove if land can be restored to its current condition without affecting its soil **for long term agricultural purpose.**

Applicant has shown no land restoration plan to preserve the current condition and has not show any facts if it is even feasible without damaging the soil permanently

to get it back to the current condition 20 years (for say from today) if one has to go back to agriculture use on this land.

Department of Conservation in the exhibit is clearly assuming that the area is an energy corridor as below:

Because the area in question has a long history of acting as a major energy and other infrastructure corridor of the State, an additional small facility will *not* create additional stress on neighboring agricultural operations.

Please note it is a speculation and factually in-correct to assume it is an energy corridor. Applicant who has agreed with this exhibit of department of conservation is speculating this to make the land a **“compatible use”**

Wind Mills surely give factual evidence of green energy corridor but there is no evidence that area around Mountain House is a fossil fuel energy corridor?

One can say it is a Green corridor because of Wind Mills but how can one say it a natural gas power plant corridor? One can say it is an open space corridor with green Altamont Hills? But definitely not a general energy corridor which includes Peaker Plants?

The number of Wind mills in this corridor (just for record) far exceed the few approved fossil power plant (East Altamont) which are not even under operation in this corridor.

Staff did no analysis on what is the public need for this project

Page 187, Line 6 and Page 189, Line 18, Staff expert Ms Worrall clearly mentioned Alameda county just sent them determination with no analysis on need for this project. Also she was not aware of any other requirement other than PG&E 2008 long term power procurement agreement.

Staff did not analyze but just accepted Alameda County and Department of Conservation's determination of "compatible use" as per Williamson Act?

Page 190, Line 18 Staff admits they just accepted without further analysis that Alameda County and Department of Conservation's determination analysis around compatible.

Staff should have dug more and done independent research and analysis around how a public facility whose need analysis has not been done become "compatible use".

Staff did not analyze why this project was "needed" on this "specific site"

Staff could not answer and did not give any justification why the project was "needed" on the proposed site. There is no evidence as admitted by Alameda County, Applicant and Staff on "immediate need of" Measure D land residents who need this facility.

Hence applicant has not met his burden of proof.

MEP is not compatible with Contra Costa County Airport Land Use.

Contra Costa County Airport Land Use Commission determined MEP project as inconsistent with Airport land use.

Even after receiving the inconsistency information CEC Staff did not notify or reply. No interactions between CEC staff and Contra Costa County Airport Land Use Commission happened to solve or understand the inconsistencies.

In fact, CEC Staff did not communicate/notify their assessment of land use to Contra Costa County Airport Land Use Commission.

Hence applicant has not met his burden of proof in Aviation Safety.

Air Quality and Health Impact

(a) **Inappropriate Air Quality District for Air Quality Permit.**

In pursuance of compliance with Federal and State air quality standards, the applicant pursued air quality from the Bay Area Air Quality Management District.

However, this was the inappropriate region for the proposed MEP site.

Pragmatically, the Applicant has failed to get certification/permit from San Joaquin Valley Air Pollution Control District. However, the wind pattern from the bay area will cause the San Joaquin Valley Air Pollution Control District to be the area affected by the MEP's air pollution, particularly the Mountain House, San Joaquin community.

Air quality districts are not defined exclusively by county lines. Rather, they are mapped and defined by non-attainment areas. The San Joaquin Valley Air Pollution Control District is in violation of the air quality standards for many more emission criteria than the Bay Area Air Quality Management District. Therefore, the standards are far stricter for obtaining air quality permits. This likely explains why the Applicant sought an air quality permit from the Bay Area Air Quality Management District rather than the more appropriate San Joaquin Valley Air Pollution Control District.

The Applicant's request for approval for the MEP project should be declined until a permit has been issued from the San Joaquin Valley Air Pollution Control District.

(b) The Air Quality Modeling and Monitoring Data was Inadequate.

As mentioned by Ms. Qian that EPA Air Quality Modeling was based on meteorological data provided and certified by ARB, but staff did not check the equipment's calibration certification of ARB which gathered the data. As a result, the data can only be deemed inadequate.

The Applicant has stated data was obtained from the Mountain House Elementary School area. The Mountain House Elementary School area is located in Contra Costa County, which is upwind from the proposed development. Data points of reference should have been obtained from the Mountain House, San Joaquin County area school districts and Tracy, which are both located downwind from the proposed development.

As a result, the data can only be deemed inadequate.

Until the applicant can obtain and provide better air data, the burden of proof has not been met and the request for approval must be denied.

(c) The Proposed MEP Facility is not Vital Infrastructure and is Against Public Policy.

California AB 32 and the proposed energy mandates for 33% renewable energy sources will continue to reduce the need for fossil fuel based energy sources. Moreover, voter approval of these mandates firmly express a public policy against developments of fossil fuel based power generation facilities, such as the MEP project. According, the CEC should consider rejecting the application for the MEP facility, as its development is against public policy and unnecessary given the trends in development.

(d) There is no Need for Additional Energy Generation Capacity.

In Tracy and Alameda County, we have several power plants which are running under capacity and they are not fully utilized. The new proposed power plants will impact tax payers and rate payers, because infrastructure costs are passed onto consumers. The only justification for developing this plant that has currently been given is that PG&E has agreed to pay money for power.

If this is the only standard, no power plant with a purchase agreement from a private company would ever be denied. This cannot be the standard as the CEC must at some level take into account need and public good, as the CEC is in effect an entity of government, rather than one that serves at the will of private companies.

Moreover, MEP has not mitigated appropriately based upon its proposed capacity. Specifically, the plant will be permitted to operate 4,225 hours and licensed to operate up to 4,000 hours per year where as the mitigation provided to San Joaquin was only for 1,400 hours.

The absence of adequate mitigation for the capacity of the plant and the lack of firm justification for a 250 MW plant should be taken into consideration and warrant the non-approval of the proposed MEP development.

Hazardous Materials and Fire Protection

Mountain House residents were not community properly because of no public workshops in Mountain House around hazardous material handling and fire safety.

Applicant has failed in his out-reach in reach to the minority community and explaining the MEP hazardous material handling impacts

Pipeline Safety

In the hearing it was mentioned by Mr. De Leon that they did not check the maintenance record of PG&E pipeline 002 and also did not do risk analysis of line 002. There was no physical check procedure on Line 002. As is evidenced by the current safety cases involving PG&E, e.g. San Bruno Explosions, the absence of pipeline safety data is a critical safety concern. Specifically:

1. Mr. Tyler accepted in the hearing that no pressure fluctuation analysis done for Line 002.
2. Additionally, no analysis was done for hazard situation with active oil pipelines passing by line 002 gas line. See Chevron letter dated February 16, 2010 by Mr. Lee Higgins to Mr. Craig Hoffman of CEC.
3. Mr. Tyler mentioned that there was no cyclic pressure analysis or modeling done which can show the impact on the safety of the line 002. Cyclic pressure analysis is important for peaker plant because peaker plant is supposed turn on and off several times a day.
4. Without checking the maintenance record, doing risk analysis and physically checking line 002, there is a significant hazard and risk to the population around MEP, the most at risk community being Mountain House, San Joaquin. Until this critical safety assessment is conducted, the Applicant has failed to meet its burden of proof and the permit must be declined.

Biology

During the March 7, 2011, evidentiary hearing, Mr. Rob Simpson asked where all of the endangered species were found. The Staff Wild Life Biologist laughed and responded that endangered species move and she did not know. Unfortunately, this cavalier and unconcerned approach to protecting sensitive species has been consistent during the MEP analysis. Moreover, the statement was actually

inaccurate. (The life cycle of a Tiger Salamander is such that it lives in a borough for most of its life and does not move. A reasonably competent Biologist should know this or at least have been prepared to respond to such queries when serving as an expert for the Applicant.)

(a) The Applicant's witnesses were clearly inadequate.

As another example, Mr. Morgan Groover asked the wildlife biologist if she knew if adding electro-conductivity, mercury or Tri-hallow methane to the water was harmful to the aquatic wild life and the biologist stated she did not know although all of those substances are regulated by the State because they are harmful to aquatic wild life.

“Electro-conductivity” is a means to measure salt. If the Applicant's relied upon expert biologist would make such erroneous statements in an open forum, how can the opinions of the Applicant's biology experts serve any value.

Clearly, the Applicant relied upon and provided experts who did not understand a reference to which any reasonable biologist adequate for the task should have understood. Accordingly, her subsequently conclusions that using reclaimed water has a beneficial effect on the Delta water system because one is not discharging things like mercury into it can at best be deemed suspect.

Moreover, Applicant's relied upon conclusions that the MEP site would not impact the numerous identified endangered species which inhabit the site, can also only be deemed highly suspect. For reference, here is the list of endangered species identified as having habitat on the property:

- Burrowing Owl – Burrows actually found on the subject site.

Letter from Department of Army dated April 20, 2010 did mention that

1. There is a potential for take of listed *fairy* shrimp, frog and salamander during construction and operation due to sediment or other material being released via storm water into nearby wetlands; potential for take of frog, salamander and kit fox during construction and operation, caused by vehicles and other equipment. Cumulative impacts may occur as a result of new developments and operation and maintenance of existing facilities in the action area.
2. Based on the available information, we have determined the action may affect the Federally-listed California red-legged frog (*Rana aurora draytonii*), San Joaquin kit fox (*Vulpes macrotis mutica*), California tiger salamander (*Ambystoma californiense*), vernal pool fairy shrimp

(Branchinecta longiantenna), longhorn fairy shrimp (*Branchinecta longiantenna*) and/or their critical habitat.

Without reliable competent experts thoroughly investigating the potential impacts of the MEP development on vital habitat for federally listed species, the Applicant has failed to meet its burden and the proposed development must be denied.

(b) The Applicant and the CEC Staff's analysis were clearly inadequate.

California Code of Regulations, Title 14, Chapter 3, Guidelines for California Environmental Quality Act. Section 15151 states:

An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of the environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible.

Disagreement among experts does not make an EIR inadequate, but the EIR should summarize main points among the experts. The courts have looked not for perfection but for adequacy, completeness and good faith effort at full disclosure. However, when none of the wildlife biologists on the project knows that dumping salt, mercury or THM's into the delta is harmful to aquatic wildlife, then the EIR is not adequate.

The CEC Staff did not do the analysis of other species under NEPA assessment which are federal species. The Applicant's environmental impact report was inadequate, because it failed to account for all of the identified federally listed species.

CEQA is the requirement of CEC state approval process. NEPA has federally listed and federally endangered species that is relied upon by CEQA analysis, when found to be lacking. A more detailed NEPA styled analysis should have been required in this case due to the number of federally listed species identified on or surrounding the property. The applicant implicitly conjures with this in a fact that they have drawn in the guidance from the NEPA assessment to establish what type of analysis would have done.

(c) The Removal of these Species will have a Profound Impact on the Local Communities.

Not only are these species, particularly the Burrowing Owl endanger, but they are also critical to pest control for the community of Mountain House. For example, the Burrowing Owl is the dominant predator for nocturnal rodent pest species. Had an appropriate analysis being done it would have revealed the burden on Mountain House Community. However, again, the needs of Mountain House Community were never considered.

Due to the power plant existence and plume the bird will stay away from power plant and will tend to take flight higher, this will make birds fly higher and close to Byron Airport and also direct them toward the well known hazard of the Altamont Wind Farm. This will further endanger the federally listed species and will create a new flight hazards and more flight hazards to planes which are non instrumental like gliders. This analysis was not done by CEC staff or applicant.

It is the Applicant's burden to consider and account for the very real impacts the development will have on wildlife and the local community. The Applicant has failed to meet this burden. Therefore, the application for the MEP development must be denied.

Soil and Water

Applicant has not studied the effects of particulate pollutants on water Ecosystem as evident during Rajesh Dighe's cross-examinations

Traffic and Transportation

No traffic study was done and published to Mountain House Community residents for review during CEC public workshops. Hence parties do not know the how MEP project would affect Mountain House commuters time and safety.

ALTERNATIVES

Applicant and Staff has made no attempt in analyzing how many solar panels on resident roof top will be required to generate localized power close to California homes which will bring down the need of such power plants. Rajesh asked these questions and applicant nor staff were able to answer. There is no evidence in the record which shows the same.

Hence the applicant should be denied till such a detail study is done and energy need is well understood.

Aviation

Plume analysis done by the applicant is a big suspect since applicant goes against the flight manuals which recommend avoiding plume for safety.

Applicant has on the record made statements like “PLUME is NOT A HAZARD”

Thanking you
Sincerely

Rajesh Dighe

Mar 27, 2011

STATE OF CALIFORNIA

State Energy Resources

Conservation and Development Commission

In the Matter of: [DOCKET NUMBER 09-AFC-03]

[MARIPOSA ENERGY PROJECT] **DECLARATION OF SERVICE**

I, [Rajesh Dighe](#) declare that on Ma-27-2011, I served and filed copies of this document dated Ma-27-2011. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent *Proof of Service* list (most recent version is located on the proceeding's web page at: <http://www.energy.ca.gov/sitingcases/mariposa/index.html>)

The document has been sent to both the other parties in this proceeding (as shown on the *Proof of Service* list) and to the Commission's Docket Unit, in the following manner:

For service to the applicant and all other parties:

sent electronically to all email addresses on the Proof of Service list;

by personal delivery or by depositing in the United States mail at [Sacramento, California](#) with first-class postage thereon fully prepaid and addressed as provided on the *Proof of Service* list above to those addresses **NOT** marked “email preferred.”

AND

For filing with the Energy Commission:

sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (preferred method);

OR

depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. [\[09-AFC-03\]](#)
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

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

Rajesh Dighe

Mar 27, 2011



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

**APPLICATION FOR CERTIFICATION
FOR THE *MARIPOSA ENERGY PROJECT*
(MEP)**

Docket No. 09-AFC-3

PROOF OF SERVICE
(Revised 3/18/2011)

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DECLARATION OF SERVICE

I, _____, declare that on _____, I served and filed copies of the attached _____ dated _____. The original document, filed with the Docket Unit, are accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [\[http://www.energy.ca.gov/sitingcases/mariposa/index.html\]](http://www.energy.ca.gov/sitingcases/mariposa/index.html). The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery;
- by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

- sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);

OR

- depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 09-AFC-3
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.
