



JESS RANCH

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| <b>DOCKET</b> |             |
| 97-AFC-1 c    |             |
| DATE          | MAY 14 2000 |
| RECD.         | MAY 18 2000 |

**Sent Via Fax and First Class Mail:**

May 14, 2000

Arthur O. Baggett, Jr., Acting Chairman  
Mary Jane Forater, Board Member  
John W. Brown, Board Member  
Peter S. Silva, Board member  
Edward Anton, Acting Executive Director  
State Water Resources Control Board  
901 P Street  
Sacramento, CA 95814

Regarding: **Statewide Compliance with:**

**Article X Section 2 of the California Constitution**

And;

**SWRCB Resolution 75-58 and Water Code Section 13550**  
**et seq.**

And:

**Permits of SWRCB on Power Plants**

Dear Chairman Baggett, Members of the Board and Mr. Anton:

By way of introduction I am President of Jess Ranch Development Company ("JRDC") and a stakeholder in the future of water resources in the State of California. The company has been developing a 1,400 acre historic property in Apple Valley as a Planned Community for a period of 20 years. The Jess Family has held ownership of the majority of the property and its "Water Rights" for nearly 100 years.

In adjudication proceedings over the past 10 years, it has been determined that water basins in our area are overdrafted in excess of 1,000,000 acre-feet per year. The condition has been referred to as severe and critical.<sup>1</sup> Although a physical solution has

<sup>1</sup> RT HDPP 10/08/1999 page 139, CEC Water Expert Joe O'Hagen

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**Jess Ranch Development Company, Inc.**

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been adopted,<sup>2</sup> the overdraft has not been curtailed. Municipal production is the principal reason for the overdraft.

On May 3, 2000, the California Energy Commission certified a Power Project, sponsored by High Desert Power Partners ("HDPP"). This project proposes to use State Water Project (SWP) water for evaporative cooling. I believe that the 100% consumptive use of SWP water for dry cooling a power plant does not comply with Article X Section 2 of the California Constitution or SWRCBR 75-58.

It is my understanding HDPP still requires permitting from your agency. My position is that the SWRCB is required by law to mandate compliance with Article X Section 2 of the California Constitution. Therefore, I believe the SWRCB must consider the following topics in order to make findings that:

1. The HDPP project does not comply with Article X Section 2 of the California Constitution concerning reasonable and beneficial use of State Project Water, in a water basin where the entire amount of the entitlement will not cure the overdraft.
2. The HDPP project fails to comply with SWCRB Resolution 75-58, that fresh inland water will not be used if there are feasible alternative methods of cooling.
3. To conserve fresh inland water, dry cooling is the environmentally preferred method of cooling power plants.
4. Water Discharge Permits are not issued for power plants with 100% consumptive use of fresh inland water when feasible alternative methods of cooling exist.
5. That proper CEQA Compliance from responsible water agencies has not been obtained.

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<sup>2</sup> Pending Review In the California Supreme Court Docket No. S07172S CITY OF BARSTOW et al., Plaintiffs and Respondents, v. **MOJAVE WATER AGENCY** et al. Defendant, Cross-complainants and Respondents, JESS RANCH WATER COMPANY, Cross-defendant and Appellant. And MOJAVE WATER AGENCY et al., Cross-complainants and Respondents, v. MANUEL CARDOZO et al. Cross-defendant and Appellants. Court of Appeal Case Nos. 017881/ E018923/ E018023 and E018681 v. Superior Court No. 208568





### Discussion Topic Number One

Under the Constitution, it is neither "reasonable" nor "beneficial" for a power plant to use SWP for power plant cooling when the overwhelming evidence provided in the HDPP case is that all of the SWP water allocated to the Mojave Water Agency ("MWA") will not cure the over draft.<sup>3</sup>

### Discussion Topic Number Two

A permit should not be issued to HDPP because: (1) Feasible alternative methods that do not use fresh inland water for cooling exist; and (2) The "feasibility" of the alternative (dry cooling) was studied before granting HDPP certification.

First: The Energy Commission expert when asked "Is dry cooling feasible?" Replied and testified "Yes it is"<sup>4</sup>

Second: In essence, the Resolution 75-58 states that in order to "use" . . . "fresh inland water for power plant cooling" . . . someone must perform. . . "an analysis documenting that dry cooling is environmentally undesirable or economically unsound."

In HDPP case CURE and myself conducted the only dry cooling "Studies". Both studies demonstrate that Dry Cooling is economical.<sup>5</sup> Furthermore, the findings in an

<sup>3</sup> As a citizen in the High Desert I individually intervened in the HDPP case. I presented uncontested evidence that HDPP should not use "fresh inland water" for cooling. Ibid.: page 139-179

<sup>4</sup> Ibid. page 161  
Question Mr. Ledford<sup>5</sup>: And in the State Water Resources Control Board Resolution 75-58, does it require a financial analysis of dry cooling . . . ?

Answer Mr. Layton: I believe it suggests.

Question Mr. Ledford<sup>5</sup>: Has any evidence been submitted to you in this proceeding that would indicate to you that it is not economical?

Answer Mr. Layton: No.

My questions of CEC Staff expert Mathew Layton are conclusive, that he took no exceptions to the numbers that I provided relative to the economics of Dry Cooling.

Question Ledford: "And I attempted to use a study that CURE had initially started and then added some components to that study that I believe had been omitted. Did you review those?"

Answer Mathew Layton: "Yes, I did."

Question Ledford: " And do you take any exception to those numbers?"



earlier power plant siting decision support dry cooling (Sutter Power Project) as economically sound and environmentally the best alternative. From the record in the HDPP case it is clear that there is no analysis or evidence to prove that dry cooling is environmentally or economically unsound.<sup>6</sup>

In applications before the Energy Commission the new merchant plant developers take the position "economically unsound", means "less profitable." In public testimony applicant generators refuse to provide any evidence<sup>7</sup> to establish that dry cooling is economically unsound. The only applicant evidence is that the "capital costs" for dry cooling is initially more costly than wet cooling, and that power plant generating efficiencies on "hot days" are less. Developers refuse to provide any financial information on the reasons for these conclusions stating "it is not necessary for a decision". Developers rely on the statements that it costs more to build and operate and therefore the conclusion should be "they would make less money".<sup>8</sup>

In my opinion, the SWRCB is not bound to accept bare conclusions on the concept of "economically unsound." For, even if we all agreed that the conservation of water costs more and competitive merchants in the deregulated energy market may make "less profit" the correct interpretation of those facts is that the cost of conservation is a cost of doing business! If California's current laws were enforced, the power providers would either make a little less or charge a little more, that is the nature of the "competitive market". Most Californians understand that is the cost of conserving water in this state.

### Discussion Topic Number Three

Dry cooling is the environmentally preferred method to provide more electric generation without wasting fresh inland water.<sup>9</sup>

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Answer Mathew Layton: "No, I do not."

Trial Exhibits 98, & 122, from Energy Commission HDPP are attached hereto.

<sup>6</sup> RT HDPP 10/08/1999 pages 159 - 170

<sup>7</sup> HDPP response to Ledford Data Requests, Dated April 5<sup>th</sup> 1999, Docketed March 31<sup>st</sup> 1999; information is proprietary and not necessary for a decision in this matter and not relevant."

<sup>8</sup> Both issues are disputed by CURE and myself.

<sup>9</sup> HDPP 97 AFC-1 RT 10/08/1999 Exhibit 99 - Rebuttal Testimony to Linda Bond and Joe O'Hagan, Exhibit 109 - Fifth annual Report to the Court, Exhibit 110 - Pages from MWA Regional Water Management Plan, Exhibit 111 - MWA Master Plan for the delivery of imported water, Exhibit 112 - MWA Brief to Supreme Court, Exhibit 113 - Graphic of Overdraft, Exhibit 114 - USGS Report 95-4189, Exhibit 115 - MWA Water Pricing, Exhibit 116 - EIS -Selected Pages - George Air Force Base Exhibit 117 - Declaration from MWA - Norm Caouette, Exhibit 118 - MWA Memo, Exhibit 119 - Cure's Analysis of Dry Cooling, Exhibit 121 - Direct Testimony of Gary Ledford, Exhibit 122 - Direct Testimony of Gary Ledford on Dry Cooling, Exhibit 123 - E-Mail from Norm Caouette and Exhibit 124 - State Water Resources Control Board Resolution 75-58.





The Energy Commission set a wise precedent to conserve water when the Sutter Power Project (97 AFC 2) was certified. In making the decision to use Dry Cooling technology, the following finding was made:

**"The change to the use of an air cooled condenser rather than wet-cooling towers results in significantly reduced environmental impacts."<sup>10</sup>**

In my opinion, by not following the Sutter precedent in HDPP, the Energy Commission is failing to observe Constitutional mandates and SWRCB policies designed to protect California's water resources. Wet Cooling is Environmentally Undesirable. "Dry Cooling" is the environmentally preferred method of cooling a power project. Not only is it environmentally desirable, but environmentally preferred.

#### **Discussion Topic Number Four**

California has over 600 power projects with more than 60% using "fresh inland water" for cooling. It is estimated that Water for Cooling Power Plants uses up to 1,000,000 acre feet of water at 100% consumption annually. None of this water is returned to water basins for other uses. As your Resolution 75-58 states, the use of "Fresh Inland Water" for power plant cooling may be considered an unreasonable use of water. Unfortunately, for the life of existing plants we cannot change the use of wet cooling, except to sunset the wet cooling should recertification be an option. On the other hand, all new power projects, including those that have not started construction, should be mandated to use Dry Cooling or other non-domestic water for cooling. This would conserve billions of gallons of fresh water per day for other uses.

I request that you not provide Waste Discharge Permits to HDPP or any other power project that fails to comply with Article X Section 2 of the Constitution and SWRCB 75-58

#### **Discussion Topic Number Five**

I have attached a Motion to Modify Resolution 75-58 to clarify the Resolution on these issues.

This letter and the accompanying motion support the California Unions for Reliable Energy ("CURE") letter April 26, 2000 urging the State Board to provide guidance to the California Energy Commission.

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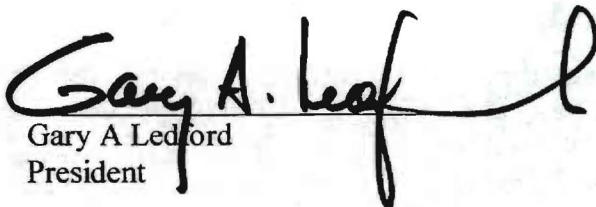
<sup>10</sup> Final Certified Decision Sutter; Findings page 270.



Thank you for the opportunity to present this view on this important statewide issue of water conservation. Please contact me with any questions.

Very truly yours,

Jess Ranch Development Company, Inc.  
A California Corporation

  
Gary A Ledford  
President

Cc: Governor Gray Davis via fax  
Attorney General via fax  
CURE via fax to counsel  
Rick Buell via e-mail  
CEC Public Advisor and dockets - via e-mail  
Other Interested Parties

Enclosure: Petition to Modify, Amend Clarify and Revise Resolution 75-58  
Selected Transcript Pages from Hearings of HDPP on 10/08/1999



1       there's no information that I'm aware of that all  
2       of the State Water Project water allocation that  
3       the agency has will need to be used to address the  
4       overdraft.

5                   MR. LEDFORD: Do you agree that the  
6       overdraft condition is severe and critical?

7                   MR. O'HAGAN: Yes, I do.

8                   MR. LEDFORD: Linda, you had -- and I'm  
9       assuming this is yours, discussed the issue of  
10      clay layers?

11                  MS. BOND: Yes.

12                  MR. LEDFORD: And I had also noticed  
13      that in the well interference report from CURE  
14      that they had also expressed a pretty large  
15      concern about clay layers.

16                  MS. BOND: I can't testify to their --

17                  MR. LEDFORD: You didn't study their  
18      report?

19                  MS. BOND: I did, I don't recall that  
20      specifically.

21                  MR. LEDFORD: Okay, because their report  
22      is cited in here in several --

23                  MS. BOND: Certainly no, I certainly  
24      reviewed it, I just don't remember that  
25      specifically.

1 deep enough to enter the saturated zone of the  
2 aquifer.

3 MR. LEDFORD: If you were to drill a  
4 thousand foot well out there, would that be deep  
5 enough?

6 MS. BOND: I don't recall the specific  
7 depths to be drilled.

8 MR. LEDFORD: Okay, thank you.

9 On the issue of dry cooling, given the  
10 real complexity of this water basin and all of the  
11 issues related to this water basin, would dry  
12 cooling be a viable alternative in this project?

13 MR. O'HAGAN: Well, I believe Mr.  
14 Layton's testimony on dry cooling is that it's  
15 technologically feasible.

16 MR. LEDFORD: Correct, but I have  
17 noticed that a number of the staff on various  
18 other topics where water is kind of interrelated,  
19 relate their testimony to the Department of Water  
20 Resources Resolution. I believe it's 7558 --

21 HEARING OFFICER VALKOSKY: Why don't we  
22 try it this way, Mr. Ledford. Mr. O'Hagan and or  
23 Ms. Bond, are there -- would the use of dry  
24 cooling cause any significant adverse water  
25 impacts?



1 Matthew Layton. I don't know if, just for the  
2 sake of time, if we want to get all these in.

3 HEARING OFFICER VALKOSKY: Why don't we  
4 just hold off on that, because that is very  
5 specific as to dry coolant.

6 MR. LEDFORD: Right. Exhibit 99 is a  
7 rebuttal testimony of Linda Bond and Joe O'Hagan.  
8 Do you want me to list them all?

9 HEARING OFFICER VALKOSKY: Yeah, just  
10 list them in sequence.

11 MR. LEDFORD: Exhibit 109 is selected  
12 pages from the fifth annual report to the Mojave  
13 River Basin Watermaster. Exhibit 110, selected  
14 pages from the Regional Water Management Plan.  
15 Exhibit 111, selected pages from the Mojave Water  
16 Agency Master Plan for the delivery of imported  
17 water.

18 Exhibit 112 is selected pages from  
19 Respondent's opening brief on the merits to the  
20 Supreme Court. Exhibit 113 is a graphic  
21 representation submitted by myself. Exhibit 114  
22 is selected pages from USGS report 95-4189.

23 Exhibit 115 is Mojave Water Agency water  
24 pricing dated August 23rd, 1999. Exhibit 116 is  
25 selected pages from the EIR on George Air Force

1 Base. Exhibit 117 is the declaration of Norm  
2 Caoette.

3 Exhibit 118 is Mojave Water Agency memo  
4 of September 14th and minutes of August 16th.  
5 Exhibit 119 is -- it's already been admitted.  
6 Exhibit 121 is direct testimony of Gary Ledford on  
7 water and related matters.

8 Exhibit 122 is direct testimony --  
9 that's on dry cooling. I guess we'll wait on that  
10 one.

11 Exhibit 123 is an E-Mail from Norm  
12 Caoette to Rick Buell dated April 13th, 1999.

13 Exhibit 124 is the State Water Resources  
14 Control Board water quality control policy on the  
15 use and disposal of inland waters used for power  
16 plant cooling, adopted June 19th, 1975. [SWRCBR 755]

17 Exhibit 125 is selected pages from  
18 certificates of participation in the amount of  
19 \$26,290,000 dated May 1st, 1997.

20 Exhibit 126 is selected pages from a  
21 draft issue memo regarding beneficial uses for  
22 ground and surface waters within the Mojave  
23 watershed dated October, 1994.

24 Exhibit 127 is an agreement for  
25 cooperation between the Mojave Water Agency and



1 the Victor Valley Economic Development Authority  
2 dated December 22nd, 1993

3 Exhibit 128 is a declaration of Larry  
4 Rowe in support of motion for entry of  
5 interlocutory decree of judgment.

6 Exhibit 129 is a letter from Andrew  
7 Welch to John Roberts -- oops. that's not mine.

8 And I think that's all.

9 HEARING OFFICER VALKOSKY: Okay, is  
10 there objection to admission of the identified  
11 exhibits? Mr. Thompson.

12 MR. THOMPSON: Although we may have some  
13 quarrel with the relevancy and possible use of  
14 these exhibits, we do not object to their  
15 introduction into the record.

16 HEARING OFFICER VALKOSKY: Ms. Holmes?

17 STAFF COUNSEL HOLMES: No objection.

18 HEARING OFFICER VALKOSKY: Mr. Adams?

19 MR. ADAMS: No objection.

20 MR. LEDFORD: That's my direct  
21 testimony.

22 HEARING OFFICER VALKOSKY: If there are  
23 no objections the identified exhibits are  
24 admitted.

25 (Thereupon the above-referenced

1 documents marked as Exhibits 98, 99,  
2 109-119, 121-129 for Identification were  
3 received in evidence.)

4 HEARING OFFICER VALKOSKY: Does any  
5 party desire to examine Mr. Ledford?

6 MR. THOMPSON: Applicant does not, thank  
7 you.

8 STAFF COUNSEL HOLMES: No questions.

9 MR. ADAMS: No questions.

10 HEARING OFFICER VALKOSKY: Okay, the  
11 Committee will consider your testimony and  
12 exhibits along with everything else, Mr. Ledford.

13 MR. LEDFORD: Thank you.

14 HEARING OFFICER VALKOSKY: As I have it  
15 the next topic is dry cooling.

16 I'm sorry -- yes, Mr. Adams.

17 MR. ADAMS: Yes, we filed Tom Bilhorn's  
18 declaration, it's Exhibit 132. I don't know if  
19 the objection voiced last week is still there or  
20 not, but I guess the way of finding out is to  
21 offer to move into evidence Exhibits 93 and 96,  
22 based on declaration and Mr. Bilhorn's  
23 unavailability.

24 HEARING OFFICER VALKOSKY: That would be  
25 93, 96 and 132? I think we identified 132 as the



1 declaration from last week, did we not?

2 Okay, is there objection to receiving  
3 those into evidence?

4 MR. THOMPSON: None from Applicant.

5 STAFF COUNSEL HOLMES: None from staff.

6 MR. LEDFORD: None from me.

7 HEARING OFFICER VALKOSKY: Okay. Those  
8 exhibits are admitted into the evidentiary record.

9 (Thereupon the above-referenced  
10 documents marked as Exhibits 93, 96 and  
11 132 for Identification were received in  
12 evidence.)

13 HEARING OFFICER VALKOSKY: We're  
14 prepared to proceed on the topic of dry cooling.

15 STAFF COUNSEL HOLMES: Thank you.  
16 Staff's witness -- was Mr. Barnett going to be  
17 testifying on dry cooling at all?

18 MR. THOMPSON: No.

19 STAFF COUNSEL HOLMES: That was a  
20 mistake.

21 MR. THOMPSON: He let me know that if I  
22 said that it was a mistake.

23 STAFF COUNSEL HOLMES: Didn't want to  
24 jump the gun.

25 Staff's witness on dry cooling is

1 Matthew Layton. He has not been sworn yet.

2 Whereupon

3 MATTHEW LAYTON

4 was called as a witness and having been first duly  
5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. HOLMES:

8 Q Good afternoon. Could you please state  
9 your name for the record?

10 A Matthew Layton.

11 Q Do you have a copy with you of what has  
12 been identified as Exhibit 85 containing your  
13 testimony on dry cooling?

14 A Yes, I do.

15 Q And was a copy of your qualifications  
16 filed in the document that's been identified as  
17 Exhibit 83?

18 A I believe they were.

19 Q And do you have any corrections to the  
20 documents that you are sponsoring?

21 A I do not.

22 Q Are the facts contained in the documents  
23 you're sponsoring true and correct?

24 A Yes.

25 Q And do the opinions contained in the



1 documents you are sponsoring represent your best  
2 professional judgment?

3 A Yes.

4 STAFF COUNSEL HOLMES: Mr. Layton is  
5 available for cross examination.

6 HEARING OFFICER VALKOSKY: Mr. Thompson?

7 MR. THOMPSON: No questions. thank you.

8 HEARING OFFICER VALKOSKY: Mr. Adams?

9 MR. ADAMS: No questions.

10 HEARING OFFICER VALKOSKY: Mr. Ledford.

11 CROSS EXAMINATION

12 BY MR. LEDFORD:

13 Q Is dry cooling being used in a number of  
14 power plants in California presently?

15 A Yes. I believe it is.

16 Q And to the best of your knowledge is it  
17 being utilized successfully?

18 A Yes.

19 Q Is it being utilized economically?

20 A I assume so. I don't have access to the  
21 books for the power plants.

22 Q Are you familiar with the recent Sutter  
23 project?

24 A Somewhat.

25 Q And was that project approved for dry

1           cooling -- or with dry cooling. I should say.

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2           A     Yes. it was.

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3           Q     And do you have any knowledge as to  
4           whether or not there was a readily available water  
5           supply in that area?

6           A     I can't testify to a water supply on  
7           that particular project.

8           Q     Do you have any knowledge as to what the  
9           climate conditions are in the Sutter area as  
10          opposed to --

11          A     Yes. I live near there.

12          Q     Does it get hot there in the summertime?

13          A     Yes. it does.

14          Q     Does it get cold there in the  
15          wintertime?

16          A     Yes. it does.

17          Q     Is there any indication that it might be  
18          similar conditions to Apple Valley?

19          A     I'm not familiar with the conditions in  
20          Apple Valley.

21          Q     Did you do a financial feasibility study  
22          in your dry cooling analysis for this project?

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23          A     No. I did a qualitative assessment.

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24          Q     And in the State Water Resources Control  
25          Board Resolution 75-58, does it require a

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1        financial analysis of dry cooling or does it  
2        suggest a financial analysis of dry cooling. might  
3        be a better --

4            A     I believe it suggests.

5            Q     And are you aware of the severe and  
6        critical --

7                    PRESIDING MEMBER LAURIE: One moment.  
8        Mr. Ledford. Thank you, please continue.

9        BY MR. LEDFORD:

10           Q     Are you aware of the severe and critical  
11        nature of the water overdraft in the High Desert?

12           A     I've been educated the last two days.  
13        yes.

14           Q     And based on your listening to the  
15        nature of the water issues, would you recommend  
16        dry cooling as a viable alternative for this  
17        project?

18                    PRESIDING MEMBER LAURIE: Mr. Ledford,  
19        for the record can you define the use of your term  
20        viable? Viable economically, viable  
21        technologically?

22                    MR. LEDFORD: All right. Thank you very  
23        much.

24           Q     How about if we start with viable  
25        technologically?



1           A     Dry cooling is a viable cooling  
2           technology for the High Desert Power Plant, yes.

3           Q     And is it viable economically?

4           A     That is a very good question. That  
5           question is very hard to answer because dry  
6           cooling does perform differently than a wet  
7           cooling tower and therefore it would affect the  
8           performance of the plant. You could experience a  
9           degradation of output of the steam cycle of a few  
10          percent and that could be lost megawatt hours or  
11          it could actually be whole lost days of operation.

12                    I don't know if those two things would  
13           make it uneconomical. Because, again, I think  
14           you're aware that some power plants are very  
15           dependent on selling peak power and they have  
16           contracts that require them to. Perhaps dry  
17           cooling would make a project like that  
18           uneconomical.

19           Q     Has any evidence been submitted to you  
20           in this proceeding that would indicate to you that  
21           it is not economical?

22           A     No.

23           Q     Did you review the rebuttal testimony  
24           that I provided in this case?

25           A     Yes, I did.

1 Q And I attempted to use a study that CURE  
2 had initially started and then added some  
3 components to that study that I believe had been  
4 omitted. Did you review those?

5 A Yes, I did.

6 Q And do you take any exception to those  
7 numbers?

8 A No, I do not.

9 MR. LEDFORD: I have no further  
10 questions.

11 HEARING OFFICER VALKOSKY: Okay.

12 Mr. Layton, could you address the  
13 conformity of the 100 percent consumptive use of  
14 water proposed by the project with State Water  
15 Resources Control Board Resolution 75-58?

16 STAFF COUNSEL HOLMES: Mr. Valkosky, I  
17 think that was actually addressed in Mr. O'Hagan's  
18 testimony and not in Mr. Layton's testimony and I  
19 think that he may have been -- I would be happy to  
20 recall him for --

21 HEARING OFFICER VALKOSKY: I thought Mr.  
22 O'Hagan said Mr. Layton was the witness.

23 STAFF COUNSEL HOLMES: The question was  
24 slightly different. I can't remember the exact  
25 question you asked, but he did defer a question to

1 Mr. Layton and I remember thinking this was going  
2 to come back at us later. Mr. O'Hagan is  
3 available to be recalled specifically to address  
4 that issue, if you would like.

5 HEARING OFFICER VALKOSKY: Okay. I would  
6 like that issue addressed, please.

7 You've heard the question, Mr. O'Hagan.

8 MR. O'HAGAN: Yes, and if I can recall  
9 it, the State Water Resources Control Board policy  
10 dealing with the Resolution 75-58 that you  
11 reference does not address whether power plant  
12 projects, you know, is a hundred percent  
13 consumption or not. It just addresses alternative  
14 sources of water for cooling or alternative  
15 cooling technologies.

16 HEARING OFFICER VALKOSKY: Did you  
17 analyze the conformity of this project with that  
18 resolution?

19 MR. O'HAGAN: Yes, yes, I did.

20 HEARING OFFICER VALKOSKY: Could you  
21 explain the results of your analysis to me?

22 MR. O'HAGAN: Well, the policy  
23 encourages the use of alternative sources of  
24 cooling water that either provides a priority of  
25 use which would be, you know, wastewater being



1 discharged to the ocean, ocean water, brackish  
2 inland waters, irrigation return flows, that sort  
3 of thing.

4           We did look at alternative sources of  
5 water in the project area. Originally when the  
6 AFC was filed the Applicant identified using  
7 wastewater from a wastewater treatment plant as a  
8 cooling source and as was discussed yesterday, I  
9 believe in biology, there was concerns that  
10 wastewater right now is being discharged to the  
11 Mojave River and diversion of that water is  
12 considered a potential for significant biological  
13 impacts, so that alternative was dropped. And the  
14 Applicant developed the proposal to use the State  
15 Water Project water in the banking program.

16           I also evaluated looking at contaminated  
17 groundwater sources at the former George Air Force  
18 Base. There is a shallow aquifer there that is  
19 contaminated. Based on my discussions with the  
20 Air Force it was felt that that would not be a  
21 sufficient source for a project of this size, in  
22 fact, it would be vastly insignificant.

23           There was other contaminated sources but  
24 they didn't seem to be -- would be suitable  
25 either. And so on that, then we also had

1 performed by Mr. Layton the -- because the policy  
2 also directs that you take a look at the  
3 feasibility of using dry or wet dry cooling and  
4 Mr. Layton's testimony goes to that point.

5 The final evaluation was is that the  
6 policy states that, you know, alternative sources,  
7 you know, if they're environmentally unsuitable or  
8 economically unsound it shouldn't be proposed.  
9 I've had many discussions with State Water  
10 Resources Control Board attorneys in terms of this  
11 policy. There's never been a case taken to the  
12 State Board, even though it is their own policy in  
13 regard to this, and I find it fairly ambiguous.

14 So that in terms of economically unsound  
15 or environmentally unsuitable, in terms of  
16 evaluating alternatives, there are significant  
17 additional costs. As Mr. Layton indicated for dry  
18 cooling, we, working up the proposed condition  
19 certification feel confident that the project will  
20 not contribute to significant environmental impact  
21 of water resources. And on that basis I decided  
22 that the project does comply with this policy.

23 HEARING OFFICER VALKOSKY: Thank you.

24 Do you have any further redirect, Ms.  
25 Holmes?

1 STAFF COUNSEL HOLMES: No. I don't.

2 HEARING OFFICER VALKOSKY: Any other  
3 questions for either Mr. Layton or Mr. O'Hagan  
4 since he's here?

5 MR. THOMPSON: I've got one.

6 CROSS EXAMINATION

7 BY MR. THOMPSON:

8 Q Mr. Layton, when Mr. Ledford asked you  
9 if you had looked at the cost figures in his  
10 testimony, and I'm not sure I could characterize  
11 his question, but didn't quarrel with him or  
12 didn't object to them, you didn't mean to imply  
13 that you checked those numbers, did due diligence  
14 on the numbers to make sure that they were right,  
15 did you?

16 A No, I did not, but I guess what I was --  
17 my response was to suggest that I think there are  
18 a broad range of numbers possible. You know,  
19 there's a broad variety of configurations you can  
20 have for dry cooling.

21 Q Okay.

22 A So that's what I was agreeing to.

23 MR. THOMPSON: All right. Thank you  
24 very much. That's all I have.

25 MR. LEDFORD: Can I just have a minute?



1 HEARING OFFICER VALKOSKY: Certainly.

2 MR. LEDFORD: I have no further

3 questions.

4 I would ask that my two exhibits --

5 HEARING OFFICER VALKOSKY: Let me do  
6 their exhibits first.

7 MR. LEDFORD: Oh, I'm sorry.

8 STAFF COUNSEL HOLMES: Mr. Valkosky, can  
9 those portions of Exhibits 85 and 83 that Mr.  
10 Layton is sponsoring please be admitted into  
11 evidence?

12 HEARING OFFICER VALKOSKY: Are there any  
13 objections to admission?

14 Hearing no objections, the designated  
15 portions of the exhibits are moved into evidence.

16 (Thereupon the above-referenced document  
17 marked as Exhibits 83 and 85 for  
18 Identification were received in  
19 evidence.)

20 HEARING OFFICER VALKOSKY: Anything  
21 further from anyone for either Mr. Layton or Mr.  
22 O'Hagan?

23 Do you have anything?

24 MR. LEDFORD: Only my exhibits.

25 HEARING OFFICER VALKOSKY: Thank you.

1 gentlemen.

2 Okay, on the topic of dry cooling, Mr.  
3 Ledford.

4 MR. LEDFORD: I would move that my  
5 rebuttal testimony and my direct testimony.  
6 Exhibits 98 and Exhibits 122 be entered.

7 HEARING OFFICER VALKOSKY: Is there  
8 objection? Applicant?

9 MR. THOMPSON: None.

10 STAFF COUNSEL HOLMES: None.

11 HEARING OFFICER VALKOSKY: Department of  
12 Fish and Game, no objections, I take it?

13 MR. ADAMS: No objections.

14 HEARING OFFICER VALKOSKY: Okay,  
15 Exhibits 98 and 122 will also be received into  
16 evidence.

17 (Thereupon the above-referenced document  
18 marked as Exhibits 98 and 122 for  
19 Identification were received in  
20 evidence.)

21 Before we commence closing argument, as  
22 I have it, the last witness is Mr. Barnett in  
23 behalf of the Applicant, is that correct?

24 MR. THOMPSON: Yes.

25 HEARING OFFICER VALKOSKY: Proceed.





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# STATE OF CALIFORNIA

## Water Resources Control Board

In the Matter of:  
 Resolution 75-58

) Docket No. \_\_\_\_\_  
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PROOF OF SERVICE

I GARY A. LEDFORD declare that on MAY 15, 2000, I deposited copies of the attached Petition to Amend Modify and Clarify Resolution 75-58, in the United States mail in Apple Valley California with first class postage thereon fully prepaid and addressed to the following:

Signed original document plus 5 copies to the following address:

State Water Resources Control Board  
 Docket Unit  
 901 P Street  
 Sacramento, CA 95814

## Interested Parties

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

The Electricity Oversight Board  
 Gary Heath, Executive Director  
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 California Independent System Operator



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Brad Foster  
3658 O'Banion road  
Yuba City, CA 95993

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

Gary A. Leaf

