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November 9, 1989

Subject: Rancho Seco - EIR
Our File No. 25175/85h

U. S. Nuclear Regulatory
Commission
c/o Rancho Seco Nuclear
Generating Station
14440 Twin Cities Rd.
Herald, CA 95638

Attn: Tony DeAngelo
M.S. 202

U.S. Nuclear Regulatory
Commission
Regional Administrator
Region V - Jack Martin
1450 Maria Lane, Suite 210
Walnut Creek, CA 94596

U. S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Attn: Chairman Carr

Gentlemen:

We have enclosed this letter for your information. In the event that you have any questions or comments, please feel free to contact us.

Very truly yours,

DIEPENBROCK, WULFF, PLANT
& HANNEGAN

By Sue Ellen Wooldridge
Sue Ellen Wooldridge

SEW4/133
Enclosure

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IE-01

DIEPENBROCK, WULFF, PLANT & HANNEGAN
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November 8, 1989

SUBJECT: Rancho Seco EIR
Our File No. 25175/12Z

Mr. David Boggs
General Manager
Sacramento Municipal Utility District
6201 S Street
Sacramento, California 95813

Dear Mr. Boggs:

We have been asked whether the Sacramento Municipal Utility District, in deciding to close down the nuclear generating plant at Rancho Seco, complied with the requirements of the California Environmental Quality Act (CEQA), Public Resources Code §§21000 et seq. As we understand that the closure of this generating facility has significant adverse environmental consequences, in that the electrical power required to service the customers of the Sacramento Municipal Utility District in the past produced by Rancho Seco must now be generated by other means, principally fossil fuels, we conclude that CEQA requires the preparation of an Environmental Impact Report before the District can properly decide to close its Rancho Seco facility. The consequence of the District's failure to comply with the CEQA requirements, by not preparing an Environmental Impact Report prior to its action to close the Rancho Seco facility, is that it is unlawful for the District to implement its decision to close the facility. In the following we will review the requirements of CEQA, some of the potentially significant adverse impacts

resulting from the closure of Rancho Seco, and the consequences of the District's failure to comply with CEQA before deciding to close the facility.

THE PURPOSE OF CEQA

The California Environmental Quality Act was enacted in 1970. CEQA's purpose is to force public agency decision-makers to document and consider the environmental implications of their actions. See Public Resources Code §§21000 and 21001; *Friends of Mammoth v. Board of Supervisors*, 8 Cal. 3d 247, 254-256 (1972) [CEQA is to be interpreted so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language]. As stated by the California Supreme Court, CEQA is to be scrupulously followed so that "the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees." *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal.3d 376, 392 (1988). Under CEQA, a governmental agency is forbidden from approving projects that have significant adverse impacts when feasible alternatives or feasible mitigation measures can substantially lessen such impacts. Public Resources Code § 21002; *Citizens for Quality Growth v. City of Mt. Shasta*, 198 Cal. App. 3d 433, 440-441 (1988).

THE PURPOSE OF THE EIR REQUIREMENT

It has been aptly said that the Environmental Impact Report is the heart of CEQA. *County of Inyo v. Yorty*, 32 Cal. App. 3d 795, 810 (1973). This is because "the EIR process protects not only the environment but also informed self-government." *Laurel Heights Improvement Assn. v. Regents of University of California*, supra, 47 Cal. 3d at 392. CEQA requires the preparation of an Environmental Impact Report (EIR) for all "projects" having a significant effect on the environment, or a Negative Declaration for those "projects" not having a significant environmental impact. If the local agency has complied with the requirements of CEQA, it may approve of a

project even though the project would have a significant adverse effect on the environment "...if the agency makes a fully informed and publicly disclosed decision that:

(a) There is no feasible way to lessen or avoid the significant effect; and

(b) Specifically identified benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the 'project.'"

14 California Code of Regulations §15043.

While the Sacramento Municipal Utility District has yet to prepare an EIR on the effects of the closure of Rancho Seco, CEQA requires a public agency to prepare an EIR "as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment." CEQA Guidelines § 15004(b). Thus, environmental problems are to be considered at a point in the planning process when genuine flexibility remains. *Mt. Sutro Defense Committee, V. Regents of the University of California*, 77 Cal. App. 3d 20, 34 (1978). Where an EIR is prepared after the actual approval of a project it will be strictly reviewed, as it may be the sort of *post hoc* rationalization of public agency actions that is routinely condemned. *Laurel Heights Improvement Assn. v. Regents of University of California*, supra, 47 Cal.3d at 394.

THE CLOSURE OF RANCHO SECO IS A "PROJECT"

The decision of the Sacramento Municipal Utility District to close Rancho Seco, while it is still capable of generating electrical power, is a "project" within the meaning of CEQA. CEQA requires the preparation of an EIR for all "projects" having a significant effect on the environment, or a negative declaration for those "projects" not having a significant environmental impact. Public Resources Code §§21000 and 21151. A "project" is defined in Public Resources Code §21065 as follows:

(a) Activities directly undertaken by any public agency.

(b) Activities undertaken by a person which are supported in whole or in part through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

> (c) Activities involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

Similarly, "project" is defined at 14 California Code of Regulations §15378(a) as follows:

> (a) "Project" means the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately, and that is any of the following:
>
> (1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing of grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100–65700.
>
> (2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans or other forms of assistance from one or more public agencies.
>
> (3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

The term "project" is understood to have a "sweeping definition". *City of Santa Ana v. City of Garden Grove,* 100 Cal. App. 3d 521, 526 (1979). Whether a particular activity constitutes a project is a question of law on which a reviewing court owes no deference to the judgement of the public agency. *City of Southgate v. Los Angeles Unified School District,* 184 Cal. 3d 1416, 1422 (1986).

THE RANCHO SECO CLOSURE IS NOT EXEMPTED BECAUSE OF THE VOTE

We anticipate that the District may contend that, while it has embarked upon a "project" in shutting down Rancho Seco, its action is exempted from CEQA under 14 California Code of Regulations §15378(b)(4) which provides that "Project" does not include "...the submittal of proposals to a vote of the people ...". However the June 6, 1989, vote on Measure K was labeled as being advisory only and the precise issue put to vote was whether Rancho Seco would continue to be operated by the District. Rather, it is the decision of the Sacramento Municipal Utility District Board, made on March 2, 1989, to close Rancho Seco if Measure K passed on June 6, 1989, and your decision to begin plant closure on June 7, 1989 which constitutes the agency "project". An

Environmental Impact Report was required before the District could embark upon this "project".

AN EIR IS REQUIRED FOR THE RANCHO SECO CLOSURE "PROJECT"

As the closure of Rancho Seco has a significant impact on the environment, because the electrical power which could have been generated at Rancho Seco now must be generated by other more environmentally damaging sources, an EIR is required under CEQA for the "project". A "project" will normally have a significant effect on the environment if it will potentially degrade the quality of the environment, curtail the range of the environment, or disadvantage the achievement of long-term environmental goals. Public Resources Code §21083 (a). A "project" will also have significant effect on the environment if it is individually limited but will have considerable cumulative effect, i.e., the incremental effects of an individual project are considerable when viewed in connection with the effects of probable future projects. Public Resources Code § 21083(b). Finally, a project will have a significant effect on the environment if the environmental effect of the project will cause substantial adverse effect on human beings, whether directly or indirectly. Public Resources code §21083(c); see also Appendix G to 14 California Code of Regulations at p. 324.5. Title 14 California Code of Regulation §15382 defines Significant Effect as follows:

> "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient, noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

ADVERSE IMPACTS OF THE RANCHO SECO CLOSURE

The precipitous closure of Rancho Seco which began on June 7, 1989, and Sacramento Municipal Utility District's continuing actions may have significant environmental effects on public health in Sacramento County, surrounding regions of California and throughout the Western United States. This is because the Sacramento Municipal Utility District has energy delivery

commitments to its customers far in excess of remaining District-owned generating capacity. Thus, additional capacity and energy sources will either have to be constructed or else have to be purchased elsewhere.

REPLACEMENT POWER WILL COME FROM FOSSIL FUEL GENERATORS

In 1989, purchased power represented only 21% of Sacramento Municipal Utility District's capacity requirements. Sacramento Municipal Utility District's own estimates for 1990 indicate that without Rancho Seco's contributions, purchased power will increase to approximately 64% of the District's capacity requirements. See Sacramento Municipal Utility District Resource Assumptions, presented by staff to the Sacramento Municipal Utility District Board on October 18, 1989. As much as 62% of total purchased power capacity in 1990 may come from fossil-fueled generation facilities, (i.e. P.P. & L., P.G. & E., S.C.E. and others) and of new replacement energy sources identified by the Sacramento Municipal Utility District, as much as 90% may derive from fossil-fueled sources.

The Rancho Seco Nuclear Generating Station when operating, generates no appreciable atmospheric emissions except water vapor. Liquid and solid waste effluents are minimal. In short, Rancho Seco represents an environmentally benign source of energy production providing economic and environmental benefits to the ratepayers and residents of Sacramento County.

Potential replacement power, given the available sources in the Western States, will undoubtedly, either in part or in full, be obtained from fossil-fueled generating facilities. The environmental consequences of such energy sources have not been fully evaluated. However, it is important to note that the Sacramento Municipal Utility District's own original Environmental Impact Report, dated June 1971, when discussing the alternatives to the licensing of Ranch Seco, states:

> [The] planning stage carried out in the early 1960's made it evident that additional sources of energy must be available in 1973 to meet the district's growing energy demand. By means of detailed economic studies in 1963, a determination was made that the new generation station would be nuclear.

Primarily, the basis for the decision were related to: the higher cost of purchase power, lack of available hydro-electric generation sites, the high cost of such facilities in the mountains east of Sacramento, shortage of fossil fuels in the west and their attendant higher cost, and potentially greater environmental effects of fossil fuel plants.

ENVIRONMENTAL CONSEQUENCES OF FOSSIL FUEL GENERATORS

A wide-ranging variety of adverse environmental effects resulting from replacing the power which could be generated by Rancho Seco with power generated by fossil-fuel facilities can be anticipated and should be discussed in a comprehensive EIR. The three most likely fuels at replacement power facilities in the West are natural gas, coal and oil. As calculated in the May, 1989 report prepared by Science Concepts Inc., for the U.S. Council for Energy Awareness, replacement by gas or oil-fired sources, of Rancho Seco's rated output of about 900 megawatts — operating between approximately 38% (Rancho Seco's historical capacity factor) and the national nuclear industry average of approximately 62.5% capacity factor — would generate additional annual airborne emissions of between approximately 420,000 to 1,000,000 tons of carbon dioxide, contributing to the atmospheric phenomenon known as the "greenhouse effect". Nitrogen oxide emissions could increase from between 7,200 to 15,000 tons. Sulfur oxides could increase from between 7.3 to 22,300 tons. Particulate increases could range from betweem 190 to 725 tons. Commensurate increases in the rate of respiratory illness and other negative health effects can be anticipated as a result of these increased emissions. If coal-fired facilities are selected for generation of replacement power, the potential emissions could range from between 723,000 to 1,200,000 tons of carbon dioxide, from between 43,000 to 72,000 tons of sulfur dioxide, from between 10,500 to 17,500 tons of nitrogen oxides, and from between 1,200 to 2,000 tons of particulates. In addition, gas and coal plants release measurable amounts of radiation, with no regulatory controls or monitoring.

All the chemical emissions noted above are contributors to the "greenhouse effect". While the global impact of Rancho Seco's closure may only represent an incremental fraction of the

"greenhouse gases" released into the atmosphere on annual basis, an EIR is necessary even where the "project's" incremental effect is limited. Public Resources Code § 21083 (b).

These emission level increases apply to both short-term and long-term purchased-power sources here in California and the West as well as the Sacramento Municipal Utility District's long-term plans for the construction of local co-generation facilities and base-load gas-fired facilities. In the case of local co-generation, increased airborne emissions as a result of co-generation will serve to concentrate the adverse effects of Rancho Seco's closure directly on the ratepayers and families of Sacramento and surrounding counties, even if the District is able to obtain pollution offsets from other counties and areas of the State. It is also questionable whether the Sacramento Municipal Utility District will be able to meet the increasingly rigorous standards and regulations for air quality within California.

The adverse environmental impact of increased fossil-fuel generation will be felt in widely dispersed regions. A natural gas or oil-fired power plant, co-generation facilities sited in Sacramento County or the adjacent counties of Amador, El Dorado, Placer, San Joaquin and Yolo, or the much-discussed natural gas-conversion of Rancho Seco would all directly impinge on the air quality of the ratepayers and residents of the Sacramento Municipal Utility District as well as the residents of adjacent counties. Deterioration of air quality could occur not only in this but also in other regions of California, in particular in those air quality basins where existing gas or oil fired power plants are sited such as the Santa Cruz—Monterey Bay area (Moss Landing Power Plant) and the Contra Costa County—North Bay area (Pittsburg Station). The residents of the states of Arizona, Oregon, Nevada, Utah and Washington may also experience negative impacts on their air quality if the Sacramento Municipal Utility District obtains energy deliveries from fossil-fuel facilities located in those states.

OTHER ADVERSE EFFECTS

Potential adverse effects of the Ranco Seco plant closure are not limited to air quality and increased emissions. Development of local or regional gas–fired co-generation facilities or conversion of Rancho Seco to natural gas would result in the construction of an extensive network of gas pipelines, storage tanks and transfer facilities. The potential for catastrophic or severe damage due to collisions, ruptures or seismic failures of these types of structures and facilities could be significant. Construction of gas transmission facilities would inevitably result in a certain degree of population disruption or relocation, depending upon routes selected and the extent of the development. Construction of co-generation facilities at sites or locales some distance from the Sacramento Municipal Utility District's or other utility's electrical transmission lines would also entail construction of new power lines in order to deliver electricity produced at these facilities into the Sacramento Municipal Utility District's service area.

The Sacramento Municipal Utility District and Rancho Seco have enjoyed the benefits of vested access to American River water supplies via the South Folsom Canal for use as cooling water, steam supply and process water at Rancho Seco. Abandonment of Rancho Seco and subsequent construction of new co-generation or base-load facilities in California would likely result in modification or loss of American River water rights. The availability of cooling, steam supply and process water at other locations in California could be limited. Increased fossil–fueled energy generation in California could result in a reduction in the overall water supply available for other beneficial uses within the state. Potential impacts to the State's wildlife, water quality, groundwater and other water resources are numerous, widespread and without a complete analysis, indeterminate. Rancho Seco is a "point source" with a limited number of effluent paths, resulting in a straight–forward and relatively simple monitoring effort by county, state and federal regulators. Construction of numerous co-generation facilities would result in a major increase in the number of effluent paths into the environment. Monitoring and regulation of these pathways

would be much more complex and possible deterioration in the accuracy and effectiveness of regulation may be the result.

Generation of hazardous wastes created as a by-product of electrical generation at new production facilities within the state may increase as a result of Plant closure. Regulation of such waste production may be more difficult at numerous sites distributed throughout the state as opposed to the single Rancho Seco site. The integrity of the County's and State's groundwater resources may be challenged by the broader distribution of generation facilities resulting from Plant closure. More effluent pathways to the aquifers will result and should be identified. The chemical profile of hazards production at fossil-fueled generation sites will probably differ significantly from the current Rancho Seco profile. An evaluation of the potential spectrum of changes in the District's chemical discharge characteristics is appropriate.

Rancho Seco is located in a fairly remote area of Sacramento county in a region of low population density. Co-generation or new transmission and distribution facilities are unlikely to be sited in such remote locations given the rapid growth characteristics of Sacramento. There exist a steadily declining number of regions both within Sacramento and adjacent counties where such facilities could be sited with a minimal degree of population disruption and exposure.

SUMMATION

The issues and concerns identified above are merely representative of the possible adverse environmental effects of closing an operable nuclear power generating facility and certainly do not constitute the entire range of consequences that may arise from closure. Only through the process of an Environmental Impact Report can a complete and informed assessment be made. These issues have significant and substantial potential for adverse effects on the populations, assets, and resources of Sacramento County, the State of California and the Western Region of the United States.

We understand that the near-term solution the Sacramento Municipal Utility District has adopted to compensate for the loss of Rancho Seco's generation capacity focuses almost entirely on purchased power. However, as out-of-state transmission line access is limited, the bulk of the District's replacement power will come from P.G. & E. and possibly Southern California Edison. These purchases will ultimately derive from fossil-fueled facilities that are currently idle or operating at reduced capacity. Servicing the Sacramento Municipal Utility District's energy needs will bring on line as much as 831 megawatts of new or currently idle fossil-fuel generation within the State of California with commensurate increases in plant emissions into the air, increased water consumption and possible increases in waste effluent entering California's already strained ecosystem. Longer term solutions to the Sacramento Municipal Utility District's energy deficit will undoubtedly require construction of new transmission lines both to the Northwest, and to Southern California. The Sacramento Municipal Utility District's own staff has identified the inevitability of the need for new District-owned capacity for peaking and baseload power much earlier in the coming years without Rancho Seco on line.

INTENDED ACTION

We believe that the Sacramento Municipal Utility District has an obligation under CEQA to articulate and to thereby inform its customer—owners and the citizens of the State of California, in a structured and comprehensive EIR, of the environmental and associated economic consequences of a decision to close Rancho Seco. It is our hope that you concur and that you promptly will begin the environmental review mandated by CEQA. Because of the limitations period established by Public Resources Code §21167, we have only until December 4, 1989, to petition to the Sacramento County Superior Court for a writ of mandate to compel the District to suspend the implementation of its decision to close Rancho Seco. Therefore we consider it a reasonable request that substantive actions or declarations authorizing the preparation of an EIR be made by your management or the Board no later than November 30,1989.

We are aware of the strained financial circumstances of the District. Preparation and issuance of a comprehensive EIR is potentially an expensive undertaking. It would be our hope and recommendation that the District's existing staff resources be utilized to their maximum capabilities in the preparation of the EIR and the use of outside consultants be minimized.

Should you have any questions regarding the foregoing analysis or should you require our assistance in documenting the adverse environmental consequences of the decision to close Rancho Seco, please do not hesitate to contact us.

Very truly yours,

DIEPENBROCK, WULFF, PLANT
& HANNEGAN

By _____
DAVID A. RIEGELS