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**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



October 17, 2007

John E. Brown, Counsel  
Elsinore Valley Municipal Water District  
3750 University Ave., Suite 400  
P.O. Box 1028  
Riverside, CA 92502-1028

**Re: Co-Lead Agency Request**

Dear Mr. Brown,

Your letter of September 24, 2007 addressed to Sean Gallagher has been referred to the Legal Division for a reply. In this letter you describe the interest of the Elsinore Valley Municipal Water District (District) in entering into a Memorandum of Understanding with the California Public Utilities Commission. You propose through your letter that the two agencies enter into a co-lead agency agreement for environmental review of the proposed project by the Nevada Hydro Company, Inc. (TNHC) and the District.

As you may know, this co-lead agency proposal was raised by Edward O'Neill, another attorney for the District, with Sean Gallagher and myself in a meeting here in our offices on Friday, August 24, 2007. At that time we requested an opportunity to review the current joint development agreement between the District and TNHC regarding the LEAPS project so that we could better understand the formal relationship between the two proponents of this project. To date, we have not received the document we requested, and it would be helpful for us to have it to better understand your position. To the extent the District has concerns regarding public disclosure of the document, we are willing to keep it confidential and to use it for internal purposes only.

In reading your letter, you describe the District as both a proponent and future operator of the LEAPS project and rely on Pub. Res. Code § 21067 for the proposition that the District will be a lead agency because it has the “principle (sic) responsibility for carrying out or approving a project which may have a significant effect upon the environment. However, under CEQA Guidelines §15051, the test for determining a lead agency is not whether a public agency is a proponent and future operator of a project, but:

(1) whether that public agency will carry out the project; and

(2) if there is no such entity, the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole. (The lead agency will normally be the agency with general governmental powers, rather than an agency with a single or limited purpose, e.g. an air pollution control district); and

(3) where more than one agency meets the criteria for lead agency, the lead agency shall be the one that will act first on the project.

In the case at hand, it is our understanding that the District is not carrying out the project, rather TNHC/Morgan Stanley will be carrying out the project which is why we have requested the joint development agreement in order to get a better handle on the facts at issue. The project will be financed and built by private entities (TNHC and Morgan Stanley), who will run the project. The CPUC is the agency with the greatest responsibility for reviewing the project and issuing a certificate of public convenience and necessity (CPCN). The CPUC has siting jurisdiction over the transmission line (the FERC has permitting authority over the pumped storage facility). Per the Public Utilities Code, the CPUC has general governmental powers and broad regulatory authority. The District does not have the eminent domain authority to site and build (or to imbue a third party with such power) a transmission line like the one proposed. (See Water Code section 71663.5 delineating such limitation). Furthermore, it is unclear whether the District has any discretionary decision to make or permits to issue for any portion of this project. The CPUC, based on the fact that the TNHC has already filed its CPCN application with the CPUC, will be the first agency to act and will have to make a discretionary decision as to whether the project is needed. Therefore, based on our current understanding of the facts, the CPUC is the appropriate lead agency under CEQA for this “project.”

Mr. John E. Brown

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If you should have any questions on this matter, please contact Arocles Aguilar, Assistant General Counsel, who supervises our CEQA section of lawyers at (415) 703-2969.

Very truly yours,

/s/ RANDOLPH L. WU

Randolph L. Wu

General Counsel

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cc. Edward O'Neill, CPUC counsel for the District  
Keith McCrea, counsel for NHC  
Sean Gallagher, Director Energy Division