

**Office of the District Attorney
County of Riverside
4075 Main Street
Riverside, California 92501**

5-7-03

Special Prosecution Complaint Form

Statement of Facts

On September 26, 2002, the Elsinore Valley Municipal Water District Board of Directors (EVMWD) broke California State Law when they carried a motion to implement two Lobbyist Agreements (\$20,000 per month, for up to one year), relative to the Lake Elsinore Advanced Pump Storage Project (LEAPS). In California, it is illegal to make risky, unsecured investments with public funds. (Attachment, Item 1, Government Code Section 53600 et sequence, Section 53601, 53601m) The State Code requires that "local agencies" investing public funds are fiduciaries subject to the "prudent investor standard." (Attachment, Item 1, Section 53600.3) The guidelines set forth by government code clearly state the "primary" objective is the safety of the principal. (Attachment, Item 1, Section 53600.5)

Background

In 1995, EVMWD applied to the Federal Energy Regulatory Commission FERC for a preliminary permit to begin the development of a hydroelectric energy project termed LEAPS. In December 1996, Gene Frick, member local task force for the EVMWD hydro project, wrote to the Office of Hydropower Licensing of FERC. He reminded FERC that finding investors in long term power projects

would be rare due to the risky energy environment caused by deregulation. He cautioned FERC that the EVMWD Board of Directors carries the responsibility of ensuring the safety of all investments regarding the use of public funds. He warned that continued spending on a risky project would put the Board of Directors in legal jeopardy. He reminded them of Bob Citron, the Orange County Treasurer that was sentenced to jail for taking what many might see as a lower risk. (Attachment, Item 2, Letter dated 12/96, Frick to FERC) In January 1997, Gene Frick, member local task force, wrote to the Board Members of the EVMWD informing them in no uncertain terms, that they are elected officials, and as such they are subject to safeguard the public funds they are entrusted with.

[The issue of safety requires that you have a high degree of certainty that you will have the money to build the project once you have the license to do so. This requires a long term power sales contracts. NO ONE is making those contracts. It is almost certain they will not. You have no indication of safety, you have many that you are in a disastrous situation. The California Energy Commission has written that this is expected, Hagler Bailly has found no one who will commit, many projects have resorted to an act of Congress because of no source of construction finance and California Energy Corp took their loss because the risk was too great that any one would ever make a long term contract.]

(Attachment, Item 3, Letter dated 1/97, Frick to EVMWD Board Members)

In order to put a stop to financing the hydroelectric project themselves, EVMWD ran a classified add to solicit outside funding for co-development of the project. (Attachment, Item 4, Classifieds) While several companies expressed an interest in tracking the progress of the project, none except TNHC was willing to provide funding for its support. This was due to uncertainty in the pre-deregulation California power market.

On May 15, 1997, The Hydro Company, Inc., doing business as The Nevada Hydro Company Inc. (TNHC) and the EVMWD signed a development agreement to co-develop LEAPS project. Per the Development Agreement, the EVMWD expressed its wishes to continue supporting the project, but does not wish to spend the remaining funds necessary to license, construct, and develop the project. TNHC, per the Development Agreement, commits to providing all the necessary funding and will pay all expenditures and costs to complete the licensing, construction and operation of the project. (Attachment, Item 5, Development Agreement)

Now 6 years after the development agreement, TNHC has no viable investment partners. Therefore, TNHC President, Peter Lewandowski, requested that Ronald E. Young, general manager of EVMWD, take immediate action to fund two lobbyists in order to promote legislation by Congressman Darrell Issa. (Attachment, Item 6, Washington Lobbyist Letter)

On September 19, 2002 Congressman Issa introduced legislation which would establish a transmission line easement through the Trabuco District of the Cleveland National Forest. The following is a quotation from the federal government web page at:

<http://thomas.loc.gov/cgi-bin/bdquery/z?d107:HR05409:@@L&summ2=m&>

[H.R.5409 Title: to provide an environmentally sound process for the expeditious consideration and approval of a high-voltage electricity transmission line right-of-way through the Trabuco Ranger District of the Cleveland National Forest in the State of California and adjacent lands under the jurisdiction of the Bureau of Land Management and the Forest Service. Sponsor: Rep. Issa, Darrell E. [CA-48] (introduced 9/19/2002)]

At the EVMWD Board of Directors meeting on September 26, 2002, a motion was made and carried, by a 3-1 vote (Phil Williams, Kristine Anderson, and Gary Kelley – supported, George G. Alongi – opposed) to authorize the General Manager to execute the documents necessary to implement two lobbyist agreements and promote the Issa legislation. The terms of the notes commit the EVMWD to pay \$20,000 per month, plus reasonable and customary expenses beginning September 1, 2002 and ending on September 1, 2003. (Attachment, Item 7, Approve Lobbyist Agreement) TNHC committed to reimburse the EVMWD for the costs of the contracts. (Attachment, Item 8, TNHC Unsecured Note)

When congressman Issa introduced the bill he made comments on the House of Representatives floor supporting the EVMWD hydro electric facility. Quoting directly from his recorded comments from;

<http://thomas.loc.gov/cgi-bin/query/R?r107:FLD001:E51622>);

[The proposed hydro electric facility on Lake Elsinore, adjacent to the corridor, will enable the Elsinore Valley Municipal Water District to place 600 megawatts of green peaker power onto the transmission grid when the California Independent System Operator (CAISO) needs it.]

Although the Public Utility Commission and Congressman Issa both agree that currently, there is no need for transmission lines in this area, his support of the LEAPS project seems to be oddly coincidental with the EVMWD illegal expenditures.

The Law

In accordance with California Government Code, a local agency having money in its treasury not required for the immediate needs of the agency may invest any portion of the money that it deems wise or expedient. (Attachment, Item 1, Section 53601) Notes that are not secured by a valid first priority security interest are not permitted. (Attachment, Item 1, Section 53601 m) At the EVMWD Board of Directors meeting on September 26, 2002, Director George Alongi vehemently sounded his concerns about progressing with the LEAPS Project:

[This project wasn't supposed to cost the District any money. We have a developer (TNHC) out there that doesn't have any financing in place. We have a representative (Congressman Issa) who now changes his mind and wants to put the power lines through the national forest, which he didn't commit himself before. So, now we have somebody in Congress changing his mind, but here we sit on the board and we're going to agree to pay \$10,000.00 a month (per firm) to a consultant to do the work that the Hydro Co. people should be doing, not us. We're supposed to be riding free. We're supposed to be the guy who is supposed to reap the benefits. They pay, we reap the benefits. And still, there is no money, there is no bonds, there is nothing out there except their word that they are going to reimburse us.] (Item 9, 9/02 Audio Tape Transcription of Board Meeting Minutes, and Meeting Minutes)

In the 1995 case, County of Orange vs. Fuji Inc., it is cited that public agencies are to be held accountable for making wise and safe investments as described by the "prudent investor standard". (Attachment, Item 10, County of Orange vs. Fuji, Inc., Cite as 31 F.Supp.2d 768 (C.D.Cal. 1998))

There is an objective order in which a public agency is permitted to invest; namely, safety-first, liquidity-second, and achieving a return on funds-third. (Attachment, Item 1, Section 53600.5, Item 11, Bank of America Guidelines)

Clearly, the EVMWD has reversed the priorities of this order by trying to achieve a return on funds first, and safety last.

Conclusion

In Conclusion, we are citing the EVMWD with unsafe investments of public monies, by granting an unsecured loan, which has zero guarantee of any return, to a company which today, 6 years from its' point of inception, still has no viable source of funding. STOP THE BLEEDING !!!

We are requesting the District Attorney's actions on the following items:

- 1. Immediately stop funding the two consulting firms with our money.**
- 2. Indictment of the 3 board members who, with prior knowledge of the illegalities, approved these risky expenditures, namely Phil Williams, Kristine Anderson, and Gary Kelley.**
- 3. In the course of indictment, we would like to request that the District Attorney depose the staff and the Board of Directors of the EVMWD, in order to investigate the possibilities associated with EVMWD funds being put forth to Congressman Issa's current political campaign. In our opinion, this whole arrangement has the appearance of "quid pro quo".**

Attachments

- Item 1 – California Government Code Section 53800 et sequence.**
- Item 2 – Letter Dated 12/96, Frick to FERC.**
- Item 3 – Letter Dated 1/97, Frick to EVMWD Board Members**
- Item 4 – Classifieds**
- Item 5 – Development Agreement**
- Item 6 – Washington Lobbyist Letter**
- Item 7 – Approve Lobbyist Agreements**
- Item 8 – TNHC Unsecured Note**
- Item 9 – 9/02 Partial Audio Tape Transcription of Board Meeting Minutes,
and Meeting Minutes**
- Item 10 – County of Orange vs. Fuji, Inc., Cite as 31 F.supp.2d 768
(C.D.Cal 1998)**
- Item 11 – Bank of America Guidelines**