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**VIA FEDERAL EXPRESS**

Randy H. Keller, Assistant County Counsel  
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P.O. Box M  
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**Re: Coso Hay Ranch Project EIR**

Dear Mr. Keller:

Little Lake Ranch, Inc. ("LLR") opposes the proposed Coso Operating Company Hay Ranch Water Extraction and Delivery System project, CUP 2007-03 ("Project"). The final Environmental Impact Report ("FEIR") prepared for the Project contains significant analytical deficiencies which render its conclusions invalid under CEQA.

**The FEIR Is Based Upon an Inaccurate and Incomplete Project Description.**

The FEIR fails to comply with CEQA due to the lack of an accurate description of the Project and its objectives. The courts have uniformly recognized that "[a]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR," and that "[a] curtailed, enigmatic or unstable project description draws a red herring across the path of public input." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193, 198; see also *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 673-74 (EIR prepared in connection with proposed expansion of existing mining operation was inadequate due to conflicting information as to whether project would involve an increase in mine production).)

Pursuant to CEQA Guidelines § 15378, a "project" includes "***the whole of an action***" that has the potential to result in a direct or reasonably foreseeable indirect physical change to the environment. (14 Cal. Code Regs. § 15378(a).) Similarly, a lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect. (*See id.* § 15003(h).) Courts construe the term "project"

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broadly in order to maximize protection of the environment. (See *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1143.) Among other information, a project description must include a clear statement of the “objectives sought by the proposed project” which, among other functions, will assist the lead agency in developing a reasonable range of project alternatives. (14 Cal. Code Regs. § 15124(b).) An EIR must define the scope of a project to include all reasonably foreseeable future development or other activity that is related to or will arise out of an initial project approval. (See *Laurel Heights Improvement Assoc. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376, 396.)

When performing its environmental review of a proposed project, the lead agency must describe the project in such a manner as to encompass the entirety of the proposed development or other activity, and, though a project may go through several approval stages, the environmental review accompanying the first discretionary approval must evaluate the impacts of the ultimate development or activity to follow. Accordingly, a lead agency may not limit the disclosure of environmental impacts by ignoring foreseeable future development or other activity that will follow the initial approval. This prevents agencies from chopping a single large project into numerous little ones in order to avoid an analysis and disclosure of the environmental impacts of the project as a whole. (See *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283-84.) Piecemeal environmental review that ignores the environmental impacts of the end result is not permitted. (See *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 193-96.)

Chapter 2 of the DEIR describes the physical components of the proposed Project, limited solely to the Hay Ranch wells, electrical substation, and the water pipelines to transport the water pumped from the Rose Valley to the Coso facility. The description of the Project abruptly ends at the terminus of the pipeline.

Coso has only recently revealed that the proposed Hay Ranch pipeline is not a single, isolated project. Rather, the pipeline is merely one part of a much larger and extremely costly capital improvement program of perhaps \$100,000,000 intended to increase the existing energy output of the Coso plant by over 33%. The FEIR makes no mention of this true project objective and contains no discussion whatsoever of the precise plant improvements intended to reach the objective. Because a complete and accurate project description constitutes the indispensable cornerstone of any environmental impact analysis, the absence of an accurate description of the complete scope and true objective of the Project in this case renders the entire FEIR fundamentally flawed and legally inadequate.

The FEIR simply addresses the water extraction project in isolation and entirely omits any discussion of any alterations or enhancements to the Coso facilities. As a result, the FEIR fails to inform the County decision-makers and the public of the full scope of Coso’s overall capital improvement project and the resulting environmental impacts. Such segmenting of the Project violates the requirements of CEQA.

According to the FEIR the purpose of the Project is to “help minimize the annual geothermal reservoir decline and the resulting megawatt production decline through the

replacement of lost geothermal fluids at the [Coso plant].” (DEIR 2-1.) In a response to public comment, the FEIR also states that “[t]he potential increase in power production at the power plants was not addressed because the project as proposed **would not increase power production** at the plants beyond existing conditions.” (FEIR 2-11.) The FEIR indicates that the output of the Coso plant is anticipated to continue to decline at an annual rate of 3.6% without augmented injection. With the injection of water from the Hay Ranch site, the rate of decline is anticipated to be reduced to 2.3% per year. (FEIR 2-485.) Attached is a list of the direct quotes from the DEIR and FEIR confirming that the purpose and objective of the Project was to reduce the decline in production – not increase it.

In a letter dated January 23, 2009 addressed to the Inyo County Water Commission from Coso’s attorney, Best Best & Krieger (“BBK”), BBK states that “[u]nder the proposed Project, Coso hopes to return the geothermal plant’s output to historic levels in the range of 270 MWs.” This objective was repeated several times during Coso’s presentation at the January 26, 2009 hearing before the Water Commission. More recently, a BBK letter dated February 17, 2009, even disclosed for the very first time that “Coso’s improvements are being undertaken pursuant to a separate environmental review and permitting process.”

We do not know if Coso or MHA, the paid environmental consultant that actually prepared the FEIR, ever disclosed to the County what these improvements are and what connection they have to the proposed Project pending before the County. Regardless of who failed to make the necessary disclosure, the FEIR fails to report and analyze the capital improvements as part of the Project. The Project is clearly only one component of a large upgrade of the Coso facilities intended to achieve the desired increase in plant productivity. (See BBK Letter dated January 23, 2009, at p.11: “Coso has initiated an extensive drilling program, the benefits of which would be enhanced by the Project;” PowerPoint presentation - “Terra-Gen and its affiliates are currently in the midst of a capital improvement plan for the Coso plant. Over \$100MM of planned investment over the next two years;” “The Coso Enhancement Plan will deploy significant capital to enhance production and extend facility life . . . Supplemental fluid injection is critical to the success of these new investments;” BBK letter dated February 17, 2009 - “Coso is undertaking well-field work and other operational improvements . . . .”) Recent reports on Coso by Fitch Ratings and Moody’s Investors Service confirm that the Hay Ranch pipeline is part and parcel of a much larger capital improvement program designed to enhance Coso’s energy output.

The disclosures by Coso affirm LLR’s long-held belief that the true purpose of the Project is to increase the productivity of the Coso plant. LLR demanded, without success, that the FEIR evaluate the impacts from increased production. Nonetheless, the fact remains that the FEIR is founded entirely upon the opposite assumption – i.e., that the Project will *not* result in an increase of the Coso plant’s output production. Coso is in effect seeking the approval of an entirely new 70 MW geothermal project designed to replace the lost productivity of its existing plant.

The FEIR's mischaracterization of the scope and objective of the Project renders the FEIR's entire analysis of the Project's anticipated environmental impacts meaningless. The FEIR's willful disregard of the true scope and purpose of the Project results in a fundamentally flawed and understated analysis of the Project's environmental impacts and is noncompliant with CEQA. As a result, the County may not take action on the Project until such time as a complete and accurate environmental impact report that addresses the entirety of Coso's intended capital improvement program and the environmental impacts that will result therefrom is prepared and circulated for public review.

The facts of this case are analogous to *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4<sup>th</sup> 713 ("*San Joaquin*"). In that case, the court held that an EIR prepared in connection with a proposed residential development was legally inadequate due to its failure to include within the scope of the project description sewer lines and the expansion of a wastewater treatment plant that would be constructed to serve the development. Noting that, "even were the FEIR deemed to be adequate in all other respects, the selection and use of a 'truncated project concept' violate[s] CEQA," the court found that the EIR's failure to address the scope and environmental impacts of the sewer expansion necessitated the rejection of the EIR. (*San Joaquin*, 27 Cal.App.4<sup>th</sup> at 730.) Acknowledging that an agency other than the County of Stanislaus had jurisdiction over the sewer expansion, the court nevertheless faulted the County for excluding the sewer expansion from the scope of the project addressed by its own EIR. Due to the omission of any discussion of the impacts of the sewer expansion, the EIR failed in its purpose of informing the County decision-makers and the public of the full scope of environmental impacts likely to result from the approval of the proposed development. (*Id.* at 732-33.) At the very least, even assuming that the sewer expansion constituted a separate project severable from the proposed residential development, the court held that the EIR was required to address the cumulative environmental impacts of the proposed development and the sewer expansion. (*Id.* at 733-34.)

Similarly, in this case, the FEIR ***contains no discussion whatsoever*** regarding the scope and anticipated impacts of the other components of the capital improvement project proposed by Coso to increase plant productivity. It is clear that the Hay Ranch pipeline and the other capital improvements planned by Coso are mutually dependent components of a single integrated project designed to achieve the *actual* project objective – i.e., an increase in the productivity of the Coso plant. Even assuming that the County may justifiably adopt Coso's position that the Hay Ranch pipeline is severable from the other upgrades to the Coso plant, the fact remains that the FEIR tells the public and the County decision-makers *nothing* about how the impacts of the Hay Ranch project would combine with the impacts of any proposed alterations in the design and operation of the plant. Such omission deprives the public and the County of the ability to ascertain the full impacts of the proposed alterations to the Coso facility, let alone the ability to respond to Coso's claim that its plant upgrades are entirely unrelated to the Hay Ranch project. The FEIR's failure to disclose the nature of Coso's intended plant upgrades and to address the impacts of Coso's capital improvement program as an integrated whole, including the impacts resulting from an increase in production at the Coso plant, renders the document inadequate.

Claims that the jurisdiction to review proposed alterations to the Coso plant itself rests with an agency other than the County or that Coso seeks merely to return plant productivity to originally permitted levels have no bearing upon the County's obligation to analyze the impacts of Coso's proposed plant modifications and the resulting increase in plant productivity at this time. As established by the court in *San Joaquin*, though the lead agency may lack authority to approve certain project components, the lead agency must nonetheless analyze the environmental impacts of a proposed project as a whole, including any related or reasonably foreseeable future development or other activities that may require the approval of other agencies. Although prior permits obtained by Coso may have authorized the generation of 270 MW at the Coso plant at sometime in the past, at no point has any environmental analysis been conducted to analyze the impacts of current plant modifications or the injection of water into the geothermal reservoir in order to reverse the plant's declining levels of production and to increase the current level of production by over 70 MW. CEQA requires that such an analysis be conducted prior to the approval of any single component of the overall program designed to obtain such productivity increase, regardless of whether the agency issuing such approval has jurisdiction over the program as a whole.

**The Baseline of the Coso Facility is Steadily Declining Production with a Current Output of Less Than 200 MW.**

The FEIR purported to analyze the environmental impacts from the Project based upon the current physical condition of the Coso operations. More importantly, the FEIR, in numerous instances, refused to consider any environmental impacts resulting from an increase in energy production. The baseline condition on which the FEIR is based is the current amount of energy production being generated by Coso (200 MW), not the alleged "permitted" capacity (270 MW). We now learn, after the FEIR has been completed, that the true purpose of the Project and the related capital improvements is to substantially increase energy production.

Coso takes the position that the baseline for addressing the Project's environmental impacts should be the "existing, permitted operations of the geothermal facility." (See BBK letter dated February 17, 2009, at p.3.) County staff has adopted this position, arguing that, because prior permits for the Coso plant allow production of 270 MW, such level of production constitutes the existing environmental setting of the Project. (Staff Report at pp.14-15.) The Staff's attempt to change the entire baseline standard to the permitted capacity of Coso by claiming an "ambiguity" must fail. Such a construction of the baseline environmental setting violates CEQA.

Claims that initial permits for the Coso facility allowed the production of 270 MW and the output of the Coso facility *at one time* may have reached that level have no bearing upon an identification of the *existing* environmental setting. Though the Coso plant may have previously generated 270 MW of energy, as discussed above, the evidence in the record clearly demonstrates that that is no longer the case and that the existing output of the Coso facility is less than 200 MW and continuing to decline at the rate of 3.6% per year. Both the DEIR and the FEIR explicitly state that this is the baseline from which the Project's environmental impacts

have been analyzed. Staff's attempt to change the baseline at the last moment from current production to permitted capacity fundamentally alters the foundation of the County's environmental impact analysis and, absent a revision and recirculation of the Project EIR, violates CEQA.

The cases cited by BBK do not support Coso's position that the proper baseline in this case is the permitted capacity of the Coso plant. In *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4<sup>th</sup> 238, the court upheld the County's reliance upon previously permitted project-related traffic levels as constituting the baseline for a proposed mining expansion project based on the fact that traffic flows generated by the mining operation fluctuate considerably due to factors unique to such facilities, and the fact that evidence in the record demonstrated that the existing facility had in fact generated daily trips in an amount consistent with the adopted baseline during intermittent periods of peak production. (*Id.* at 243.) In this case, there is no uncertainty regarding the existing productivity of the Coso facility and its decline. There is no fluctuation of output. Accordingly, the factors justifying the reliance upon past conditions in *Fairview Neighbors* are not present here.

In *Benton v. Napa County* (1991) 226 Cal.App.3d 1467, the court upheld the County's finding that it was required to investigate only the incremental impacts resulting from the proposed relocation and modification of a previously approved winery project. BBK claims that is what the County has done here "by selecting a baseline that recognizes the already permitted and analyzed uses at the geothermal facility." (See BBK letter dated February 17, 2009, at p.2.) This position is based upon a mischaracterization of the "already permitted" facilities and operations at the Coso plant. Though prior permits may have allowed the generation of 270 MW at the Coso facility, the fact is that the actual physical facilities at Coso that were approved are not currently capable of sustaining such level of production at this time. Accordingly, Coso now seeks to inject new water and modify its facilities in order to increase the level of output to its original capacity. A new analysis of the environmental impacts of Coso's re-envisioned facilities must be analyzed again. For example, prior environmental impact studies prepared in connection with Coso's original permits did not address the impacts of cool water injection from the Rose Valley, including impacts upon the geothermal reservoir or the geothermal manifestations at the surface. In light of BBK's disclosure that the plant upgrades are undergoing environmental review by another agency, one can assume that such upgrades and their impacts were not contemplated during the course of the initial permit review.

**The FEIR's Analysis of Project Alternatives is Fundamentally Flawed and Insufficient.**

Public Resources Code § 21002 states the legislative policy that "public agencies should not approve projects as proposed if there are feasible alternatives . . . available which would substantially lessen the significant environmental effects of such projects. . . ." (Pub. Res. Code § 21002.) As noted above, a clear statement of a project's objectives is critical to steer the lead agency's discussion of project alternatives. (See 14 Cal. Code Regs. § 15126.6(c) ("The range of potential alternatives to the proposed project shall include those that could feasibly accomplish

most of the basic objectives of the project.”.) Absent an accurate definition of a project’s objectives, it is impossible to meaningfully identify and analyze reasonable alternatives to accomplish such objectives.

The consequences of relying upon an inaccurate project description, including a misleading project objective, are plainly revealed by the DEIR’s discussion of project alternatives in this case. Section 5.2.2 of the DEIR briefly discusses and summarily rejects a project alternative involving an increase in power generation through plant enhancements. (DEIR at 5-2 through 5-5.) Though the DEIR concludes that the identified plant modifications would not match the benefits of the Hay Ranch water extraction and delivery system – primarily due to the costs associated with the contemplated plant modifications – in light of Coso’s recent representations that it intends to pursue plant upgrades costing over \$100,000,000 which, in combination with the Hay Ranch project, are intended to increase plant productivity by 70 MW, it now appears that Coso itself does not agree with the DEIR’s rejection of plant modifications as a feasible means to obtain increased productivity. In fact, it appears that some form of this project alternative constitutes the true project now proposed by Coso. Had the DEIR’s analysis of project alternatives been based upon an accurate description of the full scope (i.e., Coso’s overall proposed capital improvement program, including the overall cost thereof) and true objective (i.e., an increase in plant productivity, as opposed to merely minimizing the decline in plant productivity) of the Project, the range of feasible project alternatives would inarguably have expanded substantially. Because the DEIR’s analysis of project alternatives is founded entirely upon a faulty description of the Project and a misleading characterization of its objectives, such analysis is unreasonably limited and must be rejected as fundamentally flawed.

The DEIR’s analysis of available project alternatives does not satisfy the requirements of CEQA. For example, the DEIR summarily rejects an alternative involving the installation of air-cooled condensers (“ACCs”). (DEIR at 5-4.) The FEIR attempts to further explain the reasoning supporting the rejection of this alternative. (FEIR at 2-72 through 2-73.) Please see my earlier letters to the County about the feasibility of using ACCs.

The retrofit of Coso’s electrical plant to use ACCs, in whole or in part, is a vastly superior alternative from an environmental standpoint and feasible. (See *San Bernardino Valley Aududon Society, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 750 (“[T]he discussion of alternatives shall focus on alternatives capable of eliminating or reducing any adverse environmental effects, even if they substantially impede the project or are more costly.”); see also *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1181 (“The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.”).)

The FEIR’s discussion of project alternatives fails to comply with the basic requirements of CEQA. (See *Laurel Heights Improvement Assoc. of San Francisco, Inc. v. Regents of the University of California* (1988) 47 Cal.3d 376, 400 (“One of [an EIR’s] major functions . . . is to

ensure that *all reasonable alternatives* to proposed projects are thoroughly assessed by the [lead agency].”); see also *San Joaquin*, 27 Cal.App.4<sup>th</sup> at 735 (the discussion of project alternatives must be “meaningful” and must “contain analysis sufficient to allow informed decision-making”).)

**The FEIR’s Assessment of the Project’s Hydrology Impacts is Based Upon Flawed and Unreliable Studies and Information and is Incomplete.**

LLR has previously submitted extensive comments regarding the significant flaws inherent in the numerical groundwater flow model (“Hydrology Model”) prepared by Geologica, Inc., which forms the basis of the DEIR’s analysis of the Project’s impacts upon groundwater resources in the Rose Valley. Without repeating LLR’s prior comments, LLR has submitted evidence into the record revealing the unreliability of the Hydrology Model in great detail. Based upon the numerous flaws in the Hydrology Model, there is a lack of substantial evidence to support the FEIR’s conclusions regarding the nature and intensity of the Project’s anticipated impacts upon water resources in the Rose Valley. (See Cal. Pub. Res. Code § 21080(e) (unsubstantiated opinion and evidence which is clearly inaccurate or erroneous does not constitute substantial evidence supporting a determination that a project will not have a significant effect on the environment); *Laurel Heights Improvement Assn. v. Regents of Univ. of Calif.* (1988) 47 Cal.3d 376, 409 fn.12 (“A clearly inadequate or unsupported study is entitled to no judicial deference.”).)

Notwithstanding the uncertainties inherent in the Hydrology Model, the FEIR concludes that the predicted reduction in water inflows into Little Lake and the lowering of the water table will not result in a significant environmental impact. Without meaningfully analyzing whether the habitat, wetlands, wildlife and other biological resources at Little Lake or elsewhere in the Rose Valley could tolerate or survive the predicted inflow loss at Little Lake or the lowering of the water table, the FEIR merely summarily concludes that anticipated impacts upon water inflows and the water table level will not exceed “natural variations” and, therefore, will result in no biological impacts. Contrary to the FEIR’s conclusion, a 10% loss of inflows into Little Lake constitutes a significant environmental impact. The FEIR contains *no* biological report or other evidence to support the assumption that a 10% decline in inflows will not adversely impact groundwater-dependent habitat, wetlands or wildlife at Little Lake or the Rose Valley. By refusing to address these key environmental impacts, the FEIR fails to satisfy the basic investigative mandates of CEQA.

In effect, the FEIR takes a “head-in-the-sand” approach and defers any meaningful analysis of the full scope of the Project’s impacts until such time as the Project is already built out and operating. The deferred investigation of Project impacts and identification of necessary mitigation measures contemplated by the FEIR is in direct violation of the prohibition against deferred mitigation under CEQA. (See *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296 (holding that the deferred study of a project’s hydrological impacts until after project approval violates CEQA).)

Randy H. Keller, Assistant County Counsel  
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Finally, the FEIR's failure to consider the Project's potential to result in an overdraft of the Rose Valley aquifer is improper. The Hydrology Model predicts that Coso's proposed appropriation of groundwater from the aquifer will gradually lower groundwater levels, resulting in the eventual depletion of groundwater supplies. The Hydrology Model further predicts that the proposed pumping will lower the groundwater table to such an extent that the pumps used by the current overlying users will be prevented from operating at their present depth and with equal capacity so as to provide those overlying users with sufficient water. The Project thus has the potential to deprive businesses and property owners of limited and critical water resources. Such a consequence of Project approval clearly constitutes a significant environmental impact requiring further investigation and analysis.

**Conclusion.**

Given the numerous fundamental errors and omissions inherent in the FEIR and the lack of substantial evidence in the record to support its conclusions, it is clear that the document does not satisfy the requirements of CEQA. As currently drafted, the FEIR fails to serve the fundamental purpose of informing the public and the County decision-makers of the full range and intensity of environmental impacts that will result from Project approval. The County's certification of the FEIR at this time is subject to legal challenge. LLR respectfully requests that, unless the County elects to deny the Project outright, the County forego any action on the Project pending the preparation and circulation for public review of a legally adequate EIR that addresses the full scope of the proposed Project, including its true objectives, and the environmental impacts that will result.

Sincerely yours,

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Attachment