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VIA FEDERAL EXPRESS

Inyo County Planning Commission
P. O. Box 337
135 South Jackson Street
Independence, CA 93526

Re: Coso Operating Company, CUP 2007-03

Dear Planning Commissioners:

The Coso Operating Company ("Coso") proposal to pump and transfer over 4,800 acre-feet of water per year from the Rose Valley to its geothermal facility ("Project") has returned to the Planning Commission for a second review. In December, 2006, the Planning Commission approved a Mitigated Negative Declaration ("MND") and a related request for a Conditional Use Permit ("CUP") to allow Coso to proceed with this Project. As a result of objections raised by Little Lake Ranch ("LLR") and proof that the MND failed to adequately address significant environmental impacts, even with mitigation, Coso withdrew its prior application. In our view, the Planning Commission was given false and misleading information about the Project 2 years ago, and not much has changed.

Regrettably, the Final Environmental Impact Report ("FEIR") and the related Hydrology Monitoring and Mitigation Plan ("HMMP") have failed to address or mitigate the environmental impacts. Whether intentionally or inadvertently, the Staff Report and the FEIR do not provide credible evidence on which the Project can be approved.

First, the Staff Report completely ignores the recommendations of the Inyo County Water Commission ("ICWC"). The ICWC voted to reject the Project in its entirety. Second, the ICWC unanimously voted to add 18 separate additional mitigation measures and conditions to the Project. The Staff Report only attaches a copy of the ICWC recommendations, and the document itself is buried among the exhibits to the Staff Report. I am attaching another copy for your easy reference. The disrespect shown by the Staff of the Water Commissioners who spent close to 7 hours in public hearings and countless additional hours of reviewing the FEIR is evident, and contrary to County requirements.

Little Lake\Coso\FEIR\ICPC Ltr 02

Inyo County Code Section 18.77.030(A) specifically requires the Planning Commission to consider the recommendations of the Water Commission. When this Project was presented to the Planning Commission 2 years ago, there was a detailed memorandum of all of the comments made at the Water Commission public hearing (of which LLR was given no advance notice and did not attend), and the recommendations were plainly set forth. This time, the Planning Department provides no summary of the comments from the individual Water Commissioners, nor mentions the recommendation of Project denial, except by way of an attachment. The ICWC is the lead agency within the County of Inyo to address environmental impacts from water transfer projects. (Inyo County Water Policy, Resolution 99-43, Section III.A.5) Nonetheless, the Planning Department provides no reasons why the concerns expressed by all of the Water Commissioners should be summarily rejected. Attached is a copy of my letter to the Planning Commission dated February 9, 2009, in which I summarized many of the comments made by the individual Water Commissioners, none of which are reported by the Staff Report. A typed transcript of the final Water Commission public hearing on January 26 is available.

The Project will subject Little Lake to at least a 10% reduction of water inflows, and reduce the underground water table throughout the Rose Valley. These impacts will last for over 100 years after pumping stops. The Project will deplete the Rose Valley basin. Yet, the FEIR concludes, without any evidence, that such impacts are not significant environmental impacts. For the reasons set forth in our letter to Randy Keller which is attached, this conclusion cannot be supported under CEQA, and as a matter of Inyo County water policy, must be rejected.

The Staff Report, for the very first time, makes fundamental changes to the Project description, the purpose of the Project, and the baseline conditions from which environmental impacts are to be measured. The FEIR, consistently and without equivocation, states that (a) the Project consists only of the Hay Ranch water wells, equipment and pipeline to pump and transport water to Coso, (b) the purpose of the Project is to minimize the decline of electrical production, and (c) the current production of approximately 200 MW of electricity on a declining basis is the physical baseline condition on which to evaluate environmental impacts. On the eve of the Planning Commission hearing, the Staff Report now asserts that "the purpose of the Project is to increase electrical production to no more than the permitted level." Similarly, the Staff Report claims that the "baseline" for CEQA analysis is the permitted 270 MW capacity of Coso, rather than the energy production of 200 MW. The FEIR, by phrasing the objective to reduce the decline, rejected all of the requests of LLR to study all of the environmental impacts from the operations of the Coso electrical plant itself related to an increase in energy production, such as water use at Coso, biology, cultural resources, noise, traffic, air quality, hazardous substances, discharge of wastes, seismicity, volcanism, storm waters, subsidence, utilities, etc.

The Staff Report cannot change what was actually said and studied in the FEIR. Attached is a list of the direct quotes from the DEIR and FEIR confirming that the purpose and objective of the Project is only to minimize the decline in production--not to increase energy production. The FEIR as written misrepresents the true objective of the Project, as confirmed by Coso itself,

and utterly fails to address all of the environmental impacts from the proposed increase in energy production.

Nowhere in the FEIR was there any disclosure of additional capital improvements proposed by Coso, or an examination of the environmental impacts from an increase in production. Only one conclusion can be drawn - - Coso, and perhaps even the environmental consultant, MHA, are knowingly withholding crucial information from the County. For reasons that will probably never be disclosed or discussed, the County Staff has turned a blind eye to the deceptions of Coso, and changed the very description, scope and purpose of the Project without any justification whatsoever. Not only does such a fundamental change violate CEQA, but it must call into question the objectivity of the Staff in analyzing the environmental impacts from the Project.

The Staff Report states, without any disclosure of the facts, that “improvements have already been put into place at the plant that will allow an increase in electrical production from current production with the addition of the imported water.” If the improvements rely upon the importation and injection of water, then the improvements themselves are an inseparable part of the overall Project. Unfortunately, Coso again attempts to mislead the County, as it did 2 years ago, by failing to disclose all of its plans and improvements. The FEIR is fatally deficient in not analyzing the environmental impacts from these improvements. What is Coso afraid of disclosing?

The Staff attempts to gloss over the change in the Project description and purpose by arguing that there was a mere “ambiguity” in the FEIR. There is nothing ambiguous in the numerous explicit statements of the FEIR that the purpose of the Project was to merely reduce the decline in the production. The Staff must know that the FEIR is fatally deficient. The transparent attempt to resurrect the FEIR by changing the Project’s purpose and the baseline physical conditions at the eleventh hour to fit with the public disclosures by Coso at the ICWC public hearing will fail. If certified by the Planning Commission and the Board of Supervisors, the FEIR will be rejected following the inevitable legal challenge under CEQA.

The FEIR asserts that the 10% loss of water at Little Lake is the threshold by which significance under CEQA was determined, such that impacts causing more than a 10% loss of water would be significant. (FEIR at p. 2-470) There are many problems with this approach. First, the level from which this 10% is measured is not set forth in the FEIR. Second, the proposed triggers will be determined from a monitoring program of only 6 months prior to pumping commencement which is statistically and hydrologically insufficient to determine an average level. Third, depending upon where the trigger is set, much more than a 10% loss could be allowed due to an improper setting of the original background level and the resulting trigger. Fourth, even though the 10% loss might be within the average range of seasonal variation, it could still represent a permanent loss of 10%, thereby depleting water resources available to Little Lake. Fifth, the 10% loss could be allowed, even during periods of extreme distress, such as a prolonged drought. Sixth, the continuing loss of 10% for over 100 years after pumping

stops is not mitigated and still would represent a significant impact under CEQA. Seventh, mitigation measures are only imposed if someone determines the loss was only caused by the pumping itself. Proving causation over a relatively short-term pumping project of 1, 2 or 3 years is virtually impossible from any hydrology study or monitoring program. Eighth, a 10% loss will also prevent the reversal of impacts during wetter years. Ninth, the effects of this loss will continue for well over 100 years after pumping stops.

The alleged “conservative” nature of the Hydrology Model is nothing more than a paid consultant’s guess of what water conditions may be in the Rose Valley. There is nothing conservative about it, no matter how many times the word “conservative” is used. Refer to all the letters from LLR’s hydrogeologist, Andy Zdon, attesting to the failures of the Hydrology Model to follow proper modeling protocols and its lack of reliability.

About the only useful information which can be gleaned from the Hydrology Model is that Coso, an owner of less than 1% of the land in the Rose Valley, wants to pump and use almost 100% of the annual recharge off the basin. Coso is an appropriator of water with no water rights whatsoever to transport the water off basin. It does not take a hydrogeologist or a paid consultant to understand that such a massive water transfer will adversely affect the underground aquifer and all of the people who rely on it. While the Coso Project may not be entirely identical to the water transfers by the Los Angeles Department of Water and Power (“LADWP”), at least LADWP had the good grace to buy the land and related water rights by which it was able to pump the water. Coso has not.

The HMMP is not adequate to protect Little Lake and the Rose Valley. There are many specific problems with the HMMP, most of which have been identified by LLR. (See attached letter of February 9, 2009). Perhaps the biggest flaw is the provision that Coso’s pumping can only be stopped if the County can prove that Coso’s pumping alone caused a decline in the underground water table. The water table fluctuates seasonally and from year to year. The residents and landowners of the Rose Valley rely upon the water table, and any reduction in the water table can be significant. Pumping should absolutely stop if triggers are exceeded, regardless of cause.

Consider the plight of the Native American Tribes in Inyo County who were promised in 1979 that Coso Hot Springs would be protected from adverse impact caused by Coso. The U.S. Navy signed an agreement to stop the Coso energy plant if Coso Hot Springs was impacted. Despite a huge spike in the temperature and a large decrease in water levels at Coso Hot Springs immediately following the commencement of geothermal activities, the U.S. Navy did nothing. The Native American Tribes complained and were ignored. The revenues paid by Coso to the U.S. Navy outweighed any environmental concerns, even contrary to the express terms of the agreement. The Rose Valley will suffer a similar fate if this Project is approved.

The HMMP relies upon Coso itself to conduct the monitoring, collect the monitoring data, report to the County on the implications of the data, notify the County of any problems, and

voluntarily stop pumping if the County says to stop. (FEIR at Appendix 1, 3-8.) The Water Department only “oversees” the process, which for all intents and purposes remains under the primary control of Coso. The County cannot trust Coso to discharge its responsibilities, nor to honor the directions of the County to stop pumping if triggers are reached. The HMMP invites litigation to solve problems, which the County can ill afford.

The so-called “triggers” briefly described in the Staff Report are essentially meaningless. The FEIR has not yet set the initial underground water levels from which the triggers are measured. Thus, it is impossible to determine whether the initial water levels will be set to actually avoid harm from the predicted water drawdowns. The triggers cannot prevent harm because they never come into play unless the County can prove that the Coso pumping itself caused the drawdown. Even if triggers are reached, Coso will simply argue that its pumping had nothing to do with the drawdown, and keep pumping until someone files a lawsuit and convinces a court that it was Coso’s fault. Thus, the HMMP is worthless to protect against future harm.

The adequacy of the HMMP is further flawed, because the Hydrology Model is based upon average annual conditions. In drier years, the pumping from the Project will accelerate or worsen the impacts from the drought cycle. During wetter years, the basin will be slower to recover and the overall loss of water would continue to impact the biology and vegetation of the Rose Valley. Overall, the Project will permanently lower the band of natural variation.

The FEIR rejected an analysis of the biology at Little Lake and the Rose Valley because of the claim that a 10% loss of water flows was within the range of natural variation. (FEIR at 2-53.) The FEIR contains no biological report to demonstrate whether the habitat, wetlands or wildlife at Little Lake or the Rose Valley could tolerate or survive the predicted 10% water inflow loss at Little Lake or the lowered water levels.

Coso’s intentional use of the water-cooling towers (“WCTs”) is drying out the geothermal reservoir. Coso could convert its facility to use air-cooled condensers (“ACCs”). The conversion to ACCs would be more expensive, but Coso would (a) be able re-inject virtually all of the produced geofluids, (b) indefinitely extend the life of the geothermal plant, possibly in perpetuity, and (c) forever eliminate any need for imported water. Coso would then become sustainable well beyond its expected lifetime. The benefits of using ACCs for the long-term benefit of Coso were never compared in the FEIR to the short-term benefits of the Project.

Coso’s protestations that air-cooled technology is infeasible is belied by the number of energy production plants throughout the world using air-cooled technology. Attached is a list of the geothermal facilities around the world using air-cooled systems compiled by our geothermal consultant, Ronald Di Pippo. See also the attached website for SPX Technologies.

Air-cooled technology is routinely used whenever there is a lack of injection water. Coso refuses to use the technology only for its own profit goals, and despite the harm that will be caused by the continued use of its water-cooling towers. Not only is air-cooled technology used

in geothermal plants, but in a wide range of power production facilities. One of the largest power plants using air-cooled technology is the Matimba Power Station in South Africa, boasting a total capacity of around 3,690 MW consisting of 6 separate 665 MW units. (See attached brief description.) It is fairly obvious that other owners and operators of energy plants can and do use air-cooled technology profitably. Coso should do no less.

Coso also claims that a conversion of its electrical power plant to utilize ACCs is not economically justified. Attached is a copy of an article describing a pending geothermal project within The Geysers in Napa Valley. Western GeoThermal is building a brand new geothermal plant costing \$165,000,000 to produce 35MW. Coso proposes to increase production by 70 MW, but balks at spending from \$100,000,000 to an alleged \$250,000,000 to install ACCs to increase capacity by 70 MW. Obviously, the revenues to be generated easily justify the cost.

As recently as 2007 while Coso was generating 200 MW, Coso was able to convince the County that the Coso facility was only worth \$420,000,000. Based on this value, Coso paid \$4,500,000 in tax revenues (roughly 1% of the value under Proposition 13). Whatever false or misleading information may have been given to the County, it appears that Coso vastly understated its true value as evidenced by the sale of Coso to ArcLight only a few months later for \$1.2 billion. This allowed the County to increase the value of Coso to the sale price of \$1.2 billion and increase its property tax collections from Coso by over \$7,000,000 per year to nearly \$11, 900,000.

Under Proposition 13, real property taxes are approximately 1% of the fair market value of the property. According to the FEIR, the decline in total production through 2020 is projected to be approximately 3.6% per year without injection, and approximately 2.3% with injection from the Project. (FEIR 2-485.) Thus, the Project would reduce the decline by only 1.3% per year. Assuming the value of Coso's property corresponds to its energy production, this means that the Project may allow the County to maintain tax revenues by the 1.3% differential, equal to about \$155,000 per year ($1.3\% \times \$11,900,000 = \$154,700$). At this decline rate it would take decades before the taxes Coso pays return to 2007 levels, assuming Coso does nothing to increase its income or maintain production. However, Coso itself and the Fitch and Moody's Reports establish that Coso can maintain or even increase production by making capital improvements. Moreover, when Coso does spend its predicted \$100,000,000 to update the facility, this will allow the County to further increase the value of Coso and increase the tax revenues by maybe \$1,000,000 per year. Rather than be concerned about a loss of tax revenues, the County would likely increase tax revenues by rejecting the Project.

The Project is not needed and presents an unwarranted risk to the environment. There are other feasible alternatives, such as the capital improvements already being processed by Coso and the use of air-cooled technology. The County does not risk any reduction in its tax revenues by rejecting the Project. Forcing Coso to explore its alternatives will allow Coso to survive as a viable and sustainable electrical generation facility. The additional work created by the capital

improvements will actually add jobs, improve economic activity, and increase the County's tax revenues.

LLR urges the Planning Commission to ignore the unfounded claims of Coso. All of Coso's threats of bankruptcy and challenges to the tax revenues paid by Coso if the Project is rejected are nonsense. Regardless of the Project, Coso will prosper. The Planning Commission should ignore the scare tactics advanced by Coso. The most prudent approach would be to simply reject the Project outright.

If there is any recommendation of approval, the better policy would be to limit the pumping rate and the duration of the CUP to a level that is not likely to impact the Rose Valley. Ample hydrologic data can be developed at a pumping rate of 750 AFY over a period of no more than 2 years. (See the Zdon reports.) While the alternatives suggest that a somewhat greater rate and/or longer duration could be approved and are environmentally superior to the proposed Project, the alternatives would cause a 10% loss of water inflows to Little Lake, which are demonstrably significant. Moreover, all of the additional mitigation measures recommended by the Water Commission should be adopted, as well as the additional mitigation set forth in my letter to the ICWC dated January 22, 2009, which is attached to the Staff Report packet.

Very truly yours,

ARNOLD, BLEUEL, LAROCHELLE,
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Attachments