

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement • • Statements of Economic Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

February 2, 1984

William M. Wright, Esq.
Deputy County Counsel
County of El Dorado
County Office Center
330 Fair Lane
Placerville, CA 95667

Re: Your Request for Advice
Our File No. A-84-001

Dear Mr. Wright:

This letter is sent in response to your letter of December 28, 1983, requesting an opinion from this office regarding the disclosure obligations of the Public Advisory Group members of the Cosumnes River Water and Power Authority (the "Authority") under the Political Reform Act, Government Code Sections 81000, et seq.^{1/} You agreed to accept staff advice rather than a formal Commission opinion.

The Authority is a joint powers agency comprised of the water agencies of Amador, El Dorado, Sacramento and San Joaquin Counties. Its primary purpose is to develop a project on the Cosumnes River to provide a supply of water to the member counties. The Authority is governed by a Board of Directors whose membership includes representatives from all of the member counties.

Recently the Authority established the Public Advisory Group ("Group") "... to provide an organized means for individual citizens, organizations and the public at large to participate in and contribute to the planning and implementation of the Cosumnes River Water and Power Project." Letter from E. Morris McClung, Project Administrator to Mr. Larry Costick, dated December 28, 1983. The objectives of the Group are to:

1. Assist in the formulation of the Project.

^{1/} All statutory references are to the California Government Code.

William M. Wright, Esq.
February 2, 1984
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2. Review and advise on all aspects of studies, assessments, plans and reports.

3. Participate in Authority scheduled public meetings, public hearings and public workshops.

The members of the Group are five persons from each of the four member counties. The members are unpaid, and there is no budget for the Group.

As you know, Section 87302 requires that all employees and officials who make or participate in the making of decisions which may foreseeably have a material effect on any financial interest must be designated in a conflict of interest code. Section 82019, however, expressly excludes from disclosure obligations unsalaried members of any board of commission which serves a solely advisory function.

In Commission on Cal. State Gov. Org. & Econ. v. Fair Political Practices Com., 75 Cal. App. 3d 716, 721 (1977), the court stated that "the word advisory denotes indirect, relatively passive, hortatory and nonbinding counsel or guidance, as contrasted with active management, decisionmaking and the imposition of obligatory orders or decrees." The court further noted that "[t]he presence or absence of decisionmaking power is thus an important factor in identifying the wielder of a solely advisory function."

Pursuant to Commission regulation, a board or commission possesses decisionmaking power or authority if any of the following are true:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

(2 Cal. Adm Code Section
18700(a)(1), copy enclosed.)

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The Authority has clearly not conferred on the Group the power either to make a final governmental decision or to compel a governmental decision. However, it is equally clear that the Group will be making substantive recommendations concerning the development of the proposed Project to the Board of Directors of the Authority. Accordingly, the question is whether these recommendations will be regularly accepted without significant amendment or modification. The extent of the Group's influence over the Authority's decision is essentially a factual question, and it may be difficult to determine in advance of the actual operation of the new Group

At this point, whether the members of the Group should be required to file financial disclosure statements must be decided on the basis of the Authority's intent and the functions of the Group as spelled out in the letter referred to above. It appears that the Group's role will be limited to independently reviewing matters pending before the Authority, receiving public comment on the issues, and making recommendations to the Board. The Board itself will receive information, comments, and arguments from staff and others, deliberate, and make its own independent decisions. If this is the case, the Group's role is solely advisory, and its members do not need to be designated in the Authority's conflict of interest code. If the circumstances change and it becomes clear that the Group's role in Authority decisions is more influential than now appears to be intended, its exclusion from the code should be reconsidered.

Please feel free to contact me at (916) 322-6444, if you would like to discuss this letter or if I can be of further assistance.

Sincerely,



Diane Maura Fishburn
Counsel
Legal Division

DMF:pln
Enclosure

DAVID E. WHITTINGTON
COUNTY COUNSEL

ROBERT A. LAURIE
CHIEF ASSISTANT COUNTY COUNSEL

WILLIAM C. NEASHAM II
ASSISTANT COUNTY COUNSEL

EDWARD K MILLER
COLLECTION OFFICER

EL DORADO COUNTY
OFFICE OF
THE COUNTY COUNSEL F P P O

COUNTY OFFICE CENTER
330 FAIR LANE
PLACERVILLE, CALIFORNIA 95687
(916) 626-2234

JAN 3 9 59 AM '84

December 28, 1983

Barbara Milman
General Counsel
Fair Political
Practices Commission
P. O. Box 807
Sacramento, CA 95804

Re: Cosumnes River Water and Power
Authority/Public Advisory Group

Dear Ms. Milman:

Please consider this letter a formal request for an opinion from your office regarding whether or not the Public Advisory Group members of the Cosumnes River Water and Power Authority must file a Statement of Economic Interest.

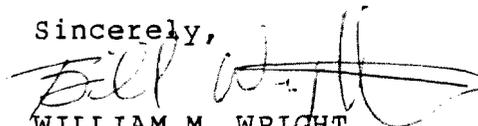
The Cosumnes River Water and Power Authority is a joint powers organization comprised of the water agencies of Amador, El Dorado, Sacramento, and San Joaquin Counties. The primary purpose of the authority is to develop the Cosumnes River Water and Power Project.

Recently the authority established the Public Advisory Group of the Cosumnes River Water and Power Project. We would appreciate a decision from your office regarding whether or not the Public Advisory Group members must file a Statement of Economic Interest. I have previously discussed this issue with Ms. Diane Fishburn of your office.

Enclosed for your review is a copy of a letter from Mr. E. Morris McClung, Project Administrator, to Mr. Larry Costick, relative to the structure and purpose of the Public Advisory Group. If you have any additional questions concerning the role of the Public Advisory Group in the Project, please contact Mr. E. Morris McClung at (916) 443-2593.

Please call if you have any questions.

Sincerely,


WILLIAM M. WRIGHT
Deputy County Counsel

WMW/ljb
cc: E. Morris McClung
Ann Harrelson

**COSUMNES RIVER
WATER & POWER AUTHORITY**

330 Fair Lane
Placerville, CA 95667

December 13, 1983

RECEIVED
Dec 19 10 04 AM '83
BOARD OF SUPERVISORS
EL DORADO COUNTY

Mr. Larry Costick
P. O. Box 1047
Ione, California 95640

Dear Mr. Costick:

Welcome to membership on the Public Advisory Group of the Cosumnes River Water and Power Project. You have been named by your county representatives and accepted by the Board of Directors of the Cosumnes River and Power Authority to assist with the planning and development of the Cosumnes River Water and Power Project.

PURPOSE

The purpose of the Public Advisory Group is to provide an organized means for individual citizens, organizations and the public at large to participate in and contribute to the planning and implementation of the Cosumnes River Water and Power Project.

OBJECTIVES

The Directors have defined the objectives of the Public Advisory Group to be:

1. Assist in the formulation of the project.
2. Review and advise on all aspects of studies, assessments, plans and reports.
3. Participate in Authority scheduled public meetings, public hearings and public workshops.

MEMBERSHIP

The membership of the Public Advisory Group consists of five persons from each of the four counties that are members of the Authority.

GUIDELINES OF PARTICIPATION

The Board of Directors has established the following guidelines for the organization and conduct of the Public Advisory Group.

1. Group and its members are to serve at the discretion of the Board of Directors.
2. Group is to adopt rules of order for its functioning. Majority vote rules at each meeting.
3. Group is to elect its own chairman and secretary. Other officers may be elected as desired.
4. Group is to notify the Secretary of the Authority as to time and location prior to each of its meetings.
5. Group is to provide a written report of each of its meetings to the Authority within fifteen (15) days after each meeting.

BUDGET

The Authority will provide no budget for the Public Advisory Group. Group members are asked to pay any costs associated with the operation of the Group.

TERM OF EXISTENCE

The creation, tenure and termination of the Public Advisory Group will be at the discretion of the Board of Directors.

The development of a project on the Cosumnes River to provide a supply of water to the Authority member counties has been a long, on-going effort by many people and agencies. The U. S. Bureau of Reclamation studied the feasibility of developing a major project in the Cosumnes River Basin for many years. An advisory group to the Bureau during that period of study was the Cosumnes River Association. Following the Bureau's abandonment of developing a project, the Association helped to form the Cosumnes River Water and Power Authority. The Authority is a joint powers organization comprised of the water agencies of Amador, El Dorado Sacramento and San Joaquin Counties. The Authority operates unde

the provisions of a Joint Powers Agreement executed in January 1983. The water entitlement section of the Joint Powers Agreement is currently under review for revision by the Authority.

A project configuration has been defined and described in an initial study prepared by the Cosumnes River Consultants (CRC), a consortium of consulting engineering firms that reported a viable economic project to the Board of Directors in October 1983. The configuration satisfies the water supply requirements of each of the counties as specified in the entitlement section of the Joint Powers Agreement and demonstrates initial economic, engineering and financial feasibility. The configuration was presented by CRC and adopted by the Board of Directors on October 5, 1983.

Subsequently, a letter was transmitted to the California Department of Water Resources (DWR), together with copies of the initial study, inquiring as to the Department's interest and inviting a negotiation for the purchase of Project water by the Department. The Department responded by letter of December 1, 1983, acknowledging receipt of the invitation and requesting an orientation briefing for the DWR Director and selected members of his staff at an early date.

Meanwhile, we wish to convene the first meeting of the Public Advisory Group for an orientation and organizing effort that will permit the Group to begin its formalized participation and involvement with the project. The Directors of the Authority are agreed that the earliest activation of the Public Advisory Group is timely and necessary.

To provide you with some information about the project, please find enclosed the following:

1. A map of the principal features of the project based on the configuration adopted by the Directors.
2. A copy of the latest progress report to the Federal Energy Regulatory Commission (letter of September 6, 1983).
3. A list of the members of the Public Advisory Group.
4. A list of the Directors of the Authority and the staff members.
5. A list of the members of the Technical Advisory Group.

Mr. Larry Costick

December 13, 1983

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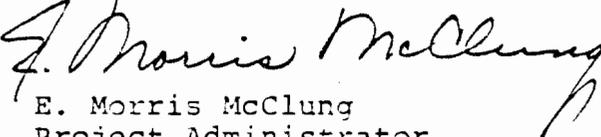
Also enclosed is the agenda for the scheduled December 19, 1983 meeting in Sacramento of the Public Advisory Group.

We look forward to an active participation by each member of the Public Advisory Group and to the development of a project that will provide satisfactory benefits to all concerned.

Thank you for your cooperation.

Very truly yours,

COSUMNES RIVER WATER AND POWER
AUTHORITY


E. Morris McClung
Project Administrator

Enclosures

cc: Mr. Robert E. Dorr, w/enclosures
Mrs. Evelyn L. Costa, w/enclosures
Mr. George L. Barber, w/enclosures
Mr. Kenneth H. Deaver, w/enclosures
Mr. Joseph V. Flynn, w/enclosures
Mr. C. Tobias Johnson, w/enclosures
Mr. Keith H. Mace, w/enclosures
Ms. Sandra R. Smoley, w/enclosures
Mr. Joseph P. Alessandri, w/enclosures
Mr. Tom Iwamiya, w/enclosures
Mr. Rod E. Schuler, w/enclosures
— Ms. Kathleen Ann Harrelson, w/enclosures

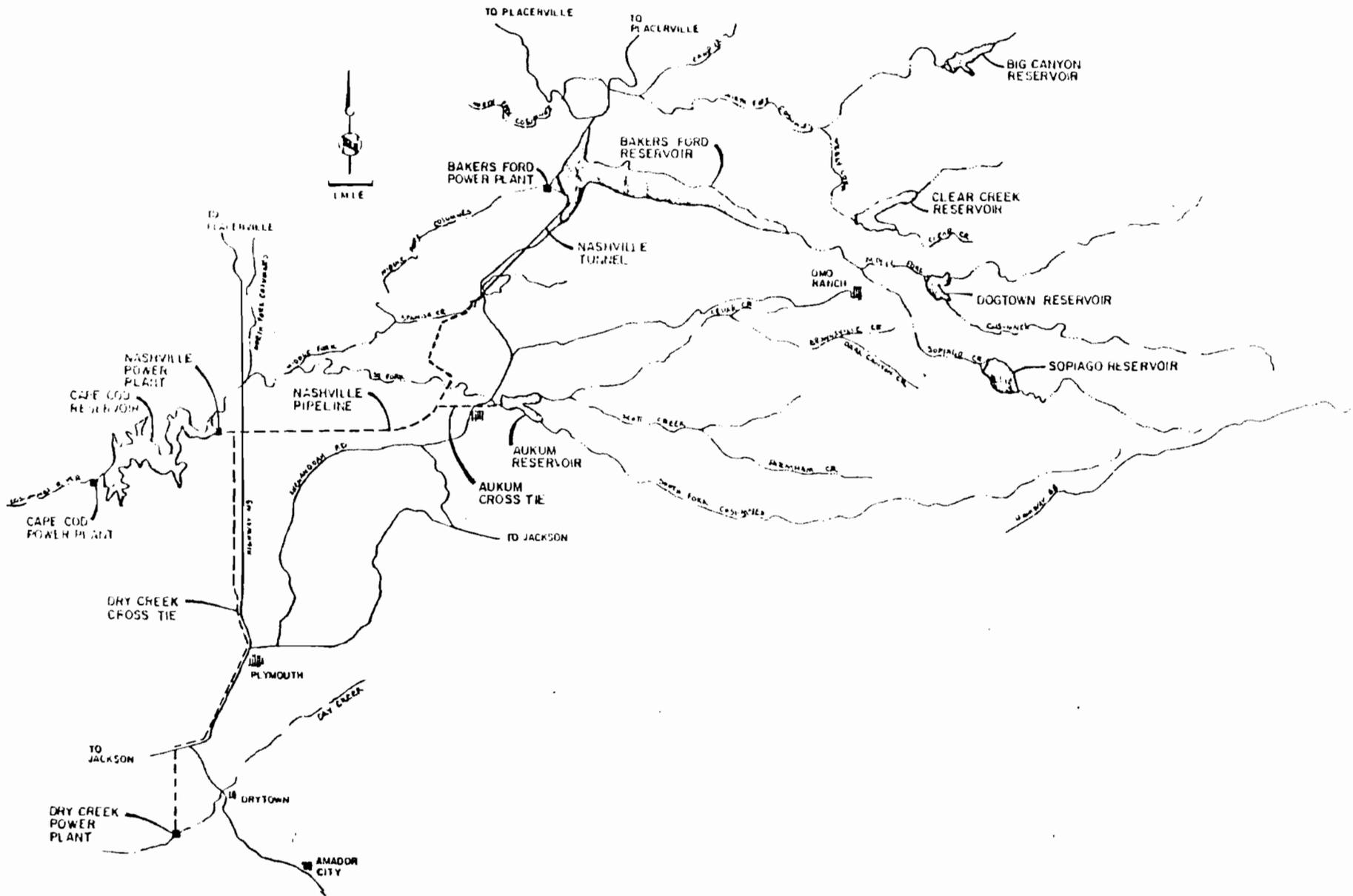


Figure 2-1 Project Configurations

**COSUMNES RIVER
WATER & POWER AUTHORITY**

330 Fair Lane
Placerville, CA 95667

September 6, 1983

Mr. Lawrence Anderson, Director
Office of Electric Power Regulation
Federal Energy Regulatory Commission
825 North Capitol Street, N.E.
Washington, D.C. 20426

**SUBJECT: Project No. 4510-000
Cosumnes River Water and Power Project
Preliminary Permit**

Dear Mr. Anderson:

Please refer to Article 8 of the Order Issuing Preliminary Permit of the subject project wherein the Permittee, Cosumnes River Water and Power Authority, is required to submit a periodic statement of progress of all investigations, consultations, and studies accomplished during the period and of work contemplated under the preliminary permit for the ensuing period.

This letter (submitted in triplicate) constitutes the report to the Commission for the six-month period February 1, 1983 through July 31, 1983.

During this period the Authority continued its adopted work program and schedule, continued its adopted project management program, contacted additional federal, state and local agencies, held a series of regularly scheduled public meetings, and continued its initial study to determine the technical, economic and environmental feasibility of the project and a feasible project configuration. The Authority's efforts have been concentrated on completing the initial study, securing financing to complete the detailed project engineering and economic feasibility study, the environmental study and the preparation of an application to the Federal Energy Regulatory Commission for a license to construct and operate the project.

The following paragraphs describe the activities accomplished by the Authority during this period.

Mr. Lawrence Anderson
September 6, 1983
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Staffing

The Board of Directors continued the operation of the Authority with the following staffing elements:

- o A Project Administrator
- o A Secretary
- o A Technical Advisory Group
- o An Engineering Consultant
- o A Financial Consultant
- o A General Legal Counsel
- o A Legal Counsel specializing in water rights
- o A Legal Counsel specializing in FERC licensing procedures

Project Management

The Authority continued to manage the administrative and technical functions required to accomplish the development of the Cosumnes River Water and Power Project in conformance with its adopted project management plan.

Project Work Program

The Authority continued to administer and execute the activities required to develop the Cosumnes River Water and Power Project in conformance with its adopted project work program.

Regularly Scheduled Meetings

Three (3) public meetings were held by the Authority at the El Dorado County Administration Center in Placerville, California. Four (4) public meetings were held by the Authority at the Sacramento County Administration Center in Sacramento, California. Meetings were held and will continue to be held regularly once per month and twice per month as required. The meeting agendas included reporting and approving minutes of prior meetings, progress reports, handling of correspondence, actions on project activities, special reports and public participation. Public notices were issued for each meeting and comments by the public at large were and will continue to be a regular agenda item. Public participation at the meetings has been active and candid.

Agency Contacts

Meetings with federal, state, and local agencies continued as required for project management and work program purposes.

Mr. Lawrence Anderson
September 6, 1983
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The California Water Commission agreed to support the Authority's request for an appropriation of \$325,000 in the federal budget for Fiscal Year 1983-84 to continue the Corps of Engineers' flood control studies on the Cosumnes River.

U.S. Forest Service Memorandum of Agreement

No action was taken during this reporting period with respect to the signed Memorandum of Agreement with the U.S. Forest Service.

Cosumnes River Consultants

Under agreement with the Authority, Cosumnes River Consultants (CRC) initiated an initial study to determine the technical, economic and environmental feasibility of the project and a feasible project configuration. The initial study is designed to provide sufficient technical, economic and environmental information to secure a water and/or power contract from a bona fide water and/or power purchaser to finance the development of the project. During this report period CRC reported the study results of more than a dozen alternative configurations and their physical, engineering, economic and financing details. During a succession of presentations at the Authority's regular public meetings, the less feasible alternatives have been eliminated and the most desirable alternative and its configuration is rapidly approaching final formulation. ^{1/}

A copy of the CRC July 11, 1983 report, "Initial Study, Cosumnes River Water and Power Project", is enclosed as Exhibit A.

A copy of the CRC July 25, 1983 report, "Addendum to the Initial Study, Cosumnes River Water and Power Project", is enclosed as Exhibit B.

E.F. Hutton & Company, Inc. and Boettcher & Company

Under agreement with the Authority and in cooperation with CRC, E.F. Hutton & Company, Inc. and Boettcher & Company have evaluated the financeability of the project alternatives prepared by CRC, and designed a financing plan for each.

Technical Advisory Group

In accordance with the adopted Project Management Plan, the Board of Directors appointed a Technical Advisory Group to advise the Directors on technical matters related to the project. The Technical Advisory Group consists of the Authority's Project Administrator, the Authority's Legal Counsel, and one technically qualified person from each of the member entities of the Authority.

^{1/} The Board of Directors adopted a project configuration at the August 29, 1983 regularly scheduled meeting of the Authority.

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The Technical Advisory Group held four meetings during this report period to review and advise on the initial study criteria, analyses and findings of Cosumnes River Consultants and E.F. Hutton/Boettcher & Company.

Public Advisory Group

The Board of Directors voted to create a Public Advisory Group to provide an organized means for individual citizens, organizations and the public at large to participate in and contribute to the planning and implementation of the project. The Public Advisory Group is to be composed of five persons selected by each of the member entities for a total of twenty persons.

During this report period candidates were identified for consideration. Selection will be made at an early date.

Water Rights Filings

The Authority began paying to the California State Water Resources Control Board annual fees required on the water rights filings assigned to the Authority from original filings of the U.S. Bureau of Reclamation.

Budget

Expenditures during this reporting period were within the Authority's project budget.

News Articles

The Mountain Democrat and Placerville Times and the Sacramento Bee had reporters in attendance and printed timely news articles about the Authority's meetings.

A representative sampling of copies of these articles is enclosed as Exhibit C.

Power and Water Purchasers

Discussions continued with potential water and power purchasers.

Pacific Gas and Electric Company (PG&E) confirmed by letter to the Authority that the initial study being prepared by Cosumnes River Consultants will provide the information required by PG&E to evaluate the project and determine their interest in purchasing the generated power.

Work Contemplated During Next Six Months

1. Complete the initial study to determine technical, economic and environmental feasibility of the project.
2. Continue feasibility and environmental studies and preparation of FERC license application.