

MEMORANDUM

TO: Richard L. Hinckley, Esq.
FROM: Charles H. McCrea, Esq.
RE: Nevada Power v. Monsanto, etc.
DATE: April 16, 1992

Herewith the Amended Opinion in the above case. I was concerned, when I heard the court had amended its February 5 Opinion, that it might have diluted it, but the Amended Opinion instead drives a few more nails in the defendants' coffin. Note that not a single one of the 33 or so judges on the 9th Circuit (including Judge Skopil, the panelist who dissented) had any interest in hearing the matter in banc. That sort of adds insult to what is already a grievous injury!

Given the resources these defendants have and the incentives their counsel have to run up the time charges, I wouldn't be surprised to see a petition to the U.S. Supreme Court for a writ of certiorari. However, I think the chances of the Supreme Court issuing the writ are between zero and none, given (1) that no federal question is involved and (2) that this decision, which only reverses a decision granting summary judgment, technically is not dispositive of the case on its merits. The only possible basis for granting cert would be a conflict between circuits. The 6th Circuit in the EPB case (which District Court Judge George found persuasive) is arguably in conflict, but certainly not wholly in conflict because in EPB the "failure to warn" claim wasn't even asserted.

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MEMORANDUM

TO: J. RANDALL JONES; DOUG COHEN

FROM: CHARLES H. MCCREA, SR.

RE: CONFERENCE CALL WITH BILL SNYDER, DAVID MCCREA, PAUL
MERRELL REGARDING NEVADA POWER COMPANY V. MONSANTO ET AL.

DATE: April 16, 1992

I spoke with Bill Snyder this afternoon and we agreed to hold a conference call on Monday, April 20 at about 9 A.M. We will initiate the call here.

Bill Snyder Tel: 406/492-7774

David S. McCrea, Esq. Tel: 812/336-2365

Paul E. Merrell, Esq. Tel: 503/528-7151