

MEMORANDUM

TO: Doug Cohen
FROM: Chuck McCrea 
RE: Nevada Power v. Monsanto
DATE: March 16, 1992

As you know, there is a possibility that the 9th Circuit may have enough interest in the defendants' petition for rehearing and suggestion for rehearing en banc that we will be invited by the court to respond. While this possibility is relatively remote statistically, it is none the less real and is somewhat enhanced by the fact that the decision in our favor was not unanimous.

9th Circuit rules do not even permit us to file a response unless invited by the court. Beyond this, they say little; they do not address the question of whether we will be invited to file a response before any rehearing is granted and they do not specify how much time we will have if we are invited to respond. However, I would be astonished were the court to grant rehearing on the basis of the defendants' petition without inviting us to respond.

I have learned that the normal time frame for disposing of petitions for rehearing is four to 6 weeks. The court's decision was filed on February 5 and defendants filed their petition for rehearing on about February 18, almost four weeks ago. It would not hurt us to be a little forehanded and research the questions we will need to argue should the unexpected occur.

Paul Merrell, the principal author of our outstanding appellate briefs (who argued the case for us at the 9th Circuit),

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has thought about this and has sent me the attached memo suggesting areas that would benefit from a little research. Perhaps you could marshall a little associate and/or paralegal help on the points Paul suggests?

Thank you.

cc.w/encl.: JRJ

CHM\NEVPOWER\REHEAR.MMO