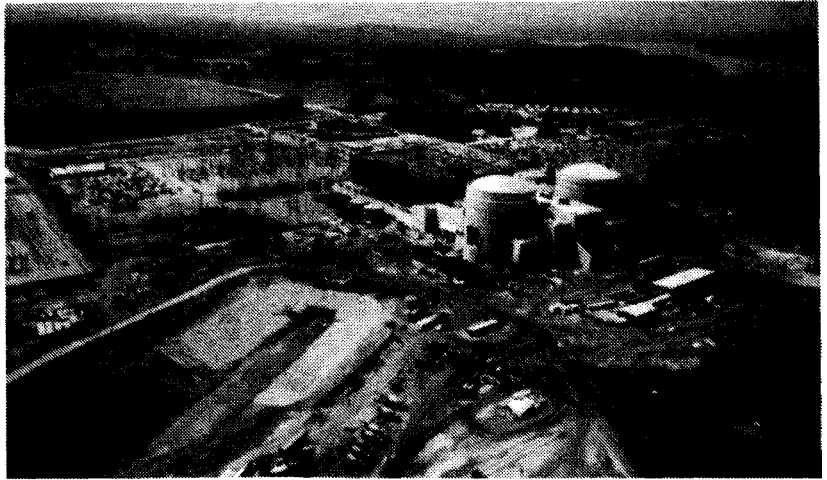


## Judge voids ban of nuclear power

by Sanford Roberts



A TVA nuclear construction site near Chattanooga, Tenn.

Last week, federal Judge Manual Real of the Eastern District of California ruled that the notorious Warren-Alquist Act, passed by the California State Legislature in 1975, is unconstitutional. Warren-Alquist was a de facto ban of the nuclear industry by legislatively mandating that no plants could be built until the federal government demonstrated an absolutely safe method of nuclear waste disposal.

The constitutionality of Warren-Alquist was challenged by the two largest utilities in the state, in the case of *Pacific Gas & Electric v. State Energy Commission*. Judge Real's opinion in this case clears the way for the reemergence of an advanced nuclear industry into that great, green Aquarian laboratory known as the state of California.

In passing Warren-Alquist the California state legislature relied heavily upon a fraudulent states rights interpretation of the Tenth Amendment to the U.S. Constitution. This legal doctrine, associated in the 19th century with the traitorous Chief Justice, Roger B. Taney, seeks to grant to the states a broad array of sovereign powers which can be exercised independent of (and in opposition to) the federal government. Where Taney used the doctrine of states rights to aid and abet the creation of the Confederacy, today's greenie movement seized upon this long-discarded interpretation to cripple and destroy the nuclear industry.

States rights became the battle cry of the antinuclear movement after other legal tricks had failed. For years, they kept the utilities tied up in court with endless procedural challenges to the plant licensing and siting process. In the spring of 1978, the Supreme Court in the historic case of *Consumers Power v. Aeschliman* put an end to this environmentalist nonsense. In this case, the Court speaking through Justice William Rehnquist put the environmentalists on notice that their obstructionism would no longer be tolerated. Rehnquist characterized the typical environmentalist tactic of interminable legal

delay as "positively Kafkaesque." In giving the green light to Consumers Power, the Court implicitly gave a green light to the nuclear industry as a whole. This view was buttressed later in 1978 when the court, in another major nuclear case, upheld the constitutionality of the Price-Anderson Act which allows the nuclear industry to assume limited liability for potential accidents in the interest of fostering the development of atomic power.

The only beacon of hope for the defeated environmentalists came from California where the State Energy Commission, acting under its authority per Warren-Alquist, refused to allow San Diego Gas and Electric to build their planned Sundesert plant. This became a major election battle during the state's 1978 gubernatorial campaign. Attorney General Evelle Younger, the eventual Republican candidate for governor, issued an opinion calling the Energy Commission action unconstitutional. The Energy Commission and its supporters, the most noted of which was the guru Governor Jerry Brown, imported a "constitutional expert" from Harvard, one Laurence Tribe, to retail the appropriate states rights hogwash to the press and public, San Diego G&E eventually folded its plans for Sundesert.

Judge Real's opinion, if upheld on appeal, precludes a repeat of the 1978 debacle. In his ruling, the judge concurs with the utilities that the federal government has preempted the field of nuclear power and the state of California has intruded upon the authority of Congress. Judge Real notes that in the controlling case of *Northern States Power Co.* it is clear that Congress expressly intended that "the federal government retain exclusive control over the construction of nuclear reactors..." In analyzing Warren-Alquist, Judge Real states simply that this "broad renunciation of the exclusivity of the federal government's control of nuclear power development is just too much." The Real decision should be welcomed by the population of California who want to eradicate kookery in state government.