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In the matter of:

COMMITTEE EVIDENTIARY HEARING

THURSDAY, AUGUST 21, 2025

Reported by:
Elise Hicks

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Noemi Gallardo, Associate Member

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Joel Mackay, Rosamond Municipal Advisory Council

Lorelei Oviatt, Director, Kern County Planning and Natural Resources, representing the Kern County Board of Supervisors

Neal Desai, National Parks Conservation Association

Anthony Myers, Safe Haven Kids Leagues of California City, and Safe Haven Kids Lead Community Resources of California

George Hodgkinson, President, Mojave Chamber of Commerce

Richard Chapman, Kern Economic Development Corporation

Drew Mercy, Antelope Valley Economic Development & Growth Enterprise

<u>INDEX</u>		
<u>WITNESSES</u>	<u>Direct</u>	<u>Cross</u>
Miguel Sandoval	29	
<u>BIOLOGICAL RESOURCES PANEL</u>		<u>PAGE</u>
<u>Opening Testimony</u>		
By David Stein		83
By Kate Moss		90
By Chris Huntley		97
By Ileene Anderson		108
<u>Direct Examination</u>	<u>Direct</u>	<u>Cross</u>
	114	162
<u>WATER RESOURCES PANEL</u>		<u>PAGE</u>
<u>Opening Testimony</u>		
By Laurel Lees		185
By Brett Fooks		186
By Erik Malvick		192
<u>Direct Examination</u>	<u>Direct</u>	<u>Cross</u>
	198	---

INDEXCAVERN CONSTRUCTION PANELPAGEOpening Testimony

By Curt Hildebrand	230
By Lucas Thexton	242
By George Wegmann	246
By Jesse Steele	252

Direct ExaminationDirectCross

257

EXHIBITSMarkedRec'dApplicant

1324	40	41
1001 through 1048		41
1050 through 1323		41

Staff

2002 and 2003	42	
2000 through 2003		44

Intervenor

4002 through 4004	47	
4000 through 4004		48

P R O C E E D I N G S

10:01 a.m.

THURSDAY, AUGUST 21, 2025

HEARING OFFICER WEBSTER-HAWKINS: Welcome. The time is 10:01 on August 21st, 2025. This is the California Energy Commission's Evidentiary Hearing for the Willow Rock Energy Storage Center.

(Spanish Interpreter's channel overlays the English channel.)

HEARING OFFICER WEBSTER-HAWKINS: I'm going to take a moment just for a tech check. Okay.

This is the Energy Commission's Evidentiary Hearing for the Willow Rock Energy Storage Center, Docket number 21-AFC-02.

I'm Renee Webster-Hawkins, the Hearing Officer for the Committee that the Energy Commission assigned to oversee this proceeding. I hereby open the evidentiary hearing on the application for certification, or AFC, pursuant to CEC Regulations section 1745, as stated in the notice filed in the docket for this proceeding. The primary purpose of today's evidentiary hearing is to take evidence on the supplemental application filed by the Applicant for the Willow Rock project.

Today's evidentiary hearing is being conducted both in person and remotely with the assigned Committee,

1 representatives of the parties, Staff from the Public
2 Advisor's Office, and the Hearing Officer appearing in
3 person here at the Mojave Air & Space Port, Stuart O. Witt
4 Event Center.

5 Some of the agency representatives and expert
6 witnesses are appearing in person and others will appear
7 remotely. The public is participating both in person and
8 via Zoom.

9 Be advised that all statements being made today
10 are being transcribed by a certified court reporter, and
11 the court transcription will be available in the docket
12 approximately one week following the event.

13 The event is also being recorded via Zoom, and
14 the unofficial Zoom recording will be available on the
15 project webpage as soon as possible following the hearing.

16 We deeply thank the community of Mojave and
17 Rosamond and the Mojave Air & Space Port for hosting the
18 California Energy Commission at this event today.

19 As noted in the pre-hearing slide loop, we are
20 offering Spanish interpretation here in the room and on
21 Zoom. If you are in person and need a headset to hear the
22 interpreter, please visit the interpreter's table to the
23 left side of the dais through the double doors and the
24 interpreter has headsets available for people who need
25 them. If you are on Zoom, you may also listen to the

1 Spanish interpretation.

2 May I kindly ask our interpreter, Aaron Vargas,
3 to provide the instructions in Spanish on how to access the
4 Spanish interpretation in the room and on Zoom?

5 SPANISH INTERPRETER: Yes, Aaron Vargas is
6 present. Okay.

7 (Whereupon the interpreter translates instructions
8 from English to Spanish.)

9 HEARING OFFICER WEBSTER-HAWKINS: As stated in
10 the notice for this event, the evidentiary hearing was
11 scheduled to take place over two days from 10:00 a.m. to
12 5:00 today and tomorrow if needed. However, after
13 discussion with the parties at the prehearing conference
14 and in the order thereafter, the Committee proposes a
15 schedule in which the hearing may reach adjournment this
16 evening. We may extend today's session by an hour or so if
17 adjournment is foreseeable this evening.

18 If we conclude the evidentiary hearing today,
19 there will be no event tomorrow, and the Presiding Member
20 will post a notice of adjournment in the docket and on the
21 front door of this event center tonight.

22 So here is a high-level schedule for today's
23 hearing. We'll begin with introductions and opening
24 remarks by the Committee presiding at today's hearing.
25 Then I will provide a brief summary of the Willow Rock

1 application for certification and the status of this AFC
2 proceeding. I will outline a few of the rules applicable
3 to the evidentiary hearing, and also explain the informal
4 procedure that we will use today for oral testimony.

5 Then we will turn to any evidentiary motions in
6 limine on the exhibits identified, if any, and seek to move
7 documentary evidence into the record.

8 After that, we will take public comment initially
9 as a courtesy to those who would like to participate
10 without waiting until the end of the day. We will also
11 take public comment at the end of today, regardless of
12 whether we conclude the evidentiary hearing or not.

13 After public comment, we will start receiving
14 oral testimony. First, I will call the witness for the
15 Eastern Kern Air Pollution Control District to certify the
16 Final Determination of Compliance. We will then convene a
17 panel of experts on the biological resources topics. That
18 will take us to a lunch break. After lunch, we will
19 convene a panel of experts on the water resources topics
20 that have been identified. And then our last panel, after
21 a short break, will focus on cavern construction.

22 Our last orders of business will be to invite
23 closing statements by the parties, a final round of public
24 comment, the close of the hearing record, and then to
25 discuss any post-hearing briefing desired by the parties.

1 So let's start with introductions.

2 The California Energy Commission is the energy's
3 primary energy policy and planning agency, and it's leading
4 California's goal to achieve 100 percent clean electricity
5 by 2045.

6 The Energy Commission, or CEC, is led by five
7 Commissioners appointed to five-year terms to guide and
8 oversee the policy for the state of California. The
9 proceedings for the Willow Rock AFC are being managed by a
10 Committee of two of our five Commissioners who are
11 appointed by the CEC.

12 So the Committee joining us today on the dais
13 includes Commissioner Andrew McAllister, Presiding Member.
14 His Advisor, Maggie Dang, is appearing remotely with us
15 today. Commissioner Noemi Gallardo is the Associate Member
16 on this Committee, and her Advisor, Jimmy Qaundah, is with
17 us today on the dais. And as I mentioned, I am Renee
18 Webster-Hawkins, the Hearing Officer.

19 So first I'd like to ask the Commissioners if
20 they have any opening remarks as we open up the evidentiary
21 hearing on this application for certification.

22 Commissioner McAllister? No. Do that. Yeah.
23 Yeah.

24 COMMISSIONER MCALLISTER: Great. Thank you,
25 Renee, and thank you and your team for helping put this

1 together and working with all the parties to bring us here
2 today. Really happy to be here today. I feel like this
3 day, this moment, has been a long time in coming, and we're
4 going to hear all about the project forthwith today.

5 But I just wanted to first thank everyone for
6 being here, the Hearing Officer and the team, as I said,
7 the CEC Staff, Public Advisor's Office, as well as the
8 Applicant and the Intervenors and the staff and leadership
9 at Kern County. Thank you for being here and just, you
10 know, holding hands with all of us through this whole
11 process. Just really great to have you at the table and so
12 capable of representing the county and the public in the
13 county.

14 The agencies who we'll hear from, I believe, all
15 of them today, the Eastern Kern APCD, we'll hear from them,
16 the Department of Safety of Dams, Division of Safety of
17 Dams, CDFW, and the county, as I said, the cities of
18 Rosamond and Mojave, just really, there are a lot of
19 partners here that go into this conversation and that we
20 must include in this conversation. That's what the process
21 is for. So hearing everyone involved is primordial.
22 That's how we get to good decisions. They're in the
23 interest of the state of California, the public, and the
24 people who live here.

25 I also want to thank Mojave Air & Space port for

1 hosting us here. Beautiful facility. And, also, it's
2 great not to have any technical issues as we go through
3 these days, these sorts of hearings, so we can really focus
4 on the task at hand. So thanks for a great facility.

5 So I'll be very brief just in my comments. I
6 think, as I said, this has been an extended process, and,
7 you know, a number of things have changed between when we
8 first engaged the AFC. The docket number starts with 21,
9 which is 2021, so we've been doing this for a while.

10 But I just want to really commend everyone for
11 their perseverance, certainly the Applicant, trying to
12 figure out how to make this project as good as it can be,
13 and all the parties that I listed, including particularly
14 the Intervenors, for bringing diverse perspectives and sort
15 of critical perspectives. And that's how, you know, when
16 we're exposed to all of the challenges, you know, in real
17 time, I think it helps projects get better, dealing with
18 all the things that may happen, that are likely to happen,
19 and that we know will happen, and trying to work through
20 those so that we can get to, you know, a feasible outcome
21 and reach a good decision, whether it's to the positive or
22 not.

23 So, you know, as we know in California, we do
24 have a need for a diverse array of supply resources and
25 demand resources to help our electric system really be the

1 backbone that it needs to be for our decarbonization
2 journey, to enhance reliability, to manage costs, and
3 really feed the process of procurement that the utilities
4 all go through to provide the services that all
5 Californians need. And so it's in that broader context,
6 you know, that we're having this discussion around this
7 compressed energy storage project here.

8 So I want to thank my partner on this,
9 Commissioner Gallardo, who brings -- I think we complement
10 each other nicely. I tend to bring a sort of techno-
11 economic approach to my lines of questioning and how I
12 look, the lens through which I look at investments, you
13 know, potential large capital investments in the state like
14 that, like this one. And having a legal mind on the case
15 is very helpful. I'm not an attorney. So I think we kind
16 of cover all the bases together.

17 And also, Jimmy, Commissioner Gallardo's Staff,
18 Jimmy in particular, who's been great on this.

19 And, Ryan, I want to thank you for also being
20 here, making sure that the public has every opportunity to
21 be heard.

22 I'm also going to just make a quick comment in
23 Spanish, because I think it's important that the public
24 know that there are actually members of the Commission, two
25 of us actually you have here on the dais, who speak

1 Spanish. So we are actually really listening. (Speaking
2 Spanish.)

3 Okay, so with that, thanks very much. And I'll
4 pass it to my colleague, Commissioner Gallardo.

5 COMMISSIONER GALLARDO: Buenos dias. Good
6 morning. Thank you so much, gracias, Commissioner
7 McAllister, for your leadership, and also for that
8 commentary. I think it's very important for us to connect
9 with all communities who could be affected by the work that
10 we're doing and the decisions that we're making.

11 So I also wanted to thank Hearing Officer
12 Webster-Hawkins for her leadership, for her organizing, and
13 the entire team.

14 And I'll keep my remarks short as well, but I was
15 out of the country, so I apologize for missing any of the
16 very important activities. But I wanted to make sure that
17 we could proceed with this work and I did not want to delay
18 things. I apologize for missing, but I'm very glad to be
19 here today with you all.

20 And I also wanted to express that there has been
21 a lot of work that has gone into this proceeding. This is
22 an example, the evidence of all the work. This is the
23 Final Staff Assessment. But it is a reflection of all the
24 collaboration that has happened here with the Applicant,
25 Hydrostor, which we really appreciate how collaborative

1 you've been in sharing information, the entire Staff of the
2 California Energy Commission, so really appreciate you for
3 all your diligence, the parties and the Intervenors who
4 have been participating, our peer state agencies, also the
5 Tribal nations, and the local government representatives as
6 well.

7 So just want to make sure that we acknowledge how
8 much goes into this, and we appreciate it. And we'll be
9 making a much more informed decision because of all of the
10 information we have here.

11 So I'll leave it at that. I did want to express
12 my condolences for the loss of Daryl Harrison, but I
13 believe we are going to have a moment again to be able to
14 do that.

15 So I'll leave it there and hand it back to you,
16 Commissioner McAllister, or Hearing Officer Webster-
17 Hawkins.

18 COMMISSIONER MCALLISTER: Thank you. Thank you.
19 Oh. Thank you, Commissioner.

20 And I want to reiterate the thanks to all the
21 parties and Staff and just the immense amount of back and
22 forth and work that, like, we as a Committee don't have to
23 deal with every day, but that we know there's a lot of
24 heavy lifting and digging and assessing and critical
25 thinking going on, and has been for now several years. So

1 really appreciate the Applicant's contribution to that back
2 and forth and the staff.

3 And as all of you know, but maybe for the public,
4 you know, the staff -- the Energy Commission is kind of a
5 unique regulatory body. Much of what we do is very
6 collaborative with our Staff. But the siting proceedings
7 that largely Commissioner Gallardo leads, overall, those
8 require Staff to come to the table, to come to these
9 discussions as a party, separate from the Energy
10 Commissioners. And so I just wanted folks to appreciate
11 that. And Staff takes that role very, very seriously, and,
12 you know, as does the Applicant and all the Intervenors.

13 And so I think the formality of this proceeding
14 is somewhat, you know, limited to our siting cases and a
15 few other cases at the Commission. And so those of you who
16 do routine interactions with the Commission on many fronts
17 will sort of note the difference of the level of formality
18 of a siting application, like the one we're in today.

19 So thanks again for your attention.

20 And back to you, Hearing Officer Webster-Hawkins.

21 HEARING OFFICER WEBSTER-HAWKINS: Thank you,
22 Commissioners.

23 Before I turn to the introduction of the parties
24 and other participants, I do want to cover a bit of
25 housekeeping to ensure that everybody in the room and on

1 Zoom knows who is speaking and can hear what is being said.

2 For the parties and government agencies here,
3 when you are introducing the members of your team, please
4 offer their names, titles, and organization.

5 For the people who are speaking here at the
6 Mojave Air & Space Port, you will see we will have two
7 floating microphones for the parties, witnesses, agency
8 representatives, and public comment to address the
9 Committee. And so we ask for all participants' cooperation
10 in sharing and passing the microphones as needed.

11 Julie has, thank you, graciously offered to
12 assist with moving the microphones around the room between
13 counsel and the witnesses and public commenters. So we ask
14 that you wait until you have a microphone before speaking.
15 If you speak without the microphone, it will not be heard
16 by the Committee, the court reporter, or any other member
17 of the proceeding.

18 For people speaking or participating via Zoom, we
19 do ask that you turn on your camera if you are able. And
20 for everyone's benefit, including for the court reporter
21 and those listening on Zoom, anytime anyone speaks, please
22 state your name clearly each time before speaking. And the
23 first time you speak, please spell your name, first and
24 last name, for the record.

25 I also want to thank Hydrostor for reminding us

1 to take care of our well-being today in light of the
2 announced heat wave here in Mojave. They have wonderfully
3 provided water and other hydration solutions over to the
4 south side of the room. Please help yourself, stay
5 healthy, and if anyone is feeling ill or faint, please ask
6 for assistance earlier rather than later.

7 And so now I would like to hand it back to
8 Commissioner McAllister for another brief announcement.

9 COMMISSIONER MCALLISTER: Okay. Well, thank you,
10 Hearing Officer Webster-Hawkins. I'd just like all of us
11 to take a moment to remember several people, actually, and
12 acknowledge their role in not only all of the ways that we
13 personally have interacted with them, our agencies have
14 interacted with them, but for their contributions just to
15 making the world a better place, more generally.

16 And first is Daryl Harrison, who I want to just
17 acknowledge, on the Applicant team, who passed away
18 tragically, and just want to send our deepest condolences
19 to his friends and family and loved ones who are suffering.

20 Second, I want to acknowledge the passing on July
21 14th of Bob Weisenmiller, who was former Chair of the
22 Energy Commission, all-around superstar in the energy field
23 through half a century, at the origin of the Energy
24 Commission pretty much when it first was formed 50 years
25 ago, worked with Governor Brown in all of his iterations

1 and transformations across, you know, more than, way more
2 than half a century of California politics and development
3 and advancement.

4 I personally am just really, really saddened to
5 lose Bob, and I know many of you knew him and worked with
6 him through the years. We are actually going to dedicate
7 the CEC's 50th anniversary celebration later this year to
8 Bob, so I encourage everyone to come to that or tune into
9 that.

10 Andrew Meredith, the former head of the State
11 Building Trades, also representing a huge number of
12 Californians that have contributed to our economic and just
13 physical well-being and our economic well-being. So I want
14 to acknowledge his passing as well, really a titan in the
15 labor movement.

16 And then finally, just given the site where we
17 find ourselves today, we wanted to acknowledge just all the
18 veterans through the years living and passed along. You
19 know, the military is sort of a bedrock of what it means to
20 be an American and to defend our democracy. And I think,
21 you know, regardless of sort of the political winds and how
22 they swing, you know, state, local, federal, we all, you
23 know, owe a huge debt of gratitude to our veterans who
24 served us, and acknowledging just the role of the Air Force
25 here and all the branches of military.

1 So for all of those people, Americans and
2 Californians, Mr. Harrison, Dr. Weisenmiller, Mr. Meredith,
3 and all our veterans, compatriots, I wanted to have a
4 moment of silence. So if we will, thank you very much.

5 (A moment of silence is observed.)

6 COMMISSIONER MCALLISTER: Okay. Thank you.

7 HEARING OFFICER WEBSTER-HAWKINS: Thank you very
8 much, Commissioner McAllister.

9 I also want to acknowledge that our Public
10 Advisor's Office is represented by Ryan Young, Deputy
11 Public Advisor, and he is here to ensure that everyone in
12 attendance can participate effectively in this Energy
13 Commission event.

14 So now I'm going to turn to the Applicant to
15 please introduce the members of your team. Please state
16 your names, titles, and organizational affiliation.

17 MR. HILDEBRAND: Good morning. My name is Curt
18 Hildebrand, C-U-R-T H-I-L-D-E-B-R-A-N-D. I'm Senior Vice
19 President with Hydrostor. And I will pass the mic to
20 introduce the rest of our team.

21 MR. HARRIS: Good morning. My name is Jeff
22 Harris, J-E-F-F, Harris, H-A-R-R-I-S. I haven't done that
23 for a while. Glad to be here. I'm outside counsel to the
24 project.

25 MS. NEUMYER: Good morning. My name is Samantha

1 Neumeyer, S-A-M-A-N-T-H-A N-E-U-M-Y-E-R, with the Climate
2 Edge Law Firm and outside counsel on behalf of the
3 Applicant.

4 MS. LEES: Good morning. My name is Laurel Lees.
5 That's L-A-U-R-E-L L-E-E-S. I'm the Senior Director of
6 Permitting with the Applicant.

7 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

8 So now I will invite the Energy Commission Staff
9 to introduce themselves, including any members of the team
10 that might be appearing remotely.

11 MR. BABULA: Thank you. Hi, this is Jared
12 Babula, Senior Attorney. And the Legal Team today is Erika
13 Giorgi, Senior Attorney, and Mariah Ponce, Attorney. I'm
14 also with Eric Knight, Manager, Environmental Manager of
15 the Siting, Transmission, and Environmental Protection
16 Division. We have a number of other folks who will be on
17 the Zoom call and/or in the room, and they can introduce
18 themselves when their panels come up.

19 Thank you.

20 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

21 And turning now to the Intervenor Center for
22 Biological Diversity.

23 MS. GRAVES: Good morning. My name is Zeynep
24 Graves, Z-E-Y-N-E-P G-R-A-V-E-S, and I'm counsel for
25 Intervenor Center for Biological Diversity. I'm joined

1 online by my colleague Ileene Anderson, Senior Scientist
2 and California Desert Director for the Center for
3 Biological Diversity.

4 HEARING OFFICER WEBSTER-HAWKINS: Thank you very
5 much.

6 So now that we have introduced all the parties to
7 this proceeding, I would like to take the opportunity to
8 recognize representatives of state and local governments
9 and organizations, as well as California Native American
10 tribes, and other public officials. If each of you are
11 willing and could approach the witness panel and introduce
12 yourselves, we'll make sure that a microphone is provided
13 for you.

14 Thank you, Julie.

15 MS. OVIATT: Thank you very much. I'm Lorelei
16 Oviatt. I'm the Director of Kern County Planning and
17 Natural Resources here on behalf of the Kern County Board
18 of Supervisors. Thank you. It's L-O-R-E-L-E-I O-V, as in
19 victory, -I-A-T-T.

20 Thank you.

21 HEARING OFFICER WEBSTER-HAWKINS: Thank you.
22 That's great.

23 MR. POHLMAN: Good morning. I'm Jeremy Pohlman,
24 J-E-R-E-M-Y P-O-H-L-M-A-N, and I'm a Senior Environmental
25 Scientist Supervisor with the California Department of Fish

1 and Wildlife, and look forward to being here today.

2 Thanks.

3 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

4 MS. GERMINARIO: Good morning. My name is Lena
5 Germinario, L-E-N-A G-E-R-M-I-N-A-R-I-O, and I'm an
6 attorney with the California Department of Fish and
7 Wildlife.

8 Thank you.

9 MR. KLIEWER: Good morning. My name is Derek
10 Kliever, D-E-R-E-K K-L-I-E-W-E-R, and I'm also an attorney
11 with California Department of Fish and Wildlife.

12 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

13 Turning to Zoom, Ryan, are you able to see if
14 there's anyone raising their hand?

15 MR. YOUNG: Thank you.

16 If members of the government or tribal government
17 would like to introduce themselves at this time, please
18 raise your hand using the open-palm icon on the Zoom
19 platform.

20 Hearing Officer, I'm seeing none in the Zoom.
21 Back to you.

22 HEARING OFFICER WEBSTER-HAWKINS: Is your
23 microphone on?

24 MR. YOUNG: Yes.

25 HEARING OFFICER WEBSTER-HAWKINS: Can people hear

1 the Deputy Public Advisor when he speaks? Wonderful.

2 Okay, great.

3 MR. HARRIS: Hearing Officer, it's Jeff Harris
4 over here. I thought I saw a hand up from the East Kern
5 ACPD, the Air Pollution Control District. It's on the
6 screen.

7 MR. YOUNG: Oh, it doesn't turn.

8 HEARING OFFICER WEBSTER-HAWKINS: So I'm hearing
9 that there may be a representative online from the Eastern
10 Kern's Air Pollution Control.

11 COMMISSIONER MCALLISTER: Hearing Officer, it's
12 showing up on the screen up here behind you in the --
13 Miguel Sandoval.

14 HEARING OFFICER WEBSTER-HAWKINS: Yes, he is
15 showing up as having a raised hand. Can you --

16 MR. YOUNG: Miguel Sandoval, we're going to
17 unmute your line. Your line is unmuted. Please introduce
18 yourself.

19 MR. SANDOVAL: Can you guys hear me okay?

20 HEARING OFFICER WEBSTER-HAWKINS: Yes, thank you.

21 MR. SANDOVAL: Oh, good morning, everybody,
22 Miguel Sandoval, M-I-G-U-E-L, Sandoval, S-A-N-D-O-V, as in
23 Victory, -A-L, Air Quality Engineer, Eastern Kern Air
24 Pollution Control District.

25 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

1 So certainly not least, I want to thank the team
2 that has worked tirelessly to make this event happen. As
3 you've been introduced to Mr. Ryan Young, he's with us
4 today from the Office of the Public Advisor, Energy,
5 Equity, and Tribal Affairs at the CEC.

6 The Legal Support Team, Blanca Camberos and
7 Elizabeth Lopez from the Chief Counsel's Office. Thank you
8 for all of your support.

9 Kris Peter from our IT Division, who is
10 responsible for transforming this space into, to the
11 technological wonder that we're working with today.

12 Elise Hicks is our Court Reporter. Thank you.

13 And also, Aaron Vargas Rivas and Giselle Franco
14 are our Spanish Interpreters.

15 So now we are showing the proposed detailed
16 schedule as published in the Committee's order after the
17 prehearing conference. It is shown as a courtesy for
18 everyone joining today. As stated in the order, these
19 times are estimates. Indeed, the times allotted to each of
20 the substantive panels may be generous. All parties,
21 witnesses, and agency representatives are asked to be ready
22 to join as soon as the previous topic or item of business
23 is completed.

24 I know the parties have had a chance to see this
25 in the order filed earlier this week. Do we have any

1 questions about the schedule?

2 Briefly, Applicant, do you have any questions
3 about the schedule?

4 MR. HARRIS: Yeah, we have no questions on the,
5 on the schedule. We do have some comments and corrections
6 that I mentioned we'll make at the appropriate time.

7 HEARING OFFICER WEBSTER-HAWKINS: Okay. Thank
8 you.

9 Staff?

10 MR. BABULA: No questions on the schedule.

11 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

12 And Intervenor?

13 MS. GRAVES: No questions on the schedule.

14 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

15 COMMISSIONER MCALLISTER: One request. Could we
16 turn up the volume of that mic a little bit?

17 HEARING OFFICER WEBSTER-HAWKINS: Right.

18 COMMISSIONER MCALLISTER: We're having a hard
19 time hearing.

20 HEARING OFFICER WEBSTER-HAWKINS: And do, if you
21 can, when you're using the mic, use it like you're singing
22 right into the mic. Thank you.

23 Okay, what I'd like to do right now is ask Mr.
24 Young from the Public Advisor's Office to describe to
25 everyone in the room and on zoom, how they can sign up for

1 public comment periods today.

2 So to you, Mr. Young.

3 MR. YOUNG: Good morning. And thank you for
4 joining us today. Again, I'm Ryan Young, The Energy
5 Commission's Deputy Public Advisor. I wanted to mention at
6 the beginning of our time here today, a few instructions
7 for later in the day, which I will also repeat at that
8 time.

9 We ask everyone that would like to make a comment
10 to turn in their blue card as soon as possible to the
11 Public Advisor's table, it looks like this and I've placed
12 stacks of them around the room. If you represent a
13 governmental entity, local state, federal legislative or
14 California native American tribe, please indicate that on
15 your blue card.

16 The public comment period will be an opportunity
17 for attendees to give comments regarding these proceedings.
18 If you want to make remarks on behalf of a government
19 entity or Native American Tribe, your comment will be taken
20 first and without a timer. Otherwise comments are limited
21 to three minutes and one speaker for organization.

22 For those of you online, you're going to use the
23 raise-hand feature that looks like an open palm to alert us
24 that you'd like to make comment. For those of you joining
25 by phone, you're going to press star nine to raise your

1 hand and then press star six to mute and unmute.

2 Again, I'll be providing a reminder about these
3 instructions at the appropriate time, but for now, back to
4 you Hearing Officer.

5 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

6 So now to set the stage for today's hearing, I
7 will briefly describe the application seeking certification
8 of the Willow Rock Energy Storage Center.

9 On December 1st, 2021, Gen A-CAES LLC filed its
10 original application to construct and operate the Willow
11 Rock Energy Storage Center. The project Applicant started
12 filing documents for a supplemental AFC on March 1st, 2024,
13 which reconfigured and relocated the proposed project.

14 As proposed in the supplemental AFC, the project
15 would be located on an 88.6-acre portion of an
16 approximately 112-acre parcel North of Dawn Road between
17 State Route 14 and Sierra Highway within unincorporated
18 Kern County, approximately four miles North of Rosamond,
19 California.

20 Willow Rock would be a nominal 520 megawatt
21 gross, or 500 megawatt net, and 4,160 megawatt hour gross,
22 or 4,000 megawatt hour net, compressed air energy storage
23 facility using Hydrostor's A-CAES technology. Key features
24 of the system include a 577-acre-foot hydrostatically
25 compensating surface reservoir with liner and technology

1 and related accessories, eight electric motor driven air
2 compressors configured in four trains, four air powered
3 turbine generators with 100 foot tall air vent stacks,
4 thermal storage systems including six 100-foot-tall hot
5 water spherical storage tanks, a 21.5-acre interlocking
6 shape floating cover over the reservoir, a 900,000 cubic
7 yard underground compressed air storage cavern and all
8 associated operational and safety equipment and piping.

9 Excavated rock from the cavern may be stored on
10 site in an architectural berm or may be trucked off site to
11 a rock processing facility.

12 Energy stored at Willow Rock would be delivered
13 to the Southern California Edison Whirlwind Substation
14 located Southwest of the site at the intersection of 170th
15 Street West and Rosamond Boulevard via a new approximately
16 19-mile, 230-kilovolt generation, or gen-tie. The
17 application describes a preferred route for the gen-tie
18 line with up to eight options depending on feasibility of
19 certain segments.

20 The Willow Rock Energy Storage Center is planned
21 to operate on a 24-hour basis, 365 days a year with an
22 approximately 50-year lifespan.

23 And so now to provide the status of this
24 proceeding as noted, Gen A-CAES LLC filed its original
25 application on December 1st, 2021. And after requesting a

1 temporary suspension of the proceeding, the Applicant filed
2 a supplemental application beginning on March 1st, 2024,
3 which was verified as complete by the Energy Commission's
4 executive director on July 16th, 2024.

5 After a discovery phase, CEC Staff filed its
6 Preliminary Staff Assessment on April 29th, 2025. Staff
7 conducted a public workshop on the Preliminary Staff
8 Assessment on June 5th, 2025 here in Mojave, and accepted
9 public comment on the Preliminary Staff Assessment through
10 June 16th of 2025.

11 On July 16th, 2025 Staff filed its Final Staff
12 Assessment or FSA. Staff has identified its FSA as its
13 formal opening testimony for the evidentiary hearing. On

14 July 17th, 2025 the Committee filed notice of the
15 prehearing conference and this evidentiary hearing. On
16 August 15th, the Committee held its prehearing conference.
17 And now, at this evidentiary hearing, the Committee will
18 formally accept evidence and testimony from the Applicant
19 and parties into the formal hearing record.

20 After the evidentiary hearing, the Committee will
21 take the hearing record and use it to write a report called
22 the Presiding Member's Proposed Decision, which is a
23 recommendation to the full five-member Commission about
24 whether to certify or reject the proposed project and what
25 Conditions of Certification might be appropriate for the

1 construction and operation of the power plant. This
2 written document will contain the analysis and conclusions
3 of the Committee that it has made about the factual and
4 legal questions presented during the evidentiary hearings.
5 The Committee will provide a 30-day public comment period
6 on the proposed decision.

7 And then ultimately, the Energy Commission will
8 review the presiding member's proposed decision and public
9 comment, and then vote at a public business meeting on a
10 final decision about whether to approve or deny the
11 certification of the proposed project. If the Energy
12 Commission grants an application for certification, the
13 project Applicant may begin construction and operation of
14 the power plant subject to the adopted Conditions of
15 Certification, which can include mitigation measures and
16 other requirements.

17 So as set forth in the July 17th notice, and as
18 discussed at the prehearing conference, this evidentiary
19 hearing is being conducted using an informal hearing
20 procedure permitted by Government Code section 11445.10 and
21 CEC Regulations section 1210.

22 The general order of presentation for each task
23 or panel today will be as follows: the Committee, the
24 Applicant, the Staff, and then the Center for Biological
25 Diversity. The Committee will consider allowing a further

1 round of questions if a party wants to rebut something or
2 clarify something that was raised for the first time after
3 the witnesses have testified. And then the Committee may
4 ask final questions.

5 When we call witnesses or convene a panel, we
6 will convene all of the witnesses on a single topic or
7 subtopic together and swear them in together, calling them
8 up to the tables collectively. And then we will invite any
9 agency representative to join the group and also be
10 available for questions from the Committee.

11 Regarding direct examination, we will deem all
12 parties opening and reply testimony as their direct
13 examination if admitted into evidence. There's no need to
14 discuss experts resumes if we have them in writing and if
15 no party objects to any witness as an expert. When
16 witnesses testify, again, please have them identify
17 themselves by their name, title, and employer, spelling
18 their name their first time that they speak.

19 If any party has an objection to a witness's
20 qualifications, please be prepared to state the objection
21 and the basis. Any objections will be decided today during
22 the hearing or taken under submission.

23 In the informal procedure, instead of back and
24 forth questioning for direct examination, we have asked
25 that the experts for each party prepare an opening

1 statement. Counsel for the parties will have a chance to
2 ask questions of their own witnesses, along with the other
3 witnesses, after the Committee leads the questions of the
4 panel members.

5 As discussed at the prehearing conference, the
6 agency representatives are appearing at the invitation of
7 the Committee to provide information about their agency's
8 responsibilities and review of this project under their
9 subject matter expertise. They are not here to testify nor
10 to be cross-examined by the parties.

11 The Committee and Hearing Officer will lead all
12 questions posed to our sister agencies. If Counsel for any
13 party has an informational question of an agency
14 representative, please frame the question to the Committee
15 or Hearing Officer, and then we will reframe the question
16 if appropriate to the agency representative.

17 As set forth in the July 17th notice, and as
18 discussed at the prehearing conference, you may only use a
19 document that has been previously identified as an exhibit
20 when questioning a witness.

21 If you're going to ask a witness questions about
22 an exhibit, before you start, please let us know which
23 exhibit number and page number if appropriate, so we can
24 put it on the screen. When asking your questions, please
25 start by identifying the document by exhibit number and

1 identify the specific page that you will be referencing.
2 And during that time, please give us time for support Staff
3 to bring up the exhibits and make sure it's in view for
4 everyone in the proceeding before commencing with your
5 questioning.

6 If anyone has an objection to a line of
7 questioning, please allow the party representative to
8 finish their question before making an objection. And
9 allow each witness to finish answering before moving on to
10 the next question.

11 For the benefit of the court reporter and the
12 transcript, please remind your witnesses to identify
13 themselves each time they speak and have only one witness
14 speak at a time.

15 At the conclusion of testimony, we will allow the
16 parties to make a closing statement of up to 10 minutes,
17 starting with Staff, then Center for Biological Diversity,
18 and finally the Applicant.

19 So next we're going to move to the motions on
20 exhibits. I'm going to ask Ms. Lopez if she can please
21 display the exhibit list thus far?

22 This is the beginning of it. It's rather
23 lengthy. Ms. Lopez is scrolling through it for the benefit
24 of everybody in the room, and the parties and the public
25 have access to see this list on their device as well.

1 So first, as provided here on this list,
2 Applicant identified Exhibits 1000 through 1323, skipping
3 1049.

4 Ms. Neumyer or Mr. Harris, do you have a motion
5 regarding your exhibits?

6 MR. HARRIS: I do, but I want to ask a question
7 first.

8 We have one additional exhibit, which was the
9 resume of Mr. Mohanty, which would be next in order at
10 number 1324. That document has been pre-filed. There's a
11 TN -- sorry, just making sure -- there's a TN number
12 associated with that, if my screen then saves, it will tell
13 me.

14 HEARING OFFICER WEBSTER-HAWKINS: Sir, can you
15 please provide the TN number?

16 MR. HARRIS: Correct. Yeah, 265694.

17 COMMISSIONER MCALLISTER: You submitted that to
18 the record earlier this week as well, right?

19 MR. HARRIS: Correct. It has been docketed and
20 assigned the TN number.

21 COMMISSIONER MCALLISTER: Great. Thank you.

22 HEARING OFFICER WEBSTER-HAWKINS: Correct.

23 MR. HARRIS: Thank you.

24 HEARING OFFICER WEBSTER-HAWKINS: So before we go
25 to a motion regarding all of your exhibits, I want to ask

1 the parties if there's any objection to the Applicant
2 identifying TN265694 as Exhibit 1324.

3 Staff?

4 MR. BABULA: No objection.

5 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

6 Intervenor?

7 MS. GRAVES: No objection.

8 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

9 So with that, we will identify TN265694 as
10 Exhibit 1324.

11 (Applicant Exhibit 1324 is marked.)

12 HEARING OFFICER WEBSTER-HAWKINS: Having taken
13 care of that, do you have a motion for all of your
14 exhibits, Mr. Harris?

15 MR. HARRIS: Hey, we're being very good about
16 saving battery here. I do have a motion. I'd like to move
17 in the exhibits you've identified plus the additional
18 exhibit today.

19 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

20 Again, Staff, do you have any objections?

21 MR. BABULA: No objections.

22 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

23 Intervenor?

24 MS. GRAVES: No objections.

25 HEARING OFFICER WEBSTER-HAWKINS: Thank you all.

1 And so with that, we will admit Applicant's
2 Exhibits 1000 through 1324, skipping 1049, into evidence.

3 (Applicant Exhibits 1000 through 1048 and 1050 through
4 1324 are admitted.)

5 HEARING OFFICER WEBSTER-HAWKINS: So next, Staff
6 identified Exhibits 2000 and 2001. And Mr. Babula, Ms.
7 Giorgi, before I ask for a motion, I'd like to also clarify
8 your evidence as well.

9 On August 6th, Staff submitted rebuttal
10 testimony. And in that written testimony, it references
11 technical memorandum regarding CEC Willow Rock measure
12 results at NSA-7. It's docketed at TN265264. However, the
13 technical memorandum itself was not identified in your
14 initial exhibit list.

15 Additionally, this week you filed supplemental
16 testimony and edits to select Conditions of Certification,
17 TN265687. Do you intend to identify these exhibits and
18 move them into evidence?

19 MR. BABULA: Yeah, let's -- so for the technical
20 memorandum, that could be -- so the FSA is 2000 --

21 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

22 MR. BABULA: -- Rebuttal Testimony, 2001,
23 Technical Memorandum, we'll make that 2002.

24 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

25 MR. BABULA: And then the Staff Supplemental

1 Testimony and Edits to Select Conditions of Certification,
2 which is TN265687, can be Exhibit 2003.

3 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

4 MR. BABULA: And so I'd make a motion to move all
5 those into the record.

6 HEARING OFFICER WEBSTER-HAWKINS: First, we'll
7 ask if there's any objections to identifying them as
8 exhibits from the other parties, the Applicant, do you have
9 any objection?

10 MR. HARRIS: No objection to the identification.
11 We obviously reserve the right to comment on the substance
12 of the edits.

13 HEARING OFFICER WEBSTER-HAWKINS: Yes. Yes.

14 MR. HARRIS: Okay. Thank you. Yes, no
15 objection.

16 HEARING OFFICER WEBSTER-HAWKINS: And Intervenor?

17 MS. GRAVES: No objection.

18 HEARING OFFICER WEBSTER-HAWKINS: Okay. And then
19 thank you for that. They will be identified as such, as
20 265264 will be Exhibit 2002, 265687 will be Exhibit 2003.

21 (Staff Exhibits 2002 and 2003 are marked.)

22 HEARING OFFICER WEBSTER-HAWKINS: I also wanted
23 to ask Staff about the status of the single compendium of
24 Conditions of Certification, which you graciously docketed
25 per the Committee's request at TN265702. Did you have an

1 opinion about whether that should also be identified as an
2 exhibit and moved into evidence, or is that more of a
3 reference for the parties?

4 MR. BABULA: That was more of a reference because
5 it's still in flux. And I think there's potentially some
6 changes that will come out of today.

7 HEARING OFFICER WEBSTER-HAWKINS: Let me ask, are
8 there any changes in that document which are not reflected
9 in your supplemental CoCs that we just identified as an
10 exhibit?

11 MR. BABULA: It should be the same. It's a long
12 document and --

13 HEARING OFFICER WEBSTER-HAWKINS: Okay.

14 MR. BABULA: -- there's a lot.

15 HEARING OFFICER WEBSTER-HAWKINS: Right. Okay.

16 MR. BABULA: But we tried to make sure they
17 synced up.

18 HEARING OFFICER WEBSTER-HAWKINS: At this point,
19 we will not identify the compendium as an exhibit. If you
20 feel the need to through the proceeding, please let us
21 know.

22 Yes, so at the end of today, when we talk about,
23 briefing schedules, we'll also talk about any supplemental
24 filings into the record, like a final compendium, you know,
25 if appropriate.

1 MR. BABULA: That will work. And generally what
2 happens is once we get agreement and finalized, Staff will
3 provide the Committee with a word version so you can
4 incorporate that into your decision.

5 HEARING OFFICER WEBSTER-HAWKINS: Thank you so
6 much.

7 So with that, do you have a motion about moving
8 the exhibits you've identified into the record?

9 MR. BABULA: Yes. I move to put the FSA, Exhibit
10 2000, the Rebuttal Testimony, Exhibit 2001, that Technical
11 Report, 2002, and this Staff's Supplemental Testimony and
12 Edits to Select Conditions as 2003.

13 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

14 And are there any objections to moving those into
15 the evidence, Applicant?

16 MR. HARRIS: No objections.

17 HEARING OFFICER WEBSTER-HAWKINS: Thank you.
18 Intervenor?

19 MS. GRAVES: No objections.

20 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

21 So with that, so moved. Those exhibits are all
22 now admitted into the record.

23 (Staff Exhibits 2000 through 2003 are admitted.)

24 HEARING OFFICER WEBSTER-HAWKINS: So turning to
25 the Center for Biological Diversity, you identified

1 Exhibits 4000 and 4001. And Ms. Graves, before I ask for a
2 motion to move your exhibits into evidence, I would like to
3 clarify your evidence.

4 In your opening testimony, Ms. Anderson
5 identifies and lists as references the California native
6 plant society, Yucca Brevifolia Woodland Alliance, the
7 Joshua tree woodland docketed as 265164.

8 You also referenced and docketed the California
9 Department of Fish and Wildlife, California Natural
10 Community List, and that's docketed at TN265165.

11 And you also referenced and docketed the
12 California Department of Fish and Wildlife, Western Joshua
13 Tree Conservation Plan, Volume 1, the June 2025 version,
14 and that's docketed at TN265166.

15 However, none of these documents were identified
16 as exhibits separate from Ms. Anderson's testimony. And
17 that was provided in the instructions in the hearing notice
18 to make sure that all documents relied upon were also
19 identified as exhibits.

20 What was your intention in referencing those
21 documents and would you have an interest in identifying
22 them as exhibits?

23 MS. GRAVES: Yeah, I think that the matters that
24 Ms. Anderson opined on that were referenced, most if not
25 all of that subject matter are covered by other materials

1 that are already in evidence, particularly the FSA.

2 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

3 MS. GRAVES: So I don't think it's critical to
4 separately move those into evidence.

5 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

6 MS. GRAVES: That said, for a clean record, and
7 if there's no objections from the other parties, maybe we
8 will make a motion to identify the four documents, so
9 starting with TN265164, TN265165, and TN265166 -- sorry,
10 three documents --

11 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

12 MS. GRAVES: -- and mark those as exhibits
13 starting with number 4002 --

14 HEARING OFFICER WEBSTER-HAWKINS: Yes. Yeah.

15 MS. GRAVES: -- through, I guess, 4.

16 HEARING OFFICER WEBSTER-HAWKINS: Thank you for
17 that motion.

18 Are there any objections?

19 Applicant, do you have any objections?

20 MR. HARRIS: No objection, but clarification. I
21 think those are all agency documents; is that correct? One
22 is the California Native Plant Society?

23 MS. GRAVES: Correct. The California Native
24 Plant Society Alliance document wouldn't be an agency
25 record.

1 MR. HARRIS: So I assume we're moving those in
2 the numbers and not for the truth of the matter asserted in
3 there --

4 HEARING OFFICER WEBSTER-HAWKINS: Right.

5 MR. HARRIS: -- but just to have them for
6 reference. And on that basis, we'd have no objection.

7 HEARING OFFICER WEBSTER-HAWKINS: Thank you.
8 Staff?

9 MR. BABULA: I concur with Mr. Harris. Those are
10 references and we can move them in for purposes of being
11 references. Thank you.

12 HEARING OFFICER WEBSTER-HAWKINS: Thank you very
13 much.

14 So, so moved as enumerated by Ms. Graves.

15 (Intervenor Exhibits 4002 through 4004 are marked.)

16 HEARING OFFICER WEBSTER-HAWKINS: So having
17 identified those documents as exhibits as well for the
18 Intervenor, do you have a motion with regards to moving
19 your identified exhibits into the record?

20 MS. GRAVES: Yes, we'd like to move to enter into
21 evidence Exhibits 4000 through 4004.

22 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

23 Applicant, do you have any objections to that
24 motion?

25 MR. HARRIS: A clarifying question.

1 HEARING OFFICER WEBSTER-HAWKINS: Yes.

2 MR. HARRIS: I thought there were five, actually.
3 I thought there was an opening and a rebuttal testimony and
4 then three references. So it's five?

5 HEARING OFFICER WEBSTER-HAWKINS: That's correct.

6 MR. HARRIS: Okay. Maybe I just can't --

7 HEARING OFFICER WEBSTER-HAWKINS: It would be
8 4000 through 4004.

9 MR. HARRIS: Okay. Great. All right. Thank
10 you. I appreciate the clarification there. I have no
11 objections on them.

12 HEARING OFFICER WEBSTER-HAWKINS: Thank you.
13 Staff?

14 MR. BABULA: No objections.

15 HEARING OFFICER WEBSTER-HAWKINS: Great. Thank
16 you.

17 (Intervenor Exhibits 4000 through 4004 are admitted.)

18 HEARING OFFICER WEBSTER-HAWKINS: Wonderful, we
19 have moved all of the known documents and exhibits into the
20 record.

21 And with that we will turn to public comment.

22 Mr. Young, will you please facilitate?

23 MR. YOUNG: Thank you.

24 The CEC now welcomes public comment. As a
25 reminder, all comments will become part of the public

1 record.

2 Now for the instructions. Now, this public
3 comment period, again, is an opportunity for attendees to
4 give comments regarding this proceeding. If you want to
5 make comments on behalf of a California Native American
6 tribe or government entity, your comment will be taken
7 first without a timer. Otherwise, comments are limited to
8 three minutes and one speaker per organization. We'll show
9 a timer on the screen and we'll alert you when your time is
10 up. All comments will become part of the public record.

11 Again, we will start with commenters joining us
12 in person and then transition to online and phone
13 attendees. So if you're here at the on location please
14 fill out and turn in a blue card now to myself. (Speaking
15 Spanish.)

16 I would like to call Rick Webb. Please approach
17 the witness table here.

18 If someone could provide him a microphone?

19 Rick, please approach the podium and spell your
20 name for the record. You're invited to also share your
21 affiliation and position on the project if any, and then
22 you may.

23 MR. WEBB: Thank you. Good morning. My name is
24 Rick Webb, Rick, R-I-C-K, last name is Webb, W-E-B-B. Good
25 morning all.

1 Thank you folks for coming down. The weather,
2 can't do much about that but enjoy it as you can.

3 I come here. I'm a director at the Rosamond
4 Community Services District. I sit as the director there.

5 What I'd like to say about Hydrostor from the day
6 they bought the project to our attention they had one site
7 they had identified and it didn't meet their particular
8 needs, and they changed to the other site but they never
9 miss a step in keeping us informed. Transparency is an
10 understatement for this particular company. I made some
11 notes. I may not get through all of them but the company's
12 been good by the communities as a whole. No community in
13 Rosamond, Cal City, Mojave has not been touched by the
14 warmth and the professionalism of them.

15 The thing I'm looking forward to with this here,
16 they're going to bring jobs to the community. The small
17 businesses benefit from it. But besides the small
18 businesses ,I think with Hydrostor being in this community,
19 she mentioned 50 years, that tells other companies
20 permanency. That brings other activity, other things.

21 Our community is growing. We have a lot of homes
22 coming and whatnot, and I support it tenfold, the growth.
23 Small businesses are going to get the benefits of it, but I
24 think it's going to spur excitement with other businesses
25 and other projects to come here.

1 In the 30 years I've been here, people have come,
2 gone, they've made promises, but Hydrostor has literally
3 left their promises at the table, be it with helping with
4 projects and the fact they've kept us involved with - I
5 mean informed. And I just think it's a good way for the
6 community, the region -- this is a regional project. This
7 is not a community project, this is a regional project.
8 And with our energies being what they are daily on my
9 phone, I get -- we could get a brownout, brownouts, whatnot
10 or whatever. This is just another way to assure.

11 And speaking as a director of the Rosamond
12 Community Services District, we submitted a letter of
13 support to the project, our entire board. And as a
14 resident myself, and just as a person that's seen this
15 region get promises that weren't fulfilled, I think
16 Hydrostor has more than fulfilled their promises as far as
17 bringing a project that's viable. And the best part about
18 it, I have grandchildren, it's clean. It's not dirty.
19 It's something that's clean.

20 So thank you very much for giving me the
21 opportunity, and I support Hydrostor and I look forward to
22 you folks, you know, looking at the entire project and
23 giving them your support also.

24 Thank you.

25 COMMISSIONER MCALLISTER: Thanks for being here

1 and providing that linkage to the local community. It's
2 really important. Thank you.

3 MR. WEBB: Yeah, and they're important -- excuse
4 me. And they're important to the local community. Their
5 first rate.

6 Thank you folks.

7 MR. YOUNG: Thank you. I'm now going to ask Joel
8 Mackay to approach. Please spell your name for the
9 records.

10 MR. MACKAY: First name Joel, J-O-E-L, last name
11 Mackay, M-A-C-K-A-Y. I am on the Rosamond Municipal
12 Advisory Council.

13 I've been in Antelope Valley over 50 years,
14 graduated school here in Rosamond, long-time community
15 member. From the inception, Curt and his team, like Rick
16 stated, transparency, second to none. They've shown up at
17 our meetings, kept us informed, endeared themselves in the
18 community. They're part of the community. Our Christmas
19 events, like Rick said, Cal City, Mojave, the support
20 they've shown those communities, our communities, donating
21 so children can get toys and clothes and stuff like that,
22 anything the community needs, they've been there for the
23 community.

24 We support. There's overwhelming support in our
25 community. Not only the benefits from the county of them

1 are going to be providing fire equipment that's needed out
2 here in east for this project, the tax dollars that's going
3 to come out here to the county, the catalyst, we're hoping
4 that with them being out here, them showing with their
5 project out here, it's going to bring other projects out
6 here and other businesses out here to east current.

7 I support it. I think overwhelming community
8 support and Rosamond supports the project. And we're
9 hoping that you guys will see the need and the benefits to
10 our community and vote to allow this project to continue.

11 COMMISSIONER MCALLISTER: Thanks for being here
12 and for all your engagement.

13 MR. YOUNG: Thank you.

14 I'd next like to welcome Lorelei Oviatt.

15 MS. OVIATT: Thank you. I am Lorelei Oviatt,
16 L-O-R-E-L-E-I O-V-I-A-T-T, Director of Kern County Planning
17 and Natural Resources. I'm here on behalf of the Kern
18 County Board of Supervisors. Thank you for this
19 opportunity.

20 First, we appreciate that the conditions that the
21 Board of Supervisors had provided in the original letter as
22 the conditional support, those conditions have been
23 included in the staff assessment. And at this time, I'm
24 authorized to tell you that the Kern County Board of
25 Supervisors supports this project and would like to see

1 your -- the Commission certify this project.

2 Second, we would, however, like to comment on the
3 issue that you have on this evidentiary hearing today
4 regarding the habitat conservation mitigation ratios. I
5 personally have led the team that has permitted 170,000
6 acres of solar and wind with CDFW, all done with
7 Environmental Impact Reports. We have never seen this
8 calculation done this way. We usually have an umbrella
9 species and then other species are under it such that the
10 calculations are done that way for how much land. I'm
11 being simplistic. There are biologists here and CDFW and
12 attorneys that are going to get into the details.

13 Kern County's concern is we are processing 6,000
14 megawatts of solar projects right now, that's over 42,000
15 acres, along with battery storage of 7,000 megawatts. If
16 we used this methodology, there would not be enough habitat
17 land to mitigate. And we believe it's just an error. We
18 have great confidence in CDFW and the work that they do,
19 but somehow this particular CEC process appears to have
20 gotten some sort of complicated conversation about how much
21 land.

22 So Kern County, because we are interested in not
23 creating this precedent, we appreciate that you're going to
24 dig into this and we ask that you thoughtfully work your
25 way through it. The Applicant is not always right, and

1 CDFW has a very, very big workload. So would just -- we
2 just appreciate that you're going to relook at this because
3 we believe it would create a precedence if you adopt this
4 methodology.

5 Lastly, we would like to express, Kern County
6 would like to express its appreciation for the California
7 Energy Commission and Governor Newsom's support of a Kern
8 County economy. For many years, we're very proud that our
9 last project put the City of Los Angeles at 60 percent
10 renewable energy. That puts us at 70 percent of the
11 renewable energy in California, it's produced in Kern
12 County, and 80 percent of the lithium batteries are here
13 and we do keep the lights on. But we also are proud that
14 Governor Newsom is now working to support other aspects of
15 our economy.

16 And we just really also appreciate that you came
17 to the actual place where these things happen. You're
18 welcome to come anytime. And I'd like to just make sure
19 everybody knows that when you look out the door, you see
20 the wind, the solar that's under -- there's probably 19,000
21 megawatts of projects, and this is what the California
22 Energy Commission does.

23 Thank you so much.

24 COMMISSIONER MCALLISTER: Thanks, Ms. Oviatt,
25 just for all your partnership, not just on this project but

1 across the board. You know, Kern County is kind of ground
2 zero for our energy transition and we -- I mean, the
3 governor knows that and I think we all appreciate that. So
4 we don't just come down here when we need support from the
5 Rules Committee to get confirmed. You know, we know what a
6 great partner you and your colleagues at the county are, so
7 thanks very much.

8 COMMISSIONER GALLARDO: And I'll just add really
9 quickly that you've been a role model for other governments
10 and we've also appreciated how you've been willing to share
11 your insight, lessons learned, best practices, and all of
12 your insight with other local governments as well, aside
13 from the state. So, thank you, Lorelei.

14 MR. YOUNG: I'm now going to turn to those on
15 Zoom. Governments and tribal commenters, please raise your
16 hand using the raise-hand feature that looks like an open
17 palm. For those of you joining by phone, press star nine
18 to raise your hand and then press star six to mute and
19 unmute.

20 So that concludes public comment for government
21 and tribal commenters.

22 I'm now going to turn to other interested members
23 of the public. Again, please let us know if you'd like to
24 make a comment by submitting a blue card if you're in the
25 room.

1 It looks like we may have one governmental
2 commenter.

3 Neal Desai, press star six to mute and unmute.
4 You should be able to deliver your comment. Neal Desai?

5 MR. DESAI: I was raising my hand for the public
6 or interested commenter, so I'll wait.

7 MR. YOUNG: Thank you. We'll return to public
8 comments from the members of the public in just a moment.

9 So here in the room, I'd like to welcome Dr.
10 David Smith. Please approach and spell your name for the
11 record. Okay, we can return to Mr. Smith.

12 Anthony Myers, please spell your name for the
13 record and provide your comment. Thank you.

14 MR. MYERS: My name is Anthony Myers,
15 A-N-T-H-O-N-Y M-Y-E-R-S. I am the Co-founder of Safe Haven
16 Kids Leagues of California City, and Safe Haven Kids Lead
17 Community Resources of California, and I am speaking for
18 this amazing company, Amazing. Hydrostor has been a
19 sponsor of Safe Haven for the last two years, and we're
20 doing nothing but more work because of them. I truly thank
21 them. I truly appreciate them. Our organization
22 appreciates them, our Staff, and our community.

23 We came onboard with Hydrostor into their amazing
24 family, helping out. They helped us out with the turkey
25 giveaway, turkeys and ham. And a couple years ago, we

1 started off small, and since being with them, we have
2 exceeded tremendously in helping families in need.

3 Our organization is basically, we help families
4 in need. We're a non-profit organization based in
5 California City, and we do just that with food insecurity,
6 events, et cetera. Hydrostor has been a major sponsor on
7 there. We just got through with our backpack giveaway,
8 annual backpack giveaway that we did in California City for
9 the East Kern community. And they came onboard with us.
10 Never, when I talked to Curt, Laurel, Russell, Natalie,
11 they never -- no, it's how can we exceed? How can we do
12 more for this community? How can we push this through?

13 At our backpack giveaway, we gave out over 526
14 backpacks to that community with the help of Hydrostor,
15 this amazing company. They came on, they suited up, they
16 showed up like they always do. And I'm standing in that
17 backpack giveaway, and I'm looking around at all these
18 kids, and I'm looking at the Hydrostor booths among others,
19 and I'm saying, wow, I mean, they're really putting this
20 effort into our community, and they really want to help our
21 community. Wow, this is crazy.

22 And I thought through this on this. They're just
23 not helping this community. They're just not there just to
24 give to the community. They were helping their future
25 employees, the kids of our community, the future. They

1 were making sure they had all the school supplies to get to
2 school, to get the education they need to become employees
3 of this amazing company.

4 And we thank them. Thank you. Thank you. We
5 appreciate you so much.

6 And we've stepped up even more this year. We had
7 a great conversation at the beginning of the year. They're
8 sponsoring our turkey giveaway to help families in need
9 with turkeys and hams and full food boxes. They want to
10 exceed the numbers that we did last year. We were at 302
11 last year. They want higher. Our job at Safe Haven with
12 our amazing team is to give them what they want, to
13 continue to help and feed families and give back to the
14 families of this community because it's important. They
15 believe. They have allowed us into their amazing company,
16 into their amazing mission, and they have wrapped their
17 arms around Safe Haven, and we are truly, truly grateful.
18 Truly grateful.

19 I thank you all for your service. I thank this
20 amazing company for being here in East Kern and
21 representing our amazing communities, and we look forward
22 to doing more and more work with you all.

23 Thank you. Give 'em hand, y'all. Give 'em
24 hand.

25 COMMISSIONER MCALLISTER: Thanks for being here

1 today. I remember you from the last hearing we had down
2 here, and just it's really great to see that continuity and
3 that ongoing support, so appreciate your engagement.

4 COMMISSIONER GALLARDO: Yeah.

5 COMMISSIONER MCALLISTER: And all you do for your
6 community. Yeah. Thank you.

7 COMMISSIONER GALLARDO: Yeah, I was going to say,
8 we need to give you a hand for all you're doing in the
9 community, so bravo.

10 MR. YOUNG: Thank you.

11 I'd next like to invite George Hodgkinson to
12 approach. Please spell your name for the record.

13 MR. HODGKINSON: Good morning. I think it's
14 still good morning. My name is George Hodgkinson. First
15 name G-E-O-R-G-E. Last name H-O-D-G-K-I-N-S-O-N.

16 I reflect the same comments I've heard before
17 from public comment, especially the last gentleman. He's
18 been in a lot of the meetings.

19 At present, I'm President of Mojave Chamber of
20 Commerce. I'm a secretary of a local Elks Lodge. I was 18
21 years on our local school board for Mojave in California
22 City. Ten years, I served as a Commissioner for Parks and
23 Recreation in Kern County. My work experience, 32 years, I
24 worked in R&D at Rio Tinto, U.S. Borax.

25 I'm a lifetime member in Mojave. I remember the

1 first time at this location, used to be a swimming pool
2 years ago operated by the military when there was a Marine
3 base, and they tried to force me to jump off the end when I
4 was six years old. I wouldn't go for it. And so I went
5 down the other end, the shallow inn. But enough said.

6 Lifelong member of Mojave. Went to school from
7 first grade to high school. Graduated way back in 1966.
8 Attended four years of college. And from 1966 through '73,
9 I worked for Chevron Oil, pump and gas in Mojave. And I
10 remember the energy shortage problems we had in early '70s.
11 And the Energy Commission is part of that; correct? That
12 history.

13 When I got out of college, I majored in
14 astrophysics, studying stars, solar energy, and the like.
15 When I came back over the hill, come back to Mojave, Mojave
16 had a little bit of a different meeting. The wind is
17 blowing. Ah, renewable energy. But we didn't have any
18 renewable energy programs back in 1970. We didn't have
19 solar or wind. But the heat and the wind was always there.
20 I remember in high school, battling the wind.

21 So I support anything to do with energy. I think
22 we need to pull out the plug, go after all energy sources
23 as we can, and invest from the government all the way down
24 what we can do to discover new forms of energy or new ways
25 to make our past energies more efficient.

1 And Hydrostor, as mentioned earlier, has been a
2 great addition to our Chamber of Commerce. They
3 participate in a lot of our charity events and has helped
4 us out in innumerable ways and we really appreciate that.

5 So I support this energy project. I hope there's a
6 wild card in any of the things we discuss going on. The
7 aha moment, something else comes up related to this
8 project, there could be things because of the work being
9 done that will help our energy that we need in this
10 country. Because AI is coming up. We're going to need all
11 the energy we can get. And I do support this project. And
12 I'd probably support just about any project that we would
13 be involved with.

14 So that's all I have to say. And thanks very
15 much.

16 COMMISSIONER MCALLISTER: Thank you for being
17 here. And this is great. I feel like we're getting a
18 snapshot of sort of the history of the community here and
19 your role in context. So thanks for all your contributions
20 to the community and to your support here.

21 MR. YOUNG: Thank you.

22 I would next like to welcome Richard Chapman.

23 MR. CHAPMAN: Good morning, Commissioners. My
24 name is Richard Chapman, R-I-C-H-A-R-D C-H-A-P-M-A-N, the
25 Presidency of the Kern Economic Development Corporation.

1 Our organization is 185 members strong, business, education
2 and government working together to create boundless
3 opportunities for business in Kern County.

4 And I'm sure as has been mentioned today, we are
5 the energy capital of the West, obviously, solar, wind,
6 battery storage, oil and gas, et cetera. And we are the
7 renewable energy capital of the country in terms of county
8 production.

9 We're very proud of being part of the energy
10 evolution. What happens are these jobs create upward
11 mobility. There are STEM jobs. We're actually one of the
12 top regions for STEM opportunities. And our STEM jobs
13 don't look like many other areas. We have high school,
14 folks with high school degrees, community colleges and
15 beyond that are offered the opportunity to move beyond
16 where they're -- you know, where the past generations were.

17 The beauty of this project is it really, as I
18 mentioned, the energy evolution creates STEM jobs. And
19 we're talking 700 construction jobs over four years, and
20 then permanent jobs. What has maybe not been mentioned is
21 the multiplier effect. Every job on that site is going to
22 create new restaurant purchases, supplier, cluster-related
23 service provider opportunities. So I think I saw one data
24 point, \$500 million of economic activity, not just the
25 capital investment, but the \$500 million infused into our

1 economy. And obviously, powering 400,000 homes.

2 Our litmus test for projects at Kern EDC, we have
3 three legs of the stool. Does it create jobs? Obviously,
4 this does. Does it create capital investment? We hear \$2
5 billion. But also tax revenue, public revenue. And this
6 is basically fully assessed for property tax, no
7 exclusions. So these taxes are going to help build roads,
8 fund education. So this is really critical as we look at
9 working with Hydrostor, moving to the finish line, and
10 adding to our portfolio that I discussed earlier.

11 So Kern EDC strongly supports this project. And
12 we urge the California Energy Commission to approve this
13 critical economic development, really life-changing
14 project.

15 Thank you for your time and consideration.

16 COMMISSIONER MCALLISTER: Thanks for being here
17 for your comments.

18 MR. YOUNG: Thank you.

19 I'm now going to ask Drew Mercy to approach.
20 Please remember to spell your name for the record.

21 MR. MERCY: Hi, my name is Drew Mercy, D-R-E-W
22 M-E-R-C-Y. I'm the Executive Director for the Antelope
23 Valley Economic Development & Growth Enterprise.

24 We're a regional economic development
25 organization covering the Antelope Valley, which is

1 southeast Kern County and northern Los Angeles County, the
2 high desert portions of both of those counties. And we
3 have about 500,000 residents throughout the area. And of
4 those 500,000, about 100,000 commute every day down to L.A.
5 or out to the greater Bakersfield area. So when we talk
6 about developing local jobs here, every job is a green job
7 because we're getting somebody off of that horrible
8 commute. And these are some of the worst commutes
9 consistently ranked nationally, up to two hours each way.

10 So as you can see, we're a beautiful high desert
11 community. And a lot of folks would come and say, oh,
12 well, you probably have trouble growing due to water. But
13 due to a lot of water storage projects, water actually
14 isn't our biggest challenge, it's electrification.

15 And as has been discussed, this is the renewable
16 hub of much of the world in the technology being developed.
17 When you look around, you see the windmills, the solar
18 panels. We're expanding into hydrogen fuel development as
19 well.

20 But the choke point we're facing as we work to
21 meet California's renewable energy needs is storage.
22 Without the storage to capture that energy during the peak
23 generation times and for use in off-peak times, it is
24 limiting our ability to grow and create those local jobs to
25 reduce congestion and pollution.

1 We respectfully request that the Energy
2 Commission approve this project. As has been discussed,
3 Hydrostor has been out here for a few years now. They've
4 become great neighbors, not just investors. They are
5 neighbors. They've gotten involved to support our
6 community's youth, become a part of the business community.
7 And this project will not only create those direct and
8 indirect jobs, but allow us to grow, to create new jobs
9 here locally.

10 So on behalf of the businesses and residents of
11 the Antelope Valley, we respectfully request you approve
12 this project, and thank you.

13 MR. YOUNG: Thank you.

14 I'm now going to turn to the participants on
15 Zoom. Interested members of the public, please let us know
16 if you'd like to make a comment so we can call on you.
17 You're going to use the raise-hand feature that looks like
18 an open palm. And for those of us joining us by phone,
19 press star 9 to raise your hand and star 6 to mute and
20 unmute.

21 I'm first going to turn to Neal Desai.

22 Neal, go ahead and unmute.

23 MR. DESAI: All right. Thank you. Good morning,
24 everyone. My name is Neal Desai, N-E-A-L D-E-S-A-I. I'm
25 the Senior Pacific Regional Director for the National Parks

1 Conservation Association. We submitted a letter to the
2 docket yesterday expressing our strong support for the
3 Willow Rock Energy Storage Center.

4 By background, we were founded in 1919 to serve
5 as the independent voice for our national parks. And along
6 with our over 33,000 members in California, we advocate
7 from local and federal levels to communities toward
8 safeguarding our national parks, which we have many amazing
9 places in California, ranging from Muir Woods in Yosemite
10 to National Historic places like Manzanar and Cesar Chavez.

11 I want to thank all the parties involved from the
12 staff to the Applicant to the Intervenors for all their
13 work in this process that has allowed us to get to this
14 point. Our intersection with this matter is our
15 involvement in state legislative and land use planning
16 efforts regarding renewable energy policy in California.
17 We focused a lot of our attention on long duration energy
18 storage policy, which we have shaped through legislation.
19 And that work has supported procurement decisions that have
20 protected ratepayers and California's resources, like water
21 and wildlife.

22 Willow Rock fits precisely within California's
23 procurement needs for long-duration energy storage and
24 through this process can be seen as a responsible long
25 duration energy storage project. So we respectfully

1 request your swift certification on this project.

2 Thank you very much.

3 COMMISSIONER MCALLISTER: Thank you for your
4 comments, Mr. Desai. I appreciate that.

5 MR. YOUNG: Thank you.

6 I would like to again invite those on Zoom to use
7 the raise-hand feature if you'd like to make a comment.

8 That concludes this first comment period. I
9 would turn it back to Hearing Officer Webster-Hawkins.

10 HEARING OFFICER WEBSTER-HAWKINS: Thank you, Mr.
11 Young, and thank you everyone for your comments.

12 So now we move on to our first topic for which
13 we're going to be receiving testimony for the day. We will
14 ask the Eastern Kern Air Pollution Control District to
15 certify the Final Determination of Compliance, or FDOC.

16 Ms. Lopez, will you kindly display Exhibit 1057,
17 which was filed on May 14th, 2024?

18 As she is bringing that document up, I would like
19 to call to the stand the Eastern Kern Air Pollution Control
20 District witness Mr. Miguel Sandoval, Air Quality Engineer.
21 I know that he is appearing via Zoom, so can we spotlight
22 Mr. Sandoval on Zoom if he's on camera? Wonderful thank
23 you.

24 Welcome, Mr. Sandoval. Will you please state
25 your name for the record? Let's try again. We're opening

1 up your mic.

2 COMMISSIONER MCALLISTER: It seems like we might
3 be muted on one or the other end.

4 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm. All
5 right.

6 And have we been able to locate the Exhibit 1057?
7 All right. And if you can scroll up at least to the face
8 page you can hold it there? It's a somewhat lengthy
9 document.

10 So, Mr. Sandoval, can we hear you, just a mic
11 check? You may be muted on your end. Can you double check
12 your microphone icon?

13 MR. SANDOVAL: Is it better now? Can you guys
14 hear me?

15 HEARING OFFICER WEBSTER-HAWKINS: Thank you.
16 Wonderful. Wonderful. Okay, so if you could please
17 restate your name for the record?

18 MR. SANDOVAL: Yeah. Miguel Sandoval,
19 M-I-G-U-E-L, Sandoval S-A-N-D-O-V, as in Victor, -A-L.

20 HEARING OFFICER WEBSTER-HAWKINS: And your
21 official title, Mr. Sandoval?

22 MR. SANDOVAL: Air Quality Engineer.

23 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

24 (Miguel Sandoval is sworn.)

25 DIRECT EXAMINATION

1 HEARING OFFICER WEBSTER-HAWKINS: Are you
2 testifying here today as an official representative of the
3 Eastern Kern Air Pollution Control District?

4 MR. SANDOVAL: I am.

5 HEARING OFFICE WEBSTER-HAWKINS: And you provided
6 your position with the district as an Air Quality Engineer.

7 Are you familiar with Exhibit 1057, which is
8 being shown on the screen right now?

9 MR. SANDOVAL: Yes, I am.

10 HEARING OFFICER WEBSTER-HAWKINS: Can you
11 describe it for us, please?

12 MR. SANDOVAL: Yeah, that is a letter to the
13 Applicant stating that their, you know, Final Determination
14 of Compliance application has been issued for their
15 project.

16 HEARING OFFICER WEBSTER-HAWKINS: And is there
17 anything attached to this letter?

18 Maybe, Ms. Lopez, you can scroll a little bit
19 into the next pages so Mr. Sandoval can see what's
20 attached?

21 Are you able to describe what these pages are?

22 MR. SANDOVAL: Yeah, so that's our engineering
23 evaluation. So what we do is we review the air quality
24 analysis provided by the Applicant. And, you know, the
25 sections for review are, the first one would be best

1 available control technology. That should be somewhere
2 down there if you keep scrolling. So ensure that the
3 project is built with the best available control
4 technology. The only long-term sources of emissions
5 identified were four piston engines.

6 And then, so best available control technology,
7 or BACT, in that case was to have an EPA-certified Tier 3
8 engines. The Applicant proposed Tier 4 engines, which
9 satisfy our BACT requirements.

10 The other area for analysis was emissions
11 offsets. We established that emissions offsets are not
12 required for this project in accordance with our Local Rule
13 210.1, which exempts offsets, offset requirements for
14 emergency engines.

15 The other area for analysis was health risk to
16 offsite receptors. The Applicant provided a health risk
17 assessment with modeling. So, that showed the calculated
18 risk to offsite receptors is below any significant
19 thresholds.

20 And then, lastly, what we did was we imposed
21 operational conditions for those piston engines to ensure
22 compliance with all our rules and regulations.

23 HEARING OFFICER WEBSTER-HAWKINS: Thank you for
24 that description.

25 So do you certify that the FDOC complies with the

1 rules and requirements of the control district?

2 MR. SANDOVAL: Yes, I do.

3 HEARING OFFICER WEBSTER-HAWKINS: And does this
4 exhibit establish that the Willow Rock project would comply
5 with the rules and requirements of the district?

6 MR. SANDOVAL: That's correct. That shows that
7 they would comply with all the rules and regulations.

8 HEARING OFFICER WEBSTER-HAWKINS: Thank you. So
9 there's no further questions from me.

10 Does the Committee have any questions for this
11 witness?

12 Seeing none, we'll turn to the Applicant. Do you
13 have any questions for this witness?

14 MR. HARRIS: No. No questions. Thank you.

15 HEARING OFFICER WEBSTER-HAWKINS: Thank you, Mr.
16 Harris.

17 HEARING OFFICER WEBSTER-HAWKINS: Staff?

18 MR. BABULA: No questions. Thanks.

19 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

20 And Intervenor?

21 MS. GRAVES: No question.

22 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

23 So thank you, Mr. Sandoval. You are released
24 from the stand and free to leave the hearing if you like.
25 But if you do choose to remain, you will remain sworn in

1 for the remainder of the evidentiary hearing.

2 MR. SANDOVAL: All right. Thank you very much.

3 HEARING OFFICER WEBSTER-HAWKINS: Thank you for
4 your participation.

5 COMMISSIONER MCALLISTER: Thanks very much. We
6 appreciate you.

7 HEARING OFFICER WEBSTER-HAWKINS: So now we will
8 turn on to our next topic, Biological Resources. So at
9 this time, I request the parties provide their witnesses to
10 the stand, the tables in the front of the room, on the
11 topic of Biological Resources. As stated in the notice for
12 today's event, we will swear in the witnesses for all
13 parties on the subject of Biological Resources as a panel.

14 Mr. Harris, I see you have a comment or question.

15 MR. HARRIS: Yeah, just a point of procedural
16 question here. Sorry, I'm going to try to not burn
17 people's ears up with this microphone, so I'll get it
18 right.

19 There were some threshold procedural issues while
20 the panel comes up that I wanted to address, and you've
21 addressed most of them in your opening statements, so it's
22 mostly just seeking some clarifications.

23 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

24 MR. HARRIS: So if you don't mind, I'd like to
25 proceed to those procedural issues quickly.

1 HEARING OFFICER WEBSTER-HAWKINS: Yes.

2 MR. HARRIS: Okay. Thank you.

3 First off, we have some corrections to our
4 testimony that will be handled by Dave Stein, who is a
5 first witness on this panel. We've got just things where,
6 production issues were, instead of document numbers, like
7 web links appeared. And we'll make those corrections to
8 our opening testimony at that point with your permission.

9 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

10 MR. HARRIS: In terms of witness updates and
11 opening statements that we filed yesterday, a couple of
12 updates there. For our second panel, Scott Crawford will
13 not be giving an opening statement. We've consolidated his
14 statement with the opening statement from Ms. Moss. For
15 the third panel, Victor Grille is not giving an opening
16 statement now, again, consolidating time to keep us on
17 schedule. And for the fourth panel, it will be Lucas
18 Thexton instead of opening statements from Victor Grille.
19 And again, those are just -- oh, on mic -- just minor
20 changes there. We've already dealt with Mr. Mohanty's
21 resume, so that's good.

22 I do have some questions, and I think you
23 actually clarified this at the beginning, about the nature
24 of some of the non-sworn testimony that you're going to be
25 receiving today. And I understand that you're not going to

1 be swearing in witnesses from the department, for example,
2 or from DSOD. Are you intending to treat their
3 participation here, though, as evidence, as testimony, or
4 as public comment?

5 HEARING OFFICER WEBSTER-HAWKINS: As stated, they
6 will not be sworn in, so their statements will not be
7 testimony. They will be accepted as statements from agency
8 representatives afforded the weight that agency
9 representative comments deserve.

10 MR. HARRIS: Yeah, and I think you clarified that
11 at the beginning, so just excuse me --

12 HEARING OFFICER WEBSTER-HAWKINS: Yeah.

13 MR. HARRIS: -- for sticking to my script --

14 HEARING OFFICER WEBSTER-HAWKINS: Right.

15 MR. HARRIS: -- but thank you for that
16 clarification.

17 And there's also some attorneys for various state
18 agencies identified. I assume that's just a similar
19 function, like Ms. Neumyer and myself. They're not going
20 to be attorney witnesses; is that correct?

21 HEARING OFFICER WEBSTER-HAWKINS: I have not
22 received any information about attorney witnesses, although
23 we have invited agency representatives to address the
24 questions posed by the Committee, which in some cases have
25 asked them to summarize their legal authority and

1 regulatory authority. So we will be asking questions that
2 could touch upon the expertise of an attorney. But, again,
3 they're not testifying as witnesses. They're providing
4 information on behalf of their agency.

5 MR. HARRIS: Okay, I appreciate that
6 clarification. We may want the opportunity to respond to
7 some of those things, either now or in writing, depending
8 on what comes out at the record. So a little unusual
9 processes for this hearing, you know? We're typically
10 seeing pre-filed testimony and sticking to that. But I
11 want to compliment you on your opening because you pretty
12 much addressed all the questions Ms. Neumyer and I could
13 put together on our way here, so thank you for those
14 things.

15 Thank you for that opportunity.

16 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

17 MR. BABULA: Hearing Officer Webster-Hawkins?

18 HEARING OFFICER WEBSTER-HAWKINS: Yes?

19 MR. BABULA: I just have kind of a couple
20 comments in a seminal vein.

21 So just to set the table, our witness, Mr. Chris
22 Huntley, who is the primary Staff witness for the
23 biological resource section, and because Staff is
24 responsible for evaluating the impacts, assessing
25 compliance with laws and developing mitigation measures,

1 and so for the purposes of this, we anticipate Mr. Huntley
2 will take the lead in responding to the questions regarding
3 the content of the Biological Resources section of the FSA,
4 while we acknowledge that CDFW Senior Environmental
5 Scientist Supervisor Jeremy Pohlman is available in a
6 supporting role to provide input within the scope of his
7 expertise as CDFW's role as a trustee agency, and so, and
8 he did summarize that at the beginning of this proceeding.

9 The other point I want to raise just for
10 clarification is that in the Committee's order, you
11 reference the status of the Incidental Take Permit from
12 CDFW. But this is a CEC proceeding and the Energy
13 Commission is issuing the Take Permit through our
14 certification, so I just want to make sure we're clear on
15 that.

16 HEARING OFFICER WEBSTER-HAWKINS: Great. And we
17 will be asking questions about that and your witnesses can
18 clarify those factual statuses as we go through.

19 MR. BABULA: Thank you.

20 HEARING OFFICER WEBSTER-HAWKINS: Yes.

21 I have a clarifying question back to Mr. Harris.
22 You referenced up to four panels. What are your -- what
23 were those references for? Right now it's, from the
24 Committee's perspective, we have invited all the expert
25 witnesses for the Biological Resources.

1 MR. HARRIS: Yeah, correct. Ms. Neumeyer and I
2 were counting panels to begin with. We considered the one
3 you just finished with the Air District as the first panel,
4 Biology --

5 HEARING OFFICER WEBSTER-HAWKINS: Okay.

6 MR. HARRIS: -- then the Water Resources. And
7 then, so they're not numbered, I apologize.

8 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

9 MR. HARRIS: We're just trying to keep ourselves
10 straight.

11 HEARING OFFICER WEBSTER-HAWKINS: Okay.

12 MR. HARRIS: Thank you for the clarification.

13 HEARING OFFICER WEBSTER-HAWKINS: I just wanted
14 to make sure we were -- we have all the witnesses here
15 around Biological Resources and that we weren't breaking it
16 up into four subpanels.

17 MR. HARRIS: Yeah, I thought what you thought
18 what we thought, so we're on the same page, so --

19 HEARING OFFICER WEBSTER-HAWKINS: Great.
20 Wonderful.

21 Okay, so we have a list of Applicant witnesses as
22 was filed into the docket this week. I'm going to be
23 confirming the presence of the witnesses. However, if
24 there's been a change or there's a new witness, please let
25 us know before we swear you in.

1 So just focusing on the witnesses right now, do
2 we have Kate Moss? Thank you. And can you please state
3 and spell your name for the record?

4 MS. MOSS: Thank you. My name is Kate Moss,
5 spelled K-A-T-E M-O-S-S.

6 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

7 Do we have Scott Crawford?

8 MR. CRAWFORD: Yes. Scott Crawford is
9 S-C-O-T-T C-R-A-W-F-O-R-D.

10 HEARING OFFICER WEBSTER-HAWKINS: Great.

11 Do we have David Stein?

12 MR. STEIN: Yes. David Stein, D-A-V-I-D
13 S-T-E-I-N. That's the last name.

14 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

15 And do we have -- I know Laurel Lees is here.
16 Are you testifying as a witness?

17 MS. LEES: Yes.

18 HEARING OFFICER WEBSTER-HAWKINS: Can you please
19 state and spell your name just for the witness panel?

20 MS. LEES: Yes. Laura Lees, L-A-U-R-E-L L-E-E-S.

21 HEARING OFFICER WEBSTER-HAWKINS: Thank you. And
22 Cody Niehus? Sorry if I mispronounced that.

23 MR. NIEHUS: That's okay. Cody Niehaus, C-O-D-Y
24 N-I-E-H-U-S.

25 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

1 And these are all the witnesses for the
2 Applicant, correct, on biological resources?

3 So turning to the staff witnesses, Mr. Babula,
4 you mentioned Chris Huntley is here.

5 Can you state and spell your name?

6 MR. HUNTLEY: Chris Huntley, C-H-R-I-S
7 H-U-N-T-L-E-Y.

8 HEARING OFFICER WEBSTER-HAWKINS: And do you have
9 any other witnesses that will be testifying for Staff on
10 Biological Research?

11 MR. HUNTLEY: No, ma'am.

12 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

13 And then for the Intervenor Center for Biological
14 Diversity, your witness is via Zoom; correct?

15 MS. GRAVES: That's correct.

16 HEARING OFFICER WEBSTER-HAWKINS: And Is that
17 Ileene Anderson?

18 MS. GRAVES: It is.

19 HEARING OFFICER WEBSTER-HAWKINS: And, Ms.
20 Anderson, welcome. Let's do a mic check and make sure we
21 can hear you. If you can state and spell your name for the
22 record?

23 MS. ANDERSON: Yes, my name is Ileene Anderson,
24 I-L-E-E-N-E, Anderson, A-N-D-E-R-S-O-N. Can you hear me
25 clearly?

1 HEARING OFFICER WEBSTER-HAWKINS: Yes. Thank
2 you.

3 MS. ANDERSON: Great. Thanks.

4 HEARING OFFICER WEBSTER-HAWKINS: So now I'm
5 going to administer the oath for the witnesses who have
6 just identified and introduced themselves. And then we
7 will ask each of you individually whether you agree.

8 So to those witnesses, do you swear or affirm
9 that the testimony you are about to give in this proceeding
10 is the truth, the whole truth, and nothing but the truth?

11 Ms. Moss?

12 MS. MOSS: I do.

13 (Kate Moss is sworn.)

14 HEARING OFFICER WEBSTER-HAWKINS: Mr. Crawford?

15 MR. CRAWFORD: I do.

16 (Scott Crawford is sworn.)

17 HEARING OFFICER WEBSTER-HAWKINS: Mr. Stein?

18 MR. STEIN: Yes.

19 (David Stein is sworn.)

20 HEARING OFFICER WEBSTER-HAWKINS: Ms. Lees?

21 MS. LEES: I do.

22 (Laurel Lees is sworn.)

23 HEARING OFFICE WEBSTER-HAWKINS: And Mr. Niehus?

24 MR. NIEHUS: I do.

25 (Cody Niehus is sworn.)

1 HEARING OFFICER WEBSTER-HAWKINS: Mr. Huntley?

2 MR. HUNTLEY: Yes, I do.

3 (Chris Huntley is sworn.)

4 HEARING OFFICER WEBSTER-HAWKINS: And Ms.
5 Anderson?

6 MS. ANDERSON: Yes, I do.

7 (Ileene Anderson is sworn.)

8 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

9 So as mentioned earlier, we also very much
10 appreciate that the Department of Fish and Wildlife
11 accepted our invitation to join this conversation from CDFW
12 and to be available for questions from the Committee on the
13 agency's review of this project. We will not be swearing
14 you in.

15 Can you please state and spell your names for the
16 record and provide your titles as well?

17 MR. POHLMAN: Yes, Jeremy Pohlman, J-E-R-E-M-Y
18 P-O-H-L-M-A-N. And I'm a Senior Environmental Scientist
19 Supervisor for the California Department of Fish and
20 Wildlife. Thanks.

21 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

22 MS. GERMINARIO: Good morning. Lena Germinario,
23 L-E-N-A G-E-R-M-I-N-A-R-I-O. And I'm an attorney for CDFW.
24 Thank you.

25 HEARING OFFICER WEBSTER-HAWKINS: Thank you very

1 much.

2 So we're going to begin with opening statements,
3 beginning with the Applicant.

4 Mr. Harris, would any of your experts like to
5 make an opening statement on the topics identified in the
6 order after hearing?

7 MR. HARRIS: Yes. So first we have the
8 administrative corrections that Mr. Stein is going to do,
9 and then we'll turn it over to Ms. Moss.

10 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

11 OPENING TESTIMONY BY DAVID STEIN

12 MR. STEIN: So I'll try to go through these very
13 quickly. The first two are typographic errors that
14 appeared first on page four of our --

15 HEARING OFFICER WEBSTER-HAWKINS: Excuse me, Mr.
16 Stein. If you could identify the exhibit number that
17 you're referencing?

18 MR. STEIN: I'm sorry. The exhibit number would
19 be 1233. It's our opening testimony.

20 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm. Thank
21 you. And what page?

22 MR. STEIN: And it's page four.

23 HEARING OFFICER WEBSTER-HAWKINS: Ms. Lopez, are
24 you able to bring up Exhibit 1233, page four?

25 Is this the correct page?

1 MR. STEIN: No, it's not. That's maybe Roman
2 number four. If you could go forward to page four in
3 the --

4 HEARING OFFICER WEBSTER-HAWKINS: I'm having a
5 little trouble hearing you, Mr. Stein.

6 MR. STEIN: I'm sorry.

7 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

8 MR. STEIN: There we are. That is the correct
9 page.

10 HEARING OFFICER WEBSTER-HAWKINS: All right. And
11 if you'd like to provide the correction?

12 MR. STEIN: So the correction is in the third
13 paragraph before Item B, Facility Location, the second to
14 the last sentence there, beginning with "Dry air." At the
15 very end of that sentence, the number five should be four.

16 HEARING OFFICER WEBSTER-HAWKINS: Okay.

17 MR. STEIN: And then on the very next page --

18 HEARING OFFICER WEBSTER-HAWKINS: Page five?

19 MR. STEIN: -- page five, the second bullet on
20 that page at the top should be stricken.

21 HEARING OFFICER WEBSTER-HAWKINS: The entire
22 bullet should be stricken?

23 MR. STEIN: The entire bullet should be stricken.

24 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

25 MR. STEIN: And then turning to the production

1 errors that Mr. Harris mentioned, the first of those begins
2 on page 20. There's a large appendix at the beginning of
3 the testimony, so it's, bear with me, it's actually page 69
4 of the PDF and page 20 of the testimony.

5 HEARING OFFICER WEBSTER-HAWKINS: So page 69 of
6 the PDF, but paginated as page 20 of the testimony?

7 MR. STEIN: Correct.

8 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

9 MR. STEIN: And it's in the -- in Item C under
10 Introduction, the list of exhibits. My feeble eyes are
11 unable to read that little number at the bottom right
12 there, but the number we're looking for is 20.

13 Elizabeth, can you identify? It is page 69 of
14 the PDF, paginated as page 20. Elizabeth, it looks like at
15 the top of your Adobe browser, you may be beyond page 69.
16 You could probably jump straight to page 69 by putting that
17 number in the box.

18 MR. STEIN: There we go.

19 HEARING OFFICER WEBSTER-HAWKINS: Thank you.
20 Excellent.

21 MR. STEIN: Okay, so 2, 3, 4, 5, 6, 7, 8, 9, 10,
22 11, 12, the 13th bullet on that page appears as an internet
23 hyperlink --

24 HEARING OFFICER WEBSTER-HAWKINS: Yes.

25 MR. STEIN: -- instead of the name of an exhibit.

1 HEARING OFFICER WEBSTER-HAWKINS: And which
2 exhibit number should it reference?

3 MR. STEIN: It should be Exhibit 1155, which is
4 the Willow Rock Preliminary Staff Assessment Comments
5 Report --

6 HEARING OFFICER WEBSTER-HAWKINS: Okay.

7 MR. STEIN: -- TN264316, dated June 16, 2025.

8 HEARING OFFICER WEBSTER-HAWKINS: Great. Okay.

9 MR. STEIN: The next is on page 23, so just a
10 couple of pages forward, or it's page 72 in the PDF, if
11 it's more convenient to find it that way. There we go.
12 The very last bullet at the top of the page is also an
13 internet hyperlink. It should read, "Exhibit 1040, High-
14 Res Figures V1, File 1 of 2 (TN254813), dated March 4,
15 2024."

16 Want me to go to the next one?

17 HEARING OFFICER WEBSTER-HAWKINS: Yes.

18 MR. STEIN: On page 26 of the testimony, which is
19 page 75 of the PDF, there we go, the one, two, three,
20 four -- fifth bullet is an internet hyperlink that should
21 be replaced by "Exhibit 1153, Consolidated Email Responses
22 to CEC Staff on Lahontan's request -- February 26, 2025
23 request for additional information." That request is
24 TN261932. And the actual exhibit number has a TN262349 and
25 is dated March 25th, 2025.

1 Then we need to go forward to page 122 of the PDF
2 or page 73 in the testimony. Should be page 122 of the
3 PDF. There we go. The bottom of that page, there's an
4 internet hyperlink that should be replaced by "Exhibit
5 1155, Willow Rock Preliminary Staff Assessment Comments
6 Report (TN264316), dated June 16th, 2025.

7 What page? Sorry, bear with me here, please.
8 Okay, the next is on page 169 of the PDF. There it is.
9 The second from the bottom bullet is an internet hyperlink
10 that should be replaced by the same reference I just
11 stated, "Exhibit 1155, Willow Rock Preliminary Staff
12 Assessment Comments Report (TN264316), dated June 16th,
13 2025."

14 Almost there. Sorry.

15 Next is page 173 of the PDF. There we are. So
16 there are two internet hyperlinks there, the last two
17 bullets. The first of those should be replaced with
18 "Exhibit 1119, Willow Rock Data Request Set 3 Response
19 (TN259675), dated October 23rd, 2024." And the second
20 hyperlink should be replaced with, "Exhibit 1132, Willow
21 Rock Data Request Set 5 Responses Report (TN260808), dated
22 December 23rd, 2024."

23 And then there's just one more on page 192 of the
24 PDF. There it is. So there's a hyperlink of the third
25 bullet from the bottom. That hyperlink should be replaced

1 with, Exhibit 1000, Section 6, Alternatives: Gem Energy
2 Storage Center (TN240751-23), dated December 1st, 2021."
3 And then the text continues to an Exhibit 1000, which is --
4 actually, that's the same.

5 HEARING OFFICER WEBSTER-HAWKINS: Mr. Stein, it
6 looks like the next un-hyperlinked text references Exhibit
7 1090. Should that be a new bullet?

8 MR. STEIN: That should be a new bullet.

9 HEARING OFFICER WEBSTER-HAWKINS: Okay. So those
10 are two separate items. Okay.

11 MR. STEIN: And that completes my corrections,
12 Madam Hearing Officer.

13 HEARING OFFICER WEBSTER-HAWKINS: Thank you. In
14 looking at those corrections, it did appear that they were
15 largely administrative corrections to properly name the
16 documents, and that the links themselves did reference the
17 TN numbers, as stated by Mr. Stein.

18 Staff, do you have any objections to those
19 administrative corrections?

20 MR. BABULA: No objections. I don't know if the
21 Hearing Officer wants them to just submit something in the
22 docket that just reflects these changes that we just made.

23 HEARING OFFICER WEBSTER-HAWKINS: Correct. And
24 just for the complete record, because the mic kind of cut
25 out, you have no objections; correct?

1 MR. BABULA: Correct.

2 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

3 MR. BABULA: No objections.

4 HEARING OFFICER WEBSTER-HAWKINS: Yes. And I
5 would agree that it would be useful to file an errata
6 containing all of those to perfect the record. Thank you.

7 And the Center, do you have any objections?

8 MS. GRAVES: No objections.

9 HEARING OFFICER WEBSTER-HAWKINS: Thank you.
10 Okay.

11 MS. NEUMYER: Apologies --

12 HEARING OFFICER WEBSTER-HAWKINS: Yes?

13 MS. NEUMYER: -- Hearing Officer, when you say
14 submit an errata, is a single sheet of paper, okay, with
15 just the update, rather than refiling the testimony?

16 HEARING OFFICER WEBSTER-HAWKINS: That's correct.
17 Thank you.

18 MS. NEUMYER: Thank you.

19 HEARING OFFICER WEBSTER-HAWKINS: Yes. Save the
20 PDF space as well. Save the digital. Right, yeah, no
21 redline required, yeah, unless, I mean, I think you could
22 just submit the actual -- those pages or, you know, however
23 it best reflects the corrections administratively.

24 Okay, with that, back to opening statements. Do
25 we have any opening statements on behalf of Applicant?

1 MS. MOSS: Yes.

2 HEARING OFFICER WEBSTER-HAWKINS: Thank you. Ms.
3 Moss, go ahead.

4 OPENING TESTIMONY BY KATE MOSS

5 MS. MOSS: Thank you. Good morning. Again, my
6 name is Kate Moss. I'm a Principal Wildlife Biologist with
7 WSP. And together with Scott Crawford, Dave Stein, Laurel
8 Lees, and Cody Niehus, we comprise the panel of experts for
9 the subject matter of biological resources, as further
10 detailed in the previously filed Applicant's witness list.

11 My opening statement today addresses topics
12 identified in the order filed by the Committee on August
13 18th, 2025, with respect to Biological Resources, including
14 the following subtopics identified as disputed or
15 unresolved between the parties: the mitigation acreage and
16 ratios; the treatment of temporary impacts; mitigation for
17 actual impacts versus acreage surveyed; definition,
18 identification, and avoidance or mitigation measures of
19 Western Joshua tree woodland.

20 My testimony today is based on information
21 collected from available background resources, such as
22 public databases and data collected from the project site
23 by WSP biologists and other biological consultants. These
24 field programs were selected based on input from regulatory
25 agency Staff and designed based on methods accepted in the

1 state of California, and include field-based studies to
2 document the presence of desert tortoise, Mojave ground
3 squirrel, Swanson's Hawk nests, Crotch's bumble bee,
4 Burrowing Owls, and rare plants, further, field programs,
5 including verification and updating ecosystem mapping and
6 census of Western Joshua tree.

7 In preparing the statement, I've also reviewed
8 opening and rebuttal testimonies filed by CEC Staff and
9 Intervenor Center for Biological Diversity, or CBD.

10 Data collected from these programs provided the
11 foundation for the impact analysis submitted to the
12 California Energy Commission, as well as subsequent
13 supplements, data request responses, and permit
14 applications.

15 Based on the data and analysis submitted to the
16 CEC by the Applicant and conditions provided in the final
17 Staff assessment, except for those I will outline below, we
18 agree with the conclusion that the project would result in
19 less than significant impacts on biological resources.

20 Regarding the Final Staff Assessment and Rebuttal
21 Testimony filed by CEC Staff, we disagree with the
22 following conditions or aspects of proposed Conditions of
23 Certification. The first, the treatment of temporary
24 habitat loss, the same as permanent loss as it relates to
25 mitigation of lands.

1 The second, the proposed mitigation ratio of 3-
2 to-1 for all impacted lands. The project is anticipated to
3 result in the permanent loss of habitat, mostly in the
4 Willow Rock facility footprint, but also at pole locations
5 along the gen-tie Line. If an architectural rock berm is
6 required to store material from the cavern, an additional
7 74.6 acres of permanent habitat loss in P1 is anticipated.
8 Temporary habitat loss is expected in areas like laydowns
9 and parking areas that will be required during
10 construction.

11 Generally, permanent habitat loss is described as
12 areas that will no longer be available to wildlife for the
13 duration of the project because those areas have been
14 converted into part of the facility by installing buildings
15 or impermeable surfaces. Temporary habitat loss is
16 generally used to describe areas that will become available
17 to wildlife after construction is complete, although may be
18 modified or altered state.

19 In the case of the project, areas that will be
20 used for laydown will be cleared of vegetation for the
21 duration of the construction, but soils will be decompacted
22 and recontoured post-construction. As per CoC Bio 8, these
23 areas will also be revegetated with native grasses and
24 forbs that can support native wildlife species, including
25 Crotch's bumble bee.

1 Further, as per CoC Bio 8, woody debris collected
2 and stored during construction will be placed over these
3 temporarily disturbed areas, and the Applicant will be
4 required to maintain these areas and control weeds for five
5 years post-construction. As such, these areas will be
6 available to wildlife post-construction, although in a
7 modified capacity, unlike permanent habitat loss.

8 CEC Staff treats the loss of habitat as
9 permanent, regardless of whether it would be permanent or
10 temporary based on the description I just provided. While
11 it's reasonable to consider the duration that temporary
12 impacted habitat would be unavailable to wildlife when
13 defining mitigation requirements, treatment of temporarily
14 impacted habitat, the same as permanent, does not
15 acknowledge that the areas will become available to
16 wildlife after construction, nor does it consider the
17 replanting and maintenance requirements of Bio 8. The
18 results of treating areas the same is that the CoC require
19 more mitigation for temporarily impacted areas than
20 permanent, as these areas will not only require offsetting
21 equal to permanent loss, but also replanting and
22 restoration measures.

23 The Willow Rock site and ancillary properties
24 occur in a semi-natural state and support vegetation
25 typical of the region, including Western Joshua tree.

1 These areas are impacted in the existing condition due to
2 their location between active roads and rail lines, off-
3 road vehicle driving, and illegal dumping. These factors
4 have impacted the current habitat conditions of the project
5 area due to direct alteration, for example, from dumping,
6 as well as sensory disturbance from noise and light and
7 human presence associated with the road and rail.

8 Burrowing Owls surveys conducted for the project
9 following accepted California Department of Fish and
10 Wildlife, or CDFW, protocols outlined in CDFW 2012 Staff
11 Report did not identify nesting Burrowing Owls in the
12 project area or 500-meter buffer.

13 Crotch's bumble bee surveys were conducted based
14 on protocols outlined in the Survey Conditions for
15 California Energy Species Act, Candidate Bumble bee
16 Species. Crotch's bumble bee was observed in the project
17 area foraging on *Phacelia*, but no hives were observed. The
18 FSA recommends a 3-to-1 mitigation ratio for all permanent
19 and temporary impacts to account for these long-term
20 temporal losses of Burrowing Owl and Crotch's bumble bee
21 habitat function within the project footprint.

22 However, the results of the 2023 and 2024 surveys
23 support the application of a 2-to-1 mitigation ratio for
24 permanent impacts due to the following biologically
25 relevant facts: the general lack of high-quality Burrowing

1 Owl habitat within the project area; the absence of active
2 burrows within the project area and adjacent 500-foot
3 buffer zone; the absence of Burrowing Owl observations
4 within the project area and infrequent and transient nature
5 of Burrowing Owl observations outside of the project
6 footprint; the limited diversity of Crotch's bumble bee
7 nectar sources within the project area with those species
8 documented flowering only in the early flight season; and
9 the absence of hives establishment or nesting behavior
10 within the project area.

11 Similarly, a 1-to-1 ratio for offsetting is
12 considered appropriate for temporarily disturbed areas,
13 given the results of the field studies and the requirement
14 of Bio-8 to replant native plant species that support
15 Crotch's bumble bee for foraging.

16 Regarding the testimony submitted by CBD, we
17 disagree with the assertion that the Applicant's Western
18 Joshua tree census data is incomplete. Complete census
19 surveys were conducted for Western Joshua tree across the
20 project area, including the gen-tie alignments. Areas with
21 no right-of-way entry were necessarily excluded from the
22 survey, as we described in the January 2025 Supplemental
23 Joshua Tree Census Report. However, these areas would be
24 spanned during construction to avoid impact as feasible.
25 Western Joshua tree census surveys were conducted in 2023

1 and April of 2024 and verified again December 8th and 9th
2 of 2024.

3 Further, we disagree that the acreage of Joshua
4 tree woodland that would be impacted remains uncertain,
5 pending additional surveys, consistent with CEC Staff
6 Determination and Rebuttal Testimony, Docket No. 21-AFC-02.
7 As noted, Western Joshua tree census has been completed
8 according to CDFW's census instructions. These data were
9 used when estimating whether Western Joshua tree canopy
10 meets the one percent or greater cover criteria for
11 classification defined by the California Native Plant
12 Society. Based on these data, Western Joshua tree
13 woodlands were not identified in the project area or gen-
14 tie line, other than a mapped occurrence along an
15 alternative gen-tie route.

16 Finally, regarding CBD's assertion that the FSA
17 improperly defers the development and disclosure of the
18 Reservoir Management Plan, preparation of a Reservoir
19 Management Plan as outlined in the FSA Condition of
20 Certification Bio-7 is a Condition of Certification and is
21 not deferred mitigation. Condition of Certification Bio-7
22 outlines clear measures that must be implemented and the
23 Applicant is in agreement with this condition.

24 The Reservoir Management Plan will be submitted
25 prior to construction of the reservoir so that the

1 requirements set out in the FSA are met proactively. This
2 approach is standard industry practice. Submitting the
3 plan early allows for evaluation of its content and
4 facilitates timely incorporation of feedback.

5 As outlined in the Condition of Certification
6 Bio-7, the Reservoir Management Plan will include detailed
7 design of a floating reservoir cover, methods to minimize
8 wildlife entrapment, including fence type and height and
9 escapement ramps, potential remedial measures including
10 installation of wildlife deterrence and a habitat
11 protection action, details on monitoring methods and
12 monthly reporting, or a process for evaluating the
13 efficiency of the cover, ramps, and other wildlife
14 protection measures.

15 Thank you.

16 HEARING OFFICER WEBSTER-HAWKINS: Thank you Ms.
17 Moss.

18 We can turn now to Staff's expert witness; is
19 that correct? Thank you.

20 OPENING TESTIMONY BY CHRIS HUNTLEY

21 MR. HUNTLEY: Good afternoon and thank you
22 Commissioner McAllister, Commissioner Gallardo, and Hearing
23 Officer Webster-Hawkins. My name is Chris Huntley. I'm
24 the Director of Biological Resources at Aspen Environmental
25 Group. I've been a wildlife biologist for over 30 years,

1 working mostly in the Mojave Desert. Together with my
2 colleague Jamie Miner and in close consultation with the
3 California Department of Fish and Wildlife, I prepared the
4 Biological Resource section of the Willow Rock FSA, the
5 Biological Resources Rebuttal Testimony, and the Biological
6 section of the Supplemental Staff Testimony.

7 In this opening testimony, I'd like to identify
8 the key species impacted by the project and the primary
9 mitigation measures developed to minimize or address those
10 impacts. I wanted to highlight areas of disagreement with
11 the Applicant and Intervenor and where our conclusions
12 differ. And I'd like to provide Staff's rationale to
13 support the conclusions presented in the FSA in here today.

14 So while there's a variety of sensitive species
15 that may be impacted by the proposed project, there are
16 three key special status species that we wanted to talk
17 about, and they include Western Joshua tree, Burrowing Owl,
18 and Crotch's bumble bee. All three of these species are
19 afforded special protection under California law and
20 require careful impact analysis and project-specific
21 mitigation. Potential impacts to these species range from
22 direct mortality, loss of habitat, disturbances that can
23 affect behavior such as foraging and breeding. And the
24 primary mechanism for mitigation relevant to this hearing
25 is the off-site land acquisition and the various avoidance

1 and minimization measures presented in Staff's Conditions
2 of Certification.

3 So here are some of the areas of disagreement and
4 our rationale for our conclusions.

5 The Applicant and CBD, or the Center, have raised
6 concerns with the analysis proposed CoCs identified in the
7 FSA and our rebuttal testimony. I'd first like to present
8 the primary areas of disagreement with the Applicant and
9 then, if I may, address concerns raised by the Center.

10 As mentioned previously by the Applicant, there's
11 several areas of disagreement, including the treatment of
12 permanent versus temporarily impacted land, use of
13 appropriate mitigation measures, and the actual impacts to
14 habitat analyzed in the proposed project. I wanted to talk
15 a little bit about permanent versus temporarily impacted
16 lands.

17 Throughout its testimony, the Applicant
18 distinguishes between permanent and temporary impacts based
19 on how different areas of the project site are being used.
20 And the Applicant disagrees with Staff's mitigation
21 approach of treating what they characterize as temporary
22 impacts as, in effect, permanent. And this is especially
23 so since Staff is still recommending basic restoration of
24 temporarily disturbed areas.

25 The Applicant's distinction appears reasonable

1 but is not scientifically or legally justified for the
2 following reasons.

3 Desert ecosystems, including the systems that
4 occur on the proposed project site, are extremely slow to
5 recover from physical disturbance such as grading or
6 continued use due to the harsh climate, limited rainfall,
7 and fragile soils. The long five-year plus construction
8 period with extensive disturbance on the main portion of
9 the site can cause impacts on other portions of the project
10 site and neighboring habitat through dust, noise, night
11 lighting, and day-to-day activity impacting nearby species.
12 Five years of equipment lay down and parking can result in
13 many more years of habitat damage.

14 Physical disturbance alters the chemical and
15 physical structure of desert soils and can result in
16 compaction, the loss of native seed banks, and in some
17 cases, increased erosion and dust, which are known factors
18 that degrade habitat both on and off the project site.

19 Grading removes vegetation and alters micro-
20 habitats critical for shelter, nesting, and foraging for
21 many species, including bumble bees and other small
22 animals, and increases the potential for the colonization
23 of weeds.

24 Disturbed areas in the desert are also readily
25 colonized by weedy species such as Sahara mustard and

1 Russian thistle, which are very common in the region.
2 These weeds then spread to adjacent habitats and can
3 degrade habitat or degrade habitat in undisturbed areas.
4 As we all know, weeds are difficult to control and they can
5 also alter fire ecology and desert ecosystems by providing
6 light, fast-burning fuels.

7 Restoration of desert areas is also costly,
8 uncertain, and is difficult to restore habitat functions
9 without extensive long-term management. Restoration is a
10 slow process and it can take decades to reach functional
11 habitat values that occurred prior to disturbance.

12 Numerous agencies have considered temporary
13 impacts to desert communities as permanent and mitigating
14 accordingly because of these factors. In fact, we cited
15 this in our document, but Lovich and Bainbridge found that
16 recovery times for disturbed desert areas range from 50 to
17 300 years for vegetation and biomass and can be up to 3,000
18 years for full ecosystem recovery.

19 The takeaway is that desert ecosystems are
20 fragile and slow to heal. Grading and other disturbances
21 often lead to permanent ecological shifts in habitat use by
22 the species that were once there. Plants and wildlife will
23 be largely excluded from the site for years. Restoration
24 is uncertain, expensive, and rarely successful. Treating
25 these disturbances as permanent is ecologically and

1 scientifically justified.

2 Staff notes that because the FSA treated
3 temporary impacts as permanent, we modified Condition of
4 Certification Bio-8 to only require stabilization of
5 temporary disturbed areas rather than seeking full
6 restoration requirements to pre-disturbance levels, which
7 we would have done in other areas if we thought the
8 restoration could be successful. This condition was
9 modified to reduce performance requirements and focus more
10 on the management of weeds, and this was discussed, at
11 least briefly, in the PSA workshop.

12 I'd like to talk a little bit about the Applicant
13 comment on mitigation ratios. The Applicant proposes off-
14 site land acquisition for Burrowing Owl and Crotch's bumble
15 bee at a 2-to-1 ratio for permanent impacts and a 1-to-1
16 ratio for temporary impacts. Conversely, Staff is
17 recommending a single 3-to-1 mitigation ratio for both
18 temporary and permanent impacts.

19 In consultation with the regulatory partners,
20 Staff concludes that the Applicant's 2-to-1/1-to-1 land --
21 or mitigation ratios are not sufficient to fully mitigate
22 for the impacts to Burrowing Owl and Crotch's bumble bee.
23 As described in the FSA, the site and adjacent laydown
24 parking and staging areas, as well as much of the gen-tie,
25 are considered suitable habitat for these species. Staff

1 acknowledges there are areas that support higher
2 concentrations of nectar resources where bumble bees were
3 observed. However, the entire project site is suitable
4 habitat and can be used by the species.

5 In addition, there are multiple factors that were
6 considered in development to the proposed mitigation ratios
7 for Burrowing Owl and bumble bees. Some of these include
8 seven Crotch's bumble bee queens and 35 workers were
9 detected on -- near the project site, which means these
10 state candidate species listed are there and are using the
11 project site. Crotch's bumble bee habitat is not limited
12 to the patches of prime foraging habitat identified by the
13 Applicant, and virtually all of the project site supports
14 suitable habitat for nesting or foraging bees.

15 Bees can nest close to or over a kilometer from
16 foraging areas, and suitable mammal burrows, downed Joshua
17 trees, cavities within Joshua trees, and other debris piles
18 are present and can be used by the bees. I know from
19 firsthand experience that bumble bee nests are very
20 difficult to detect, and they are often overlooked during
21 surveys.

22 The presence of bumble bee occurrences are also
23 likely to ebb and flow depending on seasonal rainfall and
24 wildflower expression. The species is a generalist and is
25 known to forage across a wide range of flowering plants.

1 Regarding owls, as identified in the Burrowing
2 Owl Focused Survey Report, dated January 2024, the surveys
3 resulted in a total of 29 unoccupied suitable burrows for
4 Burrowing Owls, several of which were found on the energy
5 storage facility area or adjacent laydown areas.

6 It's important to note that surveys provide a
7 snapshot of data, and Staff recognizes that while no owls
8 or signs were detected at those locations, Burrowing Owl
9 are known from the region, were detected by the Applicant
10 in the broader area, and could use the burrows that are
11 present on the project site at any given time.

12 In addition, and as described in our FSA, recent
13 guidance from CDFW has indicated that suitable burrows or
14 cavities that could support Burrowing Owl be assumed active
15 unless three years of surveys have been conducted.
16 Likewise, as no wintering surveys were conducted, Staff
17 cannot affirm that owls are using the site in the winter or
18 not.

19 In addition, the surveys did not cover all areas
20 immediately adjacent to the project site because of access
21 restriction noted by the Applicant, but based on the
22 overall site habitat, presence can be assumed in areas that
23 were not surveyed. Figure 5 of the Applicant's Burrowing
24 Owl Survey Report shows a number of potential burrows in
25 the project site as discussed previously.

1 Another important consideration is that the
2 Applicant elected to seek take coverage under the
3 California Endangered Species Act for Crotch's, bumble bee,
4 and Burrowing Owl because they were either detected on the
5 project site or have a potential to occur during
6 construction. Seeking coverage requires Staff to assume
7 the site is occupied and to provide mitigation measures to
8 offset potential impacts should those species occur in the
9 future during construction.

10 Seeking take coverage also provides an avenue for
11 the Applicant to seek buffer reductions that might not
12 otherwise have been available should owls or bees occur in
13 adjacent lands along the gen-tie or other areas. It also
14 provides coverage, as we said, for animals that might be
15 displaced from adjacent lands.

16 Based on these factors, the 3-to-1 ratio proposed
17 to mitigate impacts from the project was not arbitrary, and
18 as noted in the FSA, the 3-to-1 ratio accounts for the
19 following impacts.

20 The 3-to-1 ratio proposed by Staff was, again,
21 developed in consultation with the regulatory agencies and
22 ensures full mitigation, which is a requirement under the
23 California Endangered Species Act: Fish and Game Code
24 section 2081(b) requires the permittees to minimize and
25 fully mitigate all impacts of the authorized take, and

1 mitigation must be proportional to the extent of the
2 impact; the ratio accounts for the initial replacement of
3 lost habitat, ensures functional equivalency is achieved,
4 accounts for uncertainty and risk, and promotes resilience
5 across landscape by supporting habitat connectivity and
6 ecosystem integrity; the irreversible loss of occupied
7 habitat and potential loss of individual Crotches bumble
8 bees was also considered; the loss of habitat for Burrowing
9 Owl and to account for the disruption of breeding or loss
10 of Burrowing Owls was also accounted for.

11 The Applicant commented on the mitigation for
12 actual impacts to habitat and not the total acreage survey.
13 The Applicant suggests that the acreage proposed for
14 mitigation in the FSA appears to include the total acreage
15 surveyed for the project area, which includes temporary
16 construction areas, buffer areas around permanent and
17 temporary disturbance footprints, and route options for the
18 gen-tie that would not be built if a preferred pathway is
19 constructed.

20 Instead, they propose that mitigation should be
21 based on acreage actually impacted by the project, not the
22 optional potential areas. The Applicant suggests that
23 mitigation acreage should be reflected or adjusted to
24 reflect the actual areas disturbed, not the areas surveyed.

25 Staff considered the amount of temporary impacts

1 to vegetation and landforms using data provided by the
2 Applicant in the ITP application and other documents, and
3 it focused on the 90 acres of permanent and 198 acres of
4 temporary impacts for the no-berm option. Staff is willing
5 to work with the Applicant to ensure that the most accurate
6 version of the impact table is used and that the with-berm
7 option and no-berm option are both considered in the final
8 impact acreages for both the mitigation requirements and
9 other conditions.

10 And with that, I'm concluding my response for the
11 Applicant.

12 I would like to now address the concerns raised
13 by the Center for Biological Diversity.

14 The Center's comment regarding Joshua tree
15 woodlands in compliance with the Conservation Act. The
16 Center was concerned, remains concerned, that the
17 mitigation measures and the Condition of Certification
18 failed to address impacts to Joshua tree woodlands on the
19 project site. The Center is also concerned that the
20 Applicant has not performed complete surveys of all project
21 areas.

22 So to ensure impacts of Joshua tree woodland were
23 mitigated, Staff revised Condition of Certification Bio-4
24 to include specific language requiring any impacts to
25 Joshua tree woodland be accounted for and mitigated to the

1 3-to-1 ratio. Staff also acknowledged that not all of the
2 project footprint has been surveyed to date and there are
3 areas where supplemental surveys would be required to
4 census individual Joshua trees.

5 As identified in Staff's CoCs, should the project
6 be approved by the Commission, the collection of this data
7 would be required prior to site mobilization and prior to
8 allowing any disturbance of Joshua trees. This would
9 ensure that the project complies with the requirements of
10 the Washington Joshua Tree Conservation Act.

11 Staff also reviewed the Applicant's response to
12 the one percent threshold for Joshua tree woodland and at
13 this time concurs with the data presented by the Applicant
14 that Joshua tree woodlands are not present on the rest of
15 the project site.

16 And that concludes my opening testimony and I'm
17 available to answer any questions that the Committee may
18 have. Thank you.

19 HEARING OFFICER WEBSTER-HAWKINS: Thank you Mr.
20 Huntley.

21 Before we start questions, we'll turn to Ms.
22 Anderson to provide her opening testimony.

23 OPENING TESTIMONY BY ILEENE ANDERSON

24 MS. ANDERSON: Good afternoon Commissioners. Can
25 you hear me clearly?

1 HEARING OFFICER WEBSTER-HAWKINS: Perfect.

2 MS. ANDERSON: Great. This is Ileene Anderson
3 and I'm a Senior Scientist and the California Deserts
4 Director at the Center for Biological Diversity. My
5 qualifications are detailed in my opening testimony which
6 has been marked as Exhibit 4000.

7 Joshua tree woodland is a sensitive natural
8 community ranked as an S3 by the state which means it is
9 ranked as vulnerable, indicating it's vulnerable to
10 extirpation, or local extinction, within California. It's
11 known to occur within the project area.

12 CEC Staff have acknowledged the construction
13 along portions of the gen-tie alignments would likely cause
14 permanent impacts to Joshua tree woodlands through pole
15 foundation placement and new access roads, as well as
16 temporary impacts from coral installation and detention
17 sites. Staff estimate these impacts could affect between a
18 half-acre and two acres.

19 In its Final Staff Assessment, Staff originally
20 noted that additional areas of the project footprint,
21 including the Willow Rock Energy Storage Center site and
22 the P1 and P2 parcels, exhibit vegetation consistent with
23 Joshua tree woodland. That conclusion was later revised
24 after the Applicant disputed that these areas meet the
25 California Native Plant Society, or CNPS as it's often

1 referred to, the CNPS definition which is greater than one
2 percent cover of Joshua trees.

3 The Applicant's position appears to rest on the
4 claim that average canopy cover across these parcels is
5 less than one percent, but this misapplies CNPS's
6 classification standards. CNPS defines Joshua tree
7 woodland as stand with at least one percent canopy cover by
8 Western Joshua tree provided that juniper and pine cover is
9 less than one percent. That standard applies to discrete
10 stands not the entire project site averaged across dozens
11 of acres. Clusters of Joshua trees can easily meet or
12 exceed the one percent threshold even if a site wide
13 average falls below it.

14 The Applicant points to the absence of a veg camp
15 woodland designation but the lack of mapping is not
16 evidence that woodlands are absent on the ground. The veg
17 camp data are not exhausted and are often incomplete, which
18 is why site-specific surveys remain essential to identify
19 unmapped but ecologically significant resources.

20 To accurately assess the presence of Western
21 Joshua tree woodlands, surveys must evaluate localized tree
22 density and an ecologically appropriate scale.

23 One reasonable approach is to delineate
24 protective zones around each tree consistent with the no-
25 work buffers in Bio-12 and then identify where those zones

1 overlap to form a contiguous patch. The perimeter of those
2 patches can be used to define ecologically relevant
3 polygons within which canopy cover should be calculated.
4 If canopy cover within such polygons meets or exceeds the
5 CNPS one percent threshold, those areas would qualify as
6 woodlands regardless of broader sitewide averages.

7 Based on my review of the Applicant's own Western
8 Joshua tree survey data, it's my professional opinion that
9 there is a high potential for woodlands to occur within P1,
10 P2, particularly P2 north and the Willow Rock Energy
11 Storage Center site.

12 Accordingly, the Conditions of Certification
13 should require the Joshua tree woodlands be delineated
14 consistent with the protective buffer approach for
15 individual Western Joshua trees -- that's in my testimony
16 and that I briefly described here today -- and require that
17 that protective buffer around the Joshua tree woodland to
18 avoid and minimize impacts wherever feasible.

19 I support the revisions to Bio-14 which now
20 require compensatory mitigation for impacts to Joshua tree
21 woodlands. This is a critical improvement. Joshua tree
22 woodlands provide far more than individual trees. They
23 create ecological structure, support wildlife, sustain
24 pollinator communities, and main genetic continuity for the
25 species. Without compensatory mitigation, permanent losses

1 of woodland stands would go unaddressed. The revised
2 condition appropriately recognizes that impacts to
3 woodlands must be mitigated in a way that preserves these
4 broader ecological functions.

5 I also support the revisions to Bio-12 which now
6 require updated Joshua tree surveys within the project
7 footprint and within a 50-foot buffer around all project
8 components including the gen-tie, access roads, lay down
9 areas, staging areas, and other facilities.

10 Importantly, Bio-12 now requires updated censuses
11 before site mobilization for each phase of construction in
12 areas surveyed more than 12 months ago but left
13 undisturbed. It's critical to ensure that new or
14 previously unmapped trees are identified before any take is
15 authorized, consistent with the requirement of the Western
16 Joshua Tree Conservation Act.

17 Finally, I'd like to address the requirement to
18 avoid and minimize impacts to Western Joshua trees.

19 The Western Joshua Tree Conservation Act and the
20 accompanying conservation plan establish a clear mitigation
21 hierarchy; first avoid, then minimize, and only as a last
22 resort mitigate impacts to Western Joshua trees. The Act
23 expressly prohibits authorizing take unless avoidance and
24 minimization have been carried out to the maximum extent
25 practicable.

1 In this case, feasible avoidance measures are
2 available. For example, the option, Above Ground
3 Architectural Berm, could be redesigned such as by breaking
4 it into smaller segments and reducing its footprint, or
5 adjusting its alignment, or relocating it altogether. Such
6 modifications could substantially reduce or avoid impacts
7 to the approximately 467 Western Joshua trees slated for
8 permanent removal and the proposed 17 of them that are
9 proposed for relocation under the with-berm option. This
10 is especially true given that the design leaving
11 flexibility to incorporate avoidance at this stage.

12 Avoidance and Joshua tree impacts is not only
13 required by law but is also ecologically sound. These
14 trees are long-lived, slow reproducing, and increasingly
15 vulnerable to development and climate stressors.
16 Preserving existing mature individuals and intact woodland
17 patches is far more effective than attempting to mitigate
18 for impacts by relocating or paying mitigation fees.

19 For these reasons, the Commission should ensure
20 that the project demonstrates avoidance and minimization to
21 the maximum extent practicable before any take
22 authorization is considered.

23 That concludes my opening statement. Thank you.

24 HEARING OFFICER WEBSTER-HAWKINS: Thank you very
25 much, Ms. Anderson. And just to clarify for the record,

1 the revisions that to Bio-12 that you referred to, are
2 those the revisions found in newly identified and admitted
3 Exhibit 2003, the Staff's Supplemental Conditions of
4 Certification?

5 MS. ANDERSON: Yes, I believe so.

6 HEARING OFFICER WEBSTER-HAWKINS: Thank you.
7 Okay.

8 All right, having heard from the opening
9 statements, thank you very much.

10 I'd like to first ask the Committee if they have
11 any questions.

12 Commissioner McAllister?

13 COMMISSIONER MCALLISTER: Well, thanks very much
14 for your testimony. Clearly well considered and I think a
15 lot of great material already in the evidentiary record.

16 So a couple of things.

17 DIRECT EXAMINATION

18 COMMISSIONER MCALLISTER: I guess I want to
19 understand from each of you how -- so there's some math we
20 have to kind of wrestle with here, you know, what the
21 ratios are, but ratio of what to what, and so in terms of
22 the actual amount of land that we're talking about being
23 impacted, both temporarily and permanently, and then sort
24 of doing the math to get to the ratios of how much sort of
25 offset area we need to think about.

1 So maybe with a sort of a fairly sharp razor
2 here, can we sort of understand sort of impacts and then
3 resulting offsets from each of your sort of desired
4 approaches to this? That makes sense? Like sort of
5 putting numbers to the amount of territory we're talking
6 about and trying to sort of figure out how close or far the
7 Applicant, Intervenor, and Staff actually are.

8 HEARING OFFICER WEBSTER-HAWKINS: Right. If we
9 can start with the Applicant, even just summarize your pre-
10 filed testimony that --

11 COMMISSIONER MCALLISTER: Yeah.

12 HEARING OFFICER WEBSTER-HAWKINS: -- that
13 quantifies the acreage? Because I did hear Staff's
14 witness, Mr. Huntley, suggests that accurate tables would
15 need to be relied upon. And so I think we're wanting to be
16 educated about what those numbers look like now and what
17 might need to occur to make them more accurate if they're
18 not accurate now.

19 COMMISSIONER MCALLISTER: And also that at least
20 one of you expressed flexibility to work to sort of move
21 towards, you know, to negotiate a little bit and
22 compromise. You know, I'd like to hear. I'm trying to get
23 a sense for how much of that needs to be done.

24 MS. MOSS: Thanks. This is Kate Moss.

25 If we could maybe pull up on the screen -- sorry,

1 one second. What's this number? Yeah, 1233.

2 HEARING OFFICER WEBSTER-HAWKINS: Great. Exhibit
3 1233, the Opening Testimony and Evidence of the Applicant.

4 MS. MOSS: And it's page 33 of that document.

5 HEARING OFFICER WEBSTER-HAWKINS: The paginated
6 page 33?

7 MS. MOSS: Yes.

8 HEARING OFFICER WEBSTER-HAWKINS: Okay.

9 MS. MOSS: That's the table there. So this table
10 outlines two scenarios, the scenario where the rock is
11 hauled off site, which is the left-hand column of numbers,
12 and where there's a rock berm built on site, which is the
13 right-hand column of numbers. It then lists out, on the
14 far right column, whether that is considered a permanent
15 loss or a temporary loss.

16 And on this table, a permanent loss is defined as
17 something that is not available once construction is
18 complete, so as I described, something that's under the
19 facility, under a rock berm, something that is completely
20 modified.

21 Temporary describes an area that could be
22 restored to a degree. So as described, not necessarily
23 desert condition, but replanted with native forbs and
24 grasses and controlled for weeds.

25 It also breaks down those impacts by location, so

1 the facility, the berm, transmission pole locations, and so
2 on.

3 HEARING OFFICER WEBSTER-HAWKINS: And just for
4 clarification, with the acreage related to the transmission
5 poles, would that be like the most impactful route, or --
6 I'm looking at the footnotes to that, just try to -- so we
7 can understand sort of what the impact of the route options
8 might have on these acreage numbers.

9 MS. MOSS: I'm going to ask Dave Stein to help
10 with that question.

11 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

12 MR. STEIN: Madam Hearing Officer, I'm not sure
13 I'm prepared to provide an answer for whether the
14 options -- whether the option would change those numbers
15 significantly --

16 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

17 MR. STEIN: -- but they're very, very close.

18 HEARING OFFICER WEBSTER-HAWKINS: Okay.

19 MR. STEIN: I think the numbers in this table are
20 reasonably good, the worst case estimate of the project
21 disturbance.

22 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm. Thank
23 you.

24 MR. STEIN: And one of the things that we were
25 attempting to do when we went through the categories of

1 project elements was to use GIS technology to avoid double
2 counting. So, for example, if there was an access road
3 going through the site construction lay down and parking
4 areas noted in the second column there, Footnote X, that
5 acreage was adjusted slightly down to reflect that we had
6 counted disturbance in that area as an access road instead
7 of as a site construction lay down.

8 HEARING OFFICER WEBSTER-HAWKINS: Okay. And then
9 just to expound upon Commissioner McAllister's math
10 question, we're looking at the total permanent and
11 temporary impacted acreage under the berm and without-berm
12 options, and so we would be applying, for math purposes,
13 from Applicant's perspective, 2-to-1 for the permanent
14 acreage reflected in this table and 1-to-1 for the
15 temporary acreage impacts reflected in this table?

16 MR. STEIN: That is correct.

17 HEARING OFFICER WEBSTER-HAWKINS: Okay.

18 MR. STEIN: So, for example, according to my
19 math, if we apply the 2-to-1 for the without-berm option,
20 88.8 times two equals 177.6. We would add to that 122.2,
21 which is the temporary at a 1-to-1 disturbance ratio, and
22 that total acreage, the sum of those two temporary and
23 permanent would be 299.8 as an example.

24 HEARING OFFICER WEBSTER-HAWKINS: Thank you,
25 which if Staff doesn't dispute the acreage that you've

1 quantified here as far as what's to be disturbed, it would
2 be 88.8 plus 122.2 times three would be the mitigation
3 acreage.

4 So turning to Staff, is that the how the math
5 would look for the without-berm option?

6 MR. HUNTLEY: Hearing Officer, yes. We're not
7 disputing the impact acreage identified in the table
8 provided by the Applicant.

9 HEARING OFFICER WEBSTER-HAWKINS: Thank you.
10 It's the multiplier.

11 MR. HUNTLEY: It's the ratios, that's correct,
12 so --

13 HEARING OFFICER WEBSTER-HAWKINS: Okay, so you're
14 agreed upon the way that you're applying, both of you are
15 quantifying the permanent and temporary impacts in terms of
16 the acreage, it's the multiplier for mitigation?

17 MR. HUNTLEY: That's correct. And I think part
18 of the dispute came up where when we analyze the impacts,
19 we analyze the worst case scenario --

20 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

21 MR. HUNTLEY: -- and we should have added some
22 additional text to identify the without-berm option.

23 HEARING OFFICER WEBSTER-HAWKINS: Great. So on
24 this topic, focusing here on this math question, I'd like
25 to turn to the Intervenor's witness to see if you have

1 anything further you would like to add to this question of
2 the accuracy of this table as far as disturbed impacts, and
3 then the proposal for mitigation acreage?

4 MS. ANDERSON: Yeah. We don't have any quibble
5 with the calculated acreages.

6 HEARING OFFICER WEBSTER-HAWKINS: Okay. Good.

7 MS. ANDERSON: I think, you know, we support the
8 staff's acreage -- mitigation acreage requirement because
9 we agree that in this arid part of the world, it's really
10 hard to re-establish vegetation after a temporary impact.
11 And to have it be functional habitat, there is a temporal
12 impact there between the time you're trying to start
13 getting it going and before it actually matures into
14 habitat for a different species. So we thought that the 3-
15 to-1 mitigation ratio was completely reasonable.

16 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

17 COMMISSIONER MCALLISTER: Thanks for that.

18 So I think -- well, before, I want to hear from
19 CDFW, and then possibly the county, not to put, you know,
20 either of you on the spot here, but certainly CDFW is sort
21 of a backup resource informationally, and the county, I'm
22 just interested in the county's perspective on sort of more
23 broadly impacts and sort of what the context is here in
24 terms of, you know, available land to use for offsets or
25 sort of cumulative impacts, small c, small i kind of thing.

1 So I think the math is that we basically have
2 roughly a 2-to-1 difference from about 300 to 633. So
3 anyway, I'd love to hear CDFW's sort of view on the ratio.

4 MR. POHLMAN: Yeah, thank you, Commissioner. You
5 know, certainly CDFW supports CEC's biological rationale in
6 their mitigation determination. And, you know, I think
7 Chris and CEC Staff, you know, really provided a good, you
8 know, background justification as to why, you know, the
9 impacts, particularly to CESA-listed species, including
10 Crotch's bumble bee and Western Burrowing Owl, you know,
11 why those impacts are, you know, are certainly in high-
12 quality habitat and are going to result in, you know, a
13 highly degraded site.

14 And, you know, really, in order to fully mitigate
15 under CESA, you know, there needed -- the mitigation amount
16 is certainly appropriate and reasonable.

17 HEARING OFFICER WEBSTER-HAWKINS: If I could ask
18 you to elaborate on that? Because I'm thinking of the
19 informed comments that we heard earlier from the county
20 comparing some of the mitigation acreage to other renewable
21 energy projects in the region. Is there something unique
22 about this project and the manner of the impacts? And I'm
23 thinking, well, permanent, but also the temporary impacts
24 that may compel a mitigation ratio that's higher than
25 current, say, comparable projects, solar, wind.

1 MR. POHLMAN: Yeah, great question. So, you
2 know, I'd like to start by saying, right, like we evaluate
3 what's necessary to fully mitigate under CESA on a case-by-
4 case basis, so it's very much project-specific.

5 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

6 MR. POHLMAN: You know, there's a couple of
7 questions you asked there, one related to temporary
8 impacts. And, you know, certainly when we're dealing with
9 vegetation in the desert and dealing with desert
10 communities, you know, even though the impacts associated
11 with construction, while they may last five years and
12 include, you know, multiple, you know, seasons of both
13 night work and/or blasting activities, you know, those
14 impacts aren't going to be restored within any short period
15 of time.

16 You know, generally, you know, the Department
17 considers temporary impacts under CESA to be, you know,
18 something that would be restored within a couple -- or you
19 know, a short period of time. You know, depends very much
20 on the habitat, the impacts, the species that we're
21 considering, but, you know, certainly that the impacts
22 would be of a short duration.

23 And I, you know, concur with CEC Staff's
24 assessment where that is not going to be the case here.
25 You know, the impacts of the desertscrub vegetation is

1 going to take decades in order to fully restore and return
2 to a natural state. You know, in addition, you know,
3 there's things like biotic crust in the desert, you know,
4 again, compaction of soils, destruction of burrows, you
5 know, all of that wouldn't be expected to be restored in a
6 short period of time.

7 And, you know, going back, I guess, real fast to
8 the question pertaining to, you know, appropriate
9 mitigation amount, again, it's very much on a case-by-case
10 basis. CDFW supports Staff's assessment on this.

11 Again, you know, the impacts to high-quality
12 habitat, you know, the duration of those impacts, also the
13 duration of the project and the take coverage that would be
14 obtained by the Applicant for the project would be, you
15 know, the life and duration of that project, which would
16 not only span construction, but also operations. So there
17 could be the, you know, likely incidental take of those
18 species over, you know, again, multiple decades.

19 So I'll stop there and see if there's any
20 additional questions. And, also, it looks like Chris may
21 have some.

22 COMMISSIONER GALLARDO: Before moving forward, I
23 want to remind everyone to identify themselves, just so we
24 have an accurate records. I believe you're Jeremy;
25 correct?

1 MR. POHLMAN: Apologies. Yes, Jeremy Pohlman,
2 yeah, Senior Environmental Scientist Supervisor with CDFW.

3 COMMISSIONER GALLARDO: Excellent.

4 HEARING OFFICER WEBSTER-HAWKINS: Did you have
5 any questions, Commissioner, of Mr. Pohlman on the
6 mitigation acreage?

7 COMMISSIONER GALLARDO: No. I have a question on
8 this topic, but not here.

9 HEARING OFFICER WEBSTER-HAWKINS: Okay, so
10 staying with mitigation acreage, I'm seeing the staff
11 wanting to weigh in.

12 MR. HUNTLEY: Hi, Chris Huntley here. I wanted
13 to make sure we responded to one of your questions about
14 Kern County's previous mitigation ratios for other
15 projects.

16 Kern County, as a lead agency under CEQA, has
17 great flexibility in what they determine to be a
18 significant impact, what they feel is appropriate for
19 mitigation ratios. When we looked at some of the
20 information provided to Applicant on that topic, they
21 didn't provide information as to habitat quality, what they
22 were really impacting. What they also didn't identify, was
23 a CESA permit required? So was there a higher mitigation
24 standard?

25 Mitigating to a level less than significant under

1 CEQA is different than meeting the full mitigation standard
2 required under CESA. And that's what we were trying to do
3 in the FSA, because we have CESA species on the project
4 site, and then the Applicant elected to seek take coverage
5 for Burrowing Owl to ensure that there are no construction
6 delays should show up on their project site.

7 So our mitigation measures, our mitigation ratios
8 are meant to meet that fully mitigate standard. I hope I
9 answered that sufficient.

10 HEARING OFFICER WEBSTER-HAWKINS: Thank you.
11 Yes.

12 So I'd like to afford Applicant's expert, Mr.
13 Stein --

14 MR. CRAWFORD: No, this is Scott Crawford.

15 HEARING OFFICER WEBSTER-HAWKINS: Mr. Crawford,
16 thank you.

17 MR. CRAWFORD: Yeah, I was just going to kind of
18 talk about that habitat component. There were no Burrowing
19 Owls identified on the project site. There were no
20 Burrowing Owls identified in the additional workspace
21 areas. The one that we saw was one-time foraging in the
22 buffer zone. So when we do Burrowing Owl surveys, we have
23 to include a 500-foot buffer zone on top of the
24 construction footprint. So that was the one-time survey
25 that we saw one owl foraging in the area.

1 But if you look at the habitat components of the
2 project site, where we saw that owl is where the Joshua
3 trees ended. So they're not in a Joshua tree populated
4 habitat. Their population is found in more open scrub
5 habitat. This is a Burrowing Owl, so it lives in the
6 ground. So if you have large vegetation coverage and
7 Joshua trees blocking their view from predators, they're
8 not likely to forage there or nest there.

9 So we have done other surveys in the area and
10 we've come to the same conclusion that in areas that have
11 more Joshua tree individuals is less likely to have
12 Burrowing Owls. So that was one of the reasons that we had
13 felt that a 3-to-1 mitigation ratio was above and beyond
14 what was reasonable because we didn't have owls actually on
15 site.

16 HEARING OFFICER WEBSTER-HAWKINS: Mm-hmm.

17 MR. CRAWFORD: Sort of similar, but with Crotch's
18 bumble bee, we did have foraging bees on site. You do have
19 to keep in mind that we came off of two way above average
20 rain seasons, you know, a super bloom back to back years.
21 And then years previously to that, where other consultant
22 firms had done surveys in the area, you know, they didn't
23 find *Phacelia* plants, they didn't find host plants.

24 So a lot of the data is, you know, a snapshot in
25 time. And so we just happened to have a really good

1 snapshot in time.

2 We didn't have any hives. The nectar sources
3 that are generally recommended or recognized for the
4 species, *Phacelia* was really the only one that we had. And
5 we had quite a bit of *Phacelia* in the areas, but the actual
6 footprint of the site where the main impacts are had just a
7 few kind of here in their patches, but we didn't have any
8 observations on that actual site. Most of those were up in
9 the P2 additional workspace, P2 North.

10 And so we just want to make sure that you guys
11 have an understanding of, you know, what the onsite
12 conditions are, what the habitats are, and why. I mean,
13 normally, if we would have occupied burrows on a project
14 site, we would assume a 3-to-1 would be a reasonable
15 mitigation. I don't think stepping down to 2-to-1 is
16 unreasonable, considering that we didn't have specific
17 burrows on site or evidence of Burrowing Owl anywhere in
18 the project site or the impact area.

19 HEARING OFFICER WEBSTER-HAWKINS: Thank you for
20 that.

21 MR. HUNTLEY: May Staff respond to that?

22 HEARING OFFICER WEBSTER-HAWKINS: Yes.

23 MR. HUNTLEY: Thank you.

24 HEARING OFFICER WEBSTER-HAWKINS: Yes.

25 MR. HUNTLEY: As regards to Burrowing Owl, there

1 is habitat for Burrowing Owl on the project site. And
2 while Burrowing Owls may use more densely wooded areas less
3 frequently than more open locations, there's nothing
4 inappropriate or unsuitable for Burrowing Owls on that
5 project site. We've all surveyed across the Mojave Desert
6 and seen Burrowing Owls in a wide range of vegetation
7 communities ranging from denser than we would have thought
8 to, you know, pretty barren areas where we still have some
9 good owls.

10 So on that topic, the Applicant assumed take.
11 They wanted take coverage should an owl show up. If
12 they're doing clearing and owls start showing up, they
13 would have no mechanism to, you know, prevent take. The
14 project could likely have some hiccups as they go through
15 the process. And they wouldn't have necessarily a
16 mechanism to excavate or relocate Burrowing Owls should
17 they occur on a project site.

18 As far as bees, we said and I think we described
19 in our FSA and our opening testimony that uses of habitat
20 by bees is going to ebb and flow based on the amount of
21 rainfall that occurs and the kind of plant expression that
22 happens. And their surveys did correspond to a wet year,
23 and they had, what, 7 queens and 20, 30, 40 worker bees
24 flying all over the place. So the bees are there.

25 They did not detect any burrow -- or pardon me,

1 any nests, but that doesn't surprise us. It's very
2 difficult to find nests. You know, in all the surveys
3 we've done, literally we've run into one, and it was
4 almost, you know, dumb luck. We just happened to be in the
5 right space when we saw a number of bees coming out of the
6 ground early in the morning. It's not an easy thing to
7 find.

8 There's suitable foraging habitat on the project
9 site, and they're not restricted to *Phacelia* plants.
10 They're generalist foragers. They'll forage on salvia and
11 *Eriogonum* and other species, but like any animal, they're
12 going to feed on the best available food as it goes through
13 the season.

14 So again, we have those animals on the project
15 site now. They could very well be nesting or overwintering
16 on the project site, and so we're providing a take
17 mechanism for the loss of those species should they be
18 present.

19 HEARING OFFICER WEBSTER-HAWKINS: Great. Thank
20 you.

21 So we've heard a lot of really good testimony on
22 this. I do want to give the parties a chance to ask
23 questions of the experts, and please try to avoid
24 duplicative or questions that might elicit duplicative
25 information.

1 COMMISSIONER GALLARDO: I actually had a
2 question.

3 HEARING OFFICER WEBSTER-HAWKINS: Oh, thank you.
4 Go for it.

5 COMMISSIONER GALLARDO: Is that okay?

6 HEARING OFFICER WEBSTER-HAWKINS: Yes, please.

7 COMMISSIONER GALLARDO: Thank you.

8 I have a question for the Applicant. So on what
9 we've been discussing here, I would like to hear more
10 context. For example, you know, all these differences, how
11 do they impact the functioning of the project or even more
12 generally the success of the project? That would be really
13 helpful.

14 MS. LEES: Yes, Laurel Lees. Thank you for that
15 question.

16 The facility itself is cited on the 88.8 acres
17 that you see there. That is a portion of the parcel that
18 could be developed for the facility to function, but we've
19 been able to condense the efficiency and effectiveness of
20 the facility to operate 500 megawatts on 88.8 acres. So
21 that is an avoidance measure that we incorporated by
22 design. So our project design feature as proposed, a 500-
23 megawatt facility can function on an 88.8 acre site.

24 The reason why we included the optional
25 architectural berm is simply that we cannot predict the

1 future when it comes to cavern rock offtake and we wanted
2 optionality. Now the likelihood of building that berm is
3 low because it's permanent impacts and we want to avoid
4 permanent impacts if possible.

5 We do, as in our project description, have listed
6 three potential offtakers, one of which has been supported
7 by Kern County due to the regional economic benefits of
8 reusing that cavern rock in the concrete aggregate market
9 and realize sales tax benefits in the region instead of
10 creating an additional permanent footprint, so the facility
11 can operate as it needs without the architectural berm.

12 The transmission line preferred pathway, there's
13 a corridor that we analyzed, that needs to happen.
14 Absolutely need to have a transmission line interconnection
15 into Southern California Edison Whirlwind Substation, and
16 we do have 500 megawatts of deliverability there. So that
17 19-mile approximate transmission line is the pathway.

18 But as part of avoidance, we worked with the
19 resource agencies and CEC Staff and our engineers to move
20 the poles to avoid Western Joshua trees, as well as
21 potential jurisdictional water features that were
22 identified in our Delineation Report, which is a common
23 practice as part of avoidance and minimization. So the
24 actual need, the permanent need for a project 500 megawatts
25 to meet our objectives is the WRESC site itself and the

1 transmission line.

2 Now the temporary construction laydown that is
3 needed to build that 500 megawatts, we have more than
4 enough, lots of it. And the reason why we have lots of it
5 is because of that berm. So if we don't have the berm then
6 we don't impact all that temporary acreage and we can do
7 more avoidance, more minimization measures.

8 To that end, we did a significant number of
9 surveys and walked, you know, hand in hand on the project
10 site and are working to avoid as much of the resources as
11 we possibly can, hence our proposal to mitigate for actual
12 impacts.

13 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

14 MS. LEES: I'm sorry, I had one more point that
15 was new and unique is that this habitat is not high-quality
16 habitat, and that's been said a couple different times.
17 And I just wanted to reiterate that there's no evidence on
18 the record that says it is high-quality habitat.

19 COMMISSIONER MCALLISTER: Did Staff or Intervenor
20 want to respond to that high quality point?

21 MR. HUNTLEY: Chris Huntley.

22 Staff disagrees with the Applicant on the habitat
23 quality on the project site. It's clearly being used by
24 bees, it clearly can support bees, and it's certainly
25 burrowing habitat. It may not be as high quality as other

1 areas but it's suitable habitat. It can be occupied.

2 One other point is just non-disturbance buffers
3 for Burrowing Owl right now, because of their CESA
4 candidacy, are 500 meters, so that's 1500, 1600 feet.
5 That's well outside of an area. If an owl was to be
6 detected in that location, the Applicant now has a
7 mechanism to continue working with reduced buffers and
8 things of that nature which they may not have if they
9 didn't seek to take coverage for the owls.

10 HEARING OFFICER WEBSTER-HAWKINS: And just to
11 elaborate on that, I thought I heard Mr. Pohlman refer to
12 the site as high quality habitat. Could you elaborate on
13 the methodology or analysis or criterion you might use to
14 describe it as such?

15 MR. POHLMAN: Yeah, certainly, Hearing Officer.
16 Thank you.

17 You know, so I want to make sure to mention,
18 right, the habitats we're discussing for this project site
19 are native desertscrub communities. It's not, you know,
20 degraded farmland, you know, it's not agricultural lands.
21 There are nice mature creosote scrub, all-scale scrub,
22 obviously Josh tree woodland. These are native habitats.
23 And the species are certainly there, as indicated by the
24 survey efforts, you know, that were conducted by the
25 Applicant. I think Chris and Staff have done a good job,

1 you know, explaining why it's highly suitable habitat for
2 western Burrowing Owl.

3 I would kind of like to add to the crotch's
4 bumble bee discussion. You know, they documented multiple
5 queens and many, many worker bees. And so, you know, we
6 did have our expert bumble bee biologist actually provide
7 written testimony on this project, this was several years
8 ago, and have been coordinating with them throughout this
9 process. And, you know, if they certainly think if there's
10 that number of individuals, there's very clearly nesting
11 going on nearby. It could be within the project site or
12 the direct vicinity. And because nests are so hard to
13 detect, you know, there is a very real possibility that
14 those nests were just not detected during surveys.

15 COMMISSIONER MCALLISTER: Okay, that's super
16 interesting. So I'm a beekeeper, so I'm very interested in
17 this. Obviously, you know, Italian bees, et cetera, are
18 not what we're talking about here.

19 And so I'm kind of curious, do queens roam around
20 looking for nectar in the same way worker bees do for the
21 Crotch's bumble bee? Like you find, in a survey, you would
22 be finding queens out there in the world flying around?

23 MR. POHLMAN: Yes, great question, Commissioner.
24 And, you know, again, we coordinated with our bumble bee
25 expert, but to my understanding, yes, you know, queens

1 could be foraging around looking for nest sites --

2 COMMISSIONER MCALLISTER: Oh, right.

3 MR. POHLMAN: -- during certain times of the
4 season. Or, again, when the nest is senesced and towards
5 the end of the season, they could also be looking for areas
6 to overwinter.

7 COMMISSIONER MCALLISTER: Oh, interesting. Okay.

8 MR. POHLMAN: Yeah, so there actually is the
9 potential, you know, during project activities that they
10 could come across an overwintering queen.

11 COMMISSIONER MCALLISTER: Oh, interesting. Okay.
12 Okay, cool. That makes sense. Thank you.

13 HEARING OFFICER WEBSTER-HAWKINS: So I am
14 cognizant --

15 MS. ANDERSON: So Hearing Officer --

16 COMMISSIONER MCALLISTER: Oh, yes, go ahead.

17 HEARING OFFICER WEBSTER-HAWKINS: Oh.

18 MS. ANDERSON: Hearing Officer, I'd just like --
19 this is Ileene Anderson, and I'd just like to weigh in, as
20 well, on this quality -- habitat quality issue.

21 And, you know, Joshua trees, especially at the
22 number that are on the site, which has been our focus,
23 definitely suggests that the habitat quality is good desert
24 Joshua tree habitat out there to support a variety of
25 different species, which we haven't commented on, but it's

1 definitely, you know, good Joshua tree habitat out there,
2 creosote bush habitat. So, yes, I think it's high quality
3 as well.

4 HEARING OFFICER WEBSTER-HAWKINS: Thank you for
5 that, Ms. Anderson.

6 What I'm cognizant of right now is that we still
7 have the parties.

8 COMMISSIONER MCALLISTER: Yeah.

9 HEARING OFFICER WEBSTER-HAWKINS: They need an
10 opportunity to question the panels on this expert witness
11 panel, and any follow-up questions that the Committee may
12 have. We also would like to hear from the county.

13 We need to take a break. We've been at this now
14 for three hours. And I don't see all of this questioning
15 and good discussion wrapping up in the next 10 minutes. So
16 I would propose that we take lunch and resume with the
17 cross-examination of the witnesses for the questions of the
18 agency.

19 CDFW, if you're able to stay, we'd greatly
20 appreciate it.

21 We're going to take a 45-minute lunch and stretch
22 our legs, okay? Thank you all. We will be coming back,
23 let's see, 45, 1:07, is that 1:52? Let's say 1:55. We'll
24 start before 2:00. 1:55 is good. Thank you.

25 (Off the record at 1:07 p.m.)

1 (On the record at 1:59 p.m.)

2 HEARING OFFICER WEBSTER-HAWKINS: Good afternoon.
3 Welcome back from lunch, and we're going to pick up where
4 we left off, which is we have the Biological Resources
5 Panel and experts still with us. We have our agency
6 representative from CDFW, and we're going to now begin the
7 party's questions of the experts.

8 Just as a reminder, the parties can ask their own
9 experts clarifying questions. They can ask the other
10 party's experts clarifying questions if you're going to
11 rely on a document, such as their testimony or something
12 they've relied upon, please be sure that you've identified
13 the exhibit and page number if appropriate.

14 So we're going to begin with the Applicant.

15 MR. HARRIS: Yeah. Now let's see what this way
16 it goes here. Okay. If you're ready, Hearing Officer, I
17 think I found the volume generally, so I was going to pull
18 anybody's head off here after lunch.

19 A couple of things. I'm going to go back through
20 and clarify a couple of things. There was a statement I
21 think at the other end of the table about western Joshua
22 tree woodlands on site, and I think that's incorrect, but
23 I'd like to ask the question.

24 Are there western Joshua tree woodlands on the
25 88-acre project site?

1 That's for --

2 HEARING OFFICER WEBSTER-HAWKINS: Are you
3 directing that question to staff?

4 MR. HARRIS: Let's see.

5 HEARING OFFICER WEBSTER-HAWKINS: -- cross
6 witness?

7 MR. HARRIS: I was kind of directing it towards
8 mine, but I don't mind Chris answering.

9 Go ahead --

10 HEARING OFFICER WEBSTER-HAWKINS: Yeah. If you
11 can identify the name of the witness when you're -- that
12 would be helpful.

13 MR. HARRIS: I'm going to go with Mr. Crawford.
14 I don't want to put Chris on the spot. I think I know what
15 Chris's answer is, and I would like it, but can we pass the
16 microphone down to Mr. Crawford, please?

17 Thank you, Mr. Huntley.

18 MR. CRAWFORD: Yeah. This is Scott Crawford.

19 I think the question was do we have western
20 Joshua tree woodlands on the physical project site? And
21 the answer is no.

22 And I think that was based on a comment that
23 Jeremy Pohlman had made when he was kind of generally
24 characterizing the habitat on site with regard to a high-
25 quality habitat, and he had mentioned that it was a western

1 Joshua tree on site, indicating that it was a higher
2 quality of habitat.

3 MR. HARRIS: Okay. So not located on the 88-acre
4 site, but okay, thank you.

5 MR. CRAWFORD: Correct.

6 MR. HARRIS: I want to turn back to bees for a
7 minute, and maybe Kate can help me with this one.

8 There was a lot of numbers thrown around about
9 queens and where bees were found and that kind of stuff.

10 Can you take us through what you actually found,
11 where those bees were located, please?

12 MS. MOSS: Yes. Thanks.

13 I think it would be helpful to pull up TN number
14 -- oh, sorry, Exhibit 1149 so we can visualize what we're
15 talking about when we talk about Crotch's bumble bee
16 habitat and observations.

17 HEARING OFFICER WEBSTER-HAWKINS: And this would
18 be the Willow Rock incident dental take permit?

19 MS. MOSS: That's correct.

20 HEARING OFFICER WEBSTER-HAWKINS: And while staff
21 is locating that, is there a particular page or section?

22 MS. MOSS: There is. It's page 25. There should
23 be a map series towards the end of the application.

24 MR. HARRIS: The PDF page.

25 HEARING OFFICER WEBSTER-HAWKINS: PDF page.

1 Right. Okay. Thank you.

2 Looks like the maps begin on 23, and you're
3 directing us and our attention to page 25, which is the
4 Crotch's bumble bee habitat and observations map?

5 MS. MOSS: That's correct.

6 HEARING OFFICER WEBSTER-HAWKINS: So it would be
7 the paginated -- the PDF page is located.

8 MR. HARRIS: That's not the correct exhibit, I
9 don't believe.

10 HEARING OFFICER WEBSTER-HAWKINS: No.

11 MR. HARRIS: Exhibit 1149.

12 HEARING OFFICER WEBSTER-HAWKINS: 1149?

13 MR. HARRIS: 1149.

14 And then PDF page 25.

15 MS. MOSS: So you can stop right there.

16 So there's a map series here that we developed
17 based on field data, and to provide a little bit of
18 context, when the crews conduct these surveys, they do two
19 functions. They survey the area and they document suitable
20 habitat, so forage species, and they also document
21 observations of the bees themselves.

22 So we have two pieces of information here, which
23 is the pink is *Phacelia*.

24 MR. HARRIS: Kate, can I interrupt you for a
25 second?

1 Can you orient people about where the 88 acres is
2 in this particular exhibit?

3 MS. MOSS: Absolutely. Yes.

4 The 88 acres is at the bottom part of this
5 screen. So what we're looking at here is -- yeah. The
6 gray or dark green shading is the actual Willow Rock
7 Facility footprint. The lighter green shading is a
8 combination of P1, P2. And then you can see the gen-tie
9 off towards the left-hand side of the image.

10 So what's shown on this screen is the pink, which
11 is *Phacelia*, as I said. And the reason why we're showing
12 specifically *Phacelia* is that was the forage species that
13 was predominantly found, and where the bees were observed.
14 So while they do forage on other species, those were not
15 documented in the density that *Phacelia* was.

16 The other thing that's shown on this image is --
17 it's a little bit difficult to see, but right in the middle
18 of that pink patch there is a red dot. That is an
19 observation of a queen. There's another one off the
20 project site, so north of the project site there, you can
21 see another red dot. That's another queen.

22 So while we hear that there were multiple bees
23 observed in the Project as part of the surveys, they were,
24 but the majority of them were observed on the gen-tie line,
25 not in the Project permanent or temporarily impacted areas.

1 If you're able to scroll to the next image, this
2 shows the southern area of the project footprint. So
3 again, the dark green is the permanent loss. And then the
4 southern part shows some of those temporarily impacted
5 areas. And again, you can see that there's a patch of
6 *Phacelia*. And there's one -- and this one is orange in
7 color, so it's actually a worker bee, that was observed in
8 that patch. There weren't bees observed on the actual
9 project footprint. It was within the temporary areas.

10 HEARING OFFICER WEBSTER-HAWKINS: And can you
11 also just orient us. You referred to WR, P1, P2 north and
12 P2 south. I don't know that everyone in the room knows
13 exactly where those sites are or those areas. Just so we
14 know that -- where you're referencing when you made that
15 reference.

16 MS. MOSS: Right. Sorry.

17 So the dark green area that's the WRESC site we
18 refer to it as, which is the actual Willow Rock Facility.
19 We refer to P1, P2, I think we refer to those P2 north and
20 P2 south as the temporarily impacted areas. So those are
21 areas that would either become part of the rock berm in
22 that scenario or would be temporarily used for laydown.

23 And that's represented by all the light green.

24 HEARING OFFICER WEBSTER-HAWKINS: All the light
25 green is either P1 or P2.

1 MS. MOSS: That's right.

2 HEARING OFFICER WEBSTER-HAWKINS: All right.

3 MS. MOSS: That's right. The very light shading,
4 I realize that there's multiple shadings of green on this,
5 so it's slightly complicated, but the lighter shade of
6 green.

7 HEARING OFFICER WEBSTER-HAWKINS: Right. Thank
8 you. Good.

9 MR. HARRIS: Can we roll back to the prior image
10 too? For my next question.

11 Just back one page.

12 MS. MOSS: Yeah.

13 MR. HARRIS: Yeah. If we could go back one page
14 on the same exhibit to the first one. Yeah. There we go.

15 Okay. So Kate, so two queens total and both off
16 of the main project site; is that correct?

17 MS. MOSS: Two queens total in this area. There
18 were additional queens observed along the gen-tie routes,
19 mostly along the optional routes.

20 MR. HARRIS: Okay. So the other five that were
21 referenced earlier, not anywhere seen here, they'd be on
22 the gen-tie line, the 19-mile gen-tie line, the whirlwind;
23 is that correct?

24 MS. MOSS: That's correct.

25 MR. HARRIS: I want to ask now, Scott Crawford,

1 about survey areas. There's a sort of suggestion that
2 there's a lot of holes in our survey territories.

3 Can you actually identify the specificity where
4 the surveys were formed and where those, you know, quote-
5 unquote unsurveyed areas are on this map?

6 MR. CRAWFORD: Sure. Scott Crawford.

7 When we did the field surveys and we had split
8 those up into 2023-2024, we were working with Cody to
9 provide which parcels we had access to, which ones we
10 don't.

11 When we completed the surveys, there were 8
12 parcels total that we were not allowed access to. So let
13 me first state that we had complete access over 100 percent
14 of the WRESC project site, the P1, the P2 north, P2 south,
15 and the entire preferred route of the gen-tie line.

16 What we did not have access to along the gen-tie
17 line was one parcel in one of the options -- I'll make sure
18 I get it right -- and it's the option that goes to the
19 furthest north, and then it's kind of the western corner of
20 that option was the only area that was in an actual
21 alternative project buildable footprint. All of the other
22 parcels were in buffer areas outside of the right-of-way
23 that we were doing surveys.

24 So I just want to make sure -- is that clear
25 enough?

1 MR. HARRIS: Well, it was left and right, east
2 and west.

3 So on this map, there's on the left-hand side,
4 which is the west, I guess, there's a little jog up and
5 down. And that's an alternative route, and that's the area
6 you were not able to access?

7 MR. CRAWFORD: No. No. That's not one of them.

8 MR. HARRIS: Okay. I'm sorry.

9 MR. CRAWFORD: Yeah, if you scroll down -- well,
10 I think it's actually -- might not be on this map. So
11 there is a parcel between the P1 additional workspace and
12 the highway, but those weren't areas that we were
13 conducting the protocol surveys in, and I think it's
14 probably one of the unshaded green areas.

15 But if you go to the next -- it's probably the
16 second or third one down, that was all surveyable. I don't
17 know how far over the -- okay. So this is perfect.

18 You can see in the upper left corner or the
19 northwest corner of that alternative that goes up to the
20 north and comes back down. There's a green shaded area
21 with some *Phacelia* in it. The property just south of that
22 was an area that we did not have access to.

23 MR. HARRIS: But again, that's on one of the
24 optional routes and route options. But you were able to
25 put boots on the ground on all the preferred routes.

1 MR. CRAWFORD: Correct.

2 MR. HARRIS: Is that correct?

3 MR. CRAWFORD: Correct. That's correct.

4 MR. HARRIS: All right. Thank you. I had a
5 clean record until I asked one more question, so I
6 apologize for messing you up. I maybe need more lunch than
7 I had.

8 I want to talk to you about the ITP process now.
9 If you're the best person, Scott, or you -- can someone
10 else on the panel. There's a lot made about us seeking ITP
11 coverage and seeking take coverage.

12 Can you give a little more history about that
13 ITP-like filing and how that all evolved?

14 MS. LEES: Is it okay?

15 MR. HARRIS: Sure. Go for it.

16 MS. LEES: Laurel Lees.

17 The discovery period during which we did data
18 requests and responses to data requests, during that time
19 period in October, the burrowing owl was listed, and after
20 the close of discovery, which closed January 13th, we were
21 working towards helping staff work towards a preliminary
22 staff assessment, and it was given to us as an option to
23 speed things up if we were to file an ITP.

24 And there are two separate processes. You know,
25 we're not filing an ITP and getting CDFW to approve that,

1 which normally in CEQA land happens after a CEQA EIR is
2 certified or an MND is adopted. And in this process,
3 because CEC is a one-stop shop, we submitted an ITP form so
4 that we had information that they were asking for.

5 So it was a post-discovery information request
6 out of good faith to move things along. As we're all very
7 aware schedule is a high priority. So we filed that out of
8 due diligence and being overly conservative.

9 HEARING OFFICER WEBSTER-HAWKINS: May I ask what
10 species that submittal was based on?

11 MS. LEES: Burrowing Owl and Crotch's bumble bee.

12 MR. HARRIS: Let me go back to Scott.

13 Can you compare that process, you know, in a non-
14 Energy Commission siting context versus this context?

15 MR. CRAWFORD: So normally when we -- normally we
16 usually start with our protocol surveys.

17 In fact, if you can go up a couple slides just
18 for reference. One more. There you go.

19 No. One more back.

20 MR. HARRIS: Back to PDF page 25 --

21 MR. CRAWFORD: Yeah. That one.

22 MR. HARRIS: for the transcript.

23 MR. CRAWFORD: So I know we kind of talked about
24 the burrowing owl location. So normally we start with our
25 protocol surveys. If we do not have burrowing owl on the

1 project site, then we don't have further mitigation. The
2 complicated part now is because of the candidacy we have to
3 treat it as endangered species.

4 So normally we wouldn't ask for an ITP. We would
5 just have construction monitors and we would write a plan
6 that if we found one, we would do X, Y, and Z. So that's
7 pretty standard. With the ITP, normally what happens is
8 we're looking for what's the mitigation to offset those
9 impacts so we could have take consideration.

10 So what our thought process was moving forward
11 with the way that they filed the ITP was, you know, we were
12 looking at the impacts. We'll start with Crotch's bumble
13 bee, where the *Phacelia* was. So reasonably, that's going
14 to be impacted. That's where our mitigation would land
15 under the ITP because that's where the take would occur.

16 So similarly with burrowing owl, we would
17 probably use the same type of area knowing that the
18 burrowing owl that we did surveys were not in the project
19 site footprint but within that buffer zone. And so it's
20 kind of a different analogy, kind of a time constraint.

21 But normally we would do an ITP if we have
22 presence, which we do. We know we have burrowing owl and
23 Crotch's bumble bee either on the project site or in the
24 vicinity, which is one of the reasons we moved forward with
25 the ITP. The other way to use an ITP is if you don't have

1 time to do surveys and you assume occupancy of the entire,
2 you know, project site.

3 But I think one of the things that we wanted to
4 make sure that you guys understand is when we're looking at
5 what the mitigation looks like, it's not just the whole
6 project site. We haven't had a final design where all of
7 P1 and all of P2 are all going to be impacted. So if we
8 have a non-berm scenario, then we avoid all of P2. And so
9 to have an ITP where we consider all of those as impacts,
10 we may not be impacting.

11 And so I think that's where we were struggling
12 with, is that final 3-to-1 on a thing that impacts
13 everything seemed a little bit more than necessary. And so
14 I think what we were looking for is, you know, a
15 compromise, was if we were going to take all of the
16 acreage, then maybe we do a 2-1 for permanent and a 1-to-1
17 considering all the project impacts without looking at
18 avoidance and minimization measures.

19 HEARING OFFICER WEBSTER-HAWKINS: Okay.

20 MR. CRAWFORD: Is that good?

21 MR. HARRIS: No. Yeah. That's good.

22 And then I guess one more thing. We've talked a
23 lot about actual impact areas, right? So whoever's
24 appropriate on the panel to answer the question, how will
25 we be able to verify once we start construction how much

1 we're actually impacting? Because Laurel talked about
2 trying to avoid areas, for example, and not impacting them.
3 I know there's photography involved and that kind of stuff.

4 Can you explain that process to confirm what the
5 actual impacts and the actual acreages would be?

6 MR. CRAWFORD: Oh. Yeah. Absolutely.

7 So normally what we would do is we would fly a
8 pre-construction, whether a drone or aerial photo. So we
9 have the existing conditions immediately prior to
10 construction and then we would be monitoring that
11 throughout the course of the project. So you know, midway
12 through the project we're going to be documenting are they
13 going outside of their limits, on top of having the field
14 staff that are already looking at that.

15 And then on conclusion, we have a final flyover
16 that we're -- we look at what has actually been impacted in
17 having that calculation.

18 MS. MOSS: Sorry. Can I just add to that? I
19 also believe that that is one of the conditions of the
20 project that's in the staff assessment.

21 MR. CRAWFORD: Yeah.

22 MR. HARRIS: I have one more question for you,
23 Kate and then I think I'm wearing out my welcome.

24 So I want to ask you about habitat quality. That
25 came up quite a few times. And just can you speak

1 generally about what kind of things go into your
2 determination of habitat quality and how that affects your
3 selection of ratios?

4 MS. MOSS: Yes. Thanks. Habitat quality is
5 something that can be difficult to talk about because we
6 use terms like quality, non-quality, suitable, high, low,
7 medium. And it's difficult without having a set criteria
8 that defines those terms to speak apples to apples.

9 So the sort of things that are typically
10 considered when we think about habitat quality for a
11 species is, where would the species in a perfect world want
12 to live? That's high-quality habitat. So it's an area
13 that hasn't been disturbed that meets the natural
14 requirements of that species. And then there's sort of a
15 gradation from there. And that certainly doesn't mean
16 that a species will occur or will not occur outside of
17 high-quality habitat. They do. They occur in
18 moderate-quality and in low-quality habitat. So they can
19 occur in other habitats. And we don't dispute that this
20 project provides habitat.

21 The changes that we need to acknowledge on this
22 site that have occurred is that it's situated between two
23 highways, so that's a disturbance that creates noise and
24 light. It creates mortality risk for animals, and it makes
25 it difficult for animals to move on and off the site.

1 There's a rail line that also creates noise. There's been
2 years of people dumping garbage on the site, so that's
3 disturbed the habitat, and there's also off-road driving
4 that has modified the habitat.

5 Again, this doesn't mean that this is not
6 suitable habitat for wildlife species. It just affects
7 that definition of quality.

8 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

9 Applicant, do you have any questions of the other
10 party's witnesses?

11 MR. HARRIS: No. We don't.

12 HEARING OFFICER WEBSTER-HAWKINS: Okay.

13 MR. HARRIS: Thank you for allowing us to do
14 this. Thank you.

15 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

16 Staff? Opportunity to ask questions of -- I'll
17 ask Mr. Babula to lead the questioning.

18 MR. BABULA: Okay. Thank you. This is Jared
19 Babula, Staff Counsel.

20 So I'll start with my -- Mr. Chris Huntley.

21 Mr. Huntley, is staff seeking to have sections of
22 the site that aren't going to be impacted, mitigated?

23 MR. HUNTLEY: No, sir.

24 MR. BABULA: Would you like to respond to some of
25 the information and responses you just heard from the

1 Applicant?

2 MR. HUNTLEY: Yes. That would be great. Thank
3 you. I took some notes and I may have to go back to a
4 point if I overlook it.

5 A couple important factors. What do surveys tell
6 us? What do even protocol-level surveys tell us?

7 Protocol-level surveys are a tool we use to find
8 the best opportunity to detect a rare or sensitive species
9 on a project site, and they've generally been designed to
10 give you a reasonably good chance of detecting them, but
11 not 100 percent. We can do protocol-level surveys for bees
12 on a project site, find nothing, show up next month, and
13 there's a bee there, and we see the same thing with desert
14 tortoise and other things. Even utilizing protocols with
15 experts, we overlook 40 percent of the tortoises that are
16 on a project site and overlook the vast majority of sub-
17 adults or hatchlings. They're just not readily available.

18 When we look and when we talk about bees on the
19 project site, we are analyzing the entire project as a
20 whole. We're not analyzing the RESc project site or P1 or
21 part of the gen-tie line. We analyze the project as a
22 whole and we're providing compensatory mitigation and CISA
23 coverage to the project as a whole. And so we acknowledge
24 there's bees all over the different alignment areas.

25 The fact that bees are in some of these areas

1 that are being proposed for disturbance, like in the top of
2 that photograph there, doesn't mean they don't occur on the
3 project site, doesn't mean they don't forage on the project
4 site, doesn't mean they're not nesting on the larger energy
5 project site -- WRESC project site.

6 So it's a good tool. The surveys are obviously
7 detecting bees in the best possible habitat in a perfect
8 world type of situation, but it doesn't preclude their use
9 of the project site. And I would agree with the biologist
10 that if I wanted to find a bee or I wanted to find a veria
11 (phonetic) or something like that, I would want to look in
12 the

13 best-quality habitats that can give me the highest
14 potential to detect bees. And we're glad that the
15 Applicant went out, did the surveys, and did detect bees.

16 But there's habitat for bees all over that
17 project site, including foraging habitat. They're not
18 limited to foraging on phacelia. There are other species
19 that we detected in your species list that they would
20 forage. I think there's *Eriogonum* and salvias and things
21 like that which they can certainly forage on at any given
22 time.

23 I do want to make sure we're clear on this. Berm
24 or no-berm option, we are not going to require you to
25 mitigate for the worst case scenario. I know in one of the

1 conditions, that's what we did, and I think we're going to
2 have to change that to make sure we include a berm and
3 no-berm option. But the acreages will be taken care of in
4 that option.

5 We're not going to, I think, allow a true-up for
6 impacts to a CESA species at the end of the project. We
7 would want you to tell us what you're going to impact,
8 which alternative you're going to use, earlier in the
9 process so we don't have a further delay in offsetting
10 impacts to those species.

11 Let's see.

12 And again, as far as habitat quality goes,
13 habitat is habitat, and better habitat can support higher
14 numbers of species than lower habitat depending on the
15 forage, the shelter, and other factors, but it's habitat
16 nonetheless.

17 And as far as the habitat quality on this project
18 site overall, we agree, and we mentioned in our staff
19 assessment, that there's probably no tortoise and probably
20 no Mohave ground squirrel because it's been isolated by the
21 highway and the rail line and Sierra Highway for so many
22 years. But the fact that we have relatively intact habitat
23 with a variety of rare plants, not just Joshua trees, but
24 other rare plants, suggests that the habitat is relatively
25 okay. It is subject to disturbance and dumping and other

1 things, but that's not precluding use of the site by bees
2 or other species. So again, we have to assume that it's
3 occupied habitat project-wide for the purposes of our CESA
4 construction.

5 Again, this is not a typical CEQA CDFW process
6 where we would have a CEQA project with a clearly defined
7 project description. Then we would apply for a CESA
8 application with distinct numbers. This is a CEC process,
9 so it's a little bit independent. But we did feel we had
10 to present mitigation to offset impacts to occupied habitat
11 in the FSA.

12 And with that, I don't know if anyone has any
13 other questions.

14 MR. BABULA: Thank you. This is Jared again.

15 I do have a question for the Applicant. I'm not
16 exactly sure which would be best to do this, but can one of
17 you describe the types of equipment and materials that
18 would be placed in the laydown areas, so there's a little
19 bit of some concrete examples of how you're going to plan
20 to use the laydown areas.

21 MR. STEIN: Can you hear me here? Okay.

22 In the laydown area, there will be a variety of
23 uses.

24 So for starters, construction parking. So
25 workers coming to and from the site, whether by bus or by

1 individual car, would be parking in a designated parking
2 area. There would be material laydown, so the various
3 components of the project that are being constructed need
4 to be stored before they're actually put in place where
5 their ultimate use will be. And then there will be the
6 yellow iron machinery that will be used for grading and for
7 construction, and those will be placed in a laydown or
8 storage area when they're not in use. Those are the
9 primary uses.

10 And I wanted to take the opportunity, too, to
11 talk about what the -- the difference between -- I mean, we
12 use terms like project site and project area, and I think
13 it's important to understand the distinction between those.

14 So the dark shaded area there is the WRESC
15 project site. That is where the predominant disturbance
16 for this, for construction of this facility will occur.
17 There will undoubtedly be intensive grading, and the
18 majority of that area will be disturbed.

19 The green shaded area above it is designated for
20 construction laydown, and then the linear component, the
21 gen-tie line, runs approximately 19 miles over to the
22 Whirlwind Substation.

23 There will be activity along that gen-tie as the
24 transmission line is being constructed, but the intensity
25 of activity along that corridor is extraordinarily lower

1 than the intensity of construction activity on the site.
2 There will be less noise. There will just be less
3 construction in general.

4 In a way a transmission line is constructed as
5 little mini construction sites when each pole is located
6 along the transmission line. There's micro-siting that's
7 done in coordination with qualified biologists to be sure
8 that resources are avoided, both for biological resources
9 and cultural resources, and then placing those permanent
10 structures. And it's no more than a few days of activity
11 at each one of those locations, then they move on to the
12 next one.

13 And then once the poles are in place, then the
14 conductor will ultimately get strung on the poles and there
15 will be various little tensioning sites where the conductor
16 is actually attached to the pole and pulled to the
17 appropriate tensioning. So it's a very different level of
18 intensity.

19 So when we talk about the bees flying all around
20 the project site, I think what this image is showing is
21 that the survey identified an instance of two bees that
22 were off the area where all of the intensive activity is
23 going to be occurring, but possibly in the area of
24 construction laydown. And any other sitings were along the
25 transmission line corridor where the construction activity

1 is much less intense.

2 MR. BABULA: So just to follow up then on -- just
3 focusing not on the transmission part but on what was
4 called P1 and P2, can you describe how those four areas
5 would be, like, cleared and grubbed and rocked for
6 stability as part of the project?

7 MR. STEIN: Yeah. I don't know if I'm the best
8 person on the panel to describe that. I can take a --

9 MS. LEES: Hi, Laurel Lees.

10 So in the P1 area, which is the first L-shape
11 around the WRESC site itself, and then P2 north is that
12 block. P2 south is the block below.

13 If the berm is not constructed and we have all
14 this potential temporary laydown areas, what we would do is
15 identify places to avoid. So we're going to flag, for
16 example, in P2 south, which is -- if you want to go to the
17 next figure on the screen, just one map down, there is a
18 block of four -- yeah, you see them there with the
19 *Phacelia* -- a block of four parcels there where there is a
20 potential jurisdictional water feature.

21 So similar to that water feature, areas that we
22 want to avoid would be flagged, flagged for avoidance. So
23 we're not going to park a car in a jurisdictional water
24 feature. We're not going to have a parking lot over a J
25 tree that we can avoid -- excuse me, western Joshua tree

1 that we can avoid. Pardon me.

2 And so similarly, when we get -- for example, we
3 don't need to wait until the end of construction to true up
4 our temporary and permanent impacts. We can do that when
5 we have final design. We're going to submit construction
6 drawings and specifications and it will show our
7 delineation of work and where we're going to build, and the
8 type of activity that happens in those areas. So our
9 engineering drawings would be very specific about where our
10 lay down is going to be located, and we would work to
11 avoid, again, as much as possible, avoid Joshua trees,
12 avoid *Phacelia*, avoid -- if during pre-construction surveys
13 that we're burrowing owl found on site, we would avoid
14 those.

15 Following the normal pre-construction mitigation
16 measures, we would have a much better understanding before
17 we start construction such as clearing and grubbing --
18 pardon me, backing up steps -- such as salvage and
19 relocation of Joshua trees, then site clearing and grubbing
20 and mobilization of equipment, that would all be planned
21 for in accordance to site constraints that we would find
22 during pre-construction surveys.

23 So another way of saying: there's an opportunity
24 post certification pre-construction to identify the actual
25 permanent footprint, and be able to design our lay down to

1 avoid more resources.

2 MR. BABULA: Thank you.

3 So I do -- so on the chart, the table we had up
4 before which is 2.3 in your opening testimony, so that --
5 those numbers for what you call the temporary disturbances,
6 that would be the max of P1 and P2, but within that, based
7 on what actually happens with whether or not you're going
8 to have the berm -- the actual amount that would be
9 temporarily disturbed, in your parlance -- it could be
10 narrowed because of the -- sort of evolving the way the
11 project will actually be constructed; is that the case?

12 MS. LEES: That's correct. It would be best
13 practice to avoid and minimize impacts to maximum extent
14 that we could, and we would know more before construction.

15 MR. BABULA: So let me, if I can, Committee, just
16 go back to Mr. Huntley.

17 So Mr. Huntley, is there something in our
18 conditions that sort of provides some flexibility to adjust
19 and account for this sort of true-up in a way?

20 MR. HUNTLEY: We did have some language. I
21 believe it was in one of the Bio 8 or Bio 7. I think that
22 may have been removed.

23 I believe the mitigation related to bumblebees
24 and owl habitat should be modified to reflect Option 1 and
25 Option 2, and I do think there can be some language in

1 there to base the mitigation acreages on the designs
2 provided by the Applicant that give us a solid number prior
3 to land disturbance for site mobilization, whatever you
4 want to call it.

5 So I think there can be flexibility built into
6 the process.

7 MR. BABULA: Thank you.

8 Those are all my questions.

9 HEARING OFFICER WEBSTER-HAWKINS: And just to
10 clarify -- excuse me, just to clarify, you have no
11 questions for the Intervenor's expert?

12 MR. BABULA: No. I don't.

13 HEARING OFFICER WEBSTER-HAWKINS: All right.
14 Thank you.

15 Turning to Intervenor, do you have questions of
16 the experts?

17 CROSS-EXAMINATION

18 MS. GRAVES: Zeynep Graves, counsel for
19 Intervenor, Center for Biological Diversity.

20 I just have a couple questions for Applicant's
21 expert. I'll direct them to Ms. Moss, but if you're not
22 the right person to answer, then you can pass the mic to
23 maybe Mr. Crawford.

24 And if we could pull up 1234. This is
25 Applicant's rebuttal testimony. It's page six of the PDF,

1 paginated as three of the testimony. Page six of the PDF.

2 And we'll get to specific questions regarding the
3 rebuttal testimony, but kind of preliminarily, Ms. Moss,
4 were you responsible for evaluating whether Joshua tree
5 Woodland occurred within the Willow Rock project area?

6 MS. MOSS: I did a secondary analysis. Scott
7 Crawford did an initial analysis.

8 MS. GRAVES: Okay. Maybe I can start with Mr.
9 Crawford then.

10 So in your initial analysis of Joshua tree
11 woodland, you relied in part on the California vegetation
12 map in support of the Desert Renewable Energy Conservation
13 Plan; is that right

14 MR. CRAWFORD: That's correct.

15 MS. GRAVES: And you also conducted field
16 verification surveys in 2023 and 2024?

17 MR. CRAWFORD: That's correct.

18 MS. GRAVES: And the background mapping you
19 worked from was updated at a 10-acre scale; is that right?

20 MR. CRAWFORD: That's correct.

21 MS. GRAVES: Would you agree that the scale might
22 not always capture smaller areas where Joshua trees occur
23 in clusters?

24 MR. CRAWFORD: That's correct.

25 MS. GRAVES: And did you conduct any field

1 surveys to look for woodland in areas that had not been
2 identified as woodland during the background data review?

3 MR. CRAWFORD: Yes.

4 MS. GRAVES: And can you describe -- actually, so
5 other than the -- I think this is detailed on that -- the
6 page that we have pulled up in Exhibit 1234. Other than
7 the 74.66-acre western Joshua tree woodland polygon that
8 was identified along the project areas gen-tie Options 2A
9 and 2B, did your team -- you or your team identify any
10 other western Joshua tree polygons?

11 MR. CRAWFORD: No. We did not.

12 MS. GRAVES: Did you attempt to?

13 MR. CRAWFORD: Yes. We did.

14 MS. GRAVES: Okay. Can you describe what you did
15 to attempt to identify any other Joshua tree Polygons?

16 MR. CRAWFORD: Sure. Wo we used the base map as
17 a starting point. We did our field verification to
18 identify areas that we felt may have been missed or weren't
19 classified correctly. There was one Mohave desertscrub
20 area that was in the -- I'll say the P2 North area that did
21 not have creosote bush in it, so we had remapped that to
22 burrow bush scrub.

23 We did look at the project site. We do know
24 there is a number of Joshua trees on it. We didn't feel
25 that the 10-acre minimum mapping unit was sufficient, so

1 when we do our veg mapping we do it at a tenth of an acre.

2 So what I had done, which was a separate analysis
3 from what Kate did, was we took about 30 different Joshua
4 trees in different classifications to identify based on an
5 aerial photo and site visits what the canopy cover of the
6 Class A, Class B, and Class C trees were. We took that
7 average. We put a GIS polygon around each of those, and
8 then took a square that was a tenth of an acre and moved it
9 around the site to find the biggest cluster of Joshua
10 trees. And at the most Joshua trees that we could find,
11 that number was -- instead of having the 1 percent, it was
12 .6 percent, so it was underneath that 1 percent threshold.

13 MS. GRAVES: And was that exercise documented
14 anywhere in the record?

15 MR. CRAWFORD: It was part of our vegetation
16 mapping.

17 MS. GRAVES: Do you recall, like, either the
18 exhibit number or the TN of that mapping that reflects the
19 polygons that you're talking about?

20 MR. CRAWFORD: It should be on the Biological
21 Resources Assessment, which is the 1043 Exhibit number.

22 MS. GRAVES: And do you recall the size of the
23 polygons that you mapped the Joshua trees at a 0.6 percent
24 density?

25 MR. CRAWFORD: No. We didn't map any of the

1 polygons. We just were looking at anything that would be
2 more than that 1 percent.

3 MS. GRAVES: So sorry. Just to clarify, you --
4 can you repeat what you just said?

5 MR. CRAWFORD: We didn't map the areas that were
6 under the 1 percent. We were only looking for areas that
7 would qualify as a woodland. So if they qualified as a 1
8 percent or more, then we would have mapped those as a
9 polygon. But we didn't find any of those on the project
10 site.

11 MS. GRAVES: Right. And does that include P1 and
12 P2?

13 MR. CRAWFORD: That's correct.

14 MS. GRAVES: And what were the -- what was the
15 size of the areas that you looked at to determine whether
16 there was less than a 1 percent canopy cover?

17 MR. CRAWFORD: Yeah. It was that tenth of an
18 acre mapping unit that we use.

19 MS. GRAVES: Okay. Thank you.

20 Okay. Thank you. I don't have any further
21 questions.

22 HEARING OFFICER WEBSTER-HAWKINS: Right. Thank
23 you.

24 I have some clarifying questions based on
25 statements that have been made here today, and I think I

1 want to first just settle the record.

2 Mr. Babula, you made a comment about the ITP
3 process and being subsumed under the CEC's jurisdiction,
4 and we also had testimony about the Applicant's intent to
5 frontload the documentation to CDFW for the purpose of
6 reviewing the project for those species.

7 So I would like to confirm first, from Mr.
8 Huntley, have you received CDFW's consultation and
9 recommendation for any avoidance, minimization, or
10 mitigation on the three main species we're talking about,
11 which is burrowing owl, Crotch's bumble bee, and western
12 Joshua tree?

13 MR. HUNTLEY: This is Chris Huntley.

14 Yes, ma'am. We've been coordinating throughout
15 the entire process to make sure that we're aligned with
16 conditions of certification, and CDFW did provide
17 recommendations as requested by CEC for those species and
18 other species.

19 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

20 And then also just to confirm with CDFW, I don't
21 know if you've had a chance to look at the latest either
22 compendium or version of our conditions of certification.

23 Are you satisfied with the manner in which CEC
24 has reflected your expertise -- your agency's expertise on
25 those three species?

1 MR. POHLMAN: Yes. Yeah. You know, CDFW
2 certainly supports the rationale and the conditions of
3 certification that are, you know, provided there.

4 HEARING OFFICER WEBSTER-HAWKINS: Thank you. I
5 wanted to also just acknowledge one of the documents that
6 Intervenor's expert referenced was the Western Joshua Tree
7 Conservation Plan in its draft form, and I believe the Fish
8 and Game Commission adopted the final plan last Thursday.

9 To your knowledge, is there anything in that
10 final plan that might change your agency's recommendations
11 with regards to the western Joshua tree impacts analysis or
12 mitigation and conservation recommendations?

13 MR. POHLMAN: That's a great question, Hearing
14 Officer.

15 Pertaining to the conservation plan, I don't
16 think there would be anything in there that would pertain
17 to, you know, getting take authorization under the
18 Conservation Act, or anything that would conflict with the
19 guidance and recommendations that have been provided to CEC
20 staff.

21 HEARING OFFICER WEBSTER-HAWKINS: Okay.

22 MR. POHLMAN: You know, there have been in
23 addition to the conservation plan being finalized, there's
24 certainly been revisions to some of the relocation
25 guidelines associated with the Conservation Act and items

1 like that. And we've -- you know, I think CEC staff is
2 aware of those revisions and has incorporated them
3 appropriately, but I'll defer to CEC staff on that.

4 HEARING OFFICER WEBSTER-HAWKINS: Okay. Mr.
5 Huntley, do you have any comments on that late action from
6 last week?

7 MR. HUNTLEY: Yes. Chris Huntley.

8 Yes. I do. We do expect some modest changes to
9 occur, and we built in language to the condition to make
10 sure if there were future changes to the plan, that it
11 would be the Western Joshua Tree Plan that the Applicants
12 needs to submit would be updated to be consistent with any
13 new guidance.

14 HEARING OFFICER WEBSTER-HAWKINS: And that would
15 be under the purview of the DCBO?

16 MR. HUNTLEY: Yes.

17 HEARING OFFICER WEBSTER-HAWKINS: Right. Okay.
18 So post certification?

19 MR. HUNTLEY: Yes.

20 HEARING OFFICER WEBSTER-HAWKINS: Okay. Thank
21 you.

22 MR. HARRIS: Sorry, can I -- Mr. Harris. Can I
23 ask a question?

24 Is that change in the filing you guys made this
25 week, or is that forthcoming?

1 HEARING OFFICER WEBSTER-HAWKINS: It sounds --
2 the flexibility or the direction for future adaptations to
3 comport with the plan, is that currently in the CoCs?

4 MR. HUNTLEY: It's currently in the CoCs, Jeff,
5 and I believe it was in the original CoC as well.

6 MR. HARRIS: Okay. Yeah. We're still interested
7 in talking with you guys, even after today.

8 HEARING OFFICER WEBSTER-HAWKINS: Thank you for
9 that.

10 I did want to ask staff, is there a map in the
11 record which reflects the observations that you've
12 testified about the seven queens and the 35 workers? Is
13 there a map that reflects where those observations were
14 made vis-a-vis the project site?

15 MR. HUNTLEY: This is Chris Huntley.

16 We utilized the information provided by the
17 Applicant in their survey reports. I don't believe we
18 included it in a separate map associated with the FSA.

19 HEARING OFFICER WEBSTER-HAWKINS: Okay. Thank
20 you.

21 And then my last question has to do with a
22 comment that our counterpart at the county, Ms. Oviatt,
23 made about the availability of mitigation land. This is a
24 general question to staff, Applicant, or intervener. If
25 there's anything you want to add in your testimony about

1 the availability of mitigation land under any ratio, I
2 guess, and how that might impact the mitigation compliance.

3 MR. HUNTLEY: This is Chris Huntley.

4 That's a good question. We do know there are
5 mitigation banks in the Antelope Valley. We did change
6 some of the language of the Condition of Certification at
7 the request of the Applicant to provide greater flexibility
8 should they not be able to find land specifically here in
9 the Antelope Valley. But I don't have a clear answer for
10 you as the amount of mitigation lands currently available
11 to support this or other future projects in the region.

12 HEARING OFFICER WEBSTER-HAWKINS: Intervener,
13 does your expert have any comment on the availability of
14 mitigation lands?

15 MS. ANDERSON: This is Ileene Anderson.

16 No. I don't have any concrete idea about the
17 number of acres that are available out there for
18 mitigation.

19 HEARING OFFICER WEBSTER-HAWKINS: Great. Okay.
20 Thank you for that.

21 And to our colleagues at CDFW, do you have any
22 comments on the availability of conservation lands in this
23 region and whether or not the added flexibility in our
24 revised CoC from staff? Do you have any comments on that?

25 MR. POHLMAN: I don't have a comment specifically

1 for CEC staff's kind of revision in the CoC. In a more, I
2 guess, general response, I mean, there are other projects
3 that are currently being built that are requiring
4 compensatory mitigation that are finding lands in the
5 Mojave Desert.

6 Certainly, you know, as more lands are set aside
7 for conservation and mitigation, it could be more
8 challenging to, you know, acquire and conserve lands. You
9 know, that could be a consideration, but that's not been a
10 consideration, at least that the department is aware of at
11 this point.

12 HEARING OFFICER WEBSTER-HAWKINS: Thank you. We
13 did want to provide Ms. Oviatt an opportunity to come
14 forward and also provide similar agency comment that would
15 not be sworn testimony, but based on her professional and
16 informed perspective on any of the mitigation ratio and or
17 impacts and or conservation bank issues we've touched on
18 today.

19 MS. OVIATT: Thank you. Lorelei Oviatt, Director
20 of Kern County Planning and Natural Resources, representing
21 the Kern County Board of Supervisors.

22 Without too much trouble, would it be possible to
23 pull up the chart that showed the different acreage?

24 HEARING OFFICER WEBSTER-HAWKINS: So that would
25 be --

1 MS. OVIATT: I think you know. Somebody said it
2 was 3. --

3 HEARING OFFICER WEBSTER-HAWKINS: Yeah.

4 MS. OVIATT: What is it?

5 HEARING OFFICER WEBSTER-HAWKINS: Ms. Lopez, do
6 you have that handy? It's been a popular one today.

7 MR. HARRIS: Well, 1233.

8 HEARING OFFICER WEBSTER-HAWKINS: Right.

9 MR. HARRIS: PDF page 25.

10 MS. OVIATT: So while you're pulling that up.

11 MR. HARRIS: Table 2.3.

12 MS. OVIATT: 2.3. That was it.

13 MR. HARRIS: It's 2.3 of our opening testimony.

14 HEARING OFFICER WEBSTER-HAWKINS: And the opening
15 testimony is 12, which is a bit --

16 MR. HARRIS: 1233.

17 HEARING OFFICER WEBSTER-HAWKINS: Yeah. 1233.

18 MS. NEUMYER: This is Samantha Neumyer.

19 In PDF page 82.

20 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

21 MS. OVIATT: Okay. So I appreciate very much.

22 I think the issue on permanent has been resolved
23 with the language that is being proposed to distinguish
24 between things that are actually going to happen and things
25 that may happen. I'll just say it that way, because if

1 they don't build part of the berm, there won't be an
2 impact. So that is not shown on this map.

3 So I think that, you know, one of our concerns
4 about the permanent -- I want to talk about the temporary a
5 little bit. On this chart, you have undergrounding, for
6 example. We hear the reason they are undergrounding. Kern
7 County insisted that in front of certain homes, I can
8 assure you that they are going to be required to stay
9 within the franchise agreement. That is private property
10 next door. They are not going to be allowed to go into
11 someone's front yard. Yes. There may be something
12 wandering around that person's front yard.

13 To ask a developer to mitigate for off-site
14 impacts over and over and over again is definitely
15 precedent-setting, and we do not do that on our
16 transmission lines. I think that requiring 3-to-1 in a
17 dirt 60-foot irrevocable Offer of Dedication from the
18 county is what we're concerned about.

19 And I realize now, as I thought, this is an
20 incorrect presentation. I'm going to blame the Applicant.
21 This should have been broken down by -- the transmission
22 line is going through what I like to call virgin habitat.
23 It's going through habitat, and here's an alignment that's
24 going into the irrevocable Offer of Dedication that the
25 county is giving. I have looked through the entire thing

1 and not seen that. So obviously, CDFW would not have been
2 able to make that distinction.

3 I think that requiring 3-to-1 for that is a huge
4 precedence, and it should be 1-to-1. And 1-to-1 takes into
5 account the fact that when you're in the 60-foot, there
6 could be noise or other sorts of things that impact the
7 off-site whatever happens to be there.

8 But I assure you that this 1.5 acres of
9 underground is in people's front yards. It is not next to
10 habitat. It's next to someone's front yard, in some cases
11 with a mailbox, a front porch, a rose garden, maybe
12 something up on blocks because we're known for that out
13 here in the desert. It comes with a house and a boat.
14 Right?

15 And so 3-to-1 seems excessive for that.

16 And I think that is part of our concern that the
17 irrevocable Offer of Dedication, which the franchise will
18 be coming before the Board after you decide what you're
19 going to do with this project if it's approved, and they
20 could provide you that amount, and you could make a
21 determination if it could be less than 3-to-1. So that's
22 one thing we would --

23 HEARING OFFICER WEBSTER-HAWKINS: Ms. Oviatt,
24 could you clarify, other than the undergrounding, would
25 that --

1 MS. OVIATT: It would --

2 HEARING OFFICER WEBSTER-HAWKINS: -- proposal --

3 MS. OVIATT: Other portions, yes.

4 HEARING OFFICER WEBSTER-HAWKINS: Other portions
5 of the gen-tie line.

6 MS. OVIATT: Yes.

7 HEARING OFFICER WEBSTER-HAWKINS: So looking at
8 the transmission pole foundation possibly, the construction
9 sites, the pole and tensioning sites maybe?

10 MS. OVIATT: No.

11 HEARING OFFICER WEBSTER-HAWKINS: Or no.

12 MS. OVIATT: It's the actual putting the poles in
13 for the transmission line.

14 HEARING OFFICER WEBSTER-HAWKINS: Mm-hm.

15 MS. OVIATT: Not the construction lay down areas.
16 Those are -- you know, we actually just consider those full
17 disturbance and you mitigate for them as if they're gone,
18 and then we hopefully reuse them. In some cases, people
19 have put wind on them. They're already disturbed. We put
20 solar on them.

21 But we do agree that a construction lay down site
22 is not something that you're going to restore. What you're
23 going to do is stabilize it so that it doesn't have dust,
24 and I'm not clear where -- if this was the Applicant's
25 proposal, that they do all this extensive restoration on

1 these lay down sites.

2 I have to be honest, Kern County would not accept
3 that. This is the desert. It's very, very, very hard to
4 restore anything. What we're interested in is that there
5 not be dust coming off that site, and that there's a
6 certain amount.

7 So I just offer to the Applicant, if you propose
8 that, in order to not have higher mitigation, I understand
9 that's a cost. But it is an ongoing monitoring problem
10 that will be a very difficult monitoring problem for your
11 CEC staff, because we can't count on rain and we can't
12 count on it growing.

13 So I would just -- I really appreciate this. I
14 didn't want to add any other layers to this. I think
15 you've done a great job in sorting out this issue on the
16 side of a road. But I would say that 3-to-1 in an
17 irrevocable Offer of Dedication on the side of a road to
18 put a power pole in would create a precedence for us. We
19 have thousands of miles of this, and this is something we
20 are familiar with.

21 And I certainly am available for any questions
22 you may have. But I think you've done a great job of
23 trying to sort it out, and I think this chart needs to be
24 expanded to give them the information that they need.

25 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

1 Commissioners, do you have any -- dh. Did you
2 have a comment on the availability of habitat conservation
3 lands?

4 MS. OVIATT: I think the addition of the Crotch
5 bumble bee is what's causing this. As you can tell, we're
6 all learning about the Crotch bumble bee. Very recent.
7 I'm sure they have a date tattooed on the outside of their
8 notebook. The date when this actually happened is so
9 recent. I'm not aware of anyone who has gone out and
10 created a mitigation bank for the Crotch bumblebee.

11 The Joshua tree is different. I have developers
12 who have bought 80,000 acres of mitigation land for their
13 solar so that they can go and they can do it. So I just
14 think there needs to be a little bit of sensitivity here to
15 the fact that, you know, the Crotch bumble bee habitat has
16 not been something that -- there is no Antelope Valley
17 mitigation bank that's decided that it's covered.

18 And as you've pointed out, this is like the
19 Mohave ground squirrel. Just because you can't find it
20 doesn't mean it's not there. And we have struggled for
21 decades with that very issue with the Mohave ground
22 squirrel and we have resolved it. So I just want to
23 caution. The Crotch bumble bee is a very new kind of
24 challenge for determining the mitigation land, and whether
25 the mitigation land given the number of droughts we go

1 through is actually going to be good for the Crotch bumble
2 bee in the future.

3 So that's our -- you know, it doesn't mean
4 they're not going to mitigate for it. It's just something
5 to keep in mind as far as flexibility.

6 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

7 MS. GRAVES: No additional questions from me.

8 COMMISSIONER MCALLISTER: Really appreciate that
9 perspective. Thanks, Ms. Oviatt.

10 HEARING OFFICER WEBSTER-HAWKINS: So I'm looking
11 at hopeful faces looking in my direction. We're prepared
12 to release this panel barring any objections from the
13 parties.

14 Appreciate everyone's attention and
15 thoughtfulness in this testimony. Thank you.

16 And next we're going to bring up the Water
17 Resources Panel.

18 (Pause)

19 Yeah. All right. So I do see we have some
20 experts that have joined the panel. We're moving on to
21 receiving testimony in the area of water resources,
22 specifically on the subtopics of reservoir design and
23 construction, delegation to the Division of Safety of Dams
24 and the Dam Safety Program fees.

25 So I have asked for the witnesses to come forward

1 and I want to take a poll to see who we have here.

2 Do we have George Wegmann? Thank you, Mr.

3 Wegmann.

4 Do we have Mr. Hildebrand? Hello.

5 Do we have Victor Grille? Welcome, Mr. Grille.

6 Do we have Lucas Thexton remotely? Excellent.

7 And Samrat Mohanty? Also remote? Okay. Good.

8 For the staff witnesses, we have Shahab

9 Khoshmashrab.

10 MR. KHOSHMAHRAB: Yes. I'm present.

11 HEARING OFFICER WEBSTER-HAWKINS: Is he also

12 remote?

13 Thank you. Thank you for chiming in.

14 And James Ackerman?

15 Hopefully remote. Have you confirmed that you've
16 seen him online? Don't know yet.

17 I see Erik nodding. Okay.

18 And the center, I presume you do not have an
19 expert on this topic. Okay. Good.

20 And then do we also have the representative from
21 the Division of the Safety of Dams?

22 Yes, Mr. Babula?

23 MR. MALVICK: Yeah. This is Erik Malvick.

24 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

25 From DSOD?

1 MR. MALVICK: Yes. Yes.

2 HEARING OFFICER WEBSTER-HAWKINS: Good. And
3 let's get a microphone to Mr. Babula so he can have a
4 voice.

5 MR. BABULA: We also have Brett Fooks, who's --

6 HEARING OFFICER WEBSTER-HAWKINS: You do? Is he
7 also remote?

8 MR. BABULA: Correct.

9 HEARING OFFICER WEBSTER-HAWKINS: Okay. Oh. I
10 see. Thank you.

11 MR. FOOKS: Yeah. I am remote.

12 HEARING OFFICER WEBSTER-HAWKINS: Wonderful.
13 Thank you.

14 Okay. So as we did with the Biological Resources
15 Panel, I am going to administer the oath for the witnesses
16 who are offering sworn testimony, which is everyone except
17 the representative from Division of Safety of Dams. One by
18 one, I will ask you if you affirm, and then we will invite
19 and welcome the representative from the Division of Safety
20 of Dams. When I do call your name, please state your name
21 and spell your name for the record, and then state whether
22 or not you affirm for the oath.

23 So do you swear or affirm that the testimony you
24 are about to give in this proceeding is the truth, the
25 whole truth, and nothing but the truth?

1 Beginning with Mr. Wegmann.

2 George Wegmann. G-E-O-R-G-E W-E-G-M-A-N-N.

3 I do.

4 (George Wegmann is sworn.)

5 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

6 Mr. Hildebrand?

7 MR. HILDEBRAND: Curt Hildebrand. C-U-R-T

8 H-I-L-D-E-B-R-A-N-D, Senior Vice President with Hydrostor.

9 And I do.

10 (Curt Hildebrand is sworn.)

11 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

12 Mr. Grille.

13 MR. GRILLE: Victor Grille. V-I-C-T-O-R

14 G-R-I-L-L-E.

15 I do.

16 (Victor Grille is sworn.)

17 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

18 Mr. Thexton?

19 MR. THEXTON: Yes. Lucas Thexton. L-U-C-A-S

20 T-H-E-X-T-O-N.

21 And I do.

22 (Lucas Thexton is sworn.)

23 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

24 And Mr. Mohanty?

25 S-A-M-R-A-T, last name M-O-H-A-N-T-Y. I'm the

1 President of Geotechnical and Mining at Hydrostor.

2 And I do.

3 (Samrat Mohanty is sworn.)

4 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

5 Mr. Fooks?

6 MR. FOOKS: Brett Fooks. B-R-E-T-T F-O-O-K-S.

7 And yes I do.

8 (Brett Fooks is sworn.)

9 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

10 And Mr. Khoshmashrab?

11 MR. KHOSHMAHRAB: Shahab Khoshmashrab.

12 S-H-A-H-A-B K-H-O-S-H-M-A-S-H-R-A-B.

13 And yes, I do.

14 (Shahab Khoshmashrab is sworn.)

15 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

16 And Mr. Ackerman.

17 MR. ACKERMAN: James Ackerman. J-A-M-E-S

18 A-C-K-E-R-M-A-N.

19 Yes, I do.

20 (James Ackerman is sworn.)

21 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

22 We've completed the oath, and then also I want to
23 acknowledge and thank Mr. Erik Malvick from the Division of
24 Safety of Dams for joining us.

25 Can you please state and spell your name and

1 offer your title, Mr. Malvick?

2 MR. MALVICK: Yes. My name is Erik Malvick. I'm
3 the Division Manager for the California State Division of
4 Safety of Dams. And my name is E-R-I-K M-A-L-V-I-C-K.

5 HEARING OFFICER WEBSTER-HAWKINS: Thank you. And
6 just to remind the parties that Mr. Malvick is appearing at
7 the Committee's invitation, and he is not offering sworn
8 testimony, but his informed comment and perspective, and
9 the Committee will field the questions from the parties if
10 you have any for him in addition to our own questions for
11 him.

12 So let me just clarify, Mr. Malvick. I have a
13 couple of other names from DSOD and I don't know that if
14 they're also with you.

15 Mr. Shawn Jones?

16 MR. JONES: Yes. Yeah.

17 HEARING OFFICER WEBSTER-HAWKINS: Great. Thanks.
18 Can you spell your name for the record?

19 MR. JONES: S-H-A-W-N J-O-N-E-S.

20 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

21 And Mr. Thyberg?

22 MR. THYBERG: Yes. Good afternoon.

23 My name is Peter Thyberg. P-E-T-E-R
24 T-H-Y-B-E-R-G.

25 Thank you.

1 HEARING OFFICER WEBSTER-HAWKINS: Thank you again
2 for appearing at our proceeding.

3 So we will start now with opening statements, and
4 we'll start with the Applicant.

5 Do you have any of your witnesses prepared with
6 an opening statement?

7 OPENING TESTIMONY BY LAUREL LEES

8 MS. LEES: Hi, my name is Laurel Lees,
9 L-A-U-R-E-L L-E-E-S, and I am the Senior Director of
10 Development Permitting North America for Hydrostor.

11 Together with George Wegmann, Curt Hildebrand,
12 Victor Grille, Lucas Thexton, and Samrat Mohanty, we
13 comprise the panel of experts for the subject area of water
14 resources, as further detailed in the previously filed
15 Applicants witness list.

16 My opening statement today addresses two
17 subtopics identified in the order filed by the Committee on
18 August 18th, with respect to water resources, specifically
19 proposed Condition of Certification Water Five and proposed
20 Condition of Certification Water Six on the matter of
21 Environmental Review and Engineering Review of the
22 Hydrostatically Compensating Surface Water Reservoir. We
23 have worked closely with both CEC staff as the CEQA lead
24 agency and with DSOD as the dam safety subject matter
25 experts.

1 Safety and reliability of all project design
2 features is top priority for us, and we are designing the
3 reservoir to be consistent with all applicable laws
4 ordinances regulations and standards, including the
5 California Water Code for which DSOD is the responsible
6 agency. In the practical implementation of these two
7 separate but related review processes, we agree with CEC
8 staff that DSOD will have oversight of construction in
9 operations of the reservoir.

10 Where we differ is how the FSA delegates CEC
11 approval authority to DSOD and requires us to effectively
12 enter into an additional state law permitting framework
13 beyond the CEC's exclusive siting authority by requiring us
14 to pay a separate DSOD permit application fee, then from
15 our original application for certification fee for CEC.

16 Thank you.

17 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

18 Staff, do you have an opening statement?

19 MR. BABULA: Yes. Mr. Fooks will be presenting
20 that for us.

21 HEARING OFFICER WEBSTER-HAWKINS: Great.

22 Mr. Fooks?

23 OPENING TESTIMONY BY BRETT FOOKS

24 MR. FOOKS: Okay. Good afternoon, Commissioner
25 McAllister, Commissioner Gallardo and Hearing Officer

1 Webster-Hopkins. My name is Brett Fooks and I am the
2 Manager of the Safety and Reliability Branch. I'm here
3 with other CEC representatives on this panel who will be
4 able to address specific technical questions.

5 With this opening statement, I want to help
6 facilitate the Committee's understanding of the
7 relationship between the CEC and the Division of Safety of
8 Dams, known as DSOD, and build upon the information
9 provided by DSOD in regard to a project component called
10 the hydrostatic compensating reservoir berm.

11 For clarity in the record, I will be using the
12 term dam rather than berm because this project has two
13 distinct types of berms. The first one is the hydrostatic
14 compensating reservoir berm, which is a dam. The second
15 one is a possible architectural berm that would be erected
16 from the rock dugout to build the cavern. For the purposes
17 of this statement, I am only referring to the hydrostatic
18 compensating reservoir berm, i.e. the dam.

19 The hydrostatic compensating reservoir berm meets
20 the definition of a dam per California Water Code sections
21 6002 and 6003. Therefore, the dam is subject to DSOD's
22 requirements related to the design, construction, and
23 operations of the dam. If the CEC approves the project the
24 Applicant would be authorized to construct and operate the
25 project. However, the design, construction, and operation

1 of the dam must comply with DSOD requirements. This is not
2 unlike other project structures that must comply with
3 building codes. It is important to note that DSOD's scope
4 of review is limited to the dam and does not cover the
5 reservoir, subsurface cavern, or any other parts of the
6 project.

7 Staff acknowledges the Applicant's commitment to
8 follow DSOD requirements in the design and construction of
9 the dam. However, CoC Water 5 memorializes this commitment
10 by requiring the project owner to comply with the
11 requirements set forth in Division 3, Part 1 of the Water
12 Code and California Code of Regulations, Title 23, Division
13 2, Chapter 1, collectively referred to as the Dam Safety
14 Program requirements. Additionally this condition would
15 require the Applicant to follow any design specifications
16 required by DSOD.

17 The coordination between the CEC and the DSOD
18 during the design, construction, and operations of the dam
19 introduces a unique working relationship for both state
20 agencies.

21 For context, in most power plant projects
22 certified by the CEC, staff retains a Delegate Chief
23 Building Official, known as a DCBO, who has technical
24 expertise in the construction of industrial facilities and
25 can review and sign off on plans, drawings, specifications,

1 and provide inspection oversight for construction
2 activities on behalf of staff. The DCBO is paid for by the
3 Applicant, but reports to the CPM and keeps the CPM, which
4 is the Compliance Project Manager, informed of project
5 matters. The key aspect is that the DCBO verifies overall
6 construction compliance with applicable building codes.
7 For this project, the DCBO's role related to the dam is
8 limited to schedule oversight and documentation, and should
9 not duplicate DSOD's dam safety responsibilities.

10 However, unlike other aspects of the project, the
11 design parameters of the dam are not prescribed by a
12 building code but developed through an iterative process by
13 DSOD. To ensure that the CEC can provide effective
14 oversight of the dam component of the project, CEC requires
15 DSOD's expertise. The CEC would delegate technical plan
16 review, approval, and inspection of the dam to DSOD. The
17 DSOD will essentially be the DCBO for the dam. They will
18 be the primary authority for reviewing the design and
19 construction for dam safety and would engage with the CPM.

20 The final design signals have not yet been
21 completed. Therefore, the boundary of oversight authority
22 between DSOD and the DCBO cannot be fully delineated at
23 this stage. That delineation will take place when the
24 three entities -- the Applicant, DSOD, and the CEC-DCBO --
25 have sufficient design details to define that boundary.

1 Meanwhile the CEC and DSOD will coordinate to avoid gaps or
2 overlaps with the Applicant who is responsible for
3 providing timely design packages to support each review.

4 In summary the project is under the jurisdiction
5 of the CEC, with the CEC-CPM as the point person for the
6 construction and compliance phase of the project. The dam
7 must be built to design specifications as required by DSOD,
8 will act as the DCBO for the design plan review and
9 construction monitoring. The CEC, DSOD, Applicant, and
10 DCBO will coordinate throughout the construction phase.
11 Once the project is operating, joint CEC-DSOD compliance
12 inspections will be coordinated as necessary.

13 This concludes my statement. I and other CEC
14 technical experts are available to answer any questions you
15 might have.

16 HEARING OFFICER WEBSTER-HAWKINS: Thank you, Mr.
17 Fooks.

18 At this time --

19 MR. BABULA: Hearing Officer Hawkins?

20 HEARING OFFICER WEBSTER-HAWKINS: Yes.

21 MR. BABULA: So I think Mr. Malvick may have some
22 statements or some key points he'd like to provide for the
23 Committee, if that's okay.

24 HEARING OFFICER WEBSTER-HAWKINS: You read my
25 notes.

1 Because at this point, we do want to recognize
2 the expertise of the Division of Safety of Dams. And just
3 to express on behalf of the Committee, our goal here is to
4 incorporate your technical expertise into the design,
5 construction, and operational safety of the dam. And to
6 hopefully create and memorialize an effective partnership
7 with our Chief Building Official, where the respective
8 legal and technical roles and responsibilities are
9 articulated appropriately for the life of the project to
10 the satisfaction of the parties.

11 So just to begin, as Mr. Babula suggested, maybe
12 you can share with the Committee -- since this is the first
13 time in the CEC's history that we've had a generating
14 facility with a feature that qualifies as a dam, this is
15 our first of hopefully a long collaborative relationship
16 with DSOD, and we would appreciate if you could take a
17 moment to describe just a summary of the legal
18 responsibility, the technical expertise of your Division
19 under the Water Code generally, but also as applied to this
20 project, including the design and the construction and
21 operation of the embankment or the dam.

22 So Mr. Malvick or your colleagues, if there's any
23 statements you can provide in that line and anything else
24 you'd like to add at this point as well.

25 OPENING TESTIMONY BY ERIK MALVICK

1 MR. MALVICK: Yeah. I'll begin.

2 And just to give a little quick background, I've
3 been working for the Division of Safety of Dams for 20
4 years, so I've had extensive experience. My whole career
5 has been there, and I have expertise in doing dam safety
6 analyses. I've worked on new dams, enlargement of dams,
7 removal of dams, both in design review and construction.

8 The Division of Safety of Dams is an office that
9 represents California's dam safety program, which was
10 founded actually in 1929 after the 1928 St. Francis Dam
11 failure that saw the loss of over 400 lives, so it's been
12 over 96 years at this point.

13 DSOD has over 70 engineers and engineering
14 geologists who are experts in dam safety and we regulate
15 over 1200 dams throughout the state, and all we do is
16 review dams and focus on dam safety versus other groups and
17 engineers that will often have expertise across the board,
18 so we are extremely specialized to dam safety and saving
19 life and property.

20 In terms of the statutes and regulations of the
21 dam safety authorities, those are essentially delegated to
22 DSOD and the Department of Water Resources who are, you
23 know, our parent agency. And the way the statutes and
24 regulations are set up is they set up our broad
25 responsibilities, administrative and legally, for dam

1 safety and what we need to do to operate our program. But
2 they delegate a lot of the technical expertise and safety
3 and really requirements and guidelines from an engineering
4 perspective to DSOD in recognition of our staff's expertise
5 with dams and the recognition that all dam sites are
6 different, making it really difficult to put a, you know,
7 one size fits all to every dam in the state.

8 One of our primary activities as we've discussed
9 already is the regulatory oversight of the design and
10 construction of new dams. And additional activities
11 include the annual inspection of existing dams to ensure
12 they're continuing to perform as they're designed,
13 reevaluation of existing dams, and enforcement for dam
14 owners that aren't in compliance with our dam safety
15 authorities. We do have dams throughout the state that --
16 represented by owners that range from a small farmer all
17 the way up to the state government itself.

18 Regarding the construction of new dams, our
19 processes focus on independent reviews of every dam project
20 that we have oversight on. That's huge, because California
21 is -- you know, I won't say unique, but we're the biggest
22 state in the country, and there's a lot of risk to our
23 dams. Our independent review really serves as a
24 verification and confirmation of dam owners and their
25 consultants' designs, really to make sure that we're all in

1 agreement that a dam is safe. So we provide a benefit to
2 the dam owners in confirming that a dam is safe, and for
3 the consultants who also can take comfort in knowing that
4 we're all in agreement that a dam is safe. And again, this
5 is really just to make sure that we don't have, you know,
6 we're lowering the risks of losing life or property.

7 For new dams, this process ends up in our design
8 review. It's actually an iterative process. We do try to
9 work collaboratively with owners and other regulators,
10 starting with the initial geologic studies and seismic
11 characterizations of sites, looking at the design criteria
12 and alternatives for the design. We do full analyses and
13 modeling of all components of dams, sometimes complex
14 numerical modeling for the barriers, spillways, outlets,
15 all for that extra confirmation and validation that a dam
16 site is safe.

17 And then we do independent reviews of plans and
18 specifications to make sure that sites are constructible,
19 that contractors can build things to specifications, and
20 that they're really just meeting the standards we see in
21 practice nationally and sometimes even internationally.

22 And then finally we have -- you know, one of the
23 newest pieces of our program is reviewing and approving
24 inundation maps that will support emergency action plans
25 that are approved through the California OES.

1 Now when we approve what we call the application,
2 it essentially says that the design is safe to be built.
3 Construction of the project under our oversight is
4 essentially then authorized to begin, and we usually hand
5 it over to what we have as a field engineering branch
6 that'll take care of the construction oversight. Our field
7 staff will basically perform periodic construction
8 inspections of the site with the focus on the pieces of the
9 project that we see as the most important for dam safety,
10 and they'll usually look at making sure that quality
11 assurance measures are being met as specified in the
12 project documents.

13 And then once the project is constructed, DSOD
14 performs final construction inspections as a final
15 verification that the dam is constructed in conformance
16 with our approved plans and specifications, and then at
17 that point we will usually certify through almost like a
18 second type of permit that the project is safe to store
19 water, and then at that point we're usually requesting
20 final as-built plans for our records so that we can keep an
21 ongoing record of the dam as it was built for future
22 inspections.

23 And so once a dam is constructed and certified
24 and it's actually being put to use, our ongoing regulation
25 essentially consists of, you know, annual inspections of

1 the dam site. There are various pieces of statutes that
2 require things such as outlets to be exercised annually
3 every three years in our presence, and numerous items
4 related to maintenance that have to be accomplished. And
5 then we will also conduct periodic re-evaluations and
6 ensure that as the states of, you know, dam practice
7 evolves, that anything that needs to be changed can be
8 changed.

9 Now the last thing I want to kind of mention
10 about our program is really how we operate in terms of our
11 funding, because we are essentially a program that is fully
12 funded by dam owners. And that is established through our
13 statutes and regulations. There's really no mechanism to
14 easily break from that. And essentially the way it works
15 is that our fees and costs are broken into what we call an
16 application fee, which is essentially set up as a fee
17 schedule based on the price of design and constructing a
18 project, and then annual fees, which are essentially the
19 cost for the ongoing regulation of existing dams. And the
20 purpose of that type of setup is to, one, keep them having
21 this very complex system of billing, and two, to really try
22 to make things as consistent as possible in regulating all
23 the dam owners and ensuring that dam owners aren't paying
24 for other dam owners projects. The annual fees are
25 essentially really there to -- well, I already mentioned

1 that part.

2 But so, you know, one of the big concerns we have
3 is that there really isn't a means for DSOD to really
4 directly charge owners for the pieces of work that they
5 would do. Historically, we have dealt with projects where
6 owners have in the past requested certain accounting on
7 that and, you know, historically, we have found that
8 actually our application fees are a lot less than the work
9 we do expend in reviewing design and construction of
10 projects, and we would only expect that such a situation
11 would potentially, you know, apply in this case.

12 On this project, we don't know a whole lot at
13 this point. You know, we haven't gotten to the point where
14 we've seen enough of a plan, nor have we invested enough
15 time on it to really dig into it. You know, our office
16 looks at permits and applications for between 100 and 150
17 dams ongoing each year, and we do tend to prioritize
18 projects. You know, most of those works end up being
19 repairs and addressing deficiencies at other dams in the
20 state, and so the application process is what usually
21 really kicks in a new dam to get fully into our queue for
22 review.

23 I think Mr. Fooks' comment about, you know, what
24 might come into our oversight is pretty much what we would
25 see on a project like this. It would really just be the

1 embankment containing the reservoir, maybe a portion of the
2 reservoir itself, and then anything like a spillway or
3 outlet that is needed to ensure safe operation of that dam.

4 And that's it for my remarks. If anybody has any
5 questions, I'm more than happy to answer them.

6 DIRECT EXAMINATION

7 HEARING OFFICER WEBSTER-HAWKINS: Thank you very
8 much. You've answered a lot for me, and it's helpful to
9 hear how your agency both is funded but approaches its work
10 based on the applications you receive.

11 What I wonder -- what I was interested to hear --
12 a couple things. You referred to your review as almost an
13 independent review, which is, it seems fitting with our
14 process because we have our exclusive jurisdiction, and yet
15 we're seeking your independent review as the dam design and
16 construction and safety experts. And then also it was good
17 to hear that you have a culture of collaboration with
18 owners and regulatory agencies.

19 And given that and what you know about our
20 exclusive jurisdiction and this particular dam, which is
21 actually a necessary but secondary feature of an energy
22 storage project, do you have any recommendations -- given
23 the tension to the extent that you're aware of it, do you
24 have any recommendations about how we might be able to
25 articulate or memorialize with your agency the respective

1 roles both legal and technical? And I don't know if you
2 have any templates, if you will, of working with other
3 regulatory agencies.

4 And then also on the fee issue here, if you even
5 have any food for thought as we go forward.

6 MR. MALVICK: So I'll start and then I'll defer
7 to maybe Peter Thyberg.

8 But so in terms of the way we work with other
9 regulatory agencies, we're not usually regulating. I will
10 say, you know, our biggest I will say parallel is that we
11 coregulate dams with FERC, the Federal Energy Regulatory
12 Commission.

13 But that review is a parallel process. And so
14 we're not -- we're issuing a permit and FERC is issuing a
15 permit. And, you know, that has been -- there has been
16 tension on that in the past, but both agencies recognize
17 that they have jurisdiction on each project, and so there's
18 usually no tension in the review because both have the same
19 objective of having dam safety.

20 HEARING OFFICER WEBSTER-HAWKINS: Mm-hm.

21 MR. MALVICK: And then in terms of the -- so
22 there's really nothing to go back on in any type of formal
23 connection on that.

24 And then I think the fee thing, it's really just
25 comes down to -- you know, we have the Water Code set up

1 and the way it is. And it really defines already how
2 things are, you know, how things are paid for, you know, by
3 our office, and that was established initially back around
4 2005 and has gone through a little bit of recent
5 refinement.

6 But the big thing is that every dam owner is
7 paying for things the same way, and we're not really set up
8 to deal with a different format, which would potentially
9 require -- you know, would require time for us to establish
10 a new process if that were to become necessary. And it
11 would -- it would be challenging for us to track all the
12 fees we would have on a project.

13 And, you know, one of the big things is that most
14 of our projects involve between, you know, four to nine
15 technical staff at any -- you know, throughout the review
16 process. And so the fees on a project could be a lot
17 bigger than what the fees schedule suggests on our own
18 website if we were to actually break it down by hours, but
19 we don't have a mechanism for tracking that. So we don't
20 really know exactly what that could be, and I wouldn't want
21 to speculate what it would be.

22 And then I don't know if Peter or Shawn want to
23 feedback anything else on some legal aspects.

24 MR. THYBERG: Yes. Good afternoon. Peter
25 Thyberg. I'm an attorney with the Department of Water

1 Resources, and I support the Division of Safety of Dams.

2 Thank you, Erik.

3 And I definitely saw some great questions from
4 the Hearing Officer regarding the DSOD's program and how we
5 can continue to integrate with the CEC on this interesting
6 project.

7 I just wanted to reiterate that, you know, as
8 Erik had mentioned, the expertise that the Division has --
9 not only are they, you know, wholly focused on dams, but
10 many of the engineers in the program are also involved in
11 cutting edge research, presenting at conferences. So they
12 really are, you know, the leading edge when it comes to dam
13 safety research and review, which is, you know, quite a
14 resource to have within the Department.

15 In terms of continuing to collaborate and work
16 together with the CEC, I am working with the CEC attorneys
17 on MOU based on some samples that Erika Giorgi had shared
18 with me. So we're definitely in conversation with that,
19 which I think should definitely help our agencies integrate
20 on any future work on this project.

21 So that would be very helpful. I'd also add on
22 the application fees. You know, as Erik mentioned,
23 oftentimes the costs of those fees do not -- the costs of
24 the actual work for the projects do not align with the
25 fees, and there was a recent change in the Water Code

1 that's hoping to better right-size the fees collected with
2 the actual work that's performed. That's still in
3 progress, and we have regulations that are in progress to
4 continue to refine.

5 But in terms of this project, to kind of go to
6 Erik's point about the fees that are collected not
7 necessarily covering the costs, at least for all projects,
8 that is something that is ultimately -- could be trued up
9 through our annual fee regulations, which account for any
10 shortages in terms of the application fees and how that
11 might be allocated for the annual fee, you know, based on
12 our regulatory or regulations that are set forth.

13 That's it for me. Thank you.

14 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

15 Yes, Commissioner McAllister has some questions
16 for you at DSOD. Thank you.

17 COMMISSIONER MCALLISTER: Yes. Thanks.

18 Sort of questions, but for the Applicant, just
19 clarifying questions. And then I mean -- I think what
20 we're all trying to do here is sort of have a bounded
21 understanding of the costs and the level of effort.

22 So if my math is right, the average depth of the
23 reservoir is like a little over 20 feet, something like
24 that, just like acre-feet versus acre surface area,
25 something like that?

1 MR. GRILLE: My name is Victor Grille. It's
2 around 40 feet.

3 COMMISSIONER MCALLISTER: Forty feet. Okay.
4 Okay. Because it was around 200-some-odd -- anyway.
5 There's 200 acres versus acre-feet. I was getting about --
6 I was getting about 20, on average, but anyway.

7 So in terms of like the sort of -- this is for
8 our DSOD colleagues. Thank you so much for being on. And
9 I agree, your expertise is needed on this on this project.

10 In terms of sort of the scale of this dam -- I
11 mean, it's not Oroville, you know, and it's sort of the
12 physical footprint of the dam height construction, do you
13 have a general idea of sort of the cost?

14 I'm not going to ask for a number, but, you know,
15 in terms of the fee schedule for this, do you have sort of
16 an idea that you can kind of rely on, order of magnitude,
17 kind of, you know, pretty close to what it's likely to be?

18 And then you said that there was -- there would
19 be possibly some ability to true up, you know, along the
20 line, sort of align the actual cost with the -- the actual
21 sort of fee with the actual cost you incur. A little more
22 color on that would be helpful.

23 MR. MALVICK: Well I just --

24 COMMISSIONER MCALLISTER: Looking for sort of
25 your bounded understanding of what the cost is likely to be

1 for this project.

2 MR. MALVICK: Okay. This is Erik.

3 So we don't set what the cost for a project can
4 be, and it can be widely variable. Our application fee
5 schedule is not set up by a size or anything, other than it
6 defines the application fee based on what the cost for the
7 owner would be to design and construct the facility. That,
8 you know, would basically be the portion of the facility
9 that would be under our oversight.

10 So, you know, to your comment about the size and
11 it not being in Oroville, well, that should be reflected in
12 the cost of building this.

13 COMMISSIONER MCALLISTER: Okay. That's good to
14 know. Okay.

15 MR. MALVICK: But it's set up based on a
16 percentage of that cost that scales up and what we see is
17 that our efforts tend to be require a little bit of a
18 higher percentage for a smaller facility, but then the
19 overall scale that cost will still be low because you might
20 have a much cheaper facility to build versus a large one.

21 The true-up type of situation is more of
22 something we have program-wide. It would not reflect a
23 specific dam.

24 COMMISSIONER MCALLISTER: Okay. Got it.

25 MR. MALVICK: So that's just something we --

1 that's something we have to use, because most of the times
2 our application fees per the schedule do not cover our full
3 costs, and so the true up is actually used to adjust our
4 annual fees, which are used to keep the program ongoing for
5 the ongoing dams to cover any shortfall we might have with
6 application fees.

7 COMMISSIONER MCALLISTER: Okay. That's helpful.
8 Thanks.

9 I mean, in this case, it seems like you have more
10 of a role -- a more central role just because you're going
11 to be reviewing -- like, you're from the from the get go,
12 sort of from initiation of construction. It's not an
13 existing dam. So you're going to participate in design and
14 design review and that sort of thing.

15 So is this -- is that something you typically do,
16 or is this sort of a special case in that regard.

17 MR. MALVICK: No. That's what we do for every
18 project --

19 COMMISSIONER MCALLISTER: Okay.

20 MR. MALVICK: -- and every application.

21 COMMISSIONER MCALLISTER: Yeah. Okay. Great.

22 So maybe I'll look to the Applicant to sort of
23 where you're -- if, you know -- any ongoing discomfort you
24 have with where this arrangement sits, if any?

25 MS. LEES: Thank you. Laurel Lees.

1 I would say the only discomfort really is this
2 idea of submitting a new permit application fee, as we're
3 in two separate state law processes. And I -- that's
4 consistent with the opening testimony.

5 COMMISSIONER MCALLISTER: Yeah.

6 MS. LEES: And I think that as we're speaking,
7 the general discomfort is that the capex cost of building
8 our reservoir, because it's the purpose of storing and
9 releasing energy, is going to be different than a dam is --

10 COMMISSIONER MCALLISTER: Yeah.

11 MS. LEES: -- that's connected to surface
12 hydrology and is for that purpose, so there's just that
13 disconnect. That's the only discomfort.

14 But them participating in engineering reviews as
15 a subject matter expert, we agree with.

16 COMMISSIONER MCALLISTER: Okay. But you have a
17 sense of what the dam portion of your project is going to
18 cost to build, correct?

19 MS. LEES: Yes. We base our estimate on the
20 whole reservoir.

21 COMMISSIONER MCALLISTER: Yeah.

22 MS. LEES: The whole feature. Mm-hm.

23 COMMISSIONER MCALLISTER: Okay. So there are
24 numbers to work from within the DSOD process.

25 And if you're not the one paying those fees then

1 who would pay them?

2 MS. LEES: Well, we're open to paying reasonable
3 fees for processing, but the application fee itself being a
4 percentage of capex of that feature is nearly the same
5 level as a whole permit application fee with the CEC. It's
6 like a whole -- it's that level --

7 COMMISSIONER MCALLISTER: Okay.

8 MS. LEES: -- of expense. And so we definitely
9 understand that the culture of DSOD is not, like, a
10 consultant or developer deposit account at the county where
11 you can draw down, but we're absolutely open to paying for
12 their time and their expertise. We just don't know how to
13 make this work.

14 COMMISSIONER MCALLISTER: Okay. Okay. I think I
15 understand.

16 HEARING OFFICER WEBSTER-HAWKINS: I have a
17 question actually for staff on this issue and maybe for Mr.
18 Fooks.

19 How is the payment of this fee -- you know, aside
20 from the amount, which I understand that's what I'm hearing
21 might be the biggest sore spot -- but how is the payment of
22 the fee any different in our projects from, say, permit
23 applications for the FDOC, for W -- you know, for the
24 Region Water Quality Control Board? I mean, I guess, is
25 there a meaningful distinction at least -- you know, to

1 address the concern about a separate state law process?

2 I think we have other projects where fees are --
3 to other agencies are certainly paid.

4 MR. BABULA: This is Jared. I could jump in on a
5 few things.

6 So I don't think we're in a disagreement
7 regarding -- we call it an application fee, but nobody is
8 saying that DSOD is issuing some entitlement --

9 HEARING OFFICER WEBSTER-HAWKINS: Right.

10 MR. BABULA: -- for this application. It's just
11 that it's the fee to get them to do all the stuff they just
12 talked about, the iterative analysis, assessing design, the
13 construction and so forth. So we're not saying there's a
14 separate entitlement.

15 Now I understand the concept of, well, you have
16 to pay an application fee to the Energy Commission to start
17 things out. But to your point, Hearing Officer, there are
18 a lot of other types of fees where we subsume that
19 entitlement or that permit but we still want the feedback
20 from the other jurisdiction. And so the fee -- we would
21 require them to be a fee submitted, or if it's an annual
22 compliance thing and so forth. So it's similar to that.

23 And the other thing too is it probably would help
24 to crystallize if they're considering the whole reservoir
25 in their costs versus just the berm part. And I think some

1 of that would get fleshed out when the actual plans are to
2 a degree where we can identify this is the dam part that
3 DSOD is going to be reviewing. But certainly, for example,
4 no one should be including the digging out and creating of
5 the cavern or anything like that as part of the part to be
6 in this schedule for fees. So it's a little bit of a
7 moving target.

8 But I believe from what Mr. Harris had said, they
9 are -- they definitely want to pay for what -- the sort of
10 work that DSOD is doing. It's just a matter of what's the
11 best mechanism.

12 COMMISSIONER MCALLISTER: Okay. I appreciate
13 that. Thanks for articulating that. I was kind of
14 confused. Just -- I mean, it seems like it's okay, you're
15 paying for services to get your project implemented as --
16 you know, as if you were paying an engineering firm to do
17 some work. Only in this case, the rate schedule kind of is
18 different and it's governed by the state.

19 MR. BABULA: So an example is that the DCBO --

20 COMMISSIONER MCALLISTER: Yeah.

21 MR. BABULA: This DCBO is under the CEC and it
22 works for us, but they're paid for by the Applicant.

23 COMMISSIONER MCALLISTER: Yeah. Exactly.
24 Exactly.

25 And so I guess is there a way to kind of sharpen

1 up pencils and sort of bound the scope of the project and
2 sort of move at least closer together, along the lines of
3 what Mr. Babula just said.

4 MR. HARRIS: Yeah. If I could ask some
5 questions. I think maybe --

6 HEARING OFFICER WEBSTER-HAWKINS: Please do.

7 MR. HARRIS: Yeah. I think we're getting
8 somewhere, by the way, which is good.

9 But I guess I want to bring a sharper focus on
10 what we're talking about this facility. And I know DSOD
11 has jurisdiction over Oroville, for example, which is a
12 very large structure. We're definitely not that. From my
13 read of the regulations, you know, we can talk about
14 jurisdiction there as well.

15 But I guess one of the things that I'm concerned
16 about is that this is not like anything that DSOD has done
17 before, and I guess I want to point that out. We've got an
18 underground cavern which will contain 90, maybe 95 percent
19 of the water here. Okay? And so approximately --in rough
20 numbers 600 acre-feet of water total, and at maximum pool,
21 about 45 acre-feet. So the vast majority of this water is
22 incapable of leaving the project site because of the
23 gravity, basically.

24 Let me let the experts talk about that. I'm
25 sorry. I'm kind of --

1 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

2 MS. LEES: Yes. Yes. So the reservoir itself
3 holds approximately 600 feet, and then that which is above
4 ground that could be at risk should there be a catastrophic
5 event is approximately 45 acre-feet. And, you know, it's
6 different than the dam and that there's no surface water
7 hydrology, there's no connection, and there's no
8 downstream -- there's no downstream connection where this
9 would flow and impact X, Y, and Z.

10 The other feature that's different is you have a
11 built in catastrophic risk management measure, meaning the
12 cavern itself in that, like a bathtub, you would unplug it
13 and all the water goes down. So in calculation of the
14 permit fees being a percentage of capex of the reservoir,
15 it's just the reservoir. It is not construction of the
16 cavern or any of that.

17 So it just by the nature of the project in it
18 being lined, there's different features at the bottom to
19 function as an energy storage project, and the fact that it
20 needs to maintain a particular level of pressure to provide
21 the gravity needed to discharge at 13 hours to provide your
22 round trip efficiency, you know -- it like goes on and on
23 and on. That type of engineering that cost and then the
24 construction of it is what we based the application fee --
25 what we calculated using the California Water Code, and

1 that would be at the level of a CEC permit.

2 COMMISSIONER MCALLISTER: So I guess that strikes
3 me that -- it seems like unless I'm misreading the rules
4 here, it seems like there is a constrained scope of looking
5 at, you know, the berm slash dam and sort of framing it as
6 a reservoir, you know, the above ground portion of the
7 reservoir that would have a certain -- that you could cost
8 out.

9 And I guess I'm just suggesting that as maybe an
10 alternative -- like, an approach, a path forward to sort of
11 bound the costs that -- and I don't know, I'd love to hear
12 DSOD's sort of view of this, but how -- you know, how large
13 of a project boundary for purposes of your work would seem
14 to fit. Like a fairly straightforward definition of a dam,
15 or like the whole project, or somewhere in between, or
16 what?

17 I mean, you don't know because you haven't gotten
18 all the details yet, perhaps, but I'm just --

19 MR. MALVICK: So --

20 COMMISSIONER MCALLISTER: -- seeing that as a
21 path forward.

22 MR. MALVICK: So this is Erik Malvick, and so I
23 wanted to get in a few comments.

24 So one, you know, traditionally when we work on a
25 project, especially something like this, so one -- a

1 project like this, I mean, this is obviously unique and
2 first in California, but, you know, working with an off-
3 stream reservoir like this without hydrology, for instance,
4 is not unusual, you know? And we have worked on pump
5 storage facilities that are dealing with two reservoirs of
6 water that are in line. So we have experience working with
7 facilities like this. They do fit into the framework of
8 what we usually do.

9 But one of the big things we do when we deal with
10 projects like this is, you know, we try to work with the
11 applicants and the owners to really refine what will fall
12 into our regulatory pieces, and what needs to fit into that
13 application fee, because from what was described, it sounds
14 like a lot of those pieces would not fall into our
15 application costs. So a lot of the pieces that are --
16 would be involved in, you know, connecting the reservoir to
17 the cavern are not going to fall into our regulations and
18 oversight. So that's a big piece of it.

19 And then I think the secondary part, you know,
20 really about this being an off-stream reservoir is that --
21 and not having any downstream, you know, stream channels is
22 that that doesn't preclude the potential for that structure
23 to fail. And, you know, part of the reason this is falling
24 into the definition of the dam per the Water Code is
25 because it does have a potential significant storage, you

1 know, above grade, even if that is not necessarily going to
2 be the case 100 percent of the time.

3 But, you know, failures of dams throughout the
4 country and in other places around the world, you know, can
5 and do happen, usually in the circumstances you don't want
6 to happen. And so that's where we have to take our job
7 pretty seriously.

8 COMMISSIONER MCALLISTER: Absolutely. And none
9 of us want that eventuality, of course. So that's
10 definitely why we want you on the case here.

11 But it sounds like there's definitely some
12 opportunity to get this discussion closer together.

13 I'll maybe ask the Hearing Officer -- well, ask
14 the Hearing Officer or staff what that process might look
15 like going forward so that we can capture any advancements
16 in those negotiations in the final -- in the proposed
17 decision.

18 HEARING OFFICER WEBSTER-HAWKINS: Right. I have
19 the same question about whether there's any foreseeability
20 of a draft MOU that might be available for the Committee's
21 benefit as we're drafting the PMPD.

22 MR. BABULA: So I can -- this is Jared -- I can
23 add a few things.

24 First of all, I don't think we need to resolve
25 the fee thing in order for you to reach a decision, because

1 it's not specific to like an environmental impact.

2 I would also note that we have had discussions
3 with the Applicant and DSOD, and we met with the legal
4 counsel for -- the three of us met to try to see where we
5 are on the issue of fees. And so we are making an effort
6 to try to get that resolved.

7 I'll let Erika talk about where we are with the
8 MOU.

9 COMMISSIONER MCALLISTER: Maybe I'll just make a
10 quick comment there. I'm sort of intuiting and sort of
11 keying off of the heartburn that the Applicant sources
12 seems to feel about the fee, and so just trying to kind of
13 see how much how much room for, you know, finding some
14 adequate, accommodating middle ground. Not making a value
15 judgment about anybody's particular stance here, but just
16 trying to kind of feel it out.

17 MR. BABULA: Right. Well, for the fee, we're --
18 so staff's position is we're indifferent. We just want to
19 make sure DSOD gets what they feel they need to do their
20 work. And so whether it's structured as a front loaded
21 one-time thing or it's billed, we're open to any of those
22 processes, and we're trying to facilitate some process.

23 We do understand how, given how we have
24 structural fees in our statute and DSOD has the similar
25 stuff, and so it's a little more difficult for an agency to

1 suddenly switch how they get their money and how they can
2 do it. But we'll try to accommodate and facilitate that.

3 MS. GIORGI: Erika Giorgi, in-house counsel.

4 We do have a framework that we are vetting
5 internally that we haven't been able to share with our DSOD
6 colleagues yet. I don't have a time frame, too, on to when
7 we would be able to share that draft. But just like any
8 other interagency agreement, you know, I would expect some
9 back and forth before we're able to kind of finalizing the
10 framework.

11 HEARING OFFICER WEBSTER-HAWKINS: Thank you for
12 that.

13 MR. BABULA: I just want to say on that, again, I
14 don't think that needs to be finished either before the
15 decision is rendered.

16 COMMISSIONER MCALLISTER: Okay. that was my next
17 question.

18 I mean, if folks are comfortable with that, I'm
19 fine with that too.

20 MS. GIORGI: Right.

21 COMMISSIONER MCALLISTER: I just kind of want to
22 understand how we approach this issue and frame it within
23 the PMPD. So we're getting, you know, the right level of
24 guidance, and also not kind of creating conditions where
25 there's uncertainty that can be exploited by anybody.

1 Right?

2 So that's kind of where -- and I'm not saying
3 exploited in the negative sense, but just sort of, you
4 know, none of us want to see costs that aren't predictable.

5 So, you know.

6 HEARING OFFICER WEBSTER-HAWKINS: Do you have any
7 questions of the experts?

8 MR. HARRIS: I actually just want to make an
9 observation. It's not just the fees, but I want to come
10 back to the issue.

11 In the conversation we've had to date, it's been
12 expressed -- at least I've interpreted it to be -- that
13 there's a certain rigidity in the fee structure that it's
14 sort of like, that's what the regulations in the statute
15 provide. If there's a lot more apparently flexibility and,
16 you know, how we did the cost accounting as the
17 Commissioner was suggesting, that's good news I think to
18 us. If we look a lot more like a 45 acre-foot pond, then,
19 you know, a very large construction project, that's
20 helpful, but I haven't heard anything.

21 And maybe I'd ask to put Peter on the spot.
22 Because we've had some very good conversations -- I
23 appreciate that, Peter -- about whether they have the
24 ability to be flexible in their fees. You know, I think
25 the biggest problem is figuring out how to get how to get

1 the right fee and get to get it to them so they can use it
2 given their position is not a general fund agency.

3 So that's the money side. The other side,
4 though, is time. We agree that the Commission has a lot of
5 authority to delegate compliance verification, but not
6 compliance.

7 At the end of the day, if for unforeseen
8 circumstances the Department can't get to our engineering
9 review, and maybe we have a bad flood year and they're
10 doing things that are higher priority, we still need to be
11 able to move forward. And so part of the clarity that
12 we're looking for from the condition is what the Commission
13 always retains, is the stability. That, look, even though
14 I get a DCBO and say hey, even at the end of the day, you
15 know, we retain the jurisdiction over the entire project,
16 and you can move forward on our say-so without any legal
17 peril or compliance problems. And so money and time, we're
18 back to that. Right? So but it is both things.

19 I just wanted to make sure we're clear on those
20 concerns.

21 COMMISSIONER MCALLISTER: I appreciate that, Mr.
22 Harris. And I want to just apologize for our colleagues at
23 DSOD. You know, this is all new for all of us so, you
24 know, thanks for holding our hand into this new
25 relationship and working on the MOU.

1 And, you know, we absolutely want your expertise
2 on this project if it moves forward. And I also heard
3 rigidity in fee schedule, which is not surprising in a
4 state agency, but I did hear some flexibility in terms of
5 the project scope that would then become the basis for the
6 fees. So I hope that you can all make some progress
7 talking about that in, you know, a meaningful time frame so
8 we can just improve the clarity going forward about the
9 project itself.

10 MR. HARRIS: If I can just make one more point.
11 In terms of rigidity, too, the more we can put these kind
12 of things in the verification language as opposed to
13 condition language -- because at least the draft language
14 now suggests a payment of fee as condition. And as you all
15 know, verification language, we can work with you and your
16 staff to modify verification language.

17 And so we might be able to solve a lot of the
18 angst just by taking the word verification from where it is
19 in the condition and moving it up farther, right? So that
20 the implementation language is something that we can change
21 without having to go -- no disrespect Commissioner -- back
22 to a full Commission hearing for an amendment. So that's
23 one of the things we're going to want to work with
24 everybody on, is making sure implementing language ends up
25 in verification.

1 HEARING OFFICER WEBSTER-HAWKINS: All right.

2 Thank you.

3 MR. BABULA: Yeah. I would just add. One thing
4 is -- so I agree with Mr. Harris for a lot of what he said.

5 The thing is, is that if for some reason there's
6 some delay and DSOD can't do something of this step of
7 iteration and design and so forth, CEC doesn't necessarily
8 have that expertise to do it, and so we do have to rely on
9 the agency that has the expertise. So I think
10 fundamentally the best way to address all these issues is
11 to be proactive, get the information to us and DSOD as soon
12 as possible, and get the fees and then move forward and
13 work collaboratively.

14 And it is very common that right after
15 certification, staff, the DSOD -- or staff and the DCBO and
16 the Applicants' construction team will have meetings to get
17 things going, and so that we are ready to go as soon as
18 it's certified. So there's a lot of sort of behind the
19 scenes post-certification that can happen to make sure that
20 everything is moving smoothly and there's no hiccups.

21 MR. THYBERG: This is Peter Thyberg here. Thank
22 you.

23 I appreciate, you know, the comments on this
24 issue by the Commissioners, as well as Mr. Harris's
25 concerns and, you know, Jared's also contributions to the

1 conversation.

2 I think, yeah, the more the Applicant can share
3 in terms of the project, the details that really go into
4 what components will require DSOD review will really kind
5 of dictate what kind of fee structure that would exist
6 under the Water Code in Title 23. So I think that would be
7 a big part, having those productive conversations to really
8 find out which components really are within the DSOD Water
9 Code requirements and which ones are not.

10 As to just, you know, Mr. Harris's comment about
11 you know potential delays in review. As we all know with
12 reviews, a lot of it will depend on, you know, the quality
13 of the submittals, the responsiveness to comments,
14 unforeseen issues that always come up on projects. I also
15 find it, you know, understandable that a project like this,
16 that the submittal for our process for our dam design
17 review may not really kick off until after the Commission
18 potentially, you know, issues an approval. So to me, you
19 know, an approval or compliance of the Water Code to me is
20 a critical, you know, set of laws that would need to be
21 complied with, and any sort of condition that would come
22 with an approval, you know, would ensure that.

23 So I do believe that you know DSOD's review and
24 approval as outlined in the proposed conditions that staff
25 put together outline how this project, you know, can't

1 commute those laws as it relates to the dam component of
2 this project, and -- yeah.

3 I think that's definitely a big component of how
4 this project can proceed.

5 Thank you.

6 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

7 Commissioner Gallardo has one last question.

8 COMMISSIONER GALLARDO: Thank you.

9 So just to clarify, so for the DSOD is there an
10 additional application that the Applicant would have to
11 file for this process?

12 MR. MALVICK: So I mean I think this is something
13 that we're trying to work out through the MOU process, but
14 if this was a traditional dam they would have to file an
15 application to essentially initiate the review of the
16 project through our office, and that's what the fee is
17 usually associated with, and the Water Code really gives a
18 definition of what an application consists of.

19 COMMISSIONER GALLARDO: Okay. So there has not
20 been a situation where you're working with an agency,
21 there's already an application filed, and then you work out
22 an MOU to figure out the fees but without having the
23 Applicant having to submit an additional application or
24 major paperwork?

25 MR. MALVICK: No. There has never been that type

1 of project.

2 COMMISSIONER GALLARDO: Okay. Thank you for the
3 clarifying.

4 MR. HILDEBRAND: I think one useful set of facts
5 that would -- Curt Hildebrand with Hydrostor. Thank you,
6 counsel.

7 One set of facts that would be useful as we go
8 through this discussion is the timing for both the
9 construction, the fill, and the commissioning of that
10 reservoir and both surface and subsurface.

11 We are looking at approximately 36 months before
12 we -- after we start construction. Roughly 36 to 40 months
13 before we start charging the reservoir. That water will
14 all flow down into the cavern for the next 14 months as we
15 fill that reservoir, so we will have no water above grade
16 for approximately four years after we start construction.
17 Point being, we do have time before this reservoir will be
18 charged above surface to reconcile our designs and all the
19 other topics that were on the table here today.

20 HEARING OFFICER WEBSTER-HAWKINS: So what I'm
21 hearing is that there's no disagreement about the analysis
22 around environmental impacts mitigation compliance with
23 LORS. It really is the design and construction timeline
24 and the approvals of our sister agency threaded in through
25 that, for the comfort of the Applicant but also for staff

1 because we all want it to be -- we want the relationships
2 to flow and be clear.

3 So with that, I think we can -- unless there's
4 any additional testimony.

5 MR. BABULA: I just want to address some question
6 that Commissioner Gallardo had on the application.

7 So at this point the Applicant has provided a lot
8 of information in order for the CEC to do our work and --
9 but the level of information needed to assess the
10 structural aspects of the dam isn't there yet. And so that
11 still needs to be provided.

12 And in fact there's nothing that prohibits the
13 Applicant, if they want to start to provide stuff like that
14 to DSOD even before certification. That would be on them
15 if it doesn't get approved, but they certainly can engage
16 to try to move this forward. But ultimately that level of
17 information would also be needed by the CEC for us to be
18 able to do our oversight as well.

19 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

20 If there's no objection --

21 MR. HARRIS: I think Jared will agree with this
22 that that stuff is routinely done post-certification,
23 though. We're not -- we don't have a gap currently,
24 correct?

25 MR. BABULA: Yeah. That would all be done post-

1 certification.

2 MR. HARRIS: Thank you. I just I don't like
3 holes.

4 MR. BABULA: No. Sorry about that.

5 MR. HARRIS: And neither does DSOD, so --

6 HEARING OFFICER WEBSTER-HAWKINS: So if there's
7 no objection, I'd like to close the testimony on this topic
8 and subtopics. I want to thank our colleagues at DSOD for
9 engaging with us now, and probably for quite some time into
10 the future. So thank you very much.

11 We are going to take a break 15 minutes, and then
12 we will reconvene on the cavern construction topic.

13 COMMISSIONER MCALLISTER: I want to make just --

14 HEARING OFFICER WEBSTER-HAWKINS: Commissioner
15 McAllister?

16 COMMISSIONER MCALLISTER: I want to make just one
17 comment.

18 I see this as sort of a demystification process
19 in part and so, you know, happy to sort of push that along
20 during the course of you know the application,
21 consideration, and certification process in you know
22 getting to a PMPD. But we by no means have to figure out
23 all the details in order to reach a decision on the
24 project.

25 But just, you know, to the extent it's helping

1 us -- to the extent it's helping us sort of define the
2 project and give it clarity so that we can reach a
3 decision, I think this conversation has been really
4 helpful.

5 So thanks everybody.

6 MS. WHITE: And thank you.

7 So with that we are going to take a break. We'll
8 reconvene at 4:20, and we'll reconvene on the cavern
9 construction topics.

10 Thank you. We're off the record.

11 (Off the record at 4:05 p.m.)

12 (On the record at 4:22 p.m.)

13 HEARING OFFICER WEBSTER-HAWKINS: We are back on
14 the record.

15 So now we move on to our final topic for which
16 we're going to receive testimony, and it's the topic of
17 cavern construction, namely facility reliability, geology,
18 and worker safety and public health.

19 So at this time I request that the parties bring
20 their witnesses to the stand, either in person or on Zoom,
21 on the topic of cavern construction.

22 And as stated in the notice, we'll swear in the
23 witnesses for all parties on the subject of cavern
24 construction as a panel.

25 I do want to clarify do we have Jesse Steele in

1 person? Welcome, Mr. Steele. After I take a poll of
2 everybody's attendance I'll be swearing you in. I believe
3 all the other witnesses are already sworn in for the day.

4 UNIDENTIFIED SPEAKER: (Indiscernible.)

5 HEARING OFFICER WEBSTER-HAWKINS: Just to -- is
6 there a -- okay.

7 We have Mr. Grille, we have Mr. Thexton, Mr.
8 Mohanty, Mr. Hildebrand, Mr. Stein, and Mr. Wegmann.

9 For staff, Mr. Delano?

10 MR. DELANO: Yes.

11 HEARING OFFICER WEBSTER-HAWKINS: Appearing
12 remotely?

13 MR. BABULA: All of staff's witnesses are remote.

14 HEARING OFFICER WEBSTER-HAWKINS: Okay. And so
15 that would include Mr. Delano, Mr. Salyphone, Mr. Sofi, Mr.
16 Greenberg, Ms. Chu, and Mr. Khoshmashrab.

17 MR. BABULA: Yeah. That's correct.

18 Dr. Sofi, Dr. Greenberg, and Dr. Chu are also
19 appearing by zoom.

20 HEARING OFFICER WEBSTER-HAWKINS: Thank you for
21 that.

22 And just to clarify, does the center have any
23 expert witnesses on this topic?

24 No. Thank you.

25 So what I'm going to do is ask each of the

1 witnesses who have not already been sworn in to state and
2 spell your name for the record, both from the Applicant and
3 -- well, first with the Applicant, and then we'll go to the
4 staff.

5 So let's start with Mr. Steele.

6 If you could state and spell your name for the
7 record.

8 MR. STEELE: Mr. Jesse Steele J-E-S-S-E
9 S-T-E-E-L-E from WSP.

10 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

11 And let's go to staff's witnesses. Same request
12 to state and spell their names for the record.

13 Mr. Delano?

14 MR. DELANO: Kevin Delano. K-E-V-I-N
15 D-E-L-A-N-O.

16 HEARING OFFICER WEBSTER-HAWKINS: Mr. Salyphone?

17 MR. SALYPHONE: Yes. Present. Kenneth
18 Salyphone, K-E-N-N-E-T-H S-A-L-Y-P-H-O-N-E.

19 HEARING OFFICER WEBSTER-HAWKINS: Mr. Sofi?

20 MR. SOFI: Ardalan Sofi. A-R-D-A-L-A-N S-O-F-I.

21 HEARING OFFICER WEBSTER-HAWKINS: Mr. Greenberg?

22 MR. GREENBERG: Alvin Greenberg. A-L-V-I-N
23 G-R-E-E-N-B-E-R-G.

24 HEARING OFFICER WEBSTER-HAWKINS: Ms. Chu.

25 MS. CHU: H-U-E-I-hyphen-A-N C-H-U.

1 HEARING OFFICER WEBSTER-HAWKINS: And Mr.
2 Khoshmashrab, is he also testifying on this panel?

3 MR. BABULA: He may, but he was previously in the
4 other panels.

5 HEARING OFFICER WEBSTER-HAWKINS: Right. Okay.
6 Thank you.

7 So I'm going to administer the oath, and then one
8 by one I will ask the new members to -- I will call on you,
9 and for you to affirm the oath.

10 Do you swear or affirm that the testimony that
11 you are about to give in this proceeding is the truth the
12 whole truth and nothing but the truth?

13 Mr. Steele?

14 MR. STEELE: I do.

15 (Jesse Steele is sworn.)

16 HEARING OFFICER WEBSTER-HAWKINS: Mr. Delano?

17 MR. DELANO: I do.

18 HEARING OFFICER WEBSTER-HAWKINS: Mr. Salyphone?

19 MR. SALYPHONE: Yes. I do.

20 (Kenneth Salyphone is sworn.)

21 HEARING OFFICER WEBSTER-HAWKINS: Mr. Sofi?

22 MR. SOFI: Yes. I do.

23 (Ardalan Sofi is sworn.)

24 HEARING OFFICER WEBSTER-HAWKINS: Mr. Greenberg?

25 MR. GREENBERG: Yes. I do.

1 (Alvin Greenberg is sworn.)

2 HEARING OFFICER WEBSTER-HAWKINS: And Ms. Chu?

3 MS. CHU: Yes. I do.

4 (Huei-An Chu is sworn.)

5 HEARING OFFICER WEBSTER-HAWKINS: Okay. At this
6 time, I know that this was a panel that the Committee
7 convened, and so the parties may or may not have opening
8 statements on the topics and questions posed by the
9 Committee, but I will give each of the parties an
10 opportunity to make an opening statement.

11 So starting first with Applicant.

12 OPENING TESTIMONY BY CURT HILDEBRAND

13 MR. HILDEBRAND: Thank you.

14 My name is Curt Hildebrand. C-U-R-T
15 H-I-L-D-E-B-R-A-N-D. I'm Senior Vice President with
16 Hydrostor. Together with Victor Grille, Lucas Thexton,
17 Samrat Mohanty, and David Stein we will comprise the panel
18 of experts for the subject areas of facility design,
19 facility reliability, as further detailed in the previously
20 filed Applicants witness list.

21 My opening statement today addresses topics
22 identified in the order filed by the Committee on August
23 18th, 2025 with respect to facility design, including the
24 first of its kind nature of the Willow Rock Energy Storage
25 Center and the feasibility of the project design at the

1 proposed site. I will also be presenting an overview of
2 many of the project benefits that would result from the
3 successful certification, construction, and operation of
4 the project. My fellow panel member, Lucas Thexton, will
5 provide additional opening statement with respect to
6 facility design as well as certain topics related to the
7 topic of geology.

8 I'd like to begin with a brief overview of some
9 of the project benefits that would accrue in the event that
10 this project is certified, built, and operated.

11 We talked about a lot today the Kern County being
12 the energy hub of California and the west. Again, just to
13 reiterate the importance of that fact, that is indeed why
14 Hydrostor sited the Willow Rock Energy Storage Center in
15 Kern County. It is the largest renewable energy producing
16 county in the nation. Over 80 billion dollars has been
17 invested to date in renewable energy sector. Kern is home
18 to the largest wind project in the United States. It's
19 also host to the largest solar and plus storage project.
20 Over 22,000 megawatts of wind and solar has been permitted
21 in Kern County to date.

22 Part of the advantage of locating strategically
23 here in Kern County was to facilitate the further
24 integration and utilization of intermittent renewable
25 resources. Willow Rock will help to, one, minimize

1 expensive curtailment and/or out-of-state export of
2 intermittent renewable energy generation, and two, maximize
3 the net utilization of renewables through off-peak energy
4 storage and on-peak energy generation.

5 More specifically, in terms of the benefits to
6 reliability and advancement of the state's climate
7 policies, our A-CAES technology provides the following
8 beneficial attributes that are critically important in the
9 operation of a reliable grid. Willow Rock will provide
10 greenhouse gas emissions free spinning reserve, flexible
11 capacity with a fast start time, peaking energy for local
12 contingencies, voltage support in primary frequency
13 response, superior transient response attributes. Current
14 utility scale lithium-ion battery storage projects
15 typically cannot replicate many of these critical grid
16 reliability attributes.

17 Some of the economic benefits from Willow Rock.
18 We've talked about a few of these today. Willow Rock will
19 provide an average of approximately 275 construction jobs
20 during the approximately five-year construction and
21 commissioning phase of the project. The construction
22 workforce will peak at an estimated 750 construction jobs.
23 The project will require over two million person-hours of
24 construction labor. The construction payroll for the
25 project is estimated between 400 and 450 million dollars.

1 Willow Rock will provide approximately 40 full-time jobs
2 during normal plant operations and maintenance.

3 The project will pay sales tax and local taxes,
4 and unlike renewable technologies like solar, our project
5 is not exempt from local property tax obligations.
6 Accordingly, Willow Rock will generate significant revenue
7 in the form of annual property tax payments to Kern County
8 based on a projected capital cost of approximately 1.5
9 billion dollars for the project.

10 Direct and indirect economic benefits over the
11 project life are estimated to exceed 500 million dollars,
12 and the project has been found to not significantly impact
13 local housing, education, or emergency response resources.

14 Willow Rock is looking forward to a final CEC
15 decision before the end of this year. The original AFC was
16 filed in December 2021, and our supplemental AFC was filed
17 in March 2024, 17 months ago. We are pleased to be so
18 close to reaching a final decision.

19 And why is that final decision and its timing so
20 important? Willow Rock remains on track to receive a
21 1.76-billion-dollar loan guarantee from the United States
22 Department of Energy Loan Program Office. It's a loan
23 guarantee, not a grant. Willow Rock is also on track to
24 receive approximately 50 percent of the project capital
25 costs in federal tax investment tax credits. Both those

1 provisions survived the latest One Big Beautiful Bill in
2 Washington D.C., and we have a number of conditions
3 precedent to meet with the Loan Program Office. That
4 deadline is January 6th, and one of those conditions
5 precedent is the decision that is before this Commission.

6 I also want to emphasize that those federal
7 incentives will accrue to the rate payers of California.
8 We are not going to be putting those in our shareholders'
9 pockets. Those are actually going to be beneficially
10 passed through to our customers in the form of reduced
11 rates.

12 Some of the environmental land use and
13 infrastructure attributes of the project. We've minimized
14 the land use. Impacts will be sited on compatibly zoned
15 parcels in a very sparsely located sparsely populated area.
16 No schools, parks, or recreational areas or other sensitive
17 land uses immediately adjacent to the site, and the project
18 is consistent with all applicable laws and land uses.

19 As a point of reference, 500 megawatts of new
20 solar PV would require the use of approximately 3,000 acres
21 of land, or almost five square miles. The 500-megawatt
22 Willow Rock project will be sited on less than 100 acres.

23 The project will not be drilling new groundwater
24 wells nor utilizing groundwater during construction or
25 operation. Antelope Valley East Kern Water Agency will be

1 the sole purveyor of water to the project. The project
2 avoids the impact to water features protected by the
3 Lahontan Regional Water Quality Control Board, CDFW, and
4 the U.S. Army Corps of Engineers. It avoids impacts to
5 species protected by U.S. Fish and Wildlife Service, and it
6 supports a regional concrete aggregate facility and
7 industry for many years by providing excavated rock for
8 beneficial reuse by local and regional mining facilities.

9 The project further will be providing 1.9 million
10 dollars in direct funding to Kern County to purchase a
11 fully equipped urban search and rescue unit, including
12 necessary equipment for use by East Kern County. Further,
13 Willow Rock will provide upwards of 2.4 million dollars to
14 offset training and staffing costs during the construction
15 phase of the project, prior to its operational phase when
16 full property tax payments will be paid to Kern County.

17 We agreed to conditions with the county to
18 encourage local hire for the project, and will encourage
19 all contractors to hire at least 50 percent of our workers
20 from local Kern County communities, and we will continue to
21 work with the county to determine how to best maximize the
22 beneficial use of our sales and use taxes paid by the
23 project.

24 I wanted to mention our community outreach and
25 support. You heard from some of our community members

1 today who we've kept well informed over the past four years
2 as we've developed this project. We've gone into this with
3 eyes wide open. Our team will live, work, and play here in
4 Kern County in the event that we do go into construction
5 and operation. Over the last four years we've invested
6 substantial time and resources to educate, inform, and
7 engage with the local community. In doing so we've grown
8 in our care and commitment to serving the needs of East
9 Kern's diverse communities.

10 While the project is sited nearest Rosamond, we
11 also engage with surrounding communities in California
12 City, Mojave, Boron and Tehachapi. We've, as I mentioned,
13 spent a lot of time and resources on this effort. We've
14 attended over 400 public meetings over the last four years
15 and made at least 50 presentations and site tours to local
16 community members. We average about seven to ten community
17 meetings per month, and this considerable outreach effort
18 has also, as Ms. Oviatt explained earlier, earned the
19 conditional support from the full board of supervisors of
20 Kern County. We're proud to have earned this support, and
21 we look forward to building on it in the future.

22 Moving on to facility design and reliability.
23 The Willow Rock Energy Storage Center will utilize
24 Hydrostor's patented advanced compressed air energy storage
25 technology also known as A-CAES. A-CAES projects store

1 off-peak power and generate carbon-free electricity through
2 the expansion of compressed air that is stored in purpose-
3 built subsurface storage caverns. The subsurface cavern
4 construction methods size and operational parameters are
5 all consistent with those utilized by numerous similar
6 storage caverns in use today in the U.S. and around the
7 world. Many of these existing storage caverns have been in
8 safe and dependable operation for 50 years or longer.

9 The major plant rotating equipment including air
10 compressors, turbo expanders, heat exchangers and
11 generators will all be sourced from industry-leading tier
12 one original equipment manufacturers, or OEMs. All
13 prospective OEMs will be required to provide bankable long-
14 term performance guarantees and warranties for all major
15 equipment. Hydrostor's A-CAES energy storage systems use
16 these proven technologies in innovative combinations to
17 supply a safe and reliable long-duration energy storage
18 required to advance California's clean energy and climate
19 policy objectives.

20 At 500 megawatts of capacity and eight hours of
21 storage, Willow Rock represents the first utility scale A-
22 CAES project proposed in the United States. While this
23 project will be the first of its kind at this scale, it is
24 important to emphasize that the project, our A-CAES design,
25 will utilize standard and proven equipment throughout the

1 plant. Standard design pumps, compressors, heat exchangers
2 and related facilities all have decades of successful
3 operational history. We are not waiting to invent a new
4 machine or technology to accommodate our A-CAES project.
5 These are standard off-the-shelf equipment that we will be
6 utilizing.

7 Willow Rock's mechanical and electrical equipment
8 will be extremely similar to that currently being utilized
9 throughout the oil and gas refining pipeline and power
10 generation industries. This vast workforce familiarity
11 with A-CAES plant equipment and operations will provide
12 excellent future career opportunities for workers in these
13 industries as California transitions away from fossil fuel
14 use and towards a carbon-free and more reliable grid.

15 Next I'd like to move on to a discussion on
16 geology. Willow Rock must be located above or very near
17 suitable geologic formations in order to safely construct
18 and operate the project's subsurface storage cavern.
19 Additionally the subsurface storage cavern must be located
20 in close lateral and horizontal proximity to the surface
21 reservoir and to the A-CAES topside facilities. The reason
22 for this is that the cavern needs physical piping and
23 conduit connections for the conveyance of water to and from
24 the water reservoir and similarly for the conveyance of air
25 to and from the A-CAES topside facilities.

1 Next I will address feasibility of the project
2 design at the current site. In order to provide 500
3 megawatts of efficient, quick starting, and flexible
4 generation proposed by Willow Rock, the underground
5 facilities for compressed air storage must be located in an
6 area with specific geologic characteristics.

7 The four primary geologic characteristics include
8 the following. Firstly, the geologic resources must have
9 suitable overburden characteristics, such as limited
10 thickness and constructible soil type. Overburden is the
11 soil and rock formation between the roof of our cavern and
12 the ground surface. It comprises all of the rock and soil
13 that the shafts must transmit through. Sites must be
14 selected where not only the cavern host rock geology at
15 cavern depth is suitable for compressed air energy storage,
16 but also where the overburden above the cavern are also
17 suitable for shaft construction and operation.

18 Secondly, the deep subsurface geologic
19 formation -- and again we typically target between 2,000
20 feet in depth and 2,500 feet in depth. There are pluses
21 and minuses to going either shallower or deeper. I'd be
22 happy to respond to any questions that you may have in that
23 regard. We have found our sweet spot in the
24 2,000-to-2,500-foot depth range. For Willow Rock, we
25 currently expect the cavern horizon to be at or about 2,050

1 feet in depth.

2 That subsurface geology at cavern depth must have
3 satisfactory geologic and engineering characteristics that
4 are required -- at the required depth to support
5 construction of the excavated storage cavern. The host
6 rock geology must be deep enough to support a sufficiently
7 small and economical cavern volume, as well as support the
8 topside facility design. Shallower caverns result in lower
9 storage pressures and larger volumes of not only stored
10 air, but also the air that passes through the pipes, heat
11 exchangers, and turbo machinery of the facility are thereby
12 increasing their sizes and costs. Conversely it must be
13 shallow enough to be compatible with the topside plant
14 pressure tolerances as deeper storage caverns result in
15 higher pressures.

16 And again, if folks are interested, I do have an
17 actual core sample with me here. TSA doesn't like me
18 bringing this on planes, but I got it here anyway. This is
19 an actual core sample from our Willow Rock site. I'll let
20 our true licensed geologist describe it in more detail, but
21 I'll call it granite.

22 Third, we look for very low rock permeability in
23 our deep subsurface geologic formation, and it's necessary
24 to retain the water and the air under pressure within the
25 excavated storage cavern. We're basically constructing an

1 underground storage tank that needs to be relatively air-
2 and watertight, so very low permeability rock is what we're
3 in search of.

4 The permeability itself is a direct measure of
5 the ability of water or air to permeate through a rock
6 mass. Host rock with very low permeabilities lead to low
7 or manageable water inflows during construction. Very low
8 host rock permeabilities are essential to ensure that any
9 compressed air leakage into the host formation is extremely
10 low or negligible in order to maintain efficient plant
11 operations.

12 Fourth, the host geology formation must possess
13 competent engineering characteristics in order to sustain
14 an excavated storage cavern at depth intact indefinitely,
15 and allow for repeated compressed air injection and
16 discharge cycles over the life of the project without
17 eroding or collapsing. Willow Rock has all these required
18 geologic conditions.

19 Specific evidence of the record supporting this
20 opening statement and the topic area of facility design and
21 the feasibility of the project design at the current site
22 include the following exhibits: Exhibit 1000, page 6-2;
23 Exhibit 1002, PDF pages 13 through 15; Exhibit 1003, PDF
24 page 2-5; Exhibit 1005; exhibit 1032, pages 6-3 through 6-4
25 and 6-8; Exhibit 1033, pages 2, page 2-34; and Exhibit

1 1233, pages 109 and 110.

2 Next I would like to introduce Lucas Thexton to
3 provide his first opening statement.

4 OPENING TESTIMONY BY LUCAS THEXTON

5 MR. THEXTON: Thanks, Curt.

6 My name is Lucas Thexton and I'm the Engineering
7 Manager for Hydrostor. Together with Victor Grille, Curt
8 Hildebrand, Samrat Mohanty, and David Stein, we comprise
9 the panel of experts for the subject area of facility
10 design and facility reliability as further detailed in the
11 previously filed Applicants witness list.

12 My opening statement today addresses topics
13 identified in the order filed by the Committee on August
14 18th, 2025 with respect to facility design, specifically
15 the engineering assessments of the characteristics of the
16 subsurface geological resources at the current site that
17 support the feasibility of construction and operation of a
18 500-megawatt A-CAES facility, the basis for the expected
19 integrity of the cavern, the reliability of the facility's
20 operation over the 50-year lifespan of the project, and the
21 engineering assessments that support the representation
22 that the facility will be available to operate at full load
23 at least 95 percent of the time. I will have a separate
24 opening statement for the topic area of geology.

25 First I will address the engineering assessment

1 of the subsurface geological resources, characteristics
2 that support the feasibility of construction and operation
3 of a 500 megawatt A-CAES facility. The subsurface geologic
4 formation at the project site has undergone comprehensive
5 characterizations including permeability and strength
6 testing to confirm its suitability for compressed air
7 containment via impermeable double-line shaft and storage
8 within the deep underground cavern space. The integrity of
9 both of these will be maintained throughout the projected
10 operational life of 50 years or longer.

11 To characterize the site, eleven shallow
12 exploratory boreholes and six deep exploration boreholes
13 have been drilled to define the subsurface geology.
14 Comprehensive in-situ field and laboratory
15 characterizations during the exploration indicate the
16 presence of a massive subsurface quartz monzonite pluton at
17 the project site. This is effectively impermeable.

18 The underground storage cavern at Willow Rock
19 will be hosted in massive quartz monzonite at a depth of
20 approximately 2050 feet below ground level where the rock
21 has been characterized to be nearly impermeable. The
22 permeability is less than 5-to-the-negative-9-meters per
23 second. The formation has been shown to be devoid of
24 significant alterations and endowed with high intact
25 strength. UCS strength has been tested at approximately

1 15,000 psi. These attributes will ensure structural and
2 functional integrity of the storage cavern and shafts
3 during operations without risking the migration of injected
4 air or any other fluids.

5 Secondly I will address the basis for the
6 expected integrity of the cavern. Properly designed and
7 constructed underground storage caverns are extremely
8 reliable with no need to re-enter after construction. The
9 proposed caverns again will be built in massive quartz
10 monzonite. The local conditions have been evaluated based
11 on the in-situ testing program as well as core extraction
12 and testing. The results indicate that the proposed cavern
13 horizon is part of a massive crystalline formation of very
14 robust integrity. Strong crystalline rocks do not suffer
15 from long-term creep deformation issues, as can be
16 associated with soft caverns.

17 The massive quartz monzonite will also provide a
18 very reliable and non-deforming formation to host the
19 double-steel grout line concrete shafts without the
20 deformation that sometimes damage well casings in salt
21 caverns and other formations. The wells and the storage
22 cavern will be designed using state-of-the-art analytical
23 and numerical modeling techniques to ensure the structural
24 integrity for the design life while maintaining injection
25 fluid containment. The shafts in the cavern will be

1 constructed using industry best practices.

2 The storage cavern is also to be constructed
3 significantly below the surface and thus will not be
4 impacted by surficial seismic waves.

5 Third I will address the reliability of the
6 facility's operations life over the proposed 50-year
7 lifespan of the project. The cavern is designed for long-
8 term global stability throughout the operational life of 50
9 years and is designed to not be re-entered during the
10 operational phase of the project. The formation has been
11 shown to be massive and competent enough to maintain long-
12 term stability. The near isobaric operational pressures of
13 approximately 900 psi of the fluids within the cavern --
14 which is water and compressed air -- will have additional
15 confining and stabilizing effects on the cavern walls.
16 This further enhances the cavern's structural integrity
17 over the operating facility life.

18 Finally I'd like to address the statements that
19 the facility will be available to operate at full load at
20 least 95 percent of the time. The Willow Rock facility is
21 designed to be able to operate at full load at least 95
22 percent of the time and is intended to operate for 50
23 years. Operation and maintenance procedures will be
24 consistent with industry standard practices to maintain the
25 useful life of the plant components to support this design

1 life and plant availability.

2 Specific evidence in the record supporting these
3 opening statements and the topic area of facility design
4 and facility reliability include the following exhibits:
5 Exhibits 1026 through 1031; Exhibit 1032, pages 6-3 through
6 6-4 as well as 6-8; Exhibit 1033, pages 2-34; Exhibits 1026
7 through 1031; Exhibit 1119 pages 7 as well as 17 through
8 19; Exhibit 1135, pages 12-17; Exhibit 1193; Exhibit 1194
9 through 1200; Exhibits 1200 through 1209; and exhibits 1222
10 through 1232.

11 Next I would like to introduce George Wegmann to
12 provide his opening statement.

13 OPENING TESTIMONY BY GEORGE WEGMANN

14 MR. WEGMANN: Thanks, Lucas.

15 My name is George Wegmann and I'm a Vice
16 President and Geologist for WSP USA. Together with Lucas
17 Thexton and Samrat Mohanty, we comprise the panel of
18 experts for the subject area of geology as further detailed
19 in the previously filed Applicant's witness list.

20 My opening statement today addresses two
21 subtopics identified in the order filed by the Committee on
22 August 18th, 2025 with respect to geology. Specifically
23 the seismically active geologic environment and potential
24 hazards identified in geology paleontology and minerals and
25 proposed conditions of certification, Geo-1 and Geo-2.

1 Lucas Thexton will have an additional opening statement for
2 the topic area of geology.

3 The project is located in the Mojave Desert
4 geomorphic province of California within the Rosamond Hills
5 of Kern County. The region is geotechnically characterized
6 by quaternary alluvial deposits overlying quartz monzonite
7 bedrock, and as Curt alluded, most people view that as
8 granite. And the site lies between two major fault
9 systems, the Garlock fault and the San Andreas fault,
10 placing it in a seismically active area. Potential
11 geologic hazards associated with ground rupture, seismic
12 ground shaking, seismically induced ground failure,
13 landslides, and soil erosion would be mitigated to less
14 than significant through design, grading, and construction
15 by the implementation of CoCs Geo-1 and Geo-2.

16 CoC Geo-1 requires the project owner to complete
17 and submit a geotechnical and geohazard report to the CEC
18 for review and approval. The report will include final
19 grading and facility design refinements to mitigate the
20 impacts of geologic hazards on the project and the
21 project's impacts on geologic hazards to less than
22 significant. The refinements will be incorporated into the
23 final design.

24 CoC Geo-2 requires the proposed underground
25 structures, the cavern, and vertical shafts to be designed,

1 excavated, and constructed with appropriate civil and
2 structural design criteria, including LORS referenced in
3 Supplemental AFC Appendix 2A Engineering Design Criteria.
4 Specific evidence in the record supporting this opening
5 statement and topic area geology include the following
6 exhibits: Exhibit 1033 and Exhibit 1233.

7 Next Lucas Thexton will provide his opening
8 statement addressing the other geology subtopics.

9 MR. THEXTON: Thanks, George.

10 Again, my name is Lucas Thexton. I'm the
11 Engineering Manager for Hydrostor Inc. Together with
12 Samrat Mohanty and George Wegmann, we comprise the panel of
13 experts for the subject area of geology.

14 Together with Jesse Steele and Victor Grille, we
15 comprise this panel of experts for the subject area of
16 worker safety, as further detailed in the previously filed
17 Applicants witness list.

18 My opening statement today addresses subtopics
19 identified in the order filed by the Committee on August
20 18th, 2025, with respect to geology and worker safety,
21 specifically the seismically active geologic environment,
22 the integrity inspection program for the excavated
23 underground structures in Geo-3, as well as best practices
24 and standards for the forthcoming controlled detonation
25 plan anticipated for Worker Safety 5.

1 Firstly I will address the seismically active
2 geologic environment as it relates to the underground
3 storage cavern for the Willow Rock Project. The risk of
4 damages due to earthquakes is primarily restricted to
5 surface or very near-surface structures. Studies estimate
6 that little damage occurs to underground openings at depths
7 greater than 200 to 300 feet, except for where a tunnel
8 intersects a fault directly affected by the earthquake. No
9 faults will intercept the proposed storage cavern or
10 shafts, and the nearest fault is approximately 1.3
11 kilometers away from the project site.

12 Studies state that no damage occurs in deep rock
13 tunnels for peak ground accelerations less than 19 percent
14 of the acceleration due to gravity, and only minor damage
15 occurs for peak ground accelerations between 0.19 g and 0.5
16 g. Peak ground acceleration is by far the most widely
17 accepted index of ground shaking intensity and damage from
18 earthquakes. Thus heavy earthquake damage can be sustained
19 by surface buildings, while any deep ground under
20 excavations can remain mostly unharmed.

21 The project site is in a region where the
22 likelihood of a damaging earthquake in the next 100 years
23 is high. Furthermore, the peak ground acceleration within
24 a two-percent probability of exceedance in 50 years was
25 determined to be 0.39 g using applied technology counsel

1 software. This assumes a site amplification factor at peak
2 ground acceleration of 0.8 for a Class A site material. As
3 per ASCE 7-10, site Class A material includes hard rock
4 with shear wave velocities of greater than 5,000 feet per
5 second. Based on the peak ground acceleration values,
6 earthquake damage to a cavern at the proposed cavern target
7 depths is expected to be minor. In this case, minor damage
8 due to shaking includes some roof fall and the formation of
9 minor cracks.

10 Second I will address the integrity inspection
11 program for the excavated underground structures in Geo-3.

12 During the cavern construction, when all the muck
13 has been transported away from the face, the crown and side
14 walls are scaled, inspected, and reinforced using an
15 approved support plan. During this process, the face is
16 inspected by a supervisor for hazards before the mining
17 cycle is repeated. Upon completion of the cavern
18 construction activity the entire cavern will be surveyed,
19 and all mining equipment, infrastructure, and debris will
20 be removed. All shafts will be stripped of supporting
21 infrastructure and steel shaft liners will be installed for
22 use in A case operations. Any shafts that are not
23 repurposed for use in case operations will be plugged and
24 abandoned prior to cavern testing. This will follow
25 industry standard approaches.

1 After shaft conversion and plugging is completed,
2 pressure testing of the cavern will be performed above the
3 proposed cavern operating pressure to ensure containment
4 has been achieved. A hydrostatic pressure of approximately
5 2 bar above hydrostatic is proposed for this test. This is
6 standard for the testing of storage caverns.

7 The cavern is designed for long-term global
8 stability through the operational life of 50 years or
9 longer. It is designed not to be re-entered upon
10 completion of construction for the entire operational phase
11 of the project. Regular inspections of the shaft liners
12 will be performed throughout the facility life.
13 Preliminary inspection plans propose a five-year inspection
14 interval for both shafts.

15 Third I will address the best practices and
16 standards for the controlled detonation plan described in
17 Worker Safety 5.

18 By way of background, controlled detonation will
19 be carried out at a depth of approximately 2,050 feet below
20 the ground for cavern construction. Shaft construction for
21 this project will be performed through one of two methods:
22 either blind boring, which is detonation-free, or through
23 conventional sinking, which would involve controlled
24 detonation in the competent bedrock starting from
25 approximately 70 feet below the ground surface down to the

1 cavern level.

2 For a conventional sinking approach, a surface
3 casing made of steel will be installed for the upper 70
4 feet in the unconsolidated zone, and this will be achieved
5 using conventional digging equipment.

6 Worker Safety 5, as proposed in the Final Staff
7 Assessment, identifies and lists the appropriate best
8 practices and standards for the controlled detonation plan.
9 Specific evidence in the record supporting this opening
10 statement and the topic area of geology include the
11 following exhibits: Exhibit 1039, Appendix 2a; Exhibit
12 1120, Page 9; and Exhibit 1135, Pages 12 to 14.

13 Next I would like to introduce Jesse Steele to
14 provide his opening statement.

15 OPENING TESTIMONY BY JESSE STEELE

16 MR. STEELE: Thanks, Lucas.

17 My name is Jesse Steele. I'm the Assistant Vice
18 President of Environment, Health, and Safety for WSP.

19 Together with Victor Grille, Curt Hildebrand,
20 Lucas Thexton, Samrat Mohanty, and David Stein, we comprise
21 a panel of experts for the subject area of worker safety,
22 as further detailed in the previously filed Applicant's
23 witness list.

24 My opening statement today addresses the specific
25 topics identified in the order filed by the Committee on

1 August 18th, 2025, with respect to the minimization and
2 mitigation of exposure risks for on-site personnel and the
3 general public from Valley Fever in the Valley Fever
4 Management Plan that we prepared pursuant to the proposed
5 conditions of certification Worker Safety-7 and PH-1.

6 So Valley Fever is a fungal infection caused by
7 fungus spores, typically found in topsoil. If present in
8 the soil, the fungus spores can become airborne as a result
9 of soil disturbance. Valley Fever can result from
10 breathing spores. Therefore, measures set forth in
11 existing laws, specifically Labor Code Section 6709, as
12 well as applicable regulations, set forth in Title VIII of
13 the California Code of Regulations, and guidance from
14 Cal/OSHA and California Department of Public Health, focus
15 on exposure prevention methods, including dust suppression,
16 hygiene measures, and wearing a respirator when exposure to
17 dust cannot be avoided. These exposure prevention methods
18 are utilized to minimize the transport or inhalation of
19 spores present in dirt, soil, and dust, whether present on
20 equipment, clothing, or people.

21 As identified in the Cal/OSHA citation identified
22 on page 4.4-32 of Exhibit 2000, Cal/OSHA recommends the
23 adoption of site plans, controls, and work practices that
24 reduce workers' exposure. The measures contained in Worker
25 Safety-7 and PH-1 are consistent with the measures

1 recommended by Cal/OSHA, California Department of Public
2 Health, and the Center for Disease Control.

3 Worker Safety-7 and PH-1 contain exposure
4 prevention measures identified by relevant health agencies
5 to reduce and minimize the potential exposure to Valley
6 Fever. Measures identified in Worker Safety-7 and PH-1 all
7 work together to minimize potential exposure to Valley
8 Fever through including dust control methods to minimize
9 the occurrence of dust in the first instance; to minimize
10 the potential spread, exposure, or inhalation of fungal
11 spores if they are so present in the dust; cleaning
12 procedures for equipment, vehicles, and other items prior
13 to being moved off-site to minimize the potential
14 transmission of Valley Fever; the use of enclosed cabs for
15 equipment to isolate workers from potential exposure;
16 worker awareness training, consistent with applicable laws,
17 so that workers are not only informed about the potential
18 signs and symptoms of Valley Fever but the methods to limit
19 transmission.

20 While the Applicant believes that the measures
21 identified in Worker Safety-7 and PH-1 as proposed in the
22 FSA are appropriate and sufficient to minimize potential
23 risks from Valley Fever, the Applicant and Intervenor,
24 California Unions for Reliable Energy, CURE, agreed to the
25 addition of two further measures to address Valley Fever.

1 Half-face respirators equipped with N100 or P100 filters
2 shall be made available to on-site workers during
3 construction-related earth-moving activities. During
4 construction phases involving earth-moving activities,
5 workers shall be provided with coveralls daily, lockers, or
6 other systems for keeping work and street clothes and shoes
7 separate, and daily changing and showering facilities.
8 Clothing should be changed after work every day, preferably
9 at the work site.

10 This first measure is consistent with PH-1 as
11 proposed in the FSA which provides that on-site personnel
12 should be trained on the proper use of personal protective
13 equipment, including respiratory equipment. The National
14 Institute of Occupational Safety and Health -- NIOSH --
15 approved respirators shall be provided to on-site personnel
16 upon request.

17 When exposure to dust is unavoidable, we provide
18 NIOSH-approved respiratory protection to affected workers.
19 If respiratory protection is deemed necessary, employees
20 must develop and implement a respiratory protection program
21 in accordance with Cal/OSHA's respiratory protection
22 standard, Title VIII, CCR 5144.

23 The effect of the Applicant's and CURE's proposed
24 language is that specific filters, N100s and P100s, be made
25 available to workers. The number 100 generally signifies

1 that 99.97 percent of particles can be filtered. An N
2 filter rating means that the filter is not resistant to
3 oil, whereas a P filter rating means that the filter is
4 resistant to both oil and non-oil contaminants and
5 particulates.

6 Specific evidence in the record supporting this
7 statement and the topic area of Valley Fever include
8 Exhibit 1233, page 25; Exhibit 1032, pages 5.17-2 to
9 5.17-7; and Exhibit 2000, pages 4.4-18 through 4.4-19,
10 4.4-28, 4.4-32 through 4.4-34, and 5.10-18 through to 5.10-
11 21.

12 Thank you.

13 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

14 Does that conclude the Applicant's opening
15 statements? Thank you.

16 Turning to staff.

17 MR. BABULA: Good news. Staff does not have any
18 opening statements. We're available to answer questions,
19 but we felt that this topic was basically the Applicant's
20 best position to sort of address these topics.

21 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

22 So with that, I will turn it over -- oh. Yeah.

23 I'm sorry. The Intervenor, do you have an
24 opening statement?

25 No? Thank you.

1 Commissioner McAllister, do you have any
2 questions for the experts?

3 DIRECT EXAMINATION

4 COMMISSIONER MCALLISTER: So I really appreciate
5 all the comprehensive statements and just the extensive
6 record that you've built.

7 And I think part of the reason I wanted to -- we,
8 the Committee -- we wanted to hear on this topic is just
9 related to the innovative nature and the scale of this
10 project. I think, you know, Mr. Hildebrand, you sort of I
11 think maybe got ahead of your closing statement at the
12 first part of your opening comments. So, you know, talking
13 about the benefits to California potentially for such a
14 project. Which, you know, I agree storage is a very key
15 piece of our puzzle as we transition to 100 percent carbon-
16 free resources. And also just given, you know, the history
17 and evolution of this project, and the fact that there was
18 a site kind of chosen that sort of didn't pan out, and you
19 did not find the technical -- all the specific technical
20 criteria that you laid out for what constitutes a good
21 site.

22 So I'm certainly not asking here for anything new
23 in the evidentiary record, but I did want to just ensure
24 that we have a discussion that helps make sort of more
25 concrete our understanding of the project, and maybe talk

1 about the sort of implementation and planning and
2 Commissioning, you know, which your statements covered
3 pretty well, and then operational life of the project.

4 So I guess just to start, I don't have a lot of
5 questions, but I wanted to -- I certainly appreciate all
6 the references to the specific places in the record that
7 all of you detailed.

8 So to your knowledge is a cavern of this size,
9 you know, almost a million cubic yards of volume, sort of
10 been excavated. You know, we know not for a project like
11 this because this is the largest of its kind, but I guess
12 trying to anticipate sort of the novelty of just the fact
13 of using the techniques that the experts described for
14 opening up a cavern of this size in granitic rock. And,
15 you know, I think we all understand that granitic rock is
16 extremely hard and stable and impermeable.

17 But I guess I'm -- you know, are there models to
18 look at? Are there templates? Are there previous
19 experiences of this kind of an excavation project that you
20 are relying on for sort of an experiential base?

21 MR. HILDEBRAND: The simple answer, Commissioner
22 is yes, and for the more complex answer, I'm going to turn
23 it over to Lucas.

24 There are literally dozens and dozens of
25 similar -- larger, smaller -- similar sized caverns,

1 typically utilized to hydrocarbons across the globe.
2 They've been in operation for many, many decades safely,
3 reliably operated.

4 And with that intro Lucas, would you like to
5 respond?

6 MS. NEUMYER: And Lucas, I apologize. This is
7 Samantha Neumyer. Before you speak, I do want to direct
8 the Committee's attention to Exhibit number 1005.

9 MR. HILDEBRAND: Great. Thanks for that.

10 MS. NEUMYER: And if you go to pdf page six --
11 well, I don't know if we actually have to look at it on the
12 screen, but at least if you want to go back and look at the
13 record and the information that has been submitted.

14 And then Lucas if you could also respond to the
15 Commissioner's questions, please. Thank you.

16 MR. THEXTON: Yeah. Thanks, Samantha. Thanks,
17 Curt.

18 There is, you know, hundreds of underground
19 storage caverns that have been built in hard rock before.
20 We will not be the largest one from a volume perspective,
21 so there is strong, strong precedent for this type of
22 structure at this scale.

23 The techniques that are used for designing the
24 cavern openings and for mining the cavern itself have been
25 employed successfully hundreds of times in this

1 application, as well as in the mining industry. So we
2 really aren't doing anything new in terms of cavern design
3 or cavern delivery.

4 COMMISSIONER MCALLISTER: I appreciate that.
5 We're looking at the exhibit right now, so thanks for that.

6 MR. MOHANTY: Mr. Commissioner, I would like to
7 probably add to that. Samrat Mohanty from Hydrostor.

8 COMMISSIONER MCALLISTER: Yes. Go ahead.

9 MR. MOHANTY: So I have been involved with a
10 bunch of these cavern projects in my past life. I was the
11 principal designer for a similar -- not a similar --
12 larger-volume cavern in Singapore called the Jurong Island
13 Caverns, and the depths were kind of similar, although the
14 geology was metamorphic. The cavern volumes were in the
15 order of 1.3 million cubic meters, whereas ours is in the
16 600 cubic meter range.

17 And the dimensions of those caverns were 20
18 meters by 25 meters in, you know, width and height. In
19 comparison, we are only in the 40 by 55 feet size when it
20 comes to the storage space.

21 So much larger caverns of similar functionalities
22 and much greater capacity have been designed and
23 constructed globally, and I have been fortunate to lead a
24 bunch of these projects.

25 COMMISSIONER MCALLISTER: Great. Okay. Thanks

1 for those answers.

2 In terms of the uses of sort of the cycling, the
3 daily cycling, I understand it's virtually isobaric. Are
4 there -- in terms of just, you know, daily cycling, we're
5 likely to see, you know, in the ramp every day. We're
6 going to need that most of the year and certainly at
7 critical peaks for during various seasons of heat waves, et
8 cetera. Like, that's what the grid needs.

9 Do you have any sort of understanding of whether
10 the daily cycling, even though it's isobaric, I could see
11 if the pressure were changing a lot, maybe that would be
12 much more difficult to manage. But still, a 50-year
13 lifetime cycling every day, sort of, you know, routinized
14 filling and emptying of this.

15 Do you anticipate any sort of impacts of that
16 kind of cycling on the caverns or the preparations?

17 MR. MOHANTY: Yes. The simple answer is no.

18 COMMISSIONER MCALLISTER: Okay.

19 MR. MOHANTY: The pressure fluctuation band is in
20 the 20-25 psi range. And there has been tons and tons of
21 studies on cyclic -- impacts of cyclic loading on rock
22 strength. So unless the cyclic pressure variation band
23 reaches 50-60 percent of the rock strength, even then tens
24 of thousands of cycles are permissible. But when you
25 compare the 20-25 psi pressure radiation band to almost

1 15,000 psi of rock strength, it does not even come close to
2 50 percent.

3 COMMISSIONER MCALLISTER: Okay.

4 MR. MOHANTY: So an infinite number of cycles are
5 possible without engendering any rock fatigue.

6 COMMISSIONER MCALLISTER: Great. Anybody else
7 want to answer that at all or chime in? No? Okay.

8 Thanks for that answer.

9 And then final question. So with reference to
10 sort of the ongoing oversight of the project sort of, you
11 know, through construction, but then once it goes into
12 operation, at these inspection intervals that are specified
13 in Geo-3, what would an example of something that an
14 inspection would uncover look like that would cause enough
15 concern that would -- you know, what would something of
16 concern look like? Like, what would you -- like, in those
17 inspections, you know, if there were something to come up,
18 what would that be in your estimation? Sounds like you
19 think it's a low probability, but the inspections are there
20 for a reason.

21 What sorts of things might those inspections turn
22 up?

23 MR. MOHANTY: A significant closure or collapse
24 of the shafts, those would be something that would be of
25 concern for the longevity and the operational -- planned

1 operational phase of the project. Tiny deformations in the
2 shafts are almost expected without compromising the
3 integrity -- structural integrity of the shafts or the
4 wells, but nearly full collapse would be compromising the
5 operational function of the facility.

6 COMMISSIONER MCALLISTER: In your estimation,
7 would that be sort of towards the surface in the shaft or
8 sort of, you know, somewhat below the lined part of the
9 shaft or where would that typically occur -- likely occur?

10 MR. MOHANTY: Well the entirety of the shafts
11 will be lined from the surface to the cavern level.

12 I mean, first of all, the design that we are
13 invoking at the moment, it has adequate conservatism,
14 adequate redundancy to preclude such events from happening,
15 but there is no definitive answer as to where that could
16 be. Potentially close to the bedrock-soil interface, if
17 there is a massive seismic event, then remediating,
18 rehabilitating the upper 65, 70 feet of the shafts would be
19 relatively easy.

20 MS. NEUMYER: Commissioner McAllister, this is
21 Samantha Neumyer. I apologize.

22 COMMISSIONER MCALLISTER: Yes. Go ahead.

23 MS. NEUMYER: I just want to also add that Samrat
24 Mohanty's resume --

25 COMMISSIONER MCALLISTER: Yes.

1 MS. NEUMYER: -- was the exhibit that we
2 previously filed earlier today, and I'd also like to make
3 sure that we check in with Mr. Thexton as well, because he
4 is the additional expert on this topic, and I keep seeing
5 him flash up on the screen.

6 COMMISSIONER MCALLISTER: Sorry about that.

7 MS. NEUMYER: Just to see if he also has
8 something to say as well. And he provided the opening
9 statement, so I want to make sure that we give him a chance
10 to weigh in as well, please.

11 Thank you.

12 COMMISSIONER MCALLISTER: Okay. Yeah.

13 Go ahead, Mr. Thexton.

14 MR. THEXTON: No problem. Thanks, Samantha.

15 Samrat had adequately covered the past two topics
16 but, you know, to reiterate, the real element that the
17 inspection program will be focusing on is our shafts.
18 Those will be inspected on a regular interval to ensure
19 liner integrity is being maintained.

20 As Samrat noted, you know, really only major
21 events would impact the liners based on the level of
22 conservatism that we have, but we will be performing
23 regular inspections to ensure that that containment
24 integrity is being maintained.

25 COMMISSIONER MCALLISTER: Okay. Thanks for that.

1 And there's no issue with sort of having -- you
2 know, so as the level changes in the caverns, you've got,
3 you know, wet coming up and down. You've got dry, you
4 know, air down below. I mean, nothing of concern there? I
5 mean, it's granite, so --

6 MR. MOHANTY: No. This is one of the most
7 stable, chemically stable minerals that you can find
8 anywhere in the planet, and that cyclic wetting and drying
9 would not really lead to any leaching erosion, but we have
10 studies ongoing at the moment to study more about all of
11 that.

12 COMMISSIONER MCALLISTER: Great. So the opening
13 statement sort of made clear that you think that it's a
14 monolithic structure down there. I'm assuming you'll be
15 confirming that along the way and working with the DCBO and
16 implementation oversight staff to make sure that that is
17 actually the case as you open up the caverns.

18 MR. MOHANTY: Yes.

19 COMMISSIONER MCALLISTER: Okay. Okay.

20 I think those were all the questions I wanted to
21 ask. Yeah.

22 Thanks a lot. I really appreciate your sort of
23 gathering all of that in the opening statements and
24 covering all the questions that we asked in the filing
25 earlier this week.

1 So yeah. I think my itches have been scratched.

2 MR. HILDEBRAND: Great.

3 COMMISSIONER MCALLISTER: So thanks a lot.

4 I appreciate everybody's weighing in and your
5 expertise comes across loud and clear, so thank you.

6 HEARING OFFICER WEBSTER-HAWKINS: Thank you,
7 Commissioner McAllister, and I want to echo appreciation
8 for the detailed opening statements on the Committee's
9 questions and the citations to the record.

10 I have two questions for staff in response to
11 some of that.

12 The first question is in the staff's independent
13 review of all the evidentiary analysis and engineering
14 information that the Applicant has submitted, including
15 that which they've summarized today, was there anything of
16 note from your experts' point of view, particularly on the
17 issue of the 95 percent reliability design goal, you know,
18 that would give staff's experts any pause about the
19 sufficiency of the record in supporting that goal?

20 MR. BABULA: Well, as a cell biologist, I'd say
21 it looks good to me. But I'm going to defer to Mr. Kenneth
22 Salyphone --

23 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

24 MR. BABULA: -- to respond to that. Thanks.

25 HEARING OFFICER WEBSTER-HAWKINS: Mr. Salyphone,

1 are you with us on Zoom?

2 MR. SALYPHONE: Yes. I am. I apologize. My
3 phone just got disconnected.

4 Can you repeat the question?

5 HEARING OFFICER WEBSTER-HAWKINS: The question
6 is, after listening to Applicants' opening statement on the
7 Committee's questions, including their summaries of their
8 own technical and engineering assessments that they've
9 included in the record, do you or your colleagues have any
10 concerns about the design plan for this project and the
11 project's reliability to be able to operate 95 percent of
12 the time, 365 days a year for 50 years?

13 MR. SALYPHONE: No. It's consistent with --
14 their practices are consistent with industry standards. We
15 concur with that.

16 One thing I wouldn't agree on is 95 percent at
17 full load for over 50 years. That's pretty bold there. I
18 would say they are available for 95 percent availability.
19 Say if one of the power trains go down, the other three
20 would still be operational. But 95 percent is consistent,
21 just not at full load, I would say.

22 And yeah, that is -- it's also back to my
23 facility reliability section as well, that we don't
24 proclaim full load, we just say 95 percent availability.

25 HEARING OFFICER WEBSTER-HAWKINS: Thank you for

1 that response, Mr. Salyphone.

2 My last question has to do with the testimony on
3 the worker safety and public health conditions related to
4 Valley Fever and the Valley Fever Mitigation Plan and
5 whether or not your staff experts have any concerns with --
6 I know that that was a topic of -- a subject within the
7 agreement, the compromise between the Applicant and CURE,
8 and whether or not your experts have any further comment or
9 want to summarize your expert position and evidence in the
10 record on the issue of Valley Fever prevention.

11 MR. BABULA: I will defer to Dr. Alvin Greenberg.

12 HEARING OFFICER WEBSTER-HAWKINS: Thank you. I
13 thought you would.

14 And I see his hand raised. If we can unmute Dr.
15 Greenberg's mic and enable his ability to respond to the
16 question.

17 Dr. Greenberg, welcome.

18 MR. GREENBERG: Thank you. I'm Alvin Greenberg.

19 Good afternoon -- or it's almost good evening,
20 commissioners and Hearing Officer.

21 It's really good to listen to everybody before
22 speaking, and I've learned a lot more about the reliability
23 of the project and the geology, two fields that I'm
24 interested in but not an expert. So I appreciate the
25 opportunity to speak in an area where I am an expert, and

1 there is one thing I want to mention regarding the
2 agreement between CURE and the Applicant.

3 First of all I applaud any agreement between an
4 Intervenor and an Applicant, and I think that's a job well
5 done. However it is of course not enforceable by the
6 Energy Commission. It's not included in a Condition of
7 Certification, nor is it written in a manner that could be
8 enforceable, and I believe the Applicant is probably aware
9 that at the very first time an employee, a worker, takes
10 advantage of the opportunity to use the half-face mask
11 respirator with associated filter cartridges, it will
12 trigger one section of Title 8 -- Section 5144 -- and that
13 is Appendix D, D as in delta, which addresses the very
14 issue of when a particular respirator is not required but
15 is provided voluntarily.

16 So I wanted the Commission and the Hearing
17 Officer to know that it will trigger a Cal/OSHA
18 requirement, and I'm sure the Applicant was aware of that,
19 but I wanted to hear it from them.

20 HEARING OFFICER WEBSTER-HAWKINS: Thank you, Dr.
21 Greenberg.

22 MR. HARRIS: Would you like a response?

23 HEARING OFFICER WEBSTER-HAWKINS: Yes, Applicant.
24 Do you have a response to that?

25 MR. HARRIS: Yeah. Hi, Dr. Greenberg. It's Jeff

1 Harris. Good to see you, although you're quite small right
2 now.

3 Yeah. We do understand that. We understand your
4 position on enforceability. We have reached an agreement
5 with CURE, which you've applauded appropriately, and it is
6 a binding obligation that we will have outside of the four
7 corners of your document. We feverishly took notes on your
8 section, although I didn't know if you were going to come
9 up with dog or delta for the D, but we will make sure that
10 we are very clear with our folks that it has to be part of
11 our overall plan to show compliance with that, because we
12 don't want to see you in compliance. So I'm glad to see
13 you on the screen.

14 So thank you for being very specific with us, and
15 you are right. You are correct, and we're going to
16 implement that.

17 MR. HARRIS: So thank you.

18 MR. GREENBERG: You're welcome, sir.

19 HEARING OFFICER WEBSTER-HAWKINS: Thank you, Dr.
20 Greenberg.

21 I believe we've heard from all of the parties,
22 and they're experts on the topic of cavern construction.

23 Does any party need to offer any additional
24 witness testimony on these topics, as posed by the
25 Committee?

1 Seeing none? None from staff.

2 MR. BABULA: Yeah. Nothing additional from
3 staff. None from Applicant. None from the Intervenor?

4 All right. So I thank all of the witnesses.

5 You're released from the stand now, and we are
6 finished with the topic of cavern construction.

7 So that concludes the testimony. We are going to
8 allow the parties an opportunity to make a closing
9 statement of up to 10 minutes. You do not need to use all
10 10 minutes, and to underscore Commissioner McAllister's
11 observation, Mr. Hildebrand may have already presaged the
12 Applicant's closing statement in large part and doesn't
13 need to repeat that.

14 So we are going to go first, starting with staff,
15 then the Center for Biological Diversity, and finally the
16 Applicant.

17 MR. BABULA: All right. Thank you.

18 HEARING OFFICER WEBSTER-HAWKINS: Yes.

19 MR. BABULA: This is Jared Babula.

20 And so CEQA recommends that the environmental
21 document of an agency be no longer than 150 pages, and then
22 for a complicated project, 300. In this case, just to be
23 sure, staff did a 1,500-page document to be comprehensive
24 and have a defensible document that is adequate for the
25 Commission to reach a decision on. And so we stand by

1 that, and now we have a lot of supplemental written or oral
2 testimony to be added to that 1,500 pages.

3 So today we talked about bio and the fact that
4 the desert regenerates slowly. That was a key aspect to
5 staff's testimony of Mr. Huntley. And because of that slow
6 regeneration, we appropriately considered that the
7 temporary impacts are actually permanent, and recommended
8 mitigation for the special status species of the burrowing
9 owl and the Crotch's bumble bee at a 3-to-1 ratio.

10 However, we do recognize that if the Applicant
11 is, while they're finalizing their construction process,
12 and they decide to not -- if they don't need the berm,
13 obviously areas that are avoided, we would be open to that
14 not being needed for mitigation, because they're avoiding
15 areas that -- with the redesign.

16 And then finally, regarding the DSOD, staff is
17 committed to working collaboratively with the DSOD and the
18 Applicant to try to get to a resolution on the fee issue.
19 I think we all agree that DSOD's expertise is going to be
20 needed, and they need to be paid for that, but the exact
21 mechanism is to be determined.

22 But the end result is, is that the Commission has
23 enough information to make a decision, and just to make
24 sure we don't get lost in the weeds of all these details,
25 the staff's recommendation was for this project to be

1 approved and to move forward with the construction phase,
2 which will entail a whole other process that staff will be
3 closely engaged with to ensure that all the conditions of
4 certification are correctly implemented and the protections
5 that they provide are consummated.

6 And so with that, I'm going to end and go to the
7 Applicant or the Intervenor.

8 Thank you.

9 HEARING OFFICER WEBSTER-HAWKINS: Thank you, Mr.
10 Babula and staff.

11 MS. GRAVES: Zeynep Graves.

12 HEARING OFFICER WEBSTER-HAWKINS: Ms. Graves.

13 MS. GRAVES: Intervenor, Center for Biological
14 Diversity.

15 On behalf of the center, I want to thank the
16 Hearing Officer, the Commissioners, the Applicant, and CEC
17 staff. This process has had plenty of opportunity to
18 present the issues that we saw, and I think the iterative
19 process by being able to comment on the PSA and then again
20 on the FSA and see improvements throughout the process has
21 really helped us narrow issues to the point where we felt
22 we only needed to provide opening and rebuttal testimony on
23 the western Joshua tree issue, so thank you to all parties
24 for your help in that.

25 I think the one thing I want to leave the

1 Commission and Hearing Officer with is, you know, the
2 western Joshua tree Conservation Act is very clear that
3 take cannot be authorized until there are very specific
4 requirements that must be met, and that includes the
5 comprehensive census of all Joshua trees that may be
6 impacted by the project. So to the extent that, you know,
7 the CEC will approve the project and authorize take of
8 western Joshua trees, I just want to reiterate that it's
9 important that we have that complete census in place before
10 the Commission, before take is authorized.

11 And with that, I will hand it over to the
12 Applicant. Thank you.

13 HEARING OFFICER WEBSTER-HAWKINS: Thank you, Ms.
14 Graves, and thank you for the center's participation.

15 Applicant?

16 MS. NEUMYER: This is Samantha Neumeyer on behalf
17 of the Applicant. We'd like to thank the Committee for
18 providing us an opportunity to provide an additional
19 closing statement.

20 We really thank you for hosting these evidentiary
21 hearings, particularly in Kern County in the area that will
22 be affected, and in an area that is really important to
23 Hydrostor as a company in the community, as you heard
24 earlier today.

25 I think as you heard by a CEC staff counsel, we

1 heard from biological resources. We've heard from the
2 experts who -- well, maybe they didn't walk every inch of
3 the project site. They have completed 100 percent of the
4 expected disturbance areas for these facilities. They have
5 characterized the site appropriately. They have told you
6 about the dumping that has occurred for years. And I think
7 it's really important when you consider these mitigation
8 ratios to take those firsthand accounts into perspective.

9 Next, we do agree that a comprehensive census of
10 all trees that may be affected should be conducted, and
11 we've done it. The record is complete with the information
12 of the western Joshua tree census, and we are happy to
13 provide the citations and the appropriate citations to the
14 record showing our homework. And we've put a lot of work
15 into creating the robust record that Commissioner
16 McAllister referenced earlier, and we're proud of the work
17 that we've done, and we've been especially proud of the
18 collaboration that we've achieved with the other parties.

19 I think one important thing to note that has
20 largely gone unstated today is that the parties are in
21 substantial agreement regarding the findings and
22 conclusions of nearly all subject areas and conditions of
23 certification presented in the Final Staff Assessment, with
24 the obvious exception of, you know, the subject areas that
25 you've heard today. We're still continuing to work with

1 CEC staff counsel and DSOD regarding some of the issues
2 that you've heard, but again, I think that is a huge
3 achievement that should not go unrecognized, and it is
4 indicative of the large amounts of cooperation and hard
5 work put forward by all parties in the proceeding.

6 And again, we have a couple minor things that we
7 need to do. I know we owe you an errata of the extensive
8 administrative citations that Mr. Stein read into the
9 record today, and we will continue to work with staff on
10 that compendium.

11 But we look forward to reviewing the presiding
12 member's proposed decision when it is published. We thank
13 the Committee for its leadership and hard work in moving
14 this proceeding forward.

15 HEARING OFFICER WEBSTER-HAWKINS: Thank you.

16 So with that, following this evidentiary hearing,
17 we are going to allow optional briefing by the parties at
18 the request of the parties. So any party wishing to file a
19 brief shall do so no later than seven business days after
20 the Court Reporter's transcript from this hearing is filed
21 in the docket.

22 All briefs shall be limited to 15 pages, shall be
23 in a font size no less than 12 points, and shall not
24 include any attachments. Briefs shall apply the law to
25 only the evidence in the record, providing those additional

1 cites, if you would like, and siting evidence by reference
2 to the transcript and by exhibits and page numbers.

3 With that, we are going to offer a final round of
4 public comment.

5 Mr. Young, will you please facilitate the comment
6 period for this evidentiary hearing?

7 MR. YOUNG: Thank you.

8 The CEC now welcomes public comment. All
9 comments will become part of the public record. Please let
10 us know if you'd like to make a comment so we can call on
11 you.

12 If you want to make remarks on behalf of a
13 California Native American tribe or government entity, the
14 comment will be taken first without a timer. Otherwise
15 comments are limited to three minutes and one speaker per
16 organization. We'll show a timer on the screen and alert
17 you when your time is up.

18 We're going to start with commenters joining us
19 in person and then transition to our online and phone
20 attendees. If you're joining us here in person, please
21 submit a blue card if you haven't already.

22 Is there anyone in the room that would like to
23 make a public comment?

24 All right. I'm going to transition to Zoom.

25 If you'd like to make a public comment and you're

1 on Zoom, please use the raise hand feature. And for those
2 of you joining by phone, please press star nine to raise
3 your hand and then star six to unmute and mute your phone.

4 Is there anyone that would like to make a comment
5 on Zoom?

6 That's going to conclude the public comment
7 period. I will now turn it back to you, Hearing Officer.

8 HEARING OFFICER WEBSTER-HAWKINS: Thank you, Mr.
9 Young.

10 Now we will seek to close the hearing record.

11 At this time, is there any objection to closing
12 the hearing record for this application for certification?

13 Applicant?

14 MR. HARRIS: No objection.

15 HEARING OFFICER WEBSTER-HAWKINS: Staff?

16 MR. BABULA: No objection.

17 HEARING OFFICER WEBSTER-HAWKINS: Intervener?

18 MS. GRAVES: No objection.

19 HEARING OFFICER WEBSTER-HAWKINS: The hearing
20 record is hereby closed except the transcript of this
21 hearing, which will be added to the record as soon as it's
22 available.

23 With that, I would like to offer the Committee a
24 last opportunity to provide some closing remarks.

25 Commissioner Gallardo?

1 COMMISSIONER MCALLISTER: Do you want to go
2 first?

3 Yeah, please.

4 COMMISSIONER GALLARDO: Thank you so much,
5 everyone. Again, to the Applicant for being such a great
6 collaborator. To staff for, you know, giving us so much
7 information, much appreciated. And overall, it was nice to
8 be in this special place. So it was an extra treat to be
9 here in the Mojave Air and Space Port where so many folks
10 lived and died to defend and protect us.

11 Also want to honor the community's comments
12 earlier today. We heard from Rick, Joel, Anthony, George,
13 Richard, and Drew, who are all residents, and just really
14 proud of being a leader in energy here in this area and on
15 renewables. And here's a new application where it's
16 possible that they could also be a leader.

17 And I wanted to compliment Hydrostor, given the
18 feedback we heard, that you're being transparent, you're
19 being a good communicator, you're being an excellent
20 neighbor, and providing community benefits beyond what this
21 project would require or would do. So thank you again for
22 that as well.

23 I'll turn it over to my fellow Commissioner.

24 COMMISSIONER MCALLISTER: Great. Thank you,
25 Commissioner Gallardo.

1 So I'll also be brief. I know it's been a long
2 day, but a very productive day. I want to thank the
3 Applicant.

4 I just would echo Commissioner Gallardo's
5 comments. I mean, clearly you've been embedded in the
6 community, and really, really dedicated to providing
7 community benefits, and it's quite a model for an Applicant
8 and the developer of a large infrastructure project like
9 this. So thanks. We heard that very loud and clear from
10 your partners in the communities impacted. So kudos to you
11 for that fulsome engagement.

12 And I think our job is not to gauge whether the
13 project's sort of going to succeed in a marketplace for
14 electricity, right? Ours is a pretty prescribed process.
15 And at the same time, you know, I think we do, keeping in
16 the lines -- you know, within the lines of the AFC process,
17 we do also kind of bring along with us the context of
18 California's transition. And so I appreciate the comments
19 to that effect, and kind of helping myself, us as a
20 Committee, understand, you know, locate this project in the
21 trajectory of California's journey to rely on an electric
22 system: an affordable electric system, a reliable electric
23 system, and a low-carbon electric system. So I appreciate
24 that.

25 And the risk is on the Applicant, right? I mean,

1 the worst outcome we could see is you do the project and
2 then something doesn't work out, and it's a stranded asset.
3 And, you know, all of us -- if it gets approved, all of us
4 want to avoid that. And so it sort of drives my -- what
5 keeps me up at night is we want to make sure that all of
6 our investments are effective and efficient, efficacious,
7 and contribute to that overall trajectory. So if it is
8 approved, we need it to succeed.

9 You know, storage, I think you talked about,
10 Curt, Mr. Hildebrand, you talked about storage being a key
11 asset. That's absolutely right. I think California is
12 doing amazing work, but we need diversity of storage, and
13 this would contribute to that.

14 I really just appreciate everyone's attention.
15 This was an incredibly collegial, civil, and productive and
16 substantive hearing, and I really appreciate that. I think
17 really a model for how these things should go, even though
18 not everybody agrees on everything. I think we edged
19 closer to getting sort of agreement across the various
20 parties with the thoughtfulness, and I appreciate that.
21 And that starts with the Applicant providing a lot of
22 information and really being persistent and responsive
23 throughout this whole process. So I appreciate that.

24 And I would say the same for staff. Just really
25 excellent job on the staff part. Just your doggedness and

1 your curiosity and kind of being incredibly committed to
2 getting the work done. I don't know if we have to do,
3 like, a selection of every fifth word to get it down to 300
4 pages or something. I'm not sure that would make sense,
5 but we can try. AI can do anything, right?

6 And the Intervenor, the Center, really thank you
7 for all your participation. This is not easy for a small
8 organization or a nonprofit to participate in, and we
9 really appreciate your prioritizing this and bringing your
10 perspective and substantive comments. So thanks for being
11 here today as well.

12 And the other -- the previous Intervenor here, I
13 think, was also a very positive influence on the process,
14 and so focused on some very, very important aspects of the
15 project. And I think we've heard consistently that the
16 Applicant is committed to respecting the agreement, the
17 contract. Basically, you have an enforceable contract with
18 them. So thanks for that.

19 The relevant agencies here, Eastern Kern APCD and
20 the California Department of Forest and Wildlife and the
21 Division of Safety of Dams, I really want to commend them
22 for being fully present, giving this attention, and
23 bringing their expertise to the table for up to now and
24 today and then going forward. So really appreciate them.

25 The county, you know, we all love working with

1 Ms. Oviatt. She's so on top of things and has such a good
2 perspective and grounded experience. I think a really
3 great interface with the county and the leadership in the
4 county. And Kern really is an incredible place for
5 California to help us with our transition to a clean energy
6 future.

7 PAO, Ryan and your colleagues, really thank you
8 very much for ensuring that the public can participate.
9 This can be kind of obtuse. This can be kind of, you know,
10 a difficult process. It's very formalized and not
11 intuitive sometimes. And so I really appreciate, not just
12 in this proceeding, but across the Board, helping the
13 public have access.

14 The translators, Aaron and Giselle, thank you
15 very much. Really appreciate them sticking with us
16 throughout a long day.

17 And finally, the Hearing Officer team, Reneé,
18 thanks so much for being the conductor of this orchestra
19 today. You know, I think it sounded reasonably good.

20 And Blanca and the whole team, really appreciate
21 all of your efforts to keep us moving forward and keep the
22 train moving down the tracks on schedule.

23 We do have a schedule. I appreciate your
24 pointing out the LPO role and the sort of -- you know, the
25 pieces of the Legos and how they have to fit together. So

1 you know, and I think we all want to get to the finish line
2 here before the end of the year. So we'll do our best to
3 do that. And please do avail yourselves of the briefing
4 opportunity if you feel you need to, absolutely. And we
5 have a lot to roll up and take back and construct a PMPD.
6 And really looking forward to putting that together and
7 digging in and figuring out where to land.

8 So thanks, and that's it for me. Thanks very
9 much.

10 Pass it back to you, Hearing Officer Webster-
11 Hawkins.

12 HEARING OFFICER WEBSTER-HAWKINS: Thank you,
13 Commissioners, for your leadership and those wonderful
14 remarks.

15 I think I also want to thank the communities of
16 Mojave and Rosamond all along since our first informational
17 hearing. And both the members of local organizations,
18 local government, economic development representatives.
19 It's helped the process to have the community engaged.

20 Thank you, Lynn, from the Mojave Air and Space
21 Port. You've been a wonderful host for us. Very
22 accommodating.

23 And with that --

24 COMMISSIONER MCALLISTER: Can I make one more
25 comment?

1 HEARING OFFICER WEBSTER-HAWKINS: Yes. You may,
2 sir.

3 COMMISSIONER MCALLISTER: I neglected to mention
4 that, but I just I think it was very meaningful that we
5 started off with a moment of silence for all of our fallen
6 colleagues. And this was a great place to do that. Just
7 all the Marine Corps and Air Force and all the armed
8 services. So really appreciate that context. It means a
9 lot.

10 And California, you know, we're a blue state, but
11 we have such an alliance with the military. I think it's
12 often lost on people who may be listening in from beyond
13 our borders. So you know, it's such a footprint and a
14 collaboration with -- you know, I mean, even the Space
15 Force, right here next door. So I think I appreciate all
16 that context and thanks for bringing it up.

17 HEARING OFFICER WEBSTER-HAWKINS: Thank you.
18 And with that, the evidentiary hearing for Willow Rock AFC
19 Docket 21 AFC-02 is now adjourned. The time is 5:52 p.m.
20 Thank you.

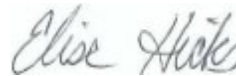
21 (Off the record at 5:52 p.m.)
22
23
24
25

CERTIFICATE OF REPORTER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of August, 2025.



ELISE HICKS, IAPRT CERT**2176

CERTIFICATE OF TRANSCRIBER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



MARTHA L. NELSON, CERT**367

August 27, 2025