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ENERGY RESOURCE CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA

PETITION TO AMEND) Docket No. 97-AFC-01C
)
High Desert Power)
Plant)

HIGH DESERT POWER PLANT AMENDMENT COMMITTEE
COMMITTEE STATUS CONFERENCE

CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Art Rosenfeld Hearing Room
Sacramento, California 95814

TUESDAY, MAY 23, 2016
9:00 A.M.

Reported by:
Peter Petty

APPEARANCES

COMMISSIONERS:

Karen Douglas, Presiding Member
Janea A. Scott, Associate Member

ADVISORS:

Jennifer Nelson, Advisor to Commissioner Douglas
Rhetta deMesa, Advisor to Commissioner Scott

PUBLIC ADVISER:

Alana Mathews, Public Adviser

HEARING OFFICER

Susan Cochran
Paul Kramer, Assistant Chief Counsel

Staff Present (* Via WebEx or Phone)

Joseph Douglas, Project Manager
Matt Layton
Elena Miller, Senior Staff Counsel
*Marc Pryor

Petitioner

Jeff Harris, Esq., Ellison Schneider & Harris
Peter Kiel, Esq., Ellison, Schneider & Harris
Mark Kubow, Middle River Power, LLC

Interveners

*Alisa Ellsworth, CA Department of Fish and Wildlife
Nancee Murray, CA Department of Fish and Wildlife

Also Present

Public

AGENDA

	<u>PAGE</u>
1. Call to Order	4
2. Status Conference	8
a. Discuss Committee Recommended Decision Granting Interim Relief to Drought-Proof the Facility	
b. Case progress and schedule	
c. Hearing on any Pending Motions	
3. Public Comment	72
4. Closed Session (if necessary)	73
5. Adjourn	73
Certificate of Reporter	74
Certificate of Transcriber	75

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
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25

P R O C E E D I N G S

MAY 23, 2016 9:08 a.m.

COMMISSIONER DOUGLAS: Welcome to the status conference for the High Desert Power Plant Petition to Amend to Drought-Proof the Facility. I'm Karen Douglas, I'm the Presiding Member of the Committee. And to the left of the Hearing Advisor is Janea Scott, the Associate Member of the Committee. To my immediate left, Susan Cochran, our Hearing Officer. To my right, Jennifer Nelson, my Advisor, and Rhetta deMesa to the left of Commissioner Scott.

So with that, let me ask the parties to introduce themselves starting with the Petitioner.

MR. HARRIS: Good morning. I'm Jeff Harris here on behalf of the High Desert Power Plant. Thank you.

MR. KUBOW: I'm Mark Kubow, I'm here with High Desert Power.

COMMISSIONER DOUGLAS: Thank you. And staff.

MR. DOUGLAS: Joe Douglas, CPM.

MS. MILLER: Elena Miller, Staff Counsel on behalf of staff of the Energy Commission.

1 COMMISSIONER DOUGLAS: Thank you.

2 Intervenor, California Department of Fish and
3 Wildlife.

4 MS. MURRAY: Nancee Murray, Staff Counsel
5 with the Cal Fish and Wildlife. And we have one
6 staff person who is having trouble calling in to
7 the meeting. The meeting number is that,
8 correct? Is there anyone, I mean, if you could
9 go to the phone to see if anyone else is having
10 trouble?

11 COMMISSIONER DOUGLAS: Sure. Can we
12 unmute, Paul? So if you're on the phone from
13 CDFW, hang on just one moment. I think they're
14 all muted now.

15 MR. KRAMER: Not by us, though.

16 COMMISSIONER DOUGLAS: Oh, okay.

17 MS. MATHEWS: Can you hear me?

18 COMMISSIONER DOUGLAS: Yes. Who is
19 speaking?

20 MS. MATHEWS: Okay. This is Alana, the
21 Public Advisor.

22 COMMISSIONER DOUGLAS: Hi, Alana.

23 MS. MATHEWS: The problem is that it asks
24 for an I.D. or our meeting number, like a
25 password, and so since there's not one for the

1 meeting, participants just need to hit the pound
2 sign again.

3 COMMISSIONER DOUGLAS: Thank you, Alana.
4 Is there a way to communicate that to people who
5 might be trying to call in?

6 MS. MURRAY: I'm texting, so --

7 MS. MATHEWS: Well, when you call in, you
8 talk - I'm trying to think what we can do. When
9 you call in, the Operator kind of prompts you to
10 answer your meeting number, it asks you for your
11 meeting number, and it asks for another I.D. that
12 you don't know, so you hit the pound sign.

13 COMMISSIONER DOUGLAS: Okay.

14 MS. MATHEWS: So if they would hit the
15 pound sign, they would be connected.

16 COMMISSIONER DOUGLAS: All right. Well,
17 I think we'll solve the problem for CDFW in just
18 a moment, and we'll make sure that we do.

19 MR. KRAMER: That's a normal feature of
20 the system, though. I think it's designed to let
21 people who get on their computer to then call in
22 and associate their phone line with their
23 computer sign-in. So I don't think that's
24 anything new.

25 COMMISSIONER DOUGLAS: All right, let's

1 keep doing introductions while we sort this out.
2 So we've got CDF&W, so are there any other public
3 agencies, federal, state, local, or Native
4 American Tribes or Nations in the room or on the
5 phone, in the room? I think not. Now, on the
6 phone? Would you speak up if you're representing
7 a government agency?

8 MS. MURRAY: My other person is also
9 having trouble.

10 COMMISSIONER DOUGLAS: Okay. All right,
11 we'll --

12 MS. MATHEWS: I can only text one person
13 at a time.

14 COMMISSIONER DOUGLAS: Got it. No, we'll
15 give you time to sort this out, don't worry.

16 Just while we're waiting here, could we
17 ask the people on the line to identify
18 themselves? Obviously it's not a requirement,
19 but if you could speak up, that would be great.

20 MS. ELLSWORTH: Alisa Ellsworth.

21 COMMISSIONER DOUGLAS: Oh, good.
22 Welcome.

23 MS. ELLSWORTH: Thank you.

24 MR. PRYOR: Marc Pryor with staff.

25 COMMISSIONER DOUGLAS: Thank you. Anyone

1 else on the line who would like to identify
2 themselves?

3 MS. MURRAY: Alisa, she's -

4 COMMISSIONER DOUGLAS: That's excellent.
5 Should we wait for your other person?

6 MS. MURRAY: No. He'll call in hopefully
7 soon.

8 HEARING OFFICER COCHRAN: If you could
9 provide the spelling of Ms. Ellsworth's name to
10 the Court Reporter before the end of the day,
11 that would be great.

12 COMMISSIONER DOUGLAS: Thank you.

13 HEARING OFFICER COCHRAN: Thank you.
14 Okay, Notice of the Status Conference was given
15 on May 13, 2016. This case concerns proposed
16 modifications to the water supply to the High
17 Desert Power Plant that I'm going to call HDPP
18 for the rest of the morning.

19 The HDPP was certified by the Energy
20 Commission in May 2000 and began commercial
21 operations in 2003. The HDPP is an 830 megawatt
22 natural gas fired combined-cycle electric
23 generating facility located in the City of
24 Victorville in San Bernardino County.

25 At the time of the certification in 2000,

1 the HDPP was limited to using water obtained from
2 the State Water Project, SWP, for plant cooling
3 requirements.

4 In 2009, the Energy Commission adopted an
5 Order so that the project was allowed to use
6 recycled water for up to one-third of the total
7 water for plant cooling purposes. And that
8 limitation was approximately 1,000-acre-feet per
9 year. The limitation on the amount of reclaimed
10 water that could be used was lifted in 2014.

11 In 2015, the Petitioner filed the current
12 Petition before the Committee, seeking a loading
13 order to allow it to use a combination of water
14 from the State Water Project, banked State Water
15 Project Water, and adjudicated groundwater from
16 the Mojave Basin. They would use recycled water
17 to the extent feasible, with additional sources
18 determined by water quality and quantity
19 parameters.

20 Currently, HDPP may use groundwater from
21 the Mojave Basin, but only until September 30 of
22 this year.

23 At prior status conferences held in March
24 and April, the Committee, the parties, and the
25 public discussed interim relief to allow the HDPP

1 to continue to operate until final resolution of
2 the issues presented by the Petition could be
3 decided.

4 The Committee has issued its Committee
5 recommended decision granting interim relief on
6 May 6, 2016. Originally filed as a Presiding
7 Member's Proposed Decision on May 3rd, the
8 recommended decision would extend HDPP's use of
9 groundwater from the Mojave River Basin for one
10 additional water year, ending in September 2017.

11 The recommended decision also included a
12 loading order that, 1) made the use of recycled
13 water the predominant choice for plant cooling
14 purposes, 2) authorized continued use of State
15 Water Project, either directly or after banking,
16 in conjunction with recycled water when the
17 recycled water was insufficient in either quality
18 or quantity and, finally, restricted use of
19 groundwater at times when there was insufficient
20 recycled or State Water Project water, whether
21 that was directly available or banked.

22 The recommended decision also included
23 the Committee's initial determinations that
24 Executive Order B-29-15 applied to the petition,
25 thus exempting consideration of the interim

1 relief from the California Environmental Quality
2 Act, CEQA, but retaining the Committee's
3 discretion under the Warren-Alquist Act,
4 specifically referencing Sections 25523 and
5 25525.

6 In developing the recommended decision,
7 the Committee wanted to provide some assurance to
8 Petitioner of its ability to operate until final
9 resolution of the questions presented by the
10 Petition.

11 The recommended decision was scheduled
12 for action by the full Commission at its regular
13 business meeting of May 17, 2016. However,
14 comments were received from both Energy
15 Commission staff and the Petitioner, requesting
16 additional relief in the form of conditions
17 relating to the way in which State Water Project
18 water was banked, giving the Committee pause.

19 The Committee then rescheduled
20 consideration of the recommended decision to the
21 June 14, 2016, business meeting and set this
22 status conference to discuss, first and foremost,
23 the interim proposal and potential changes to the
24 Conditions of Certification under which the HDPP
25 operates.

1 In addition, we'll discuss to the extent
2 that time is available the scope of review of
3 this amendment going forward.

4 So first what I would like to turn to is
5 SOIL&WATER-1, the recommended decision focused on
6 this condition of certification.

7 Mr. Kramer, in the tray there is Exhibit
8 A to the Interim Relief, if you could pop that up
9 and share that application? So what you see
10 before you are what was Exhibit A to the
11 recommended decision, and shows the changes made
12 by the Committee to the existing language; that
13 is, the language of SOIL&WATER-1 that has existed
14 since 2014. If you could scroll down just a
15 little bit, please, to -- keep going, please --
16 right there, the very last -- you'll see
17 underlined text which shows that that is an
18 insertion. And what this Committee did here was
19 inserted that the Project Owner shall use no more
20 than 3,090-acre-feet per year of water,
21 regardless of the source of water, for plant
22 cooling purposes.

23 Both staff and Petitioner have questioned
24 the limit of water of 3,090-acre-feet a year. So
25 that you'll understand where the Committee came

1 up with that number, that figure came from the
2 Petition, which where it cited four or five
3 different times, and I can give you citations to
4 the Petition, page numbers if you need them, and
5 also seemed to be consistent with the 2009 Order
6 that allowed use of up to 1,000-acre-feet a year
7 of reclaimed water, claiming that that was one-
8 third of the total water demand.

9 Petitioner in its comments has stated
10 that the 3,090 actually only represents 80
11 percent of capacity. So the first question the
12 Committee has this morning is, is there a better
13 number that the Committee could use as an outer
14 limit of the amount of water the plant needs to
15 use in order to operate, say, 90 for five percent
16 of the time. And I'll take comments from either
17 Petitioner, whoever wants to speak first.

18 MR. HARRIS: Thank you. I'll go first.
19 It's Jeff Harris on behalf of the project.

20 First off, above this line there's
21 actually an addition that allows for an
22 additional year of groundwater use by the
23 project, and I want to acknowledge that change
24 and thank the Committee for that; that's half of
25 our interim relief and I don't think anybody

1 commented on that language, so we're already 50
2 percent there. So I wanted to try to be
3 optimistic to start out this morning, but...

4 There's a couple things going on here.
5 At the end of the day, you have a huge record,
6 you've got a lot of information before you, but
7 this is a pretty simple task, I think, for the
8 day, it really is to focus on the interim relief.

9 I understand staff has some other issues
10 they want to discuss and we've been handed
11 something this morning and we'll be feverishly
12 looking at, and we're certainly willing to have
13 that conversation with or without the Committee
14 towards the end of the discussion. But I really
15 want to focus on the interim relief.

16 To the 3,090 question, that number is in
17 the Petition multiple times. If you word search
18 it, you will find it everywhere. But that number
19 really was focused on the use of groundwater, and
20 what we wanted to do was model various scenarios.
21 And you've heard me talk a lot about the GSI
22 report and the attachments to our opening
23 testimony. So that number really was only
24 developed in the context of how much groundwater
25 might we need under the most extreme of extreme

1 circumstances. And we're talking about probably
2 prolonged drought and then possibly outage of the
3 Delta due to, you know, levee failures, some
4 earthquakes, or what have you. So it was really
5 intended to be kind of an outlier number.

6 The important thing to know about that
7 number is, and we did develop it through our
8 modeling, it's in the GSI Report; if you word
9 search that, you'll find it multiple multiple
10 times. That set of modeling assumptions assumed
11 20 percent availability of recycled water, so
12 that's basically another 1,000-acre-feet, so it
13 would put you up a little over 4,000-acre-feet a
14 year from those two sources. That gives you the
15 development of that. So our immediate concern
16 was that the number is about an 80 percent
17 supply.

18 This project is important to us and it's
19 also, I think, important to Southern California.
20 I want to be very clear on this point: this
21 project is not *the* solution to the problem, at
22 least, okay, I mean, if there was one, you guys
23 would all be happier and there would be a lot
24 less work going on here. So I am not at all
25 suggesting that this project is *the* solution. I

1 do think it's one of the tools in the tool belt
2 that's necessary for the CalISO this year,
3 especially in the face of Aliso Canyon.

4 So we basically need flexibility and the
5 entire discussion of our interim relief is based
6 on that, is having flexibility. I think if I
7 read the staff's comments correctly, they're okay
8 taking the number out; I think that's probably
9 the best solution. I'm not aware of power plants
10 that you've licensed that have an upper limit on
11 how much water --

12 HEARING OFFICER COCHRAN: That is the
13 current standard, to include an upper limit.

14 MR. HARRIS: Okay. Well, then that upper
15 limit needs to be -- and I'm actually unaware of
16 that, so I might ask for some help for some other
17 cases, but I am not aware of any of my clients
18 facing that kind of upper limit on total water
19 use for any of the facilities, so we can come
20 back to that, so -- but if there has to be an
21 upper limit number, that number ought to be as
22 high as a theoretical possible could go, so
23 you've heard me say this before, if you operated
24 this power plant for the sole purpose of
25 evaporating water, that is what you wanted to do

1 was maximize evaporation of water, there is a
2 limit already. There's a physical limit on how
3 much that machine can run and there's a physical
4 limit on how much that technology can evaporate.
5 You have to, in reaching that upper limit, make a
6 lot of assumptions about primarily two things:
7 how much do you run and, secondly, what is the
8 ambient temperature over the course of the year
9 because the hotter it gets, the more water you
10 need to cool, and that's -- you know, I'm not Mr.
11 Science here, we all know that, right?

12 So if you want to put an upper limit on
13 this, you really need to think about those two
14 things, you know, how much might you run, how
15 much might this power plant experience heat in
16 the desert where it's located, over what
17 timeframe. So, you know, we've talked a lot
18 about rolling averages, too, as an important
19 thing to make sure that we don't end up being
20 curtailed. And if you look back through some of
21 our prior filings, I believe our opening
22 testimony had a number of 5,000-acre-feet a year;
23 that was in one version of SOIL&WATER-1 that we
24 did, and that wasn't well-received by staff, so
25 we've taken it out since then. But the 5,000-

1 acre-feet a year we thought represented a number
2 that had the safety cushion in it that we would
3 need under those extreme circumstances we talked
4 about where it's super-hot and we run a lot
5 because of, say, Aliso Canyon or some other
6 purposes. Even then, I'm a little hesitant to
7 know what would happen if we ever pushed up
8 against that because if we pushed up against that
9 number, you know, that would tell you that
10 Southern California was needing a lot of
11 electricity, you would be running all the time
12 and it would be super-hot. So I'm loathe to
13 suggest that even the 5,000 we put in last time
14 would be absolutely the most. So if you're going
15 to insist on a number, I think it ought to be the
16 5,000-acre-feet we proposed previously. I would
17 love it if you would make that on a rolling
18 average of at least three years so we could have
19 some warning if we were going to run up against
20 it and know we're going to have to shut down.

21 And then the last thing I think would be
22 important would be to acknowledge that if for an
23 unlikely circumstance we got up the 5,000, that
24 we would be able to continue to operate to
25 support the Grid. So in other words, no shutdown

1 condition at the end of that because if we are at
2 5,000-acre-feet in any year, there's a lot of
3 stuff going on that we're not fully aware of
4 currently and it may be that it's beachfront
5 property in Torrance, California or something.
6 But in any event, those are kind of the
7 parameters.

8 And I guess the last thing I'll say on
9 this issue is that I would like to reserve the
10 right to go back and look at some of your other
11 decisions because I'm unaware of a single project
12 that has a limit like that. Actually, I can take
13 it back, there is one that I can think of, that's
14 the Mountain View project, it has a 7,000, I
15 think, acre feet per year limit of groundwater,
16 pure groundwater. And we're not talking about
17 taking anything near that amount.

18 On this issue, I've got more to say, but
19 I think I should stop because I'm probably making
20 you raw at this point, so why don't I go ahead
21 and stop. Actually, let me turn, do you have
22 anything you want to add? Okay, one last -- I
23 wore out my welcome about five minutes ago, so
24 I'll stop.

25 HEARING OFFICER COCHRAN: Thank you, Mr.

1 Harris. Staff, did you want to be heard on an
2 upper limit of water use?

3 MS. MILLER: Yes, thank you. Thank you
4 for the opportunity and for having the status
5 conference today; staff appreciates the
6 opportunity to talk to you.

7 The question presented is, is there a
8 better number, and I can tell you that the staff
9 don't have a better number for you for a couple
10 of key reasons, some of which I think you'll
11 realize are somewhat overlapping with what Mr.
12 Harris has just stated.

13 They don't operate this plant -- this is
14 a merchant power plant -- they don't operate 100
15 percent of the time, and so staff did not look at
16 this upper limit number that you're talking about
17 today for the simple reason that it wasn't the
18 focus of staff's concern.

19 We had a petition requesting groundwater,
20 that was the focus. Staff certainly, as you've
21 seen in all the moving papers have focused on
22 emphasizing reclaimed or recycled water. And so
23 Mr. Harris has given you another number which
24 you've asked for, but he's also explained that
25 that's a number that, without saying it in this

1 way, I think what he's telling you is that the
2 plant would have to be operating in an absolutely
3 unusual way, in excess of what they have operated
4 in the past because something has happened, a
5 series of events, potentially natural disasters.

6 And so staff didn't look at an upper
7 limit number. You're correct, staff did in their
8 comments strike out that number in that sentence,
9 and then they emphasized what we've been
10 emphasizing all along, which is I think a point
11 of contention between staff and the Petitioner,
12 and that is the loading sequence.

13 What staff are recommending is
14 flexibility. You've heard Mr. Harris talk about
15 flexibility; we agree on that. But flexibility
16 for staff means flexibility with the loading
17 sequence and that's the objective certainly for
18 what we're discussing today, which is the interim
19 solution.

20 And then I want to make one last point.
21 Mr. Harris brought up Mountain View. I don't
22 think it's necessarily going to help us, but just
23 wanted to emphasize to you that the groundwater
24 in that case is degraded groundwater. And so we
25 have a unique circumstance in that case of

1 distinction. And that's it unless you have
2 questions for me.

3 HEARING OFFICER COCHRAN: Actually I have
4 comments to share. So I wanted to get back to
5 Mr. Harris' number of 4,000 or 5,000. And as I
6 understand it, part of what is limiting the
7 Committee's action in this is that, while we have
8 received evidence from the parties, none of it
9 has been vetted through our adversarial process
10 yet. So in trying to come up with a reasoned
11 decision, even on a recommended decision for some
12 interim relief, we are somewhat constrained by
13 the fact that we don't have a robust evidentiary
14 record where the parties have been able to talk
15 about all of these issues.

16 That being said, there are filings that
17 the Petitioner has made in the last several years
18 that show the amount of water used and the
19 capacity factor where the plant has run. And in
20 running those numbers, and assuming a 95 percent
21 capacity rate so that you're running at 95
22 percent, five percent being given for, you know,
23 routine maintenance, things of that nature, it
24 does jibe with the 4,000- to 5,000-acre-feet per
25 year scenario that you describe, Mr. Harris.

1 And so I thank you for at least
2 confirming my math because if you're not a
3 science guy, I'm not a math person. And is that
4 a number that we could live with? And remember,
5 this is just for the interim time period.

6 MR. HARRIS: The 5,000 number I think is
7 a number that I have to say we could live with
8 since we proposed it, and I'll refer you to
9 Exhibit 1000 which is the High Desert Project
10 opening testimony. Verification language and the
11 condition language says that it shall not exceed
12 5,000-acre-feet total water usage.

13 HEARING OFFICER COCHRAN: Okay.

14 MR. HARRIS: And I guess I want to put
15 one point of clarification on this. We're
16 talking about water usage for cooling, okay?
17 Only for cooling.

18 HEARING OFFICER COCHRAN: Right.

19 MR. HARRIS: Because there have been
20 years when we've used 4,200-acre-feet of water in
21 the past when you combine cooling with injection,
22 all the possible uses. So as long as the
23 language is -- there's some excellent language in
24 Exhibit, a thousand, but send you -- point to
25 your attentions.

1 HEARING OFFICER: Okay. And that is
2 exactly why in the added language, in SOIL&WATER-
3 1, it says specifically for plant cooling
4 operations, and trying to distinguish, as you
5 said, between any of the banking that may have
6 gone on.

7 So Ms. Miller brought up the next topic
8 that I think we wanted to speak about and that's
9 the loading sequence. And the first thing I
10 wanted to talk about is, in its comments on the
11 recommended decision, Petitioner requests
12 "maximum flexibility in choosing among the
13 various water supplies." When you talk about
14 maximum flexibility, Mr. Harris, what were you
15 referring to?

16 MR. HARRIS: Well, we've been at this so
17 long the world has changed. Our Petition didn't
18 start off talking about percolation, that is a
19 huge difference, and our loading sequence is not
20 built around a use of percolation because that's
21 a different set of complex issues for us. And so
22 I guess I want to make that point.

23 I'm also frankly surprised, having
24 proposed this and having it been kind of flatly
25 and roundly and sort of rejected by staff, the

1 idea of a loading sequence, the idea of using a
2 cooling tower, chloride concentration. Those
3 ideas were thrown back at me as unenforceable,
4 completely unenforceable. So something has
5 changed in their world view that I don't
6 understand.

7 So we ought to have a discussion about
8 loading sequence when we talk about the longer
9 outcome of this petition -- God, I hope it's not
10 much longer -- but I don't think the loading
11 sequence is properly before you as part of the
12 interim relief. We're talking about how you
13 operate the facility and we're going to need the
14 flexibility to operate the facility on these very
15 supplies. We do have limits on those supplies,
16 there's a 2,000-acre-foot limit on the amount of
17 groundwater we can use. There are again physical
18 limits on how much the project can use, and we
19 have every incentive to use as much recycled
20 water as possible.

21 So I very much look forward to the
22 opportunity to discuss the loading sequence and
23 whether it's still relevant given its prior
24 rejection by staff and given where I think we're
25 headed with percolation. But that ought not be

1 part of the discussion today. You have a very
2 robust record, this has not been vetted through
3 your hearing process, and I think the time to
4 deal with the loading sequence and those issues
5 is going to be in hearings. But it's not
6 properly part of been there and belief in my
7 mind, you know, we are trying to maximize our
8 ability to put water in the ground, we're trying
9 to use the available supply.

10 The groundwater supply that we have
11 access to right now is a perishable supply, you
12 know? It's done at September 30th this year with
13 the extension, it will be done September 30th of
14 2017, so to suggest -- and I guess I want to
15 preempt this argument, this is just that we're
16 not currently operating under the loading
17 sequence is correct, we are *not* currently
18 operating under the loading sequence. Nor would
19 you expect us to be since it hasn't been adopted,
20 it hasn't even been shown a favorable review
21 until recently. So our biggest concern with the
22 language as written, and staff emphasizes this in
23 their comments, is that it effectively makes that
24 groundwater supply, the Mojave River supply that
25 you've extended for a year, an emergency only

1 supply. So we could only use it under emergency
2 circumstances, that's how staff reads the
3 language; I think that's one reading of the
4 language, I'm don't necessarily agree it's that
5 Draconian.

6 But, yeah, let's have a discussion on the
7 loading sequence, whether it still makes sense,
8 how it might be implemented, but I don't think it
9 should be part of the interim relief, especially
10 if you want this project available this summer.

11 HEARING OFFICER COCHRAN: Paul, could you
12 slide down so that we can see what the loading
13 sequence language is that was included in the
14 recommended decision -- and this is the loading
15 sequence that is currently contained in the
16 recommended decision.

17 So, Mr. Harris, do I understand you
18 correctly that you would strike all of the
19 language that you see on the screen that's
20 underlined?

21 MR. HARRIS: Yes, you do. And if I could
22 have Mr. Kramer actually scroll back up to (A),
23 there is a loading sequence in this condition
24 already. If we look at loading at (A), whenever
25 recycled water of sufficient quality is

1 available, it could be purchased and we shall use
2 directly delivered water; whenever the quantity
3 or quality of recycled water is not sufficient to
4 support operations, we may supplement with State
5 Water Project banked water from the four wells,
6 and as long as this does not exceed the condition
7 5 limit and/or MRB water. There's a loading
8 sequence in this condition currently that we're
9 living with, and that's what we're living with
10 today. So, in addition to I think complicating
11 operations, it's redundant to the existing
12 requirements.

13 If down the road, past interim relief,
14 there's a desire to change out that language and
15 put in some other loading sequence language, we
16 should do that. But it unnecessarily complicates
17 things and it's absolutely redundant and limiting
18 to us.

19 HEARING OFFICER COCHRAN: Okay, I'm going
20 to throw this question out to whoever wants to
21 answer it. So the language that currently
22 exists, does it in fact limit choices? Or is the
23 Project Owner free to choose among the various
24 sources listed to provide enough water for
25 cooling purposes?

1 MR. HARRIS: It does limit us to the
2 quantities, yeah, by quantity. So MRB water
3 never more than 2,000-acre-feet a year, that's
4 the limit we've been giving. And by the way, if
5 you want us to use more recycled water, that's
6 the supply that we can use because it's the
7 highest quality water and it's the best dilatant.
8 So if you want the recycled water percentage to
9 go up, that's the supply we would use.

10 So we are limited in the amount of MRB
11 water -- and now I'm working my way backwards to
12 the language -- 2,000-acre-feet there. We're
13 limited in the amount of banked State Water
14 Project water we can use because we have a
15 minimum, we have 1,000-acre-feet we have to keep
16 in there and we have to manage that water. So
17 that water is limited, as well, in the supply.
18 And the recycled water is limited; sometimes it
19 doesn't show up and sometimes it doesn't show up
20 in quality. So I would say, yes, there are
21 limits that are associated with all of those in
22 that current loading sequence.

23 HEARING OFFICER COCHRAN: Staff?

24 MS. MILLER: A lot to respond to. Let me
25 go backwards a little bit. Mr. Harris talked

1 about percolation was not originally discussed in
2 their petition, and I realize that we've not gone
3 to hearing, but there has been a lot said and
4 filed on the issue of percolation, and this is
5 one of those areas where I'm happy that we are in
6 agreement.

7 Jumping ahead, you asked another question
8 and our thoughts are that staff have had to look
9 at the Petition. The Petition was to drought-
10 proof this project. And staff have to find that
11 balance in what the Project Owner is saying they
12 need to keep the project going. They need
13 flexibility.

14 Staff are sensitive and responsive and
15 have considered that a great deal, and where
16 there is continued disagreement, or on things
17 that you've heard Mr. Harris talk about such as
18 Paragraph A vs. the loading sequence, again,
19 focusing on the most recent comments that staff
20 have filed because there have been various
21 iterations in recent weeks.

22 The biggest concern for staff -- and I
23 know that you'll be keen to this -- but just to
24 emphasize, is the groundwater use. And the
25 thought being, and the emphasis being that that

1 groundwater be used as a last resort, sort of as
2 an emergency. And so that's what you see in the
3 loading sequence.

4 Paragraph A has a lot of information
5 there, but the problem with Paragraph A standing
6 alone without the loading sequence below that
7 paragraph is that the Project Owner would be able
8 to go out of order. And so staff's concern would
9 be groundwater jumping ahead of those other
10 sources.

11 And, you know, the Project Owner may say
12 that's exactly what we're here for, that's
13 exactly what we need, and I'm confident that Mr.
14 Harris will respond. But staff believe very
15 strongly that State Water Project obviously is
16 critical to this power plant, but the banked
17 State Water Project water should take precedence
18 and priority, and so that's what we're trying to
19 emphasize in that loading sequence. And
20 Paragraph A doesn't get us there.

21 MR. HARRIS: If I could respond?

22 HEARING OFFICER COCHRAN: Certainly.

23 MR. HARRIS: A couple things. I think we
24 want to get there too, eventually, though we
25 first need to have our bank built up, and that's

1 why we're asking for percolation to do more than
2 anything else. We want the ability to put that
3 water in the ground, and I think the staff agrees
4 with that. The more water we can get in the
5 ground, the less likely we are to be able to want
6 to use the interim supply of MRB water. That
7 water is probably three or four times more
8 expensive to us than the water we can percolate,
9 or the recycled water we can use. So we have an
10 economic incentive to minimize that use in the
11 long run.

12 In the short run, we are fighting to make
13 sure that our groundwater bank stays as high as
14 possible because, you know, six months or a year
15 and six months, I guess it's less than that,
16 technically to the end of September, we're only
17 going to have those two supplies. So, you know,
18 long term, this is a very good discussion to have
19 about the long term issues. But in the interim,
20 in the short term, you know, what you're hearing
21 is an essential difference, which is this: is the
22 staff wants us to draw on the groundwater bank
23 first and exclusively, and we're telling you that
24 we need the ability to build up our groundwater
25 bank. Percolation is going to go most of the way

1 getting us where we need to get if we can meet
2 that this year in the interim relief, but in the
3 long term we're not going to have an economic
4 incentive to do that once the bank is built.

5 HEARING OFFICER COCHRAN: Good. We'll be
6 talking about percolation pretty extensively in
7 just a few minutes, so hold your perc thoughts.
8 But, Ms. Murray, I wanted to give you an
9 opportunity to speak to SOIL&WATER-1 if you have
10 any concerns -- I'm sorry, if CDFW has any
11 concerns -- regarding the imposition of an upper
12 limit and/or the loading sequence as contained in
13 SOIL&WATER-1.

14 MS. MURRAY: Well, we do support the idea
15 of an upper limit, that seems like an enforceable
16 condition. And as to the loading sequence, we
17 hadn't thought of that as necessary for the
18 interim order, but more appropriate for the long
19 term discussion. It's not to say that we're
20 against the idea of a loading sequence that
21 needs-- if the Commission feels like they need to
22 put that in the interim order. We are most
23 concerned that to maximize the amount of State
24 Water Project water they can use this year,
25 whether it's injection or percolation, and I hear

1 that percolation discussion is coming, but
2 potentially this is a year where they could use
3 more State Water Project water than they have in
4 the past. We support that and would like them to
5 do that in as many ways as possible.

6 MR. HARRIS: If I could? Between the
7 two, and I know you want to talk about
8 percolation later, if I could only have one, I
9 would take percolation. I would give up this MRB
10 water tomorrow if I could get the percolation
11 because it's so much more effective in getting
12 that groundwater into the bank. Now, I don't
13 know why I should have to choose, I don't know
14 why especially with Aliso Canyon, and we don't
15 know what's going to happen this summer and this
16 winter when the non-core...excuse me the core
17 customers are drawing on the gas supply. But I
18 offer that not to give up one, but I offer it to
19 give you an idea of scale in terms of what's more
20 important to us.

21 HEARING OFFICER COCHRAN: Thank you, Mr.
22 Harris. So let's launch into the percolation
23 discussion, then.

24 So under the existing Conditions of
25 Certification, the Petitioner may bank treated

1 State Water Project through injection wells, and
2 Mr. Kramer, in the other SOIL&WATER in the tray,
3 that has the rest of the Conditions of
4 Certification that were proposed to be changed as
5 "interim relief." And a big part of this has to
6 do with taking away from the current concept
7 where it's injected only, and adding this concept
8 of percolation.

9 Now, the injection that is currently
10 authorized under SOIL&WATER-4 is done under
11 agreements with the City of Victorville that HDPP
12 has. The City of Victorville in turn contracts
13 with the Mojave Water Agency as Water Master for
14 the Basin. Injection and production occur
15 approximately six miles from the project site,
16 and the amount of water available for production
17 is limited by conditions which ensure that the
18 water produced for cooling from the bank is in
19 fact water that has been banked, and not native
20 groundwater. These conditions take into account
21 the location of banking and withdrawal, and the
22 fact that banked water dissipates over time, and
23 that's that FEMFLOW 3D model that was an
24 important part of the original decision back in
25 2000.

1 The Project Owner is also required to
2 treat water prior to banking in order to ensure
3 that the quality of the groundwater is not
4 degraded by the introduction of lower quality
5 State Water Project water; in fact, Mr. Harris
6 has talked about how the quality of the State
7 Water Project water has degraded over time, which
8 has also caused problems with its use for
9 directly available cooling purposes.

10 The discussions of the Status Conferences
11 centered on the need for the power plant to be
12 operating in order for treatment and injection,
13 potentially limiting the project's ability to
14 bank available State Water Project water.
15 However, the discussions have addressed neither
16 the potential impact on water quality from
17 percolated untreated State Water Project water,
18 nor the dissipation of water that occurs when it
19 is banked, something that is currently addressed
20 in SOIL&WATER-4.

21 Is my understanding of what the record
22 says correct? Do I understand the hydrogeology
23 and how all these different pieces work together
24 in this groundwater basin?

25 MR. HARRIS: You're always correct in my

1 view, so, yes. You do have that correct, I
2 think. The differences here are pretty small.
3 There's a lot of paper in front of you on
4 percolation, there are five conditions that are
5 talked about here. The last two, 12 and 13, I
6 think staff and the Applicant are identical.
7 That leaves us four, five and six. And six is
8 very minor differences, and so we're really down
9 to differences between four and five, which is
10 the language in front of you right now with E, F
11 and G, so -- and maybe I can help get us there
12 quickly. We're not afraid of having the
13 discussion -- Mr. Kramer, can you move it down
14 just a little bit so we can see G, as well? I'm
15 sorry, go up a little bit more if you could so we
16 can see all the strikeout language there. We're
17 not afraid of having the discussion about this
18 language in the non-interim relief portion of
19 this hearing. We don't think it's necessary, we
20 don't think you should have to build the bank, we
21 don't think that it makes sense to take away our
22 ability to inject, and we don't think that we
23 have to maintain 9,000-acre-feet or be in risk of
24 non-compliance. But those are all things that
25 I'm willing to talk about, you know, in the

1 longer term.

2 I don't believe this was ever offered as
3 an interim relief by the staff, and I think the
4 thing that makes me think that more than anything
5 else is the very last number and underlined in G,
6 talking about where we need to be by 2021. So
7 that language, the 2021 leads me to believe that
8 this not intended to be over the next two or
9 three years, it's intended to be a longer term
10 proposal. So, you know, let's have a discussion
11 about whether this language makes sense, we think
12 it doesn't, and if you want me to go through line
13 by line why I think it doesn't, I can, but what
14 we've asked for basically is the ability to go
15 out and get the agreements that are necessary to
16 allow us to percolate water. And to percolate
17 the water this year. We've got a closing window
18 on 2016 water year and we've got a supply that is
19 available to us.

20 HEARING OFFICER COCHRAN: Okay --

21 MS. MILLER: Can I make one quick -- I
22 apologize for interrupting, but the document
23 that's on the screen that we're seeing as
24 Paragraph G is not the most recent version from
25 staff, and I want to articulate that point. Mr.

1 Harris' point about the year 2021 alerted me to
2 this, so I want to say that the most recent
3 version of Paragraphs E, F and G is TN No. 211438
4 and distinguished by the year 2024.

5 HEARING OFFICER COCHRAN: I was just
6 going to bring up that this was the original
7 response that staff had presented in response to
8 Exhibit 1000, and so this was I believe at the
9 April Status Conference, and there has now been
10 additional changes --

11 MR. HARRIS: That's right.

12 HEARING OFFICER COCHRAN: -- that were
13 proposed in staff's response to the Committee
14 recommended decision. So this is not the most
15 current language, but this is language that I had
16 readily available that if we were going to try to
17 make changes today, that this was a document that
18 we could edit. I have this as a word processing
19 file, not as a PDF.

20 MS. MILLER: Okay, I see.

21 HEARING OFFICER COCHRAN: And then the
22 text that we reviewed today for SOIL&WATER-1 is
23 from TN 211402 and it's attached as Exhibit A of
24 the Committee recommended decision.

25 So everyone now knows where some of these

1 documents are. This document, I don't have the
2 TN handy, but it is currently docketed in the
3 docket.

4 MR. HARRIS: Yeah, thank you for pointing
5 that out. I had the hard copy in front of me,
6 and you're right, it is TN 11438. I apologize
7 for suggesting that 2021 was not interim and I'm
8 now corrected that 2024 seems three years less
9 interim to me. So --

10 HEARING OFFICER COCHRAN: And that was my
11 next question, is why is percolation needed in
12 the interim as opposed to simply addressing this
13 in the larger proceeding on the future operation
14 of HDPP. Remember, we were trying to get the
15 Applicant through with enough time for the
16 Committee to finish its processing of this
17 amendment, which is why we only extended the use
18 for one year and why we only focused on
19 SOIL&WATER-1. Percolation is seeming to be a big
20 issue, especially in light of some of the water
21 quality discussions that were had in the original
22 proceeding and that's why the Conditions of
23 Certification read the way they read relative to
24 injection, cleaning the water, etc. So why is
25 this needed on an interim basis?

1 MR. HARRIS: The short answer is I don't
2 know if there will be any water available in
3 2017, and there is water available now that could
4 be spread and percolated in 2016. We have an
5 allocation in 2016, we have been having
6 conversations with Mojave, and they're going
7 quite well, about how that might all happen. We
8 have to talk with the City, as well, because it's
9 kind of a three-party arrangement. The Water
10 Master and the City, and then the City and the
11 project. So we will lose the opportunity to
12 percolate our 2016 water supply.

13 If you wanted to issue an interim
14 decision today, we would go out and start making
15 this happen. As it is, we're looking at June, so
16 it's just going to give us June, July, August and
17 September to percolate the water that's available
18 now. So not knowing the future water supply is a
19 big issue.

20 HEARING OFFICER COCHRAN: Okay. So the
21 question, then, is for 2016 the anticipation is
22 that the plant will be running, so why isn't
23 injection available for those water supplies?

24 MR. HARRIS: Injection will be available
25 if it's not taken off the table, but we can

1 inject and percolate in 2016. We'll be able to
2 maximize that supply in 2016. I guess I've
3 confused the Commissioner if I'm reading the body
4 language, I'm sorry. Go --

5 COMMISSIONER DOUGLAS: Well, are you
6 saying you would inject and percolate at the same
7 time? Or are you saying you would inject when
8 the plant is running and percolate when it's not?

9 MR. HARRIS: Percolation is independent
10 of the operation of the power plant. Percolation
11 could happen at 4:00 in the morning when we're
12 down. It's a matter of Mojave Water Basin, or
13 the Manager, the Water Basin Manager diverting
14 the water into the spreading fields. And so
15 there's a complete disconnect, if you will,
16 between where the water is percolated and the
17 operation of the power plant. So they're two
18 different separate operations.

19 COMMISSIONER DOUGLAS: Are you saying you
20 would percolate instead of injecting? Or would
21 you do both?

22 MR. HARRIS: We would probably make a
23 decision on how to maximize our water supply,
24 percolate as much as we could and we'll use as
25 much as we could, and we would inject as much as

1 we could. So I would think the primary use of
2 those three, the primary use would be percolation
3 because that's the most effective to build our
4 groundwater bank. That would be where our
5 priority lies. Now that might mean that we have
6 to draw on banked water, or even MRB water, which
7 is more expensive because we're doing that
8 percolation. But that is the most effective way
9 to build a groundwater bank is through
10 percolation, so that would be -- I can say
11 unequivocally that would be the top priority for
12 that State Water Project water, get it in the
13 ground --

14 COMMISSIONER DOUGLAS: Would you say it's
15 more effective than injection?

16 MR. HARRIS: Yeah, I would say it's more
17 effective than injection. The injection --

18 COMMISSIONER DOUGLAS: How much more so?

19 MR. HARRIS: On pace, the bigger issue is
20 the injection, first we have to be operating to
21 be able to inject, we need heat to be able to
22 inject. So if the plant isn't operating, we
23 can't inject. Spreading water in the basin is
24 something that there are water basins available,
25 and you can do, you know, hundreds of acre feet

1 over a shorter period of time compared to
2 injection. Injection is a much slower method,
3 but we could do both.

4 HEARING OFFICER COCHRAN: So the
5 question, then, obviously is one of the big
6 reasons why injection was required under the
7 original decision, was because of concern about
8 water quality. Even in 2000, it was recognized
9 that the State Water Project water was less clean
10 than the existing groundwater, so that they
11 wanted it cleaned before it was injected. How
12 does percolation address those water quality
13 issues, number one; 2) what is the model by which
14 we can calculate if you spread a certain amount
15 on the field, how much is then really available
16 for your use? And does the distance and time of
17 that percolation then affect the water production
18 that's available for the plant?

19 MR. HARRIS: Yeah, all very good
20 questions. Those are exactly the kind of things
21 Mojave Water Master addresses. There isn't a
22 need to do the same kind of water treatment on a
23 State Water Project to percolate it. That's the
24 whole idea of percolation is you spread it on the
25 ground and it percolates into the ground. So you

1 don't have to pre-treat it. The systems that are
2 at the power plant to clean up the water before
3 it's injected are quite complex.

4 And this isn't done without regulation, I
5 want to be very clear about that. The Water
6 Master has permits, the Regional Board is
7 involved in this process, you can't just go out
8 and find a field and flood it. So there is
9 regulatory oversight of that process. And I want
10 people to understand that percolation of
11 groundwater happens all over the state. If
12 you've been to Los Angeles, you've seen the big
13 basins there, those are specifically for that
14 purpose. So the reason it can happen faster is
15 it doesn't have to be treated, it can be spread.

16 In terms of how it's calculated, the
17 Water Master does the calculation. They are the
18 ones who keep the accounting, and they're the
19 ones who keep the accounting on our current water
20 bank, and they have methods in place that are geo
21 -- hydrologically beyond my non-science guy
22 expertise. But they definitely are the ones at
23 the end of the day that will certify how much
24 credit we should be getting for the water that's
25 been spread.

1 HEARING OFFICER COCHRAN: And are those
2 calculations included in the Aquifer Agreement
3 with the City of Victorville? In the Agreement
4 between the City of Victorville and Mojave? Or
5 are you talking about contracting directly with
6 Mojave? Please identify yourself.

7 MR. KIEL: Good morning. Peter Kiel with
8 Ellison Schneider & Harris for High Desert Power
9 Project. Initial discussions with Mojave Water
10 Agency and Water Master suggest that the plant
11 could amend its existing agreement with the City
12 of Victorville, which is essentially a water
13 supply agreement, to provide for water banking
14 services. And separately, the City of
15 Victorville and Victorville Water District, we
16 need to amend its storage agreement with the
17 Water Master to allow for percolation as a means
18 to add to the groundwater storage bank. I do not
19 believe that those agreements will need to
20 identify calculations or other dissipation
21 methods. Percolation is such a common practice
22 and widespread throughout the Basin, it's the
23 recognized means of replacing water pumped out of
24 the Basin. There are -- I don't know the number,
25 but there are percolation basins in multiple sub-

1 basins within the adjudicated area. And Mojave
2 indicated that this would be a very simple task
3 for it to direct some of the State Water Project
4 water that High Desert could purchase through its
5 agreement with Victorville into percolation. But
6 Mojave and Water Master are reluctant to get into
7 more details until there is clear indication that
8 there would be Energy Commission approval
9 forthcoming.

10 HEARING OFFICER COCHRAN: Okay. So I am
11 now looking at both staff and the Intervener on
12 the issue of percolation. Who would like to go
13 first, if you have any comments at all?

14 MS. MILLER: I have comments, yeah.
15 Okay. The initial question that was asked
16 concerned the distinction between percolation and
17 injection, and what I recall hearing from the
18 Committee was an understanding, wanting to
19 understand which one was better. And if you go
20 through the countless pages that have been
21 docketed on this, there's one sentence that I
22 have to give to you, and I don't disagree with a
23 lot of what Petitioner said, but they neglected
24 to say one thing that we have in our papers and
25 that is injection only works when the power plant

1 is running. And I think that that's why we are
2 seeing low numbers of banked water. There are a
3 number of benefits to allowing percolation, and
4 that's why staff have embraced it as another tool
5 in the tool chest to drought-proof this project.

6 Percolation is something that they will
7 need to move toward in getting an agreement, but
8 in the workshop that we had in Victorville, I
9 want to share with you that we had Victor Valley
10 and the City, and we talked a little bit about
11 the infrastructure and what goes to the wells, in
12 particular for percolation versus injection. And
13 there were pros and cons to both. And I give
14 that to you just as commentary, because that's
15 all this is, to make you aware of the fact that
16 one does not knock the other one out. There is
17 not one that is so superior to the other that we
18 can neglect and let it fall off. But they are
19 important distinctions because we will unlikely
20 see the bank and the emphasis of staff in the
21 loading sequence of building up the bank of State
22 Water Project so that we don't have to tap into
23 groundwater; we will not see the number go up
24 without percolation because unless this power
25 plant is going to be running an inordinate amount

1 of time and banking, we just simply aren't going
2 to see that bank build up just merely by
3 injection.

4 And so we have come to this place, and
5 I'm going to defer to Nancy unless my client,
6 Matt Layton, has anything else to add, but the
7 three parties here are in agreement about
8 percolation because we want to see that bank
9 build up, and you can't do it just by injection.
10 Matt, do you have anything to add?

11 MR. LAYTON: Hearing Officer, this is
12 Matt Layton. I guess I noticed that you had one
13 question that you were struggling with. The
14 reason you clean the water before you inject it
15 is you're introducing the water directly into the
16 Aquifer, and therefore there is a water quality
17 concern.

18 With percolation, you're actually doing
19 what High Desert currently does on site, which is
20 filter it. So the percolation does the filtering
21 and therefore the water that's ultimately
22 introduced into the aquifer is filtered. So
23 there's no difference, but again, if you're
24 injecting directly into the Aquifer, you need to
25 treat it, and that was the concern. And I guess

1 what High Desert has on site is actually rather
2 simple, it's not complex to pretreat the water,
3 it's filters, sand media, things like that, it's
4 not very elaborate to pretreat; the State Water
5 Project water is not as degraded as everybody
6 seems to believe it is.

7 HEARING OFFICER COCHRAN: Ms. Murray.

8 MS. MURRAY: Cal Fish and Wildlife
9 supports both injection and percolation in this
10 interim order. We do believe that most
11 flexibility in using as much State Water Project
12 water in this year when it's available would help
13 build up the bank and be a good thing. So we
14 support both injection and percolation in the
15 interim order.

16 HEARING OFFICER COCHRAN: So then I'm
17 going to get down, then, to the very specific
18 language that would be needed in order for this
19 to occur. My thought is that some of the
20 language that we have, whether it's the language
21 that's on the screen, or the more recent proposal
22 from staff, is much more in the nature of long
23 term. So if we wanted to focus solely and
24 exclusively on the interim with the thoughts that
25 we would transition to at least partial use of

1 percolation, or the ability to use percolation,
2 what does that look like? So I've heard that
3 there are agreements, Mr. Kiel spoke about sort
4 of standards in the industry as it relates to
5 agronomic uptake, or dissipation, or whatever
6 those modeling results are, how are those
7 communicated to the Energy Commission so that the
8 Energy Commission can then determine that there
9 has been compliance with those Conditions of
10 Certification? And I'll take an answer from
11 anyone who can give it to me.

12 MR. HARRIS: That's fine. Do you want me
13 to go? Okay, she does. Okay, thank you. A
14 couple things, 1) the one thing that was
15 whispered in my ear that I want to put back is
16 just the idea of scale here, the difference
17 between injection and percolation. If things go
18 very well with injection, we're probably talking
19 about 1,000-acre-feet a year, maybe a little bit
20 more. With percolation, if we can get a decision
21 quickly from the Commission to allow us to go
22 forward, we might be able to do 6,000-acre-feet
23 this year. That's nearly six times as much. My
24 math guy skills, so... That's important and
25 that's why you heard me say earlier that, of the

1 two, this really was actually the most important
2 to us, given that we don't know what water year
3 '17 looks like.

4 In terms of what specific language, we I
5 think proposed that as Attachment A to our
6 comments on the recommended decision. We
7 basically said in our language that, as an
8 additional method to build the ground bank, that
9 we can seek the agreements to do so. And that's
10 our change to 4E as in "Elephant." And that's
11 all we're really asking for is the ability to go
12 out and put these agreements in place so we can
13 make 2016 a year that we actually get some water
14 in the ground and maybe as much as 6,000-acre-
15 feet.

16 I have heard staff's criticism that our
17 language looks like it could go on in perpetuity.
18 That's not our intent. I don't think that's an
19 issue that ought to concern the Committee, given
20 that there's going to be a subsequent decision
21 here on the Petition. So just to be clear, just
22 as I've been critical of the staff's language as
23 looking too far into the future, our language is
24 not intended to look that far in the future. I
25 think that this language should operate probably

1 for a couple of years at most. And then
2 ultimately whatever decision we make on the
3 Petition would govern. So it doesn't say in our
4 language that Mr. Kramer is dutifully trying to
5 get up on the Board, it doesn't say in
6 perpetuity, it's not intended to be in
7 perpetuity, and I think the check on that is a
8 Committee decision on the Petition itself.

9 HEARING OFFICER COCHRAN: Staff.

10 MS. MILLER: Briefly, I just wanted to
11 say a couple of points. Staff recognized that
12 what we were working on when we added this
13 language is in fact an interim solution and we
14 recognized that it doesn't necessarily read as
15 part of an interim solution, certainly when you
16 look at the distinction of the years.

17 So let me just briefly explain why.
18 There's been a lot said and why we're not going
19 to hearing is because of uncertainty, the
20 uncertainty of the Water Basin, and I want to
21 preface again, but say it briefly, we understand
22 the need for an interim solution, and we
23 appreciate it. But there is a bigger sphere, and
24 so we're focused on the center right now of
25 getting through this discussion about interim,

1 but on the bigger sphere there is uncertainty to
2 the degree that staff looked at the interim
3 solution as an opportunity to open up some
4 channels in the long term because we talk a lot
5 in these cases about, you know, are we going to
6 have to come back? Well, in this case we know
7 we're coming back, we know we have a bigger issue
8 to tackle, and so due to the uncertainty and due
9 to the points made by the Intervener, Fish and
10 Wildlife, on the uncertainty of the water
11 balance, and Petitioner wanting us to get through
12 this and not get bogged down, staff put this
13 language in with all of that in consideration.
14 And so I simply say, why not have this in? Mr.
15 Harris has his assertions and you may hear more
16 after I stop talking, but that was the
17 motivation. And I think it's important that you
18 understand because the staff that worked on this
19 case have been with us since the original
20 decision in 2000. And so I've got staff sitting
21 behind me that were part of the analysis done in
22 the 2000 decision where 4,000-acre-feet per year
23 was analyzed for the upper limit. And so they've
24 seen the various renditions of this project and,
25 with that, you get Paragraphs E, F and G, which

1 are now up on the screen, proposed by staff for
2 SOIL&WATER-6. And I'll stop there.

3 HEARING OFFICER COCHRAN: Ms. Murray.

4 MS. MURRAY: For Cal Fish and Wildlife,
5 we would prefer, as you said your understanding
6 is that you're using the Executive Order and the
7 CEQA suspension, a short limited interim order
8 that is a standalone order if you can do that.
9 That's what we believe would more align with the
10 idea of using the Executive Order, a short
11 interim order that is just for this, you know,
12 until September 2017, that would give us using
13 the CEQA suspension motivation to get the interim
14 order and then do the water balance and other
15 environmental investigation that needs to happen
16 in order to make a more informed long term
17 decision. So we don't feel it would be helpful
18 to have dates going out until 2024, we'd rather
19 focus on this interim order, this interim order
20 timeframe, and motivate the parties to get to the
21 environmental analysis and a longer term
22 decision.

23 HEARING OFFICER COCHRAN: Thank you. So
24 staff, I'm sorry, I missed somebody.

25 MS. MILLER: One important distinction.

1 Ms. Murray used the phrase "environmental study,"
2 and we're here and we've been talking about, and
3 there's some documentation on the record, about a
4 water balance study, and so I want to make that
5 very important distinction between a water
6 balance study and an environmental study.

7 HEARING OFFICER COCHRAN: And if you --
8 everyone keeps jumping my outline, so --

9 MS. MILLER: I've read it...

10 HEARING OFFICER COCHRAN: I hope not.
11 You listen to how my brain works, okay, or
12 not --

13 MR. HARRIS: I have a suggestion that
14 maybe gets us there. If you can indulge me for a
15 moment, if I can get Mr. Kramer to put our
16 language up from our filing, which is our
17 comments on the Committee's recommendation,
18 211442, so High Desert's comments. Okay, if I
19 look up, I'd know that, wouldn't I?

20 I thought I heard an opening in what Ms.
21 Murray said. And you know, we've been asking for
22 in -- it's on Soil & Water 1 for relief through
23 the end of water year '17. I would be amenable
24 under E of our language just adding a sentence
25 that says something to the effect that "this

1 authority shall extend through the end of Water
2 Year 2017," you know, "(September 30, 2017)." So
3 then you would have perfect date alignment
4 between the groundwater access and the
5 percolation access which maybe addresses the
6 concerns that I'm hearing on the other side, so I
7 can speak for them and say that they're
8 satisfied, but we should probably hear from them
9 on what they think about that. So the idea is to
10 get the two interim reliefs exactly on the same
11 dates and to use our language to do that, and not
12 prejudice staff's ability to make their losing
13 arguments later. So -- sorry, I couldn't resist,
14 Matt. I mean, I mainly conduct with Matt, so it
15 always throws me off.

16 HEARING OFFICER COCHRAN: Okay. If we
17 were to do something like that, is that agreeable
18 to staff?

19 MR. HARRIS: Should I whistle final
20 Jeopardy? If they want to take a minute to think
21 about it, I don't have any problem with us all
22 taking a short break.

23 HEARING OFFICER COCHRAN: Well, and one
24 question, though, that I would have is, usually
25 when a Condition of Certification calls upon the

1 Project Owner to obtain an agreement or some
2 other permit or license from someone else, that
3 we don't normally get, we ask at least for the
4 ability to review and comment, and I don't see
5 that in the verification here. Is that something
6 that would increase staff's comfort with the
7 percolation agreements that the Project Owner
8 needs in order to add percolation to its menu of
9 banking options?

10 MR. MILLER: Any time Mr. Harris ends his
11 argument with a jibe at staff, I know that
12 there's an opportunity for me to counter. In
13 this case, I will simply say that staff want to
14 give the Project Owner the ability to go and get
15 that agreement. And we're not so concerned about
16 the language of the agreement, but we are very
17 much concerned that the interim solution find the
18 balance, and strike the balance of time
19 appropriate so that they have enough time to do
20 what it is they believe they can do, and that
21 they can then come back to the Commission at the
22 end of that time and knock us over and impress us
23 with everything that they were able to do, with
24 the brilliant decision that they received from
25 this Commission. It's really important that we

1 focus on timing and I don't know that the
2 distinction of the Year 2017 and lining up those
3 numbers, though it is comfortable to get to that
4 place for all of us to have numbers that line up,
5 is enough. The details are really important and
6 we have distinct differences in the details.

7 HEARING OFFICER COCHRAN: Okay, so since
8 you all want to talk about Water Balance
9 Calculation, let's talk about Water Balance
10 Calculation. I believe CDF&W has stated that an
11 analysis of the impacts of HDPP's use of recycled
12 water should be considered by separating the
13 water balance of the transition zone from that of
14 the rest of the Upper Alto Sub-area. Is that
15 correct? I see Ms. Murray nodding her head.

16 MS. MURRAY: From the rest of the Alto
17 Sub-Area.

18 HEARING OFFICER COCHRAN: Alto Sub-Area,
19 thank you. And you further state that some of
20 the facts presented in the Annual Mojave Water
21 Reports that they have to file with the Court
22 every year, as the Water Master, indicate that
23 use of recycled water could result in a reduction
24 in recharge to the transition zone, which in turn
25 has the power to lower the groundwater levels and

1 impact the riparian habitat. Have I understood
2 that correctly?

3 MS. MURRAY: You have understood that
4 correctly.

5 HEARING OFFICER COCHRAN: Okay, that's
6 one for me. So then, what I'm struggling with is
7 I don't know what this Water Balance Calculation
8 has in it that is something other than what's
9 already contained in the information from the
10 Mojave Water Authority acting as Water Master.
11 Is there something that I am not understanding
12 when we're talking about this?

13 MS. MURRAY: It's my understanding that
14 the Water Master does more of a gross
15 calculation, what moves from Alto to Centro, and
16 Centro to Baja, so it's not necessarily
17 transition zone specific. And while there is a
18 well in the transition zone, and there is a
19 condition that groundwater depth to the plants be
20 no more than 10 feet, getting to that and
21 monitoring that and making sure that that happens
22 is not really part of their responsibility, as
23 they are now seeing it, we're having some
24 discussions with them, that they believe that all
25 they have to do is report, they don't necessarily

1 then take action.

2 HEARING OFFICER COCHRAN: Okay, so then
3 what type of analysis should be conducted to
4 assess those potential environmental impacts of
5 using reclaimed water for cooling at the HDPP?
6 In other words, if we say Water Balance
7 Calculation, does everybody else understand that
8 and I, on behalf of the Committee, just don't
9 understand it? I know that there was some
10 communication with Mojave Water Authority and
11 there is a letter docketed from them saying that
12 they could perform this study, but it was going
13 to cost money and they needed to get money for
14 that. Is this a term of art? I mean, I'm just
15 trying to make sure that if the Committee were to
16 require someone to go out and obtain this Water
17 Balance Calculation, would we know what we were
18 getting, and would it answer the question that we
19 wanted answered?

20 MS. MURRAY: It's my understanding that
21 it is complex and that's why the Mojave Water
22 Master believes that they would have to spend
23 time and energy taking what they know now and
24 probably some other data collection in order to
25 do the water balance. Our hydrogeologist has

1 started, he has some other priorities that have
2 come up, so it's not top of his list of things to
3 do, but he has started to gather some of the
4 information that he believes is necessary.

5 HEARING OFFICER COCHRAN: And do we have
6 a timeframe for how long it would take to both
7 gather the information and then prepare this
8 Water Balance Calculation?

9 MS. MURRAY: I do not at this time
10 because he has other projects and so if, I mean,
11 it would be faster if High Desert were to hire a
12 consultant, and then he could assist, or -- yeah,
13 that would be faster.

14 HEARING OFFICER COCHRAN: The reason I'm
15 asking these questions and in this level of
16 detail is that the Committee has been working on
17 a scoping order to provide some direction to the
18 parties as to where we see the proceeding
19 heading, and part of that obviously is this
20 discussion of a Water Balance Calculation. And
21 so in order for us to get that Scoping Order to
22 you shortly, the better I understand it the
23 better I can write it so that everybody
24 understands what we're looking for. Ms. Miller,
25 did you want to say something?

1 MS. MILLER: I do. Thank you for sharing
2 with us that your plans are to come out with a
3 Scoping Order and staff have been considering
4 that that would be the path forward. And with
5 that, I want to preface by saying interim
6 solution is priority number one, I think, for the
7 Committee, is how staff are reviewing this, and
8 then this Water Balance Analysis is secondary.
9 But with that, I think it's primary for CDFW and
10 why they have intervened.

11 And so you're agreeing with me,
12 excellent. Okay, so far so good. Thank you. I
13 appreciate it. So staff have considered what
14 would this look like and that's what you're
15 speaking to, is the who, the what, the how, how
16 much money, how much time. We don't have the
17 answers for you, but we've thought about it a
18 great deal. And what we're prepared to recommend
19 to you is that there be a workshop. This is one
20 of those situations we find ourselves in often in
21 these power plant cases where you have a lot of
22 different people. But perhaps this is a unique
23 case because we have local agencies, federal
24 agencies, they all have their own expertise, and
25 they all have something that they want to say.

1 And that's why we use our workshops for those
2 opportunities. And so the suggestion of staff is
3 to have a workshop and in the Workshop Notice,
4 call it an outline, an agenda, whatever you call
5 it, that bullets out what a Water Balance
6 Analysis we think ought to be, and obviously
7 conferring with CDFW so that when everybody comes
8 to that event, the workshop, everybody is
9 prepared to roll up their sleeves and work, and
10 it would be a long day, if not an overnight two-
11 day thing. I don't know. But there are some
12 agencies -- CDFW is in the lead -- that I think
13 have been chomping at the bit to get this
14 information for years, it just so happens to have
15 fallen, landed out of outer space, into this
16 case. And so I'm stressing the point that it's
17 unique and distinct, but it's a really important
18 part to that larger sphere that I referred to
19 earlier. And so, you know, we'd have the Energy
20 Commission there, we'd have obviously Project
21 Owner there, CDFW, BBWRA, MWA, City of
22 Victorville, and maybe some Feds and members of
23 the public, and undoubtedly Tribes; I think the
24 Tribes might participate. I have another case
25 and the Tribes are getting interested in these

1 issues, and participating.

2 The workshop would be something that we
3 would vet, public involvement and notice of the
4 parties, and so there would be a considerable
5 amount of work. And toward that end, a document
6 was shared today that we were thinking of in
7 terms of an attachment to a workshop notice
8 originally, I don't think that we've changed our
9 course on that. And I realize, of course, that
10 the parties have not had a chance to review it,
11 but it wasn't intended to be a part of this
12 Status Conference, it was intended to sort of
13 evidence and buttress what I'm asserting is
14 staff's recommendation, that is that we separate
15 this issue of the Water Balance analysis and take
16 the opportunity to turn it into a workshop.

17 HEARING OFFICER COCHRAN: And given that
18 you've been thinking about this, do you have a
19 time yet for the workshop or --

20 MS. MILLER: The focus being --

21 HEARING OFFICER COCHRAN: I see Mr.
22 Layton shaking his head no.

23 MS. MILLER: Mr. Layton, do you have a
24 time that you'd like to share?

25 MR. LAYTON: No, we do not have a time.

1 HEARING OFFICER COCHRAN: I was hoping.

2 MR. LAYTON: Well, I guess the reason we
3 brought this today is because we recognize that
4 there's a lot of parties, and therefore schedules
5 get really complicated, even having the last
6 workshop took a lot of effort and a lot of time
7 before we could finally find that date. So we're
8 trying to move this along because we understand
9 that this is one of the issues that really
10 prevents resolving the bigger Petition, not the
11 interim relief.

12 HEARING OFFICER COCHRAN: Okay, thank
13 you. Mr. Harris.

14 MR. HARRIS: Thank you. I think first
15 and foremost, primarily, top of the list, top of
16 the morning, this discussion about a Water
17 Balance only comes into play with staff's
18 substitute proposal for 100 percent recycled
19 water because -- did I hear you say over there
20 "Amen"? No? Okay, I thought it was an "Amen."
21 Maybe it was a "hold on." The reason I said
22 that, and I'll be corrected, apparently, is that
23 the issue really is the possibility of less water
24 going to the river than historically has gone to
25 the river from VVWRA, and you can be assured that

1 if this Committee ordered this facility to use
2 4,000-acre-feet a year, 100 percent recycled
3 water, there would be less water going to the
4 river from VVWRA. So that is the context under
5 which I understand this proposal. I think,
6 Hearing Officer, I said you're always right,
7 you're absolutely right, this issue is dealt with
8 through the Water Master. There is adjudication,
9 Court ordered adjudications, so there's another
10 branch separation of powers fun thing to talk
11 about here, as well, at some point if we want to
12 get there. But at the end of the day, the
13 current Mojave Water Agency is exactly -- and
14 I'll say this again -- exactly what the State of
15 California wants for all groundwater basins, the
16 landmark Sustainable Groundwater Management Act,
17 says go out and set up things like Mojave Water
18 Agency to deal with groundwater issues. And
19 there's a process in place, there's adjudication
20 in place, they're the ones who, at the end of the
21 day, are responsible for making sure that the
22 basin stays in balance and it's the entire basin.

23 I don't know what a Water Balance is.
24 I've been doing this since '93. I've never had a
25 case with a Water Balance issue. To the extent

1 you need information about what's going on in the
2 basin, I think there's a lot of information
3 available from the Mojave Water Master. So not
4 only, but I think we're at the point where we
5 don't need a workshop on this issue, I think we
6 probably need hearings to know whether this is
7 even relevant. It's certainly not part of our
8 Petition. And someday we would like to get back
9 to what we've asked you, Exhibit 1000 and Exhibit
10 1003, those are our requests, those are our
11 Petitions, and those are the issues that are
12 before you, and they don't have anything to do
13 with these regional issues. And I really want to
14 emphasize that the Committee needs to avoid
15 turning this individual adjudication of one
16 party's rights, one water customer's rights, into
17 a regional groundwater planning forum, that it's
18 just not the way these things work. This is not
19 a regional planning process. It's a power plant
20 application. And so I don't think these issues
21 are things that need to be decided by the
22 Committee at all to decide what we've asked you
23 to decide in our Petition.

24 HEARING OFFICER COCHRAN: And I believe
25 Ms. Murray disagreed with you, Mr. Harris. We'd

1 like to hear from Ms. Murray.

2 MS. MURRAY: Right. And thank you. I
3 respectfully disagree that it's not just that if
4 it's 100 percent recycled water that there needs
5 to be a water balance, it's something less than
6 that, and we don't know where it is in that
7 spectrum. The original Order did not allow
8 recycled water, it did not analyze that, it was
9 to be all State Water Project water. To go from
10 no recycled water to 100 percent, or even if it
11 was 90 percent recycled water, without any kind
12 of a water balance indication of how that would
13 affect the transition zone, and not just the
14 gross numbers that the Water Master looks at, but
15 how it would affect the transition zone, which is
16 a rare riparian area in the desert with
17 endangered species, that would need to be looked
18 at and analyzed in the long term Order, whether
19 it's 100 percent or something less than 100
20 percent. And we realize we weren't at the table
21 in 2009 when it was changed to allowing for the
22 recycled water, and feel like if we're now
23 potentially going to heavily rely on recycled
24 water, we need to know what impact that would
25 have on the ground to the transition zone. And

1 so we support the idea of a workshop. I don't
2 know, apparently Kit is not on the phone, but we
3 have been working with him in developing a Water
4 Balance and I'll show him this draft, and would
5 be -- unlike Mr. Harris saying that this is a
6 regional question, it's really about this power
7 plant using a regional resource, and so it's
8 specific to this license and this condition. So
9 I do believe that whether it be a workshop, to
10 then be able to funnel down and find out how to
11 actually get a scope of work and a product that's
12 useful, would be helpful.

13 HEARING OFFICER COCHRAN: Thank you.
14 Staff, did you have anything else you wanted to
15 add?

16 MS. MILLER: I have nothing to add.

17 HEARING OFFICER COCHRAN: Thank you. So
18 then I had one question I wanted to get back to
19 you and it's a call back to something that Mr.
20 Harris said earlier today about in the proposed
21 conditions you reference cooling tower blowdown
22 rate and levels of chloride in the cooling tower
23 water. Is there agreement that these standards
24 are objectively verifiable? And is there a way
25 to use these criteria to determine what water

1 should be used for power plant cooling? So if we
2 were looking at a loading order, is there a way
3 to use them to help address that?

4 MR. HARRIS: Yes.

5 HEARING OFFICER COCHRAN: Since you
6 brought them up, I figured you'd think that they
7 were objectively verifiable and reasonable. I'll
8 look at staff, then, if they have any questions,
9 comments, protests. Mr. Layton.

10 MR. LAYTON: We have discussed this a lot
11 and my concern is that the chloride is introduced
12 through their treatment of the water. We're not
13 down at the project operating it, helping them
14 operate it every day. It's kind of an after the
15 fact that we would get reports that the Chloride
16 levels have climbed and so we switched to this
17 water or that water. What we were trying to do
18 is just simplify it and just ask them to march
19 through the water in a hierarchy and not get to
20 groundwater until it depleted all the banked
21 water. The banked water and the groundwater
22 would come out of the same well, it's the same
23 water, therefore there's no quality reason to use
24 groundwater ahead of State Water Project water.
25 The only reason you would do that is to preserve

1 your bank. Yes, it's very nice to have an
2 insurance policy, and I appreciate that they have
3 suggested that the groundwater is more expensive,
4 but they really haven't proven that there is a
5 cost when you buy the groundwater, but they
6 haven't shown the cost of injecting the water or
7 perking the water, how much it costs to put it in
8 the ground, how much it costs to clean it up if
9 you inject it, how much it costs to recover it,
10 how much it costs to carry that charge, that
11 water that's down well, that's just sitting
12 there, it's money that you have just parked in a
13 bank getting no interest. The groundwater, while
14 it does cost twice as much on just a face value,
15 it may be more -- it may be cheaper because it's
16 only -- you only get it when you need it. And
17 again, we're looking for an insurance policy, so
18 we're looking for them to increase their bank.

19 HEARING OFFICER COCHRAN: Thank you, Mr.
20 Layton.

21 COMMISSIONER DOUGLAS: All right, well, I
22 think we're through the topics on our outline and
23 the Committee's questions, so at this point we'll
24 go to public comment. Is there anyone in the
25 room who would like to make public comment? Is

1 there anyone on the phone who would like to make
2 public comment, phone or WebEx? Please speak up.
3 Hello? Whoever is speaking, are you trying to
4 make public comment or were you caught by
5 surprised when we unmuted every phone line?
6 Phone lines are all unmuted. Please speak up if
7 you'd like to make a comment. All right, it
8 sounds like we have no comments, so we will go to
9 a closed session at 12:30.

10 HEARING OFFICER COCHRAN: At 12:30. And
11 there --

12 COMMISSIONER DOUGLAS: There will be no
13 substantive report out, there will be a report
14 out that tells you that we are done with our
15 closed session, but you will not hear anything
16 interesting, there's no --

17 HEARING OFFICER COCHRAN: There's no
18 reason to stay.

19 COMMISSIONER DOUGLAS: -- there's no
20 reason to come back and sit here and hear us say
21 that we've closed down our closed session, unless
22 you would like to, in which case you're welcome.
23 So with that, we're adjourned until we move to
24 closed session.

25 (Whereupon, at 10:35 a.m., the meeting was

1 adjourned to closed session.)
2
3 (At approximately 2:00 p.m., Hearing Officer
4 Cochran returned to the Hearing Room):
5 At 2:00 p.m., there is no reportable action and
6 the Committee has continued the Committee
7 Conference and Closed Session. Notice of
8 continuation will be published shortly. With
9 that, we are continued to June 2nd at 1:00 p.m.

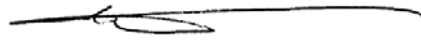
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REPORTER'S CERTIFICATE

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 6th day of April, 2016.



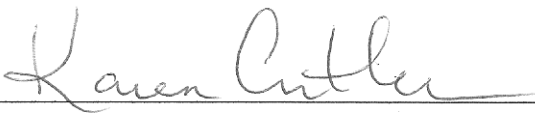
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I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision 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.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of January, 2016.



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