

DOCKETED

Docket Number:	97-AFC-01C
Project Title:	High Desert Power Plant
TN #:	213560
Document Title:	Transcript of 08/11/16 Committee Status Conference
Description:	N/A
Filer:	Cody Goldthrite
Organization:	California Energy Commission
Submitter Role:	Committee
Submission Date:	9/9/2016 11:15:38 AM
Docketed Date:	9/9/2016

ENERGY RESOURCES 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 AMENDMENTS COMMITTEE
STATUS CONFERENCE**

CALIFORNIA ENERGY COMMISSION
CHARLES IMBRECHT HEARING ROOM (HEARING ROOM B)
1516 9TH STREET
SACRAMENTO, CALIFORNIA

THURSDAY, AUGUST 11, 2016

10:00 A.M.

Reported by:

Kent Odell

CALIFORNIA REPORTING, LLC
229 Napa St. Rodeo, CA 94572 (510) 313-0610

APPEARANCES

COMMISSIONERS PRESENT:

Karen Douglas, Presiding Member

Janea Scott, Associate Member

ADVISORS PRESENT:

Jennifer Nelson, Advisor to Commissioner Douglas

Le-Quyen Nguyen, Advisor to Commissioner Douglas

Rhetta deMesa, Advisor to Commission Scott

Kristy Chew, Technical Advisor for Siting Matters

HEARING OFFICE:

Susan Cochran, Hearing Officer

Ralph Lee

CEC STAFF PRESENT:

Kerry Willis, Assistant Chief Counsel

Matt Layton

Paul Marshall

Christine Root

Joseph Douglas

PUBLIC ADVISOR'S OFFICE:

RoseMary Avalos, Outreach Specialist

PETITIONER/APPLICANT:

Mark Kubow, High Desert Power Plant

Jeffrey Harris and Peter Kiel, ELLISON SCHNEIDER & HARRIS, counsel
for High Desert Power Plant

APPEARANCES (CONT.)

INTERVENOR:

Kit Custis, California Department of Fish and Wildlife

Kevin Takei, Staff Counsel, California Department of Fish and Wildlife

ALSO PRESENT:

Linda Bond, Consultant

INDEX

	Page
1. Call to Order	5
2. Status Conference: Case progress and schedule	6
3. Hearing on Any Pending Motions	--
4. Public Comment	61
5. Closed Session	63
6. Adjournment	63
Reporter's Certificate	64
Transcriber's Certificate	65

P R O C E E D I N G S

1
2 AUGUST 11, 2016

10:03 A.M.

3 COMMISSIONER DOUGLAS: All right, good morning,
4 everybody. We're here for the status conference of the
5 Committee of the California Energy Commission regarding
6 proposed amendments to the High Desert Power Plant. The
7 Energy Commission has assigned a committee of two
8 Commissioners to conduct these proceedings.

9 I'm Karen Douglas, the Presiding Member. Janea Scott
10 is the Associate Member of the Committee.

11 And I'll introduce the other people on the Committee
12 here today, Susan Cochran, the Hearing Officer. To my right,
13 my advisor, Jennifer Nelson. And to her right, Kristy Chew,
14 the Technical Advisor on Siting Matters for the Commission.

15 And then, Commissioner Scott's Advisor, Rhetta
16 DeMesa, should be here shortly.

17 So, at this point I'll ask the parties to introduce
18 themselves and their representatives, starting with the
19 Petitioner.

20 MR. HARRIS: Good morning, Jeff Harris on behalf of
21 the Applicant.

22 MR. KUBOW: Mark Kubow with High Desert.

23 MR. KIEL: And Peter Kiel, representing High Desert.

24 MR. CUSTIS: Kit Custis, with Department of Fish and

1 Wildlife.

2 MR. TAKEI: Kevin Takei, with the Department of Fish
3 and Wildlife.

4 MS. WILLIS: I'm Kerry Willis, with the staff.

5 MR. LAYTON: Matt Layton, with the staff.

6 MS. ROOT: Christine Root, with staff.

7 MR. DOUGLAS: Joe Douglas, with staff.

8 COMMISSIONER DOUGLAS: All right. Well, thank you
9 and that was impressive sharing of the microphone.
10 Hopefully, we'll be able to streamline that a bit. There we
11 go.

12 All right, so is anybody here representing any other
13 government agencies, state, local, federal or tribal
14 governments?

15 All right. Anyone on the line? Anyone on the phone
16 or WebEx, representing any other public agencies?

17 All right. At this point, I'll hand over the meeting
18 to the Hearing Officer, Susan Cochran.

19 HEARING OFFICER COCHRAN: Thank you and good morning.
20 I want to also congratulate you on remembering how these
21 microphones work. But I do want to remind you that in order
22 for your voice to be heard and recorded the red light has to
23 be on. What our fabulous IT folks just told me is to treat
24 it like a walkie-talkie, press it before you talk. And then,
25 when you're through speaking, turn it off. Because only four

1 microphones can be live at any one time. So, it's going to
2 be first on, first off. So, if you turn your microphone off,
3 you are going to kick off who is ever in the first position.

4 So, today, the Committee provided notice of this
5 Status Conference on July 13. The notice also contained
6 various orders to the parties regarding information sought by
7 the Committee.

8 First, the Committee ordered the Petitioner to file a
9 document reflecting all of the relief that it is seeking in
10 these proceedings. The Committee thanks Petitioner for its
11 timely filing.

12 Second, the Commission staff was ordered to produce
13 an Issues Report. As guidance, the notice for the Status
14 Conference included a series of questions for staff and the
15 other parties regarding different topics. Again, the
16 Committee thanks staff for filing its Issues Report in a
17 timely basis.

18 The order then provided an opportunity for
19 Intervenor, California Department of Fish and Wildlife, who
20 I'm probably going to mostly call CDFW for the balance of
21 this morning's conference, with an opportunity to respond to
22 the Issues Statement, as well as to provide a Status
23 Conference Statement. In addition, that right was also given
24 to Petitioner. And staff was also invited to file a Status
25 Report, largely so that we could talk about the timing of

1 proceedings.

2 Since those documents were received, I have been
3 consulting with Linda Bond and Karen Holmes to analyze the
4 findings. You may recall that the Committee provided notice
5 that it would be using these advisors back in June. Galen
6 Lemei, in the Chief Counsel's Office, also helped on this.

7 As this amendment moves forward, I want to restate
8 that the Committee's -- what the Committee's focus is. And
9 the Committee believes that the focus now is the same as it
10 was in the original decision from 2000, and was highlighted
11 in the notice of this Status Conference.

12 That issue is stated as the fact that we want to
13 ensure that HDPP's use of water has the potential to affect a
14 unique location known as the Transition Zone, which contains
15 a mesquite bosque that serves as habitat for a variety of
16 species. And I don't think there's any dispute about that.

17 Thus the question, as posed by the notices, are there
18 significant impacts to the Transition Zone, the riparian
19 habitat existing there, and the species reliant on that
20 mesquite bosque that may be caused by the use of reclaimed
21 water, groundwater from the Mojave River Groundwater Basin,
22 and/or State Water Project water.

23 By saying this, I don't mean that the Energy
24 Commission can ensure maintenance of any specific water
25 levels in the Transition Zone. That's beyond our

1 jurisdiction and I believe is adequately covered by the
2 Mojave Water Agency's role, as Water Master, under the
3 adjudication.

4 However, the High Desert Power Plant is a licensee,
5 whose impacts on those water levels is something that we can
6 address and potentially mitigate. Stated another way, how
7 can the Energy Commission make sure that the High Desert
8 Power Plant's use of water for cooling, regardless of source,
9 adjudicated groundwater, recycled water, or banked
10 groundwater from the State Water Project, does not impact the
11 Transition Zone and its habitat?

12 That approach leads to some very specific questions
13 that are still pending, even after having reviewed everyone's
14 analysis. And the first is I want to make sure that we all
15 have a common understanding of what the High Desert Model
16 does. It's sometimes called Fem Flow 3D.

17 To resolve the question of the potential impacts that
18 the project could pose to the Transition Zone and its
19 habitat, the original decision contained conditions of
20 certification that did three things. First, it prohibited
21 the use of groundwater. Second, it prohibited the use of
22 recycled water. And third, allowed the use of State Water
23 Project, either directly or from a groundwater bank, to the
24 extent that State Water Project water that had dissipated
25 from the bank was subtracted from the amount available to the

1 project.

2 To account for this dissipation, the conditions of
3 certification required the creation of the High Desert Power
4 Plant model using Fem Flow 3D and information from USGS. And
5 Linda Bond helped in the creation of that model.

6 Because there appears to be some confusion about what
7 that model does and how it is used, I'd like to ask Linda,
8 who's here in the room with us today, to give a very short
9 explanation of its development and use.

10 So, Linda, if you could come up to the table? Okay.
11 We're all trying to give Linda a microphone.

12 MR. HARRIS: Hearing Officer Cochran?

13 HEARING OFFICER COCHRAN: Oh, no, take mine. Yes?

14 MR. HARRIS: We have some concerns about the way the
15 issues are being teed up. So, I don't think there is
16 complete agreement about what the issues are in terms of the
17 Transition Zone. But I'd like to hear from Linda, but I
18 think I want to let you know that we have -- from our
19 filings, you've seen sort of a different view of what the
20 scope of this amendment petition is. And so, I just kind of
21 want to -- you said there's complete agreement on a point and
22 I guess I didn't want to let that pass without saying I don't
23 think there is complete agreement on the scope.

24 HEARING OFFICER COCHRAN: Okay, we'll touch back on
25 that in just a minute. Thank you.

1 Ms. Bond.

2 MS. BOND: Is this working? Yes. The High Desert
3 Groundwater Model was developed by the Petitioner, or the
4 Applicant at that time. It's based on a Groundwater Modeling
5 Code published in the USGS called Fem Flow 3D.

6 What that model was designed to do was to evaluate
7 the effect of the High Desert groundwater banking proposal,
8 both the injection and withdrawal of water for the power
9 plant, and to determine, with time, how much water would be
10 available for project use.

11 It specifically models just the effects of High
12 Desert operations. It does not model all the hydrodynamics
13 of the Basin. It's based on a method of modeling called
14 superposition and it -- oh, I'm sorry - superposition. And
15 what that simply does is it allows us to just look at the
16 impacts of the effects of a single action.

17 The parameters in the model are based on the USGS
18 Regional Groundwater Model that I believe they published
19 around 2002. And the aquifer parameters are based on this
20 calibrated model.

21 I'm not sure if there's other information you need?

22 HEARING OFFICER COCHRAN: Let me just ask a couple of
23 quick follow ups.

24 MS. BOND: Sure.

25 HEARING OFFICER COCHRAN: First of all, when you talk

1 about the aquifer parameters, what are you talking about?

2 MS. BOND: I'm talking about hydraulic conductivity,
3 storativity, the layering of different strata in the model.
4 For example, there's a river aquifer which is essentially --
5 or, a river unit within the aquifer that represents the very
6 coarse gravel and sands along the Mojave River, beneath the
7 Mojave River. It includes the faults that significantly
8 affect groundwater flow in the area. And it extends to the
9 boundaries of the groundwater basin. Sort of laterally it's
10 bounded by the mountains. And it starts at the top of the --
11 it encompasses the Alto area.

12 HEARING OFFICER COCHRAN: And I just want to make
13 sure I understood that. We can focus specifically on the
14 plant and we don't have to look basin-wide in using the
15 model.

16 MS. BOND: Right. What the method of superposition
17 is, is it's based on the principle, the fact that if you have
18 specific conditions in the aquifer, which we do in this area,
19 groundwater pumping is linear. And what that means is that,
20 if you add a specific amount of pumping, it's going to add a
21 specific change in water levels or a change in discharge.
22 And if you double that, then it will double the effect.

23 So, it's something that can be analyzed separately.
24 Separately would be, probably, the best word to explain it.
25 But, specifically, it does not model all of the basin flows.

1 Just what the effect of what High Desert would be and it's a
2 very simple, but powerful approach to identify exactly what
3 the effects of High Desert would be. And the way it was used
4 was to ensure that there would be no adverse impacts to
5 discharges of base flow, which flow into the Transition Zone.

6 HEARING OFFICER COCHRAN: Okay. Mr. Harris, getting
7 back to you, now. So, I want to be clear about what I said.
8 What I said was the original decision, from 2000, and the
9 notice of the Status Conference identified a specific issue.
10 And that is that the Transition Zone, containing the mesquite
11 bosque that serves as a habitat for a variety of species, and
12 that HDPP's use of water has the potential to affect that
13 zone.

14 Are you not in agreement with that?

15 MR. HARRIS: I'm not in agreement with that.

16 HEARING OFFICER COCHRAN: In what way?

17 MR. HARRIS: And I can explain. So, first off, I
18 guess I want to note I didn't -- I didn't bring my technical
19 expert with us today, our water modeling expert. I didn't
20 expect this conversation.

21 So, luckily, it's transcribed and we can share that
22 with our folks and try to catch up with what's going on here.

23 But I'm a little surprised, frankly. You know, we
24 have a petition before you and there are other agendas out
25 there, and I'm not going to try to be subtle today, that are

1 unrelated to that petition. And we need to talk about that.
2 I really like to talk about, at some point, what we've
3 requested.

4 And we haven't requested any changes in our State
5 Water Project water. We haven't requested any changes in the
6 banking except to be allowed to percolate, which all parties
7 seem to think percolation is a benefit.

8 And significantly, and probably the central factual
9 issue for our discussion today, we have not requested any
10 changes in our use of recycled water. None. So, looking at
11 the potential effects of the project, the use of recycled
12 water by this project is unchanged. And then, by extension,
13 that means the potential impacts on the river are unchanged.

14 There was a decision in 2009 that looked at these
15 issues. And maybe people wished they would have participated
16 or participated differently in that proceeding. But you have
17 a CEQA approval that allows us to use a water supply we're
18 not asking you to change. So, that's fundamentally the legal
19 question that leads me to say no to the way you've framed up
20 the question here.

21 There are also other issues out here about how we
22 ought to proceed with this proceeding. There's a very clear
23 statement in the Executive Order that this petition is exempt
24 from CEQA. And the questions that are presented in the
25 Committee's order are largely questions about environmental

1 issues, which are CEQA issues.

2 And the questions that are presented in the two pages
3 of single-spaced scope of work in the California Department
4 of Fish and Wildlife's filing are CEQA questions.

5 And so, I think it's wholly inconsistent to say we
6 have to analyze the significant effects of an unchanged water
7 use when the project is exempted from CEQA.

8 I think the other thing that this process is not
9 properly recognizing is the role of the Mojave Water Master.
10 It's no longer 2000. You know, Ms. Bond did great work in
11 2000 and I actually had a chance to work with you afterwards
12 on a project in Turlock. So, no disrespect at all to your
13 expert's qualifications. That's not my point.

14 But we've had, since 2000, the world sort of change.
15 And I mentioned this in our filings. The adjudication has
16 come in and it's been settled, and it's been affirmed by the
17 Supreme Court. The Water Master has been appointed and has
18 been serving in that role.

19 The biggest change since 2000, and I don't think it's
20 reflected in maybe some of the advice you're getting from
21 prior advisers, was the listing of the Delta smelt in 2007,
22 which fundamentally changed the water picture. And, yes,
23 that has a huge effect on the water available to us to bank
24 and so it sort of changed everything.

25 And so, I think we need to get past 2000. I think we

1 need to get past the original decision.

2 I'm concerned about a lack of transparency on that
3 focus. I mean, the proceeding lately has really focused more
4 on things in the original decision and not things that
5 happened in 2009 or what we're requesting, now.

6 And so, we need to refocus this process and get it
7 out of a regional planning process and back into our
8 petition, which is actually quite simple. You know, no
9 change in our surface water, no change in our banking except
10 for percolation, no change in our use of recycled water.
11 And, oh by the way, we'll take a limit on how much
12 groundwater we can possibly use as a backup supply. But
13 those are the things that are before you.

14 And these issues that you guys are wrestling with,
15 and I understand you're wrestling with it, and don't
16 misunderstand me, I understand the value of the bog and the
17 importance of the Transition Zone in this unique area. But
18 the issues you're wrestling with are CEQA issues, to which we
19 shouldn't be looking at in this proceeding.

20 And even if you're concerned about those, and we are,
21 they're dealt with through the Water Master process. So, we
22 need to get back to our petition and not the other issues.
23 Those other issues include the MOW between Fish and Wildlife.

24 HEARING OFFICER COCHRAN: The first is I think that
25 if you go back and you reread the scoping order that this

1 Committee issued, it clearly said that it was exempt from
2 CEQA. However, we are conducting an analysis under the
3 Warren-Alquist Act, and specifically Sections 25232 and 25355
4 state that we will consider environmental concerns. We're
5 not talking about a full-blown CEQA analysis here, but we are
6 concerned about the potential environmental effects of the
7 decision. The decision of which would make permanent the
8 recycled water use that was changed on an interim basis, in
9 2012, as well as the potential use of adjudicated
10 groundwater.

11 I also think that the Committee is quite aware of the
12 regional nature of the Mojave Water Agency, which is why, in
13 the notice of this Status Conference, we specifically asked
14 for other environmental review that Mojave Water Agency has
15 done to address, potentially address, or to answer some of
16 these questions that have arisen, and to date, Mr. Kiel made
17 representations at a prior status conference, but no one else
18 seems to cite to these documents. And the Committee and the
19 Commission has a long history of working with responsible and
20 trustee agencies.

21 But in part, we trust, but we verify. We make sure
22 that the actions that that responsible or trustee agency
23 actually will answer the environmental concerns that we have.
24 And if there are residual environmental concerns left, then
25 we talk about how to resolve and mitigate those.

1 So, we're not conducting a CEQA analysis. We've said
2 that from the beginning. I think that's abundantly clear.
3 But we do have a responsibility under the Warren-Alquist Act
4 to consider the environmental effects of the projects that
5 we're approving, including your request to modify the water.

6 MR. HARRIS: Yeah, I think we should brief these
7 issues because, fundamentally, we have a different view. The
8 Warren-Alquist Act does not create new authorities for the
9 Commission. The Commission is implementing CEQA. That is
10 the scope of the environmental review.

11 The Commission only has two basic authorities. You
12 need to make a decision on whether there's significant
13 environmental effects and whether there's LORS compliance.

14 And as to the first one, the Governor has said, for
15 this proceeding, that's not applicable. But we have the
16 benefit of knowing that Mojave will take care of those
17 issues. That's what they've been doing since 2000.

18 HEARING OFFICER COCHRAN: And what I'm saying is that
19 we need to verify that, Mr. Harris. We do that all the time.
20 And I've not yet seen any verification of that.

21 I think that if -- you know, there has been briefing
22 on this, there has been some evidence adduced. But when we
23 went searching for interim relief in order to provide us with
24 sufficient time to conduct the review that the Committee
25 believes is necessary, this is where we are now. It has

1 raised these questions.

2 COMMISSIONER DOUGLAS: So, I'm just going to quickly
3 add that, you know, this is not in any way an evidentiary
4 hearing. We asked Linda to speak today, in part because
5 there has seemed to be some level of disconnect between our
6 understanding of certain things, such as the model, its
7 purpose, its role, and that understanding of other parties.
8 And it seemed, to us, to be best to have an open discussion
9 and give the parties time to hear what she has to say, put
10 information on the table, have a dialogue today. But, quite
11 likely, come back in a couple weeks with everybody prepared
12 and able to respond, to address these issues. Again, that's
13 what I'm anticipating.

14 If you think there are issues that have not yet been
15 briefed or if you think there are issues that you have
16 briefed, but you want to come back and look at again, you
17 know, we'd certainly entertain that.

18 MR. HARRIS: Okay. I think we do. It's really
19 foundational. If we're going to be analyzing, reanalyzing
20 the existing use of recycled water, which isn't changing,
21 that to me is outside of CEQA. And if we need to brief that,
22 I think we should.

23 It's abundantly clear what the Executive Order
24 intends. And I don't think there is an opening for the
25 Commission to say you have independent authority, outside

1 that Executive Order, to make those analyses. I also don't
2 think you have to because I think you can do your LORS
3 compliance analysis. And that's all we need to be able to
4 meet the requirements of the Mojave Water Agency.

5 So, I don't think we want to re-litigate 2000. It's
6 no longer 2000. But I'd beg the point that we have a
7 fundamental disagreement on a significant legal issue, which
8 is sort of foundational of all of this.

9 HEARING OFFICER COCHRAN: So noted. Okay, does
10 anyone else in the room have any questions, comments,
11 protests about the summary that we just heard from Ms. Bond?
12 And I understand that, as Commissioner Douglas said, we're
13 probably be coming back later. But we wanted to put our
14 cards on the table as to, you know, the information that we
15 were relying on and whether it's where we need to be.

16 Yes, sir?

17 MR. MARSHALL: Can staff offer some comments or
18 observations about this discussion we're having right now?

19 HEARING OFFICER COCHRAN: Absolutely. Your name,
20 please?

21 MR. MARSHALL: Oh, Paul Marshall, staff of the Energy
22 Commission.

23 I think the questioning that the Committee has about
24 the nature of the model and what it can be used for is
25 important. Because the way staff understands their interest

1 in the model is that they would like to determine whether or
2 not it is an effective tool for evaluating whether or not any
3 of the project owner's actions, in addition to the current
4 injection program, could have an impact on the river.

5 And we've looked at the model. We use it because
6 we're the ones who have to determine compliance for the
7 project's operations as they currently are and, you know,
8 have a fairly good understand of it.

9 And we see where there may be some applicability of
10 the model, where we could evaluate whether or not the
11 project's change in the type of banking that it does could
12 affect the river. And so, we haven't fully determined
13 whether or not we can actually do it, yet, because there may
14 need to be some changes.

15 And where this is important is that -- and I'm not
16 sure the owner may fully appreciate this, and you don't have
17 your expert here and so maybe they're not able to inform you.
18 But the reason this is an important question or an important
19 issue that we need to evaluate is that beyond the 2000
20 litigation that we had gone through, this is actually
21 something that really, probably pertains more to the banking
22 that you're proposing to do at Mojave Water Agency.

23 And, you know, if you're going to be banking with
24 Mojave Water Agency and they're going to be doing their
25 spreading at various locations throughout the groundwater

1 basin, those locations where you're going to be doing the
2 spreading are different than where you're currently doing
3 your direct injection into the groundwater system.

4 And so we need to evaluate if you change the nature
5 of your injection, or your banking, would that result in
6 impacts to the river that are not currently being analyzed.
7 And so it's important for us to understand where Mojave Water
8 Agency is doing their groundwater recharge and how much
9 direct injection you'll be doing, or not, so that we know
10 what kind of effect it will have on the river.

11 And so, that's one question I think the Committee is
12 trying to answer. And that is a distinct and different
13 question than the other, big question we're also trying to
14 answer which is the one about whether or not the diversion of
15 recycled water from the river, for project use, is going to
16 affect the balance in the river.

17 And so, the way staff sees it is we have to analyze
18 that impact that you may cause through the Mojave Water
19 Agency's program. We're not saying it is a significant
20 impact, but we have to come up with some way to analyze it.

21 And then the other, larger question that the
22 Committee has directed us to analyze, which is whether or not
23 the diversion of recycled water is going to cause an impact.

24 So, that's our interpretation of where we're at.

25 HEARING OFFICER COCHRAN: And we understand, Mr.

1 Harris, that you disagree that we should be looking at that.

2 MR. HARRIS: No, I said -- I do need to ask this
3 question, what diversion of water are you talking about, that
4 is not currently authorized?

5 MR. MARSHALL: Did I use the term "unauthorized" or
6 "authorized" water use or --

7 MR. HARRIS: Well, the --

8 MR. MARSHALL: I said the diversion of recycled
9 water.

10 MR. HARRIS: Okay, which is currently authorized.

11 MR. MARSHALL: That's true. It is you are currently
12 authorized to use recycled water, correct.

13 MR. HARRIS: Okay. So, the project changes nothing.
14 And so, there are no new environmental impacts to analyze.

15 MR. MARSHALL: That's true.

16 MR. HARRIS: And that's the fundamental -- that's the
17 fundamental disconnect of this entire thing is that the staff
18 and the department are suggesting, wrongly, that there's
19 going to be increased diversions of water. And that's just
20 not true. And if we have a disagreement on that, let's
21 continue to talk about that issue because that is the factual
22 issue today.

23 And I'm glad to hear, I'm willing to hear whether I'm
24 wrong on that, but I don't hear it.

25 MR. MARSHALL: Staff's not going to dispute that you

1 don't currently have a license or authorization to use
2 recycled water.

3 MR. HARRIS: Good.

4 MR. MARSHALL: But I think what the issue is, that
5 the Committee is raising and has directed staff to do is to
6 further evaluate what the impact that diversion is having,
7 because you've reopened the case by asking, by petitioning to
8 amend the project and to use recycled water.

9 MR. HARRIS: Yeah, we were forced to reopen the case
10 by condition. But having said that, the issue is what are we
11 asking for? And we are not asking for any changes in our
12 recycled water use, none.

13 And CEQA says, once an environmental impact review
14 has been done, you don't do it again.

15 HEARING OFFICER COCHRAN: Well, that's not quite what
16 it says under 15162, but we won't quibble about that right
17 now.

18 MR. HARRIS: Well, let's talk about that because
19 that's the issue. Because you are suggesting changed
20 circumstances that allow you to reopen this Environmental
21 Impact Report.

22 HEARING OFFICER COCHRAN: But you're also arguing
23 changed circumstances to allow you to use different sources
24 of water.

25 MR. HARRIS: There are not different sources of

1 water. As to recycled water, we have a current authorization
2 and that's not changing. There's nothing different about our
3 recycled water use. And I'll say it five more times, if you
4 want, but it's not going to help. That is factually correct.

5 COMMISSIONER DOUGLAS: So, it sounds like there's an
6 issue you'd like to brief, and you'll be able to do it.

7 But, Mr. Marshall, I just wanted to say your
8 description of our interest in the model and why we were
9 interested in asking more questions about it is correct. And
10 I don't know if Commissioner Scott or the Hearing Officer
11 would like to add anything, but I think you described it
12 well.

13 And just in the interest of open communication,
14 because we need lots of it in this case, as we move to scope
15 the proceeding, we are also wondering, because our interest
16 is really this project, this place, as opposed to the broader
17 basin-wide issues, the extent to which the, you know, water
18 balance work that CDFW has been talking about is necessary.
19 And I don't know if Susan had anything on that--

20 HEARING OFFICER COCHRAN: I had some -- I was going
21 to turn next to Mr. Takei and Mr. Custis, from CDFW, about
22 this. Because now that Mr. Marshall has so graciously teed
23 this up for us, one of the questions that the Committee
24 obviously has is about dissipation of percolated groundwater.
25 And I know that we have spent a lot of time talking about a

1 water balance calculation in these proceedings. And I, for
2 one, have never really understood exactly what that was. And
3 I know that CDFW included a scope of work for a water balance
4 calculation that actually appeared much broader than what the
5 Committee was thinking it was going to be basin-wide.

6 And we truly are focused exclusively on the body of
7 water, the Transition Zone and the Mojave River.

8 So, with that in mind, I'd like to open it up to you
9 two to give us your thoughts about what you've heard so far.

10 MR. TAKEI: My name's Kevin Takei. I'm with the
11 California Department of Fish and Wildlife. And my last
12 name's spelled T-a-k-e-i.

13 Before we answer that question, we did have -- we did
14 have our own question about related to the flow model. And
15 I'm not sure if we want to -- if we should ask that now or
16 later.

17 HEARING OFFICER COCHRAN: Please, go ahead.

18 MR. TAKEI: Basically, we were just curious if there
19 was data, or a report, or some sort of outcome that could be
20 shared related to the modeling results. And I think, just
21 the Department's not aware of that information.

22 MS. BOND: And you're talking about the High Desert
23 Model?

24 MR. TAKEI: Yes.

25 MS. BOND: Well, I looked back in my files and I

1 believe that there was an original -- original documentation
2 of the model that was developed and provided by the High
3 Desert Power Project for the original siting evaluating. And
4 then, I've got two -- what the conditions of certification
5 required was, is that that original model was accepted in
6 concept, but it needed to be updated in two ways. The model
7 had to be expanded to a larger area so that it would
8 encompass the entire area of influence of the injection and
9 the pumping. And it had to have the aquifer parameters
10 updated and it was updated with data from the USGS model, and
11 from aquifer tests that were performed by High Desert.

12 And that was represented in this report, which is a
13 High Desert report that I just happened to have still had.

14 And then, there was a third update of the grid that
15 occurred in 2003. And I'd have to look back. I think I
16 remember why it was updated one more time. There was an
17 error in the coding of the -- well, anyway, I'm not sure why
18 it was updated. I'm not going to try to recall that.

19 But there's definitely some documentation. But the
20 document that you probably might want is the original
21 documentation, plus these two.

22 And then, finally, the model, as I recall in the
23 conditions of certification it was required that the model be
24 run annually to evaluate how much water remained available to
25 the project that had been banked. When groundwater is

1 injected, it causes a dissipation effect and some of that
2 water, essentially, is no longer available to the project
3 because it's not a closed basin. You have discharge going
4 down to the transition zone.

5 And so the staff, as I recall, the CEC staff, Paul,
6 can update you on this, would run it every year and report to
7 High Desert how much was still available in the bank, and
8 High Desert would report how much they had withdrawn. And
9 so, that results, as I recall based on the conditions of
10 certification, would be updated. And I assume they were
11 filed with the compliance.

12 I did that work for the Commission up until 2008 and
13 I believe it was taken over by staff or staff's consultants.
14 And they should be in the compliance reports.

15 MR. TAKEI: Yeah, it sounds like the data for annual
16 run of the model is probably out there somewhere.

17 MS. BOND: Right. If that's what you mean by
18 results, there is that.

19 HEARING OFFICER COCHRAN: Staff, are those in fact
20 available?

21 MR. MARSHALL: Yes, they are. As a matter of fact,
22 right now we're running the model on a quarterly basis
23 because the project owner's water in the bank is below a
24 threshold that they're supposed to maintain. So, we're
25 reporting to them on a quarterly basis how much they have in

1 the bank and are able to use.

2 So, we could share the modeling with you, go through
3 it with you and show you how it runs or operates, and give
4 you an idea of what kind of results it produces, if you're
5 interested.

6 HEARING OFFICER COCHRAN: Are you interested?

7 MR. CUSTIS: This is Kit Custis, with Fish and
8 Wildlife. I don't really want to get into the model too
9 much.

10 (Laughter)

11 MR. CUSTIS: But as we're talking around it, it's
12 sort of a thing like, okay, I'd like to know what the scope
13 of the (inaudible) -- so that if there's something triggered
14 then I can go, wait a minute, I don't understand this. But
15 right now, I understand what you did, I just don't have the
16 documentation for it.

17 COMMISSIONER DOUGLAS: Right. And before we go too
18 deep into technical discussion, I understand the Petitioner
19 does not have their expert here. This is not an evidentiary
20 hearing. We're in the room, but this is the sort of thing
21 that would normally be covered in a workshop where you'd all
22 have a chance to work through the issues. And maybe that's a
23 recommendation that we could have out of this.

24 So, we don't need to go too deep into it, but it
25 would be helpful if you could look into and understand that

1 better.

2 MR. HARRIS: And for my edification, that's all about
3 the current practices, though, right? It's all about the
4 injection, it's not about percolation?

5 HEARING OFFICER COCHRAN: Well, no, actually, I think
6 that it should include percolation because there are
7 questions about percolation and properly accounting for
8 dissipation, saturation, et cetera.

9 And I know that there is some uncertainty, based on
10 the filings from both staff and Petitioner that the existing
11 model accounts for that. That, in fact, the areas where
12 percolation currently occurs aren't included in the model.

13 And there's also been some discussion that the Mojave
14 Water -- I'm sorry? Yeah, I was going to outline all of them
15 and then I was going to -- okay, sorry.

16 That the Mojave Water Agency already accounts for
17 that in their various agreements.

18 And, finally, that if the Commission were to impose
19 conditions on percolation that didn't just accede to the
20 Water Agency, that it would be somehow affecting or
21 interfering with the Mojave Water Agency's role.

22 So, the first questions I have, Linda, since -- Ms.
23 Bond, since you're talking to us today about the model, is
24 are the areas where percolation occurs included in the model?
25 And does the model account for dissipation, saturation, all

1 those other fancy water terms?

2 MR. HARRIS: I'd really like to have this
3 conversation with my water expert here. I think this is
4 hugely unfair to us. Hugely unfair. And we don't -- and I
5 know this is not an evidentiary hearing, but we do not
6 concede that this model can be converted to something for
7 percolation.

8 But to a higher point, does anybody else in the Basin
9 use this model? And the answer is currently no. Why are we
10 being treated differently? There's nothing in the Warren-
11 Alquist Act that allows you to apply something other than
12 what applies to other water users in the Basin.

13 This whole conversation is about a premise that
14 assumes that the Commission has some kind of organic
15 authority to treat High Desert different than similarly
16 situated water users. And that's, again, not the case.

17 HEARING OFFICER COCHRAN: And I'm struggling to see
18 why. I'm assuming that whoever the lead agency is in
19 approving those other projects can ask these same questions.
20 And if they fail to do so, that's on them. But the Energy
21 Commission does have the authority to do that with a licensee
22 who comes to us, and asks for the ability to do certain
23 things. We do it all the time.

24 MR. HARRIS: Not like this, no.

25 HEARING OFFICER COCHRAN: Oh, I think that the usual

1 practice that I've seen is that staff does a very good job of
2 outreach to local agencies, determines whether their
3 standards, regulations, et cetera, set forth what would
4 otherwise be mitigation, and imposes those conditions.

5 We do it with NDPES permits, we do it with Air
6 District permits, we do it with any number of permits from
7 other responsible or trustee agencies.

8 So, I don't think you're being singled out and I
9 don't think that this is anything different than the typical
10 analysis we do for LORS and LORS compliance to ensure that
11 there is compliance and not environmental impact.

12 COMMISSIONER DOUGLAS: So, in the -- you know, if you
13 do want to show and are able to show the Mojave Water
14 Authority looks at this issue, does this, covers this issue
15 in a reasonable way, that's certainly the sort of thing that
16 we would also like to see brought forward in an evidentiary
17 hearing.

18 And this is not -- you know, we are putting
19 information on the table in order to share it with all the
20 parties, in order to better work with you and scope the
21 proceeding. So, we do not need to go down the path of asking
22 any more technical questions. If you have concerns with
23 that, that can happen later.

24 It seemed more helpful, in my mind, to have Linda go
25 ahead and answer the questions so that that information is

1 provided to all the parties and you can deal with it later.

2 But if you'd rather not, we can just move on.

3 MR. HARRIS: Yeah, I think we'd rather not.

4 COMMISSIONER DOUGLAS: Okay.

5 MR. HARRIS: It's not clear to us that this is
6 productive. And it's certainly we're at a big disadvantage
7 not having our expert here so --

8 COMMISSIONER DOUGLAS: Okay, absolutely.

9 MR. LAYTON: Commissioner Douglas, this is Matt
10 Layton. You just made me think of a point. I'm concerned
11 that Mojave Water Agency is not here. You just said you're
12 trying to provide this to all of the parties. Nor is Victor
13 Valley, nor is the city.

14 Again, this is a status conference to -- and we don't
15 have -- apparently, we don't have very good communication
16 skills, I understand that, so this helps.

17 But what I think we really need is we need those
18 other parties here. I'll leave it to the lawyers to discuss
19 what all that means.

20 But on the factual basis, we really would like to
21 have all those other parties in the room. I don't think it's
22 appropriate for us to be talking about what Mojave Agency can
23 or can't do. And again, we talk to them a lot. But I'd like
24 them to tell us what they can or can't do and how it relates
25 to what the FEMFLOW did in the past and how we use it today.

1 COMMISSIONER DOUGLAS: That's exactly what we'd like
2 to see in the evidentiary hearings. And we don't need to see
3 it before that, really.

4 HEARING OFFICER COCHRAN: But we did want to have a
5 discussion about why we were asking this, because it seemed
6 that there was some confusion about what our basis was.

7 MR. LAYTON: I'd be happy to admit "some" is perhaps
8 too weak of a word.

9 (Laughter)

10 HEARING OFFICER COCHRAN: Well, I knew what I was
11 asking.

12 (Laughter)

13 HEARING OFFICER COCHRAN: Okay. So, and that's the
14 problem with paper is that paper does not convey tone, or
15 meaning, or anything.

16 So, that leads us to the question, then, of future
17 proceedings, and where we're going and how fast we're going
18 to get there. And the only schedule that we really got was
19 from the Applicant, who suggested that this could all be
20 resolved by the September Business Meeting, and I think Mr.
21 Harris has been disabused of that notion today?

22 MR. HARRIS: Several notions, yes.

23 (Laughter)

24 HEARING OFFICER COCHRAN: But that one in particular.
25 September 14th is probably not happening. I'm just going to

1 go out on a limb there. And I'm making light, but this is
2 very serious.

3 I think that we have a limited amount of time to
4 resolve this based on the interim relief that was granted.
5 And we would like to see this resolved quickly. I mean, that
6 was the whole purpose of the Executive Order was to get these
7 things in and out. And I don't want to be still waiting, you
8 know, a year from now having this same discussion. I'd like
9 us to be much further along.

10 So, it sounds as though there were a couple of things
11 discussed. There's the question of a technical expert
12 workshop discussion, which would hopefully include our
13 friends from the desert, who actually control the water.

14 MR. LAYTON: This is Matt Layton, again. I don't
15 know if a workshop would be adequate to get those parties
16 there.

17 HEARING OFFICER COCHRAN: Okay.

18 MR. LAYTON: I think the Committee should consider a
19 hearing.

20 HEARING OFFICER COCHRAN: Okay.

21 MR. LAYTON: Because, again, we have plenty of
22 discussions with those agencies, and we can tell you about
23 those discussions, but I think it would be better if all
24 parties heard from those agencies, directly.

25 HEARING OFFICER COCHRAN: Okay.

1 MR. LAYTON: And I'm not sure -- I'm pretty sure we
2 cannot get them to come to a workshop, all of them to come to
3 a workshop.

4 HEARING OFFICER COCHRAN: Right, okay. Is there a
5 value in a discussion workshop on at least the existing model
6 and what it can do and what it might be able to do? Is there
7 a value in that?

8 MR. HARRIS: Is this on?

9 HEARING OFFICER COCHRAN: You're red. You have the
10 floor, Mr. Harris. Oh, wait, it's --

11 MR. HARRIS: I wonder if we're asking the right
12 questions and maybe that needs to be the next step. I mean,
13 I thought the Committee did a lot of work on this in figuring
14 out the questions, but we obviously have some pretty
15 fundamental disconnects on what questions you should be
16 asking.

17 You know, it's ironic that we're fighting over
18 percolation, which everybody in the room thinks is the
19 greatest thing that can possibly happen to this Basin. And
20 we're fighting over, you know, an accounting rule, basically.

21 So, I guess my suggestion would be that maybe you
22 ought to ask the parties to define the issues in the case
23 because I think there's a disconnect between the parties and
24 the Committee on that.

25 HEARING OFFICER COCHRAN: I believe that the

1 Committee just asked for that in the last Notice and Orders.
2 We said, if these are not the issues that you think we need
3 to ask, tell us. And no one took us up on that offer.

4 MR. HARRIS: I can read you my response. I think we
5 did. We definitely took up the issues of the CEQA questions
6 and the MWA questions so --

7 HEARING OFFICER COCHRAN: But you didn't --

8 MR. HARRIS: You didn't ask us to tell us if you were
9 asking the right questions.

10 HEARING OFFICER COCHRAN: We said, what additional
11 questions need to be asked?

12 MR. HARRIS: And our answer to that is clear enough,
13 honest. So, if we don't there are additional questions --

14 HEARING OFFICER COCHRAN: Well, you --

15 MR. HARRIS: I think you're asking the wrong
16 questions. That's the distinction.

17 COMMISSIONER DOUGLAS: So, here's a question for you,
18 then. Because time frame in this case is really something
19 that, you know, we all want to move quickly. We don't want a
20 delay. But you appear to want to do this round of briefing
21 before there is a workshop or other follow up on the model,
22 if I'm reading this correctly.

23 My thinking is that they could be concurrent, but I'm
24 interested in what you think about that. Concurrent would
25 move us along faster.

1 MR. HARRIS: Yeah, and we're interested in moving
2 along faster, for sure.

3 COMMISSIONER DOUGLAS: All right.

4 MR. HARRIS: And I apologize, I think we did answer
5 the question. But I didn't want to go so far as to say I
6 thought we ought to refocus the questions, and maybe I should
7 have in my filing.

8 COMMISSIONER DOUGLAS: Okay. But you have clearly
9 said today that you think we should refocus the questions.
10 And so, we want to give you an opportunity to frame that up,
11 and all the parties an opportunity to at least respond.

12 I don't know if all the parties want to, themselves,
13 ask us to refocus the questions or if that's really the
14 Applicant.

15 So, you know, and then my recommendation is in order
16 to keep this thing moving on track, in terms of time line,
17 that if it would be useful to have a dialogue between the
18 parties, that the Committee does not need to be part of, just
19 to understand what the model currently does and the
20 possibility that it could do more, and the technical issues,
21 pro or con, around that. You know, my own recommendation
22 would be to try to do that concurrently. But that would be
23 up to you.

24 MR. HARRIS: That's fine. And if you'll give me five
25 minutes, I'll tell you what I think the issues are. And

1 they're in our filing. There's nothing -- you know me,
2 there's nothing left unsaid. But maybe talking about that
3 could help.

4 You know, the thing that we want the most out of all
5 this is the ability to percolate water. That's our number
6 one desire. And that's section one of our filing for a
7 reason. What that allows us to do, more than anything else,
8 is to build that bank so we never have to get close to the
9 point where Paul's got to monitor me quarterly. Mark knows
10 he's got enough water to be able to respond if things go bad
11 in Aliso Canyon, and that kind of thing. So, the number one
12 thing we want is percolation. And I think everybody wants
13 that, as well.

14 Then the question becomes how do you account for
15 that? And our answer to that question is you account for it
16 like Mojave accounts for everybody else. And maybe we
17 haven't done a good job of creating the record to explain how
18 Mojave accounts for everybody else. I will give you that.

19 And we also need to give you the environmental
20 documents that show how Mojave uses the percolation basin.
21 They're a responsible State agency. They just don't go out
22 and dump water wherever there's a spot. You can imagine the
23 Regional Board would have problems with that and DBOC, and
24 others. So, let us document that for you, okay.

25 So, that though, then, is going to create a policy

1 question at the end of the day of what's the accounting
2 method? Our view is it ought to be like it is for anybody
3 else in the Basin. And that's not a flim -- is that -- my
4 mind is --

5 HEARING OFFICER COCHRAN: That would be green in
6 our --

7 MR. HARRIS: Green water's not good, Linda's model.
8 Because that's not the way the rest of the Basin does it.
9 So, I mean, I think I've been clear on that, with the
10 critical issue of what we want is percolation and what we
11 want is the ability to be treated like anybody else in
12 Mojave's District.

13 We need the ability to blend our available water
14 sources. And that's the critical issue. We can't tell what
15 all the variables are going to be. If it's going to be hot,
16 it's going to be cold, how much are we going to run? How
17 much is the Delta smelt, , there's some other new listing
18 that's out there, going to affect water to the Basin, all
19 those kinds of things.

20 And so, at the end of the day what the guy, sitting
21 here biting his tongue, needs more than anything else is the
22 ability to tell Edison, or DWP, or whoever it is, that I can
23 run this project under all conditions. And to do that, in
24 this location, we need to blend water.

25 So, we want to blend surface water, we want to blend,

1 use our banked water, and we want to be able to use as much
2 recycled water as feasible, since it's our lowest cost
3 source. And Matt doesn't like that term, so sorry, Matt, I
4 said that.

5 So, we're going to work with you on coming up with
6 something that makes you feel better about that terminology.

7 So, at the end of the day we're not changing any of
8 the things that I said. We're not changing our amount of
9 recycled water. And we've offered to make permanent the
10 limitation on recycled water -- or, groundwater that we use.
11 We offered, in our statement, to never use the groundwater if
12 our bank is above 4,000 acre feet. Matt thinks that number's
13 too high. I'm sorry, Matt, I'm picking on you. I like you,
14 so maybe it's a --

15 MR. LAYTON: I just think the number has no meaning.
16 It's not too high.

17 MR. HARRIS: Well, the meaning we intended to convey
18 is a one-year supply and that's why we picked it. But let's
19 talk about what makes sense, okay.

20 MR. LAYTON: It was a gift but --

21 MR. HARRIS: All right. Well, thank you.

22 So, that's an important thing for us. We think that
23 the all-parties stipulation is a good framework for the
24 Committee, to work to get the interim relief, the final
25 relief to let those go.

1 And then in terms of legal issues, you've heard my
2 point about what it would change in the project. I think if
3 you line those things up, not changing the project, the
4 Executive Order, and the 2009 decision, and your ability to
5 move forward within the UA, which we need to apparently make
6 that case better, I think there's a good, strong argument
7 there.

8 But those are the fundamental things that we're
9 interested in accomplishing at the end of the day.

10 HEARING OFFICER COCHRAN: Okay. So, on your very
11 last point, first, do you still feel it's necessary to brief
12 that? Or, would you still like to have briefing on the --

13 MR. HARRIS: I don't want to spend a lot of time
14 briefing, I think we've kind of made the point. Maybe we
15 ought to provide you with just kind of a summary of what we
16 think the legal issues are and the other parties can respond
17 to that.

18 HEARING OFFICER COCHRAN: Okay.

19 MR. HARRIS: Is that --

20 HEARING OFFICER COCHRAN: So, not true points and
21 authorities, just more --

22 MR. HARRIS: How about a discussion piece?

23 HEARING OFFICER COCHRAN: A white paper?

24 MR. HARRIS: Okay, sure.

25 HEARING OFFICER COCHRAN: Are the other parties in

1 agreement with that? Would that be helpful? I'm looking at
2 Ms. Willis and Mr. Takei.

3 MS. WILLIS: This is Kerry Willis, Assistant Chief
4 Counsel for Siting. You know, what was your question, again?

5 HEARING OFFICER COCHRAN: A summary of legal points.

6 MS. WILLIS: Yes, a summary of legal points, thank
7 you. Staff is available to respond to Mr. Harris' summary of
8 legal points, if he wants to submit that. I don't think we
9 have anything to submit, you know, to begin with.

10 To the other point, I think your original offering
11 was for staff to have a workshop of technical folks to come
12 together to discuss modeling. We're certainly open to that.

13 As Mr. Layton explained, there's a limited usefulness
14 to our workshops if the water agencies are not coming.

15 HEARING OFFICER COCHRAN: Understood.

16 Mr. Takei?

17 MR. TAKEI: I think we would echo the same sentiment
18 on both points. First, we would welcome the briefing, or the
19 outline, or the documentation from Mr. Harris and would, at
20 that time, be able to respond accordingly.

21 In terms of the technical workshop, I think it would
22 be useful for the Department, as well, because we would,
23 obviously, like to see the data from the modeling prior to
24 that workshop so that we would be prepared to respond to
25 that. And, presumably, the questions in your mind is how --

1 what kind of overlap is there between the scope of work that
2 the Department has proposed. And so, once we do have that
3 understanding, we could probably be in a better position to
4 answer those types of inquiries.

5 HEARING OFFICER COCHRAN: Okay. And I'm going to
6 open this out to everyone's discussion. So, we're looking at
7 some summary of legal points, documentation that will have a
8 significant page limit on it.

9 MR. HARRIS: Thank you.

10 COMMISSIONER DOUGLAS: You can write as much as you
11 want, Mr. Harris. No.

12 (Laughter)

13 HEARING OFFICER COCHRAN: But we're only going to
14 read three pages. No, I'm kidding.

15 (Laughter)

16 HEARING OFFICER COCHRAN: And no playing with font
17 sizes.

18 Okay. Anyway, so we're talking about that and we're
19 talking about maybe a technical discussion on what the model
20 does or doesn't do.

21 COMMISSIONER DOUGLAS: And let me just pause on that.
22 I just want to say I recognize Mr. Layton's point --

23 HEARING OFFICER COCHRAN: Yes.

24 COMMISSIONER DOUGLAS: -- that it's most helpful if
25 everyone's in the room.

1 HEARING OFFICER COCHRAN: Agreed.

2 COMMISSIONER DOUGLAS: But I think from the
3 Committee's point of view, if our three parties, who are here
4 today, have the same information going into the evidentiary
5 hearing and have a chance to, at least among themselves, come
6 to agreement about where they agree and where they disagree
7 about the model, that's a benefit to us even if the other
8 parties aren't there.

9 And we hear your point that it may be necessary to
10 just go to the region, have an evidentiary hearing, and that
11 may be what it takes to get everybody in the room. And
12 that's fine. If you think that's what it takes to be most
13 efficient, we're happy to do that.

14 MR. LAYTON: This is Matt Layton. In the interim,
15 you know, we are working with Fish and Wildlife. We've
16 worked on the outline on what might be the scope. Again,
17 regardless of what Mr. Harris thinks of whether there's a
18 scope needed or not, we understand the Committee is
19 interested in it, so , we've been trying to scope out this
20 water assessment or study. So, we welcome the opportunity to
21 work with Kit.

22 We also are sending a letter to Mojave Water Agency,
23 the Water Master, encouraging them to proceed. Again, we may
24 need additional tools from the Committee to get that
25 encouragement brought more closely to bear.

1 HEARING OFFICER COCHRAN: Would cookies help? I'll
2 bring cookies.

3 MR. LAYTON: Cookies would probably help me.

4 (Laughter)

5 HEARING OFFICER COCHRAN: Okay.

6 MR. LAYTON: So, I mean, I guess we're interested in
7 trying to get Fish and Wildlife to a point where they
8 understand what they want to understand about water use in
9 the area. If that provides additional water for High Desert,
10 we think that's great. If High Desert doesn't want that
11 additional water or not, we just think we should proceed.

12 So, we're trying to proceed with or without -- well,
13 we're trying to proceed with or without clear understanding
14 of what the Committee wants. So, we are making progress.

15 HEARING OFFICER COCHRAN: Okay, so I think -- so, let
16 me restate what I think the Committee wants and the Committee
17 can smack me if I'm wrong.

18 What the Committee is looking specifically at is the
19 Transition Zone, only, and its habitat. So, we're not
20 looking at a regional look, we're looking at specifically
21 quantifying and qualifying potential impacts to the
22 Transition Zone, and the best path forward for that.

23 If there's some way to use data points from existing
24 monitoring wells, like CDF&W mentioned in their paperwork,
25 there's apparently a monitoring well, H-2, that's near where

1 the perc ponds are, that could help us. If that information
2 were imposed over our superposition model to answer that
3 question, that would be great.

4 If there's something else out there, we're happy to
5 hear what that something else might be. But again, we're
6 focused very narrowly.

7 And if Mojave Water Authority already does it, that's
8 groovy, too. We just want to trust, but verify, channeling
9 my inner Ronald Reagan when I say that.

10 So, then the next question is when we think some of
11 these preliminary steps could take place so that we could
12 then get an idea of when folks are looking for evidentiary
13 hearings. Because, obviously, calendars get crazy,
14 especially towards the end of the year, since we're sitting
15 here earlyish August. Are we talking three months out, five
16 months out? Don't all speak at once.

17 MR. LAYTON: Um --

18 (Laughter)

19 MR. LAYTON: This is Matt Layton, again. I guess
20 I'm -- we could proceed on the technical study, working with
21 the parties on the technical study. We think that can be
22 done within a year, which is a long time.

23 I don't know how that fits into Mr. Harris' schedule
24 or his client's schedule. We understand that the scope may
25 be broader than what the Committee is specifically looking

1 for, but that may be the best way to get the details that you
2 want, as well as the detail that both CDFW and Mojave Water
3 District think is interesting for a study that they want to
4 jointly proceed on.

5 So, I'm not sure when, if you want to wait for the
6 information of the study, to have the evidentiary hearings.
7 Or again, do you want to have the evidentiary hearings soon
8 to try to force the agencies, maybe, to come to a quicker
9 resolution?

10 Because, well, again, it's going to be a long time
11 before the study is complete, and a long time up to a year.

12 HEARING OFFICER COCHRAN: Mr. Harris, did you have a
13 thought?

14 MR. HARRIS: Well, I think up to a year is optimistic
15 and I think the filings are -- anyway, I'm (inaudible) --

16 HEARING OFFICER COCHRAN: Okay. I think that's food
17 for thought for the Committee.

18 One comment I would make is, essentially, what they
19 did in 2000 was they said, "Here are sort of the hallmarks of
20 what we want to make sure is mitigated, go off and create the
21 model." And that may be something that we're going to have
22 to do this time.

23 So, what we might need to do is have the hearings
24 early, as suggested by Mr. Layton, get MWA to show us their
25 cards as to what they're already doing, and then, if

1 necessary, then create something afterwards, if needed. And
2 I'm just thinking out loud. I mean, my crystal ball's still
3 in the shop, so don't think that I have any magic knowledge
4 that you all don't.

5 MR. HARRIS: This may sound insane, coming from me,
6 but I'm hoping we don't have evidentiary hearings, or that we
7 have evidentiary hearings on very few things. I think you
8 ought to direct us to be locked up in a room together and
9 talk through these things.

10 We've worked on an all-party stipulation that I
11 think, again, provides a framework, and I think that's going
12 to be more productive.

13 I don't have a lot of hope about dragging other
14 parties in. I kind of wonder what an evidentiary hearing
15 would look like if there was no pre-file testimony from MWA
16 or, you know, VWRA. But, you know, we had a very good
17 discussion with staff this week, on Monday, and I think we
18 understand their issues a little better. And we're putting
19 pen to pencil to try to figure out if we can address some of
20 those things.

21 I think what the Department is trying to do is
22 laudable and there may be a way to get there with them, as
23 well.

24 So, you know, I don't want to predestine this to be,
25 you know, six days of evidentiary hearings because I don't

1 think it needs to be that. I think if you get us together,
2 if you force us together and it sounds like you're allowing
3 us to talk to each other, that maybe we can come up with some
4 common ground that doesn't involve a year's worth of modeling
5 and a whole bunch of other things.

6 COMMISSIONER DOUGLAS: Okay, it sounds like you're
7 recommending something more like at least starting with a
8 workshop approach to, with the other parties, understand the
9 lay of the land and the opportunities to potentially move
10 forward on a shorter time frame.

11 MR. HARRIS: Thank you for asking that clarifying
12 question. I think I'm talking more about confidential
13 settlement discussions.

14 COMMISSIONER DOUGLAS: I understand.

15 HEARING OFFICER COCHRAN: And I don't know that our
16 regs allow that.

17 MR. HARRIS: Well, the parties could certainly agree
18 not to use what I say in settlement discussion against me,
19 but that's a good point. I don't know that they do, either.

20 But we might move certain places in a room, with
21 these three parties that we're not willing to move in
22 evidentiary hearings.

23 COMMISSIONER DOUGLAS: I understand.

24 MR. HARRIS: And I don't want to have somebody come
25 back later and say, well, you already told me, you know, you

1 could operate on 15 percent recycled water, if that's not a
2 number where I agreed to.

3 HEARING OFFICER COCHRAN: Okay, understood.

4 MR. HARRIS: So, I think it would have to -- I think
5 you're right, it would have to be a ground rule for those
6 discussions. Like I said, we would be willing to move, I
7 think, probably in ways that we wouldn't be moving in
8 evidentiary hearings.

9 HEARING OFFICER COCHRAN: And we always encourage the
10 parties to work out as much as they can ahead of time. We
11 like that. So, the mechanism of doing that, though, I will
12 leave to the parties.

13 I see that Ms. Avalos from the Public Adviser --
14 okay.

15 Is there anything else anyone wants to offer? Mr.
16 Layton?

17 MR. LAYTON: I guess, I would hope that we don't get
18 limited to having a stipulation between these three parties
19 in the room because I really do think the other agencies need
20 to be involved.

21 And if a workshop, which Mr. Harris wants to get us
22 locked in a room, would include those other two water
23 agencies and maybe the city, I think that would be
24 productive. Again, how we get them there, I still might
25 encourage the Committee to provide some assistance.

1 HEARING OFFICER COCHRAN: Okay.

2 COMMISSIONER DOUGLAS: When you mention assistance,
3 let's just make sure we understand what you mean. Do you
4 mean a letter?

5 HEARING OFFICER COCHRAN: A subpoena.

6 COMMISSIONER DOUGLAS: Do you mean coming and, you
7 know, a personal invitation? Do you mean a brief hearing
8 where we hear from everybody and then we adjourn, and you
9 continue with the workshop? What's on your mind?

10 MR. LAYTON: I guess I was assuming a subpoena but --

11 (Laughter)

12 MR. LAYTON: But I don't -- I don't know how we can
13 get them there. But, obviously, if the Committee was
14 personally persuasive, that might help.

15 HEARING OFFICER COCHRAN: Mr. Kiel, did you want to
16 say something?

17 MR. KIEL: Yes, thank you. Peter Kiel for High
18 Desert. I thought it's useful being blunt about why we
19 haven't had a lot of participation from the other agencies.
20 They are, you know, Victor Valley, VVWRA, and MWA and Water
21 Master aren't seeking anything from the Commission. The
22 Water Master certainly responds to the court and doesn't feel
23 that it needs to respond to the Commission to carry out its
24 objectives and mission.

25 I don't think they see any value in participating and

1 only downside to having, for example, the MOU scrutinized in
2 an evidentiary proceeding, to allow a party to it to argue
3 that it should be revised.

4 That's the kind of tension we have here. And even a
5 nice letter and cookies won't get them to the table,
6 necessarily.

7 HEARING OFFICER COCHRAN: You've never had my
8 cookies.

9 (Laughter)

10 HEARING OFFICER COCHRAN: Thank you, that was
11 helpful. I knew that there was some tension, I just didn't
12 know what it was.

13 Anything further from anyone else?

14 MS. WILLIS: I just wanted to add, Kerry Willis,
15 again. In other hearings, before other proceedings,
16 something that I think -- one of the options you mentioned
17 was having some sort of a -- it doesn't have to be an
18 evidentiary hearing. It could be a status conference, or
19 something, where the other agencies, or folks, everybody's
20 invited and we are sent to go into a room and work things
21 out. That has happened and it's usually very effective.

22 HEARING OFFICER COCHRAN: Okay.

23 MR. HARRIS: We're kind of getting to a good place,
24 so I almost hate to raise it, but I am concerned about
25 transparency in the process. I have not been involved in a

1 proceeding where prior advisors were advising. And we've
2 wrestled with this and I'm just going to put that on the
3 table.

4 Two of those people are colleagues of mine. One of
5 them, and I'll let them guess which one, is I consider a good
6 friend. But it's troubling. I don't know what those prior
7 advisors are doing.

8 And, you know, and then I heard today that at least
9 one that at least one person is with the General Counsel's
10 Office which also was involved in the discussions, which in a
11 typical proceeding would be part of the ex parte.

12 So, we need to think about that issue, all right, and
13 we've so far decided not to respond to your memo. But I
14 guess I wanted to let you know that I'd like to figure out
15 how to make this process transparent, as opposed to making
16 it, you know, an objection about that process. So, if you
17 have thoughts on how we can do that, I would prefer that.

18 HEARING OFFICER COCHRAN: Just if you're talking
19 about Mr. Lemei, he's in the Hearing and Policy Unit with me.

20 MR. HARRIS: Is he now, okay. Thank you for that
21 clarification. I didn't know he got promoted?

22 HEARING OFFICER COCHRAN: It was a lateral.

23 (Laughter)

24 HEARING OFFICER COCHRAN: Okay, public comment.

25 COMMISSIONER DOUGLAS: But we'd welcome your thoughts

1 on that. So, do feel free to provide.

2 COMMISSIONER SCOTT: I think that's a really
3 important point and I want to echo what Commissioner Douglas
4 just said in respect to if you have thoughts on that for us,
5 please let us know.

6 MR. HARRIS: Yeah. Well, the thoughts are prompted
7 by a lot of the Committee's documents, lately, really
8 focusing on the original decision, and not the petition. So,
9 I think there seems to be some influence there that I don't
10 fully grasp. So, that's why I've been struggling with the
11 issue.

12 HEARING OFFICER COCHRAN: Understood.

13 Last call?

14 MR. LAYTON: I apologize. This is Matt Layton. Does
15 the Committee have any other questions, you think you haven't
16 been getting answers, that we can provide something? This is
17 an opportunity to talk to you and, again, I guess I'm
18 troubled by -- the written word doesn't work for me anymore.

19 So, if you have any additional questions, can you
20 outline them for us?

21 HEARING OFFICER COCHRAN: I think Mr. Marshall has
22 adequately summarized where the Committee is. It's THEN
23 going to be those little, fine details that will resolve or
24 not resolve the concerns. But I think he has at least the
25 broad outline of what we're looking at and for.

1 COMMISSIONER DOUGLAS: I don't think we have any
2 additional questions. I thought he did a very good job of
3 explaining why the Committee might have an interest in the
4 model. And I think that was an accurate reflection of in
5 fact why we did ask about the model.

6 And then, we've also asked a couple of times, you
7 know, to the extent that Mojave Water -- I keep saying
8 authority or agency -- you know, to the extent that they have
9 current practices that might make the work of the model
10 duplicative, or something, in some way, or that we might be
11 able to rely on, instead, we'd like to get information on
12 that.

13 But I think sitting where we do, with the information
14 that we have, which is less than the information that staff,
15 and Applicant, and other parties have, it's not immediately
16 obvious that the, you know, Basin-wide adjudication lens
17 really tells us what we need to know about, you know, the
18 timing of water percolation, injection, withdrawals, and so
19 on, and how that affects a specific resource in a specific
20 place.

21 And so if you can answer -- and does the model have a
22 role in helping us understand that? And so those are
23 specifically the questions we have.

24 HEARING OFFICER COCHRAN: Yes.

25 MS. BOND: Since I mentioned two documents, should I

1 provide that information to the reporter?

2 HEARING OFFICER COCHRAN: What I would like to do,
3 actually, is to have those docketed, put them on the
4 electronic file. If you need help doing that, I can help
5 you, Ms. Avalos, from the Public Adviser's Office can help
6 you, either one. But I think we do need to docket those.

7 MS. BOND: And the other documents I mentioned, I
8 don't have copies of.

9 HEARING OFFICER COCHRAN: Right.

10 MS. BOND: But should be in the compliance.

11 HEARING OFFICER COCHRAN: Staff should have them in
12 the compliance proceeding.

13 Mr. Layton?

14 MR. LAYTON: I can't stop myself. Would you like us
15 to docket all of the FEMFLOW, you know, annual analysis and
16 quarter analysis that we've done?

17 HEARING OFFICER COCHRAN: Sixteen years?

18 MR. LAYTON: It's actually in the compliance files, I
19 believe.

20 HEARING OFFICER COCHRAN: Is there some subset of
21 that, because it's like 16 years?

22 MR. CUSTIS: Yeah, I mean a report like this, just
23 kind of like the conclusion or a table that says this is what
24 we've decided?

25 MR. LAYTON: Perhaps we could just work with Mr.

1 Custis, because we'd actually like to talk to him. And
2 again, we're trying to understand what they want, so we would
3 be happy to bring over the information and see --

4 HEARING OFFICER COCHRAN: That would be lovely.

5 MR. LAYTON: And I don't think it would present any
6 problems if the Applicant wasn't there at the time. We're
7 just discussing about water levels and stuff.

8 HEARING OFFICER COCHRAN: Okay.

9 COMMISSIONER DOUGLAS: Mr. Harris, in terms of
10 getting your water expert all the needed information, do you
11 have any concerns or issues you want to address? Is there
12 something -- do you specifically want it all docketed? Do
13 you want to just work with staff and try to make sure, talk
14 about a level of docketing that would be helpful? What's
15 your preference?

16 MR. HARRIS: Well, I'd like to talk to my expert. He
17 happens to be -- my benefit from being involved in those
18 discussions, and I know Matt doesn't want to see me, but he
19 might actually want to be involved in understanding how the
20 models work.

21 COMMISSIONER DOUGLAS: Okay.

22 MR. HARRIS: But there's a level of detail which
23 should all go away but -- so, if we could be linked into
24 that. Anything that anybody's going to rely on should be
25 docketed, I guess is my view.

1 COMMISSIONER DOUGLAS: Yeah, I think the question is
2 maybe some of it is so much in the weeds that no one's -- you
3 know, but if your water expert's involved in that, that's of
4 course great. So, we will count on you all to work that out.

5 MR. HARRIS: I suppose, yeah.

6 HEARING OFFICER COCHRAN: Is there any interest in
7 maybe having a little bit more formalized discovery process,
8 or do you just want to be friendly and exchange on your own?

9 MR. HARRIS: I think we'd like to be looped in. I'm
10 not saying that the Department or the Commission staff
11 shouldn't meet to --

12 HEARING OFFICER COCHRAN: Right.

13 MR. HARRIS: -- but if documents start getting -- I'd
14 like them to think about inviting my expert, I think over
15 time, and anything that you're going to rely upon, I think
16 you docket that.

17 HEARING OFFICER COCHRAN: Okay. We'll leave it to
18 the parties, then, to sort of work that out. But if you have
19 questions -- I'm sorry, Mr. Layton.

20 MR. LAYTON: Better to ask permission. My water
21 expert would be happy to meet with Mr. Harris' water expert
22 and CDFW. Would it be possible for Ms. Bond to attend, as
23 well?

24 HEARING OFFICER COCHRAN: I think that's a question
25 of scheduling but, yeah.

1 MR. LAYTON: And CDFW, too.

2 COMMISSIONER DOUGLAS: It seems to me that that would
3 be helpful. Does that raise any concerns with any party in
4 the room?

5 MR. HARRIS: I'm sorry, I was trying to turn off my
6 ringer.

7 HEARING OFFICER COCHRAN: A meeting of all of the
8 experts, sort of your expert, Mr. Custis, Ms. Bond, Mr.
9 Marshall?

10 MR. HARRIS: Yeah, I think we'd prefer to have our
11 folks available for those meetings, yeah.

12 COMMISSIONER DOUGLAS: I asked -- you were turning
13 off the ringer on your phone.

14 I asked, specifically, does anyone have any concern
15 if Ms. Bond participates in that meeting?

16 MR. HARRIS: We're going to go back and talk about
17 these issues, okay.

18 HEARING OFFICER COCHRAN: Okay. Anything else for
19 the good of the order?

20 Okay, Ms. Bond has one more thing.

21 MS. BOND: I think one key document that everybody
22 will need is the initial, original documentation of the model
23 because it would explain how it's constructed and what it's
24 for. These models -- I mean, these reports that I have
25 provide some of that information, but it's mainly focused on

1 the updated grid. And I assume that High Desert has that
2 document in its files?

3 HEARING OFFICER COCHRAN: No, that's a bad thing.

4 MR. HARRIS: You shouldn't assume that. This is --
5 Mark's new to the project in California, so everybody welcome
6 Mark. We acquired the project and there's been at least two
7 others before us.

8 HEARING OFFICER COCHRAN: Okay. Does staff have that
9 information, maybe, in --

10 MR. LAYTON: We do.

11 HEARING OFFICER COCHRAN: Excellent.

12 MR. LAYTON: If you would like to docket it?

13 HEARING OFFICER COCHRAN: I think it would probably
14 speed the plow if we docketed that item. Is it in the
15 original docket? Not everything in the original docket, from
16 the original proceedings, has transferred over to the new
17 electronics. Not all of the documents are available
18 electronically.

19 MR. LAYTON: Correct. There's a lot of paper still
20 floating around.

21 HEARING OFFICER COCHRAN: So, if we could upload that
22 to the current docket, that would be very helpful.

23 Anything else? Going once, going twice.

24 Public comment? Is there any public comment?

25 MR. LEE: Shall we open the line to WebEx?

1 HEARING OFFICER COCHRAN: Yes, please.

2 MR. LEE: Okay, we are on.

3 HEARING OFFICER COCHRAN: Ms. Avalos, I assume you
4 don't have any blue cards?

5 Is there anyone online who would like to offer a
6 comment?

7 Closed session.

8 COMMISSIONER DOUGLAS: All right, so -- oh, go ahead.

9 HEARING OFFICER COCHRAN: Okay. The Committee is now
10 going to adjourn to a Closed Session in accordance with
11 California Government Code Section 11126, subdivision(c)(3),
12 which allows a State body, including a delegated committee,
13 to hold a closed session to deliberate on a decision to be
14 reached in a proceeding the State body is required by law to
15 conduct.

16 The court reporter is dismissed. I will let you know
17 when we come back and formally adjourn the meeting.

18 None of the rest of you should stick around. I doubt
19 there's going to be any reportable action.

20 Mr. Harris?

21 MR. HARRIS: Just I guess I just want to emphasize
22 the need for sort of quick resolution on this, how we're
23 going to account for banking issue? We're about to make a
24 very large capital expenditure and we think we're getting
25 five or six thousand acre feet of water banked. If that's

1 really less than that, that affects the entire decision. So,
2 we really need to make a decision on this accounting issue
3 sooner than later.

4 HEARING OFFICER COCHRAN: Well, the interim relief
5 lasts for the next two water year cycles, so that's what we
6 can tell you.

7 MR. HARRIS: Okay. So there's no ambiguity, that
8 interim relief does allow the accounting to be done by MWA?

9 HEARING OFFICER COCHRAN: Yes.

10 MR. HARRIS: Okay. So, we will, at the end of the
11 process for this interim period we're certain, we have 100
12 percent certainty -- well, that's never the right way. We're
13 certain that we're going to be able to use the BMA -- MWA
14 accounting. No, MBA accounting, please. The Mojave Water
15 Agency accounting.

16 COMMISSIONER DOUGLAS: That is correct. And we made
17 that very specific and very deliberate in that.

18 MR. HARRIS: Mark will be able to sleep on the plane
19 now, so thank you.

20 HEARING OFFICER COCHRAN: Thank you. And with that,
21 we've adjourned to Closed Session.

22 (Thereupon, the Hearing adjourned to
23 Closed Session at 11:23 a.m.)

24 At approximately 3:00 p.m., HEARING OFFICER COCHRAN returned
25 to the meeting room and announced: There was no reportable

1 action from closed session. The meeting was thereupon
2 adjourned at 3:00 p.m.

3

4

5

--oOo--

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

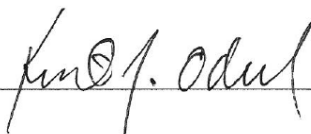
25

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 9th day of September, 2016.



Kent Odell
CER**00548

TRANSCRIBER'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 transcribed by me, a certified transcriber.

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 09 of September, 2016.



Barbara Little
Certified Transcriber
AAERT No. CET**D-520