

DOCKETED

Docket Number:	97-AFC-01C
Project Title:	High Desert Power Plant
TN #:	218802
Document Title:	Transcript of 06052017 Committee Status Conference
Description:	N/A
Filer:	Cody Goldthrite
Organization:	California Energy Commission
Submitter Role:	Committee
Submission Date:	6/15/2017 10:27:10 AM
Docketed Date:	6/15/2017

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA

PETITION TO AMEND:)
) Docket No. 97-AFC-01C
HIGH DESERT POWER PLANT)
)
_____)

COMMITTEE STATUS CONFERENCE
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET
ARE ROSENFELD HEARING ROOM
SACRAMENTO, CALIFORNIA

MONDAY, JUNE 5, 2017

2:30 P.M.

Reported by:
Peter Petty

APPEARANCES

COMMISSIONERS

Karen Douglas, Presiding Member

Janea Scott, Associate Member

ADVISERS

Jennifer Nelson, Adviser to Commissioner Douglas

Rhetta DeMesa, Adviser to Commissioner Scott

Matthew Coldwell, Adviser to Commissioner Scott

Kristy Chew, Special Technical Adviser

PUBLIC ADVISER

RoseMary Avalos,

HEARING OFFICER

Susan Cochran

Raj Dixit

STAFF

Michelle Chester, Senior Staff Counsel

Lon Payne, Project Manager

Matt Layton

HIGH DESERT POWER PLANT

Jeffrey Harris, Ellison, Schneider, Harris and Donlan

Peter Kiel, Ellison, Schneider, Harris and Donlan

Mark Kubow, President, Middle River Power, LLC

Timothy Thompson (via WebEx), GSI Water Solutions

APPEARANCES

INTERVENERS

Nancee Murray, California Department of Fish and Wildlife

Kit Custis (via WebEx), California Department of Fish and
Wildlife

Alisa Ellsworth (via WebEx), California Department of Fish
and
Wildlife

1
2 P R O C E E D I N G S

3 2:31 P.M.

4 SACRAMENTO, CALIFORNIA, MONDAY, JUNE 5, 2017

5 COMMISSIONER DOUGLAS: Good afternoon. It looks
6 like we have critical mass, so we are going to get started
7 with this status -- with this Committee conference and
8 status conference for this Committee of the California
9 Energy Commission regarding the proposed amendment to the
10 High Desert Power Plant.

11 The Energy Commission has assigned a Committee of
12 two Commissioners to conduct these proceedings. I'm Karen
13 Douglas, the Presiding Member. Janea Scott, the Associate
14 Member of the Committee, is to my left. And I'll introduce
15 some of the people here today. To my immediate left is
16 Susan Cochran, our Hearing Officer. To the left of
17 Commissioner Scott are her Advisers, Rhetta DeMesa and Matt
18 Coldwell. To my right is my Adviser, Jennifer Nelson. And
19 also, Kristy Chew, the Technical Adviser to the Commission
20 on Siting Matters.

21 So I'd like to ask the parties to please introduce
22 themselves and their representatives, starting with the
23 petitioner.

24 MR. HARRIS: Project owner, actually. Hi. Jeff
25 Harris with Ellison, Schneider, Harris and Donlan on behalf

1 of High Desert. And to my right is Mark Kubow, Senior Vice
2 President, or some such title, for Middle River Power. And
3 to his right is my colleague, Peter Kiel, so --

4 COMMISSIONER DOUGLAS: Thank you.

5 Staff?

6 MR. PAYNE: Lon Payne. I'm Project Manager for
7 the High Desert Power Project. And to my left is Michelle
8 Chester, representing the Chief Counsel's Office.

9 COMMISSIONER DOUGLAS: All right. Thank you very
10 much.

11 And Intervener, California Department of Fish and
12 Wildlife.

13 MS. MURRAY: I'm Nancee Murray, Office of General
14 Counsel with the California Department of Fish and Wildlife.

15 And I believe Kit Custis and Alisa Ellsworth are on the
16 phone.

17 COMMISSIONER DOUGLAS: I see.

18 MS. ELLSWORTH: Yes, I'm on.

19 COMMISSIONER DOUGLAS: Good.

20 HEARING OFFICER COCHRAN: Mr. Dixit, could you
21 make both Mr. Custis and Ms. Ellsworth, was it?

22 MR. DIXIT: Alisa?

23 HEARING OFFICER COCHRAN: Yes. If you could make
24 them panelists, please.

25 MR. DIXIT: And again, please, Mr. Custis, and the

1 other one, I can't -- I have a call in but I don't have a
2 name.

3 (Background WebEx noise.)

4 HEARING OFFICER COCHRAN: Ms. Ellsworth?

5 MS. ELLSWORTH: Yes?

6 (Colloquy between Hearing Officer Cochran and
7 Commissioner Douglas)

8 HEARING OFFICER COCHRAN: Could you speak a little
9 bit more, Ms. Ellsworth, so we can figure out if you're
10 caller two, three or four?

11 MS. ELLSWORTH: Speaker louder?

12 HEARING OFFICER COCHRAN: Keep talking please.

13 MS. ELLSWORTH: Okay. All right. I don't know
14 what to say, so --

15 MS. MURRAY: Why don't you say your position
16 title?

17 MS. ELLSWORTH: Alisa Ellsworth (indiscernible).

18 HEARING OFFICER COCHRAN: She's number four, so if
19 you -- yeah, let's make her a panelist, as well. Great.

20 COMMISSIONER DOUGLAS: Well, at this point
21 then -- oh, are there any representatives of federal, state
22 or local government agencies in the room or on the phone,
23 government agencies or Native American tribes?

24 MR. DIXIT: (Indiscernible.)

25 COMMISSIONER DOUGLAS: Right.

1 HEARING OFFICER COCHRAN: Yeah. Could you un-mute
2 everyone please?

3 MR. DIXIT: Pardon me?

4 COMMISSIONER DOUGLAS: Un-mute please.

5 HEARING OFFICER COCHRAN: Un-mute.

6 MR. DIXIT: Everyone is un-muted.

7 COMMISSIONER DOUGLAS: All right.

8 HEARING OFFICER COCHRAN: Oh, because I see red
9 Xs, so --

10 COMMISSIONER DOUGLAS: Maybe.

11 HEARING OFFICER COCHRAN: -- did they do that to
12 themselves?

13 MR. DIXIT: (Indiscernible.)

14 HEARING OFFICER COCHRAN: X.

15 MR. THOMPSON: Oh, hi. Oh, hi. Can anybody hear
16 me on the other end there?

17 HEARING OFFICER COCHRAN: Yes.

18 COMMISSIONER DOUGLAS: We can. Go ahead.

19 MR. THOMPSON: I'm sorry. Yeah. No, this is
20 Timothy Thompson. I'm with GSI Water Solutions, and I'm a
21 consultant to the petitioner, to High Desert Power.

22 COMMISSIONER DOUGLAS: Thank you.

23 MR. THOMPSON: Yes.

24 COMMISSIONER DOUGLAS: All right. Are there any
25 government agencies, representatives of government agencies

1 on the phone or in the room? All right.

2 At this point, I will turn the conduct of the rest
3 of this meeting to the Hearing Officer.

4 HEARING OFFICER COCHRAN: Thank you, and good
5 afternoon.

6 Notice of today's status committee conference was
7 provided on May 17. The purpose of today's conference is to
8 discuss the outcome of the staff workshop that was held on
9 May 2nd, 2017. In preparation for today's status
10 conference, we required the parties to file status reports
11 that would -- were to include the following information: A
12 brief summary of the agreements, if any, that the parties
13 may have reached at the staff workshop; a summary of the
14 subject areas that remain disputed and require adjudication
15 and the precise nature of the dispute for each issue.
16 Finally, we asked for proposals for briefing deadlines, the
17 impact of scheduling conflicts or other scheduling matters,
18 including the amount of time required for any evidentiary
19 hearing.

20 We received status reports from Staff and the
21 petitioner, which we appreciate very much, and we have had a
22 chance to review them. In general, the parties did not
23 reach any final agreements on any of these issues: the
24 sources of water to be used, the loading sequence of
25 identified water sources, and the use of percolation to bank

1 water for later use, including the sub issue of how to
2 account for any banked water.

3 Applicant/Petitioner did include in its status
4 report a proposed stipulation that has been circulated to
5 the parties. Before we get into some of the substantive
6 issues that I just outlined, I would like to know -- I would
7 like to discuss sort of the timing as we're moving forward a
8 little bit.

9 There are interim orders that provided interim
10 relief to the petitioner. Part of the interim order allows
11 the use of groundwater from the Mojave River Basin
12 Adjudicated Water Rights. And the right to use that water
13 ends on September 30, 2017.

14 Has any party identified the need for the use of
15 groundwater after that date? The reason I ask is so that we
16 can make sure that we're going to provide or try to reach a
17 final decision in this matter before that interim relief
18 expires.

19 So I'm looking at Mr. Harris first. Does the
20 petitioner see a need for groundwater rights after September
21 30 or this year, which is the end of the water year?

22 MR. HARRIS: We are not requesting an extension of
23 that interim relief. We talked about whether we should do
24 that, but I think we're so close on the remaining issues
25 that we'll have some, hopefully, some clarity, in weeks, as

1 opposed to months, here. So I guess my only reservation
2 would be if this drags on longer than any of us, god forbid,
3 hope that it will. We might come back to you with a new set
4 of circumstances, but a long way of saying we're good for
5 now, so thank you.

6 HEARING OFFICER COCHRAN: Okay. Thank you.

7 So that leads me to my next question. As I
8 indicated, Petitioner circulated a stipulation. What is the
9 status of that stipulation? Has it been executed by the
10 parties? Is it still in draft form? And in specific, I
11 think we're curious as to what the position of the
12 Intervener, California Department of Fish and Wildlife, is
13 regarding the stipulation.

14 So who would like to start?

15 MR. HARRIS: I'll be glad to start since we filed
16 a copy of what we think is very close to a final
17 stipulation. And I guess I need to divide the world out
18 into percolation versus the remaining Soil and Water 1
19 issues.

20 And so focusing strictly on percolation issues, I
21 think we're basically done. There are some minor exchanges
22 of language that were going back and forth last week as of -
23 - well, even this week, I think some additional language
24 changes. But we're down to kind of minor issues, I think,
25 on percolation, which is fantastic. So there will be some

1 cleanup language that has to happen in the conditions. And
2 as I said, I think the parties can, probably in the next
3 eight to ten days, less than that actually, reach final
4 agreement on the percolation language.

5 Soil and Water 1, we are still having discussions
6 about Soil and Water 1. And even there the issues are
7 reasonably narrow. I think we're down to just a few. And I
8 think, you know, if I could sort of oversimplify the world
9 and say that, you know, we're down to the questions of the
10 maximum annual amount of recycled water that could be used.

11 I think we had proposed 3,000, and I think the Department
12 came back with 2,500 on an annual basis. And then there's
13 the maximum annual average which is a three-year rolling
14 average, think of that way, and I think we're fairly close
15 on that issue, as well.

16 One other issue that remains kind of outstanding
17 on Soil and Water 1 in my mind is the percentage of blend.
18 We had proposed 20 percent as something that we thought,
19 based on historic data, was doable. That has been
20 challenged. The counter was back at 30 percent. And we're
21 still looking at whether that's even feasible. We have not
22 operated at that level, that I'm aware of, for protracted
23 periods of time. And there are other issues related to that
24 percentage of blend. You know, 20 percent of what, right,
25 at the most simple level. I think we can work through those

1 issues.

2 But I guess at the highest level summary, I think
3 on percolation, we're basically done. On Soil and Water 1,
4 there's still some work to be done there.

5 We were prepared to actually sign the stipulation
6 on percolation issues, and we still are prepared to do that.

7 We understand there may be some other views that you'll
8 want to hear about that. I'd like to take those issues off
9 the table, frankly, by finalizing that stipulation and
10 getting it in front of you, and then we can just focus back
11 on Soil and Water 1.

12 So that's sort of where we are, I think, at the
13 highest level. And I'll be glad to answer any questions.

14 Anything else you want to chip in, other than the
15 fact that I demoted Mark from President to Vice President?
16 I should probably correct the record on that. Anything else
17 to add at this point?

18 HEARING OFFICER COCHRAN: One question, I did
19 have. When you're talking about the percentage of blend, 20
20 percent of what is being blended with 80 percent of what
21 else? I'm sorry, I've lost track of where we are.

22 MR. HARRIS: Twenty percent of annual use of
23 recycled water. So 20 percent recycled water, 80 percent
24 other water supplies, so --

25 HEARING OFFICER COCHRAN: Okay. Staff or Fish and

1 Wildlife, who would like to go next?

2 MS. CHESTER: Michelle Chester on behalf of Staff.

3 I agree, we're very close to an agreement on
4 percolation. I think there are some recent questions we
5 still want to explore before we consider it final. I would
6 note that I am not the appropriate party to sign off on the
7 agreement, as well, so that will have to go through an
8 internal process within the Commission.

9 Otherwise, I agree that percolation is close to
10 being agreed upon. And it would be, I think, helpful to all
11 parties to sort of set that aside and focus now on the
12 recycled water in Soil and Water 1. Whether it's
13 disjointed, you know, one coming to an agreement and then
14 another, I don't have a preference. But we have made some
15 progress.

16 HEARING OFFICER COCHRAN: Okay. Ms. Murray?

17 MS. MURRAY: And I would agree that we're close to
18 agreement on the percolation. We've said for a while that
19 we think more tools in the toolbox. We want them to
20 percolate as much as they can. So we're close. We have one
21 small issue left to work out. And then we need to hopefully
22 turn and focus on Soil and Water 1 and the recycled water.

23 HEARING OFFICER COCHRAN: Okay. Thank you.

24 I'm sorry, I have to go back through, because I
25 had a whole different speech ready, not knowing where

1 everyone was on the stip.

2 So at this point what I'm hearing, I think, from
3 the parties is that we're focused on Soil and Water 1, which
4 is the sources of water for the project and the total
5 annualized demand. And how long -- would the parties
6 benefit from additional time to discuss that amongst
7 yourselves, or is that something that you feel could be
8 ready for evidentiary hearings in fairly short order?

9 MR. HARRIS: I guess I have to start --

10 HEARING OFFICER COCHRAN: So shy and retiring --

11 MR. HARRIS: -- since I --

12 HEARING OFFICER COCHRAN: -- Mr. Harris.

13 MR. HARRIS: -- since I jumped in first on the
14 other ones, I'll give them some time to think.

15 I don't think we need a lot of time to talk about
16 it. I think the issues are really narrow and pretty clear.

17 We're down to, as I said, annual number, what's the most
18 you can use in any single year of recycled water, which is a
19 concern to the Department. We want some flexibility on
20 that, so we want a three-year rolling average. And the
21 tension there is, we originally proposed about, I think,
22 2,000 a year and a three-year rolling average. And people
23 said, well, then you could use 6,000 in one year, which I
24 don't think we could use if we ran it as a water evaporator.

25 So we're kind of coming up on a compromise on those issues,

1 I think.

2 The Department, for some reason, would like to
3 have the number of recycled water limited, or all in,
4 basically. There are two supplies of recycled water.
5 There's the city's water supply, and then the VVWRA, which
6 is the subject of the MOU. Our last draft had a limit just
7 on the VVWRA water. The Department wants to see that as an
8 all-in number. I don't fully understand the issues there,
9 but I think we're willing to maybe give on that point in the
10 spirit of compromise. I'm not giving now but I'm letting --
11 I'm signaling pretty clearly, semaphore out here, that we're
12 movable on that issue.

13 And then the issue of the percentage of blend, I
14 think that one will probably take the most time in terms of
15 drafting. Because you're really then under 20 percent of
16 what; right? And one of the things that becomes obvious
17 from our perspective is, you know, what if we asked for
18 recycled water to be delivered and it's not available, if
19 the plant is out for some reason? They have some planned,
20 short planned outages. We definitely want to take out of
21 the denominator any hours when we asked for water and it
22 can't be delivered to us, recycled water. We haven't really
23 talked to Staff about that issue. I don't anticipate it
24 will be a huge issue, but there will be some things to work
25 through on that.

1 The bigger issue is 20 percent of what? And I
2 want to make sure we're very clear so that, you know, ten
3 years from now when somebody picks up the language, they can
4 very much see how you calculate 20 percent of what. So --
5 and again, our number is 20 percent. Theirs has been
6 higher. And maybe there's some room in the middle, but
7 we're still doing our diligence on that issue.

8 And again, at the end of the day what the project
9 needs to be able to do is to tell any potential, you know,
10 counterparty in a Power Purchase Agreement that we're
11 available when they need us. So we ultimately will probably
12 ask for some flexibility that we don't expect to have to
13 use, but to satisfy the counterparty that we could be
14 available then, we may need that flexibility. I think I've
15 said in the past that, you know, the lawyers for the banks
16 are kind of like spiders. They immediately crawl to the
17 dark place, so what's the worst possible. So we're looking
18 for a permitting envelope that will allow us to be able to
19 let folks know that we can deliver this project when they
20 need it.

21 So I don't -- I would like to see -- and we
22 proposed in our status report that we'll have some
23 conclusion on this among the parties by the end of the
24 month, so either we come to you saying here's the deal and
25 you ought to accept it and make it your decision and publish

1 it without need for hearings -- and I'm going to come back
2 to the question of whether we're going to do hearings at all
3 at some point. But I think the end of the month is probably
4 the right time frame for us to have either reached
5 agreement, or at least agreed on what we disagree about.

6 HEARING OFFICER COCHRAN: Okay. Anyone else have
7 anything they've like to offer, either Staff or the
8 Department?

9 MS. MURRAY: This is the Department of Fish and
10 Wildlife.

11 We saw that, the end of the month proposal in the
12 High Desert's pleadings, and think that's a reasonable time
13 frame.

14 HEARING OFFICER COCHRAN: Okay.

15 MS. CHESTER: Staff also agrees with that time
16 frame.

17 HEARING OFFICER COCHRAN: I'm sorry. Go ahead.

18 (Colloquy)

19 HEARING OFFICER COCHRAN: The Committee has
20 already looked at its calendars and had tentatively set
21 aside June 19th as a date for evidentiary hearings or
22 resolution and presentation of stipulation. Is that close
23 enough to the end of the month that could work for folks to
24 resolve these three remaining issues as outlined by Mr.
25 Harris? So basically two weeks from today.

1 MR. HARRIS: Yeah. I think that gives us, you
2 know, probably 19 days from our self-imposed deadline to get
3 ready for hearings. And I think we'll be down to a very
4 narrow set of issues. The factual record is already in
5 front of you. We tried to very much document that in our
6 stipulation. So I'm not seeing a need for a whole lot of
7 testimony, even if we aren't reaching agreement on the last
8 remaining issue. So we wouldn't -- yeah, we'd like the
9 19th. We would -- you know, Mark loves it out here, but
10 he'd be happy not to come back, you know, every month for
11 the rest of the year. So we'd rather do this sooner than
12 later, so we think that's a reasonable time frame.
13 Especially with, you know, this much advance warning that we
14 may be going on the 19th, we'll prepare as such, too, so --
15 and it may motivate all parties to reach an agreement.

16 So the long answer is, yes, we'll be here on the
17 19th, so --

18 HEARING OFFICER COCHRAN: Okay. Ms. Chester?

19 MS. CHESTER: I think the 19th is probably a
20 little bit of a tight schedule for Staff. I think there are
21 some issues worth talking about. And it does take internal
22 review time to make sure we're all comfortable before
23 sending it back to the parties. So --

24 HEARING OFFICER COCHRAN: Okay.

25 MS. CHESTER: -- while I agree there may be just a

1 few remaining issues, I think it takes a little bit more
2 time.

3 HEARING OFFICER COCHRAN: Thank you.

4 So getting back to the stipulation for just a
5 moment, if I could. In general, when I looked through
6 specifically the language for Condition of Certification Soil
7 and Water 4, you've added new methods of groundwater
8 banking. Is there any value in bringing the rest of the
9 language current to reflect what has happened in the past?
10 For example, commercial operation is still discussed as
11 though it's a future event.

12 The reason I say that, is as we've gone through
13 and tried to figure out what the conditions are, if we could
14 come up with conditions that reflect the current reality as
15 opposed to once commercial operations start then this will
16 happen, five years after commercial operations have started
17 we'll have this much water in the ground. So it might
18 behoove us to make these reflect the current reality,
19 especially insofar as we are changing other things in the
20 conditions.

21 Also, I think that there might be a preference
22 that the conditions specifically refer to the draft
23 agreement for percolation banking that is included as part
24 of one of Petitioner's filings at TN 212984. And regarding
25 that agreement, I noticed that banking is limited to 13,000

1 acre feet a year. And one of the questions, I think, is
2 that we would want to make sure that everyone is secure that
3 that's a sufficient amount of water to have banked. Is it
4 too much? Not enough? Just right?

5 Also, what is the status of that agreement?
6 Because that has been, I think, in our docket for almost a
7 year now. Has that contract been signed, or is still sort
8 of a draft agreement?

9 Third, the water banked under that agreement has
10 what they call third priority. And how does that work for
11 High Desert Power Plant? What assurances are there that the
12 water won't be transferred to higher priorities within the
13 confines of both that agreement, as well as the Mojave Water
14 Agency's rules for these storage agreements?

15 And finally, the agreement discusses the fact that
16 Mojave Water Agency still has control over both injection
17 and percolation. So how is that going to work? Because if
18 the injection conditions remain the same, where the Energy
19 Commission is determining the amount available, and then we
20 have percolation conditions that you're proposing that
21 Mojave Water Agency is going to control the amount available
22 for percolation, how are we going to sync those up, and
23 what's the mechanism for that? And it seems to me that the
24 Conditions of Cert should identify and discuss that, as
25 well. In other words, these need to be sort of self-

1 contained so that, like Mr. Harris just said, if we come
2 back in ten years, everyone will be able to pick it up and
3 understand what our thought process was on how this is
4 supposed to work.

5 Questions? Comments? Protests?

6 MR. HARRIS: I will try to answer what I think is
7 four questions posed as we move forward here.

8 The 13,000 acre feet is in the current document.
9 That is a limit on the amount of injected water. Our intent
10 and our preference is that that 13,000 not be a limit on the
11 amount of water that can be percolated. I don't know how
12 much more water we might percolate, but under the right
13 circumstances you want to have the flexibility to be able to
14 do that. And so our view is the 13,000 is really a number
15 for the injected that would be tracked, as it's currently
16 tracked by the Energy Commission staff still.

17 We've talked about -- and again, cards on the
18 table, we don't know how much injection we'll do going
19 forward given if we successfully get percolation on a
20 permanent basis, but we want to keep that option available.

21 So I'd see those two as being separate accounting
22 exercises performed by the Energy Commission staff for
23 injection and by MWA for percolation.

24 So in terms of the -- and I kind of answered a
25 couple of questions there, so let me go back.

1 So in terms of the status of the agreement, the
2 agreement we have in place is co-terminus with your interim
3 relief, meaning that the current storage agreement
4 terminates when our right to use the groundwater terminates.

5 We approached MWA about making that a more durable
6 agreement and they basically said, we want to stick, you
7 know, with the Energy Commission on duration. So we will,
8 though, be able to go back and amend that agreement once we
9 have approvals from you all to extend the term beyond this
10 period. And also, at that point if we wanted to clarify
11 that the 13,000 acre feet is not a limit on percolated
12 water, we could do it at that time, as well.

13 So there is an agreement in your docket that is
14 signed, it is effective, and it's about to run with the end
15 of the period. And I think you may have had a question or
16 am I reading --

17 HEARING OFFICER COCHRAN: Well, actually, what I
18 was going to say is that the agreement is dated July 27th,
19 2016, and it is unsigned. I don't know that we've seen a
20 signed storage agreement. And the agreement itself on page
21 four references the fact that storer, being the City of
22 Victorville, previously the Victor Valley Water Agency, is
23 hereby authorized to store not more than 13,000 acre feet of
24 supplemental water in the Altos subarea of the Mojave Basin
25 any water year during the term of this agreement. So I'm

1 not sure that that's what I just heard you say.

2 And how that also works, I don't know what other
3 storage agreements the City of Victorville may have that may
4 be implicated by this, as well. And although this does
5 specifically mention High Desert as an intended third-party
6 beneficiary, I'm still concerned about how we, the Energy
7 Commission, make sure that the water is actually there for
8 the plant to operate.

9 I think Mr. Kiel wanted to say something

10 MR. KIEL: Thank you, Ms. Cochran. Peter Kiel for
11 the owner and petitioner.

12 You are correct. The current percolation storage
13 agreement has a 13,000 acre foot limit. The Mojave Water
14 Agency and Watermaster saw some ambiguity in the Energy
15 Commission conditions regarding 13,000 limit for injection
16 and whether that also applied to percolation. The limit was
17 carried over out of thinking it was just easier to stick
18 with the current injection framework. The parties have
19 discussed removing the 13,000 acre foot limit in the
20 conditions and leave it to Watermaster's discretion on what
21 size bank would be appropriate within the judgment and the
22 basin.

23 HEARING OFFICER COCHRAN: And is that reflected in
24 the stipulation?

25 MR. KIEL: It will be, yes.

1 HEARING OFFICER COCHRAN: Okay. So the draft --
2 because I didn't see that in the current draft that was
3 attached to the status report. So I'm just trying to make
4 sure that all the puzzle pieces fit together.

5 MR. KIEL: That was a great catch. That is one of
6 the additional issues that we have been working on.

7 HEARING OFFICER COCHRAN: Okay.

8 MR. KIEL: There's other cleanup that we have
9 discussed. I think the parties were concerned about doing
10 wholesale changes to the conditions for two reasons, one is
11 it's a longer negotiation, and also a concern that the
12 Committee wouldn't have the background of specifically what
13 changes were absolutely needed versus those that were merely
14 beneficial for clarity. I think the parties agree that
15 clarity will be very important and we'll pursue those.

16 There's another condition, Soil and Water 6D that
17 the owner is concerned with that we are discussing changes
18 to and whether it should be removed for having been
19 satisfied. I think there's a disagreement amongst the
20 parties on that. Just giving an example of cleanup that
21 we've been talking about.

22 HEARING OFFICER COCHRAN: I think from the
23 Committee's point of view, that we are looking at conformity
24 and clarity, as well as reflection. And I thank Mr. Harris
25 for likening lawyers who go to the dark places as spiders

1 instead of cockroaches, because I'm definitely a spider.

2 So did any of the other parties want to speak to
3 sort of the issues that I just raised?

4 Or, I'm sorry, Mr. Harris, I interrupted you. Are
5 you through with sort of the four things I outlined? I mean
6 --

7 MR. HARRIS: Well, I guess the one thing that we
8 didn't address was the higher priority issue. And I'd --

9 HEARING OFFICER COCHRAN: Yeah.

10 MR. HARRIS: -- probably let the smarter of us
11 address that one, as well.

12 MR. KIEL: The reference to priority refers to the
13 banker's priority to access recharged capacity in the MWA
14 facilities.

15 HEARING OFFICER COCHRAN: Right.

16 MR. KIEL: And we've been assured that it's not
17 likely an issue, just given the amount of supply to be
18 percolated by Watermaster and by Mojave Water Agency in the
19 individual party's banking. And even if it causes some
20 delay in the actual recharge activities, it shouldn't delay
21 the plant's ability to withdraw the percolated waters.

22 HEARING OFFICER COCHRAN: I see Mr. Layton at the
23 podium.

24 MR. LAYTON: Good afternoon. This is Matt Layton
25 with the Energy Commission.

1 Just to clarify, there's been a lot of discussion,
2 so you're getting down into the weeds. Staff does think the
3 30 percent or the 10 percent does apply to actual water use,
4 not potential or permitted. I think that we want to be very
5 clear on that.

6 The 13,000 we thought applied only to the
7 injected. And again, we were trying to make as few changes
8 as possible, hoping for as much progress on stipulations --
9 on the stipulation as possible. So we weren't doing a lot
10 of cleanup.

11 We thought it was clear that the 13,000 pointed to
12 the injected water only. And therefore, since there was no
13 limit discussed on the other water, there was no limit on
14 perked water. I think originally there was some concern
15 that if you perked in one location which -- excuse me, if
16 you injected in one location, you would put in too much
17 water, leading to additional or enhanced dissipation,
18 therefore there was an upper limit.

19 What we're trying to do with the perk, I think all
20 the parties are, is MWA now has the ability to put the water
21 where they need it. And therefore the dissipation will
22 either be uniform or, again, addressed by the MWA. So we
23 don't see a need to put an upper limit on the perked water,
24 even though there is one in the agreement, it sounds like.

25 And the 6D, I think, that Mr. Kiel pointed to, we

1 have some concern because we don't think we, Staff, can
2 suggest when the end of life of a power plant is. I think
3 we would defer that back to the Committee. I understand
4 that power plants do operate for longer than 30 years, which
5 is the original assumption in the original proceeding.

6 However, the Committee decided to put that limit in the
7 conditions originally, so Staff is reluctant to just agree.

8 So I think we would have a hard time agreeing on that
9 particular issue in the stipulation. That would be one of
10 the things we might bring back to the Committee, when would
11 this project have an end of life?

12 I think it's important for the owner to know. I
13 don't think Staff has the ability to offer up a suggestion
14 for the owner on that one. I think we would defer to the
15 Committee.

16 HEARING OFFICER COCHRAN: I'm sorry. Go ahead.

17 MR. LAYTON: I think that's the four questions I
18 think you asked. But then again, if you have more questions
19 you can --

20 HEARING OFFICER COCHRAN: Well, I'm no water
21 engineer, so I just read the words.

22 MR. HARRIS: This is Jeff Harris. I wasn't sure
23 it was Matt at first because I was agreeing with everything
24 he said, so we're pretty much on the same page, I think, on
25 the first couple of issues. We're definitely on the same

1 page on the first set of issues.

2 On the last issue about the 30-year language that
3 is in there, we see that as being in the category of things
4 that Ms. Cochran raised of things that have already been
5 satisfied. And just so people are clear on our position on
6 that language, the 2009 amendment which allowed for the use
7 of recycled water satisfied the provision that said you have
8 to have a change in your water supply during the 30-year
9 period. So if that needs to be decided by the Committee,
10 that's fine.

11 But that will be our position, is that it is, one
12 my favorite words, it's vestigial. It's leftover from
13 things that are already satisfied, just like the conditions
14 related to construction. And I know everybody may not share
15 that same view, but that's our position.

16 So -- and thank you, Matt. I appreciate the
17 clarification, so --

18 HEARING OFFICER COCHRAN: Ms. Murray, did you want
19 to --

20 MS. MURRAY: Yeah. I just wanted to say we agree
21 that the current docket does not have an executed copy of
22 the water storage agreement and would like to see that
23 docketed, just to kind of tighten up that loose end, and
24 there be, in the future -- I mean, will that -- the
25 percolation would be only allowed through September 30th,

1 2018, we'd want any amendment to that docketed also, and
2 that be in the Conditions of Certification, that amendments
3 to that also be docketed.

4 And like any -- the Department issues permits and
5 licenses and has found through experience that there needs
6 to be an end of any license or a permit or condition that
7 you don't let things go on forever, that there needs to be
8 an end date. And that if there -- if the Committee wanted
9 to have a process to evaluate that prior to the end, as is
10 in 6D now, that's fine. If High Desert wants to propose a
11 different process or just leave it at -- we can still talk
12 about that, but it is certainly the Department's position
13 that there needs to be an end date.

14 MR. HARRIS: And I guess I would respond by saying
15 that it may not be the Department's preference, but it's
16 absolutely the way the Energy Commission does business. It
17 is atypical for you to have an end date in your licenses, so
18 I guess I want to throw that out there. And that's probably
19 an issue we can brief if we can't reach agreement on it. At
20 the end of the day, there's no factual disputes there.

21 In terms of the document not being in the docket
22 in the executed form, that's just simply a papering over. We
23 can handle that. We'll do that when we get back. So --

24 MS. MURRAY: Well --

25 MR. HARRIS: -- I guess, I'm sorry, one more thing

1 on that issue. Sometimes the conditions say provide to the
2 CPM. Sometimes they say docket. And so it may just be as
3 simple as that, that it was provided to the CPM but not
4 docketed. And you're all -- the Commission's -- y'all --
5 the Commission's docketing procedures have changed, and you
6 pretty much docket everything now. So -- but we'll get a
7 fresh copy on the docket, so --

8 HEARING OFFICER COCHRAN: Okay. And I share Ms.
9 Murray's concern that the term of this agreement was only
10 through September 30 or 2018. And my question was, well, if
11 it's not renewed, then what? I mean, again, going back to
12 the dark spidery place to make sure that we continue to have
13 Conditions of Cert that would allow the plant to continue to
14 operate, even in the absence of the storage agreement with
15 MWA.

16 MR. HARRIS: And, Peter, correct me on this, too,
17 I think the storage agreement, the term deals with how long
18 we can use that water. But I think the bank continues on
19 for a period past -- the ability to use the banked water
20 continues past the September date. And I'll let Peter
21 clarify that, so --

22 HEARING OFFICER COCHRAN: So there's a
23 survivability clause, essentially, in here that says that
24 even if the agreement is terminated the water is still there
25 for beneficial use?

1 MR. KIEL: That's correct. The reason that we've
2 made so much progress with the parties on a stipulation is
3 that there is agreement to percolate water. That is the
4 tool that will allow this plant to be drought safe for the
5 future. And without extending that, you know, 20, 30
6 percent, whatever the number, it's really, you know, not
7 enough. So percolation is absolutely the most important
8 thing that we're presenting to you and this plant needs.

9 HEARING OFFICER COCHRAN: So then what I was
10 calling the survivability provision is actually the duration
11 of agreement, which is paragraph three, that talks about 5
12 years, and then a total term of 30; is that correct?

13 MR. KIEL: I believe. I apologize. I don't have
14 it --

15 HEARING OFFICER COCHRAN: That's okay.

16 MR. KIEL: -- in front of me. My understanding is
17 that it is an agreement that's intended to be regularly
18 reviewed and renewed by the Watermaster Board. The current
19 injection agreement has been renewed in a similar fashion.
20 I believe the five-year term is set by the judgment itself,
21 again, the same rationale that they should be regularly
22 reviewed and updated as the judgment or factual information
23 is acquired.

24 So, yes, there is some risk that Watermaster, in
25 its judgment, may decline to renew. But it's our

1 understanding from a policy matter, from a natural resources
2 management standpoint, banking and bringing in water from
3 outside the basin for storage provides common benefits, as
4 well as those specific to High Desert, or any other party
5 that may be banking water.

6 HEARING OFFICER COCHRAN: Okay. Turning back to
7 June 19, I think that it's fairly obvious the parties aren't
8 ready to have evidentiary hearings that day. But as I said,
9 the Committee has sort of reserved some time. Would it be
10 helpful to maybe have a prehearing conference on that day,
11 just to figure out where we are, what issues remain, to be
12 ready to then figure out when an evidentiary hearing might
13 be coming?

14 MR. HARRIS: Yeah. I think we ought to hold the
15 date under all circumstances. I mentioned earlier, I want
16 to talk about the type of hearings you have to have. I just
17 want to reiterate, you have complete discretion here. I
18 don't think you have to hold any hearings. You've certainly
19 approved many amendments without formal evidentiary
20 hearings, witness testimony, briefing, and all those other
21 things. And I think if we can get to a stipulation, you can
22 definitely proceed without any evidentiary hearings.

23 We requested the Committee, three years ago, I
24 think, to help move the parties along. You've done a good
25 job of doing that. I don't want you to get locked into the

1 idea that you have to have evidentiary hearings and you have
2 to have formal witness testimony and briefing and what have
3 you. You certainly can do informal hearings if you have to.

4 So my hope is not to spend a lot of our time
5 preparing for a hearing, and not to have to spend a lot of
6 time briefing either, but those are probably the issues that
7 are ripe to talk about on the 19th.

8 HEARING OFFICER COCHRAN: Ms. Chester?

9 MS. CHESTER: I would agree that Staff is not
10 ready for evidentiary hearings on June 19th. I think if we
11 are able to take a little bit more time to work out the
12 substance of the issues, that would be Staff's preference.
13 If June 19th is about process over substance, I think we
14 would be ready and available to meet.

15 HEARING OFFICER COCHRAN: Ms. Murray?

16 MS. MURRAY: I'm fine with having a prehearing
17 conference or some kind of save the date for the 19th. We
18 wouldn't be ready for evidentiary hearings. We're hoping
19 that we will have it down to maybe just, you know, one or
20 two issues that -- such as having an end date for a permit
21 or a license that would not necessarily lend itself to
22 testimony. It's somewhat of a judgment call and good
23 government, but not potentially witness.

24 HEARING OFFICER COCHRAN: Okay. Have we exhausted
25 everything? Is there anything else that any of the parties

1 want to bring to our attention?

2 MR. HARRIS: I guess I do want to say on this end
3 date thing, it feels like a new issue and sort of a new
4 attack, and I thought we were making progress, so I will
5 have discussions offline on that. But if that's a hard line
6 in the sand for the Department, then we're not going to be
7 able to agree to that. So I just need to make that clear.
8 It was discovered -- and let me just walk you through the
9 process here.

10 What happened is that we wanted to put all the
11 conditions, including the verification language and all the
12 subsections, into one document. And in doing so we found
13 this section that, again, looks vestigial to us. And I
14 don't see how in good faith you can suggest that the 2009
15 decision on recycled water was not a major decision on the
16 water supply for this project that satisfied that section.

17 And so I'm concerned about the litigious approach
18 on this issue, and it's not helping with the relationships.

19 So I want to put that out there as an issue that we need to
20 kind of work through. But it's very important to us that we
21 be able to go to the bankers and the spiders without those
22 kind of limitations on us, so --

23 HEARING OFFICER COCHRAN: Anything else? Okay.

24 With that, we will now turn to public comment.

25 Are there any members of the public who would like to speak

1 to the Committee regarding the High Desert Power Plant
2 Project amendment currently before us? Don't rush the
3 podium.

4 Is everyone un-muted? Mr. Dixit, the panelists
5 are still muted. Did they do that to themselves or --

6 MR. DIXIT: Anyone?

7 HEARING OFFICER COCHRAN: You don't have to un-
8 mute me. You can mute me again. I'm signed in upstairs.
9 Thank you.

10 MR. DIXIT: All panelists were un-muted. All
11 attendees are un-muted.

12 HEARING OFFICER COCHRAN: Anybody? Last call.

13 COMMITTEE MEMBER SCOTT: Well, ask again, specific
14 to the folks on the phone.

15 HEARING OFFICER COCHRAN: Okay. For the phone, is
16 there anyone on the phone who would like to address the
17 Committee? Okay. I hear a whole lot of silence.

18 We will not be having a closed session. So with
19 that, we are adjourned.

20 (The meeting adjourned at 3:13 p.m.)

21

22

23

24

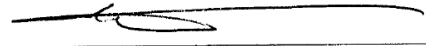
25

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 15th day of June, 2017.



PETER PETTY
CER**D-493
Notary Public

CERTIFICATE OF TRANSCRIBER

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

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



MARTHA L. NELSON, CERT**367

June 15, 2017