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ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA

Blythe Solar Power Project Amendment Docket No. 09-AFC-06C

EVIDENTIARY HEARING

Tuesday, November 19, 2013

10:00 a.m.

California Energy Commission
Hearing Room A, 1516 Ninth Street
Sacramento, CA

Reported by: Kent Odell

APPEARANCES**FOR THE ENERGY COMMISSION**

Commissioner Karen Douglas, Presiding Member
Commissioner David Hochschild, Associate Member
Raoul Renaud, Hearing Officer
Jennifer Nelson, adviser to Commissioner Douglas
Eli Harland, adviser to Commissioner Douglas
Kelly Foley, adviser to Commissioner Hochschild
Eileen Allen, commissioners' technical adviser for facility siting

FOR THE STAFF

Jared Babula, senior staff counsel
Andrea Martine
Carol Watson
Casey Weaver
Thomas Gates
Jacqueline Record

FOR THE APPLICANT

Scott Galati
Kenneth Stein
Laura Nagy
Alice Karl
Duane McCloud
Scott Busa

FOR THE COLORADO RIVER INDIAN TRIBES

Sara Clark
Winter King (by telephone)

FOR THE LABORERS INTERNATIONAL UNION

Michael Lozeau

COMMENTERS

Mike Boyd
COMMENTERS, CONTINUED

Tiffany North
Ken Waxlax

P R O C E E D I N G S

10:14 A.M.

PROCEEDINGS BEGIN AT 10:14 A.M.

HEARING OFFICER RENAUD: My name is Raoul Renaud. I am the hearing officer for the Blythe Solar Power Project Amendment proceeding here at the California Energy Commission. We're going to start the evidentiary hearing at this point. We're awaiting the arrival of the Presiding Member of the Committee, Commissioner Douglas. We understand she is on her way and so while she's on her way we'll take care of some preliminary matters.

We always start first with introductions. So to my left is Commissioner David Hochschild, who is the Associate Member of the Committee. And to his left is his advisor, Kelly Foley.

To Kelly's far left would be Eileen Allen, who is the Commissioner's advisor for facility siting. To my right would be the Presiding Member, Commissioner Douglas, and to her right, her advisors, Jennifer Nelson, and Eli Harland.

Okay. Let's take introductions now from the

1 Applicant.

2 MR. GALATI: Scott Galati, representing
3 NextEra Blythe Solar LLC.

4 MR. BUSA: Good morning, Commissioner. I'm
5 Scott Busa with NextEra Energy Resources LLC.

6 HEARING OFFICER RENAUD: Thank you. And from
7 staff, please.

8 MR. BABULA: Jared Babula, Staff Counsel.

9 HEARING OFFICER RENAUD: Thank you, and good
10 morning.

11 We have a representative from the Laborers
12 International Union.

13 MR. LOZEAU: Yes, Michael Lozeau.

14 HEARING OFFICER RENAUD: Good morning.

15 MR. LOZEAU: Good morning.

16 HEARING OFFICER RENAUD: And we have a
17 representative from the Colorado River Indian Tribes.

18 MS. CLARK: Yes, My name is Sara Clark,
19 representing CRIT.

20 HEARING OFFICER RENAUD: All right, thank
21 you. Welcome.

22 Do we have any - this meeting, in addition to

1 having those of us who are here in the room present,
2 has the capability for people to participate by WebEx
3 system, which is a computer and telephone system.
4 Those on computers can basically see what's on these
5 large screens here in the room, and they can hear us
6 and we can hear them.

7 So let me ask first if there are any
8 representatives of any of the parties - that would be
9 the staff, applicant, CURE, CRIT or Laborers, on the
10 phone, who would care to introduce themselves.

11 MR. GALATI: Yes, we have some witnesses on
12 the phone who we will introduce at that time, if that
13 would be okay. But we will have some people on the
14 phone that might testify.

15 HEARING OFFICER RENAUD: Great.

16 MR. BABURA: Thank you, Mr. Galati. Anyone
17 else?

18 MS. KING: Hi, this is Winter -

19 HEARING OFFICER RENAUD: Okay.

20 MS. KING: Oh, sorry.

21 HEARING OFFICER RENAUD: Go ahead, Ms. King.

22 MS. KING: This is Winter King. I am also an

1 attorney for CRIT. I will be sort of in and out today
2 on the phone, but my associate, Sara Clark, will be
3 representing CRIT for the whole day.

4 HEARING OFFICER RENAUD: All right. Thank
5 you very much.

6 And let me introduce now the Presiding Member
7 of our committee, Karen Douglas. Commissioner Douglas
8 has been pretty busy lately with a lot of cases going
9 on at the same time. So she has - we're just doing
10 the introductions here, so here she is. We're just
11 doing the introductions, Karen. So - all right.

12 And, Mr. Babula, you were just starting to
13 say something.

14 MR. BABULA: We have some staff on the phone,
15 and they can introduce themselves if they need to
16 speak later on.

17 HEARING OFFICER RENAUD: At the appropriate
18 time. Very good. Thank you.

19 Now just a little bit about the telephone
20 system. As I said, you can hear us, I hope, and we
21 can hear you. If you're going to be making noise near
22 your phone, shuffling papers, any talking with other

1 people, whatever, I would suggest you mute your phone.
2 If you don't and we hear noise, we're going to have to
3 mute you from our end.

4 But it would be better if you could just mute
5 your phone and then when it's time for you to speak
6 you can unmute it.

7 This proceeding is also being
8 stenographically recorded. It will be transcribed
9 into a typed format booklet which will be available on
10 the Commission's website and will contain everything
11 that was said by everyone present today.

12 Okay. Just a couple of preliminary things.

13 This is an Amendment Proceeding. The Blythe
14 Solar Power Project was licensed by the Energy
15 Commission in 2010 under Docket No. 09-AFC-06. It was
16 at that time licensed to be a solar trough project of
17 1,000 megawatts.

18 In the intervening time there has been some
19 developments, including a change of ownership of the
20 project and some changes in technology such that the
21 current owner has filed a petition to amend the
22 project to be powered by a photovoltaic technology

1 instead, and to make it smaller as well.

2 Amendment proceedings are governed by Section
3 1769 of the Commission's regulations, and those
4 regulations require, among other things, that in order
5 to approve an amendment, the Commission find that
6 there has been a substantial change in circumstances
7 justifying the change, or that the change is based on
8 information that was either not known or could not
9 have been known with reasonable diligence at the time
10 of the prior matter.

11 The CEQA - the California Environmental
12 Quality Act - also provides guidance on amendment
13 proceedings. Section 15162 of the CEQA Guidelines
14 teaches that the focus of a Commission or body
15 reviewing an amendment of this type should be on
16 evidence of an increase in severity of impact over the
17 approved project, and so for those of you who will be
18 presenting evidence today, take that to understand
19 that that is the focus of the Committee, and
20 ultimately of the Commission, is that we're interested
21 in what changes to the project could lead to an
22 increase in the severity of the impacts.

1 Finally, for those of you familiar with the
2 Commission's business, you may know that our original
3 mandate was to govern - or our jurisdictional mandate,
4 was to govern - was to license projects that are
5 thermal in nature, and photovoltaic is not thermal.

6 The legislature passed a new Section of the
7 Warren-Alquist Act, Section 25500.1, carving out a
8 small exception for a case such as this one, in which
9 an approved solar thermal project which was approved
10 during a certain time period and filed an amendment by
11 a certain date to convert to photovoltaic technology,
12 could have that amendment reviewed at the Energy
13 Commission, and that's what we're doing today, under
14 Section 25500.1.

15 That Section states that the applicant need
16 not file an entirely new application for certification
17 and requires that the Commission prepare supplemental
18 environmental review documentation, provide for public
19 notice and comment on the supplemental environmental
20 review, and hold at least one public hearing on the
21 proposal.

22 This could be considered that public hearing.

1 The Commission itself will also hold a public hearing
2 at the time that the matter does come before the full
3 Commission for a decision. So I think we're actually
4 exceeding the requirements of 25500.1 by holding this
5 hearing as well as the upcoming Commission hearing.

6 Okay.

7 Now we have - basically we refer to testimony
8 as evidence in these cases. We have testimony in the
9 sense that you probably are most familiar with, which
10 is oral testimony, as a witness under oath, saying
11 things and being questioned.

12 But what we rely on a great deal here is
13 written testimony. Most of the parties will file
14 testimony in writing, from witnesses, which is then
15 available for all the other parties to review and for
16 the public to review as well. That testimony can be
17 countered by testimony filed by other parties and in
18 fact, if a party wishes to, they can ask that the
19 author of the written testimony be present for cross-
20 examination.

21 Today I think we're going to wind up - I
22 anticipate this is going to be a - sort of, I'd call

1 it a working session. I know that parties -
2 particularly the staff and applicant - have been
3 working overtime to try and work out differences that
4 they have over the aspects of the staff assessment and
5 the proposed conditions of certification, and I want
6 to tell you that the Committee really appreciates your
7 efforts in that regard. The more issues you can
8 resolve in advance means the less issues that we have
9 to resolve for you.

10 So since those negotiations and discussions
11 have been going on up until the last moment, I'm sure
12 you have news for us that we don't know about, that
13 hasn't been the subject of a filing that we've seen,
14 for example.

15 So I think we're going to have to kind of
16 play it by ear today as far as how we proceed and what
17 we do.

18 I think maybe what might make sense, though,
19 is that we begin with each party giving us just a very
20 brief summary of what you view as the topics that -
21 you have a presentation or that you want the Committee
22 to hear something about today; we might call them "the

1 contested topics."

2 MR. BOYD: (By Telephone): This is Mr. Boyd.
3 I didn't have a chance to introduce myself.

4 HEARING OFFICER RENAUD: Go ahead, please.

5 MR. BOYD: This is Mike Boyd -

6 HEARING OFFICER RENAUD: All right.

7 MR. BOYD: I'm with Californians for
8 Renewable Energy, Inc., here.

9 I was the intervenor in the original
10 proceeding and Mr. Alfredo Figueroa has been - it's my
11 understanding that he has been providing you guys some
12 submissions and stuff in this -

13 HEARING OFFICER RENAUD: Well -

14 MR. BOYD: -- amendment proceeding. Is that
15 true?

16 HEARING OFFICER RENAUD: No.

17 MR. BOYD: He asked me to be on the phone
18 call today, that's why, he was feeling ill.

19 HEARING OFFICER RENAUD: All right.

20 MR. BOYD: It's been three years since I
21 participated in your evidentiary hearing process, so
22 obviously I'm kind of at a disadvantage. I was trying

1 to listen to your schedule. The last time I
2 participated you guys broke it down by topic area, and
3 ten you had your -

4 HEARING OFFICER RENAUD: Let me stop you
5 there, Mr. Boyd. Because I don't think you represent
6 an intervenor in this case. You may be thinking of a
7 different case.

8 But the intervenors in this case are
9 California Unions for Reliable Energy - CURE - the
10 Laborers International Union of North America, and
11 Colorado River Indian Tribes. And the only intervenor
12 in the prior Blythe Solar Power Project was CURE,
13 California Unions for Reliable Energy.

14 I suspect you're thinking of a different
15 case, sir.

16 MR. BOYD: Okay, that's fine.

17 HEARING OFFICER RENAUD: All right.

18 MR. BOYD: That could be the case.

19 HEARING OFFICER RENAUD: It could be the
20 Palen case, I'm not positive. But this is the Blythe
21 Solar Power Project case -

22 MR. BOYD: I was one of the parties in the

1 Palen case, that's true, too. You could be correct.
2 And it may be that it's stated in the BLM proceeding,
3 and not in the CEC proceeding.

4 HEARING OFFICER RENAUD: All right. Well,
5 you're welcome to listen in and at the end we'll have
6 a public comment period if you have remarks for the -
7 that you would like the Committee to hear.

8 MR. BOYD: Well, you said it was a public
9 hearing.

10 HEARING OFFICER RENAUD: It is a public
11 hearing, and that's why we're inviting you to listen
12 in and provide public comments again.

13 MR. BOYD: (crosstalk) sit here a listen all
14 day long. I have other things I have to do.

15 HEARING OFFICER RENAUD: Well, we -

16 MR. BOYD: (crosstalk) be able to leave, if
17 that's okay.

18 HEARING OFFICER RENAUD: No. You might be
19 surprised that we have a lot of other people here who
20 have things to do and we have a schedule to keep. We
21 have about 50 people here in the room.

22 MR. BOYD: Okay.

1 HEARING OFFICER RENAUD: And so we have
2 established an agenda and the agenda calls for public
3 comment at the end of the proceeding. So -

4 MR. BOYD: Okay. (crosstalk)

5 HEARING OFFICER RENAUD: Pardon me?

6 MR. BOYD: It's an all-day proceeding,
7 correct?

8 HEARING OFFICER RENAUD: What's that?

9 MR. BOYD: Is it all day long - how long is
10 the proceeding going. So if I hang up now and call
11 back later - that's what I'm trying to find out.

12 HEARING OFFICER RENAUD: All right. Well, I
13 would check with the public advisor's office on that.
14 And the time estimate is about two hours. But I would
15 check with the public advisor's office.

16 MR. BOYD: Oh, okay. So it's not an all-day
17 thing. Okay.

18 Well, then I can stay on the phone until the
19 appropriate time. I'm just trying to figure out if -
20 I mean, I've been at some of these hearings where it
21 was like, two days.

22 HEARING OFFICER RENAUD: Okay. Thank you.

1 Okay, thanks. Sorry about that. Okay.
2 Where were we? Okay. So we were talking about the -
3 the order of proceedings.

4 As I was saying, I think we'll try to deal
5 with the topic we might refer to as contested topics,
6 so those upon which the parties have some
7 disagreement, and after we are done with that we will
8 know - any topic that you haven't brought up, we'll
9 assume it's uncontested. And at that time we will
10 hear motions from each party to move their evidence
11 into the record, and then go with public comment.

12 Does that sound good? All right, great.

13 The applicant has the burden of proof in a
14 proceeding such as this so we will allow the applicant
15 to go first. Although I did say maybe we would take a
16 quick summary from each of you.

17 Let's do that, let's give each of you just a
18 couple of minutes to kind of let us know where you -
19 where you think we stand.

20 MR. GALATI: This is Scott Galati.

21 We provided two documents for you. The first
22 was Exhibit 1012, which is our pre-hearing statement,

1 and in that pre-hearing statement we identified that
2 there were five areas that were disputed. Two of
3 those areas are no longer disputed - they're the areas
4 of air quality and worker safety.

5 The areas that were also identified as
6 disputed were cultural, biology, and geopaleontology.
7 The geopaleontology issue is still as described in the
8 pre-hearing statement.

9 The cultural is a focused issue on whether or
10 not a condition CUL-19, which has to do with BLM's
11 preemptive authority under the programmatic agreement,
12 whether it should be deleted from the decision or kept
13 in the decision.

14 And then lastly, in biology, we have worked
15 very hard to reduce the issues to certain parts of two
16 conditions. One is BIO-12, a particular section,
17 1(d), that has to do with the criteria for getting
18 habitat land, and mitigation land; and then BIO-15, we
19 have several changes that we would like to discuss
20 here today to the specific new condition that staff
21 placed in BIO-15.

22 Also in the BIO-15 discussion we want to make

1 sure that we address is - we believe that staff has
2 made a determination that the project now has
3 significant unmitigable impacts for biology due to
4 avian issues, and we want to find out if that is the
5 case, that's staff's position. We disagree, and maybe
6 address the Committee any questions they might have
7 about an override of such a condition.

8 Those are issues that we see. My best
9 estimate is we can probably handle CUL-19 in about
10 five to ten minutes, and we can handle Geopaleontology
11 in about five or ten minutes, and spend the bulk of
12 our time going through the changes we would like for
13 BIO-15.

14 HEARING OFFICER RENAUD: All right. Great,
15 Thank you very much.

16 Staff?

17 MR. BABULA: Thank you. I just also want you
18 to know, we did have a workshop as well. So there's
19 actually been three, with the business meeting, this
20 is, then the workshop; we had three public type
21 hearings.

22 I agree pretty much with what the applicant

1 said. There's a couple - there is this one specific
2 condition in Paleo that is at issue.

3 CUL-19, I would just defer to what's already
4 been filed, and have no additional discussion on that,
5 if the Committee feels that the two pages that's in
6 the staff assessment that discusses CUL-19 is
7 adequate; and that's the central theme. I just want
8 to make sure that - if the Committee feels they have
9 enough info on any particular issue I would like the
10 committee to cut off discussion and say that we can
11 move on.

12 So that's always a concern, that we just keep
13 going, and the Committee doesn't need anything
14 further.

15 One final thing is for the most part, across
16 the board the impacts from the amended project are
17 reduced and less and/or the same as the impacts from
18 the original project. So most of this should be
19 relatively quick to discuss - in the format, I think,
20 with the biological conditions we get bio staff up
21 here; they have their biologists and we do it as sort
22 of an informal discussion so that we can flesh out a

1 couple of the issues, and when the Committee feels
2 that that has been adequately done we move on. And I
3 have nothing further to say at this point. Thanks.

4 HEARING OFFICER RENAUD: Very good. Thank
5 you.

6 And now, let's see. I'm just going to go in
7 the order that I see you as opposed to the order in
8 which you intervened, if that's okay.

9 All right. So Ms. Clark.

10 MS. CLARK: Thank you.

11 HEARING OFFICER RENAUD: For CRIT.

12 MS. CLARK: We have a couple of issues, some
13 of which will require some time here today, and some
14 of which I think will require legal briefing.

15 We raise a number of legal issues in our
16 comment letter on the staff assessment, and
17 unfortunately our expert, Ms. Wileen Fisher-Holtz, is
18 unavailable today, and so a number of those issues we
19 don't have an expert to present on - and in our filing
20 on Monday we have requested that the evidentiary
21 hearing be continued to allow her to testify but we
22 haven't heard any response back from the Commission on

1 that point.

2 And so we have some legal issues that we
3 would like briefing on, but we don't need any time
4 here today.

5 As for the issues that do need to be raised
6 today, I would like to conduct some cross-examination
7 on questions related to the cultural resources
8 conditions of certification and I think that should
9 take approximately ten him minutes, and it is
10 primarily towards the CEC staff and the applicant's
11 expert.

12 HEARING OFFICER RENAUD: Very good. Thank
13 you, then.

14 Now will the cultural expert be available?

15 MR. BABULA: They would be available. I
16 would question, though, none of the conditions of the
17 cultural resource section changed from the original
18 decision because the project impacts have been
19 reduced.

20 The only changes were that certain identified
21 resource sites had been taken out of mitigation
22 because the [indiscernible] will no longer impact

1 those sites. So unless the questions relate to why
2 those particular sites were taken out or whether
3 that's appropriate, I don't really see what they would
4 have questions about regarding what has already been
5 adjudicated in the prior decisions.

6 HEARING OFFICER RENAUD: All right. Well,
7 thank you.

8 As I said earlier, I mean, the focus of the
9 Committee here -- it really is required that they
10 focus on this - is in changes caused by the amendment,
11 and increases in impacts. So at the time we get to
12 those questions we'll consider whether they appear to
13 relate to those topics.

14 MS. CLARK: That's fine. We can wait till
15 then.

16 HEARING OFFICER RENAUD: Perfect. Thank you.

17 And Mr. - is it Lozeau?

18 MR. LOZEAU: Lozeau's fine, yes.

19 HEARING OFFICER RENAUD: Okay.

20 MR. LOZEAU: There are variations on the
21 pronunciation.

22 HEARING OFFICER RENAUD: Just like mine.

1 MR. LOZEAU: LIUNA's concerns involve just
2 air quality and some of the biological resource
3 discussions, mostly on mitigation and biological
4 resource questions.

5 For the air quality, I do have a fundamental
6 comment which questions whether or not in fact, that
7 is an insignificant issue for PM 10, the ozone
8 precursors - both of which are very high above,
9 certainly, the air district's numbers. I haven't seen
10 any numbers in the staff assessment that are being
11 used as thresholds that we could compare that to.

12 And it seems to me that the evidence that we
13 have seen shows that's a significant impact from the
14 construction emissions of those. And assuming that is
15 true, we propose various mitigations to help adjust
16 that, or at least lower those numbers further.

17 So that's the main air quality concern that
18 we raise. So we are ready to ask questions about that
19 today. In terms of the scheduling, we weren't able to
20 get our experts here on the notice that we had, trying
21 to fit in here to the changed project circumstance.

22 And I would just somewhat disagree

1 respectfully that it's simply about changes here.
2 Because the project is a new project, so to the extent
3 there are impacts from - even if they're less than the
4 original project - I think the panel, and certainly
5 the decision, still has to make the appropriate
6 findings and they would show that it isn't a
7 significant impact - even though it's perhaps less
8 emissions than the original project that you reviewed
9 earlier.

10 MR. BABULA: I have a question for Mr. -

11 MR. LOZEAU: Lozeau.

12 MR. BABULA: Okay. Is the fact that staff
13 corrects the baseline number in the recent submittal
14 on Friday, does that change your concerns? I noticed
15 your quality expert talks a lot about the comparison
16 of additional emissions to a higher baseline.

17 The staff concurred with what the applicant
18 had presented in that the baseline anomaly number was
19 too high, and went back to the same number as in the
20 final decision, which is [INDISCERNIBLE] 82 parts per
21 million - or micrograms. But does that change your
22 concerns or not?

1 MR. LOZEAU: I think in response to the first
2 comment that we made, which had questioned whether or
3 not the new baseline that was reported in the staff
4 assessment had been folded into the impacts analysis -
5 but the main concern is actually a separate comment -
6 even assuming that baseline - even the table that
7 staff put together in the assessment shows that the
8 PM-10, and those precursor emissions, are going to be
9 considerably higher, certainly than the threshold that
10 we have published for that particular area by the Air
11 District, and there is nothing else that I saw in the
12 assessment that it was being compared to to suggest
13 there wasn't going to be a significant impact, still,
14 from those. Even with the adjusted baseline that
15 staff came up with.

16 HEARING OFFICER RENAUD: All right. Thank
17 you for that discussion.

18 Just to respond to a couple of things for the
19 record. You both indicated not having been able to
20 procure witnesses' presence today because of the -
21 what you I think referred to as late notice, and I -

22 MR. LOZEAU: No, I didn't -

1 HEARING OFFICER RENAUD: (crosstalk) - the
2 notice was timely. You both intervened quite late in
3 the proceedings, and I think we have moved very
4 quickly to get you intervenor status, and we advised
5 at that time that you were entering the case pretty
6 late, and basically take the case as you find it. So
7 -

8 There's no reason that we're going to
9 preclude anything from you that meets the standards
10 that I have discussed, but I just wanted to make sure
11 that it's understood.

12 All right. So with that I think Mr. Galati
13 wanted to lead off with what you would like to
14 present.

15 MR. GALATI: Yes. If the Committee wouldn't
16 mind, just to clarify the record - maybe I could read
17 into the record some of the agreements that we have
18 that I don't have in front of me in writing anywhere
19 else, so I can get it on the transcript. So the areas
20 that are non-contested are -

21 HEARING OFFICER RENAUD: All right.

22 MR. GALATI: There are about three or four

1 things - and if the Committee doesn't mind me doing
2 it, and if staff could agree, or - and the intervenors
3 could agree, that it could come from a bottom-feeder
4 such as I, I would really appreciate it.

5 HEARING OFFICER RENAUD: I was going to say
6 you're a good reader, so we could hear that - I don't
7 know about this feeder business, but you're good at
8 reading. If no one objects, that's fine with us.

9 MR. GALATI: The first item has to do with
10 biology. And I would just like to place on the record
11 that - that we do agree with all of the changes to
12 Condition Bio 12 except 1D.

13 HEARING OFFICER RENAUD: And what is 1D?

14 MR. GALATI: 1D has to do with the habitat
15 compensation. One of the criteria of what the land
16 must meet. We can talk about that when I bring the
17 witnesses up.

18 I also want to make sure that it's in the
19 record that we agree to Soil Water 1 as it is
20 identified in Exhibit 2003.

21 We also agree with Soil Water 3 as it is
22 shown in Exhibit 2000. And Soil Water 7, as it is

1 shown in Exhibit 2000 and Appendices, B,C, and D.

2 We also agree with Soil Water 10 as it's
3 shown on Exhibit 2000, and Soil Water 19 as it is
4 shown in Exhibit 2003.

5 We also agree with Trans 12 as it's shown on
6 Exhibit 2001; and TSE 1 through TSE 7 - excuse me,
7 TSE 1 through TSE 4; and TSE 6 and TSE 7 as they are
8 shown in Exhibit 2000.

9 We also agree with Workers' Safety 7 as it's
10 shown on Exhibit 2005 and the fact that Workers'
11 Safety 8 would be unchanged as it is described in
12 Exhibit 2005.

13 Sorry about that. I didn't get those
14 actually in a pre-hearing statement as we were working
15 through those issues, so I just wanted to get those on
16 the record.

17 HEARING OFFICER RENAUD: All right, thank
18 you.

19 MR. GALATI: Then I could bring up our - if
20 it's the Committee's preference; would you like to go
21 with Biology first? Geo and Paleo? Cultural?

22 HEARING OFFICER RENAUD: It's up to you.

1 Whatever works best for you and your -

2 MR. BABULA: (crosstalk) cultural for CUL 19,
3 or are you okay with -

4 MR. GALATI: No, I'm okay.

5 HEARING OFFICER RENAUD: I know that there is
6 a representative for BLM on the phone that might want
7 to comment on that, so -

8 MR. GALATI: All right.

9 HEARING OFFICER RENAUD: We can do that right
10 now.

11 MR. GALATI: I wasn't going to swear anybody
12 in.

13 HEARING OFFICER RENAUD: All right, I'm
14 sorry.

15 So let's proceed with whichever ones are
16 ready to go, and you can be getting the ones that
17 aren't quite ready, ready while you're doing those.

18 MR. GALATI: I think it's best to go ahead
19 and start with Biology.

20 HEARING OFFICER RENAUD: Let's do that.

21 MR. GALATI: So at this time I would like to
22 call up our panel. I'll move to here. And then we

1 can swear them in.

2 HEARING OFFICER RENAUD: Thank you.

3 MR. GALATI: Dr. Alice Karl, Kenny Stein, and
4 Dr. Laura Nagy. So they need to be sworn.

5 HEARING OFFICER RENAUD: Yes, okay. If you
6 would all please raise your right hands.

7 (Whereupon, the witnesses were sworn.)

8 HEARING OFFICER RENAUD: All right. Thank
9 you.

10 MR. GALATI: So what I would like to do is
11 just turn it over to the witnesses and have them walk
12 through - we have identified as Exhibit 1013,
13 Supplemental Testimony Regarding Condition of
14 Certification BIO-15. I think it would be best if we
15 would go ahead and start with that one.

16 And we made nine modifications that we
17 wanted. Staff agreed to some, and we would just like
18 to describe those for you. They are written, you have
19 them in front of you, Exhibit 1013.

20 Do you want to go ahead, Mr. Stein?

21 MR. STEIN: Yes. Good morning,
22 Commissioners. Thank you for your time this morning.

1 I guess I wanted to start by reminding the
2 Committee that we came in with a project that reduces
3 the footprint from the approved project by, you know,
4 a third to a half - significant reduction of impacts
5 on biological resources across the board. And I don't
6 think you'll hear anyone today argue that impacts to
7 any biological resource is going up. In fact, they
8 all go way down.

9 And in fact, when we redesigned the footprint
10 of the project, it was, to a large extent, impacts to
11 biological resources that drove how we defined the
12 footprint; it was to avoid higher-quality habitat and
13 to reduce our impacts to biological resources.

14 So while it might have been wishful thinking
15 to think that we were going to get a medal for that,
16 we did honestly expect that the conditions of
17 certification for Biology would pretty much come back
18 simply reducing our mitigation acreage numbers. And
19 to our surprise, a lot of the biology conditions of
20 certification came back quite a bit more prescriptive
21 and more stringent than the approved project, despite
22 the fact that all of our impacts were going way down.

1 Now we did work really closely with staff
2 during the workshop to take a lot of those conditions
3 and work with them and frankly, we agreed to a lot of
4 them. Again, despite the fact that they were more
5 prescriptive and more stringent, but - and I think
6 we're close on the last few, but there are a few that
7 we still feel are problematic and are not warranted,
8 given the reduction in impacts from the project.

9 So those are the ones that remain to talk
10 about today. So I was wondering if we should start
11 maybe with BIO-12, and get that one -

12 MR. GALATI: Are you guys okay starting with
13 BIO-12-1B? Only, let's start with BIO-12 -

14 HEARING OFFICER RENAUD: Let me just
15 interject for one moment here, because I'm not sure I
16 know who these people are. Are you testifying as
17 experts?

18 MR. GALATI: Yes.

19 HEARING OFFICER RENAUD: Okay.

20 MR. STEIN: Let me introduce myself - I
21 apologize -

22 HEARING OFFICER RENAUD: I got your name, but

1 that was it.

2 MR. STEIN: Right. I am Kenny Stein, an
3 environmental manager with NextEra Energy Resources,
4 so I am the environmental manager for the project.

5 HEARING OFFICER RENAUD: All right. And will
6 you be testifying as an expert, or maybe I should ask
7 Mr. Galati.

8 MR. GALATI: Yes, all three will be
9 testifying as experts.

10 HEARING OFFICER RENAUD: Okay. Perhaps we
11 should just ask the other parties if they have any
12 objections to these parties - these witnesses' expert
13 qualifications?

14 MS. CLARK: No objection.

15 MR. BABULA: No objection.

16 HEARING OFFICER RENAUD: Great. Okay.

17 MR. LOZEAU: No objection.

18 HEARING OFFICER RENAUD: All right, good.

19 With that formality out of the way, go ahead.

20 MR. GALATI: Let's go ahead and start with an
21 item, BIO-12-1B. So I'm going to refer the Committee
22 to 1012.

1 Pages 28 through 31 of that document, Exhibit
2 1012. You will see a change that we have requested on
3 Item 1D.

4 HEARING OFFICER RENAUD: Go ahead, Mr. Stein.

5 MR. STEIN: This condition is related to the
6 criteria that would be applied to any mitigation land
7 - offsite mitigation land that the project would need
8 to secure. And for the approved project, effectively
9 if you were to go out and secure private land offsite,
10 there was a requirement that the land be within the
11 Colorado Desert Recovery Unit. And also it had to
12 meet a lot of other criteria in terms of habitat
13 quality, proximity to large areas so that it can be
14 properly protected. But as long as it was within the
15 Colorado River Desert Recovery Unit and met those
16 other criteria, it would be acceptable.

17 Again, the project as proposed is going to
18 greatly reduce impacts to the desert tortoise, which
19 is the focus of this mitigation criteria. We pulled
20 back the footprint quite a bit, from the mountains to
21 the west, which is the higher-quality habitat, and
22 were a little surprised that - the response to that

1 reduction to that reduction in footprint was a
2 slightly more stringent mitigation land criteria.

3 In this case, what is being suggested added
4 in is that there be a first priority given to
5 mitigation land, that it be within the Chuckwalla
6 DWMA, and the second priority to lands within the
7 Cheme Huevi DWMA.

8 What we're concerned about is that -

9 MR. BABULA: May I interrupt you. I think
10 staff can make a change that you might agree to -

11 MR. STEIN: Okay.

12 MR. BABULA: I'm going to have staff just
13 read the proposed language that I think might resolve
14 this.

15 MS. MARTINE: This is Andrea Martine, Staff
16 Biologist for the Energy Commission. And I propose it
17 to be as follows: Deprioritize near larger blocks of
18 land that are either already protected or planned for
19 protection, such as the Chuckwalla DWMA, or which
20 could feasibly be protected long-term by a public
21 resource agency or a non-governmental organization
22 dedicated to habitat preservation.

1 MR. STEIN: I don't have - I'm trying to
2 figure out how those words relate to the words in the
3 approved condition. But what I just heard generally
4 sounds fine.

5 HEARING OFFICER RENAUD: Thank you very much.
6 That sounds quite appropriate.

7 MR. GALATI: If the Committee would like,
8 what we were planning to do at the end of this hearing
9 was give you a stipulated clean conditions where we
10 all agree capture that change. If that's okay with
11 the Committee, and we'll get this filed as soon as we
12 can actually make sure we got the words right.

13 HEARING OFFICER RENAUD: That sounds fine.

14 Intervenors, anything to say on that?

15 MS. CLARK: I would just like to clarify that
16 when Mr. Galati says "we agree," he's referring to -

17 HEARING OFFICER RENAUD: His client.

18 MS. CLARK: -- the client. And staff.

19 HEARING OFFICER RENAUD: Yes.

20 MS. CLARK: And I don't think he's speaking
21 for intervenors. We don't have anything to add on
22 Biology, but I want to make sure that's clear on the

1 other conditions as well.

2 HEARING OFFICER RENAUD: We understand.

3 Mr. Lozeau.

4 MR. LOZEAU: My union doesn't have any
5 objections to that language change. We did raise some
6 comments about whether people actually are clear as to
7 whether the REAT process is working. Our consultant
8 commented that it's not open to the public; it hasn't
9 been sort of reviewed in an overview kind of way as to
10 how - how they're making their decisions and how well
11 it's working.

12 So it's unclear whether in fact, the
13 mitigation that you're hoping to get out of that
14 process is actually occurring and being effective.

15 But in terms of the language I don't think we
16 have any comments on that proposed language.

17 HEARING OFFICER RENAUD: All right. Thank
18 you.

19 MR. GALATI: I apologize for starting the
20 Committee off with 1013 and now moving back to -
21 Exhibit 1013 which the modifications which we're
22 proposing to BIO-15. My understanding that the

1 modification No. 1 here, we have proposed that --
2 staff may agree?

3 MS. WATSON: I believe that's correct.
4 I'm sorry. This is Carol Watson -

5 HEARING OFFICER RENAUD: All right.

6 MS. WATSON: -- Biological resources.

7 HEARING OFFICER RENAUD: And we're on BIO-15
8 now, am I right?

9 MR. GALATI: That's correct.

10 HEARING OFFICER RENAUD: Okay. So we're
11 going to pick it up with Modification Number 2. And
12 so that would be - could you direct us to which part
13 of BIO-15 you're looking at there?

14 MR. GALATI: It is the very first bullet.

15 HEARING OFFICER RENAUD: Under "Survey and
16 Monitor on Site"?

17 MR. GALATI: Correct. And in 1013 whenever
18 asked for the words "behavior or other relevant
19 project-related avian bat factors" to be deleted. And
20 we actually have a question on that.

21 MR. STEIN: Yeah, this provision is related
22 to the pre-construction surveys that the project would

1 need to do prior to construction.

2 And the approved project did do pre-
3 construction surveys which were accepted by the
4 Commission for the 1,000 megawatt thermal solar
5 project, and again, even though we came in with a much
6 smaller project, staff and the other resource agencies
7 asked us to do some additional pre-construction avian
8 bat surveys despite the smaller project, and we had
9 several meetings, exchange of protocol for doing
10 additional work and agreed to do actually quite a bit
11 more pre-construction surveys, including radar for bat
12 use at site and extensive raptor migration and
13 additional avian point counts.

14 The question that I have right now is we
15 don't have a problem with this additional language -
16 that's suggesting that - that the pre-construction
17 surveys include behavioral or other relevant project-
18 related avian and bat factors. Since we're not
19 exactly sure what that means we just want to confirm
20 that (garbled) and what we had agreed to do is going
21 to meet that, since we're in the process of finishing
22 that up through the spring; we're going to

1 construction next year. We didn't want this language
2 to somehow be interpreted that we need to go back out
3 and do more pre-construction data.

4 MS. WATSON: I think that's a fair point. I
5 agree with your assessment that we think that what
6 you're doing now is - would probably fulfill most of
7 this. That language actually had been added after our
8 last workshop. I would be happy to delete the "or
9 other" and just keep "behavior."

10 MR. STEIN: In our minds we are actually
11 collecting behavior information out there, especially
12 with the migration work that we're doing, which tries
13 to observe how raptors behave through the site and the
14 bat radar - or the radar work that we're doing is also
15 behavioral in nature and so we just wanted to make
16 sure that - that somehow including the word "behavior"
17 wasn't implying that we needed to do something
18 different.

19 MS. WATSON: I think we're in agreement.

20 MR. STEIN: Thank you.

21 MR. GALATI: Great. We'll capture that.

22 Then I would like to move to Modification

1 Number 3, and Modification Number 3 is to the fifth
2 bullet that you see in BIO-15.

3 MR. STEIN: And actually Modification Number
4 3 - Modification Number 7; Modification Number 8 -
5 really all go to the same issue. Because they're all
6 related to - our interest in making sure that they are
7 the proper thresholds for when adaptive management and
8 mitigation would be triggered as a result of impacts
9 to birds and bats.

10 If you look at the wording changes in
11 Modifications 3, 7 and 8 - without getting into the
12 specifics right now - what we've asked is that the
13 words "ecologically significant" be the qualifier so
14 that adaptive management isn't triggered and
15 mitigation isn't triggered, unless the impacts to
16 birds and bats are deemed to be ecologically
17 significant.

18 If left as-is, the way the Condition reads,
19 it suggests that adaptive management has to be
20 implemented - mitigation might have to be implemented
21 for any impact to any bird or bat.

22 All we're simply asking to do here is to

1 confirm that the triggers here for adaptive management
2 mitigation are CEQA-based, which is what the staff
3 assessment and final decision should be based on
4 anyways, is CEQA.

5 We inserted the word "ecologically
6 significant." An alternative could be - simply say
7 that it would be CEQA-significant, or significant as
8 defined under CEQA -- would be an alternative
9 terminology, just so that it's clear that it's not any
10 bird or bat, it's significant impacts under CEQA.

11 MS. WATSON: I think we accept this proposed
12 change.

13 MR. GALATI: With the word "CEQA" or
14 "ecologically significant"? Which one?

15 MS. WATSON: CEQA-based.

16 MR. GALATI: While we're on that subject,
17 does that also take care of 7? Modification 7, which
18 is to bullet - which is Item Number 6, where we've
19 asked "to less than ecologically-significant levels,"
20 would I be putting "less than CEQA-significant
21 levels"?

22 MS. WATSON: I do - I find that problematic -

1 in case it's a special-status species, it's - if it's
2 there, if it's fully protected, you can't actually
3 mitigate (that take) - and so - I'm unsure you'd be
4 able to fulfill that condition language.

5 MR. STEIN: There is presumably going to be a
6 finding of override here if - if there is still a
7 conclusion by staff that impacts could be significant
8 and unavoidable - we're still suggesting that adaptive
9 management and mitigation only be triggered when those
10 impacts are significant under CEQA, and even the - I
11 think the significant thresholds are actually made
12 fairly clear in the revised staff assessment for the
13 approved project, where staff lays out what is deemed
14 to be a significant impact, and one of those is a
15 "substantial adverse impact to listed species or
16 candidate species," so I think, if we're dealing with
17 a list of species or even a candidate species, it
18 would be a CEQA-based trigger, which is "substantial
19 and adverse impact to those species."

20 So I don't think - I think having CEQA-
21 significant still covers any sort of listed or special
22 status species.

1 MS. WATSON: I think if my solicitor is fine
2 with that then I would expect that [indiscernible]
3 treading into more legal territory amongst biological
4 issues.

5 MR. BABULA: So if - on your CEQA - if there
6 was an impact -

7 You're arguing that like if it's a listed
8 species there may be consequences from the perspective
9 of that (un)listed species died at your site, that
10 that might not be CEQA-significant?

11 MR. STEIN: I would say that in order for
12 adaptive management mitigation to kick in - I'm going
13 to read here, it's from page 22-10 of the Revised
14 Staff Assessment for the approved project, and it says
15 that -

16 MR. GALATI: Hang on a second, Mr. Stein.
17 That is Exhibit 2001 (two thousand and one).

18 I'm sorry, go ahead. I just wanted to make
19 sure that Mr. Renaud can write the decision and knows
20 what to cite to.

21 MR. STEIN: In writing out the criteria for
22 determining whether an impact to a biological resource

1 is significant it says that there would be a
2 significant impact where there would be "a substantial
3 adverse affect to wildlife species that are federally
4 listed or state listed or proposed to be listed - a
5 substantial adverse affect to wildlife species of
6 special concern - candidate species for listing - or
7 animals fully protected in California."

8 So what I'm just suggesting here is that we
9 continue to rely on the significant thresholds and
10 criteria that were in the original staff assessment
11 for the approved project, and which are -

12 It's the exact same words, by the way, out of
13 Appendix G of CEQA. Appendix G of CEQA often sort of
14 guides CEQA lead agencies in determining thresholds of
15 significance. So I went back and checked over the
16 language that I just quoted from the revised staff
17 assessment - it's almost identical, if not identical,
18 to the language in Appendix G of CEQA.

19 MR. GALATI: With the Committee's indulgence,
20 I think that we are in agreement in concept, that we
21 can have a CEQA-related threshold. I would like an
22 opportunity after the hearing to quote some language

1 to staff and try to include those in our stipulation.

2 We'll let the intervenors have copies of that
3 as we do that. But I think we can get the language
4 right. What I hear here is an agreement, but we
5 might not be able to get the right language today.

6 HEARING OFFICER RENAUD: Yeah, and let's just
7 be reminded that we're here with the Committee to hear
8 evidence, and you know, I think we understand your
9 opinion, but now you're really negotiating. And
10 that's good, but it's kind of not the most productive
11 use of our time this morning.

12 MR. BABULA: I agree with that -

13 HEARING OFFICER RENAUD: But your suggestion
14 is right on, Mr. Galati.

15 MR. BABULA: I think there is enough
16 information of record for the Committee to, if they
17 had to take it, they could make a decision right now.
18 So I think we can move forward.

19 MR. GALATI: Absolutely, I agree with that.

20 So Mr. Stein, I think we're now to
21 Modification 4.

22 HEARING OFFICER RENAUD: Mr. Galati, let me

1 just ask you. You referred to the Modification 5
2 number. Are they - is there a list, by using those
3 numbers somewhere, that I haven't seen yet, or -

4 MR. GALATI: I apologize. It's Exhibit 1013.

5 HEARING OFFICER RENAUD: Yes, I have that
6 open.

7 MR. GALATI: -- and there's a heading for
8 each one of the items.

9 HEARING OFFICER RENAUD: Okay.

10 MR. GALATI: Called Modification 1, 2, 3 and
11 4 -

12 HEARING OFFICER RENAUD: All right.

13 MR. GALATI: Which describes the modification
14 that we're asking for. And this is the modification
15 to Item Number 3 of the BDCS component section of BIO-
16 15. So again, all of this is on BIO-15. And it's our
17 fourth proposed change.

18 HEARING OFFICER RENAUD: All right, thank
19 you.

20 MR. GALATI: Okay, Mr. Stein.

21 MR. STEIN: Okay. This is one where I think
22 we're pretty close to an agreement with staff on this

1 from the workshop.

2 We had suggested - this has to do with the
3 surveys that would be done - pre-construction and
4 post-construction - and one of the things that we had
5 asked to be deleted was the requirement to do
6 controlled - studies on controlled sites, meaning,
7 going off the project site and doing surveys of avian
8 and bat mortality just out, sort of background in the
9 desert. And we don't think at this point in time that
10 that would be the most productive use of time and
11 money, so we did agree on another part of a condition
12 - as I thought, in exchange for removing the
13 requirement to do controlled sites, to simply agree
14 that any mortality that would be found at the site
15 would just be assumed to be related to the project,
16 and if staff remains okay to keeping that in - which
17 we are, in removing the controlled site - that's all
18 we're asking for now.

19 MS. WATSON: Staff agrees.

20 HEARING OFFICER RENAUD: Anything additional,
21 Mr. Galati?

22 MR. GALATI: Staff proposed different changes

1 to this language - if "controlled sites" is deleted -
2 this is in the testimony - Exhibit 2006 (two thousand
3 and six). Is that correct, Jared?

4 In Exhibit 2006 staff made some further
5 changes. Would that be acceptable to the project if
6 controlled sites were deleted?

7 MR. STEIN: Yes. We're okay with the
8 remaining changes staff made to that condition.

9 MR. GALATI: I would like to turn the
10 Committee's attention to, on page 3 of Exhibit 1013-
11 Modification No. 5. Mr. Stein, can you explain why we
12 want a change to Item 4D of Condition BIO-15?

13 I apologize, this is (crosstalk.

14 MR. STEIN: We agree that post construction
15 there needs to be very robust statistical mortality
16 monitoring once the project is built.

17 We had asked that staff - and we also agree
18 that there should be monitoring done during
19 construction. I think it's important also to try to
20 get a handle on what if any, on avian and bat
21 mortality is happening during construction.

22 We had asked to remove their plan for

1 statistical mortality monitoring during construction
2 because we think doing statistically based mortality
3 monitoring during construction is problematic for a
4 couple of reasons, and I'll turn it over to Dr. Nagy
5 to address that.

6 DR.NAGY: So when we discussed this, one of
7 the challenges is that because there are so many
8 moving parts in the construction site that in order to
9 do a statistical design that is going to give me a
10 meaningful result there are so many confounding
11 factors in terms of what kind of construction in
12 season that you end up with a really murky answer that
13 doesn't really tell you anything.

14 So what we discussed is that through the
15 onsite monitoring, incidental monitoring, all those
16 data would be included and summarized but that we
17 wouldn't try to do any statistical extrapolation for
18 that. My intent is simply to ensure that we do have
19 monitoring during construction, but I understand there
20 are constraints according to the statistical analysis.

21 MR. STEIN: I think what we are hoping for is
22 just to simply remove the word "statistical" as it

1 might apply during construction and focus the word
2 "statistical" to post-construction. But certainly
3 not trying to - we're not trying to get out of doing
4 monitoring during construction.

5 I think the way it currently reads now
6 suggests that statistical monitoring is required in
7 both construction and post construction. I think we
8 can probably figure out the right language for that.

9 MS. WATSON: That sounds fine.

10 MR. GALATI: Thank you for bearing with us,
11 Committee. I think we're making progress, but
12 sometimes it takes us being in this room with suits on
13 to do that.

14 So I'll go to Modification Number 6 on
15 Exhibit 1013, page number 4. Mr. Stein.

16 MR. STEIN: I actually think this one is that
17 is already resolved - oh, yes.

18 MS. WATSON: Correct.

19 MR. STEIN: Oh, yes. So I think we're all -
20 we're good with this one.

21 MR. GALATI: Trying to grab defeat from the
22 jaws of victory.

1 So then we're down to - we already talked
2 about Modification 7, which dealt with ecologically
3 significant. So now we're down to Modification 8,
4 which I understand has been accepted.

5 MS. WATSON: I believe that's also correct.

6 MR. GALATI: So the last issue that we have,
7 and I'll just throw it out to staff to describe, is
8 we're a little unclear whether the staff's analysis is
9 actually asking the Committee to make a new finding of
10 override for avian impacts. So I would like to just
11 turn it over to staff.

12 We don't have anything more, I think, and
13 appreciate staff working with us on these changes.

14 MR. BABULA: I think there is one condition
15 we needed to do - what was it?

16 It was the condition, the staff needs to
17 confirm that we agree with the proposed change
18 [inaudible]

19 We've covered that already, sorry.

20 MS. WATSON: Mr. Galati, I'm sorry. I will
21 ask you what it is you want. We did accept that
22 modification.

1 MR. GALATI: No, the question was, the first
2 project found that the avian impacts were mitigated to
3 less-than-significant levels. So when we asked for an
4 override we didn't need one for biology.

5 And I am - in reading the staff assessment
6 and in reading your testimony, I'm not sure but it
7 sounds like you're saying that even with this
8 mitigation that there will be unmitigated impacts, so
9 that I would ask - have to ask the Committee for an
10 override.

11 I just want a clarification about the staff's
12 position.

13 MS. WATSON: I believe that's true. We think
14 that with respect to special status species
15 [indiscernible] fully protected species where you may
16 be able to mitigate the biological effects but you'd
17 still have that LORs violation.

18 MR. GALATI: If the Committee is interested I
19 would like to have our witnesses respond to defining
20 override and the difference in impact between the old
21 project and this project.

22 COMMISSIONER DOUGLAS: I'm just going to ask

1 for a clarification of staff. So are you saying that
2 the - one area where your position is an override
3 might be needed is fully protected species for a LORs
4 violation or a potential LORs violation?

5 MS. WATSON: That's correct.

6 COMMISSIONER DOUGLAS: Okay. That's the only
7 area.

8 MS. WATSON: T and E species also.

9 COMMISSIONER DOUGLAS: Okay.

10 MS. WATSON: And endangered species.

11 COMMISSIONER DOUGLAS: Okay.

12 HEARING OFFICER RENAUD: Well, let me ask, is
13 there something about the amendment that if we didn't
14 have an override under biology in the final decision
15 for the BSPP, is there something about the amendment
16 that changes the impacts that you're referring to?

17 MS. WATSON: There is nothing inherent in
18 this project or to PV. We do think that this is a
19 decrease in impacts. I certainly agree with that
20 characterization. I think what's happening is we're
21 just incorporating recent information such as the
22 threatened species that was killed very close to this

1 site at the Desert Sunlight outcome information as we
2 get it.

3 HEARING OFFICER RENAUD: Very good. That is
4 exactly the kind of thing we need to know about in
5 terms of - that's a changed circumstance, so that
6 gives us exactly what we need to know.

7 MR. BABULA: I think a couple of questions,
8 just for staff, to flesh this out a little.

9 So from that perspective of - I mean, some of
10 this information that has come out since the project
11 was changed would have impacts the thermal project as
12 well. Is that - I mean, some of that - like the -
13 additional avian information relates to solar projects
14 in general.

15 MS. WATSON: I would say solar projects in
16 general, specifically also PV in - even the original
17 project parabolic trough we were certainly unaware of
18 the effects of probably, attraction and collision with
19 the site.

20 MR. BABULA: And then the main concern is
21 that the protected species may come through and be
22 injured regarding - whether it's CEQA or LORs, there

1 is a potential for some additional-

2 MS. WATSON: There's a potential. We think
3 it's unavoidable, and of course this could be a
4 scenario that involves single clapper rail, which is a
5 threatened endangered species, or there could be just
6 some bad confluence of weather and conditions for us
7 to have a flock of birds, comes down and crashes.
8 That just happened this summer. Not at a PV
9 [indiscernible]

10 MR. GALATI: I just wanted to make a
11 clarification, because what I heard staff say puts me
12 in a situation where I now need to brief, and I just
13 wanted to let the Committee know.

14 The finding of an override for a fully-
15 protected species, the Commission may not be able to
16 do a finding of override for a fully protected species
17 under Fish and Game Code 3511, and so I want to be
18 careful here that we are not predicting, as we sit
19 here today, that one of those species is going to be
20 taken, which is the standard for that particular
21 violation of LORs.

22 Just like when we build anything, it is

1 possible a fully protected species flies into it and
2 that doesn't require a finding of override of LORs for
3 those, and we have been permitting transmission lines
4 in projects down in this area. We did the Blythe 1
5 and Blythe 2 project with evaporation ponds, and we
6 don't have a finding of override because a particular
7 fully protected species -

8 This issue has come up in the solar thermal -
9 the solar flux tower projects - which is a very
10 different - and from our perspective is, and I want to
11 be real clear that we don't have a requirement -- that
12 staff isn't predicting that we will take a fully
13 protected species, but that in fact, what staff is
14 saying is that there is a potential that that could
15 happen, and we're calling a CEQA impact.

16 They are very different, and I don't want to
17 put the Committee in a position where it can't make a
18 finding of override for that species.

19 MR. BABULA: Do you want to address that - is
20 that your understanding?

21 MS. WATSON: Well, just as a brief comment I
22 would say no, obviously we - we can predict these over

1 the life of the project; we think that it is certainly
2 predictable, but no, we can't predict which species to
3 what scale, how often, if it's consistent for
4 mortality or if it's a more sporadic, episodic kind of
5 event.

6 MR. GALATI: I think that answers my
7 question. I just wanted to raise it to the Committee.

8 MR. BABULA: And one other quick - just to
9 follow up.

10 And so part of our mitigation is a lot of
11 monitoring and adaptive management to understand and
12 adjust and refine the menu of mitigation items to help
13 us move forward as a project; as time goes on and we
14 learn more we apply that into the mitigations.

15 MS. WATSON: Exactly. And that's also the -
16 kind of the nature of my concern, was a pre-
17 construction monitoring - or I should say construction
18 monitoring, because like these other sites, these -
19 these kinds of events can happen, even during
20 construction before operation.

21 MR. BABULA: And one final follow-up.

22 And is the applicant currently doing some -

1 even before they got this amendment, they have agreed
2 to do information gathering and monitoring and then to
3 try to assess and get early information, so as a
4 starting point they already have data going in as
5 opposed to starting with okay, we - we've got a
6 license for the amendment, now let's start collecting.
7 Is that the case?

8 MS. WATSON: That's true. Yes, we've been
9 working pretty collaboratively, I would say, with the
10 project owner. They have agreed to design and
11 implement surveys.

12 MR. GALATI: So it sounds to me like staff
13 believes that there may be a mitigating impacts due to
14 this project to avian species, asking the Committee to
15 work - or requiring the Committee to make an override
16 for those CEQA impacts.

17 If that is the case, and if the Committee is
18 considering those, I would just like to make sure we
19 state on the record, we think that a lot of the
20 reasons that you made a finding of override for the
21 first project would be applicable to this project.
22 Although we don't believe we need a finding of

1 override because we think that the impacts have gone
2 down - even for avian species - from the technology
3 change.

4 HEARING OFFICER RENAUD: All right, thank
5 you.

6 So is staff taking the position, then, that
7 the - the likelihood of an impact to a fully protected
8 species is now greater than it was in 2010, based on
9 new evidence?

10 MS. WATSON: I don't think it's greater. I
11 think that what was happening is, we expect impacts
12 and so those sites simply were not being monitored and
13 so we weren't realizing these effects.

14 I also think there is probably something to
15 do with where you site these geographically; it's
16 close to the Colorado River corridor, so it seems to
17 be bringing in migratory birds to adjacent projects.

18 HEARING OFFICER RENAUD: Okay. So staff has
19 more knowledge about the likelihood of impacts than it
20 had in 2010, is that what -

21 MS. WATSON: Yes.

22 HEARING OFFICER RENAUD: -- what you're

1 saying?

2 MS. WATSON: I mean, with respect to this
3 region in particular.

4 HEARING OFFICER RENAUD: All right. And that
5 is based on what, anecdotal evidence, would you call
6 it?

7 MS. WATSON: This is based on monitoring
8 results at other sites and informal coordination with
9 the REET agencies, and - you know, the agencies are
10 just starting to become more aware, I think, of avian
11 issues, whereas [indiscernible] that kind of - it's
12 just not really looked at at construction operational
13 sites, and so I think the more we look the more we're
14 going to find these impacts and trying to address them
15 proactively.

16 HEARING OFFICER RENAUD: All right, thank
17 you. Questions from the Commissioners?

18 All right. If there is anything - could I
19 have your -

20 MR. LOZEAU: Mr. Renaud, this is Mike Lozeau.

21 On the collision issue, we would agree with
22 staff that - that those impacts are unavoidable for a

1 project of this size and with PV panels. We had Dr.
2 Sean Smallwood provide written testimonies. One of
3 the more prominent collision experts, bird collision
4 experts. He's done a lot of surveys for wind projects
5 and a lot of PV projects as well. One of the - you
6 know, one of the few experts out there who really
7 knows how these surveys have to be conducted.

8 And he largely agreed with staff's
9 assessment, though, he - he actually did a prediction
10 of how many bird collisions there would be for this
11 site and -- with a lot of uncertainty built in, as
12 everyone acknowledges, as to why the birds are doing
13 that as well as - no one can predict exactly how many
14 birds are going to be killed or exactly what species
15 are going to run into those panels.

16 But you know, it can be quantified, it can be
17 estimated. And he actually did that in his testimony.
18 And it's a large number of birds that one can expect
19 will run into the panels, as well as other creatures,
20 I suppose, as well.

21 So in terms of having to make the findings, I
22 think you would have to go through that process for

1 avian birds.

2 I would also add that in addition to fully
3 protected and endangered and threatened species, you
4 know Section 3503.5 of the Fish and Game Code, which
5 protects every individual owl and hawk - so - and
6 raptor - so there are some that overlap with fully
7 protected status, but there's a lot who just - the
8 red-tailed hawks, for example, they're just fully
9 protected by 3503.5.

10 So there's a lot more birds, even than what
11 staff has mentioned, that would be under California
12 law fully protected, although that is not the term of
13 art used for 3503.5.

14 The assessment I think focuses on their
15 nesting protections, which that provision also
16 provides, but it also says no individuals can be taken
17 from this particular broad categories of bird species,
18 so -

19 So the finding that staff is suggesting is
20 even - if it's obviously in that category they have to
21 go because of those large number of birds as well.

22 I was just curious on the behavioral study

1 question. Maybe it would be interesting to hear if
2 folks have - on the applicant's panel had indicated
3 that the current studies would include some behavioral
4 kind of analysis and could, maybe you can describe
5 that, and is it going to continue as the - I mean, Dr.
6 Smallwood has testified in his written testimony that
7 behavioral information is critical; otherwise how do
8 you know if birds - from my lay person, you know,
9 summary, would be how do you know a bird is attracted
10 to the site if - you know, you'd have to sort of know
11 what birds are there and how they are using it and
12 whether, you know, now they're diving towards a panel
13 when none of the studies showed they did.

14 So how would the current studies, or what is
15 planned for when the panels come on line, how would
16 those assess behavior for the particular methods that
17 are being applied?

18 DR.NAGY: The current studies, we have
19 migration studies where we have point counts with
20 really good (use sets) where we're doing four hours
21 worth of survey time and these points are designed -
22 the methods were designed in combination with the REET

1 agencies through quite a bit of discussion, and we
2 have a couple of points within the project that we're
3 moving around.

4 We also have a marine radar unit on-site, and
5 what that allows us to do is to evaluate the movement
6 patterns over the site of both bats and nocturnal
7 migrants.

8 MR. LOZEAU: So would it document - you know,
9 I guess the radar would certainly document the height
10 of the birds and whether they change direction, things
11 like that. Is that what people mean by behavioral
12 monitoring?

13 DR.NAGY: Yes.

14 MR. LOZEAU: The radar - just in the
15 evenings?

16 DR.NAGY: Yes, we generally use the radar to
17 supplement for time periods when you can't see the
18 birds. And so the daytime surveys will be getting the
19 patterns; in [indiscernible] surveys we can be (too)
20 specific because you can see them, and then what radar
21 does is it fills in the missing gaps for the evenings,
22 where you can't see the birds or bats moving at higher

1 levels.

2 MR. LOZEAU: Dr. Smallwood definitely
3 emphasized the need for behavioral monitoring before
4 the project and as it starts up, otherwise you might
5 be missing some important component of whatever is
6 causing the birds to show up at the PV panel.

7 HEARING OFFICER RENAUD: Thank you. We have
8 his testimony offered into evidence. We'll get to the
9 admission issue later on.

10 COMMISSIONER HOCHSCHILD: We have a question
11 from -

12 HEARING OFFICER RENAUD: All right.

13 COMMISSIONER HOCHSCHILD: A question for Mr.
14 Stein.

15 I visited Desert Sunlight - and this was
16 actually before the issue came out about some of the
17 migratory birds, seeing that the arrays are like -

18 I'm just wondering, are you familiar with any
19 effort by them or any other solar PV projects to
20 install something like a fake, you know, owl or hawk
21 or something, like they do, you know, in buildings
22 where you're trying to keep out birds - and so has

1 anyone done that with PV, and if so, what have been
2 the results? Or is there anything else that can be
3 done as a deterrent that has been proven effective?

4 MR. STEIN: It's a good question. And
5 actually, you know, we're in conversations now, I
6 think, with all of the agencies including the Energy
7 Commission, to take the data that we currently have
8 and try to figure out what, you know, what are the
9 best things that we might be able to do if in fact,
10 we're having, you know, a significant impact to birds.

11 So what you're suggesting, some sort of
12 deterrent, has certainly been brought up and on the
13 table. It just - those conversations haven't gotten
14 far enough - actually have started implementing
15 anything yet. But I think even in - and correct me if
16 I'm wrong - I think even in the examples of the types
17 of adaptive management that might be employed,
18 deterrence is one of the things that's listed.

19 So we remain open to ideas. In fact, I think
20 - we have already had some conversations with some
21 companies out there that have, you know, deployed
22 certain deterrent technologies for the wind industry,

1 would those be appropriate for solar. So those are
2 things we are -

3 MR. GALATI: Mr. Hochschild, the way the
4 Condition works is once you get the monitoring data,
5 see what's actually happening on the project site. We
6 can tailor those deterrent methods for typical types
7 of birds and then you can monitor those.

8 And so we tried to put that into - in BIO-15,
9 and we kept those pieces that allow that flexibility
10 to be in the BBCS, allow you the flexibility without
11 coming back for an amendment to the Commission or
12 something. So those details, you implement them and
13 then you monitor them. If they're effective, you keep
14 doing it, and if they're not, you do something
15 different.

16 HEARING OFFICER RENAUD: Anything further on
17 this area?

18 MR. LOZEAU: Mr. Renaud, the only other
19 comments we would add is on the BDCS, which a lot of
20 the details end up going into that. We've commented
21 on the lack of independent public ability to comment
22 on that, or to review, and see how it looks. So a lot

1 of these details about, you know, whether a particular
2 study actually achieved the behavioral use goal or
3 whatever kind of thresholds might apply, which I don't
4 think have been identified yet, even, or what kind of
5 - what kind of theories, you know, people have tried
6 to prove or disprove as they move ahead, and then
7 adopt the management process - none of that is
8 obviously available at this time.

9 So one of our core comments, which - and on a
10 number of those key documents was, is there a way
11 that, you know, would allow the public at some point
12 to plug back in and make some comments? Especially as
13 adaptations (sic) are being made. Obviously there's
14 going to be substantive decisions made in the future.

15 So we thought that was important.

16 We did have a comment on the burrowing owl
17 mitigation numbers, where the staff assessment based
18 it on just a very small number of nests or sign, and I
19 think it was on the two burrowing owls that were
20 actually observed, and Dr. Smallwood pointed to that
21 while there were over 90 distinct locations where a
22 sign was localized and it's obviously more birds that

1 would be out there, they just weren't - they didn't
2 happen to be seen the day someone walked through. But
3 he calculated that that mitigation acreage actually
4 should be higher to account for all the sign that was
5 seen, albeit only, I think, there was two birds that
6 were actually observed in physically the birds
7 themselves.

8 And we did also make one other suggestion
9 because of the relatively recent identification of at
10 least one critically imperiled plant species, the
11 Abram's spurge, which was located in Unit 4 in the
12 northwestern corner. That sort of lends itself, or
13 suggests that is there a way to adjust the location of
14 some of the panels, seeing that the project is
15 smaller. There was 9,000 acres identified before; is
16 there still another adjustment that could be made to
17 the 2,000 individuals of that, what was framed as a
18 critically imperiled plant species, and whether that -
19 it wasn't the whole site but some of the - I guess
20 some of the plants are covering the whole site, so
21 there's really no way to avoid them as the project
22 moves ahead. But for this one it was only in the

1 northwest corner of one of the units. So that was one
2 of the other comments that - the written testimony
3 that Dr. Smallwood suggested as well.

4 HEARING OFFICER RENAUD: All right. Thank
5 you. Then we'll review that testimony and consider it
6 in the decision-making process.

7 MR. GALATI: I would respond very briefly to
8 those three points.

9 HEARING OFFICER RENAUD: Please.

10 MR. GALATI: The first point, on the public
11 input of the BDCS. Remember, the BDCS and the
12 technical advisory committee is just that, it's a
13 technical advisory committee, and it's made up of
14 people who have special expertise. Intervenors do not
15 have that special expertise, nor should there be
16 members of the public who can provide that special
17 expertise; these are the actual lead agencies whose
18 job it is to protect those species, that's who sits on
19 the tack, and that's who reports to the CPM. The idea
20 of making that a public process, I think, would make
21 it cumbersome, would make people who have commercial
22 interest be able to stop the process from going

1 forward, as opposed to a real collaborative work with
2 the experts.

3 The second is the burrowing owl. No new
4 burrowing owl surveys have been done. The burrowing
5 owl mitigation is exactly like the last project, and
6 it's based on the last project's data. So that issue
7 has already been adjudicated and we're still - we're
8 mitigating in the same way, in the footprint.

9 And then last, same thing with BIO-19.

10 BIO-19 is, you may recall, is about a 20- or
11 25-page condition that deals with how we protect
12 plants, that was long, and discussed for a very long
13 time. We have accepted Bio 19 in its current version;
14 staff has agreed that it stays unchanged from the
15 final decision.

16 So we don't see any need to address that
17 issue, as well.

18 HEARING OFFICER RENAUD: All right, thank
19 you.

20 MR. BABULA: I just want a follow-up comment.
21 Staff did, in our response to comments, address some
22 of the items that Dr. Smallwood had indicated in his

1 testimony.

2 MR. LOZEAU: I would just mention that Dr.
3 Smallwood is in fact an expert, and probably one of
4 the more preeminent experts on these very issues.
5 Probably as much as or more so than any of the - you
6 know, most of the agency staff, and perhaps
7 applicant's experts as well.

8 So there are people out there in the private
9 sector who actually have a lot of expertise -

10 MR. GALATI: And we can consider hiring them.

11 MR. LOZEAU: So it wouldn't, you know, a
12 public process, at least for this particular
13 intervenor, would not be necessarily some kind of, you
14 know, useless process, because we actually have
15 already presented our expert who would be able to
16 analyze whatever is going on in the adaptive
17 management process.

18 And in terms of the Abram's spurge, it wasn't
19 actually identified during the last project. So
20 whatever the conditions were for plants, that's
21 assuming that the panels are going in basically where
22 they were going in, but for this particular plant

1 there are - this is a specific geographic area where
2 they were located, and they were located after the
3 last approval.

4 So it's - it's an obvious suggestion that,
5 you know, one could adjust the locations to actually
6 avoid at least that one critically imperiled plant.
7 There are some plants, I agree, that I don't think you
8 can avoid - the unicorn plant that is identified,
9 things like that, they're all over the site. But this
10 one isn't.

11 So that was just a commonsense suggestion
12 from our expert.

13 MR. GALATI: Bio 19 deals with classes of
14 plants, not specifically named plants. Abram's spurge
15 is now one of those classes, it's dealt with in the
16 way that it was dealt with in Bio 19.

17 HEARING OFFICER RENAUD: Good. Thank you.
18 Anything else?

19 Are we done with Biological Resources?

20 MR. GALATI: I think we're done.

21 HEARING OFFICER RENAUD: All right. Staff?

22 MR. GALATI: I would like to fix something,

1 though.

2 HEARING OFFICER RENAUD: Fine.

3 MR. GALATI: Because I was going way too
4 fast, Mr. Renaud, and I forgot to ask for the
5 witnesses to be sworn on the staff side. We had these
6 witnesses sworn, and maybe we can ask them to be sworn
7 and to basically put on the record that since they
8 have been talking they have been telling the truth.

9 (Laughter in room.)

10 HEARING OFFICER RENAUD: Yeah, that's a good
11 idea. We can make their swearing-in nunc pro tunc,
12 which would mean "now for then."

13 So would you please raise your right hands.

14 (Whereupon the witnesses were sworn.)

15 HEARING OFFICER RENAUD: Thank you.

16 MR. GALATI: Thank you, Mr. Renaud.

17 HEARING OFFICER RENAUD: We're ready to move
18 to Geo and paleontology. All right.

19 Intervenors, are we clear to move on to the
20 next topic? Thank you, let's do that.

21 MR. GALATI: My understanding is we're down
22 to one dispute, which is whether the condition of

1 certification, a new condition of certification, Paleo
2 9, or P-A-L 9, should be included in the final
3 decision.

4 We submitted our testimony in the pre-hearing
5 statement and testimony, which was Exhibit 1012 and if
6 the Committee has any questions about that testimony,
7 Mr. McCloud is available here, he should be sworn, and
8 he can answer any questions.

9 He can also give a brief overview of what our
10 position is.

11 HEARING OFFICER RENAUD: All right. I think
12 we would like to hear the brief overview. Right,
13 okay. So why don't you raise your right hand and I'll
14 swear you in.

15 Do you swear or affirm that the testimony you
16 are about to give shall be the truth, the whole truth
17 and nothing but the truth?

18 MR. MC CLOUD: Yes, I do.

19 HEARING OFFICER RENAUD: Please state your
20 name.

21 MR. MC CLOUD: Duane McCloud.

22 HEARING OFFICER RENAUD: All right. Go

1 ahead.

2 MR. BABULA: Can we swear in staff's witness

3 -

4 HEARING OFFICER RENAUD: Of course. Let's do
5 that too.

6 MR. BABULA: -- so they can -

7 HEARING OFFICER RENAUD: Okay. Raise your
8 right hand.

9 (Whereupon the witness was sworn.)

10 MR. WEAVER: Casey Weaver.

11 HEARING OFFICER RENAUD: Okay. Go ahead.

12 MR. MC CLOUD: A brief overview. Just a
13 clarification. The discussion here is about PAL-9 -
14 Paleontology 9. Which is a requirement to do
15 basically a series of pre-construction testing related
16 to characterizing the paleontological resources.

17 This condition was not in the original
18 decision, and the - I don't want to put words into
19 Casey's mouth but the rationale for this is because
20 we're doing significantly less disturbance to the
21 site, we will have an opportunity to discover
22 significantly less paleontological resources as part

1 of the process.

2 So from our perspective we are kind of
3 somewhat being punished for being less disruptive.
4 And we understand the rationale for as it's written.
5 However, our position is that yes, we are doing
6 significantly less disturbance on the site. However,
7 on the original disturbance on the site - which was
8 estimated to be in excess of 8 million cubic yards -
9 not all 8 million of that cubic yards was going to
10 (moved) for paleontological resources. It was a huge
11 major earthwork project and with what will be lots of
12 grading. We weren't going to have a paleontological
13 monitor sitting on the front of a [indiscernible]
14 looking to see if anything turned up and generally the
15 way such projects work, things get moved, things get
16 rolled and things buried very, very quickly when
17 you're doing mass earthwork.

18 In fact, an estimate that you would be able
19 to look at half of what came up would probably be
20 very, very optimistic.

21 So from our position now we're going to move
22 roughly in total one-tenth of the same amount of dirt,

1 and that includes an allowance for the actual posts as
2 they go into the ground, which again is one of the
3 bases of discussion, if we're pounding a post into the
4 ground to put a solar PV structure on top of, then
5 obviously we're not excavating that dirt.

6 But even considering the amount of dirt we
7 will excavate for, say, roads and trenches for wiring,
8 etcetera, in aggregate that total would be roughly
9 one-tenth of the original project; we will still see a
10 lot of that dirt, not just what goes in the post,
11 which is roughly one-tenth of the total, and from our
12 perspective we will still have a lot less soil that is
13 not characterized on the revised project than we would
14 have had on the original project.

15 I guess our position is simply because we
16 were moving a lot more dirt doesn't mean we're doing a
17 lot more paleontological observation, and certainly
18 from the amount that we were going to miss - had it
19 remained a solar thermal project, 1,000 megawatts,
20 would have been a much, much higher amount of dirt
21 that was not observed than what we would have in the
22 modified project.

1 So just for clarification, we are still of
2 the position that PAL-9 should be eliminated.

3 HEARING OFFICER RENAUD: All right. I have a
4 question. Both the approved project and the amended
5 project use posts to hold up the structures, right -

6 MR. MC CLOUD: Right.

7 HEARING OFFICER RENAUD: -- the solar
8 collecting structures.

9 And the plan is that they would be driven
10 into the ground basically?

11 MR. GALATI: Yeah, let me explain to you -

12 HEARING OFFICER RENAUD: My question is, the
13 number - give me a comparison of the number of posts
14 for each project.

15 MR. GALATI: The original project had - had
16 different types of footings, because the solar trough
17 had to be supported and very flat. So they graded the
18 entire site and then they drilled several different
19 footings.

20 They were not driven into the ground -

21 HEARING OFFICER RENAUD: All right.

22 MR. GALATI: -- for the first project.

1 HEARING OFFICER RENAUD: Okay.

2 MR. GALATI: So the material that would come
3 out could be monitored.

4 This project - I don't remember how many
5 posts, Mr. McCloud might know - we won't be grading
6 and we won't be digging, we'll just be driving, for
7 the posts.

8 MR. MC CLOUD: Yeah, this project would have
9 roughly five times as many as the original project
10 would have had. But again, the characterization is
11 different. Those were what we call drilled piers, in
12 which case you basically drill a big hole in the
13 ground and you pull the dirt out. And then fill it in
14 with concrete.

15 COMMISSIONER HOCHSCHILD: The other question
16 I have - typically you would be vibrating it in -

17 So is there a difference in the depth of
18 these piers as compared to the trough technology? Or
19 are they about the same.

20 MR. MC CLOUD: Yeah, trough is deeper.
21 Again, it depends on the diameter you go to -

22 COMMISSIONER HOCHSCHILD: Yeah.

1 MR. MC CLOUD: Generally, the trough piers
2 are going to be a minimum of 12 to as high as 20 feet
3 deep. So - not quite double, but somewhere in that
4 range.

5 COMMISSIONER HOCHSCHILD: All right.

6 MR. BABULA: Yeah, numbers of posts and so
7 forth is in the staff's supplements testimony and
8 staff assessment, it's all in there. But I would like
9 to have Casey, when he speaks and addresses us, he can
10 identify the numbers of posts.

11 MR. GALATI: Okay. Nothing further from us.

12 HEARING OFFICER RENAUD: All right. Any
13 questions for the witness, anybody?

14 MR. BABULA: I have no questions.

15 HEARING OFFICER RENAUD: All right. All
16 right, go ahead, please, with your witness.

17 MR. WEAVER: Good morning. To kind of
18 explain what the idea of the PAL-9 is about, it's to
19 collect representative fossils in the area of the
20 solar field that otherwise wouldn't be collected, and
21 destroyed by the pylon insertion method.

22 The initial project was going to have large

1 grading and some drilled piers where soil would be
2 recovered and fossils collected, curated and used for
3 scientific investigation or knowledge. The current
4 project with drilled - with the vibrated pylons would
5 go through that solar field without any chance of
6 recovering any of the fossils. Anything that they hit
7 would be destroyed.

8 So the idea of PAL-9 is to mitigate that loss
9 by recovering a representative number of fossils where
10 the paleoecology could be determined from those
11 fossils collected in the area that would otherwise be
12 impacted with no recovery. So that is the gist of
13 PAL-9.

14 Initially the resistance, I believe, in PAL-9
15 was suggestion of modification of foundation elements
16 to minimize impact to the paleontological resources -
17 shallow footings, different types of foundation
18 elements, whatever.

19 The pylon insertion is a really good
20 construction methodology, and as an engineering
21 geologist I understand those concepts, and the very
22 positive construction methodology that the pylons are.

1 However, there's 213,885 of these posts that are going
2 to be driven into the ground - I'm sorry, these are
3 posts not pylons - 8-inch diameter posts and - steel
4 posts - again there would be no recovery for that.

5 You know, very good foundation elements for
6 holding up the mirrors, that's for the panels
7 throughout the site -

8 HEARING OFFICER RENAUD: Okay. So it sounds
9 like this is not an area that staff and applicant are
10 going to come to an agreement on, and the evidence
11 that you want us to have is in the record. Am I
12 correct about that?

13 MR. BABULA: Yeah. We have the staff
14 assessment and then we also -

15 I do want to clarify two things we filed in
16 the supplemental, so this would be Exhibit 2003. We
17 filed a supplements discussion of the paleontology
18 with changes to PAL-9, and the discussion that goes
19 with that supersedes the discussion elements in staff
20 assessment that relate to the Condition, because there
21 is the condition has been changed, so anything in the
22 staff assessment that goes to PAL-9 is being replaced

1 by the discussion in the 2003 Exhibit plus what Casey
2 just gave today.

3 And then the other issue I just want to
4 clarify, which is on PAL-7 and PAL-8 - the - there is,
5 staff and applicant agree that on PAL-7 the condition
6 in the file decision should be reinstated. We had in
7 our staff assessment made a change to one of the
8 sentences (but/that) agree that it could go back to
9 the original condition.

10 And then PAL-8 was an added condition that
11 wasn't in the file decision and we have agreed to
12 remove that condition.

13 So right now our only issue we have is PAL-9,
14 and the dispute that you just heard.

15 MR. GALATI: And we agree as well that - that
16 the evidence that you heard today and the evidence in
17 the record is enough for the Committee to make a
18 decision on that point.

19 HEARING OFFICER RENAUD: All right. And do
20 intervenors have anything to add? Any questions?

21 MS. CLARK: I just have one - I have two
22 comments on this issue.

1 First is (the NI) testimony that I (assigned
2 all the Commission's attention to it) - that staff has
3 stated that anything that they hit with these pylons
4 would be destroyed and that there would be no recovery
5 for such paleontological resources, and couldn't we
6 just concur that - that is true with respect to
7 paleontological resources, but also cultural
8 resources? And so it just provides further support
9 for the idea that there are resources under the gun
10 and this particular construction methodology will
11 cause harm to any resources that are located there, be
12 they paleontological or be they cultural.

13 And then second, CRIT does object to the -
14 what is the number of this, is this 9?

15 HEARING OFFICER RENAUD: Nine.

16 MS. CLARK: Paleo 9 - on the grounds that
17 it's concerned about efforts to do additional ground
18 disturbance where it might perhaps not be necessary.
19 And so we agree with the applicant's request to remove
20 it and that - note that if it does continue that we
21 would prefer to have Native American monitors present
22 for any ground-disturbing activities to look for any

1 paleontological resources.

2 HEARING OFFICER RENAUD: All right. Thank
3 you. Mr. Lozeau, anything?

4 MR. LOZEAU: No.

5 HEARING OFFICER RENAUD: All right. Okay.
6 Then I think we're done with that -

7 MR. BABULA: I think there is one more
8 statement -

9 MR. WEAVER: One more -- a little bit of
10 clarification in the - in the staff assessment, on
11 page 5.2-34, just above the proposed conditions of
12 certification, there was a discussion about regarding
13 the panel post insertion with three elements that
14 would be instigated by the findings through PAL-9.

15 We're not looking at having the foundations
16 changed, that's not what mitigation is. Mitigation of
17 PAL-9 is simply to recover the fossils and use those
18 for scientific collection and information.

19 HEARING OFFICER RENAUD: Okay. All right,
20 thank you for that.

21 Anything else?

22 MR. GALATI: The last thing that we - we have

1 nothing on the Geo and Paleo; we're ready to move to
2 Cultural.

3 HEARING OFFICER RENAUD: Let's do that.

4 MR. GALATI: We can stand on what we have
5 written. There was a condition in the final decision
6 that required - it's called Cul 19. It basically
7 provides that where there is BLM and there is
8 disagreements, that the BLM programmatic agreement
9 actually controls.

10 What we're trying to do here is to figure out
11 a balance on how you serve two masters. And - it's
12 BLM property, pay our rent to BLM; they have a
13 requirement, and we have executed a programmatic
14 agreement under Section 106 which binds us to do
15 certain things.

16 Some of those things are very similar to what
17 the Energy Commission requires under CEQA. It can be,
18 and has been, difficult at times to get agreement on
19 everything. So all of our projects actually had this
20 agreement, this CUL-19, which was, if there is a
21 discrepancy, federal law preempts.

22 There is also agreement we put in the

1 condition - because I know, I wrote this piece - which
2 says: "Provisions in these conditions that are
3 additional to or exceed BLM provisions and represent
4 requirements under the Energy Commission's CEQA
5 responsibilities shall continue to apply to the
6 project's activities.

7 This was a compromise condition that would
8 give clear understanding to the applicant when BLM's
9 requirements apply and then, if there is additional
10 CEQA requirements that are required by the Conditions,
11 we have to comply with them.

12 We disagree that this should be taken out. I
13 think that Mr. McMenimen, who is the Project Manager
14 for BLM, I don't know if he's on the phone now, he did
15 tell us that he would call in, just as he did in
16 Palen, and BLM would like this condition back in as
17 well.

18 HEARING OFFICER RENAUD: All right. So
19 staff, maybe you can explain why you want to remove
20 it. Oh, yes, okay.

21 So do you have a witness?

22 MR. BABULA: I do, but I would need - I can

1 explain that we had filed in our staff assessment,
2 there is a two-page discussion that relates to that -
3 why we wanted to remove it. It basically reiterates
4 the current federal law - the relationship between
5 state agencies and federal law under FLPMA. So we
6 thought it wasn't necessary, and the discussion in
7 staff assessment we think is sufficient to address
8 that point and we don't need to do any further
9 discussion on that issue.

10 HEARING OFFICER RENAUD: Okay. I read that,
11 but what I didn't understand is what is the downside
12 of leaving it? I could see you're explaining it's not
13 necessary but what - why - is it hurting anything?

14 MR. BABULA: I wouldn't say it's hurting.
15 It's not really mitigation and it doesn't fit. I
16 think it was a product of - it would be an initial
17 trying to work with BLM in clarity in how the
18 relationship would go moving forward with compliance
19 on projects that are on federal land and now that we
20 have a few years of practice and history with working
21 with BLM, we don't think there's any issues of the
22 applicant being positioned in the middle of two

1 agencies with conflicting mandates.

2 So the thought was that the condition was no
3 longer necessary to - and wouldn't be permitted in any
4 future projects.

5 HEARING OFFICER RENAUD: Okay. Thank you,
6 that's what we need.

7 Intervenors, do you have anything to bring up
8 in this area?

9 MS. CLARK: No. Not on this particular -

10 HEARING OFFICER RENAUD: On CUL-19.

11 MS. CLARK: No.

12 HEARING OFFICER RENAUD: No? All right.
13 Anything else on cultural?

14 MR. GALATI: I just wanted to make sure we
15 state for that record that - the proposed changes to
16 conditions of certification; we wanted to make sure
17 that we weren't in support of them. We think the
18 conditions of certification should stay the way they
19 are in the final decision.

20 HEARING OFFICER RENAUD: Okay. Good. So
21 let's turn, then, to Colorado River Indian Tribes.
22 What do you have on Cultural for us?

1 MS. CLARK: Thank you. I just have a few
2 questions for CEC staff related to the conditions of
3 certification and to address CEC staff counsel's
4 objection earlier that perhaps sees my own questions
5 aren't relevant.

6 I wanted to state that the questions I am
7 about to ask are related to conditions of
8 certification and whether or not they work to address
9 cultural resource harms, particularly in the event of
10 an unanticipated discovery. And as we saw with CEC
11 staff in the bio resources section, they have made
12 changes based on learning, and what this Commission
13 and the Commission's staff has learned in the last
14 three years.

15 And the questions that I have, and our
16 suggestions for the conditions of certification
17 represent those exact same type of learning, and the
18 tribes have learned, and I would hope that the
19 Commission and its staff has learned as well, that the
20 conditions originally proposed in 2010 haven't been as
21 effective as I would hope, and the tribes certainly
22 saw this with the Genesis project - I know the

1 Commissioner is familiar with my testimony on this so
2 I won't go into it here.

3 And so my questions here for CEC staff really
4 relate to whether or not conditions of certification
5 work and are effective to address the relationship of
6 the tribes. So - if you want to allow me to question
7 on that point.

8 HEARING OFFICER RENAUD: Okay, yes, go ahead.

9 MS. CLARK: Thank you.

10 HEARING OFFICER RENAUD: Who did you want to
11 question? The gentleman here?

12 MS. CLARK: Yes.

13 HEARING OFFICER RENAUD: All right. Then we
14 need to swear you in.

15 (Whereupon the witness was sworn.)

16 MR. GATES: Yes, I do.

17 HEARING OFFICER RENAUD: State your name,
18 please.

19 MR. GATES: Thomas Gates.

20 HEARING OFFICER RENAUD: Thank you.

21 MS. CLARK: So my first question, really, is
22 to CUL-1, which is a \$35 per acre fee for the impacts

1 to the prehistoric trails in that cultural landscape.
2 And then - my question is related to the Palen
3 project. In that project we saw a revision to this
4 measure to address the - specific to Rio Grande trail
5 landscape, and with all modifications.

6 So for the Commission's edification, this \$35
7 per acre fee was intended to work (as sort of a whole)
8 for the Palen project to Genesis project, and this
9 Blythe project. And given now that we have seen
10 changes - just like with the Palen project - and can
11 you explain sort of how the \$35 per acre will work now
12 that we have - Palen is out and we have a smaller
13 acreage number here. Will we still get the same level
14 of mitigation, and is it adequate?

15 MR. GATES: In other projects such as Palen,
16 staff felt that they were warranted to assess effects
17 beyond the original project footprint, and therefore
18 we came up with the concepts we came up with for
19 Palen.

20 In the situation with this project, because
21 we acknowledge a significant diminishment of project
22 impact, staff felt that the prior analysis stood, and

1 staff didn't feel warranted to reach further as
2 compared to, for example, the Palen project.

3 Regardless of where staff is and how far they
4 feel they are warranted or not warranted to do further
5 analysis beyond the project footprint, we understand
6 that the prehistoric trails network landscape is a
7 smaller concept than the larger concept that we had
8 developed with Palen, in that the particular trail
9 network that is talked about originally in the Palen
10 project and now in this project, would be subsumed
11 within that larger project, or larger landscape.

12 It is the - Hultza Doma Trail that is
13 discussed, for the prehistoric trails network has a
14 very limited period of significance compared to the
15 other landscape and is one of several trails that
16 would be subsumed into that larger landscape, trail
17 landscape.

18 So we feel that the - because we're not
19 warranted to do any further analysis, that the
20 previous mitigation for Blythe stands and we would
21 simply accept that and subsume that into a larger
22 project.

1 MS. CLARK: And to follow up. Can you
2 explain specifically how the \$35 an acre fee, now that
3 it is really smaller, based on acreage and based on
4 the fact that Palen is going through different
5 analysis, how that will work for this project?

6 MR. BABULA: Before I answer, I just want to
7 kind of object to the sense that - we're talking about
8 Blythe project, and I know there is some relation, but
9 a lot of the testimony that was filed by CRIT had to
10 do with Genesis, and just - I just don't want to get
11 too carried off about these other projects. This is a
12 very different, different technology, different
13 footprint. And so -

14 MS. CLARK: This particular mitigation
15 measure, however, ties directly to those two projects.
16 If you suppose that the money will be pooled together
17 with Genesis and Palen - and so that's - that's this
18 line of questions.

19 HEARING OFFICER RENAUD: Let me just
20 interject for one moment here, because we're looking
21 for some information, Ms. Clark.

22 Is there a document that shows CRIT's

1 proposed changes to the Conditions -

2 MS. CLARK: Yes.

3 HEARING OFFICER RENAUD: -- and if so, which
4 is it?

5 MS. CLARK: It's been filed as Exhibit 4007.

6 HEARING OFFICER RENAUD: All right. Thank
7 you.

8 MR. GATES: So if I'm to answer that
9 question, the mitigations under the condition for
10 Blythe would simply be expended as it's stipulated in
11 that condition.

12 MS. CLARK: All right. And so - in your
13 opinion that is a sufficient amount of money, even
14 though it's less than it was for the original project?

15 MR. GATES: Yes.

16 MS. CLARK: My next question relates to the
17 cultural resources mitigation and monitoring plan, the
18 CRIMP. And I am curious if you can tell us how tribes
19 will be consulted, if at all, with respect to
20 development of this CRIMP.

21 MR. GATES: I believe right now there is not
22 language that directly requires consultation on

1 development of the CRIMP in the current conditions
2 that are for the Blythe project. There are conditions
3 to include Native American monitors and so on and so
4 forth. But at this point I don't think there is any
5 requirements to consult on the development of that
6 plan.

7 MS. CLARK: Okay. And then - when the CRIMP
8 is developed, and then later applied, can you walk me
9 through how the CRIMP will be interpreted if there is
10 a dispute either between the applicant and CEC or if
11 tribes raise concerns that the CRIMP isn't being
12 applied properly?

13 MR. BABULA: I mean, this is, again, this is
14 a condition that hasn't changed from the original
15 project. So I'm not sure that -

16 MS. CLARK: But you already objected on this
17 ground, and I explained that we have learned about
18 whether or not these conditions apply -

19 HEARING OFFICER RENAUD: That's overruled.
20 The objection is overruled.

21 That's a good - we are aware that there has
22 been some lessons learned and so we're interested in

1 it.

2 MR. GATES: Simply, there is language in
3 Condition 5, if that's the condition we are
4 discussing, that simply says that if a cultural
5 resource specialist with or without a Native American
6 monitor, encounter resources on the project site that
7 are of interest to Native Americans, then that would
8 start a consultation process on that -- at that point.

9 MS. CLARK: Then I guess I am asking if
10 there's - as to the consultation process, if there are
11 questions that arise, can you explain retains the
12 ultimate authority to say, "Oh, this is what the CRIMP
13 says, and this is how we're going to apply it on the
14 ground."

15 MR. GATES: I believe that ultimate authority
16 rests between the CRS, the compliance project manager,
17 and the technical staff at the Energy Commission.

18 MS. CLARK: Okay. I would just like to draw
19 your attention to Cultural Resource 5, which says that
20 implementation shall be the responsibility solely of
21 the CRS and of the project owner, and it doesn't have
22 any language allowing the CEC technical staff to be

1 involved.

2 So my next question is, can you please
3 explain - the next question is, can you please
4 describe the circumstances in which the avoidance of
5 significant sites will be required under the current
6 cultural resource conditions of approval.

7 MR. GATES: I'm sorry, could you repeat the
8 question?

9 MS. CLARK: I'm looking for you to describe
10 the circumstances in which significant sites will be
11 required to be avoided - not due to recovery, but
12 avoided, under the proposed Cul?

13 MR. GATES: To my best knowledge - I'm not a
14 lawyer - that there is stipulation for avoidance in
15 these conditions.

16 MS. CLARK: And so you mentioned earlier that
17 the Native American monitors will have some role, and
18 I am hoping you can explain to the Commission when
19 exactly Native American monitors will be required to
20 be involved, and what role they have when they are
21 doing their monitoring.

22 MR. GATES: I think the Native American

1 monitors generally are to assist the cultural
2 resources specialists that are on site during the
3 monitoring to identify when things of Native American
4 interest are encountered, to help with that
5 identification. And I think the language that I just
6 looked at recently on Condition 5 simply says, to the
7 extent that there is a resource that has got Native
8 American interest.

9 And so I'm pretty just repeating the language
10 that is in the Condition 5.

11 MS. CLARK: And so - in Condition 5 it says
12 the Native American monitors shall be obtained to
13 monitor ground disturbance in all areas where Native
14 American artifacts may be discovered. But it seems
15 somewhat ambiguous to me, and I'm curious that you can
16 say where you think on the site Native American
17 artifacts may be discovered. Is that the entire site
18 or is this limited?

19 MR. GATES: I think that some of those types
20 of issues would be addressed in the development of the
21 management plan. Or the monitoring plan.

22 MS. CLARK: Okay. Just to say it again: The

1 tribes are not going to be consulted on -

2 MR. GATES: Per the conditions that is not a
3 requirement.

4 MS. CLARK: And can you describe for the
5 Commission how the tribes will be notified in the
6 event of a discovery of a significant resource, and
7 what happens if they are not contacted on time?

8 MR. GATES: It would depend on what the type
9 of resource is. If it were a, for example, human
10 remain or something that was pursuant to the Native
11 American Graves Protection and Repatriation Act, then
12 there is a federal process by which the federal would
13 have to handle that with tribes per those regulations.

14 If it's on private property, obviously there
15 are state equivalents to that, and those are well
16 known regulations and procedures.

17 Beyond that, it would depend on if a Native
18 American monitor was there at the time of discovery.
19 It would seem that the discussion of the importance,
20 we have a handle that would start at that point - if
21 the Native American monitor was there. But ultimately
22 it would defer to the cultural resources specialist,

1 who, in consultation with the compliance project
2 manager, who would in consultation with the technical
3 staff, would begin to make those decisions.

4 MS. CLARK: And can you tell me again what
5 the notification provisions are, and in what event
6 would a tribe be notified that there is some find at
7 the site?

8 MR. GATES: Well, I believe that - again, if
9 the discoveries were pursuant to NAGPRA then there
10 would be a notification process there.

11 MS. CLARK: Sorry - of non-NAGPRA resources,
12 but still significant resources.

13 MR. GATES: I do not know the answer to that
14 question.

15 MS. CLARK: Okay. For the Commission's
16 edification, the condition of certification that is
17 being proposed provides that tribes must be notified,
18 but leaves that responsibility up to the project
19 owner, and there is a long lag time between when the
20 find would be made and that notification would have to
21 happen. In that interim process we certainly could
22 see data recovery or other harmful mitigation measures

1 made in that time frame.

2 My next question is in - I believe it's for
3 cultural resources - Cul 6 and Cul 7 - you propose to
4 use this Phase 2/Phase 3 mitigation plan, and I'm
5 wondering if you can please explain what that exactly
6 entails and then whether tribes would be at all
7 involved in that process.

8 MR. GATES: Well - if it's a Phase 2 or a
9 Phase 3 mitigation plan, is that what you said?

10 MS. CLARK: The words that are used are
11 "phase two slash phase three" implying that it will be
12 done all at the same time.

13 MR. GATES: So these are BLM standards, I
14 believe, and you know, Phase 2 would be something akin
15 to a survey and Phase 3 would be something more
16 intrusive - removal, excavation, data recovery, and
17 again, dependent on what those items are that are
18 discovered, would then determine particularly how
19 those would be handled.

20 If indeed an ARPA permit is required then
21 there are ARPA requirements per those regulations.
22 And so I would defer to those laws for how that would

1 happen.

2 MS. CLARK: In the staff assessment it states
3 that the Phase 2-Phase 3 mitigation plan would allow
4 for a determination (of) eligibility to be made on-
5 site based on a call between BLM and CEC, and I just
6 note that there are no tribes involved in that
7 consultation process, and I just wanted to confirm
8 that if that is true that if there is a discovery
9 made, that no tribes will be involved in that
10 eligibility determination.

11 MR. GATES: If there is an eligibility
12 determination on the ground - and again, there was a
13 CRS and Native American monitor there, then
14 ostensibly, at least, that Native American monitor
15 would be involved in that discussion.

16 MS. CLARK: I believe that's all my
17 questions. Thank you.

18 HEARING OFFICER RENAUD: All right, thank
19 you.

20 MR. BABULA: I had a couple just follow-ups
21 to - to Dr. Gates.

22 Can you first just explain what a CRS is, and

1 what kind of background they have?

2 MR. GATES: A CRS is a Cultural Resources
3 Specialist that is required to be on the ground during
4 certain ground-disturbing activities per the
5 conditions. Their qualifications require them to meet
6 the Secretary of Interior standard, which is a level
7 of experience, a Master's degree in archeology, and
8 their job is to observe and coordinate on the ground
9 the ground-disturbing activities and to be generally
10 aware of the types of things that come out of the
11 ground and work with the Native American monitors to
12 assess those.

13 Their jobs are also to report back to the
14 compliance project manager and between the compliance
15 project manager and the technical staff of the Energy
16 Commission review those reports.

17 MS. CLARK: And can you clarify who the CRS
18 is employed by?

19 MR. GATES: CRS is generally employed by the
20 petitioner.

21 MR. BABULA: Then on - there is a
22 programmatic agreement for this? Would there be a

1 programmatic agreement regarding this - this project,
2 with BLM? And can you explain a little bit about how
3 that works.

4 MR. GATES: The programmatic agreement, which
5 currently we are not a party to, oftentimes - now I
6 believe - I'm a little shaky on this, but I believe
7 there was one put in place; I believe that that
8 programmatic agreement for this project has to be
9 amended - that's the BLM's responsibility--and there
10 should be in that programmatic agreement similar types
11 of language about how these types of processes are
12 handled and carried forward and conducted and reported
13 on and etcetera.

14 MR. BABULA: For the Committee's - (sort of)
15 correction there - there was a programmatic agreement
16 in this case. I filed it as part of staff's Exhibit
17 2003, and it indicates that the Colorado Indian River
18 tribes signed that programmatic agreement for the
19 original thermal project.

20 So my question, Dr. Gates - so these are
21 their same conditions from the original project. And
22 - overall based on the fact that this project is a

1 smaller footprint, do you concur that the conditions
2 are still adequate and can you confirm that the
3 project footprint is missing a number of identified
4 cultural resource sites that would have been destroyed
5 or impacted from the original project?

6 MR. GATES: I certainly concur that there is
7 a diminishment in the project; that the conditions as
8 staff sees them, we feel, can stand and are adequate
9 to handle the situations that might arise. And I am
10 not sure if there was a third question in that.

11 MR. BABULA: Significant sites.

12 MR. GATES: And yes, there were - in the
13 removal of some of the footprint per the current
14 petition, significant sites were removed and are no
15 longer in that footprint and therefore no longer
16 subject to the disturbance that they previously would
17 have been disturbed under the - as it was previously
18 licensed or currently is licensed.

19 MR. BABULA: And my final question. Could
20 you describe some of the engagement you've had with
21 the tribes in general, from the time that the
22 amendment was filed to now?

1 MR. GATES: There is documentation in staff
2 assessment that shows our deliberations with a number
3 of tribes that are affiliated to this area, and it
4 shows the meetings, the requests, the nature of the
5 schedule by which we sent out notices, so on and so
6 forth. And I would just say that that is in the
7 assessment and is available. If there is something I
8 particularly need to get to I can do that. But it's
9 there.

10 MR. BABULA: I have nothing further.

11 MS. CLARK: Can I address two issues that Mr.
12 Babula has raised?

13 HEARING OFFICER RENAUD: Go ahead, please.

14 MS. CLARK: Thank you. So first, my question
15 is that programmatic agreement, which as he correctly
16 notes, the Colorado River Indian Tribes did sign back
17 in 2010, and the PA was presented to the tribes as a
18 sort of take it or leave it agreement. And it does
19 offer some additional benefits to the tribes -
20 additional notification provisions of the concurring
21 parties, and additional promises of consultation.

22 We also signed a programmatic agreement for

1 the Genesis project that was very similar, and as I
2 think you all are tired of hearing about, the Genesis
3 project programmatic agreement didn't address the -
4 the CRIT's concerns and was unsuccessful at mitigating
5 the finds that happened - the thousands of artifacts
6 that were uncovered during project construction.

7 And to the extent that our signature on the
8 initial Blythe programmatic agreement means anything,
9 it just - it indicates that CRIT has had a long-
10 standing interest in ensuring that conditions of
11 certification are properly imposed, and the reason why
12 we're here today is because we saw that the conditions
13 imposed in 2010 aren't working, and we're here to
14 present the Commission with additional evidence and
15 additional testimony to explain how we think these
16 conditions can be better worded, better enforced,
17 better provided for to ensure that the tribes are
18 properly notified.

19 My second point is also on consultation.
20 Again, we appreciate the work that Mr. Gates has done
21 to engage the tribes, but from CRIT's perspective
22 consultation is only adequate when the tribes can

1 speak directly to the decision-makers. When we raise
2 our concerns to staff it becomes filtered through the
3 staff assessment and as you saw in our comment letter,
4 in the staff assessment we don't think that it
5 adequately addressed the concerns that the tribes
6 have, and so the reason why we intervened is to
7 present CRIT's concerns directly to the decision-
8 makers that are hearing evidence on this project.

9 HEARING OFFICER RENAUD: Good, thank you.

10 Does CRIT contend that in Genesis the
11 conditions were not complied with or was it that the
12 conditions were complied with but they just were not
13 good enough?

14 MS. CLARK: It's both. So in the Genesis
15 project we saw conditions that weren't complied with
16 and due to the inability of CRIT to issue a challenge
17 to CEC decisions we did not file suit against the CEC
18 but filed suit against BLM, which has substantially
19 similar conditions on the ground.

20 And so in that lawsuit it dealt primarily
21 with the question of whether or not the agency was
22 complying adequately with the conditions. But we

1 would also assert that the conditions themselves
2 aren't strong enough to protect cultural resource
3 finds. So it's a "both."

4 HEARING OFFICER RENAUD: Thank you, all
5 right. Anything further from anybody on Cultural?

6 MR. GALATI: Yeah, I think we need to address
7 some of the issues that were raised here about Genesis
8 and about the conditions, because I think we have a
9 very different viewpoint.

10 HEARING OFFICER RENAUD: And by address them,
11 do you mean now, with testimony, or in a brief, or -

12 MR. GALATI: Now in testimony, because we
13 have some members who have worked on Genesis here.

14 We would have done the same thing in Palen
15 when we heard the same things but we didn't have
16 people from Genesis there.

17 So I think we would like to say a few things.
18 Sometimes when you keep repeating something over and
19 over again, it attaches meaning, and then all we have
20 to do is say it and it has connotations.

21 So I would like Mr. Stein to address some of
22 the issues that were raised here about the conditions

1 and whether they worked or not.

2 HEARING OFFICER RENAUD: Okay, let's go
3 ahead.

4 MR. GALATI: Thank you.

5 MR. STEIN: Okay, my name is Kenny Stein,
6 Environmental Manager with NextEra.

7 The company certainly respects CRIT's
8 concerns. I think it's true that in this company -
9 and I personally know a lot about Genesis - we built
10 in on that project, and I was involved with that
11 project personally, from the very beginning of siting
12 through terminating construction - and we have learned
13 some things, and we understand CRIT's concerns a lot
14 better now than we did before.

15 But one thing I would take issue with what
16 Ms. Clark says, is to suggest that somehow we have
17 learned about how the CEC's conditions of
18 certification for that project, you know, didn't work
19 or are not working, and that's simply not true. CEC
20 staff did an incredibly exhaustive job during
21 permitting to try and understand what the risks to
22 resources were.

1 You can find pages and pages of staff
2 assessment for the Genesis project that shows, based
3 on what we knew from pre-construction surveys, that
4 there was a high likelihood of finding buried
5 resources there, and staff had incredibly detailed
6 conditions of certification for how to treat those,
7 and put CRIT in place that was very detailed for what
8 we do when we find - not if we find buried resources,
9 but when, because I think everyone expected that we
10 would find buried resources - and I actually think
11 that things would have worked even better had we
12 followed the conditions of certification - the CRIMP -
13 to a "T."

14 I think that there were certain times when -
15 when that plan was actually deviated from a little bit
16 to try to just give a little bit more time, but we
17 feel that the conditions of certification and the
18 CRIMP and the procedures for the Genesis project were
19 very good, they did work very well -

20 I realize that CRIT did not like the fact
21 that certain buried resources were found - once again,
22 they were predictably found, and there was a very

1 detailed plan for how to address those. We did
2 address those according to the plan, and we take issue
3 with the notion that somehow there has been new
4 information since the time that the Blythe project was
5 approved to suggest that the conditions of
6 certification and the procedures that were in place
7 for Genesis didn't work and that now is a game changer
8 for Blythe.

9 MS. CLARK: May I respond briefly?

10 HEARING OFFICER RENAUD: Please.

11 MS. CLARK: I would just say that first, we
12 have direct quotations from CEC staff after the
13 Genesis project stating that this is an unprecedented
14 find -

15 MR. STEIN: I was not a CEC staff person.

16 MS. CLARK: Okay. And we have - the sheer
17 scope of that find, where we had over 2400 artifacts
18 found - and I can get you monitoring logs on that -
19 was unprecedented, at least in CRIT's mind. And you
20 can disagree, that you or CEC staff believe
21 differently, but from our perspective we consider that
22 to be new information.

1 MR. STEIN: That statement was made by a BLM
2 staffer, not with respect to - I mean, it was
3 unprecedented, I guess, in that BLM person's mind,
4 from the perspective of - they had never had a large-
5 scale solar project that therefore had those kinds of
6 impacts, so they were dealing with more resources
7 being found than they had been used to.

8 But that doesn't change the fact that the
9 procedures were in place to address those - it was
10 completely predicted that those sorts of things would
11 be found - in the numbers that they were found, even.
12 And so again, we just have to agree to disagree that -
13 that the conditions of certification in the CRIMP
14 somehow was flawed and didn't work for Genesis.

15 COMMISSIONER DOUGLAS: I just have a couple
16 questions, if this discussion has exhausted itself,
17 which it seems to have.

18 How are Native American monitors typically
19 chosen, what does that process look like?

20 MR. GALATI: I can first go to the condition
21 which says how they'll be chosen. And if you go to
22 condition - Tom, you might have to help me.

1 MR. GATES: I believe it's in five.

2 MR. GALATI: I'm sorry, Commissioner -

3 MS. CLARK: It's in Cul 5, but all it says is
4 that that process will be provided for in the CRIMP.
5 That's Cul 5 Number 8.

6 MR. GALATI: There's another reference to the
7 -

8 MR. BABULA: You know, it's somewhere in the
9 200 pages of Cultural Resources.

10 MR. GALATI: But I will let Mr. Stein also
11 read in the fact that Native American monitors are
12 required by BLM as well. So there is a joint effort
13 and there is guidance from BLM on how that is put
14 together as well.

15 MR. STEIN: And having Native American
16 monitors involved is really important to us, and so we
17 - I guess we make sure that - basically any time that
18 archeological monitors are required, that Native
19 American monitors are also present, and typically we
20 try to make sure that they have some qualifications in
21 terms of understanding tribal resources and you know -
22 in all of the solar projects that are under

1 construction now, the ones nearby, I think it's worked
2 pretty well in terms of having Native American
3 monitors on site and working pretty well with the
4 archeologists on site.

5 MS. CLARK: I don't think we dispute that
6 Native American monitors are used well when they are
7 used. We just want to make sure they're used for all
8 ground-disturbing activities.

9 MR. GATES: Commissioner Douglas, if I may.
10 The specific instructions in our conditions for how
11 Native American monitors - is embedded in Condition 16
12 - which would be page 165 of the Cultural Resources
13 section of the staff assessment.

14 In general, you go to a list that is
15 generated by the Native American Heritage Commission;
16 it's the same list - it's a slightly different list
17 than what we would normally start our consultation
18 with, and you go from there. So normally those tribes
19 are already aware of the project, and if you go
20 through that, and if you exhaust that list and if you
21 still cannot come up with a Native American monitor,
22 it gives discretion to the CPM and CRS to - to make a

1 decision whether they should reach out further to
2 other tribes or whether they are good to go without
3 any Native American monitor.

4 COMMISSIONER DOUGLAS: Okay. And that's a
5 list of tribes, right? Or a list of individuals who
6 are interested in being Native American monitors -
7 it's a list of tribes, right?

8 MR. GATES: That is correct.

9 COMMISSIONER DOUGLAS: Okay. And then from
10 that you contact the tribes, or you get a - get a list
11 by just talking to the different tribes that are on
12 the list?

13 MS. CLARK: The tribes have - there are
14 requirements for who can be a Native American monitor.
15 And some tribes can comply with that and some tribes
16 cannot.

17 COMMISSIONER DOUGLAS: Okay.

18 MS. CLARK: And that's under BLM's rules.

19 MR. GATES: There is no state requirements.
20 There is only - there might be federal requirements
21 but under the state laws there is no requirements for
22 qualifications or who.

1 There is a list. These groups are generally
2 known to staff and to CRS's that are on the site and
3 they work through that list until they find a
4 sufficient number of monitors, or they can't find
5 those monitors.

6 COMMISSIONER DOUGLAS: Okay, thank you.

7 And another question that I have is that -
8 you know, I noticed that CRIT's proposed conditions
9 have - or I guess CRIT has expressed concern about
10 data collection and a lot more interest in re-burial
11 of artifacts on-site. But I am interested in staff
12 and applicant's perspective on that.

13 MR. GATES: I would simply say that I
14 generally reviewed those suggested changes. While
15 some of those changes are in staff's opinion innocuous
16 or can be easily accommodated or can be accommodated,
17 I should say, maybe not easily, but can be
18 accommodated - we simply feel that the project was
19 licensed as it was; we carried forward the conditions;
20 the project is currently diminished; and we at the
21 staff level feel we don't have cause to open up those
22 conditions.

1 Were they to be opened up, some of those
2 things are not, in staff's opinion, terribly hard to
3 accommodate.

4 COMMISSIONER DOUGLAS: Let me ask the
5 applicant.

6 MR. STEIN: Yeah, you know, when it comes to
7 - putting the avoidance situation aside, because
8 obviously there is, you know, questions around whether
9 sites should be avoided or not. But assuming that an
10 artifact or a site is going to be impacted, the
11 question has come up, well, instead of doing studies
12 on it, sampling it and curating it in a facility, can
13 it be left in place somehow or reburied - a project,
14 you know, continues with its design and construction
15 as planned.

16 And from our perspective - we don't
17 necessarily have a problem with that. It's been our
18 understanding -- and I don't want to speak for BLM -
19 but that they have some rules and regulations and
20 policies about when artifacts are found, especially -
21 I'm a little out of my technical expertise here, but
22 when they are deemed to be, you know, eligible for

1 their informational potential, that what is done with
2 those resources to make sure that that information is
3 preserved for current and future archeologists, is
4 that the artifacts are studied and curated in a
5 facility that meets BLM criteria. But - yeah, yeah, I
6 mean, like I said, this is putting the feasibility of
7 avoidance aside once - I am just assuming in this case
8 that you know, avoidance can't be - that the resource
9 can't be avoided.

10 But if we're talking about leaving the
11 artifact in place or re-burying it, we - the project
12 don't - don't necessarily have a problem with that.

13 MS. CLARK: And CRIT does acknowledge that
14 there have been issues with BLM's desire or approval
15 of re-burial in situ, in place; it's a conversation
16 that we continue to have with BLM and will be
17 continuing to have as a result of this project, and so
18 our request on this particular issue is to leave the
19 door open, that that's a possibility (and that's why
20 we've included) the if-feasible language.

21 If BLM ultimately says no, you can't do that
22 -which they have said in the past, then that wouldn't

1 be required. But if that is something that BLM will
2 accommodate, we would hope that the conditions of
3 certification which are being developed first would
4 also permit that.

5 COMMISSIONER DOUGLAS: Okay. Thank you.

6 I was going to ask about avoidance next. And
7 when I read the avoidance request or proposed
8 condition, my thought as well was you know, that it
9 could be read to require an on-the-spot redesign every
10 time anything significant was found, and I think that
11 that would be a very challenging thing to think was
12 feasible, even setting aside for a minute the issue
13 that Mr. Gates raised about the fact that this entire
14 issue was adjudicated once and we're really here on an
15 amendment.

16 But I'm just setting that aside for a minute
17 in order to explore the ideas that you have put
18 forward.

19 Is there another way of reading "avoidance,"
20 or is that what you mean, and I'm just trying to
21 explore what's being proposed here.

22 MS. CLARK: That's what we mean, "avoiding,"

1 leaving the site as-is. We are not, obviously,
2 experts in the specific positioning the heliostat
3 pedestals. One thing that CRIT has heard is that the
4 - or sorry, I should say PV pedestals - is that this
5 is a little bit more flexible than we saw with the
6 solar trough project, because it's not required to be
7 in a perfectly straight line, and we have surmised
8 that perhaps there is some slight additional
9 flexibility for avoiding in the PV field, and so that
10 would get into technical areas that we don't know much
11 about but would hope that the CEC staff or the
12 applicant could consider.

13 COMMISSIONER DOUGLAS: I'll just ask the
14 applicant if they have any comments on that. I'm not
15 really asking for a negotiation at this point at all.
16 I just am trying to understand CRIT's proposal, in
17 order to understand it.

18 MR. STEIN: I think we can say that if there
19 is a resource that is found that is easy to avoid
20 without you know, considerable design complications in
21 the middle of building a billion-dollar project, we
22 would certainly try to find a way to do that.

1 We actually did that in Genesis in a couple
2 of situations where it was really difficult design-
3 wise.

4 So we - we are going to - I mean, if there is
5 resources found, if there is a way to easily work
6 around it, we're going to try to do that. But we
7 certainly don't want to be in a situation where the
8 rule going in is - Commissioner Douglas, as you
9 suggested, is that every time we find something we
10 have to redesign the project.

11 MS. CLARK: I appreciate that. I would just
12 hope that the Conditions could reflect that there is
13 preference for avoidance given. Right now there is no
14 language in the Conditions that require that at all.

15 COMMISSIONER DOUGLAS: Okay. Thank you.

16 I think I have one more question. So could
17 you describe for me - and I know that some of this may
18 be in the 200 pages, but some of this either we
19 haven't put together correctly, or in some cases
20 managed to compile in a useful way.

21 So during construction if a significant find
22 is made, what does happen. Mr. Gates began by

1 explaining, well it depends on what kind of find, and
2 what law, federal regime it might fall under, for
3 example, or state regime. But can you give a
4 generalized answer to that? Let's say the Native
5 American monitor or the cultural resource specialist
6 finds something, what does happen?

7 MR. GATES: First - directed to me first?

8 First you would have to make a determination
9 of eligibility. If it's not eligible there is no
10 longer an issue. The project proceeds as if that
11 wasn't there or you know, it's not really considered a
12 historical resource at that point.

13 So after that determination of eligibility -
14 now it depends on what that is, again. If indeed, in
15 order to make that determination of eligibility you
16 need Native American input - for example, some things
17 are like an ethnographic resource, where it's very
18 hard - or a traditional culture place - it's very hard
19 for non-Native Americans to even evaluate what it is
20 they have - you certainly would need to get that - and
21 that is a matter of professional judgment as to where
22 someone can make that call.

1 But most of the things we're talking about
2 are prehistoric archeological items, objects, sites,
3 and these things archeologists generally know about
4 and can identify and there is a strong record of
5 whether something would likely be eligible or not to
6 get through that.

7 And then after that you then - depending on
8 what it is - you would then have to pull back, make an
9 assessment; if it something that needs to be removed
10 or if it's avoided, then that is a non-issue at that
11 point, after you a resolved avoidance.

12 But if you cannot avoid, you would then have
13 to do a research design and determine how you're going
14 to extract the information potential - as potentially
15 in that site or object. And that how you extract that
16 information potential could be anything from an
17 excavation to photography or documentation or, you
18 know, etcetera, there's a bunch of different things.

19 COMMISSIONER DOUGLAS: Okay. And can you help
20 me understand the - kind of time scale that sort of
21 implicit in this, depending on what you find - for an
22 artifact that - for which an eligibility determination

1 can be made fairly quickly because it's relatively
2 known to people with that expertise -- is that made in
3 moments, is it made in -- you know, versus, Kenny,
4 going on through your explanation. Because I'm
5 imagining a project under construction, right? A
6 quarter of the way through a road, and they've
7 encountered something. So what happens and what's the
8 time implication of it?

9 MR. STEIN: I can weigh in. I mean, if there
10 was anything to be learned from Genesis it's that
11 there needs to be some clear time frames, because you
12 know, in that project it took months and months to
13 make decisions that I think everybody thought were
14 supposed to be made in a matter of days or weeks.

15 And I think in most cases - in most cases, we
16 actually in the project, tend to prefer an assumption
17 of eligibility as a time saver, and say "Look, we're
18 not going to sit around and take weeks or months to
19 determine whether it's eligible; we'll assume it's
20 eligible, and move straight to data recovery and
21 extracting the information from the site."

22 Obviously that's the issue that Ms. Clark

1 brought up earlier: once you have determined it's
2 eligible or assume it's eligible, then you take
3 another, you know, weeks or more to - it should be
4 weeks, for data recovery, to study that or leave it in
5 place.

6 MS. ALLEN: This is for Ms. Clark. Could you
7 describe how you envision the concept of reburial
8 occurring on the ground? I'm wondering what it would
9 be like in terms of whether that item that was found
10 that would be reburied would then be surrounded by a
11 fence, or would - would the - what would it be like in
12 terms of whether that newly-found item would be
13 protected or not and would vehicles be going back and
14 forth over it? That kind of thing.

15 MS. CLARK: I understand your concern.
16 Unfortunately, I am not a person - I wish our expert
17 was here, because the process of reburial in site is a
18 culturally sensitive process, and just from the
19 tribes' perspective, from what I do know is that that
20 would be performed as part of a ceremony and that it
21 would have affected tribes on site to do that.

22 In terms of the later protection of it, you

1 know, CRIT is amenable to the reburial happening in
2 its place; it would prefer it to be in a place that is
3 not being driven over; that is not going to be later
4 augured into. At Genesis that did occur, so that in
5 between the roads - and we sought protection by
6 fencing -

7 And so, you know, we appreciate that there
8 has to be some sort of flexibility on the ground in
9 order to do that.

10 MR. STEIN: And I certainly don't want to put
11 words into CRIT's mouth, but I know, again, at
12 Genesis, when there was a discussion about reburial
13 the notion of even taking certain artifacts and
14 reburying them somewhere, you know, off to the side of
15 part of the project that wasn't going to be impacted
16 by the design is something that - that CRIT seemed to
17 be open to.

18 MS. CLARK: I mean, that's not our preferred
19 operation but if that's what we're talking about, yes,
20 I think it's in that general geographic framework.

21 MR. GATES?: Ms. Allen, if I could answer
22 also, not that I'm saying that it's warranted here; I

1 still stand by my original assertion that that we were
2 pleased with the conditions are, but in general, if
3 you were to contemplate doing this, normally what you
4 would do, you would develop as a part of your
5 mitigation monitoring plan, your CRIMP, you would have
6 a section called Reburial that would identify the
7 types of possible things that you might encounter, how
8 a tribe would want to be sensitive to the reburial or
9 not, or under what conditions or what types of
10 ceremonies; a lot of those things absent actually an
11 actual discovery, would generally give an idea of how
12 that would play out.

13 You would negotiate that and that would then
14 be a section, so then if you encounter that and
15 reburial is triggered, you would then follow that
16 section of that plan.

17 COMMISSIONER DOUGLAS: Yes, so I have maybe
18 one more question - maybe more, but we'll see.

19 So you know, I think that there clearly has
20 been some learning from experience in terms of how all
21 of our conditions have worked across the board from
22 the first set of solar projects to (this) second, and

1 Mr. Stein, you raised the issue of clear time frames
2 being helpful, and I just couldn't agree more with
3 you.

4 I think that everybody benefits from having
5 more clarity in expectations and lack of clarity can
6 cost a lot, both in terms of time - being able to meet
7 a schedule, being able to not confuse or frustrate
8 each other or the process, and so on.

9 And so I think that rather than just ask this
10 as a question I will just say that you know, Mr.
11 Gates, I agree with your description of where we are
12 on the cultural conditions, that we've got conditions,
13 we've got a project with reduced impacts and so, you
14 know, it's really hard to see reopening this.

15 I think the one place that I had some - I'm
16 still reflecting, though, is that there is an override
17 for - a cumulative override - on cultural resources
18 being proposed and in that context, one thing I'm
19 thinking about is whether it would be productive to
20 have all the parties who are interested have some
21 discussion with CRIT, not about a wholesale rewrite of
22 the conditions by any means, but about some

1 accommodation to things that in the view of all the
2 parties is reasonable.

3 So I just want to offer that encouragement.
4 That's really all it is, but I would be interested if
5 there is anything you're able to come up with, and
6 it's really the context of the proposed override that
7 has me thinking that - in that context, if there are
8 small things that could be done to make the process go
9 more smoothly, or accommodate viewpoints that have
10 been brought to the table here, then it may be
11 worthwhile for all parties here.

12 So just take that as encouragement, not
13 anything more than that. But with that, my questions
14 are done unless there are others.

15 MR. BABULA: And so - excuse me, this is
16 Jared.

17 Is there a context of how we would work that?
18 I'm not really sure. I think my inclination would be
19 to have the applicant and CRIT kind of go have some
20 discussion and then come back, or - or do that in the
21 context of maybe submitting something after the record
22 closes so we could still move forward with the

1 approvals. I don't know if the applicant wants to
2 have - has any suggestions, and I was just wondering
3 how that could play in, and so kind of wrap this up.
4 After all, this has been kind of going on for awhile.

5 COMMISSIONER DOUGLAS: That's correct. We
6 don't need any more evidence - right? At all.

7 We have got a full and complete record; we're
8 not reopening or scheduling new hearings. So it's
9 just a matter of whether you're going to be able
10 somehow to come up with a way of talking based on the
11 record that is before us.

12 MR. STEIN: If I may respond. I think -

13 MR. BOYD: Mr. Boyd. I would just remind you
14 guys I am here still, and you said something about
15 other [indiscernible]

16 HEARING OFFICER RENAUD: We'll be getting
17 there soon, Mr. Boyd, hang on.

18 MR. BOYD: Okay, thank you.

19 MR. STEIN: Commissioner Douglas, I think
20 that is an excellent suggestion, and in fact, we're
21 doing that now. I mean, we have a really hugely
22 improved dialogue in the field with the CRIT and other

1 tribes - ongoing conversations, and we hope many and
2 more of them, to try to make sure that A, we're
3 sensitive to their concerns, and B, that we do have a
4 clearer path forward that everybody understands up
5 front.

6 We're certainly open to and have every
7 intention to have those discussions, and if we can get
8 clearer time frames, procedures in place in the CRIMP,
9 I think that's the place to put them.

10 We will look forward to having those - that
11 kind of dialogue with the CRIT to try to improve the
12 CRIMP.

13 COMMISSIONER DOUGLAS: That would be -

14 I think a lot of this actually can go into
15 the CRIMP. But if there is a place where we are just
16 too inflexible, then, and want to leave some option
17 open for the future, that is something worth thinking
18 about.

19 This is a very narrow recommendation at this
20 point, this is not about a wholesale rethink of how
21 these conditions are going to go.

22 HEARING OFFICER RENAUD: Anything further in

1 this area?

2 No? All right. I believe that would cover
3 the substantive areas. Everyone, is that correct?
4 The disputed areas, I should say.

5 MR. LOZEAU: We'll certainly intervene and
6 lay in a comment on air quality, and we raised issues
7 there. There may not be a dispute between the
8 applicant and staff but we certainly dispute some of
9 those conclusions.

10 HEARING OFFICER RENAUD: All right. And you
11 did submit written testimony on that, correct?

12 MR. LOZEAU: At the time we weren't
13 intervenors yet, so we had comments on that from an
14 expert.

15 HEARING OFFICER RENAUD: All right. Okay.
16 We've got that.

17 MS. CLARK: And similarly, we raise legal
18 comments in the area of (visual) resources and land
19 use, and so as I have said before, we would like
20 briefing on those matters but don't have any
21 testimony.

22 HEARING OFFICER RENAUD: All right. Thank

1 you.

2 Okay. Well, I think what we should do, then,
3 is just take care of the formality of your moving your
4 exhibits into evidence and I think we can do this in a
5 fairly quick fashion because we are - because we don't
6 have a whole lot of exhibits.

7 Why don't we start with the applicant. What
8 I have for you is Exhibits 1000 through 1014. Those
9 are reflected in the docket, and as to 1014, we do now
10 have a transaction number, which is 201250. That
11 wasn't shown on your latest printed exhibit list, but
12 we now have that.

13 Would you like to move those into the record?

14 MR. GALATI: Yes, we would like to move in
15 Exhibits 1000 through 1014.

16 HEARING OFFICER RENAUD: All right. Thank
17 you.

18 Is there any objection from any party?

19 MR. BABULA: No objection.

20 HEARING OFFICER RENAUD: Mr. Lozeau?

21 MR. LOZEAU: No objection.

22 HEARING OFFICER RENAUD: Thank you. Those

1 will be admitted into the record, then. Thank you.

2 (Whereupon Applicant Exhibits 1000 through
3 1014 were admitted into the record.)

4 HEARING OFFICER RENAUD: Okay. Let's go to
5 staff.

6 Staff, I have for you Exhibits 2000 through
7 2006. Are there any additional exhibits?

8 MR. BABULA: No, those are a complete list of
9 exhibits, and I would like to move those into the
10 record.

11 HEARING OFFICER RENAUD: All right, thank
12 you.

13 Are there any objections?

14 MR. GALATI: No objection.

15 HEARING OFFICER RENAUD: CRIT?

16 MS. CLARK: No.

17 MR. LOZEAU: No objection.

18 HEARING OFFICER RENAUD: Thank you. All
19 right.

20 Let's move to CRIT's exhibits. I have for
21 you 4000 through 4011.

22 MS. CLARK: That's correct. Although we did

1 submit an application for confidentiality for Exhibits
2 4012 and 4013 and I would appreciate a ruling on that
3 application.

4 HEARING OFFICER RENAUD: Well, I haven't seen
5 it, because it hasn't been ruled on as far as the
6 confidentiality aspects, and that is not handled by
7 our office.

8 MR. BABULA: Yeah, I can kind of clarify
9 that.

10 That is another one of my duties here, is on
11 confidentiality, and because I was busy with all this
12 other Blythe stuff, I have [inaudible]

13 But I would - I haven't looked at it yet but
14 I assume it's pretty similar to those in Palen, and we
15 weren't able to find that it's confidential in the
16 context of a normal confidentiality application. I
17 don't have a problem dealing with what the Palen
18 Committee did, which was to - for purposes of the
19 hearing - designate it confidential, so if we forward
20 a path, that would probably be the cleanest.

21 HEARING OFFICER RENAUD: All right. We'll
22 need to do that -

1 MS. CLARK: That's what we proposed.

2 HEARING OFFICER RENAUD: All right. The
3 problem is, I don't think we have transaction numbers
4 for those two exhibits, either. And we can't admit
5 them into evidence until we do.

6 MS. CLARK: You're not going to get
7 transaction numbers for them because they're not
8 submitted on CEC website.

9 HEARING OFFICER RENAUD: Yeah.

10 MR. BABULA: Well, they should have a - and
11 then they come in and they get acknowledged that they
12 were - they came in -

13 MS. CLARK: (Crosstalk) number for the
14 application -

15 MR. BABULA: Right, application.

16 MS. CLARK: (Crosstalk) after that.

17 MR. BABULA: Right. Well, it's a - sort of a
18 housekeeping issue, and we can figure out the docket,
19 what the transaction numbers will be. I think if I
20 were to get those -

21 Well, we'll get a transaction number and get
22 that figured out.

1 HEARING OFFICER RENAUD: Okay. I think what
2 we'll do then is we'll rule in writing on those two -

3 MS. CLARK: Thank you.

4 HEARING OFFICER RENAUD: -- exhibits - that
5 add to the remaining ones.

6 MS. CLARK: So I move 4000 through 4011 into
7 evidence.

8 HEARING OFFICER RENAUD: Okay. Is there any
9 objection?

10 MR. GALATI: There is no objection except I
11 don't want the Commission to start a precedent that
12 documents can be filed confidentially, used as
13 evidence that I never get to see.

14 MS. CLARK: There is a non-disclosure
15 agreement which you can sign. And you didn't take
16 advantage of that in Palen.

17 MR. GALATI: I know. And I did that for
18 issues of expediency, as I am willing to do here.

19 But I don't want this to be - become the
20 standard practice for due process, to have
21 confidential documents being filed. I think - I'm
22 putting it on the record that I think that it can be

1 abused, and - (been doing lots of megawatts), and
2 until Ms. Clark showed up we never did it.

3 HEARING OFFICER RENAUD: I think we had a
4 time constraint, a time crush, in this case, but I
5 assure you our goal is always to be fair, to make sure
6 everybody has access to all these evidence that's
7 being considered by the Committee.

8 COMMISSIONER DOUGLAS: I will just add one
9 thing. In Palen we accepted the confidential
10 documents basically as hearsay, not to be relied on
11 for a finding. And that same concept would apply
12 here.

13 HEARING OFFICER RENAUD: All right, fine.

14 So is there any objection to CRIT's motion?
15 4000 through 4011?

16 MR. GALATI: No objection.

17 MR. BABULA: No objection.

18 HEARING OFFICER RENAUD: Thank you. Mr.
19 Lozeau, any objection?

20 MR. LOZEAU: No objections.

21 HEARING OFFICER RENAUD: All right, fine.

22 (Whereupon CRIT Exhibits 4000-4011 were

1 admitted into evidence.)

2 Now, Mr. Lozeau, we have from you Exhibit
3 5000, and then -

4 That contains a number of sub-documents, and
5 I actually emailed you and suggested that you file
6 each of those separately, but I don't think you did.

7 MR. LOZEAU: No, I'm sorry. I didn't have
8 time to -

9 HEARING OFFICER RENAUD: So we're going to
10 have to keep that as Exhibit 5000 with all of its
11 attachments, and then we have 5005, which is Dr.
12 Smallwood's testimony. Anything else?

13 MR. LOZEAU: No, those would be the two
14 documents, and I was just trying to make sure you
15 could see the pieces that were already submitted in
16 this transaction.

17 HEARING OFFICER RENAUD: So would you care to
18 move those two into evidence?

19 MR. LOZEAU: Yes, I would like to move that
20 those be entered into evidence.

21 HEARING OFFICER RENAUD: All right, is there
22 any objection.

1 MR. BABULA: I have a -

2 I'm kind of confused about - so he has the
3 transaction numbers and he has - and it's all the same
4 transaction number, on all those exhibits. And then
5 there's another list that we did which was the same
6 numbers, such as like, "Matt Hagerman," "Comments on
7 the draft environmental impacts," or the (crosstalk)

8 HEARING OFFICER RENAUD: We're not using
9 those exhibit numbers.

10 MR. BABULA: Okay, well -

11 HEARING OFFICER RENAUD: 5000 is all of those
12 -

13 MR. BABULA: Okay.

14 HEARING OFFICER RENAUD: -- documents
15 together.

16 MR. BABULA: Okay. So that's one thing.

17 And then I have an objection to the actual
18 documents. I'm not clear what comments from Matt
19 Hagerman on the Pioneer Green Energy Project or the
20 comments by Gregory House on the Pioneer Green Solar
21 Project in Kern County has anything to do with the
22 Blythe project, especially given the content of, like,

1 Mr. Hagerman's discussion was emphasized, what to do
2 with the soil of that former ag land.

3 HEARING OFFICER RENAUD: I had the question,
4 what's this doing here?

5 I also noted that it addressed - one of them
6 was addressed to the law firm of Adams Broadwell,
7 which represents CURE in this case.

8 MR. LOZEAU: It's just referenced in the
9 comments and then the testimony, I believe, of - well,
10 it was referenced in our comments and it was about the
11 decommissioning comments that we made, actually, not
12 the other components of it. So those are just what -

13 HEARING OFFICER RENAUD: Okay. We'll, we
14 aren't going to exclude it, but I think we will give
15 it due weight, which - you know, we'll see.

16 MR. LOZEAU: That's fair.

17 HEARING OFFICER RENAUD: All right. Any
18 objections?

19 MR. GALATI: No objection.

20 HEARING OFFICER RENAUD: All right. So those
21 are admitted as well.

22 (Whereupon Exhibits 5000 and 5005 of Laborers

1 International Union were admitted into evidence.)

2 HEARING OFFICER RENAUD: All right. That
3 will conclude the admission of evidence, with respect
4 to the ruling on - except for the two confidentiality
5 things.

6 Okay, brief me. I have heard some briefing
7 topics referenced. One would be on the issue of
8 override for biological resources. Mr. Galati, you
9 said you would need to brief that.

10 MR. GALATI: I no longer believe I need to -

11 HEARING OFFICER RENAUD: All right.

12 MR. GALATI: -- since staff clarified what
13 they were requesting.

14 HEARING OFFICER RENAUD: Okay. And then on
15 the cultural conditions of certification, I think
16 you've indicated a desire to brief on those.

17 MS. CLARK: Yes, and the cultural resources
18 section [indiscernible]

19 HEARING OFFICER RENAUD: Right, okay.

20 Does the Committee see any areas for briefing
21 that you would like to request? All right, okay.

22 I think what we'll have to do, then, is

1 establish a briefing schedule. I'm prepared to do
2 that right now. It will be limited to the cultural -

3 MS. CLARK: We had also requested briefing on
4 visual [indiscernible]

5 HEARING OFFICER RENAUD: As it pertains to
6 cultural?

7 MS. CLARK: No, as it pertains to the section
8 - we raised these comments in our letter on the staff
9 assessment. And the pre-hearing statements.

10 HEARING OFFICER RENAUD: I think when we
11 admitted you as an intervenor we said it would be
12 limited to the issues raised in your presentation,
13 which really was cultural, and then how cultural
14 issues are impacted by such things as visual issues.
15 Do you dispute that?

16 MS. CLARK: I would have to refer back to
17 that document.

18 MR. BABULA: I don't think they put in any
19 evidence about visual with regard to PV panels. I'm
20 not sure -

21 MS. CLARK: These are not - it's not an
22 evidentiary question, a legal question, which is why I

1 am asking for them to be briefed. That's my
2 understanding of how the CEC process works.

3 HEARING OFFICER RENAUD: Well, you know, just
4 to cut it short, I can't stop you from briefing
5 anything you want -

6 MS. CLARK: Okay.

7 HEARING OFFICER RENAUD: -- frankly. So -
8 send in whatever brief you want to send in.

9 MS. CLARK: Thank you.

10 HEARING OFFICER RENAUD: I think we'll give
11 you - how much time do you need for that?

12 MS. CLARK: We would appreciate two weeks
13 because of Thanksgiving.

14 HEARING OFFICER RENAUD: Parties, what are
15 your thoughts on the briefing schedule?

16 MR. BABULA: I was considering - well, first
17 I would like to make this sort of optional in the
18 sense of - if I don't have anything to initially brief
19 can I wait for a reply brief if there is something
20 that someone brings up?

21 HEARING OFFICER RENAUD: Of course.

22 MR. BABULA: Okay.

1 MR. GALATI: That's what I would like to do.
2 I don't have anything to brief. I don't know what Ms.
3 Clark is going to say.

4 HEARING OFFICER RENAUD: Is the two weeks
5 acceptable?

6 MR. GALATI: I can probably turn around a
7 reply brief in three days. So if two weeks takes us
8 to enough time to get a reply brief to you to have it
9 in the decision then I don't object to two weeks. If
10 it does, then I object to the two weeks.

11 I also just want to bring this into play
12 here. We're talking about an amendment, we're talking
13 about the visual changes. And when we do that, that's
14 what the focus should be.

15 HEARING OFFICER RENAUD: I was honestly
16 thinking that if this was all very simple we could
17 conceivably issue a decision next week. I'm not
18 seeing that happening anymore with the - A, with the
19 two-week briefing schedule and also just with the -
20 complexities that have come up today. So, if no one is
21 concerned about the two-week briefing time I'm
22 inclined to say that's fine.

1 MR. BABULA: Is there a specific - is there
2 something in the initial that [indiscernible] (needs)
3 to make a decision, or is it -

4 HEARING OFFICER RENAUD: Well, if we're
5 waiting for - if we're giving a party the opportunity
6 to issue a brief, I mean, the least we can do is wait
7 until we receive it --

8 MS. CLARK: I appreciate that.

9 HEARING OFFICER RENAUD: -- before we issue a
10 decision.

11 MR. BABULA: Right. I meant whether you
12 needed any further briefing on any topics.

13 HEARING OFFICER RENAUD: No, we don't.

14 MR. GALATI: I agree with that. I think that
15 you're affording an opportunity for briefing so that
16 Ms. Clark can write a brief. But do you need a brief
17 on cultural or visual or any of these issues that have
18 been raised in prior file testimony?

19 If you don't there's no reason to accommodate
20 allowing the brief. It's not - there is no regulatory
21 requirement to have a brief. It's only to help the
22 Committee. It's not to help the parties.

1 MS. CLARK: And certainly if you don't think
2 it's helpful, then I won't waste my client's time
3 doing it, but I think there are important issues.

4 HEARING OFFICER RENAUD: Okay. We're going
5 to allow - we're going to ask that your brief be due
6 on November 27th. That's one week.

7 MS. CLARK: Thank you.

8 HEARING OFFICER RENAUD: All right. You can
9 always say "very well."

10 And then we'll ask - that's Wednesday the
11 27th. And we have Thursday and Friday, which is the
12 Thanksgiving holiday. Could we ask for Mr. Galati's
13 brief by Wednesday, December 4th?

14 MR. GALATI: Not only "very well." Thank you
15 for not making it due on Monday.

16 HEARING OFFICER RENAUD: You're welcome.

17 MS. CLARK: I concur on that point.

18 HEARING OFFICER RENAUD: Okay. And any party
19 can provide a reply brief, obviously. Okay. All
20 right.

21 I think - if there is nothing further, we'll
22 move to public comment. Let me see if there is anyone

1 in the room who wishes to come forward and make a
2 public comment.

3 Okay, seeing none, let me turn to the phone,
4 and ask for public comment. Mr. Boyd, are you there?

5 MR. BOYD: Yes, sir.

6 HEARING OFFICER RENAUD: Did you wish to
7 address the Committee?

8 MR. BOYD: Yes, sir.

9 HEARING OFFICER RENAUD: Please proceed. We
10 have a three-minute time limit today.

11 MR. BOYD: (by telephone) Okay. First off, I
12 am a - the way that I am a party - the underlying case
13 had a programmatic agreement and a cultural that
14 included all the proceedings that - including Genesis
15 and this one, and I was party to that and I provided
16 testimony - along with Mr. Figueroa - regarding
17 cultural resources. At that time we told you that it
18 was likely the Genesis site was a village and that you
19 were going to finding human remains there.

20 Your so-called experts disputed that in that
21 proceeding. And then proceeded to approve the project
22 that found these remains. This is the second

1 occurrence - (in that proceeding) why I raised the
2 issue of the Metcalf Energy Center in San Jose, where
3 again we warned you Care had its own archeological
4 consultants, and we warned you that there was going to
5 be human remains there and lo and behold, they were
6 discovered.

7 Now we have this Blythe project and - the
8 damage is already done. The (grading) part is done.
9 And you guys - what you're doing is, you're changing
10 the project, the proposed action, that was examined in
11 the record and decision on this project by the BLM.
12 And you're trying to do without doing even a
13 supplements environmental impact statement.

14 You have to start over. You have to go back
15 to ground zero, because your [indiscernible] proposed
16 action. PV solar isn't the same as solar thermal.
17 You have a different footprint, it's a different
18 project, and you have to go back and start over. And
19 you have to redo your consultations to the government
20 (computations) that you didn't do when you did the
21 original programmatic agreement that I was a party to.

22 So you guys really are screwing this up big-

1 time, and (I already tried)[indiscernible] my attorney
2 Mr. Briggs very well. I don't have to be a party to
3 be able to sue you, okay. I can sue you just by being
4 a member of the public, and I have done it before, and
5 you know it's true.

6 So please, go back to your partners in the
7 environmental impact statement and do this right. Go
8 back and do it right.

9 A finally, I just want to leave you guys with
10 this: This process is abhorrent. You can't take
11 actions before you allow public comment like you just
12 did. You just took actions, you took all the evidence
13 into the record before allowing public comment.
14 That's a violation of my procedural due process rights
15 and constitutional rights. It gives me a right to
16 bring an action against you in the federal court,
17 because what you're doing is illegal. It's against my
18 constitutional right to do that, okay?

19 And I want you guys to think real seriously
20 about what you're doing, because it's not benefiting
21 anyone but the developer.

22 Now let me leave you with this: When you

1 guys [inaudible] - I want you to go on Google Earth
2 and I want you to look at the Blythe project from
3 space and see that scar that's left there from the
4 prior owners. You can see the impacts from outer
5 space.

6 And you guys are acting like, oh,
7 everything's fine and hunky-dory, we can just use all
8 the documents and all the words like last time we lied
9 about the impacts of the project. That's what you're
10 trying to do, and it's not going to stand. Someone's
11 going to hold you accountable for this, and frankly,
12 it's going to have to be me. And I'll leave you with
13 that. Look at that Google Earth picture. That's the
14 legacy you're leaving in the Mojave Desert, is that
15 scar that you can see from outer space.

16 Thank you.

17 HEARING OFFICER RENAUD: Thank you for your
18 comment. Anyone else on the phone wish to make a
19 comment?

20 MS. NORTH: Tiffany North.

21 HEARING OFFICER RENAUD: Go ahead, please.

22 MS. NORTH: I just had a few questions on the

1 worker safety discussion from earlier.

2 I wanted to make certain - [indiscernible]
3 worker safety 7 and 8 in the agreements that were
4 reached were in Exhibit 2005 - and I believe that
5 Worker Safety 7 Agreement is actually in Exhibit 2003
6 and not 2005.

7 And then on Worker Safety 10, that was
8 previously in dispute, and I wondered if there had
9 been an agreement that was reached on that - that was
10 heat illness versus heat stroke discussion. I didn't
11 see where an agreement had been reached, and last week
12 there was disagreement between the Commissioner and
13 staff.

14 HEARING OFFICER RENAUD: Mr. Galati is going
15 to try to clarify that.

16 MR. GALATI: Tiffany, in our pre-hearing
17 statement, which is - and testimony, which is 1012, we
18 withdrew our objection to Worker Safety 10. So we
19 agree -

20 MS. NORTH: Okay.

21 MR. GALATI: -- to Worker Safety 10. And I
22 will let Mr. Babula see if I got the exhibits right.

1 I thought that Worker Safety 7 was - and
2 Worker Safety 8 were both addressed in Exhibit 2005.

3 MS. NORTH: Okay. I think they might be in
4 the accepted exhibit, so I just wanted to make sure
5 that that was clear.

6 And then additionally, the County had
7 suggested an additional Worker Safety 11 condition in
8 our comment letter last week, and I recognize that
9 time and everything is moving quickly and you guys are
10 all very busy over there, and I just wondered if that
11 had been considered or when it will be considered, and
12 is that going to be in the December decision, or -

13 MR. BABULA: Your both comments came in
14 fairly late and so staff - we haven't had a chance to
15 do anything on the after side. I mean, we looked at
16 it but we haven't produced anything. I think that the
17 (PMPD) was figured out based on the information in the
18 record and that's where that response will be
19 included.

20 MS. NORTH: Okay.

21 HEARING OFFICER RENAUD: It will be addressed
22 in the PMPD.

1 MS. NORTH: Okay, thank you. And that was
2 it.

3 HEARING OFFICER RENAUD: Thank you.

4 MS. NORTH: Thank you, good-Bye.

5 HEARING OFFICER RENAUD: Okay. Anyone else
6 on the phone wish to make any comments?

7 MR. WAXLAX: Yes.

8 HEARING OFFICER RENAUD: Go ahead, please.
9 State your name.

10 MR. WAXLAX: My name is Ken Waxlax. I'm a
11 realtor from LaQuinta, California. And I followed
12 these projects since 2009.

13 I would just like to say that in that time I
14 have been amazed at the amount of biological and
15 scientific data and knowledge the solar development
16 community has contributed to the Colorado Desert area,
17 and sometimes I wonder if they get enough credit for
18 that.

19 They have done an incredible job today, and
20 under the proposed conditions of certification that
21 will continue. (All will be) learned about many
22 populations in years to come.

1 Additionally, this project is already about a
2 quarter mitigated for environmental issues and
3 concerns will be fully mitigated when built out. This
4 Blythe project will power something like 200,000 homes
5 carbon-free for 30 years. And that should be enough
6 to approve this project all by itself.

7 It's certainly the foremost reason why I
8 support solar energy, and this project specifically.
9 These utility-scale projects are a bridge to a more
10 robust distributed solar solution, starting the
11 migration to carbon-free power for the future. We
12 just need to continue on the path and not lose sight
13 of the goal: a clean energy future.

14 This project should be part of that future,
15 and I support it fully. Thank you very much.

16 HEARING OFFICER RENAUD: Thank you. Anyone
17 else on the phone who wishes to make a comment?

18 All right. Is there anyone in the room who
19 wishes to make a comment?

20 Okay. Are there any closing remarks?

21 MR. LOZEAU: Mr. Renaud, I just had a
22 question, point of order.

1 HEARING OFFICER RENAUD: Okay.

2 MR. LOZEAU: I was hoping to ask some
3 questions on air quality.

4 HEARING OFFICER RENAUD: Okay. Who did you
5 wish to question?

6 MR. LOZEAU: Staff, I think.

7 MR. BABULA: Well, what we kind of done in
8 air quality - I think what's been filed, we have this
9 stuff that the intervenor filed, and we have our
10 filings in there. The information shows that - I
11 think the intervenor has acknowledged that the air
12 quality emissions are going down on the licensed
13 project. So we don't see what the changes in project,
14 when the emissions are down, would be relevant to a
15 discussion regarding conditions or any other air
16 quality issues.

17 MR. LOZEAU: Well, the response that we got
18 as comments was there was an outlier anomaly - I was
19 going to ask about that, because there's not a lot of
20 scientific support for that, just simply an assertion
21 that this is an anomaly. I don't think the Air Board
22 said it was an anomaly.

1 And then we have this reference to CEQA
2 methodology in terms of not paying any attention to
3 the Air District significant threshold, which is the
4 same threshold as every other county around here, for
5 NOx in particular, and I don't see any published
6 methodology anywhere in your website that I can find,
7 and I don't know what that's referring to.

8 It seems to me, if those are the responses -
9 if those are the substantive responses to our expert's
10 comments, then I should have an ability to ask a few
11 questions about those.

12 HEARING OFFICER RENAUD: Mr. Lozeau, did you
13 make a request for a witness to be here to cross
14 examine? Because the way this works, as I explained,
15 is we have written testimony.

16 If you want to cross examine the written
17 testimony you would have to ask that the author be
18 here.

19 MR. LOZEAU: We indicated in our pre-hearing
20 statement that we were going to be prepared to ask
21 questions on air quality and biology of staff, and
22 their testimony is all these things they filed in the

1 last few days. So yeah, that's what we indicated.

2 MR. GALATI: I'll join in the objection. And
3 this is why.

4 Their own testimony agrees that the total
5 contribution to whatever the background is is less
6 from this project than it was from the last project.

7 MR. LOZEAU: Only pertains to PM 10, not to
8 NOx, for one thing.

9 MR. GALATI: No. I think - I think - maybe I
10 mischaracterized that part of the project.

11 There is no question that the construction
12 equipment, the time for construction and the amount of
13 grading has gone down in every category.

14 MR. LOZEAU: But despite that our expert
15 indicates that it's still well above and will violate
16 standards - it's well above the one significant
17 threshold that we have to look at, and I don't see any
18 replacement threshold offered by staff.

19 MR. GALATI: That's the same threshold that
20 was used for the original project.

21 MR. LOZEAU: There is no threshold.

22 MR. GALATI: The CEQA threshold that staff

1 used to determine what the impacts were. They are
2 using the same threshold for this modified project.
3 Emissions have gone down. There is no reason to allow
4 additional cross examination of - of applying the same
5 methodology that was applied for the first project.

6 MR. BABULA: And staff did respond to the
7 comments and we filed that in staff's response and
8 comments, which is Exhibit 2002.

9 MR. LOZEAU: Right. And that refers to some
10 methodology. It doesn't actually identify it. I am
11 not sure what that means, "a CEQA methodology." I
12 don't know, is that a written document? Is there a
13 written document called, you know, a statewide CEQA
14 methodology that doesn't pay attention to the Air
15 District's special significance? Is there a written
16 document about that? Am I missing something else?

17 MR. BABULA: Well, your concern was using a
18 specific air district, and staff indicated that
19 because we look at things statewide, we don't use a
20 specific area to review that.

21 MR. LOZEAU: Even though that is the district
22 that covers this particular project.

1 MR. BABULA: Correct.

2 MR. LOZEAU: And even though there is this
3 methodology - is that a written methodology that I can
4 actually look at and see what you replace that
5 threshold with?

6 MR. BABULA: Whatever is in the staff
7 assessment.

8 MR. LOZEAU: Right.

9 MR. BABULA: It's getting beyond my knowledge
10 area there.

11 MR. LOZEAU: So I mean, I think it would be
12 interesting to find out what the methodology is, for
13 one thing. We have the staff assessment, and our
14 expert clearly indicated that, for NOx in particular,
15 it's going to be well above - it's only the threshold
16 of significance that the air district indicated, the
17 comments response says that - somehow it's you know,
18 different from other areas. It's probably exactly the
19 same number as every county in the vicinity.

20 So in any event, we did put it in our pre-
21 hearing statement -

22 HEARING OFFICER RENAUD: Did you specify a

1 witness you wanted to question?

2 MR. LOZEAU: No, we asked - we said we would
3 like to ask questions of staff.

4 MR. BABULA: They did put in -

5 MR. LOZEAU: (crosstalk) question each of the
6 staff's and applicant witnesses presenting testimony
7 in the following areas: air quality, biological
8 resources and worker safety.

9 There's nothing in your order of pre-trial
10 hearing of either putting individual exhibits in, for
11 one thing, or listing out by name -

12 HEARING OFFICER RENAUD: Let's just see if
13 this can be solved in short order. Is there a
14 particular individual who would be the best person to
15 ask your questions of, in your opinion? (Mr.
16 Layton's) here.

17 COMMISSIONER DOUGLAS: Let's direct that
18 question to Jared.

19 The - you know, this is an informal hearing.
20 We appreciate questions brought by parties,
21 particularly when they illustrate issues that are -
22 especially when they illustrate issues that are

1 burning issues in the minds of the Committee. But
2 this is getting on the outer edges of that threshold,
3 but if you would like to ask a question about the
4 methodology, and if staff has someone here right now
5 who can answer it, then go ahead and ask about the
6 methodology. We'll just swear her in.

7 HEARING OFFICER RENAUD: Yeah, let's swear
8 this witness in.

9 Raise your right hand please. Do you swear
10 or affirm that the testimony you are about to give
11 will be the truth, the whole truth and nothing but the
12 truth?

13 MS. RECORD: Yes, I do.

14 HEARING OFFICER RENAUD: State your name,
15 please.

16 MS. RECORD: And my name is Jacqueline
17 Record. I wrote the staff assessment on air quality.

18 I actually do have some comments before, just
19 in response to some of Mr. Lozeau's concerns. Okay.

20 As the baseline for this amendment, the
21 approved project was compared to the modified Blythe
22 Solar power plant. The modified project would have

1 almost 25 percent less daily emissions for PM 10. All
2 other criteria pollutants would have an estimated
3 emissions between 50 to 90 percent decrease.
4 Similarly on an annual basis as well.

5 Project-related modeled impacts
6 [indiscernible] during construction of modified Blythe
7 Solar project were - are less than the already
8 approved solar trough project. Staff believes the
9 comprehensive mitigation measures would reduce
10 emissions during construction and operation to the
11 maximum extent feasible.

12 And Mr. Lozeau did have some concerns
13 regarding staff not using the Mojave Air District -
14 Mojave Desert Air Quality Management District
15 significant threshold values. Those threshold values
16 are to determine whether or not a project is
17 significant, and staff did determine that the project
18 would be significant and with appropriate mitigation
19 it would be less than significant.

20 So that's what those significant thresholds
21 are for. We are not saying that the project would not
22 be insignificant - would - would be insignificant. So

1 I guess I'm confused on what -

2 MR. LOZEAU: Are you suggesting that it won't
3 be significant because it would be below the air
4 district's threshold for NOx after the mitigations are
5 applied?

6 MS. RECORD: Could you repeat your question?

7 MR. LOZEAU: Are you saying that it's not
8 going to be significant because the NOx emissions
9 from, let's say the construction phase are going to be
10 below the Mojave Desert Air Quality Management
11 District's threshold of significance for NOx?

12 MS. RECORD: For NOx we have, in our staff
13 conditions, we have (HRC) 5, and that is to mitigate -
14 to require all tier level 3 engines - those are (air
15 B) tier levels for engines to be on site. And those
16 are monitored on a monthly basis during construction.
17 And that is to reduce impacts of NOx.

18 MR. LOZEAU: Are you saying it's going to go
19 below the air district's threshold of significance for
20 NOx?

21 MS. RECORD: In theory it's supposed to -
22 it's supposed to mitigate to the extent feasible.

1 MR. LOZEAU: So - and that only appears to
2 the off-road vehicles?

3 MS. RECORD: It's for off-road -

4 It says "all diesel-fueled engines" - used on
5 this construction site.

6 MR. LOZEAU: Does that apply to on-road
7 vehicles?

8 MS. RECORD: On-road was actually already -
9 they are under an ARB standard for all on-road
10 vehicles, such as like large F-150s and things like
11 that. Those are going to have emissions that will -
12 they are regulated under ARB programs.

13 MR. LOZEAU: So you don't have any
14 mitigations related the on-road vehicles.

15 MS. RECORD: Not specifically to on-road.

16 MR. LOZEAU: So I was just curious what the
17 reference is the response comment. "Single CEQA
18 methodology approach." Is that a -

19 MS. RECORD: I don't remember.

20 MR. LOZEAU: Do you know who wrote the
21 response to the comments?

22 MS. RECORD: I did - but that might be in

1 error. I don't know what methodology you're talking
2 about.

3 MR. LOZEAU: So it just refers - instead of -
4 it sounds like you actually maybe looked at the air
5 district's threshold of significance for NOx?

6 MS. RECORD: I did.

7 MR. LOZEAU: So here in the response it says
8 it's not applying those threshold but applying a
9 single CEQA methodology approach. You have no
10 explanation for what that is?

11 MS. RECORD: I - I am under the impression,
12 as the lead agency, we decide on a CEQA methodology.

13 MR. LOZEAU: So that's - I'm trying to figure
14 out what the methodology referenced here is. I'm just
15 reading: "Single CEQA methodology" -

16 MS. RECORD: If it - if a project is
17 exceeding any air quality standards - then they would
18 be considered significant.

19 COMMISSIONER DOUGLAS: Let me see if I can
20 speed this along.

21 So is this the same methodology that we use
22 for other projects?

1 MS. RECORD: Yes, correct.

2 COMMISSIONER DOUGLAS: Is this methodology the
3 same as used for the project that was permitted
4 initially?

5 MS. RECORD: Correct.

6 COMMISSIONER DOUGLAS: Okay.

7 MR. LOZEAU: Is it written down? Is there a
8 threshold involved?

9 MS. RECORD: No.

10 COMMISSIONER DOUGLAS: That's really verging
11 on a legal question, we don't really, these legal
12 questions -

13 If you would like to ask what the methodology
14 is, go ahead, and then I think we'll be pretty close
15 to wrapping this up. If not at the point of wrapping
16 this up.

17 MR. LOZEAU: Well, this is all - I'm just
18 reading what the response was.

19 So the -

20 MS. RECORD: I would prefer if you would use
21 my staff assessment as -

22 MR. LOZEAU: We did. And in the staff

1 assessment there is a table that gives the NOx
2 emissions that are predicted for the project.

3 MS. RECORD: Yes. In Table - Air Quality
4 Table 6 and 7. (Will balance for) construction - air
5 quality.

6 Those are the maximum daily emissions, are on
7 page 6, for construction. And then construction -
8 annual emissions are on Table 7. Operations are on 8
9 and 9.

10 MR. LOZEAU: And so in the table you're
11 referring to, for example, is there an estimate for
12 the power block on-road equipment and how much NOx
13 emissions will come from that component each year?

14 MR. BABULA: I think there's not a power
15 block. This isn't a thermal -

16 MR. LOZEAU: Well, in that table, in the
17 staff assessment - is there a power block on-road
18 equipment -

19 MS. RECORD: There are on-road equipment for
20 exhaust and for [indiscernible]

21 MR. LOZEAU: And under the NOx emissions per
22 year estimate?

1 MS. RECORD: Yes.

2 MR. LOZEAU: What is that number?

3 MS. RECORD: On-road is 1.0 tons per year.

4 MR. LOZEAU: Are you looking at page 4.1 dash
5 1 dash 17?

6 MS. RECORD: Yes. I am. For construction.

7 MR. LOZEAU: For construction. Well, the
8 power block on-road equipment.

9 MS. RECORD: Uh-huh, yes.

10 MR. LOZEAU: And that's the - per-day for
11 that 333.3 pounds per day?

12 MS. RECORD: Oh, per day is 8.7 pounds per
13 day.

14 MR. LOZEAU: Are we looking at the same
15 thing? I don't have that in front of me.

16 MS. RECORD: All right. (I had staff
17 assistance for that.)

18 HEARING OFFICER RENAUD: Where are we going
19 with this, Mr. Lozeau?

20 MR. LOZEAU: I was trying to just make sure
21 we're talking about the same thing.

22 I mean, our expert looked at the same table.

1 Is that table after mitigations? Are there any
2 numbers in that table that are above the county's
3 threshold for NOx?

4 MS. RECORD: No.

5 MR. LOZEAU: For the -

6 MS. RECORD: Tons per year is one. For NOx.
7 1.0.

8 MR. LOZEAU: For the whole project?

9 MS. RECORD: Tons per year.

10 MR. LOZEAU: I'm not sure what you're looking
11 at there, so -

12 MS. RECORD: You asked specifically for on-
13 road vehicles. I'm giving you the on-road vehicles.

14 MR. LOZEAU: Yeah, I am -

15 MS. RECORD: Exhaust, due to exhaust.

16 MR. LOZEAU: Power blocks on-road equipment?

17 MS. RECORD: For the entire power block,
18 correct.

19 MR. LOZEAU: Do you think you - are you
20 applying the thresholds from the county, or not?

21 MS. RECORD: Not from the air district. But
22 regardless, those thresholds are to determine if a

1 project is significant.

2 We determined that they are significant.

3 That's why we mitigate.

4 MR. LOZEAU: Does the table have before
5 mitigation? Or after mitigation? Are there numbers
6 calculated with the mitigation?

7 MS. RECORD: For construction - I believe
8 that these would be after mitigation.

9 MR. BABULA: The staff assessment speaks for
10 itself.

11 COMMISSIONER DOUGLAS: I think that's right.
12 I think we're spending a lot of time on tables that
13 maybe could be clarified off-line and not in front of
14 the Committee.

15 HEARING OFFICER RENAUD: If there is a
16 conflict between the testimony of Dr. Smallwood and
17 the staff's witness - the Committee's job is to look
18 at that and decide it.

19 MR. LOZEAU: Well, I will leave it at that.
20 Sorry I got into the tables a little too far there,
21 and I don't have it in front of me.

22 So I was just curious what the methodology

1 was, and - and whether or not the NOx threshold was
2 taken into account.

3 COMMISSIONER DOUGLAS: Okay.

4 HEARING OFFICER RENAUD: Okay, thank you.

5 All right.

6 COMMISSIONER DOUGLAS: All right. So with
7 that, then, I want to thank all the parties and the
8 public who called in - there's a hand up on the WebEx.

9 HEARING OFFICER RENAUD: He already spoke,
10 Mr. Waxlax.

11 COMMISSIONER DOUGLAS: Oh, he already spoke,
12 perfect. All right.

13 So thanks for checking on that. So with that
14 we will look forward to getting briefs from CRIT and
15 any reply briefs that might or might not come in after
16 that.

17 And we will move forward on a fairly
18 expeditious pace to get a proposed decision out. So
19 thank you again, and we will -

20 HEARING OFFICER RENAUD: Adjourn, yeah.

21 COMMISSIONER DOUGLAS: -- we will adjourn.

22 HEARING OFFICER RENAUD: This hearing is

1 adjourned, thank you.

2 MS. CLARK: Thank you.

3 MR. GALATI: Thank you.

4 (Whereupon the hearing was adjourned at 1:28
5 p.m.)

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