

PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
Application for Certification)
For The Calico Solar Project)
(Formerly SES Solar 1))
-----)

Docket No. 08-AFC-13

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APPEARANCES

COMMITTEE MEMBERS

Anthony Eggert, Presiding Member

Jeffrey D. Byron, Associate Member (via WebEx)

HEARING OFFICERS, ADVISERS

Paul Kramer, Hearing Officer

Lorraine White, adviser to Commissioner Anthony Eggert

Kristy Chew, adviser to Commissioner Jeffrey D. Byron

STAFF

Stephen Adams, Staff Counsel

Christopher Meyer, Project Manager

PUBLIC ADVISER

Jennifer Jennings

APPLICANT

Allan Thompson, Esq.

Ella Foley Gannon, Esq.
Bingham, McCutchen, LLP

Felicia Bellows
Tessera Solar

INTERVENORS

Loulana Miles, Esq.
Adams, Broadwell, Joseph & Cardozo
representing California Unions for Reliable Energy

Joshua Basofin
representing Defenders of Wildlife

Kevin Emmerich (via WebEx)
Laura Cunningham (via WebEx)
representing Basin and Range Watch

APPEARANCES CONTINUED

INTERVENORS

Gloria Smith
Travis Ritchie(via WebEx)
representing Sierra Club

Bob Burk(via WebEx)
representing Society for the Conservation of Bighorn Sheep

Bart Brizee, Deputy County Counsel(via WebEx)
representing San Bernardino County

Wayne Weierbach(via WebEx)
Robert Springer(via WebEx)
representing Newberry Community Service District

Patrick Jackson(via WebEx)
representing Patrick Jackson

ALSO PRESENT

Richard Booth
representing Lahontan Regional Water Quality Control Board

Chris Otahal
representing United States Bureau of Land Management

Steven Lamb
representing Burlington Northern Santa Fe(BNSF)

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PROCEEDINGS

1
2 HEARING OFFICER KRAMER: Okay, welcome to the
3 prehearing conference for the Calico Solar Energy Project
4 located near Barstow. My name is Paul Kramer. I'm the
5 Hearing Officer. I'm going to immediately turn it over to
6 our Presiding Member, Commissioner Eggert, for some
7 comments.

8 PRESIDING MEMBER EGGERT: Thank you, Hearing
9 Officer Kramer. Good afternoon, everyone. Some familiar
10 faces out there from earlier this week, which I think
11 speaks to the business of our siting calendar and schedule
12 here.

13 I want to welcome everybody to this prehearing
14 conference for the Calico Solar Project. This is in
15 preparation of course for next week's evidentiary
16 hearings. And we're going to try to basically assess
17 what -- how we're going to proceed with those hearings,
18 and make sure that we're going to develop a strategy for
19 that, which allows us to hear all of the issues that are
20 before us, expeditiously and fairly. I am the Presiding
21 Member for this case. I'm joined by the Associate
22 Committee Member Commissioner Byron, who we have on phone
23 I believe, and may want to say a couple words.

24 But I just want to again thank all of the
25 parties, the applicant, the staff, and all of the

1 intervenors for all of the hard work. This is clearly is
2 very, very complicated project and case, and a lot of
3 issues that we're going to try to get through at the
4 evidentiary hearing. So I appreciate everybody's
5 cooperation in doing so.

6 So I think with that, I'd like to offer
7 Commissioner Byron, did you have any opening comments?

8 ASSOCIATE MEMBER BYRON: Only to say that I'm
9 here, Commissioner. And I think the only way you'll hear
10 from me is if we're having trouble with sound or something
11 on the phone line, but I'll be with you for the duration.

12 PRESIDING MEMBER EGGERT: Thank you very much.
13 And we'll see you again of course down in Barstow as well.

14 I think I'm going to go ahead and take
15 introductions starting now with the applicant.

16 MR. THOMPSON: Thank you, Commissioner. My name
17 is Allan Thompson. And let me introduce -- actually let
18 her introduce herself, co-counsel.

19 MS. GANNON: Ella Foley Gannon from Bingham
20 McCutchen for the applicant.

21 HEARING OFFICER KRAMER: Okay, CEC staff, unless
22 you have others to introduce?

23 STAFF COUNSEL ADAMS: Steve Adams from the staff
24 counsel's office.

25 PROJECT MANAGER MEYER: Christopher Meyer, Energy

1 Commission Project Manager.

2 HEARING OFFICER KRAMER: Good afternoon. Okay,
3 we have CURE.

4 MS. MILES: Loulena Miles on behalf of CURE.

5 PRESIDING MEMBER EGGERT: Welcome. Do we have
6 Defenders of Wildlife?

7 MR. BASOFIN: Yes Joshua Basofin with Defenders
8 of Wildlife.

9 PRESIDING MEMBER EGGERT: Welcome. Basin and
10 Range Watch, either in the room or on the phone? Do we
11 have either Laura Cunningham or Kevin Emmerich?

12 MR. EMMERICH: Yeah we're here. Kevin Emmerich
13 Laura Cunningham, Basin and Range Watch.

14 PRESIDING MEMBER EGGERT: Thanks for joining.
15 Sierra Club?

16 MS. SMITH: Yes, thank you. We're here. Thank
17 you, Commissioner Eggert. This is Gloria Smith from
18 Sierra Club. We are about two blocks away, so you will be
19 seeing us in just a moment. Sorry for the delay.

20 (Laughter.)

21 PRESIDING MEMBER EGGERT: Well, we'll look for
22 you. Thanks for joining us via phone in the interim.

23 The next is Society for the Conservation of
24 Bighorn Sheep.

25 MR. BURK: Yes, sir, Commissioner. Bob Burk

1 here.

2 PRESIDING MEMBER EGGERT: Okay, is Gary Thomas
3 with you as well?

4 MR. BURK: No, he's actually on his way. We're
5 doing a water haul to some Bighorn Sheep out past the Cady
6 Mountains.

7 PRESIDING MEMBER EGGERT: Okay. San Bernardino
8 County?

9 MR. BRIZZEE: Good afternoon. Bart Brizzee
10 Deputy County Counsel for the County.

11 PRESIDING MEMBER EGGERT: Okay, Bart.
12 Newberry Community Service District?

13 MR. WEIERBACH: Yes. Good afternoon. This is
14 Wayne Weierbach and we also have Chief Robert Springer.

15 MR. SPRINGER: Yes, sir, I'm also here.

16 PRESIDING MEMBER EGGERT: Is that Springer?

17 MR. SPRINGER: Springer, S-p-r-i-n-g-e-r.

18 PRESIDING MEMBER EGGERT: Okay. And then Patrick
19 Jackson?

20 MR. JACKSON: I'm here.

21 PRESIDING MEMBER EGGERT: Okay. Also, anybody
22 from BNSF?

23 MR. LAMB: Right here. Sir, Steve Lamb for BNSF.

24 PRESIDING MEMBER EGGERT: Thank you. We'll check
25 with our State agencies. Anybody from the State

1 agency -- other State agencies, Department of Fish and
2 Game?

3 MR. BOOTH: This is Richard Booth. I'm with
4 Lahontan Water Board.

5 PRESIDING MEMBER EGGERT: How do you say your
6 name again?

7 MR. BOOTH: Booth, B-o-o-t-h. Richard. State of
8 California regional water quality control board.

9 PRESIDING MEMBER EGGERT: Thanks for joining.

10 MR. BOOTH: You bet.

11 PRESIDING MEMBER EGGERT: Anybody else from the
12 State agencies?

13 Okay, anybody from BLM?

14 MR. OTAHAL: Yes, Chris Otahal from BLM.

15 PRESIDING MEMBER EGGERT: Welcome Chris. How do
16 you say your last name again?

17 MR. OTAHAL: It's Otahal, O-t-a-h-a-l.

18 PRESIDING MEMBER EGGERT: Okay. Is there anybody
19 else that I've missed that is a either an official party
20 or government agency?

21 No. Okay and then for those members of the
22 public who are joining us here today. I'm looking I see,
23 there she is. Jennifer Jennings back here in the room
24 who's our Public Adviser, and who can assist with
25 participation in the hearing, both for today and at the

1 evidentiary hearing as well.

2 Oh again, welcome everybody. We've got a full
3 group here and a full schedule. And I know -- I think now
4 I'm going to turn it back over to Hearing Officer Kramer.
5 Take it away.

6 Oh, my apologies. Also, here at the dais, we
7 have Commissioner Byron's advisor Kristy Chew and to my
8 right is my advisor Lorraine White, who will be helping
9 out on this case.

10 HEARING OFFICER KRAMER: Okay, thank you. We got
11 your prehearing conference statements. And I had a little
12 bit of time to go through them, but I wouldn't say that I
13 would want to take a test to them at this point. So we'll
14 be repeating ourselves somewhat today I think to go over
15 those. Our main purpose today is to -- one is to see if
16 we're ready for hearings and then, two, is to figure out
17 how to arrange them if we are ready. You know, the
18 scheduling of witnesses, and the order of topics that
19 would come forward.

20 But yesterday, you may have received from -- or
21 you should have received via Email a petition to intervene
22 from the BNSF railroad. And I wanted to ask
23 preliminarily, there anybody who has not received that?

24 So you're all aware of it apparently. Is any
25 party intending to object to that petition?

1 I see nobody. Okay. I think from our
2 perspective, we're wondering -- because it is very late in
3 the proceeding. I gather then that just to put a finer
4 point on it, no party feels that they'll be prejudiced by
5 the late entry of this party into the case?

6 MS. GANNON: The applicant doesn't.

7 MR. THOMPSON: Although, within normal caveats
8 that discovery is over and we would expect BNSF to take
9 the case where it is today.

10 HEARING OFFICER KRAMER: And I note that BNSF
11 said in their Email cover that they were perhaps going to
12 file some additional evidence as late as Monday.

13 Mr. Lamb, could you come to the podium so we can
14 get you on the mike, sir.

15 MR. LAMB: We have filed of one statement of
16 Edward Phillips. It is I think nine -- no seven pages
17 long. We have two other statements --

18 MS. WHITE: Mr. Lamb, could you please make sure
19 your mike is on. There should be a little green button.

20 Thank you.

21 MR. LAMB: Thank you, ma'am. Yes, Steve Lamb for
22 BNSF. Yes we have also filed a prehearing statement this
23 morning. And we filed some testimony from Edward Phillips
24 yesterday and we expect to have two other testimonies
25 filed. They're both less than 10 pages. I think one is

1 seven pages and one is eight pages. And those should be
2 filed today. We're just tracking down people for
3 signatures. And they all relate to the issues, sir, that
4 were put forth in the petition.

5 MR. BASOFIN: Mr. Kramer, I have a somewhat of a
6 concern that there's a rather ambitious schedule for this
7 proceeding. It's basically two and a half days. And I'm
8 curious to know whether BNSF is intending to submit
9 evidence. And if the Committee feels that there will be
10 enough time for all of the intervenors to submit all of
11 their evidence and have time for cross-examination as
12 well.

13 HEARING OFFICER KRAMER: That's one of the things
14 we're going to get to. We're going to add it up. I even
15 have a spreadsheet that will do the math for us. And
16 we're going to see and we may find -- I don't think you
17 were involved in the Carlsbad case, were you?

18 But there, when we added things up, I think we
19 had maybe a couple weeks. And everybody took a bit of a
20 haircut. So that may be what happens.

21 MR. LAMB: If I might address that directly. We
22 have three witnesses that have done statements. Our
23 estimate is 20 minutes H. That is an anticipation that
24 there may be some parties that want to examine them.

25 We are perfectly happy to allow their written

1 testimony to stand for expediency purposes. My
2 understanding is that the Commission is going forward with
3 an informal process. So it's out there.

4 And the only other thing, Hearing Officer Kramer,
5 that we had asked is the one kind of significant issue
6 that we have, that we believe we're going to resolve is
7 still glint/glare. And we'd ask for the opportunity to
8 cross-examine there. We estimated no longer than 30
9 minutes.

10 But having said that, my understanding is that
11 that might not even be ready until the August 18th
12 hearing. And I'm not entirely sure of that. So we don't
13 think that we'll impact timing. We just want to
14 participate.

15 HEARING OFFICER KRAMER: Okay thank you. So you
16 think everything will be filed today.

17 MR. LAMB: Yes, sir. I believe it will.

18 HEARING OFFICER KRAMER: And served
19 electronically?

20 MR. LAMB: Yes. If not, first thing -- either
21 over the weekend or -- I've got it prepared. It's just
22 finding the people to get the signatures, sir.

23 Did you have any other questions?

24 MR. THOMPSON: Mr. Kramer, if I could suggest
25 that if he's having trouble getting the signatures, rather

1 than wait till Monday, if he could send out drafts without
2 signatures, so that we can see on them weekend, it would
3 be appreciated.

4 MR. LAMB: I will be happy to do that. In fact,
5 one of the problems is we have an electronic signature
6 that didn't come through. So they're agreed and proved
7 to. It's just getting the actual ink signature.

8 HEARING OFFICER KRAMER: That would be great.
9 Then if you could share the --

10 MR. LAMB: We can make that happen.

11 HEARING OFFICER KRAMER: -- share the drafts.
12 Maybe even have them back at the ranch do that while we're
13 talking today if that's possible.

14 MR. LAMB: Sir, I have the technology to do that
15 right now.

16 HEARING OFFICER KRAMER: Great.

17 MR. LAMB: Okay.

18 MS. SMITH: Mr. Kramer, can you hear me now?

19 My question would be is if visual resources are
20 not a contested issue, absent this intervenor and then all
21 of sudden, it becomes a contested issue, that then you
22 know, it does ultimately drag out the proceeding and gives
23 short shrift to some of the issues like biological
24 resources for intervenors that have been involved from the
25 beginning.

1 I mean I have a concern. I'm not clear why this
2 party hasn't -- didn't seek intervention long ago.

3 HEARING OFFICER KRAMER: Are you saying then that
4 you're objecting to giving them intervenor status?

5 MS. SMITH: Well, I'm willing to work through it.
6 So I mean, I think it's a legitimate question. If we're
7 not going to have any problems with visual resources for
8 example, absent this party, and then all of a sudden it
9 turns into a half a day, like it has been known to do,
10 then I have concerns.

11 MR. LAMB: If I can address that, sir?

12 I think that what happened here is that it has
13 been addressed as to motorists, but not as to rail and
14 obviously I can't speak for CEC staff, but my
15 understanding is they're still in the process of doing the
16 study regarding that. So there's no opportunity to
17 comment on that until we get that back. That's the issue.
18 It's timing issue.

19 HEARING OFFICER KRAMER: So Mr. Meyer, this study
20 was going to be a part of the traffic package, is that
21 right?

22 PROJECT MANAGER MEYER: Yes, the glint and glare
23 and potential impacts on both motorists and rail traffic
24 will be filed as part of the Supplemental Staff Assessment
25 part 2 that's scheduled for August 9th, and then will be

1 handled at the hearing subsequent to the hearings that
2 we're talking about this coming week. So we're -- staff
3 is not going to be ready to talk about either cultural
4 resources or traffic and transportation, which includes
5 this glint and glare issue until the subsequent hearings.

6 HEARING OFFICER KRAMER: Okay. And is that
7 you're understanding, Mr. Lamb, it's perfectly okay to
8 discuss that in the traffic discussion?

9 MR. LAMB: Yes, sir.

10 HEARING OFFICER KRAMER: So you don't have any
11 other visual issues besides that?

12 MR. LAMB: No, sir.

13 PRESIDING MEMBER EGGERT: I wonder if I might
14 maybe add a further request, and that is if it's
15 reasonable and feasible, if there is opportunity to have
16 discussions prior to the hearing with the applicant to see
17 if we can minimize the time spent on that particular topic
18 during the hearing itself.

19 MR. LAMB: Sir, we've not only been doing that,
20 but we will tonight to do that. There's no question about
21 that.

22 PRESIDING MEMBER EGGERT: Okay. Thank you.

23 MR. LAMB: Thank you. Anything else?

24 HEARING OFFICER KRAMER: Not for the moment, but
25 standby.

1 MR. LAMB: Okay.

2 HEARING OFFICER KRAMER: Well, we will issue our
3 ruling then on the petition to intervene. We won't wait
4 the normal 10 days or more. Actually, I think we've gone
5 back to 15 days to be perfectly consistent with our
6 regulations. So we will -- I don't think we're going to
7 do that right from here right now. But we will issue
8 something in the next few days on that question.

9 MR. LAMB: Thank you.

10 HEARING OFFICER KRAMER: And even if you're not
11 granted intervenor status, those same points could be made
12 in the form of public comments. So we would want to hear
13 them one way or the other.

14 MR. LAMB: Well, we appreciate that. But as I
15 understand the rules, there's no opportunity to
16 cross-examine if, for example, we do have an issue. So
17 that was the only difference and that's why we wanted to
18 submit testimony and be present.

19 HEARING OFFICER KRAMER: I understand.

20 MR. LAMB: Thank you.

21 PUBLIC ADVISER JENNINGS: Hearing Officer Kramer,
22 can I just make a point, there are intervenors on the
23 line. People need to identify themselves before they
24 speak. It's hard to follow otherwise.

25 HEARING OFFICER KRAMER: Okay. Yeah folks on the

1 line, if you could say your name periodically so we
2 can -- and unless we're here so long --

3 PUBLIC ADVISER JENNINGS: Folks in the room need
4 to identify.

5 HEARING OFFICER KRAMER: Oh, I'm sorry. Us? Oh.
6 Okay, this is Paul Kramer and you're going to hear a lot
7 from me. I apologize for that.

8 Okay, next on my list is the topic of exhibit
9 lists. I was hoping to have an exhibit list to handout to
10 you to look at and go over, get back to me. But a lot of
11 people did not follow the instructions, which was to
12 result in my receiving a Microsoft Word formatted copy of
13 the electronic table that I hope we made available with
14 the notice of the hearing. And then that would be for us
15 a very easy cut and paste operation into a master table.

16 So not having received that, I'm going to ask you
17 to -- if you know you're one of those people, go back and
18 send me one by Monday. And then we will circulate a list
19 for the parties to look over.

20 The exhibit list is a floating -- it's a moving
21 target until the record closes at least. So we'll be
22 adding things to it, correcting things, perhaps during the
23 hearings. But I was hoping to get you started looking at
24 it and seeing if we'd made some major mistakes today, and
25 that just wasn't possible.

1 So get me the Word version of that. It's
2 basically a word table. And I suspect some of you created
3 it, but you just made it into PDFs, which makes it harder
4 for us to cut and paste. And we're so crunched right now
5 that we really want our job -- that part of our job to be
6 easy.

7 MR. THOMPSON: Mr. Kramer, you've been glancing
8 at me. Should I take those glances at meaning we are one
9 of the offending parties?

10 HEARING OFFICER KRAMER: I believe you were.

11 MS. GANNON: I believe we were, yes.

12 MR. THOMPSON: Okay. We'll get on it.

13 HEARING OFFICER KRAMER: I know we had a
14 conversation. One of your problems was that you submitted
15 the bulk of your evidence before the form went out. But I
16 know we had an Email chat about that I recall.

17 MR. THOMPSON: We did.

18 HEARING OFFICER KRAMER: Okay. We're not going
19 to terminate anybody's privileges just yet because of
20 that, so don't worry.

21 So the next step would be to identify the
22 contested topics. And hopefully we come up with a list of
23 things that are not contested. And again I apologize,
24 because of the compression in the schedule, I didn't have
25 the time I would have hoped to have had to go overall of

1 your statements in detail and produce a first cut of an
2 outline.

3 So instead, we're just going to need to work down
4 the list. Let me uncover -- well let me take a moment. I
5 was going to send Commissioner Byron our outline that the
6 Committee was using. So let me do that for him.

7 ASSOCIATE MEMBER BYRON: Thank you, Mr. Kramer.

8 And just FYI, while I'm on WebEx, I see that
9 there is something up on the screen, but it's all X
10 hatched, so it's not coming through. I'm wondering if
11 others might be having that same problem.

12 HEARING OFFICER KRAMER: Oh, they would be, and
13 that's because I've got -- well I'm working on my Email
14 program right now. And I haven't shared that part of my
15 system. So it's obliterating what you really want to see,
16 what you will see in a moment.

17 Okay, now that should be clean. So we have an
18 exhibit list. And then you'll be seeing this throughout
19 the proceeding because I will update it.

20 I'm trying to remember what the first topic was.
21 I'll get there. It was project description? Does anybody
22 have any issues with project description?

23 And folks intervenors on the telephone, if
24 you -- you know, feel free to chime in if you need to
25 answer one of these questions affirmatively. Otherwise,

1 we will take your silence as meaning that you have no
2 issues. So any issues with project description?

3 MR. BASOFIN: Mr. Kramer, Defenders had
4 identified an issue with project description in our
5 prehearing conference statement.

6 HEARING OFFICER KRAMER: Okay, does it cross over
7 to one of the other areas or is it unique to --

8 MR. BASOFIN: I don't think so. It relates
9 directly to the -- which current version of the proposed
10 project is being submitted by the applicant.

11 HEARING OFFICER KRAMER: Okay, so you probably do
12 not have a witness on that I'm guessing just from asking
13 the questions?

14 MR. BASOFIN: No, right.

15 HEARING OFFICER KRAMER: How many minutes do you
16 need?

17 MR. BASOFIN: 15 or 20.

18 HEARING OFFICER KRAMER: Okay. Your first
19 haircut is 15.

20 (Laughter.)

21 MR. THOMPSON: Mr. Kramer, if I may?

22 We have two witnesses in what we call project
23 overview, Felicia Bellows and Sean Gallagher. My
24 suspicion is that Mr. Basofin's questions may be directed
25 to that panel.

1 MR. BASOFIN: I think my questions actually would
2 probably be directed to a staff witness.

3 MR. THOMPSON: Ah, never mind.

4 HEARING OFFICER KRAMER: Okay, Mr. Meyer, who
5 would that be, your staff witness?

6 You, okay.

7 So Mr. Thompson, I gather that you want to have
8 those people testify to just kind of set the stage is that
9 your intent?

10 MR. THOMPSON: That makes sense to me.

11 HEARING OFFICER KRAMER: Okay, how long will they
12 need?

13 MS. GANNON: Yeah we requested an hour for the
14 direct.

15 HEARING OFFICER KRAMER: You really need that
16 much?

17 MS. GANNON: Well, this includes, you know, sort
18 of the discussion of the project, the discussion of some
19 of the project changes that have happened. I think it's
20 going to be important in setting the tone and making an
21 overall case. I mean we may be able to go -- I mean if
22 you want to give me a 15 minute haircut, I'm okay.

23 HEARING OFFICER KRAMER: Done.

24 MS. GANNON: Half an hour would be harder.

25 HEARING OFFICER KRAMER: Okay, well we'll leave

1 it at 45 minutes for the moment.

2 MS. GANNON: Okay.

3 HEARING OFFICER KRAMER: What we're just trying
4 to do right now is get a number at the bottom of this page
5 three or four of this spreadsheet, and we'll see where we
6 are. You know, we can keep in mind that we do have the
7 extra day on the 18th, where we can go from nine or 10 in
8 the morning -- oh, I think I made it 10 o'clock, but we
9 can go, because you're so use to it now, into the evening,
10 if we need to, I guess.

11 (Laughter.)

12 MS. GANNON: And Mr. Kramer, we asked for an hour
13 on cross. We can go to a half an hour for that.

14 HEARING OFFICER KRAMER: For project description?

15 MS. GANNON: For -- well, we had sort of as a
16 project overview description.

17 HEARING OFFICER KRAMER: Okay.

18 MS. GANNON: Maybe even --

19 HEARING OFFICER KRAMER: And that would be
20 cross-examination of your witnesses or --

21 MS. GANNON: Well, we were thinking of -- yes.

22 HEARING OFFICER KRAMER: You want
23 cross-examination, Mr. Meyer?

24 MS. GANNON: We were going to cross-examine Mr.
25 Meyer?

1 HEARING OFFICER KRAMER: Okay, for 30 minutes did
2 you say?

3 MS. GANNON: Twenty.

4 MS. MILES: Excuse me, Mr. Kramer, CURE would
5 also like an opportunity to do cross-examination for
6 project overview.

7 HEARING OFFICER KRAMER: How long?

8 MS. MILES: 15 minutes.

9 HEARING OFFICER KRAMER: Okay, what we're doing
10 here is adding it up, and we'll see what we come to.

11 Okay, somehow we've got an hour and a third now.
12 So -- she doesn't be long here. Okay, any other thoughts
13 about project description?

14 MS. SMITH: Yeah. Gloria Smith for Sierra Club.

15 Project description is, as a matter of sequence,
16 a pretty big issue. But we don't have any
17 questions -- we're not going raise any issues per, you
18 know, as a substantive matter of project description. But
19 as you mentioned earlier, it does bleed into all the other
20 resource areas. And it may be something that we'll bring
21 up in legal briefing, but we don't want to spend any time
22 on it just as a stand-alone chapter of the Staff
23 Assessment. Does that make sense?

24 HEARING OFFICER KRAMER: Noted. Okay, the next
25 topic is land-use. And these are in no particular order,

1 just so you know. It's simply the artifacts of the last
2 case and the way it laid out. And they might very well be
3 rearranged when we get done.

4 Any opening testimony from staff?

5 STAFF COUNSEL ADAMS: Yes. We estimate about 10
6 minutes for that.

7 HEARING OFFICER KRAMER: With which witness?

8 STAFF COUNSEL ADAMS: For land-use staff's expert
9 will be Negar Vahidi.

10 HEARING OFFICER KRAMER: I'm presuming land-use
11 is disputed? Am I wrong?

12 MS. GANNON: We, in applicant's view, is very
13 minor dispute. We actually did not offer any direct for
14 our witness. We're proposing to put in Angela Leiba by
15 attestation. And we did ask mistakenly 60 minutes for
16 cross. We don't need 60 minutes for cross. I mean we'll
17 have her ready.

18 HEARING OFFICER KRAMER: Okay. But her direct
19 would be how long?

20 MS. GANNON: We had no direct.

21 HEARING OFFICER KRAMER: Okay, zero.

22 MS. GANNON: If anyone needs to have -- to
23 cross-examine her, we would make her available.

24 HEARING OFFICER KRAMER: Okay. And Mr. Meyer,
25 Ms. Vahidi was -- or Mr. Adams, how long? Did you say 10

1 minutes?

2 STAFF COUNSEL ADAMS: Yes, 10.

3 HEARING OFFICER KRAMER: Okay. Does any other
4 party have any director testimony or cross-examination on
5 land-use?

6 STAFF COUNSEL ADAMS: Well, we would probably
7 also have cross on land-use.

8 HEARING OFFICER KRAMER: Okay. About how long?

9 STAFF COUNSEL ADAMS: Similar, 10 or 15.

10 HEARING OFFICER KRAMER: Ten, okay.

11 And the applicant did not have any cross, as I
12 understood it, you were just making her available,
13 correct?

14 MR. THOMPSON: We have no further direct of our
15 witness. Steve, when you said you had 10 minutes of
16 cross, that was for our witness?

17 STAFF COUNSEL ADAMS: I think so, if you're
18 putting a witness on, yeah.

19 MS. GANNON: Well, we were not planning putting a
20 witness on. If you want to have her available for cross,
21 we will put her on.

22 MR. THOMPSON: Let's leave that open, if
23 possible.

24 MS. GANNON: She will be present, so she will be
25 available. And I think we wanted 15 minutes for cross for

1 staff -- staff's witness.

2 HEARING OFFICER KRAMER: Okay.

3 MR. BRIZZEE: This is Bart Brizzee from the
4 county. We'd like to cross-examine staff's witness on
5 this. No more than 10 minutes.

6 HEARING OFFICER KRAMER: Thank you. Anyone else?

7 MS. MILES: CURE would like to request 10 minutes
8 of cross on this also.

9 HEARING OFFICER KRAMER: Okay, where's the next
10 topic.

11 STAFF COUNSEL ADAMS: Excuse me Mr. Kramer, could
12 we get clarification from the county on its topic under
13 land-use to make sure that's appropriate topic?

14 HEARING OFFICER KRAMER: Yes. Mr. Brizzee, did
15 you hear that.

16 MR. BRIZZEE: Yes. Our cross would be directed
17 towards impacts to recreational and wilderness uses.

18 HEARING OFFICER KRAMER: Is that going to bring
19 on a different witness, do you think?

20 STAFF COUNSEL ADAMS: I don't know.

21 HEARING OFFICER KRAMER: Okay, let me know, so we
22 can put the name on the list down the road.

23 STAFF COUNSEL ADAMS: Okay, the same witness.

24 HEARING OFFICER KRAMER: Okay.

25 MS. SMITH: Mr. Kramer, point of clarification.

1 Is this -- are you doing this already sort of in
2 chronological order, so this is what we'll be doing on
3 Wednesday afternoon?

4 HEARING OFFICER KRAMER: No, no.

5 MS. SMITH: Fair enough.

6 HEARING OFFICER KRAMER: This is the way it was
7 in Carlsbad. It still says Carlsbad you point out there.
8 I got your point.

9 (Laughter.)

10 MS. SMITH: We know how well that went.

11 HEARING OFFICER KRAMER: Well, we got out of
12 there.

13 It was four long days.

14 Well, I can't seem to edit that at the moment, so
15 forgive me my plagiarism.

16 Socioeconomics, does anybody have any interest?

17 --

18 MR. JACKSON: Paul -- Mr. Kramer --

19 HEARING OFFICER KRAMER: I'm sorry, yeah Mr.
20 Emmerich your voice is a little bit low, so belt it out
21 and go ahead.

22 MR. JACKSON: Mr. Kramer?

23 HEARING OFFICER KRAMER: Yes.

24 MR. JACKSON: As I indicated in my prehearing
25 conference statement it is my belief that the land-use

1 recreation and wilderness section as well transportation
2 section are not ready for the evidentiary hearing, and
3 they are -- they should be -- they require adjudication.
4 Did you have an opportunity to read my prehearing
5 statement?

6 HEARING OFFICER KRAMER: I was able to skim it, I
7 believe. Well, let me ask you, if -- we will be
8 discussing whether we're ready to go ahead or not. And
9 was that Mr. Emmerich or someone else or Mr. Jackson?

10 MR. JACKSON: Mr. Jackson.

11 HEARING OFFICER KRAMER: Okay, I'm sorry. Just
12 as we need to once in while identify ourselves, if you
13 folks on the phone can too, that would be helpful.

14 If it is going to go forward, what would your
15 needs be, as far as direct or cross-examination goes?

16 MR. JACKSON: This is Pat Jackson again. At this
17 point in time, I really can't go forward, because I
18 indicated in my prehearing conference statement is that
19 information that I need is being withheld by the BLM. At
20 this point in time, as indicated by my statement, I filed
21 an appeal with the Department of Interior. And at this
22 point in time, it's out of my hands.

23 I was hoping that I could provide exhibits that
24 would support the facts that Hector Road is, in fact, an
25 existing right of way under the federal Land Planning and

1 Management Act, as well as, and it is designated open road
2 under the California Desert Conservation Act.

3 Okay, I can't do that. And right now, I'm being
4 prevented as well as the other property owners from fully
5 participating in this hearing. And as it is currently
6 proceeding, we're going to be land locked. And hopefully,
7 I was hoping that my pre-conference statement would stir
8 the parties to have a side meeting so it could resolve
9 this issue. And I was quite surprised by Burlington
10 Northern Santa Fe entering the picture, because I'm sure
11 that they will want to join in the discussion about their
12 crossing.

13 HEARING OFFICER KRAMER: Okay, well we have not
14 made the decision whether or not to go forward yet. We'll
15 be discussing that. And I understand that you just can't
16 estimate the time you'll need, because you're just not
17 sure. Could you explain a little more precisely what
18 information it is you're looking -- you asked for that you
19 don't have and how it would be relevant to this case?

20 MR. JACKSON: There's -- I've made two requests
21 of the BLM in December under the Freedom of Information
22 Act. And I specifically requested all records that --

23 HEARING OFFICER KRAMER: Can you speak up.

24 MR. JACKSON: -- they have on Hector Road. As
25 you know, it's been a point of contention whether Hector

1 Road is either a county road, a designated open route, an
2 existing right of way. Okay, the information I was able
3 to acquire from different sources so far indicates that
4 the Bureau of Land Management has specific documents, and
5 those documents were identified in a letter of April 18th
6 that was submitted to the BLM specifically identifying
7 those documents that they have. And they have yet to
8 provide them.

9 Those documents would convince everybody, I
10 believe, that the BLM, the applicant, nobody has the right
11 to land lock the private land and to deprive those private
12 owners of their use and enjoyment of their land. For some
13 reason, this has been side-bar'd, you know, for the last
14 two years.

15 The second item that I requested was information
16 on the well water quantity testing that they did on the
17 Crow's Nest well, as well as other water well sites.

18 I firmly believe that at this point in time,
19 there's not enough documentation to indicate, you know,
20 what impact this project will have on the aquifer. And I
21 so far have information and belief that if they do, in
22 fact, lower the groundwater level, that it could have a
23 major impact on the earthquake fault that runs through
24 project.

25 Just as an example, over the last 30 years, there

1 have been over 443 aftershocks with a magnitude of 2 or
2 higher. Of those, four of those were over 4 magnitude and
3 one in December of 2008 was over 5.

4 I'm hoping, you know, that I can get the
5 information to discern that this project will not have an
6 impact on, one, the private property owners, future
7 developers in the area, or the faults. And I think it is,
8 as I pointed out in my statement, it is significant, it is
9 relevant, and it's material. And it's quite unfortunate
10 that people just won't give me the information.

11 HEARING OFFICER KRAMER: Okay, well the
12 Commission doesn't have jurisdiction over the Bureau of
13 Land Management, so we don't have the power to order them
14 to produce records for you.

15 MR. JACKSON: This is Pat Jackson again. And I
16 understand that. And that is my dilemma. First of all, I
17 have to wait till the BLM releases their EIS, which I
18 believe will be between August 6th through 13th. And
19 then, of course, I have to wait until the Department of
20 Interior either sides with me or with the BLM.

21 But most importantly, is that regardless of the
22 information, the fact that it's being withheld from me,
23 prevents me, the other private property owners, the other
24 parties in here to fully participate in these hearings, in
25 accordance with CEQA and NEPA.

1 So like I said, I did this in the hopes that we
2 can resolve this issue, not you know judicially, but, you
3 know, amicably on the side. But as I pointed out, I'm
4 being ignored, and it's going to have a major impact on
5 those people who are just, you know, indicated there's
6 only property and not a park.

7 HEARING OFFICER KRAMER: Okay, well I'm going to
8 put 40 minutes in your column just as a rough estimate. I
9 think that's all can I do at this point. We will come
10 back at the end once -- I think part of the
11 process -- what these estimates will do is help us get a
12 feeling for what -- which issues are outstanding and how
13 much, and that will help us decide if this case is ready
14 to go forward or if parts of it are ready to go forward,
15 for instance.

16 So, thank you for that Mr. Jackson. That's
17 land-use.

18 Socioeconomics, do we have any issues with
19 socioeconomics?

20 MR. BRIZZEE: This is Bart Brizzee again from the
21 county. I's listed it in my prehearing conference
22 statement. Because there's a question whether the impacts
23 to emergency medical services, which are described under
24 this category, would be the same as the fire impacts that
25 are listed under worker safety. I'm happy to deal with

1 them under worker safety, if it's one in the same thing.

2 HEARING OFFICER KRAMER: I think it has been
3 treated that by in our recent cases. So that -- everybody
4 is used to that, that's probably the best way to do it.
5 So socioeconomic hearing -- does anybody else want to
6 either put on a witness or cross-examine someone?

7 I'll mark that uncontested.

8 And what we'll be doing with uncontested items is
9 simply submitting them on the declaration -- declarations
10 of parties that are already attached to the testimony, so
11 we won't have any witnesses.

12 There's still the opportunity to brief issues or
13 argue things, but we just won't need to have any
14 testimony. And there is always the remote possibility
15 that during our Committee's final review for the hearings,
16 we may discover something that looks just a little bit odd
17 to us and we may want to ask a question of the staff or
18 the applicant, but we'll give you a heads up about that.
19 And something like that shouldn't take more than five
20 minutes.

21 Okay, but for now socioeconomic is uncontested.

22 Let's move on to air quality.

23 Does anybody need to offer testimony or
24 cross-examine another witness?

25 MS. GANNON: The applicant would like to have 15

1 minutes of direct for air quality.

2 HEARING OFFICER KRAMER: Give me the name of your
3 witness so I can fill it in.

4 MS. GANNON: It's Julie Mitchell from URS.

5 HEARING OFFICER KRAMER: Does that promote or
6 prompt anybody to want to ask questions of her?

7 STAFF COUNSEL ADAMS: Staff would propose to put
8 on Will Walters for 10 minutes and also cross-examine for
9 15.

10 HEARING OFFICER KRAMER: Fifteen cross and you
11 said 10 for his direct?

12 STAFF COUNSEL ADAMS: Yes.

13 HEARING OFFICER KRAMER: Anybody else want to
14 join that discussion?

15 MS. MILES: CURE would like to reserve 10 minutes
16 for cross.

17 HEARING OFFICER KRAMER: Okay.

18 MS. GANNON: And Mr. Kramer, we would propose to
19 have that witness available by phone, if that's acceptable
20 to the parties?

21 HEARING OFFICER KRAMER: Does anybody object to
22 having Ms. Mitchell testify by telephone?

23 MS. GANNON: Thank you.

24 HEARING OFFICER KRAMER: Okay, and also when
25 we're making these requests, if other parties can -- if

1 you know, let us know if you're going to -- you think
2 you're going to need to show the witness a document,
3 because then we could try to do that by WebEx if we were
4 set up in advance, but trying to do it, you know, with one
5 minute's notice might be a little bit dicey.

6 MS. MILES: Yes, actually we did want to put in a
7 request to have an opportunity to show some exhibits on
8 the overhead?

9 HEARING OFFICER KRAMER: Air quality?

10 MS. MILES: And we can bring a flash drive -- the
11 exhibits on a flash drive, if that's acceptable?

12 HEARING OFFICER KRAMER: Okay, are they exhibits
13 we already have received?

14 MS. MILES: I believe so.

15 HEARING OFFICER KRAMER: Well, obviously they
16 should be. Otherwise, they would be surprise exhibits.
17 That might evoke some objection.

18 MR. RITCHIE: Hearing Officer Kramer, this is
19 Travis Ritchie. I'm also with Sierra Club.

20 Sierra Club also introduced some exhibits with
21 the prehearing conference statement that we would
22 similarly like to have the opportunity to present those
23 during cross-examination. And we can bring a flash drive
24 equally. We can also bring hard copies, but I know that
25 makes it harder for the folks on WebEx to see.

1 HEARING OFFICER KRAMER: Yeah, although our
2 projector in the room sometimes that doesn't do details
3 very well either.

4 MR. RITCHIE: Question plan on bringing both, if
5 that makes it easier

6 HEARING OFFICER KRAMER: Okay. Yeah, bring it
7 along and then we'll try to have -- during the break let's
8 try to -- just so we don't spend extra time, let's try to
9 see -- you know, get it tested.

10 And I think we have the advantage here that Mr.
11 Therkelsen and the applicant have obtained the services of
12 an audio visual consultant. So whatever mistakes I might
13 normally make will not be part of the process, which is
14 good. And then I'll have somebody to talk to at lunch.

15 (Laughter.)

16 STAFF COUNSEL ADAMS: Mr. Kramer, this is
17 probably the appropriate time to remind you that
18 we -- staff and counsel plan to testify from Sacramento,
19 because of the budget constraints on travel.

20 HEARING OFFICER KRAMER: Right. Okay, so then
21 assume everybody, that staff witnesses, unless we say
22 otherwise, will be testifying via telephone. If somebody
23 has a problem with one of the witnesses doing that, let us
24 know and we'll discuss it. Would that include Mr.
25 Walters, though, because I know he's from southern

1 California.

2 STAFF COUNSEL ADAMS: Well, I think there is a
3 desire to have staff and counsel together.

4 HEARING OFFICER KRAMER: So he'll probably come
5 up here?

6 STAFF COUNSEL ADAMS: Yeah, probably. Well, I
7 don't know if he'll come up here, or how will arrange it.

8 MR. THOMPSON: If he wants to stop in Barstow,
9 that's okay.

10 STAFF COUNSEL ADAMS: On the way.

11 (Laughter.)

12 HEARING OFFICER KRAMER: Okay, so Ms. Mitchell
13 was by phone. And I'll try to mark the staff too, just so
14 I...

15 Okay, anyone else on air quality?

16 Seeing none, public health?

17 I almost left his name in here, Dr. Greenberg, I
18 presume is your public health witness a again, Mr. Meyer?

19 PROJECT MANAGER MEYER: That is correct.

20 HEARING OFFICER KRAMER: Okay are you
21 anticipating having him come or -- well, he'd be part of
22 the group here I presume in Sacramento.

23 PROJECT MANAGER MEYER: Yeah, Dr. Greenberg will
24 be available for the work safety fire protection section,
25 so he will be coming for that. So if something does come

1 up with public health, he'll be available, but we weren't
2 anticipating having any direct on public health.

3 HEARING OFFICER KRAMER: Okay. Does anybody have
4 any need for direct or cross on public health?

5 MS. GANNON: The applicant does not.

6 HEARING OFFICER KRAMER: Okay, seeing none, that
7 will be uncontested then.

8 Powerplant efficiency. Would that be Mr.
9 Khoshmashrab, if there's a need, Mr. Meyer?

10 PROJECT MANAGER MEYER: That is correct.

11 HEARING OFFICER KRAMER: Okay, I'll leave his
12 name in there then. But does anybody wish to have live
13 testimony or cross about that topic?

14 MS. GANNON: Yes. We have two witnesses that we
15 were planning on putting on for efficiency and
16 reliability.

17 HEARING OFFICER KRAMER: Okay.

18 MS. GANNON: And it's Waymon Votaw and --

19 HEARING OFFICER KRAMER: It's W -- how do you
20 spell his last name?

21 MS. GANNON: V-o-t-a-w.

22 HEARING OFFICER KRAMER: Okay. And --

23 MS. GANNON: And Rick Reiff, R-e-i-f-f.

24 HEARING OFFICER KRAMER: Okay. Are you
25 suggesting that combining efficiency with reliability

1 would be efficient?

2 MS. GANNON: That's what we were thinking.

3 HEARING OFFICER KRAMER: Okay. Is there any
4 objection to doing that?

5 MR. RITCHIE: Hearing Officer Kramer, Travis
6 Ritchie with Sierra Club. We have no objection, but we
7 may have a few points depending on what comes up on their
8 direct. We may want to reserve about 15 minutes for cross
9 on that issue.

10 HEARING OFFICER KRAMER: And Ms. Gannon I'm not
11 sure you said or I just didn't hear your estimate for your
12 direct.

13 MS. GANNON: I said 30 minutes.

14 HEARING OFFICER KRAMER: So we're going to
15 combine that with the reliability.

16 Okay, I probably should save this file, just to
17 be safe. Nothing from staff though?

18 STAFF COUNSEL ADAMS: Staff anticipates about 15
19 minutes of cross on reliability.

20 HEARING OFFICER KRAMER: Okay.

21 MS. MILES: CURE would like to reserve 10 minutes
22 for cross?

23 MR. BASOFIN: And Defenders -- this is Josh
24 Basofin with Defenders. We'd like 30 minutes for
25 cross-examination on reliability and we will have -- also

1 have documents that I can bring on a flash drive to use as
2 exhibits to show witnesses.

3 HEARING OFFICER KRAMER: Okay, hold on. I've got
4 to -- okay so CURE was?

5 MS. MILES: Ten minutes.

6 HEARING OFFICER KRAMER: And Defenders was 30
7 minutes?

8 MR. BASOFIN: That's correct.

9 MS. GANNON: For Defenders' visuals, are those
10 exhibits that have already been submitted in the record?

11 MR. BASOFIN: Yes.

12 MS. GANNON: Thank you.

13 HEARING OFFICER KRAMER: Actually, I made a crack
14 about the projector here, but we won't be using that. So
15 I apologize to the projector.

16 Okay, so we've done efficiency and reliability.
17 That leaves us to visual resources. I'm sure this is not
18 uncontested.

19 The applicant, do you have witnesses?

20 MS. GANNON: Yeah, we have a three witness panel
21 that we propose to put on, which is -- would constituted
22 of Felicia Bellows of Tessera, who is sitting on my right,
23 and I forgot to introduce in the beginning of these
24 proceedings. And Angela Leiba, which is L-e-i-b-a from
25 URS, and Josh -- Jason Pfaff, which is P-f-a-f-f, from

1 Powers Engineering. And we anticipate a 30 minute direct,
2 and we reserve 60 minutes for cross.

3 HEARING OFFICER KRAMER: Okay, staff.

4 STAFF COUNSEL ADAMS: Well, we're anticipating
5 about 10 minutes direct of our own witnesses -- just a
6 second.

7 Bill Kanemoto and probably about 15 minutes in
8 cross.

9 (Thereupon a discussion occurred off the record.)

10 HEARING OFFICER KRAMER: Oh, okay, he's on
11 another phone, so let me go to my magic screen and -- Okay
12 so we're going to find him and we're going to mute him.

13 Okay, do we know who that was?

14 No, he must not have announced himself. Okay,
15 I'll try to check back with him later.

16 MS. GANNON: Mr. Kramer, we forgot to mention we
17 would have Jason Pfaff by telephone. The other witnesses
18 could be present, unless others need him to be present.

19 HEARING OFFICER KRAMER: Okay. Was it just Mr.
20 Kanemoto, Mr. Adams?

21 PROJECT MANAGER MEYER: Staff we're still
22 discussing on how we're going to deal with it, since
23 traffic is trailing, whether we're going to have a panel
24 to deal with any of the glare issues with Alan Lindsley at
25 that time. But at this point, staff is just looking on

1 visual having Bill Kanemoto.

2 HEARING OFFICER KRAMER: Okay, I would say let's
3 do the glare all at once, rather than split it up and risk
4 having a lot have questions, just trying to remember what
5 we did two weeks earlier.

6 PROJECT MANAGER MEYER: And staff would remind
7 that the preliminary -- the predominant testimony on glint
8 and glare is going to be with the traffic section that
9 will be trailing, that won't be filed at the time of the
10 hearing.

11 HEARING OFFICER KRAMER: Yeah. Anyone else want
12 to participate in the visual discussion?

13 MS. MILES: CURE would like to reserve 10 minutes
14 of cross.

15 MR. EMMERICH: This is Kevin Emmerich, Basin and
16 Range Watch. We'd like 10 minutes for the applicant.

17 HEARING OFFICER KRAMER: Cross-examination then?

18 MR. EMMERICH: Right.

19 HEARING OFFICER KRAMER: Okay.

20 MS. GANNON: In looking at the schedule, the
21 applicant would be willing to take our cross down to 30
22 minutes.

23 HEARING OFFICER KRAMER: Oh, thank you.

24 Greenhouse gases. It's a subset of the air
25 quality issue but we've been giving it a separate section

1 lately. Do we have anyone who wishes to discuss that
2 topic live or cross-examine.

3 Uncontested.

4 Project alternatives. That's got to be good for
5 something.

6 MR. BASOFIN: Defenders would like to reserve 15
7 minutes.

8 STAFF COUNSEL ADAMS: Staff anticipated 10
9 minutes of direct and 15 of cross. Susan Lee is our
10 witness.

11 HEARING OFFICER KRAMER: Oops, sorry you're not
12 the applicant. That's not Freudian.

13 Applicant?

14 MS. GANNON: The applicant will offer Felicia
15 Bellows for 30 minutes. I'd say we have 30 minutes direct
16 and 30 minutes cross.

17 HEARING OFFICER KRAMER: Okay. Anyone else?

18 We've had Defenders already?

19 Staff was 10 of cross, I'm sorry?

20 Mr. Adams, the staff cross I --

21 STAFF COUNSEL ADAMS: Fifteen on alternatives.

22 HEARING OFFICER KRAMER: Fifteen, okay. Thanks.

23 Worker safety fire protection. County of San
24 Bernardino, I know you're interested in this one.

25 MS. MILES: I'm sorry, Hearing Officer Kramer,

1 can you also include 10 minutes for cross for alternatives
2 for CURE?

3 HEARING OFFICER KRAMER: You said 10?

4 MS. MILES: Yes.

5 HEARING OFFICER KRAMER: Okay, worker safety fire
6 protection, which is among other things is dealing with
7 the effects on the local fire and safety service
8 providers. Did you have a direct witness, Mr. Brizzee?

9 MR. BRIZZEE: No, we didn't, but we'd like to
10 reserve 15 minutes of cross for the applicant's witness.

11 HEARING OFFICER KRAMER: Noise covered the number
12 you gave.

13 MR. BRIZZEE: 15 minutes.

14 HEARING OFFICER KRAMER: Got it. Thanks.

15 Applicant and staff?

16 MS. GANNON: Mr. Kramer, we were putting this
17 issue together with hazardous materials, because there
18 were -- the fire issues were related to the hydrogen as
19 well, so we thought it would make sense to have a panel
20 with those together, if the other parties don't object.

21 HEARING OFFICER KRAMER: Any objections to that?

22 MS. GANNON: Then in that case, we have three
23 witnesses which we will be offering. One is Michael
24 Alhalabi, which is A-l-h-a-b-i;, Tariq Hussain, which is
25 H-u-s-s-a-i-n, and Tricia Winterbauer,

1 W-i-n-t-e-r-b-a-u-e-r. And Mr. Winterbauer will be on
2 the phone. And we estimate 60 minutes for our direct on
3 that subject matter. We also ask for 60 on cross.

4 HEARING OFFICER KRAMER: Okay, staff?

5 STAFF COUNSEL ADAMS: Staff doesn't intend to put
6 on a witness, but we'll reserve 10 minutes in cross.

7 HEARING OFFICER KRAMER: Any other parties?

8 MR. WEIERBACH: Newberry Community Service
9 District would like to reserve 15 minutes.

10 HEARING OFFICER KRAMER: It's Mr. --

11 MR. WEIERBACH: Wayne Weierbach.

12 HEARING OFFICER KRAMER: From the Newberry
13 Community Service District.

14 MR. WEIERBACH: That's correct.

15 MR. THOMPSON: Can we go back 30 seconds. Staff
16 is not going to put on fire worker safety fire witnesses?

17 STAFF COUNSEL ADAMS: We're not going to have
18 direct.

19 MR. THOMPSON: Further direct.

20 HEARING OFFICER KRAMER: Okay, so --

21 MS. GANNON: We would ask that your witnesses be
22 available for potential cross.

23 PROJECT MANAGER MEYER: Yes, that's as I talked
24 about earlier with Dr. Greenberg being available.

25 HEARING OFFICER KRAMER: And that would be by

1 phone again.

2 MS. MILES: CURE would like 10 minutes for
3 cross-examination.

4 HEARING OFFICER KRAMER: Okay, Mr. Weierbach,
5 your number went out of my head before I could type it in.

6 MR. WEIERBACH: Fifteen minutes.

7 HEARING OFFICER KRAMER: Fifteen. Okay, and CURE
8 was?

9 MS. MILES: Ten minutes.

10 HEARING OFFICER KRAMER: Ten.

11 THE COURT REPORTER: Mr. Kramer, I think somebody
12 has us on hold. I'm hearing music. It's not coming
13 through the room, but I'm hearing it on my recording. I
14 wonder if you could direct them to take us off hold.

15 HEARING OFFICER KRAMER: Let me see if can I spot
16 them. If they put us on hold, they may not be there to
17 hear us ask them.

18 THE COURT REPORTER: Right.

19 HEARING OFFICER KRAMER: But yeah just for
20 everyone, even though I have the ability here to mute you,
21 it would be really nice, you may not realize it at your
22 office. I know Mr. Brizzee at least when I worked at the
23 county 20, 30 years ago, when you put people on hold, you
24 know they're outside the building and they get music. And
25 you never know that until you're, you know, away from the

1 office one day and you call in and your secretary puts you
2 on hold. So if people need to mute, I think the command
3 was star 6 or something like that. Or you may have a mute
4 button on your phone unit on your desk, but please don't
5 put us on hold, because sometimes we get music. And
6 it's -- are we still getting it, Peter?

7 THE COURT REPORTER: Yes.

8 HEARING OFFICER KRAMER: Oh I can barely hear it
9 on the speaker but it's not enough to move the meters on
10 our computer.

11 (Thereupon a discussion occurred off the record.)

12 HEARING OFFICER KRAMER: We'll go back on the
13 record.

14 (Thereupon a phone rang.)

15 HEARING OFFICER KRAMER: All right now that's
16 going to be a problem.

17 All right, Ken Spear, you're muted.

18 Okay, we were talking about Hazmat. Dr.
19 Greenberg is going to be available by the telephone.
20 Anymore cross-examination or direct testimony requests for
21 worker safety, fire protection, and Hazmat in their
22 combined configuration?

23 MR. LAMB: Hearing Officer Kramer, just for
24 clarification, BNSF --

25 HEARING OFFICER KRAMER: Could you come to the

1 mike, Mr. Lamb.

2 MR. LAMB: Sure.

3 One of BNSF's witnesses speaks to hazardous
4 materials solely as to the hydrogen lines. And again,
5 that's in the statement. We'll have him available. We do
6 not need to put that testimony on live. We believe that
7 that's being resolved, but we would ask for 10 minutes of
8 potential cross to be reserved

9 HEARING OFFICER KRAMER: It's noted.

10 MR. LAMB: Thank you.

11 HEARING OFFICER KRAMER: Okay, anyone else? So
12 as you can see on the screen now, worker safety is up to
13 three hours. And that's probably okay, if there aren't a
14 lot more like it.

15 Soil and water resources. Any need to discuss
16 that?

17 MS. MILES: CURE will be sponsoring a witness to
18 that topic.

19 HEARING OFFICER KRAMER: Okay.

20 MS. MILES: And we anticipate --

21 HEARING OFFICER KRAMER: I have a feeling I'm
22 going to have to make more room in this spreadsheet for
23 that.

24 Okay, CURE and the name is?

25 MS. MILES: Dr. Borris Poff.

1 HEARING OFFICER KRAMER: Doctor, last name?

2 MS. MILES: Poff, P-o-f-f.

3 HEARING OFFICER KRAMER: Poff, okay. And time?

4 MS. MILES: We estimated one hour. I'm willing
5 to cut that down to 45 minutes.

6 HEARING OFFICER KRAMER: Thank you. Staff or the
7 applicant.

8 MS. GANNON: The applicant has four witnesses on
9 water. So this is both water supply and the hydrology
10 issues. We have Robert Scott, S-c-o-t-t. He will be by
11 telephone. And when we get to scheduling issues, he will
12 actually be out of the country and will be calling in from
13 Spain, so we'd like to hopefully get a time certain for
14 him, if at all possible.

15 We also have Joe Liles, who is L-i-l-e-s; Matt
16 Moore M-o-o-r-e; and Bob Byall B-y-a-l-l. And we have
17 estimated 60 minutes for our direct, and we said 120 for
18 cross, but I think we could take it to 60 for cross.

19 HEARING OFFICER KRAMER: Sixty and Sixty.

20 MS. GANNON: Um-hmm.

21 HEARING OFFICER KRAMER: And the last, Bob?

22 MS. GANNON: B-y-a-l-l.

23 HEARING OFFICER KRAMER: B as in boy?

24 MS. GANNON: Yes. B-y-a-l-l. Sixty and sixty.

25 Okay, staff?

1 STAFF COUNSEL ADAMS: Staff would like to reserve
2 half an hour for direct. We have four witnesses. They're
3 Casey Weaver, Gus Veils.

4 HEARING OFFICER KRAMER: Okay, slow down.

5 STAFF COUNSEL ADAMS: Excuse me, the second
6 witness is Gus Yates. I can't read my own writing.

7 HEARING OFFICER KRAMER: Yates?

8 STAFF COUNSEL ADAMS: Yates, Y-a-t-e-s.

9 HEARING OFFICER KRAMER: Okay.

10 STAFF COUNSEL ADAMS: The third witness is John
11 Fio, F-i-o.

12 HEARING OFFICER KRAMER: Okay.

13 STAFF COUNSEL ADAMS: And the fourth is Steve
14 Allen. And we anticipate needing an hour for
15 cross-examination.

16 HEARING OFFICER KRAMER: Okay, but those -- okay,
17 so you're just offering those witnesses?

18 STAFF COUNSEL ADAMS: Yes.

19 HEARING OFFICER KRAMER: But you won't -- no
20 direct from them.

21 STAFF COUNSEL ADAMS: Excuse me?

22 HEARING OFFICER KRAMER: What was your estimate
23 of the direct time?

24 STAFF COUNSEL ADAMS: Oh, direct, half an hour.

25 HEARING OFFICER KRAMER: Okay. Thank you. And

1 then 60 minutes for cross?

2 STAFF COUNSEL ADAMS: That's right.

3 HEARING OFFICER KRAMER: Thank you.

4 Anyone else?

5 MS. MILES: CURE estimates -- we estimated one
6 hour of cross for soil and water for applicant and one
7 hour of cross for staff, but we are willing to cut that
8 down to 30 minutes for each.

9 HEARING OFFICER KRAMER: So 60 total. Okay,
10 thank you.

11 MR. LAMB: Hearing Officer Kramer, this is Steve
12 Lamb for BNSF again. One of the testimonies that we
13 submit, which has been filed -- I just found out that got
14 filed -- was by a gentleman by the name of Schmidt. And
15 that relates to hydrology in relation to detention basins
16 and subsidence solely. And again, he'll be available. We
17 don't need to put him on live. He'll be available for
18 cross if someone would want to cross him, and we would
19 just reserve 10 minutes of cross, solely on the issue of
20 detention basins.

21 HEARING OFFICER KRAMER: Detention basins.

22 MR. LAMB: Yes, sir.

23 HEARING OFFICER KRAMER: Okay. Anyone else on
24 soil and water.

25 MR. EMMERICH: This is Kevin Emmerich Basin and

1 Range Watch. We'd like to request 10 minutes
2 cross-examination.

3 HEARING OFFICER KRAMER: Any particular topic or
4 across the board?

5 MR. EMMERICH: Water.

6 HEARING OFFICER KRAMER: All right another
7 subtopic then.

8 MR. EMMERICH: Across the board.

9 HEARING OFFICER KRAMER: Okay, thanks.

10 Okay water is up to five and then nearly five and
11 a half hours. That can't be right. It can. Okay.

12 MR. BOOTH: This is Richard Booth with Lahontan
13 Water Board. I don't have a witness but I'd like to ask
14 the gentleman with BNSF. Do the detention basins he's
15 referring to deal with stormwater or with wastewater?

16 HEARING OFFICER KRAMER: Mr. Lamb, did you hear
17 the question?

18 MR. LAMB: I did not. I'm sorry. I was trying
19 to the get status on some of these -- what was the
20 question?

21 HEARING OFFICER KRAMER: Go ahead and ask again.

22 MR. BOOTH: Yes, sir. I'm wondering if the
23 detention basins you referred to --

24 (Thereupon a loud noise.)

25 MR. BOOTH: That's not me -- the detention basins

1 you referred to deal with stormwater or deal with treated
2 wastewater?

3 MR. LAMB: Stormwater.

4 MR. BOOTH: Okay, thank you.

5 HEARING OFFICER KRAMER: Was that you, Peter?

6 THE COURT REPORTER: It was not.

7 HEARING OFFICER KRAMER: It was not. And a fire
8 alarm doesn't go away that quickly, so we're lucky, I
9 guess.

10 Okay, let's move on, if there's nothing else to
11 noise. Does anybody need to say anything about noise or
12 can I mark that as uncontested.

13 MR. BURK: Bob Burk, SCBS. We'd like to have 10
14 minutes on noise, please.

15 HEARING OFFICER KRAMER: Does that relate to the
16 effect on the sheep, I presume?

17 MR. BURK: Yes. And I had the mute button on,
18 and I was trying to talk, and forgot. Sorry I'm a little
19 late.

20 HEARING OFFICER KRAMER: Okay. Well, we're
21 hearing you now. I think normally if you're just talking
22 about the effects on wildlife, let me ask the parties if
23 it would be more effective to handle that in the
24 biological section?

25 PROJECT MANAGER MEYER: This is Christopher Meyer

1 from staff. Yeah, noise deals with effects to humans in
2 the noise section, but for issues related to wildlife, we
3 would -- staff would deal with that in the biology
4 section.

5 HEARING OFFICER KRAMER: Okay, so hold your
6 comments for a minute Mr. Burk and we'll -- we're almost
7 to biology.

8 MR. BURK: Okay, thank you.

9 MS. MILES: Mr. Kramer, during the Imperial
10 hearings, there was testimony relating to noise on
11 biological impacts. And there was concern because we
12 really didn't have an expert on noise from the staff that
13 we could cross-examine. And the staff's biologist said
14 that they really didn't have an understanding of noise to
15 respond. So I wonder if we could have a staff witness
16 available who does have an understanding of noise as it
17 could relate to the travel of noise across areas?

18 HEARING OFFICER KRAMER: Yes. Thank you for
19 highlighting that potential glitch.

20 So Mr. Meyer, you'll make the appropriate person
21 available at the appropriate time?

22 PROJECT MANAGER MEYER: Yes, staff can have the
23 noise expert available during the biology section when
24 that's on, to answer any questions that cross the topics.

25 HEARING OFFICER KRAMER: Okay, great.

1 So does anybody have anything that
2 non-biologically affecting noise?

3 Okay, uncontested then, for noise that is.

4 Traffic and transportation, that is going to be
5 heard in the middle of the month on the 18th. Once that's
6 ready.

7 MS. GANNON: And so we can understand, the
8 glint/glare will be handled as part of the traffic; is
9 that correct?

10 HEARING OFFICER KRAMER: Yes, because as I
11 understand it, Mr. Lamb, you can correct us if we're
12 wrong, the effects that you're interested in are purely on
13 the railroad traffic?

14 MR. LAMB: That is correct. And I do not believe
15 that that is going to be ready until a approximately
16 August 9th the report from staff.

17 HEARING OFFICER KRAMER: Okay. So I'll just make
18 a note that it includes glint/glare for traffic and
19 transportation.

20 MS. GANNON: Well, then we would make one
21 correction to our visual witnesses and Jason Pfaff would
22 not be testifying then at the hearings next week. He
23 speaks to glint/glare.

24 HEARING OFFICER KRAMER: Okay I'll take him off
25 the list. But why don't we -- why don't we fill him in in

1 traffic and transportation at least now for information.
2 Would he be the only witness then for you on traffic? Or
3 is it too early to tell?

4 MS. GANNON: It's too early to tell, until we've
5 seen the Supplemental Staff Assessment.

6 HEARING OFFICER KRAMER: Well, we'll have him in
7 there as at least one of the people, anyway.

8 MS. GANNON: Right.

9 HEARING OFFICER KRAMER: Okay. And let's see,
10 this is going to be on 8-18.

11 Biological resources. Give me a moment to add
12 some space here. What do you think, 10 rows?

13 Okay, staff?

14 STAFF COUNSEL ADAMS: We have two witnesses,
15 Scott White and Chris Huntley. We're anticipating that
16 direct will take about 30 minutes. And we'll need about
17 an hour for cross-examination.

18 HEARING OFFICER KRAMER: The applicant?

19 MS. GANNON: We will be offering three witnesses,
20 Dr. Patrick Mock M-o-c-k, Theresa Miller, M-i-l-l-e-r, and
21 Shawn Johnston, J-o-h-n-s-t-o-n. And we have estimated
22 two hours for direct. And we said three hours for cross.
23 We could say two hours for cross.

24 HEARING OFFICER KRAMER: Okay, and the direct
25 again was how much?

1 MS. GANNON: Two.

2 HEARING OFFICER KRAMER: 120 each?

3 MS. GANNON: Yep.

4 HEARING OFFICER KRAMER: Okay. And CURE?

5 MS. MILES: CURE has two witnesses on biology,
6 Dr. Vern Bleich and Scott Cashen. And we estimated three
7 hours for direct for Scott Cashen and I'm willing to cut
8 that down to two. And for Dr. Bleich, we estimated one
9 hour and I'm willing to say 30 minutes for direct.

10 HEARING OFFICER KRAMER: So 150 minutes. Was
11 that Blake or Blank?

12 MS. MILES: Bleich, B-l-e-i-c-h.

13 HEARING OFFICER KRAMER: Oh, I wasn't even close.
14 And cross again how long?

15 MS. MILES: For cross-examination -- sorry I'm
16 just looking. I believe we need one hour for
17 cross-examination for the applicant and 30 minutes for
18 staff.

19 HEARING OFFICER KRAMER: Ninety total, okay.

20 Anyone else?

21 MR. BASOFIN: Joshua Basofin with Defenders of
22 Wildlife. Defenders will be sponsoring testimony for two
23 witnesses, Jim Andre and Jeff Aardahl. I estimate that
24 direct will be about 20 minutes for each of them. And
25 it's difficult to estimate cross. I mean I suspect there

1 will be cross and recross on several of the applicant's
2 and the staff's witnesses. I think an hour and a half
3 would be the lowest amount of time probably.

4 HEARING OFFICER KRAMER: Okay, so 90 minutes for
5 direct again?

6 MR. BASOFIN: For direct 20 minutes for each of
7 them, so 40 minutes total.

8 HEARING OFFICER KRAMER: Forty, okay. And the
9 second gentleman's last name, not Mr. Andre but the other
10 one.

11 MR. BASOFIN: Aardahl. It's spelled
12 A-a-r-d-a-h-l.

13 HEARING OFFICER KRAMER: Okay.

14 MS. GANNON: Mr. Kramer, we have an objection to
15 presenting Jim Andre as a witness in this case. Jim
16 Andre -- Mr. Andre was hired as a subconsultant to the
17 project, and was paid for doing work on the site and there
18 was a non-disclosure agreement for the company, with which
19 he was working. And we believe that he should not be
20 presented or accepted as a witness in this case.

21 MR. BASOFIN: Mr. Kramer, in response, I've
22 spoken to Mr. Andre, and it's my understanding that he has
23 spoken with the applicant about the project that he as
24 visited the site. I'm not aware of an executed contract
25 for him. I haven't seen any evidence of that. This was

1 sort of sprung on me today.

2 But in any case, I'm not sure -- I don't -- I'm
3 not sure where the applicant is coming from where he would
4 be conflicted out in any case.

5 MS. GANNON: He was working for a company called
6 Boreman and we have a work order that shows him working
7 for Boreman. Boreman has signed a non-disclosure
8 agreement with URS, who is a consultant to the applicant.
9 The non-disclosure agreement we believe will preclude his
10 giving testimony in this matter.

11 We have just received -- and the reason of
12 course, it just came up today, is we just found out
13 yesterday that he was going to be designated as a witness.
14 So we weren't aware of this until this morning ourselves.

15 I have received, just prior to these hearings,
16 some copies of the invoices that were received that showed
17 his hours of work on the site. And the check has been
18 sent to them to pay for this work, so he was in the
19 employee of the consultant to the applicant.

20 MR. BASOFIN: Mr. Kramer, there's something
21 conspicuously missing from all of this and that's an
22 executed contract, which I haven't seen between either the
23 applicant, the contractor, or the subcontractor with Mr.
24 Andre. And I would add that I'm not sure how this is
25 within the jurisdiction of the Committee. I mean this is

1 a witness who's qualified to testify. His testimony has
2 been offered by an intervenor. And you know, I think that
3 if all of the experts who have had conversations with the
4 applicant or been to a site were to be precluded from
5 testifying, you would find that the Committee would find
6 very quickly that intervenors would have a very difficult
7 time finding any expert to appear on their behalf.

8 This is just the nature of this particular
9 industry. And so I'm -- I still don't think that the
10 applicant has, you know, shown good cause why this
11 testimony should be precluded.

12 And I would just add that if -- well --

13 MS. GANNON: Clearly, we are not saying that any
14 person who happened to talk to the applicant or visit a
15 site. Being paid by the applicant to do work and to be
16 conducting surveys or studies on the site, we think is an
17 entirely different nature. Again, there was a
18 non-disclosure agreement, which was signed by the employer
19 of Mr. Andre, who was working on the site. We think I's
20 clearly a different case than somebody just happening to
21 stop by and we would be trying to exclude them. This is,
22 we think, a clear conflict.

23 ASSOCIATE MEMBER BYRON: Mr. Kramer, I don't know
24 if you're waiting for Committee members to interject, but
25 a non-disclosure or contract issue is outside my interest

1 as a Committee member. If this witness feels he can
2 testify and has information that would be of interest to
3 us as evidence, I'd certainly like to hear him. If he
4 decides between now and then that he's not in a position
5 to testify, so be it. But my inclination is let's go. Let
6 him in.

7 MS. GANNON: Could we have an opportunity to
8 present arguments or a brief on this before the hearings?

9 HEARING OFFICER KRAMER: Certainly. And I think
10 that would be most efficient, if you could send that to
11 all the parties. And then I suppose Mr. Andre should know
12 what you think his obligations are for his own personal
13 reasons.

14 MS. GANNON: We certainly will, because obviously
15 we view this as a very serious matter.

16 MS. SMITH: Mr. Kramer, Sierra Club has a strong
17 interest in this as well. I mean, I think everybody at
18 the Commission knows that Mr. Andre is one of the
19 preeminent experts in plants in California and I've
20 certainly -- it's been my experience, he's an unbiased
21 scientist. So if there is going to be briefing or further
22 discussion on this matter, we certainly want an
23 opportunity to weigh in as well.

24 HEARING OFFICER KRAMER: Okay, let's -- yeah, we
25 don't want this to consume a good part of a day that

1 should be spent working on discussing the issues. So
2 filing what you've got ahead of time, I think, would be
3 the best way to get the discussion started and hopefully
4 resolve it, but we'll see.

5 MS. GANNON: We will do so.

6 MR. BASOFIN: Mr. Kramer, can you elaborate on
7 your instructions for briefing, I think that would be
8 helpful. When would you like briefs from the parties on
9 this issue?

10 HEARING OFFICER KRAMER: Ms. Gannon, when could
11 you -- by Tuesday noon, is that too soon?

12 MS. GANNON: That should work. Thank you.

13 MR. BASOFIN: And would you like briefs from all
14 the parties at once or do you want a brief from the
15 applicant and then a reply brief from us?

16 HEARING OFFICER KRAMER: I don't think we have
17 time for back and forth, so if you -- but I think -- I'm
18 guessing that this is going to be more to educate you
19 about what they think his obligations are.

20 MR. BASOFIN: Right. Well, I have a few things
21 to say as well. So I mean I can take what they've said to
22 today as a motion to preclude the testimony and I can
23 reply to that in my brief.

24 HEARING OFFICER KRAMER: Okay. Go ahead, yes.
25 Then if you could have that by Tuesday noon as well.

1 MR. BASOFIN: Very good.

2 MS. SMITH: But just for point of clarification,
3 I mean Commissioner Byron said he was very interested in
4 hearing what Mr. Andre had to say. So have we now moved
5 from -- to a point where there's going to be a
6 determination before we get underway on biology on whether
7 or not he can testify, because I didn't hear that that was
8 actually on the table, until the briefing schedule came
9 up. I would object to that.

10 HEARING OFFICER KRAMER: Well, we have the
11 beginnings of a motion at least here. And it sounds like
12 it will be made more formal. So --

13 MS. GANNON: We are willing to make it a formal
14 motion to exclude his evidence -- his testimony as
15 evidence in this matter.

16 HEARING OFFICER KRAMER: And so to prepare for
17 that, so we're not exchanging and looking over documents
18 in the first instance at the hearing, the exchange of raw
19 materials and argument prior to the hearing get us
20 started.

21 MS. SMITH: It sounds like -- I mean, this motion
22 by the applicant has the potential of blowing up all of
23 next week potentially, if we end up spending all this time
24 back and forth on Mr. Andre, who is again a recognized
25 expert in California plants. That's their choice I

1 suppose.

2 HEARING OFFICER KRAMER: We haven't lost any time
3 by having them preview their arguments. And we'll see
4 where it goes from there.

5 Mr. Lamb?

6 MR. LAMB: On a far less controversial note, just
7 so we're clear, I wanted to note that the only comment
8 that we had done in written form was with Mr. Phillips in
9 relation to biology. It only related to the emergency
10 access issues relating to the fence that's up there.
11 Again we do not need to present him live. That was filed
12 and served yesterday. We'd just ask for five minutes of
13 cross to reserve, that's it.

14 HEARING OFFICER KRAMER: Okay, anybody else have
15 any requests to go on the tally sheet?

16 MR. RITCHIE: Yes, Mr. Kramer, this is Travis
17 Ritchie with Sierra Club. We had requested, I think in
18 our prehearing conference statement, 30 minutes of cross
19 for each witness. And by my count we're up to nine. So
20 that would be an estimated total of four and a half hours
21 for cross-examination.

22 HEARING OFFICER KRAMER: Okay, well --

23 MR. RITCHIE: We can potentially cut that down to
24 maybe 30 minutes for each party, as opposed to each
25 witness.

1 HEARING OFFICER KRAMER: Okay. And so how do you
2 count the parties?

3 MR. RITCHIE: Well I might just say three hours
4 and that would make it easier.

5 HEARING OFFICER KRAMER: Okay, that's 180. Okay,
6 there's an 11 hour day, 12 hour day.

7 MR. BRIZZEE: Not to add to it. Bart Brizzee
8 from the county. We'd like to reserve 15 for staff's
9 witnesses.

10 HEARING OFFICER KRAMER: Okay.

11 MR. BASOFIN: Mr. Kramer, I just -- just as a
12 note, Mr. Andre would only be able to appear physically at
13 the hearing on the 16th. If he was asked to appear on the
14 other two days, he does have a prior engagement. We would
15 be requesting to appear by phone.

16 HEARING OFFICER KRAMER: You stead 16th?

17 MR. BASOFIN: I'm sorry, the 6th. So the 4th or
18 the 5th he would be engaged and would need to be by phone.
19 On the 6th he could appear in person.

20 STAFF COUNSEL ADAMS: Staff also has some
21 availability issues, but I thought we were dealing with
22 those later.

23 HEARING OFFICER KRAMER: Yeah, but I'll make the
24 note here.

25 MS. CUNNINGHAM: Laura Cunningham Basin and Range

1 Watch. We have a witness myself Laura Cunningham for
2 testimony for 10 minutes and cross 15 minutes.

3 HEARING OFFICER KRAMER: Okay, hold on a second.
4 I'll have to have you repeat that in a minute.

5 Does anyone else have a request?

6 MR. BURKE: Society for conservation of Bighorn
7 Sheep.

8 HEARING OFFICER KRAMER: Okay.

9 MR. BURK: We'll have two witnesses, myself --

10 HEARING OFFICER KRAMER: Okay don't -- I'm just
11 trying to figure out how many rows to add to my
12 spreadsheet.

13 Okay, so back to Basin, the direct witnesses were
14 again?

15 MS. CUNNINGHAM: Laura Cunningham 10 minutes.

16 HEARING OFFICER KRAMER: And your cross was?

17 MS. CUNNINGHAM: Fifteen minutes.

18 HEARING OFFICER KRAMER: Okay. And then.

19 MR. BURK: Bob Burk, SCBS.

20 HEARING OFFICER KRAMER: Okay, and were you going
21 to be the witness, Bob?

22 MR. BURK: Yes and Gary Thomas also.

23 HEARING OFFICER KRAMER: For how long total?

24 MR. BURK: Probably 10 minutes at the most,
25 between the two of us, and probably 10 minutes at the most

1 of cross-examination across the Board.

2 There's other parties that are speaking to what
3 we're speaking to also. So that will speed it up a
4 little.

5 HEARING OFFICER KRAMER: Okay. We're now to 15
6 hours cross on biology.

7 MS. GANNON: April Hearing Officer Kramer, if the
8 suggestion as was just pointed out, there is a great deal
9 of commonality in the issues for biology, reading the
10 prehearing conference statements from the other parties,
11 it appears that there is again quite a lot of commonality
12 between these issues and we are hoping that there can be a
13 reasonable accommodation made to limit that cross to have
14 these -- so we don't have to go over the same issue in
15 lots of different variations and permutations, that we can
16 sort of have it presented and discussed in a more concise
17 form, so that we don't have to do 17 or 18 hours days.

18 HEARING OFFICER KRAMER: And that's what we find
19 the panel's quite often facilitate, as opposed to that.
20 But we'll talk about the panels in a minute.

21 MS. GANNON: And particularly because in many of
22 these cases there are not direct witnesses on these
23 matters. So it appears that we'll be predominantly
24 focused on crossing either our witnesses or staff's
25 witnesses.

1 HEARING OFFICER KRAMER: Um-hmm. Okay let's -- I
2 think that -- almost everyone was heard from on biology.
3 Ms. Miles?

4 MS. MILES: Yes. I do have a question about
5 agency participation. That was definitely very, very
6 valuable in the Imperial project, and I haven't heard from
7 staff as to whether they know which agencies will be
8 participating and available for questioning and for
9 providing clarification.

10 MR. BASOFIN: And Defenders does have a pending
11 subpoena application for a CDFG representative as well.

12 STAFF COUNSEL ADAMS: Staff is working with
13 representatives of BLM, the Department of Fish and Game,
14 and the U.S. Fish and Wildlife Service to have a similar
15 panel. Right now, it looks like all the members of that
16 could be available on Thursday. If we go Wednesday or
17 Friday, we start losing one or more members. I can
18 mention names if that's of interest.

19 HEARING OFFICER KRAMER: Sure.

20 STAFF COUNSEL ADAMS: These are tentative of
21 course.

22 HEARING OFFICER KRAMER: Okay so it was BLM, U.S.
23 Fish and Wildlife.

24 STAFF COUNSEL ADAMS: And Department of Fish and
25 Game.

1 HEARING OFFICER KRAMER: Okay. Does anybody want
2 to hear those names, being that they're tentative.

3 MS. GANNON: Sure.

4 HEARING OFFICER KRAMER: Okay go ahead.

5 STAFF COUNSEL ADAMS: From the Department of Fish
6 and Game Tonya Moore, and possibly Becky Jones. They're
7 both biologists from the desert region. From Fish and
8 Wildlife Service, Ashleigh Blackford. From the Bureau of
9 Land Management, we've got Amy Fresnock and Chris Otahal
10 are expected.

11 HEARING OFFICER KRAMER: How due spell Amy's last
12 name?

13 STAFF COUNSEL ADAMS: Yeah Amy Fresnock
14 is -- excuse me I'm mispronouncing it. Fesnock,
15 F-e-s-n-o-c-k.

16 HEARING OFFICER KRAMER: Okay, Mr. Basofin, when
17 did you file this request?

18 MR. BASOFIN: It was filed with my submittals
19 yesterday.

20 HEARING OFFICER KRAMER: Oh, that's -- I'm glad
21 you mentioned it, because I don't -- so you're looking for
22 a preponderance for whom?

23 MR. BASOFIN: For a California Department of Fish
24 and Game representative. I hadn't seen one on staff's
25 witness list. And so I just felt compelled to file this

1 subpoena just to cover my bases to make sure that -- I
2 think it's imperative that we have a representative from
3 California Department of Fish and Game appear. So I'd
4 just like to ensure that that happens. And that was the
5 purpose of my application for subpoena.

6 HEARING OFFICER KRAMER: Okay. Well staff are
7 you going to be able to get that for him?

8 STAFF COUNSEL ADAMS: To get him assurance that
9 Fish and Game will attend?

10 HEARING OFFICER KRAMER: And I suppose ultimately
11 somebody to talk to.

12 STAFF COUNSEL ADAMS: Yeah, I'd like to offer up
13 the assurance now, but we have a commitment from Tonya
14 Moore to appear and I'm waiting to hear from Becky Jones,
15 but expect that she very likely will also be there. So
16 that would be two Fish and Game employees specialists in
17 desert biology. And we anticipate them being available
18 throughout -- well, whenever biology is scheduled.

19 MS. MILES: And if I heard you correctly, you
20 said that it would -- they would prefer Thursday?

21 STAFF COUNSEL ADAMS: Well, trying to coordinate
22 all the schedules. Thursday is the one day that all of
23 the four people I mentioned are -- would be available.

24 MS. MILES: And we were just hoping to get a date
25 certain by which biology would not be heard before that,

1 so we were going to suggest that Thursday be reserved for
2 biology starting at 9 a.m. I know the applicant has asked
3 for a time certain for their soil and water I believe.

4 MS. GANNON: Yes.

5 MS. MILES: And so perhaps we could say Friday at
6 9 a.m., just as a possibility.

7 MS. GANNON: He's actually only available
8 Thursday morning at 9 a.m. at this point, but question
9 talk about the availability, but that's the time we're
10 requesting.

11 MS. SMITH: Setting aside time specific, Sierra
12 Club has a strong interest in having all of these experts
13 available at the same time. I mean, obviously it's not
14 going to be in the middle of the room for one of those
15 flash panels, but you know having them all available -- I
16 mean, occasionally, you know, they're speaking amongst
17 themselves and figuring things out. So I mean -- I just
18 find it very valuable that we could have BLM, Fish and
19 Game, and Fish and Wildlife Service all available at the
20 same time.

21 MS. GANNON: And we absolutely do as well. It
22 just happened that our expert is on available only at 9
23 a.m. on Thursday, but we could completely support having
24 the panel participating.

25 HEARING OFFICER KRAMER: Okay. I think we've

1 filled biology's dance card. It's at 15.8 hours now.

2 Let's move on to -- where did they go. Some of
3 the -- where did they go? Oh, there we go -- some of the
4 other topics that are likely to be uncontested.

5 Compliance and closure. Let's go down the list
6 and see if anybody has anything for any of them.

7 Facility design?

8 Reliability has been combined with efficiency.

9 MS. GANNON: Actually, we did have a witness for
10 facility design. It's a panel.

11 HEARING OFFICER KRAMER: Okay, are they -- do you
12 need them to make any point that's not in the testimony or
13 are they disagreeing with some staff recommendation or --

14 MS. GANNON: We thought that there had been
15 issues brought up in the discussion in the Supplemental
16 Staff Assessment that it would be helpful for us to be
17 able to have our live witnesses respond to. We had asked
18 for an hour and we can certainly do it in much less than
19 that. I think we could probably do it in about 20
20 minutes, but we thought it would be useful for the
21 Committee to be able to hear this testimony live.

22 HEARING OFFICER KRAMER: Okay, but are
23 you -- you're asking that staff's recommendation be
24 changed in some way?

25 MS. GANNON: We are not asking that the staff's

1 recommendation be changed.

2 HEARING OFFICER KRAMER: Okay, so I'm just
3 wondering if -- you know, if the parties are agreeing and
4 nobody's questioning it, then we probably could spend the
5 time better elsewhere.

6 MS. GANNON: You know we could probably address
7 what we would like to get before the Committee in our more
8 project overview discussion.

9 HEARING OFFICER KRAMER: Okay, so there is
10 something you want.

11 MS. GANNON: Yeah, but question do it in that.

12 HEARING OFFICER KRAMER: Okay, so facility design
13 remains uncontested.

14 Efficiency -- or reliability was combined with
15 efficiency already?

16 Transmission system engineering?

17 MS. MILES: Yes, CURE has a witness, David
18 Marcus.

19 HEARING OFFICER KRAMER: And how long will he
20 need?

21 MS. MILES: We estimated one hour, but we can say
22 45 minutes for direct.

23 HEARING OFFICER KRAMER: Do the parties wish to
24 cross-examine Mr. Marcus?

25 MS. GANNON: We'd ask for 20 minutes cross for

1 the applicant.

2 HEARING OFFICER KRAMER: Anyone else?

3 Transmission line safety and nuisance?

4 No.

5 Cultural resources --

6 MR. LAMB: Transmission line safety. Steve Lamb,
7 BNSF. One of the documents we'll be submitting today from
8 a Mr. Skeels relates to that, and I believe we have an
9 understanding and agreement it relates to offsets and
10 making sure the lines go perpendicular for a particular
11 period of time. So there is testimony out there that's
12 going to be presented. He does not need to be presented
13 live. And to the extent that there is any testimony, we'd
14 just ask for five minutes of cross.

15 HEARING OFFICER KRAMER: Okay. And again that's
16 between you and the applicant pretty much.

17 MR. LAMB: That is correct.

18 HEARING OFFICER KRAMER: That is correct. Are
19 you folks going to submit a revised or stipulated
20 condition or something like that?

21 MS. GANNON: We may.

22 HEARING OFFICER KRAMER: Okay. All right we'll
23 give that five for cross at this point.

24 MR. LAMB: Thank you, sir.

25 MS. MILES: We may -- CURE may have

1 cross-examination for staff's witnesses on transmission
2 system engineering.

3 HEARING OFFICER KRAMER: Well, were we talking
4 about safety or TSE?

5 MR. LAMB: Safety. I was talking about safety
6 sir.

7 HEARING OFFICER KRAMER: Okay.

8 MR. LAMB: I was talking about transmission line
9 safety. BNSF.

10 HEARING OFFICER KRAMER: Okay. So if you have
11 the only witness in safety or engineering rather, did you
12 want to cross-examine staff, did you say.

13 MS. MILES: The staff.

14 HEARING OFFICER KRAMER: And did you have anyone
15 in particular or whoever they want to offer for your?

16 MS. MILES: I don't remember the name off the top
17 of my head that was in the Supplemental Staff Assessment.
18 Perhaps Christopher Meyer.

19 HEARING OFFICER KRAMER: Okay, and the number of
20 minutes again, I'm sorry?

21 MS. MILES: Ten minutes.

22 HEARING OFFICER KRAMER: Ten, okay.

23 PROJECT MANAGER MEYER: And just for my
24 clarification, was this on anything specific, so I make
25 sure I have the right --

1 MS. MILES: This is related to Dave Marcus's
2 testimony Dave Marcus's testimony and we'll be asking
3 questions of staff relating to that testimony. And the
4 staff -- the sections of the Staff Assessment that are
5 cited in that testimony.

6 HEARING OFFICER KRAMER: Cultural resources is
7 going to be on the 18th. And since that's not out, that's
8 probably not impossible get estimates. As a practical
9 matter, if we go forward then, we're going to have to I
10 think just decide at the -- well, we only have a few
11 topics, so everybody will come that day with everything
12 they need, but we'll have to allocate things at the
13 beginning of the hearing. There won't be a chance for a
14 prehearing conference.

15 Geological and paleontological resources. Any
16 issues with regard to that topic?

17 Okay, that's uncontested.

18 Waste management, which is different of course
19 than hazardous waste, which we've previously discussed.

20 Okay, a topic that's not on this list yet, but
21 will be in a moment is overrides. There is always, with
22 these cases especially, the possibility that in order to
23 approve the project, if that's the Committee's desire or
24 to recommend its approval that because there were either
25 LORS inconsistencies or environmental impacts that could

1 not be mitigated, that the Committee would have to
2 recommend that the Commission override.

3 So our -- I can't remember if I put it explicitly
4 in the notice, but I believe I've said it in the past, and
5 we ask that the parties bring their evidence as far as
6 overrides go to these hearings. We're not planning on a
7 two-part process where the Committee first decides whether
8 or not there is a need to override and then convenes
9 another hearing to discuss that. We want to take care of
10 that up front.

11 And really overrides -- it's combination of facts
12 and argument. So of course the argument you'll make in
13 favor of overrides, if it's necessary, would be in your
14 briefs. But you need to have evidence on the table to
15 support your argument. So the evidence is what would you
16 bring to the hearings.

17 So is the -- we've already got -- I think we've
18 got some time for project description and socioeconomic
19 which are kind of the traditional places where that kind
20 of information could be brought in.

21 My having sprung this on you, at least as the
22 question of where it goes, might mean that you think you
23 need a little bit more time to put in evidence. Although,
24 I suspect that only the applicant is really interested in
25 supporting that sort of argument, and would be the only

1 one offering evidence.

2 MS. GANNON: And we've already put in written
3 testimony on that subject matter and we would be offering
4 Sean Gallagher as a live witness on this.

5 HEARING OFFICER KRAMER: Okay, so would anyone
6 object if we made that explicitly then part of the project
7 description discussion?

8 Seeing none, I'll just make a note here that this
9 includes evidence supporting overrides, if necessary.

10 MS. GANNON: And one clarification about the geo
11 issue, which we said was not contested, we have contested
12 some conditions related to the geology. They are really
13 related to the detention basins, which we are going to be
14 offering testimony on in our water issues. But in case
15 staff's witnesses wanted to address those issues live or
16 wanted to cross them on that, I just want to make the
17 parties aware of we actually have -- we have requested
18 some changes to two of the geo conditions, and would be
19 planning on addressing that live at the hearings.

20 HEARING OFFICER KRAMER: Okay, so how about if we
21 say we'll combine that with soil and water to discuss
22 applicant's condition amendment requests?

23 MS. GANNON: Thank you.

24 MS. SMITH: Mr. Kramer, Sierra Club would like to
25 reserve 15 minutes for project description now.

1 HEARING OFFICER KRAMER: Okay, and that would be
2 in the nature of cross-examination, I suppose?

3 MS. SMITH: Yes, sorry.

4 HEARING OFFICER KRAMER: Oh, that's okay.

5 MS. MILES: CURE would like to change its
6 estimate to 20 minutes.

7 MR. BASOFIN: I think Defenders would like to
8 change to 30 minutes as well from 20.

9 HEARING OFFICER KRAMER: You were 15.

10 Okay, well let's look here then. Okay, when you
11 total this up, you end up with -- the last page isn't
12 totaled, but that's about an hour and 20 minutes. So we
13 end up with basically 35 hours over three days, that would
14 be 10 hour days. And we don't quite have three full days.
15 And we have nothing in here for the 18th. Does anybody
16 have the feel for how much time we're going to need on the
17 18th for cultural and the traffic issues?

18 MS. GANNON: I'm somewhat reluctant to answer
19 that question for two reasons. One is we feel that the
20 cultural resources hearing will probably be not a very
21 lock hearing. We feel that we have resolved most of the
22 issues and we are hopeful that we will be in agreement
23 with the staff's assessment when it's issues.

24 However, we are very reluctant to move any of the
25 issues off of this calendar. We would like to concentrate

1 on trying to get this schedule into a form which we think
2 will be sufficient to air these issues, but to avoid
3 duplication of discussions and to try to get through this
4 as much as we can, because we'd really like to be able to
5 get these issues done and if briefing is needed to be able
6 to do it following the close of the hearings next week, so
7 that we can have as much resolved as possible.

8 HEARING OFFICER KRAMER: I understand.

9 MS. GANNON: I guess there's only one reason why
10 I was hesitant to say that.

11 ASSOCIATE MEMBER BYRON: Who's that argument
12 coming from, please?

13 MS. GANNON: This is Ella Gannon counsel to the
14 applicant.

15 ASSOCIATE MEMBER BYRON: Thank you, Ms. Gannon.

16 MS. MILES: Hearing Officer, we really cannot say
17 to what -- how much time we're going to need until we see
18 the Staff Assessment, because we believe it will be
19 changed dramatically from the original Staff Assessment
20 for this project. And so it could vary pretty widely.

21 HEARING OFFICER KRAMER: Okay what about traffic
22 though, do you have a great interest in that?

23 MS. MILES: We don't anticipate having a great
24 interest in traffic.

25 HEARING OFFICER KRAMER: Okay, and the Sierra

1 Club, do you have any interest in cultural at all?

2 MS. SMITH: No, I don't. We don't anticipate
3 participating in that proceeding.

4 HEARING OFFICER KRAMER: Okay, any of the other
5 intervenors are you going to be actively involved in the
6 cultural discussion?

7 MR. JACKSON: This is Pat Jackson. Both the
8 cultural transportation go to the heart of the issue of
9 access to the private property.

10 HEARING OFFICER KRAMER: Okay, and that raises a
11 point for me. It may be that the issue of what
12 the -- what the Commission's ability to address Mr.
13 Jackson's access issue is legally is something that we
14 should have the parties brief. And I think it would be
15 useful to have that briefed prior to our hearing. We
16 already have the regular briefs -- and that's the hearing
17 on the 18th that I'm speaking to now. We have the regular
18 briefs due on the 18th, but that's not going to be
19 effective for that issue.

20 Would it be possible to have the parties brief
21 the specific issue of the authority of the Commission and
22 any legal arguments they want to -- or authorities they
23 want to call to our attention regarding the access issue
24 one week before the hearing on the 18th, so that would be
25 the 9th?

1 MR. JACKSON: Mr. Kramer, this is Pat Jackson
2 again. The issue is not only access. Part of the issue
3 is the fact that people, the BLM and the applicant have
4 withheld information from me and other parties, which
5 prevent this hearing to meet CEQA. The primary goal of
6 CEQA, as pointed out in my prehearing conference
7 statements, is that the information be presented so the
8 parties can consider and analyze it and comment. That is
9 the heart of our this issue.

10 I mean, you can say all day long, you know, that
11 you do not have the authority to tell the BLM to give me
12 information. But the fact of the matter is, is --

13 (Thereupon a noise was heard.)

14 MR. JACKSON: Am I still on?

15 HEARING OFFICER KRAMER: Yeah. Are you still
16 there -- can you hear us?

17 MR. JACKSON: I'm sorry. That wasn't me, I don't
18 believe.

19 HEARING OFFICER KRAMER: It looks like it might
20 have been Jennifer Draper.

21 MR. JACKSON: Okay, well again, you know, I can
22 see the time constraints you know in the hearing, okay.
23 And some of these issues, in my mind, can be resolved, you
24 know, not necessarily in a formal setting. We've had
25 meetings before, the applicant, BNSF and so forth to

1 resolve this issue. I think at this point in time it
2 behooves the parties to make a good faith effort, right,
3 to address these issues.

4 Otherwise, you know, you'll spend a lot of time
5 addressing these issues, but the fact of the matter, it
6 won't meet CEQA.

7 HEARING OFFICER KRAMER: Well, I think a
8 threshold question for the Committee is, is whether this
9 is a CEQA issue.

10 MR. JACKSON: Well I didn't --

11 MS. GANNON: Hearing Officer Kramer, we are happy
12 to --

13 MR. JACKSON: I'm sorry.

14 HEARING OFFICER KRAMER: Go ahead, Mr. Jackson
15 first, and then Ms. Gannon.

16 MR. JACKSON: Okay, if the BLM withholds
17 information, and information is the primary issue of these
18 hearings, right, then how can it be argued? I mean, I
19 need that information, you know, to protect my property
20 rights. I need that information to fully participate in
21 these hearings. And that information, at this point in
22 time, is not forthcoming. And I've had to go to the great
23 extent, you know, of filing a Freedom of Information Act
24 request and pulling in another governmental agency.

25 HEARING OFFICER KRAMER: Well, no, my point is

1 that it's not clear to me that this is an environmental
2 issue. It sounds as if you're trying to argue that it is
3 one. So I think it would be helpful for the Committee,
4 for the parties to brief and they can choose to brief or
5 not. If they're not interested in the issue, they don't
6 have to.

7 I would expect that you would be interested, the
8 applicant is interested, maybe staff, I don't know.

9 MR. JACKSON: I understand -- this is Pat Jackson
10 again. I understand that the Conservation of Bighorn
11 Sheep are very interested. I also understand that outside
12 parties, including the Center for Biological Diversity is
13 very, very interested in this.

14 There's been some recent court cases on the issue
15 of closing roads, and that is a cultural, a
16 transportation, a land-use issue. It covers the whole
17 board. I mean, explain to me does anybody want to propose
18 that the private property owners that are indicated and
19 not apart be land locked?

20 HEARING OFFICER KRAMER: Well, I'm not going to
21 get into a debate with you.

22 MR. JACKSON: They just don't want to take away
23 their property rights which is now a part of the proposal.

24 HEARING OFFICER KRAMER: Well, it may be that
25 this is not the proper forum to enforce those rights.

1 MR. JACKSON: I agree.

2 HEARING OFFICER KRAMER: And what the Committee
3 wants to hear is legal argument from the parties about
4 whether -- first of all to explain the issue perhaps more
5 precisely, and the law that revolves around it, and also
6 to explain whether the committee has the ability to
7 address the issue or if it is simply something that's
8 beyond our legal authority.

9 Ms. Gannon.

10 MS. GANNON: The applicant is happy to brief the
11 issue and we will also give factual explanation that
12 demonstrates that this road -- his land will still have
13 access. So there is a factual presentation as well, and
14 we will -- we can submit that. And you said by the 9th?
15 When did you ask for it?

16 HEARING OFFICER KRAMER: Let's see that's -- what
17 day of week is that?

18 MS. GANNON: That's a Monday.

19 HEARING OFFICER KRAMER: Monday. It would
20 be -- no the 11th.

21 MS. GANNON: The 11th, okay.

22 HEARING OFFICER KRAMER: Yeah, I was -- I'm
23 working nine day weeks. That wasn't my intention.

24 (Laughter.)

25 MS. GANNON: So are we.

1 HEARING OFFICER KRAMER: And Mr. Jackson, to the
2 extent that they do this, you'll be advantaged because you
3 will then have a preview of their arguments, but so will
4 the Committee. And that will help us be able to deal with
5 that.

6 MR. JACKSON: But again, the issue is, is will I
7 have enough time to present, you know, a convincing
8 argument, if they're going to do it on the 11th?

9 HEARING OFFICER KRAMER: No, they're just going
10 to submit briefs then, so that everybody can look at them
11 and prepare for the hearing on the 18th.

12 MR. JACKSON: Okay. I'll do whatever I can to
13 resolve these issues.

14 HEARING OFFICER KRAMER: Well, and it may or may
15 not resolve in your favor. It may be that you have to go
16 somewhere else to make your points. We'll have to see
17 what the law tells us.

18 Okay, so project description is going to include
19 the evidence, if parties are offering evidence supporting
20 overrides.

21 With that little addition, we're now up to -- I
22 really don't even want to look. We're still about 35
23 hours total.

24 STAFF COUNSEL ADAMS: Mr. Kramer?

25 HEARING OFFICER KRAMER: Mr. Adams.

1 STAFF COUNSEL ADAMS: On the override issue, I'm
2 just seeking clarification on in adding that to project
3 description, is it your intent that that would be a
4 discussion or identification of the benefits of the
5 project -- and the --

6 (Thereupon a noise happened.)

7 STAFF COUNSEL ADAMS: The reason I'm asking is,
8 logically, if we're actually talking about the benefits
9 and whether they are such that would override remaining
10 significant effects, logically, it seems like that would
11 belong after we march through all the environmental
12 impacts.

13 So I was sitting over here trying to think how it
14 would work to address that right at the beginning of the
15 hearing, if that's when we're going to deal with project
16 description.

17 HEARING OFFICER KRAMER: Well, we could do it at
18 the end. I think as a practical matter, most of the
19 evidence is already in. Socioeconomics talks about the
20 benefits to the, you know, jobs and other things like that
21 to the community.

22 (Thereupon a noise was happened.)

23 STAFF COUNSEL ADAMS: I guess one other thing
24 just to make you aware of is that Terry O'Brien would
25 likely be -- if we're presenting a witness on override,

1 would likely be the witness there as opposed to
2 Christopher Meyer.

3 HEARING OFFICER KRAMER: Okay, well does anybody
4 else feel strongly that we should wait till after the
5 evidence to hear about the facts that might support
6 overrides?

7 MS. GANNON: Our original intent was to have it
8 first with the policy overview. That's what we also did
9 in the Imperial valley proceedings. And it seemed to sort
10 of, we thought, set the stage and have a discussion. As
11 you said, the evidence has initially been presented. It's
12 out there. We think people know the facts and that it's
13 an appropriate time to discuss it. But if staff feels
14 strongly about it or Mr. O'Brien is only available at the
15 end, we can move that.

16 STAFF COUNSEL ADAMS: No, I don't know of any
17 availability problem. If it's been done before and
18 worked, then that's fine. I was just raising a -- kind of
19 mental block I was having with it.

20 HEARING OFFICER KRAMER: Okay. So how long do
21 you think Mr. O'Brien will need? Because I'll add him
22 here to the project description testimony. Ten minutes?

23 STAFF COUNSEL ADAMS: Yeah 10 minutes, sure.

24 HEARING OFFICER KRAMER: Okay, hold on a second.

25 (Thereupon a discussion occurred off the record.)

1 ASSOCIATE MEMBER BYRON: This is Commissioner
2 Byron. Just checking to see if we're all still connected

3 HEARING OFFICER KRAMER: Yeah, we were having a
4 little side bar here. So we'll be back in a second.

5 (Thereupon a discussion occurred off the record.)

6 MR. BOOTH: This is Richard Booth of Lahontan
7 Water Board. I'm still connected, but I might not be for
8 much longer.

9 HEARING OFFICER KRAMER: Okay, this is Paul
10 Kramer, in case you forgot.

11 Oh, good the person who was making those noises
12 hung up her phone. Excellent.

13 Okay, we've covered all the topics. We filled
14 all the spaces. We have -- we have requests for more time
15 than we have. And some of you have been forthcoming with
16 offers of reductions in the time that you think you need
17 for cross-examination and the like.

18 But I want to ask if there's any other -- do we
19 have any other opportunities to further reduce the time
20 that we have estimated?

21 I'll just go over it again. Project description
22 now is up to 2.3 hours. Land use is nearly four
23 hours -- I'm sorry. What is the total on that? Land use
24 is an hour and a half.

25 Air quality is, oh, just an hour.

1 Efficiency and reliability are about an hour.

2 Visual is three and a half hours -- no, I'm
3 sorry, two hours.

4 Greenhouse gases is a wash.

5 MS. GANNON: We can go down on visual now that
6 we've taken off glint/glare.

7 HEARING OFFICER KRAMER: Oh, okay, great. I had
8 you for 30 minutes and 30.

9 MS. GANNON: We can do 15 and 15.

10 HEARING OFFICER KRAMER: Thank you.

11 PRESIDING MEMBER EGGERT: Sounds like Paul has
12 put on his auctioneer hat.

13 (Laughter.)

14 PRESIDING MEMBER EGGERT: Do I hear 10?

15 (Laughter.)

16 HEARING OFFICER KRAMER: Okay, alternatives was
17 about a little under two hours, with an hour for the
18 applicant. Do you need that much time? The others are
19 only going to come at you for about 40 minutes looks like.

20 MS. GANNON: How about if we go 20, 20.

21 HEARING OFFICER KRAMER: Does anybody have the
22 feel for how much public comment we're likely to receive?
23 I know that's always throwing darts, but --

24 MR. JACKSON: Mr. Kramer, this is Pat Jackson.

25 HEARING OFFICER KRAMER: Go ahead.

1 MR. JACKSON: Let's just zero out my 40 minutes
2 at this hearing, and I will -- pencil me in for 40 minutes
3 on the 18th, because that's going to be the real issue.

4 HEARING OFFICER KRAMER: Are you talking about
5 visual?

6 MR. JACKSON: No, no, no. I'm talking about land
7 use.

8 HEARING OFFICER KRAMER: Okay, so land use would
9 probably be next week, so you'd be swapping that to some
10 other topic?

11 MR. JACKSON: Well, no, what I'll do is I won't
12 address any of the issues or take up any time at the
13 evidentiary hearing. One, because I don't have any
14 evidence to present. Two, my arguments -- whatever I say
15 is going to be rebutted. And three, you know, the real
16 issues are going to be, you know, put out there to the
17 18th, as I see it.

18 So I'm giving you the 40 minutes here, but I'm
19 hoping that I'll have an opportunity to be heard on the
20 18th, when transportation will be addressed.

21 HEARING OFFICER KRAMER: Okay, so you would
22 address your land locking issue in transportation?

23 MR. JACKSON: Correct.

24 HEARING OFFICER KRAMER: In my mind, I see a lot
25 of cross-over issues with land use, but as long as the

1 parties understand that some of that may sort of flop back
2 on to land use, that's fine with us. Does anybody object?

3 MS. SMITH: Well, I'm not objecting, but this is
4 just a new topic for us. And I have no idea what
5 additional access or different access would look like with
6 respect to the project footprint and the site. So if all
7 of a sudden we've got a road where, you know, Desert
8 Tortoise are currently living or some other issue -- and
9 you know, I don't know.

10 MS. GANNON: There is no change in the project as
11 a result of this. This is just for clarification of how
12 this access will be given. There's no change. The map is
13 the same.

14 MS. SMITH: I just wanted to -- I guess I wanted
15 to reserve the right to take a look, you know, and
16 understand what this means for the project site. That's
17 all.

18 HEARING OFFICER KRAMER: Okay, and this brief
19 that's coming on the 11th, hopefully will --

20 MS. SMITH: -- will enlighten us. And then
21 if -- I guess what I'm saying is once I'm enlightened and
22 if there are subsequent biological resource issues as
23 result of this briefing, I'm just putting that out there
24 and giving you a heads up that there may be some
25 responsive briefing, if that's the case.

1 PROJECT MANAGER MEYER: This is Christopher Meyer
2 with the staff. Just a clarification. The briefing
3 you're talking about, you're just explaining the current
4 situation that was assessed in the Supplemental Staff
5 Assessment or are any of the parties looking at presenting
6 something to the staff that staff will have to analyze as
7 something new?

8 MS. GANNON: No. We would just be intending to
9 explain to the Committee how access will continue to be
10 provided, not a change in the project at all. And then we
11 would address the issues that have been raised about
12 whether this is something that the Commission should even
13 be considering.

14 HEARING OFFICER KRAMER: Okay. Thank you.

15 Then we had air quality at an hour -- a little
16 under an hour. Do we really have any air quality issues
17 or are we just -- and I know it's sort of a tradition in
18 our case, is that we have an air quality presentation,
19 because we assumed some members of the public are going to
20 be interested, but I wonder if that's really the case for
21 a renewable project.

22 MS. MILES: Sometimes there are overlaps between
23 air quality and water needs. And so, I mean, in terms of
24 CURE's cross-examination, we would be satisfied if an air
25 quality expert could be available during water supply or

1 soil and water, consideration. I'm not sure about the
2 other parties.

3 MS. GANNON: In terms of the applicant, our
4 intent was to present information about a submittal that
5 was made in which we are going to be using temporary
6 construction generators and we want to present this
7 information. It is presented in our testimony, but we
8 also wanted to present it live and give people an
9 opportunity to cross the witness. We re-ran the air
10 models and made sure that it didn't change any of the
11 results and we were -- that's the intent of us putting a
12 live witness on for air.

13 HEARING OFFICER KRAMER: And has that already
14 been built into the FDOC?

15 MS. GANNON: That was been submitted. It was not
16 discussed in the Supplemental Staff Assessment.

17 HEARING OFFICER KRAMER: So it's new since that.

18 MS. GANNON: It was new since the Supplemental
19 Staff Assessment, yes.

20 HEARING OFFICER KRAMER: Okay, are the
21 intervenors aware of that filing? Is it an issue for you
22 potentially?

23 MS. MILES: Potentially.

24 HEARING OFFICER KRAMER: Okay, so we need -- that
25 shouldn't take nearly an hour though, if that's all we

1 need to talk about, should it?

2 MS. GANNON: We don't think so.

3 HEARING OFFICER KRAMER: Ms. Miles?

4 MS. MILES: I believe we had only requested 10
5 minutes anyway.

6 HEARING OFFICER KRAMER: That's right, you were
7 10 minutes.

8 Okay, well, hopefully that will go quicker.
9 Maybe that's the best we can hope for that.

10 Efficiently was about an hour and a half combined
11 with reliability, that is.

12 And visual was 1.3 hours. I was going backwards
13 I guess.

14 Alternatives an hour and a half. There's a lot
15 of material there, so I could see where that might take
16 awhile.

17 Worker safety, fire protection. Let me ask, are
18 there issues besides the county's issue? Well, we have
19 the railroad's concern about the hydrogen. And the
20 counties concerned about financing the improvements to
21 their emergency response system, but do we have any
22 others.

23 MS. GANNON: Not from the applicant's
24 perspective.

25 HEARING OFFICER KRAMER: Three hours does seem a

1 bit much for that. And two hours was from the applicant.

2 MS. GANNON: We can definitely come down from
3 that. Let's do 30, 30.

4 HEARING OFFICER KRAMER: That's a help.

5 MS. GANNON: Twenty, twenty.

6 HEARING OFFICER KRAMER: Twenty, twenty, okay.
7 Do I hear -- you might want to quit before you hit zero.

8 Okay, then that brings us down under two hours.
9 And if you talk less, presumably the others will have
10 to -- or will have less to ask you about. So that might
11 be an incentive actually, if I can sell it that way.

12 MS. GANNON: It doesn't always work that way.

13 HEARING OFFICER KRAMER: No, I know.

14 Hazardous materials was no time.

15 Soil and water is going to be our next big one, I
16 think. And that was -- oh, scroll correctly. That's 5.6
17 hours. Applicant, staff and CURE, all needing an hour
18 each for cross-examination. And the applicant has an hour
19 of direct testimony. Is there a little bit of room to
20 squeeze in there?

21 MS. GANNON: This is one we will obviously try to
22 keep it less than that. But I'm hesitant to commit to
23 being less than that, because we are talking about water
24 supply here. We're also talking about Sedimentation
25 issues. As I said we're doing our geo issues here. So I

1 have three witnesses that we need to have a conversation
2 with. I just -- I don't really want to say less than an
3 hour. Again, we'll do the best we can to keep it less
4 than that, but we've been giving.

5 HEARING OFFICER KRAMER: Okay. Nothing on noise.
6 What was that? Oh that must be biology. Biology
7 is 15.8 hours. I think I made the mistake of saying we
8 wouldn't start earlier than 9 a.m. every day -- any day.
9 Although, maybe that's -- I'm not going to call that a
10 mistake.

11 Okay, Sierra Club, three hours of
12 cross-examination. CURE, two and a half hours of direct
13 testimony and another hour and a half of
14 cross-examination. The applicant two hours for direct and
15 another two hours for cross.

16 MS. SMITH: Mr. Kramer, point of clarification.
17 Does that presume the traditional model or where you get
18 everybody in the center and do the informal thing?

19 HEARING OFFICER KRAMER: Oh, good point.
20 Let's -- in the notice I believe, I certainly intended to
21 and I believe I said that we would be considering the use
22 of panel presentations and we still like that, right.

23 PRESIDING MEMBER EGGERT: Yes.

24 HEARING OFFICER KRAMER: So do we have anybody
25 who wants to argue against that?

1 And does -- with that in mind, does that make you
2 think that maybe biology especially, which probably lends
3 itself to panels pretty well, could go somewhat quicker,
4 at least?

5 STAFF COUNSEL ADAMS: Staff was proposing the
6 other agencies as a panel, so the four -- we believe four
7 representatives of the other REAT agencies would be
8 together and then we would have two staff members testify
9 separately. It's a pretty complicated long section of the
10 SSA to have them summarize and go over a few of the
11 contended points.

12 So we would be presenting six witnesses. I think
13 we could put the two staff witnesses together and then the
14 four from other agencies together.

15 HEARING OFFICER KRAMER: Why couldn't they all be
16 together?

17 STAFF COUNSEL ADAMS: Well, the federal agency
18 witnesses can't be sworn, because of the hoops that have
19 to be jumped through for that to happen, so they are
20 providing information, not testifying.

21 I suppose we could swear the State agencies' reps
22 and not the federal, and put them all on, but I -- again
23 we -- we're going to want to direct certain questions and
24 to staff as opposed to the larger group. It may be
25 confusing and more time consuming if we're continuously

1 having to invite certain people to respond and ask others
2 to stand aside. I mean physically we could put six chairs
3 up there I suppose.

4 HEARING OFFICER KRAMER: I think we would prefer
5 that, because it's more efficient. You know, we'll to
6 have monitor -- if everybody wants to say yeah, I agree
7 with him or her, well, in some ways we'd be lucky if they
8 confined their comments to something as brief as that.
9 But, we can discourage people from piling on, you know, if
10 they have nothing to add. But the beauty of the panels is
11 that we get one issue, you know, one micro issue out of
12 the way, as opposed to spending a lot of time having the
13 attorney try to remember for the witness what was said two
14 hours ago, which is, you know, sometimes you get into five
15 minute arguments about what was really said. And we're
16 trying to avoid that sort of thing.

17 So we were probably envisioning even bigger
18 panels. You know, maybe with enough space, so nobody, you
19 know, can punch each other, but maybe the applicant
20 witnesses and the staff's witnesses could be at an even
21 bigger table, or two tables -- or yeah. And we're not
22 averse to letting the experts ask questions of each other.
23 You know, I think sometimes the attorneys worry that
24 things can getaway from them. But it don't bother us if
25 that works better.

1 PRESIDING MEMBER EGGERT: So Hearing Officer
2 Kramer, this -- I definitely prefer the panel approach.
3 And I do think it is more efficient and more illuminating
4 to the topic. And actually we did have the officials from
5 the other agencies participate in a very similar related
6 case without being sworn in, and I think they did provide
7 a lot of valuable input into the record.

8 The one thing we did do, which I think was mostly
9 successful, was we did split the biological topics, we
10 split animals from plants as away of, you know,
11 delineating among -- there's some cross over, but I think
12 it worked relatively well. So that's -- if that can
13 accommodate the availability of the witnesses as well.

14 MR. BASOFIN: Mr. Kramer, Defenders is in support
15 of informal panel approach. The one issue that we raised
16 in our prehearing conference statement was we think it's
17 important that the parties have an opportunity to follow a
18 line of questioning to itself logical conclusion. I think
19 in eliciting testimony, particularly on cross-examination,
20 that's an important thing for the parties to be able to do
21 to make sure we have a coherent record in front of us,
22 when we go into briefing.

23 And so we would just request that the Committee
24 allow the parties to do that.

25 HEARING OFFICER KRAMER: As I recall, that's what

1 happened in Ivanpah pretty. You asked all your questions.
2 And then when you were done, it moved to Ms. Smith, for
3 instance.

4 MR. BASOFIN: Right.

5 HEARING OFFICER KRAMER: So yeah we're
6 not -- it's not a total free for all. We're, you
7 know -- you're all trying to talk over each other and see
8 who's question gets answered. But we find it more
9 efficient to have -- if you have a question to have, in
10 some cases, the applicant's witness, and the staff's
11 witness and your witness give their perspectives on it one
12 after the other, rather than, you know, they're separated
13 by 20 or 30 pages of transcript.

14 MS. MILES: Two clarifications. CURE also
15 supports the informal process. Just one clarification is
16 that we agree up front what the categories are going to
17 be, because I prepare my questioning based on categories.
18 So if it's animals and plants, that works great for me.

19 At the Imperial hearing, we also divided it into
20 Conditions of Certification or looking at the mitigation
21 package. And that made it a little bit more difficult.
22 So if we can just agree up front to categories, that would
23 makes things much smoother.

24 HEARING OFFICER KRAMER: Okay, so what's your
25 proposal, just animals versus plants and don't dig down

1 any deeper than that?

2 MS. MILES: That works for me. And also if we
3 could ask questions to specific witnesses.

4 HEARING OFFICER KRAMER: Right to start, and
5 somebody else may want to chime in afterwards.

6 MS. MILES: Afterwards, that's fair.

7 MS. GANNON: The applicant also supports the
8 suggestion, and we think dividing it really does help.
9 And we again hope that that would be able to be utilized
10 to reduce duplication of lines of questioning. Once a
11 line of questioning has been gone through, hopefully we
12 don't have to retread ground and can get through in less
13 than 15 hours.

14 The reason that we suggested in the other related
15 proceeding that the mitigation measures be done
16 separately, because the panel that was available from the
17 State and federal agencies were really there to
18 speak -- they wouldn't -- like the State agencies -- the
19 federal agencies couldn't speak about what mitigation, for
20 example, would be included in a biological opinion to be
21 issued. That's in draft form but has not issued yet.
22 They could not speak in these proceedings about that, but
23 they could speak generally about mitigation approaches,
24 and particular the changes in the mitigation numbers and
25 dollar figures, which was one of the main subjects of

1 discussion and probably will be a main subject of
2 discussion here.

3 So it may make sense that be discussed separately
4 again just because of the participation of the agency
5 panel, what they can and cannot address.

6 HEARING OFFICER KRAMER: So do they need to be
7 excused or just --

8 MS. GANNON: They just didn't -- they just sort
9 of gave their initial discussion of it and then
10 sometimes -- like the federal agencies said they couldn't
11 answer questions from us. They could only answer
12 questions from you.

13 So we would have to ask you to ask a question to
14 them. And whether that's going to happen again in that
15 way, I'm not sure, but it seemed because of the procedural
16 challenges, with that, it seemed to make sense to break
17 that out separately. And then to have really -- because
18 they weren't really having a very substantive discussion
19 about, you know, the particular habitat on this site. It
20 was more about the approach of the agencies is what they
21 were addressing. And I don't know if staff knows if
22 that's the intent here as well or if they're going to be
23 available to discuss the particular project related
24 impacts and their analysis

25 Does staff know?

1 STAFF COUNSEL ADAMS: Well, I think staff
2 biologists are the ones who are going to be talking about
3 project specific. I don't think all of these other
4 agencies have done a approving agency type review perhaps.
5 I don't know.

6 MS. GANNON: Or they may have not completed it
7 yet. As I said, they just said in the earlier
8 proceedings, they said she weren't able to testify on
9 that, so that was our suggesting about it, preparing
10 questions and how to think about breaking it out. That
11 seemed to be a line that made sense.

12 STAFF COUNSEL ADAMS: Well, and I'd add one
13 complicating factor on a really large panel that's going
14 to be up there for hours, is some of the other public
15 agency public have expressed that they may not be
16 available late into the night. I guess word is getting
17 out that these hearings go late.

18 So I mean to the degree that putting all 15 or so
19 biologists on one panel is going to mean they're up there
20 for eight hours. You know, I think that becomes an issue
21 too, and it might be more humane to brake it up into
22 smaller panels and let people go after everyone's had a
23 chance to question.

24 MS. SMITH: And along those lines, Mr. Kramer,
25 because the Desert Tortoise has different legal

1 requirements surrounding its protection and mitigation and
2 conditions, I would ask that we did Desert Tortoise sort
3 of in one, you know, stream rather than jumping around to
4 other species and then back and forth with Desert
5 Tortoise. It just may make more sense for the record, at
6 least from our perspective.

7 HEARING OFFICER KRAMER: No offense to the sheep
8 though, right?

9 MS. SMITH: No.

10 (Laughter.)

11 MS. SMITH: We love sheep.

12 (Laughter.)

13 HEARING OFFICER KRAMER: Okay. Well, these
14 things are always a work in progress. But you know, I
15 know the two of us have had a couple cases under our belt
16 now with these. So we'll go ahead with the -- with that
17 formula. Animals, Desert Tortoise first, and then we'll
18 finish -- or then we'll have the plants. And
19 then -- yeah, I think -- so we're thinking that
20 maybe -- do you want to break out the mitigation, because
21 that might cause some experts to have to stick around
22 longer than if we can -- yeah is there -- are there a lot
23 of issues with mitigation?

24 I'm guessing there probably are in these cases.
25 They always do seem to be. That's where the rubber meets

1 the road.

2 So I'm seeing, yes.

3 MS. GANNON: We have a number of things we'd like
4 to discuss with mitigation, yes.

5 HEARING OFFICER KRAMER: Okay, well, we'll have
6 to play it by ear. I sometimes forget that people need
7 breaks. Although as I get older, less so. But so, you
8 know, if we're going on too long, you know, just a
9 friendly reminder will help. And we'll play it by ear and
10 try to get through that as efficiently as we can.

11 So that brings us to -- let's see, we're going
12 down the list. So did we have any offers to reduce their
13 time on biology? I didn't hear any. We're at 15 hours.
14 So -- are there time constraints we need to know about
15 regarding Thursday. That seems the most logical day to
16 tackle biology.

17 MS. GANNON: We have a difficulty, and I'm trying
18 to see if we can have our -- the one water witness who is
19 just available at 9 a.m. from Spain or early on Thursday.
20 I have sent out Emails seeing if can I get him to change
21 to Friday, but I have not heard back yet.

22 HEARING OFFICER KRAMER: How long would we need
23 for him?

24 MS. GANNON: He's probably about 20 minutes.

25 MR. LEIBA: Ella, this is Angela Leiba. He's

1 available at 9:30 on Friday, if that works.

2 MS. GANNON: That's our --

3 MR. LEIBA: Bob Scott.

4 HEARING OFFICER KRAMER: Anything else?

5 MS. GANNON: We're not sure that that's the
6 answer. We're trying to get something from Email.

7 HEARING OFFICER KRAMER: Yeah, yeah, we didn't
8 quite hear whatever was said on the phone, anyway.

9 MS. GANNON: That's good.

10 (Laughter.)

11 HEARING OFFICER KRAMER: Okay.

12 STAFF COUNSEL ADAMS: Staff's only request on
13 scheduling, would be that the BLM, Fish and Wildlife
14 Service and -- who am I forgetting? -- Fish and Game
15 be -- the panel that they appear -- be on early enough in
16 the day that we aren't losing people from it during --

17 HEARING OFFICER KRAMER: Did you say Friday or
18 Thursday?

19 STAFF COUNSEL ADAMS: Well, Thursday. I may have
20 said Friday.

21 MS. SMITH: Mr. Kramer, I'd strongly urge the
22 Committee to get -- that we get started on Thursday
23 morning on biology and just -- and take care of this topic
24 in one day. I mean we had -- it was such a mess in
25 Ivanpah. You know we started at eight o'clock at night

1 and the next day we came back, and it was disjointed. And
2 it frankly you know did not serve the topic well. And I
3 can tell us getting bogged down here. We know we're going
4 to get bogged down. It's not going to be 20 minutes and
5 then we shut down and we move on to biology.

6 So I just strongly encourage the applicant to get
7 a witness on Friday morning to address that issue -- on
8 your water issue, so that we can do biology in one day
9 continuously without having to break it up.

10 HEARING OFFICER KRAMER: Okay, so that was the
11 one issue -- or the applicant had the one witness that was
12 Mr. Byall?

13 MS. GANNON: No, that's Bob Scott.

14 HEARING OFFICER KRAMER: Oh, Bob Scott. Okay.

15 MS. GANNON: All the other witnesses can be
16 available any other time.

17 HEARING OFFICER KRAMER: He really wants
18 Thursday, but you'll check on that. And so I think Friday
19 would be the best place for water if we can make that
20 work. And then let's see, wildlife agencies want
21 Thursday.

22 So how about if we commit to going as late as we
23 need to to finish biology on Thursday and we'll start with
24 that. And then we'll start with soils a Friday. And we
25 have to spread the other around.

1 But let me go off the record.

2 (Thereupon a discussion occurred off the record.)

3 HEARING OFFICER KRAMER: The question is still on
4 the table about whether we're ready to go to hearings next
5 week. And I want to open up the floor at this point in
6 time for any last arguments that the parties want to make
7 about whether we should be going to hearing next week or
8 doing something else.

9 Mr. Jackson are you still there?

10 MR. JACKSON: Yes, I'm still here. And again I
11 contend --

12 HEARING OFFICER KRAMER: Well, unless you've got
13 something new. I think we've heard you pretty thoroughly.

14 MR. JACKSON: Okay. Then I'm going to say this.
15 At this point in time, those two sections of the
16 Supplemental Staff Assessment do not meet LORS.

17 HEARING OFFICER KRAMER: And you're speaking of
18 land-use and traffic?

19 MR. JACKSON: Yes.

20 HEARING OFFICER KRAMER: Does anyone else want to
21 speak to the issue of whether we're ready to go ahead on
22 some or all of the issues on next Wednesday?

23 MR. RITCHIE: Yes, Mr. Kramer. This is Travis
24 Ritchie with Sierra Club. As we stated in our prehearing
25 conference statement, just generally speaking we believe

1 that many of the mitigation matters proposed for
2 biological resources and many of the conclusions made for
3 biological resources defer the issue until further studies
4 pre-construction studies and whatnot.

5 So as a general matter, you know, we don't
6 necessarily think the record is as complete as it needs to
7 be at this point and just wanted to state that opinion on
8 the record here.

9 HEARING OFFICER KRAMER: So you would prefer that
10 some of those studies were done before we made our
11 decision.

12 MR. RITCHIE: Yes, I would.

13 HEARING OFFICER KRAMER: Okay. Anyone else?

14 STAFF COUNSEL ADAMS: Well, staff feels we're
15 ready to proceed, with the exception of the two areas,
16 cultural and traffic and transportation. Where studies
17 are required, it is to obtain additional information to go
18 the extra mile in trying to identify additional resources
19 that have not been found yet, and certainly that is not a
20 stance that can be criticized of not having evidence of
21 certain impacts, but looking -- continuing to look for
22 evidence and mitigating if it's found. So we think we're
23 ready to go, except for those two -- with those two
24 exceptions.

25 MR. BASOFIN: Mr. Kramer, this is Joshua Basofin

1 with Defenders of Wildlife. I generally concur with the
2 statement of Sierra Club and I want to state specifically
3 I think the absence of a Desert Tortoise
4 translocation-relocation plan is a tremendous impediment
5 to moving forward in these hearings.

6 It's of great importance to biological resources
7 in general and to the minimization avoidance and
8 mitigation measures for the Desert Tortoise. And my
9 understanding is that that document will be forthcoming in
10 the relatively near future, and I think it would be
11 extremely useful and necessary for the Committee to have
12 it in order to make a decision in this case.

13 MS. GANNON: The applicant believes that
14 that -- like staff, that the Committee has all the
15 information they need in front of them to be able to
16 evaluate the proposed project, and to make a determination
17 on the Application for Certification. And we know that
18 you are aware of the schedules and the issues that are
19 pending before this project and why timing is so critical.
20 And we think that delaying the hearing at all for these
21 proceedings, would have really devastating effects on the
22 project and are completely unnecessary, given the record
23 that's before you today.

24 So we really encourage you to make sure that we
25 address all of these issues. We concur that it's

1 appropriate to defer discussions of cultural resources and
2 traffic until the staff issues their Supplemental Staff
3 Assessment.

4 HEARING OFFICER KRAMER: Okay thank you all.

5 Ms. Miles.

6 MS. MILES: I would like to add something as
7 well. We are -- CURE is not going to try to convince you
8 to not proceed to hearings, because we understand that you
9 intend to proceed to hearing that's next week. But we
10 would like to say that we believe there's likely to be big
11 holes in the record, particularly with respect to
12 biological resources and soil and water resources at the
13 conclusion of the August 6th through 9th hearings.

14 Separately on a separate matter with regard to
15 cultural resources, we are concerned that there have been
16 schedule slippages in the release of Supplemental Staff
17 Assessments. And so we just want to make sure that the
18 date that we go to hearing for cultural resources
19 is -- will enable the parties to actually have time for
20 meaningful review of the additional supplement from the
21 staff.

22 And so I know right now, there's nine days and
23 that seems to be to us the bare minimum, considering that
24 there's likely to be a lot of changes. So we just would
25 like to not have a concrete date that we are tied to for

1 the hearing for cultural. We'd like it to be tied to the
2 release date of the Staff Assessment. So nine days after
3 the release of the supplement.

4 HEARING OFFICER KRAMER: Mr. Meyer, are you on
5 target to meet that deadline.

6 PROJECT MANAGER MEYER: Yeah. Staff is on target
7 to meet that deadline. We're hoping to publish earlier,
8 but I don't think it's going to be possible to publish by
9 Friday, due to the fact that I'll be in, well, hearings
10 for three days.

11 But we are still working to get the cultural
12 resources published with traffic on Monday the 9th.

13 PRESIDING MEMBER EGGERT: We are going to have
14 lunch breaks, you know.

15 (Laughter.)

16 PROJECT MANAGER MEYER: Yes, and I will be taking
17 it home with me.

18 HEARING OFFICER KRAMER: Okay, well we have
19 decided to go ahead. That's a surprised look on your
20 face.

21 PRESIDING MEMBER EGGERT: And I just want to make
22 a comment. I think, you know, I definitely hear the
23 concerns of the parties. And from the Committee's
24 perspective, speaking for myself not for Commissioner
25 Byron, I am hopeful that we do elucidate, you know,

1 through record the information that we do have available
2 to us on biology, the concerns of the intervenors, and you
3 know through that paint the picture of if and where there
4 might exist holes.

5 And so, you know, I think, you know, staff's
6 obviously confident that they're -- that they've addressed
7 the issues and I think we'll have, is it, what 16 hours,
8 15 hours to sort of work through that, to determine if
9 that's actually the case.

10 So I'm looking forward to a good discussion. And
11 I think we'll be able to have a good picture at the end of
12 that day.

13 MS. GANNON: And Hearing Officer Kramer, we
14 haven't -- two potential proposals of resolving our
15 witness's problem on Thursday. One solution would be we
16 have submitted written testimony by Bob Scott both in
17 opening testimony as well as in rebuttal filed yesterday.
18 And we would be happy to submit him on his written record
19 if others do not need to cross him.

20 If others do want the opportunity to cross him,
21 we can discuss that, but we believe we could submit him on
22 written testimony, if there's no objection to that?

23 MS. MILES: Can you just briefly state what the
24 subject matter is that he's going to be testifying to?

25 MS. GANNON: Water supply.

1 MS. MILES: Okay. So, and do you have another
2 witness available to testify to water supply?

3 MS. GANNON: Not -- we have another witness who
4 will be speaking to some portions of it. I mean, there is
5 another witness who will talk about the wells that were
6 put in to test the groundwater, but he is the one who is
7 talking about the reliability of the water supply.

8 MS. MILES: It is a pretty critical issue.

9 HEARING OFFICER KRAMER: And well -- then maybe
10 we could -- we may just have to start on Thursday with
11 your cross-examination of him. That shouldn't take what
12 more than 15 or 20 minutes, if that's the best question
13 do.

14 MS. GANNON: The other alternative would be is we
15 believe we could have him available on Friday at 11
16 o'clock but we need to have it be at 11 o'clock, because
17 he's traveling, but we can get him to stop on the side of
18 the road in Spain, if we give him a time certain.

19 On Thursday he had set aside his time and
20 scheduled around this, but he has, by Email, said that he
21 will say that again you know we can't -- so if we're doing
22 something else at 11 o'clock, we would ask that we would
23 be able to stop, you know, within 10 minutes or so and
24 then put him on and then allow for cross. And if that's
25 acceptable to the parties in agreement, we can make him

1 available then.

2 MS. MILES: That's definitely preferable to us.

3 MS. GANNON: Okay.

4 HEARING OFFICER KRAMER: Okay. And the plan was
5 going to be that we would be doing soil and water on
6 Friday anyway.

7 MS. GANNON: Right. So again, if we could just
8 make sure that, again at 11 o'clock we can have him call
9 in. And if we can also know you will need -- he will be
10 calling in internationally so is there a different number,
11 is there something else we need to -- different we need to
12 do to be able to have him participate? Do we know?

13 HEARING OFFICER KRAMER: Mr. Therkelsen and I are
14 going to be talking to our folks to interface with your
15 A/V person after this. So we'll see if WebEx allows
16 international call in. Because I have a feeling you can
17 only call one number at a time out of that room.

18 MS. GANNON: Right.

19 HEARING OFFICER KRAMER: But there should be a
20 way to --

21 MS. GANNON: So if we can just put that on the
22 list of trying to figure out how we can get --

23 HEARING OFFICER KRAMER: Right. Or maybe
24 somebody from your side can call in and then conference
25 him in or something like that.

1 MS. GANNON: That's possible, right. Okay.

2 HEARING OFFICER KRAMER: So Bob Scott at Friday
3 at 11 a.m.

4 MS. GANNON: Thank you, everyone.

5 HEARING OFFICER KRAMER: Okay, let me ask then as
6 far as -- we could tediously go through all these -- the
7 smaller topics and put them in, you know, on either
8 Thursday -- well mostly Thursday or what's left of Friday,
9 or I could just do that and, you know, and send it out.

10 As I understand things, and there are no -- now
11 that we've picked Thursday for -- if I wasn't clear, we
12 picked Thursday for biology. So that deals with the
13 wildlife agency's concerns.

14 And we've talked about Mr. Scott. And I don't
15 recall anybody else having any particular scheduling
16 concerns so far.

17 MS. MILES: We just wanted to make sure we had a
18 date set, so that, you know, our hydrologist could be
19 available on that day. So Friday would work perfectly for
20 us.

21 HEARING OFFICER KRAMER: Okay good. So then, if
22 you don't need to help me micro manage for instance where
23 efficiency reliability goes, I can just go off and make
24 that my homework.

25 MS. GANNON: As long as we can have the dates in

1 advance.

2 HEARING OFFICER KRAMER: That's something I'll do
3 this weekend and put out to you via Email.

4 MS. GANNON: Okay.

5 HEARING OFFICER KRAMER: Or sooner. And it will
6 look like this spreadsheet only terribly rearranged, and
7 with a proper title. So that's what we'll do then.

8 Let's see, I think I have a couple other
9 questions. Just status-wise, what is the latest status of
10 the FEIS, does anyone know when that's supposed to come
11 out?

12 MR. OTAHAL: Yeah. We finished up the final EIS,
13 when was it, yesterday, I believe -- the day before
14 yesterday. So that is at the printer right now.

15 HEARING OFFICER KRAMER: So maybe next -- a week
16 from today then?

17 MS. GANNON: It's actually at the EPA right now.

18 HEARING OFFICER KRAMER: Okay.

19 MS. GANNON: So it was being delivered to the EPA
20 today.

21 HEARING OFFICER KRAMER: Which means they may be
22 able to public it next Friday.

23 MS. GANNON: Next Friday, right.

24 MR. OTAHAL: And just as a note to the
25 intervenors, since it was brought up about the tortoise

1 translocation plan, that is an appendix to the FEIS. We
2 have a draft one.

3 HEARING OFFICER KRAMER: Is there any way to
4 share a copy of that prior to, well, Thursday? Next
5 Friday is about a day late.

6 MR. OTAHAL: I don't know -- I don't know if you
7 can docket that quickly. I could get it to you today.

8 HEARING OFFICER KRAMER: Well just sharing it via
9 Email is better than nothing. Yeah I'm more interested
10 that it get in the hands of the parties than our
11 docketing. But if you send it to Chris Meyer, he could
12 send it out to everyone and see that it's docketed.

13 MR. OTAHAL: Okay, that will work. I could send
14 that to him today.

15 HEARING OFFICER KRAMER: Okay, by the way, that's
16 Chris Otahal, right?

17 MR. OTAHAL: Yeah, sorry.

18 PROJECT MANAGER MEYER: Chris, this is
19 Christopher. What kind a file size are you talking about?

20 MR. OTAHAL: It's very large, about 28 mgs,
21 megabytes.

22 PROJECT MANAGER MEYER: Yeah, okay. That might
23 be a little problem with getting it into an Email, so we
24 might have to look at a zip file or some other way of
25 transmitting it to the parties over Email.

1 MR. OTAHAL: That does actually bring up the
2 issue. I don't know how I would get it to you either.

3 HEARING OFFICER KRAMER: Can you put on it the
4 web page and just send the link?

5 MR. OTAHAL: I don't have that -- I don't have
6 that technology here.

7 PROJECT MANAGER MEYER: Chris, as soon as I get
8 done here, why don't we talk off line or I'll send you an
9 Email with an F T P site for you to load that up on to.

10 MR. OTAHAL: Okay, that would be great.

11 PROJECT MANAGER MEYER: Thanks.

12 HEARING OFFICER KRAMER: Okay, thanks, Chris,
13 that's good news.

14 The status of the biological opinion?

15 MR. OTAHAL: The biological opinion is scheduled
16 to be finished on September 7th.

17 HEARING OFFICER KRAMER: And what do you mean by
18 finished, approved?

19 MR. OTAHAL: It will be signed as the final
20 version.

21 HEARING OFFICER KRAMER: And you said September?

22 MR. OTAHAL: 7th?

23 HEARING OFFICER KRAMER: Okay, thanks.

24 Let's see, in our notice of the hearings, we
25 noticed the August 18th hearing for here at the Energy

1 Commission. But we invited the parties to, if they felt
2 it would be appropriate for us to go back down to Barstow
3 to make an argument to us at this prehearing conference.

4 So I wanted to just see if anybody was so
5 inclined?

6 MS. GANNON: The applicant is happy to be in
7 Sacramento, if that works for the Committee.

8 HEARING OFFICER KRAMER: Yeah, it saves us about
9 eight hours of total travel time, and at a time where
10 we're going to be very busy, so we like that, and without
11 a budget.

12 PUBLIC ADVISER JENNINGS: Hearing Officer Kramer?

13 HEARING OFFICER KRAMER: Ms. Jennings?

14 PUBLIC ADVISER JENNINGS: I was wondering if you
15 could defer that to see how many people show up for the
16 Barstow hearing, specially since --

17 HEARING OFFICER KRAMER: It would be running real
18 short on time to notice it, but we could revisit that if
19 we see a lot of people down there, and ask them.

20 PUBLIC ADVISER JENNINGS: Okay, thank you.

21 HEARING OFFICER KRAMER: A related question is in
22 the Imperial hearing, there was some people who live
23 off -- basically off the grid, at least off the telephone
24 grid. And they -- but they have satellite Internet
25 service. And they didn't like you burning their cell

1 phone minutes calling in to our hearings. It went long
2 into the night.

3 So we're wondering, do we have anybody like that
4 in this case? I suppose by definition, they wouldn't be
5 on the telephone.

6 PUBLIC ADVISER JENNINGS: Right.

7 HEARING OFFICER KRAMER: But, because with a
8 little bit of effort, we could slightly set up our WebEx
9 in a slightly different way. We'd probably have to
10 renotify it, which means sending it to all the surrounding
11 property owners again. So I'm not really excited about,
12 you know, that business for the Post Office.

13 But we could set it up so that we both use the
14 telephones and also broadcast basically a streaming
15 video -- or audio that is, on the Internet. And if
16 anybody is aware of, you know, a significant group of
17 people that would benefit from that, I think we'd consider
18 it.

19 So Mr. Meyer.

20 PROJECT MANAGER MEYER: Yeah, this is Christopher
21 Meyer, the project manager. This project, unlike the
22 Imperial valley project, we haven't seen a lot of public
23 comment. The members of the public that have had
24 significant interest, such as Mr. Jackson, have become
25 intervenors. But when we've opened it up for public

1 comment several times, we haven't received that. And I
2 actually haven't received comments from any local
3 residents with any concerns over access.

4 Now, if the Public Adviser's office has had
5 something, I'm sure you know, they can add that, but
6 nothing has come to my desk.

7 HEARING OFFICER KRAMER: Okay, it's something
8 that, I think, we might need to do more as a matter of
9 course in the future, but we had -- you know we'd already
10 set this up, so I don't want to go through the trouble of
11 change, if there's no apparent reason to do so.

12 And just to be clear, traffic is not going --

13 PUBLIC ADVISER JENNINGS: Hearing Officer Kramer,
14 I think someone is on the phone trying to get your
15 attention?

16 HEARING OFFICER KRAMER: Oh, I'm sorry on the
17 phone.

18 MR. BURK: This is Bob Burk from SCBS. There's
19 several of us that are intervenors that live in the local
20 area, and we would like to have the hearing down here
21 instead of us having to travel to Sacramento or sit on the
22 phone for four or five hours.

23 HEARING OFFICER KRAMER: Yeah, we understand
24 that, and if we had a little more time, and the certainty
25 of a budget, we probably would come down there for the

1 second hearing. We did make a conscious effort to come
2 down for the first hearing -- the first set of hearings,
3 the three days. My hope -- I hope that's at least to your
4 liking. But it just doesn't look like it's going to be
5 possible for us to come down there on the 18th.

6 MR. BURK: Okay. Well, in reference to the
7 public comments, I know of several people that have not
8 commented yet, but will be submitting comments before
9 long, so I'm being told, different organizations within
10 the local area.

11 HEARING OFFICER KRAMER: Okay, and then they also
12 know that we've set aside a specific time on Wednesday the
13 4th at 6 p.m., so they could come right in, make their
14 comments and they don't to have wait for a break in our
15 other activities.

16 MR. BURK: Correct. And there are several folks
17 that I know here locally that will be attending that. So
18 if there's nothing else for me, I'm going to get off the
19 phone. I still have a business to run.

20 HEARING OFFICER KRAMER: Okay, well good luck
21 with that.

22 MR. BURK: Thank you.

23 HEARING OFFICER KRAMER: And we'll see you next
24 week.

25 Okay, I think, let's see -- we might have not

1 been crystal clear about who's going to testify by
2 telephone. But I'm not sensing that there's
3 any -- there's any real need in any particular case to
4 have somebody in-person at the hearings. I'll try
5 to -- I'll mark staff and the listing and if -- when you
6 get the spreadsheet on Monday or sooner, look it over and
7 see if we -- I've gotten names wrong, or estimates are
8 wildly off or something is missing and let me know by
9 Email and I'll have a corrected version for the hearings
10 that I'll probably circulate.

11 And again I'll also circulate the exhibit list.
12 One of the things we may talk about during the hearings,
13 some of you have submitted documents, which we could
14 probably make just the subject of official notice. They
15 don't necessarily need to be formal exhibits.

16 But the flip side is, if you've gone to the
17 trouble of finding them and printing it out, it's kind of
18 convenient to have it rather than to have to look it up.
19 So we probably go either you know leave it in as an
20 exhibit or convert it to official notice status. But
21 those are the kind of things we can talk about down the
22 road once you have the list to look at.

23 And, as far as other homework goes, those of you
24 who did not give me a Word version of your exhibit
25 lists -- although, let me check that, because right before

1 I came here, my secretary did -- she did go to the trouble
2 of trying to cut and paste. So maybe what -- for your
3 sake, why don't I just circulate what we have, and can you
4 see if there's anything missing. And if there is, please
5 submit it in the Word document format using that table.

6 And if for some reason, you don't have a copy of
7 the Word file that contains the table, send me an Email
8 note and I'll shoot one back to you.

9 So cross that off your homework list for the
10 moment to recreate that list, and just see if we've gotten
11 it close enough with what we did do. But there is a
12 reminder the homework on the issue of Mr. Jackson's access
13 questions. Any briefs the parties wish to add to inform
14 the Committee of the law, and how they believe it applies
15 to the facts as they understand them, understanding that
16 you still to have prove up those facts at the hearing on
17 the 18th. But briefs to educate us on that topic should
18 be filed and provided to everyone electronically and then
19 in the normal course by mail for those who also get mail,
20 by August 11th.

21 Oh, and then Ms. Gannon and perhaps others were
22 going to provide by Tuesday noon, to everyone via Email
23 their thoughts and arguments about Mr. Andre -- or Dr.
24 Andre, is it -- the witness who the applicant believes is
25 constrained by a confidentiality agreement from

1 testifying.

2 And did I miss any other bits of homework?

3 MS. GANNON: One other piece that -- in our
4 rebuttal testimony, we are noted that there are three
5 conditions which we are currently developing proposed
6 revisions to, that they were the sort of complicated
7 conditions. And we just did not have an opportunity to
8 complete that before submitting the rebuttal.

9 We do intend to get it -- to distribute it to the
10 parties before the hearing, so that they'll have an
11 opportunity to look at them and hopefully we'll be able to
12 discuss them. And they mostly relate to biological
13 conditions. So we'll make sure that certainly they're
14 there before we hear those issues.

15 HEARING OFFICER KRAMER: Okay, and that would be
16 very helpful to everyone, I think. Do the other parties
17 have any proposals to change conditions, any concrete
18 proposals they're going to be making?

19 MS. SMITH: We're interested in staff's reaction
20 to some of the changes in the rebuttal. I mean there's
21 some significant changes to biological resource
22 mitigation. So, you know, we reserve the right to sort of
23 see how that plays out at the hearing, but I mean there
24 are some significant changes that have been proposed.

25 HEARING OFFICER KRAMER: Okay, well I was asking

1 more about the mechanics. So if you had a specific
2 proposal, for instance, or a series of them, like the
3 applicant probably does, it would be nice to have them all
4 compiled in a separate document, so that -- because
5 otherwise we all get confused about, you know, different
6 versions of proposed changes. And if you have your final
7 best version of what you want, that you could send
8 everyone and bring to the hearing, it will be a little bit
9 easier for us to track them and perhaps get the correct
10 version into the proposed decision.

11 MS. GANNON: Would you prefer we submitted a
12 number of proposed changes with our rebuttal testimony?
13 And, as I said, we're developing these couple of others.
14 Would you prefer us to put them into one document, which
15 we would then offer as a single exhibit?

16 HEARING OFFICER KRAMER: Yeah a final
17 compilation.

18 MS. GANNON: Okay, we can do that.

19 HEARING OFFICER KRAMER: And I guess as the
20 baseline for the changes, it would be the conditions as
21 they are in the staff's -- what do we call it -- the
22 Revised Supplemental Staff Assessment. And so we want to
23 see a red line strike out from that as the base.

24 MS. GANNON: That's what we've done so far, yes.

25 HEARING OFFICER KRAMER: Great. That will make

1 it easier if we all have the same music.

2 MS. MILES: And I have a question relating to the
3 audio visual. I asked earlier or perhaps made it as a
4 statement and I should rephrase it as a question. Should
5 I bring any exhibits that we want to have as like an audio
6 visual aid on a flash drive or can you at least put that
7 into like a follow-up Email as to what the directions are
8 for parties when they're doing their audio visual
9 presentation?

10 HEARING OFFICER KRAMER: Let's have Mr.
11 Therkelsen tell us after consulting with his audio visual
12 guy. Are you the best point of contact, Bob?

13 MR. THERKELSEN: Sure.

14 HEARING OFFICER KRAMER: Okay.

15 PRESIDING MEMBER EGGERT: And actually, maybe
16 just to follow on to that, I think -- I mean, given the
17 fact that we are going to have a large number of folks
18 dialing in and participating remotely, I'm wondering if
19 there's an opportunity to do an A/V test between the two
20 facilities ahead of time.

21 I know we always end up getting delayed by
22 technical difficulties. And if there's a chance to make
23 sure that the staff is coming through clearly in their
24 testimony.

25 HEARING OFFICER KRAMER: Well, one of the things

1 I was going to talk to Mr. Therkelsen about after this was
2 putting him together with -- a member of our IT staff
3 volunteered to talk to his A/V guy to see if it sounded as
4 if they were going to be compatible. So they're going to
5 work on that.

6 PRESIDING MEMBER EGGERT: I was going to say, I
7 mean in the 21st century, given all of the claims about
8 the ability to do, you know, remote tie in, we should be
9 able to pull this off.

10 MS. MILES: And also, I would like to query my
11 experts and just make sure that they did submit all of
12 their images to me. And if they didn't, then to -- is it
13 all right if I just distribute them to all parties prior
14 to the hearings?

15 HEARING OFFICER KRAMER: They may object, of
16 course, but their objections will have less weight the
17 more time they have to look over it.

18 MS. MILES: Thank you.

19 HEARING OFFICER KRAMER: So is there any other
20 business we need to conduct?

21 MR. BASOFIN: Mr. Kramer, I have an issue. It
22 occurred to me that you hadn't broken out the topic area
23 of cumulative impacts in your time assessment for this
24 topic areas. And I have a line of questions that relates
25 to cumulative impacts.

1 HEARING OFFICER KRAMER: Specific to one or many
2 topics?

3 MR. BASOFIN: Specific to cumulative impacts on
4 biological resources.

5 HEARING OFFICER KRAMER: Okay. And -- well, I
6 think we would expect you to raise that during the bio
7 discussion. So your saying we need to add a few minutes
8 for that.

9 MR. BASOFIN: I think so. I didn't realize that
10 that -- that you'd be incorporating cumulative impacts
11 into each respective.

12 HEARING OFFICER KRAMER: Let me see what you have
13 already. You already have 90 minutes. That sounds like
14 an awful lot. You should be able to fit it in there,
15 shouldn't you?

16 When you're going to be trying not to overlap
17 with the questions that are being asked by your colleagues
18 who have asked for 90 minutes, 180 minutes. I'm going to
19 give you credit for being able to fit that in.

20 MR. BASOFIN: I certainly will do my best not to
21 overlap with my colleagues, but I'm not sure if their
22 questions in this particular category will overlap with
23 mine for cumulative impacts.

24 HEARING OFFICER KRAMER: Well, in effect on
25 Thursday we're going to finish it that day. And we've got

1 15.8 hours here. You want another 10 minutes to take it
2 up to around 16?

3 MR. BASOFIN: I'll raise you 15.

4 HEARING OFFICER KRAMER: Okay, over 16 hours. So
5 everybody's going to be compressing a little bit at the
6 end. You probably want to worry more about being the last
7 guy, than how many minutes you have.

8 Ninety -- I'm sorry, 105 minutes.

9 Mr. Lamb.

10 MR. BASOFIN: Thank you Mr. Kramer.

11 MR. LAMB: Thank you, Hearing Officer Kramer.

12 Steve Lamb for BNSF. I just wanted to note for the record
13 and we appreciate the Committee's indulgence that all of
14 our testimony has now been submitted and served.

15 HEARING OFFICER KRAMER: Well, thank you.

16 Okay, any other business before we adjourn.

17 STAFF COUNSEL ADAMS: You have a
18 subpoena -- request for subpoena from Defenders and I
19 think maybe that can be resolved.

20 MR. BASOFIN: Yeah, Mr. Kramer, I'm willing to
21 withdraw our application for subpoena of a Department of
22 Fish and Game representative with the assurances from
23 staff counsel that a representative will appear.

24 HEARING OFFICER KRAMER: Thank you.

25 Anything else?

1 We, of course, have and opportunity for public
2 comment, because we always do. Do we have any members of
3 the public here wishing to make a comment or on the
4 telephone?

5 Seeing none, Commissioner Eggert?

6 ASSOCIATE MEMBER BYRON: Commissioner Eggert, may
7 I suggest let me make a few comments that I hope will be
8 helpful to parties and then can you correct anything you
9 may disagree with that I State.

10 PRESIDING MEMBER EGGERT: Please do,
11 Commissioner.

12 ASSOCIATE MEMBER BYRON: Well, first of all, you
13 know, I just would like to address this issue about
14 whether or not we should go to hearing or not. I am
15 satisfied that the staff feels that we're ready to go
16 except on topics mentioned. I believe cultural resources,
17 traffic and transportation.

18 You know, I never -- it seems as though -- it may
19 be satisfying to the partners, but it's the rare case that
20 it ever seems like we're ready to go to evidentiary
21 hearing, but a lot gets resolved when we start down that
22 path. And we do need deadlines and that's norm for the
23 case, not the exception.

24 I'd certainly like to thank all the parties
25 today. I think they all showed tremendous understanding

1 about the limitations that we have on time, and on our
2 staff with regard to their inability to travel. I'd like
3 to certainly thank them for their professionalism. I
4 think Mr. Kramer does an excellent job of being fair and
5 equitable in trying to figure out the time and certainly
6 in dealing with issues as our hearing officer.

7 And I don't foresee that the issues are going to
8 be as challenging as managing the schedule in this
9 proceeding. He's done a good job on this.

10 But I have a few suggestions that I'd like to
11 proceed with to the parties, that I hope will be helpful
12 to them. You know sometimes it seems that parties forget
13 that Commissioner Eggert and I will be making the
14 recommendation to the full Commission on all the contested
15 issues. And we're certainly interested in testimony and
16 evidence that informs us, not necessarily informs the
17 other parties. That's to say, I'd really like to ask if
18 you'd please refrain from using the precious time that
19 we've got to ask questions where answers are already in
20 the record, or really seem to be for educational purposes.

21 Also, it's not clear to us, and I've noticed this
22 recently in testimony that we've had, so I don't mean
23 particularly for the parties that are here in this case,
24 but if your line of questions -- if it's not clear to us
25 where your line of questions are going, then we're all

1 left wondering why you're asking them. So if you could
2 make that clear early on, I think it's really helpful to
3 us. And certainly if another party has made the point
4 that you're planning to make, there's really no need to
5 add it to the evidentiary record. We get it the first
6 time.

7 I appreciate that you all realize everybody's
8 time valuable. So I'll ask that you please be respectful
9 of that, and brevity in both your questions and you're
10 responses.

11 And Commissioner, you're the Presiding, but I'll
12 do what I can to contribute. I've got a big giant stop
13 watch with a loud beeper and I'll bring it, so that we can
14 follow Mr. Kramer's schedule, and make sure everybody
15 knows that we're trying to keep this going.

16 I'll stop there.

17 PRESIDING MEMBER EGGERT: Thank you very much,
18 Commissioner and I don't disagree or dispute any of those
19 assertions. Obviously, we do want the full and complete
20 record, and you know, to the extent that we have
21 information and materials that have been submitted, that
22 acts as the one path for us to be educated about the
23 topics.

24 And obviously, we do want to appropriately
25 explore all of those contested issues, should the

1 testimony and the cross in the hearings next week

2 Somebody did ask me whether or not there was a
3 dress code for next week. They might have noticed I
4 wasn't wearing a tie today. I note that it is 105 degrees
5 in Barstow right now as we speak. It's at least shown
6 here that it's going to cool off down to 102 by next
7 Wednesday. So I say you know where whatever is
8 comfortable, shorts, Birkenstocks.

9 (Laughter.)

10 PRESIDING MEMBER EGGERT: I don't think we
11 necessarily have to have formal dress. I think I'm going
12 to leave my ties at home, but others can do as they wish.

13 So I look forward to the hearings next week and
14 I've always -- at least the ones that I've been fortunate
15 to participate in so far, have always been very
16 informative and very much appreciate everybody's time and
17 comfort, because I know everybody's time is valuable. And
18 we do have a lot of -- everybody has a lot on their
19 plates. And so -- but I think we've got a good plan.

20 Hearing Officer Kramer has set out for us a
21 rather ambitious schedule, but I think we can get through
22 it with good cooperation.

23 And unless there's anything else, I'll see you
24 all on Wednesday.

25 (Thereupon the hearing adjourned at 4:29 p.m.)

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CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California Energy Commission hearing was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California;

That the said proceedings was taken before me, in shorthand writing, and was thereafter transcribed, under my direction, by computer-assisted transcription.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of August, 2010.



JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
License Number 10063