

PRESIDING MEMBER'S PROPOSED DECISION  
AND COMMITTEE CONFERENCE  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

<b>DOCKET</b>	
<b>08-AFC-5</b>	
DATE	<u>SEP 20 2010</u>
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In the Matter of: )  
 )  
Application for )  
Certification for ) Docket No.  
The Imperial Valley Solar ) 08-AFC-5  
Project (formerly Solar Two)  
Project) Imperoal Valley )  
Solar, LLC )  
\_\_\_\_\_ )

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM B  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA  
MONDAY, SEPTEMBER 20, 2010  
9:03 A.M.

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APPEARANCES

COMMITTEE MEMBERS PRESENT

Jeffrey Byron, Presiding Member

James Boyd, Associate Member

Anthony Eggert, Associate Member

HEARING OFFICER AND ADVISERS

Raoul Renaud, Hearing Officer

Kristy Chew, Advisor

Lorraine White, Advisor

STAFF AND CONSULTANTS PRESENT

Jared Babula, Counsel

Christopher Meyer, Project Manager

Joy Nishida, Staff Biologist

Rick York, Staff Biologist

APPLICANT

Tessera Solar

Sean Gallagher

Ella Foley Gannon

Marc Van Patton

INTERVENORS

CURE

Hossein Alimamaghani

Tom Budlong

Loulena Miles

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1 PROCEEDINGS

2 COMMISSIONER BYRON: Good morning, everyone, and  
3 welcome to a Presiding Members' Proposed Decision and  
4 Notice of Committee Members' Conference scheduled here  
5 this morning at the Energy Commission in Sacramento on  
6 Monday, September 20.

7 I'm Jeff Byron, the Presiding member of the  
8 Imperial Valley Solar Project decision.

9 And with me is my Associate member. Good  
10 morning, Commissioner Eggert. And our Hearing Officer,  
11 Raoul Renaud.

12 I'd like to thank you all for being here so early  
13 this morning on Monday. And we have lots to get through.

14 I'd like to ask if our Hearing Officer would take  
15 over and will go through introductions and see if we can  
16 finish up by the lunch hour.

17 HEARING OFFICER RENAUD: Thank you, Commissioner  
18 Byron.

19 I'm Raol Renaud, the Hearing Officer appointed by  
20 the Commission to cover the hearing aspects of this case.  
21 And we are here for the Committee conference which was  
22 noticed along with the Notice of Availability of the PMPD.

23 The Committee conference is actually an optional  
24 proceeding, but the Committees generally try to hold one  
25 and sometimes in advance of the Commission vote to give

1 the parties an opportunity to discuss their comments on  
2 the PMPD.

3 Before we go any further, let's take introduction  
4 from those who are present, starting with the applicant,  
5 please.

6 MS. GANNON: Good morning, Ella Foley Gannon,  
7 counsel to the applicant.

8 MR. VAN PATTON: Mark Van Patton, Tessera Solar.

9 MR. GALLAGHER: Sean Gallagher with Tessera  
10 Solar.

11 HEARING OFFICER RENAUD: Good morning. And on  
12 behalf of staff, please.

13 MR. MEYER: Christopher Meyer, Project Manager.  
14 And I have Jared Babula, staff counsel.

15 HEARING OFFICER RENAUD: Good morning. Thank  
16 you.

17 And on behalf of the Intervenor, California  
18 Unions for Reliable Energy.

19 MS. MILES: Loulena Miles.

20 HEARING OFFICER RENAUD: Good morning. Thank  
21 you.

22 And we have our WebEx system going today so folks  
23 can phone in and participate also on their computer  
24 screens. I see we have some callers. Do we have any  
25 parties, intervenors particularly? I'm thinking of Tom

1 Budlong, California Native Plant Society or Jose Allen  
2 man. Any of you there?

3 MR. ALIMAMAGHANI: Hossein Alimamaghani.

4 HEARING OFFICER RENAUD: Good morning, sir.

5 Any other intervenors?

6 All right. Is there anyone else on the phone who  
7 would like to introduce themselves? You don't have to  
8 but --

9 MR. TAYLOR: Steve Taylor with San Diego Gas and  
10 Electric.

11 HEARING OFFICER RENAUD: Good morning. Thanks  
12 for joining.

13 Is there anybody from the Bureau of Land  
14 Management, BLM?

15 All right. Thank you very much.

16 Just a little bit of housekeeping. This is --  
17 since this is a noticed proceeding, it is a public hearing  
18 and it is recorded -- stenographically recorded this  
19 morning by a certified reporter who will turn this into a  
20 transcript. So there will be actually -- or actually  
21 quite shortly a written transcript of this hearing on the  
22 Commission website.

23 Those of you who are participating and wish to  
24 speak, please make sure, first of all, to identify  
25 yourselves when you do speak so the record will be clear

1 as to who it is, and speak directly into your microphone.  
2 If you're on the telephone, please refrain from any  
3 background noise.

4           If you do have noise in your room where your  
5 telephone is, please mute your telephone but don't place  
6 us on hold. Because if you do, you might have background  
7 music, which we didn't want to hear.

8           We do have the power here to cut off any caller  
9 who is creating a disturbance. So again, please try to be  
10 as quiet as the folks here in person are being. We  
11 appreciate that very much.

12           Also, if you have any technical difficulties --  
13 let's see if I have the phone number. I should. I don't  
14 think you will. If you let us know if you're having any  
15 problems understanding anybody or hearing, I think it  
16 should work quite well. It usually does.

17           COMMISSIONER BYRON: Mr. Renaud, if I may also,  
18 I'd like to acknowledge that Commissioner Eggert's Advisor  
19 Lorraine White is also at the dais with us this morning.  
20 Hopefully my advisor, Kristy Chew, will be here, but she  
21 has other responsibilities she'll be in and out fulfilling  
22 this morning.

23           HEARING OFFICER RENAUD: All right. Thank you  
24 very much. Good.

25           The Committee asked that the parties submit

1 written comments, if any, on the PMPD by September 16th,  
2 which was last Thursday. And we did receive comments from  
3 the applicant, from Commission staff, and from intervenor  
4 CURE. And we do thank you for those.

5 I think probably the best way to organize things  
6 today is to go topic by topic and to go around the room  
7 and have each party discuss or speak to whatever comments  
8 they wish to speak to. The Committee will also have some  
9 questions about some of the comments.

10 It appears to me that biological resources  
11 probably has the most comments, and so I propose that we  
12 save that one for last. We'll try to get the other areas  
13 out of the way first.

14 MR. MEYER: Mr. Renaud, just a brief  
15 clarification. The version that was posted on the web,  
16 I'm trying to verify. It may be incorrect on the staff's  
17 PMPD comments.

18 The first -- there are two versions. There was  
19 an earlier draft version that may have been attached the  
20 first 18 pages of that. So people could verify that the  
21 version they're working on has -- should only have 106  
22 pages rather than 127. The first 18 may be incorrect and  
23 I believe the version I had in dockets -- the first 18  
24 pages are incorrect. That's being corrected in dockets  
25 and the correct -- the new version. But the staff's



1 comments in its entirety are in the document. They just  
2 unfortunately start on Page 19.

3 HEARING OFFICER RENAUD: Okay. Well, the version  
4 I copied is 106 pages.

5 MR. MEYER: I have 107.

6 HEARING OFFICER RENAUD: 107. It might be that.  
7 So hopefully it's -- so we are all pretty much looking at  
8 the same document I hope. Well, that's good. Great.  
9 Thank you. All right. I don't think -- did anybody have  
10 any comments or changes for the project description topic?  
11 I don't think so.

12 All right. Alternatives. I can see that staff's  
13 comments contain some -- first I should say, staff did  
14 have some comments on the introduction. Those are  
15 clerical errors, and we'll certainly take care of those  
16 and we thank you for pointing those out.

17 Alternatives, staff has pointed out or has some  
18 comments here. I think we would view these as comments  
19 the Committee will take into consideration in preparing  
20 the errata. But you're not proposing -- you're not  
21 pointing out an error or suggesting any changes. But  
22 you're basically --

23 MS. MILES: Hearing Officer Renaud.

24 HEARING OFFICER RENAUD: Yes, Ms. Miles.

25 MS. MILES: I had a comment about the

1 introduction, actually.

2 HEARING OFFICER RENAUD: Oh, you do. Okay.

3 MS. MILES: I noticed the clerical error  
4 regarding staff assessments parts A through C, and it was  
5 supposed to be changed to 1 and 2. However, after that  
6 clause it states, "which were made available for public  
7 comment." And I just wanted to point out for the record  
8 that there was no noticed public comment period. And that  
9 there was no opportunity for written comments on the  
10 supplemental staff assessments for the public.

11 HEARING OFFICER RENAUD: Is that contained in  
12 your written comments?

13 MS. MILES: It is not.

14 HEARING OFFICER RENAUD: All right. Well, you're  
15 saying that the --

16 MR. GALLAGHER: A was not -- was published  
17 after -- you're claiming that what? There wasn't adequate  
18 public notice about it?

19 MS. MILES: No. What I'm saying is that there  
20 was no public comment period on the ME supplemental staff  
21 assessment for this project. There was a 30-day public  
22 comment period on the original staff assessment draft EIS.  
23 However, there were a number of significant project  
24 changes after that and they were included in the  
25 supplemental staff assessment parts one and two. And

1 there was never a notice 30-day public comment period on  
2 either of those documents.

3 HEARING OFFICER RENAUD: Well, thank you. We'll  
4 look at that.

5 Do you have anything else other than what's in  
6 your written comments about the introduction?

7 MS. MILES: Nothing more than what I just  
8 indicated.

9 HEARING OFFICER RENAUD: Thank you. So we'll  
10 move on -- we've done introductions. We've done  
11 alternatives. Let's see.

12 Facility design. Staff's suggestions include a  
13 reference to the -- well, basically some rewording of  
14 Condition of Certification general three.

15 Applicant, did you have any comments on that  
16 or --

17 MS. GANNON: We have no objection to the proposed  
18 change.

19 HEARING OFFICER RENAUD: All right. Thank you.

20 Looking at the WebEx screen, I see that Mr.  
21 Budlong, you appear to have joined us.

22 MR. BUDLONG: Finally.

23 HEARING OFFICER RENAUD: Good morning, sir.

24 MR. BUDLONG: My computer gave me more trouble.

25 HEARING OFFICER RENAUD: We're glad to have you,

1 Mr. Budlong. I'm glad it wasn't our system that was  
2 giving you the trouble.

3 MR. BUDLONG: It was not your system.

4 HEARING OFFICER RENAUD: All right. Do we have  
5 anyone from California Native Plant Society?

6 All right. Thank you, Mr. Budlong, for joining.  
7 What we're doing is going through the written comments  
8 that were submitted by the three parties and we're going  
9 topic by topic. So feel free to chime in whenever you  
10 have something you wish to bring to our attention.

11 Again, staff has submitted a number of comments  
12 on the greenhouse gases section. I think for the most  
13 part these are suggested rewordings. They aren't  
14 particularly substantive. And we thank you for those.

15 Is staff or applicant any party -- I'm sorry --  
16 applicant, any of the parties wish to comment on the staff  
17 proposed GHG changes?

18 MS. GANNON: We agree with your assessment of it.  
19 We think staff is correct in their description of SB 1368,  
20 and we have no objections to those revised changes. We  
21 think that the Committee was correct in the way they  
22 described the CEQA standards of significance and we don't  
23 believe that needs to be changed.

24 HEARING OFFICER RENAUD: Very good. Thank you  
25 very much.

1 MS. MILES: Are you going to be coming back to  
2 project alternatives? No. Okay.

3 HEARING OFFICER RENAUD: We have the written  
4 comments and we're going through those. You added -- oh,  
5 you hadn't added an alternative. Did you want to add  
6 something on alternatives?

7 MS. MILES: Well, I just thought that you would  
8 give an opportunity for us to provide a comment on the  
9 alternatives section.

10 HEARING OFFICER RENAUD: I think I might have  
11 gone over that quickly. So go ahead.

12 MS. MILES: Thank you. Appreciate it.

13 I just wanted to state for the record that CURE  
14 is 100 percent in agreement with the staff's concerns  
15 regarding the 709 megawatt project that the PMPD proposes  
16 to adopt. And that proposal may have -- is significantly  
17 different impacts from the alternatives that were analyzed  
18 by the staff. And like the staff, CURE was not given an  
19 adequate time to review the 709 megawatt project. It was  
20 submitted two working days prior to the evidentiary  
21 hearings in the applicant's rebuttal testimony on July  
22 21st. And that just was -- we did not have an opportunity  
23 to discovery on that. And we did not have an opportunity  
24 to have expert review. We did scramble. We tried to do  
25 questioning at the evidentiary hearing on that. However,

1 we do not feel that the Commission should approve this,  
2 nor do we believe that the Commission has the legal  
3 authority to approve it under CEQA, because we believe  
4 that there are new and potentially significant impacts  
5 associated with the removal of the roads and the over land  
6 travel throughout the project site.

7 HEARING OFFICER RENAUD: Thank you, Ms. Miles.

8 That sounds to me like exactly what you put in  
9 your written comments. And --

10 MS. MILES: For the most part.

11 HEARING OFFICER RENAUD: I think we aren't going  
12 to take the time today to reiterate what they've written.  
13 If you have anything to add or wish to comment on someone  
14 else's comment, please feel free.

15 MS. MILES: Like I said, we fully support staff's  
16 comment on that issue well.

17 HEARING OFFICER RENAUD: Very good. Thank you.

18 And the Committee isn't intending or planning to  
19 argue back and forth with you folks about your comments  
20 this morning. We understand your comments. We accept  
21 them in terms of being grateful for your comments. We'll  
22 consider them in preparing an errata. But if we don't say  
23 here orally that we disagree or we agree or whatever,  
24 don't take that as a sign of assent. We're here to listen  
25 to your comments and take them back to prepare the errata.

1 MS. GANNON: And on that issue, the applicant  
2 would just say we are in 100 percent agreement with the  
3 Commission or the Committee's determination as set out in  
4 the PMPD, and for the legal reasons set forth in our  
5 briefs, we believe there is adequate support in the record  
6 and we support the determination.

7 HEARING OFFICER RENAUD: Thank you.

8 All right. Was there anything further on the  
9 greenhouse gas section before we move on to air quality?  
10 Anybody wish to add anything on greenhouse gases?

11 All right. Move on to -- well, let's see here.  
12 Did anybody wish to comment on the engineering assessment  
13 portion of the PMPD which includes facility design,  
14 efficiency, reliability, transmission system engineering  
15 and transmission line safety and nuisance. I don't think  
16 we have any written comments in those areas.

17 All right. Hearing none, let's move on to air  
18 quality. Staff, again, you've submitted in comments and  
19 proposed probably your major change is a proposed addition  
20 of the paragraph which starts at the bottom of page 8 of  
21 staff's comments. Do any of the parties wish to comment  
22 on that proposed addition?

23 MS. GANNON: (Inaudible) has no objection. We  
24 had also proposed the same condition which would -- we had  
25 stipulated to during the hearings. And this is what this

1 description is addressing. So we have no objection to the  
2 inclusion of this language.

3 HEARING OFFICER RENAUD: Okay. Let's see. Mr.  
4 Meyer, can you clarify for us exactly where that would go?  
5 I see a reference here to PMPD, AQ, page 6. Is that -- is  
6 that what -- the problem is there's not a page 6. So I  
7 wasn't sure where you were proposing that that go.  
8 Anybody can chime in if you can help us here.

9 MR. MEYER: I'll check with the air quality staff  
10 and relay back very briefly.

11 HEARING OFFICER RENAUD: All right. Thank you.  
12 That will help.

13 Other than that, let's see. The air quality  
14 changes -- there is a change to AQSC 11. This concerns  
15 the engines. How does staff -- sorry -- applicant feel  
16 about that?

17 COMMISSIONER EGGERT: This is the same language  
18 that we also included in our comments. So we are in  
19 agreement with it.

20 HEARING OFFICER RENAUD: Any party wish to add  
21 further about that? Anything else on air quality?

22 Okay. I said we'd skip over biological resources  
23 and come back to that. So it looks to me like soil and  
24 water resources would be the next topic. I know this is a  
25 topic that's generated a good deal of interest amongst you



1 all primarily due to the proposed use of the Boyer Well on  
2 a temporary basis. There's a lot to skip through here.

3 So page 84 of staff's comments is where we go.

4 CURE, did you have a written comment on soil and  
5 water resources?

6 MS. MILES: Yes. We did include a written  
7 comments.

8 HEARING OFFICER RENAUD: Let's see. Starting on  
9 page 5 -- is that? Oh, no. I see. You started on  
10 page 2, really. Right? Three. Four. There we are.  
11 Roman numeral IV, starting on page 4. Okay.

12 Well, let's start with the staff comments.  
13 Staff's proposed a major deletion of a portion of a  
14 paragraph. This is at the top of page 84. I think this  
15 is probably due to the fact that the sediment basins are  
16 removed. So does anybody have a problem with removing  
17 that language?

18 MS. GANNON: We think it's an appropriate  
19 correction.

20 HEARING OFFICER RENAUD: All right. And CURE is  
21 saying no problem.

22 MS. MILES: That's fine.

23 HEARING OFFICER RENAUD: All right.

24 Now, staff has also proposed an additional  
25 sentence under impacts and mitigation for construction

1 erosion. It's the sentence in red there in the middle of  
2 page 84. How does the applicant feel about that?

3 MS. GANNON: We think it's unnecessary. We think  
4 there is a discussion of wind diversion in the PMPD as it  
5 was drafted. We don't object to it. But we think it's an  
6 unnecessary change.

7 HEARING OFFICER RENAUD: Thank you.

8 Anybody else wish to weigh in on that? All  
9 right.

10 MS. MILES: We're generally in support of this  
11 change.

12 HEARING OFFICER RENAUD: Okay. Does anybody wish  
13 to comment on staff's proposed change in the middle of  
14 page 85 with reference to the sediment study by Dr. Chan?

15 MS. GANNON: Again, we feel that the PMPD's  
16 description was accurate and adequate, and we don't see  
17 any reason for the change.

18 HEARING OFFICER RENAUD: Okay. Anybody else wish  
19 to comment on that? Thank you.

20 Now, starting on page 85 of staff's comments,  
21 it's being suggested that references to the 709 megawatt  
22 alternative be changed to the BLM preferred alternative.  
23 Perhaps staff can enlighten us on why you're proposing  
24 that change. Because we're just trying to identify which  
25 one we're talking about, but you're suggesting we change

1 the name of the reference.

2 MR. MEYER: I am sorry. I was looking up the  
3 answer to your original question. I'm sorry I missed the  
4 first part of that.

5 HEARING OFFICER RENAUD: Oh, for the pagination.

6 MR. MEYER: We were referencing construction  
7 impacts and mitigation under sub-part 2 for that new  
8 language. But instead of AQ page 6.

9 HEARING OFFICER RENAUD: You want me to start  
10 over or repeat the question?

11 MR. MEYER: If you would.

12 HEARING OFFICER RENAUD: At the bottom of page 85  
13 of staff's comments begins a suggestion that we change  
14 reference to the 709 megawatt alternative to the BLM  
15 preferred alternative or just the preferred alternative.  
16 And I'm wondering what's the genesis of that suggestion.

17 MR. MEYER: Basically just for simplicity since  
18 it's the preliminary LEDPA and the final LEDPA may change.  
19 We don't know at this point. At the time of our decision,  
20 the rod I don't believe will be out. So it may end up  
21 very different.

22 And also staff had just a general concern that as  
23 the applicant develops the technology and limitation based  
24 on megawatts rather than acreage is more appropriate.

25 HEARING OFFICER RENAUD: Thank you. Appreciate

1 that staff. Does staff wish -- sorry. Get this straight.

2 Applicant wish to comment on that?

3 MS. GANNON: As long as the reference is clear as  
4 to what the project is that is being approved, we don't  
5 have an objection to it.

6 HEARING OFFICER RENAUD: So we could call it  
7 Fred?

8 MS. GANNON: If you'd like to call it Fred,  
9 that's good. Sam, I would prefer. That's okay.

10 HEARING OFFICER RENAUD: Would CURE comment on  
11 that?

12 MS. MILES: No. I mean, nothing more than we  
13 don't believe that the 709 megawatt project can be  
14 approved until the staff does an analysis of that  
15 alternative.

16 HEARING OFFICER RENAUD: We understand that's  
17 your position. Thank you.

18 Now, turning to staff's comments on page 87 --

19 MS. GANNON: There is at the bottom of 86 they  
20 had suggested deleting language on page 22. And we just  
21 didn't understand why that language would be deleted, what  
22 the intent was.

23 HEARING OFFICER RENAUD: Thank you. That's a  
24 good question.

25 Staff, do you wish to enlighten us on that? Does

1 the language you're proposing to cross out or delete  
2 describes where sun catchers would not be placed with  
3 respect to the washes? And the Committee thought that  
4 was, you know, a good factual clarification to include.  
5 Can you tell us why you'd want to -- you suggest we not  
6 include it? As far as we know, it's correct.

7 MR. MEYER: I apologize. I'm not clear on what  
8 the technical staff's rationale was. It wasn't clarified  
9 to me as well. So based on what I'm seeing here, it's my  
10 understanding that this is a clear indication of what the  
11 LEDPA is. So I would agree that that information would be  
12 appropriate in the PMPD.

13 HEARING OFFICER RENAUD: We'll leave it there.  
14 Anybody else wish to weigh in on that piece?

15 MS. MILES: CURE has nothing on that.

16 HEARING OFFICER RENAUD: Thank you.

17 Let's turn to page 87 then. For condition soil  
18 and water two, staff is proposing adding some language to  
19 the effect that the condition limits the use of  
20 groundwater to a period of 36 months from the date of  
21 first construction related ground disturbance.

22 First of all, maybe staff, you could let us know  
23 what was your thinking behind adding that.

24 MR. BABULA: I believe it was to just clarify the  
25 limitation, because the language -- it goes with the next

1 one, soil and water nine, to indicate this limitation of  
2 time as opposed to just long term contract.

3 HEARING OFFICER RENAUD: Applicant wish to  
4 comment on that?

5 MS. GANNON: We agree with the six-month  
6 limitation. We thought that was clear from the PMPD. We  
7 don't have an objection to including it into this  
8 condition as well. But we thought it was clear from the  
9 way it was drafted.

10 HEARING OFFICER RENAUD: All right. Thank you.  
11 Things like that is just extra clarification that can't  
12 hurt.

13 CURE, anything to add on that?

14 MS. MILES: I think it definitely helps with  
15 clarity. However, of course, as we say in our comments,  
16 we believe that the Dan Boyer Well is not an appropriate  
17 water source for the project and unless it undergoes  
18 further study.

19 And in particular, there was one thing I was not  
20 able to add in my written comment due to time. And that's  
21 just as I stated earlier, you know, the supplemental staff  
22 assessments were not circulated for 30-day public review.  
23 And this is one of the changes that was added to the  
24 project after the original staff assessment was released.  
25 And so there's never been an opportunity for public

1 review, comment, and response on this on this particular  
2 project change which I think has been the topic of much  
3 concern among the local community.

4 MR. BABULA: I don't -- it's my understanding  
5 that a supplemental staff assessment doesn't have any  
6 particular 30-day, 15-day review. There's no review  
7 period necessary on a staff assessment.

8 HEARING OFFICER RENAUD: All right.

9 MS. MILES: But under CEQA, you have significant  
10 project changes either before the final -- before the  
11 draft EIR -- sorry. Before the project is approved or  
12 after the project is approved, you do have to recirculate  
13 that. So a public comment period where the public is  
14 entitled to comment and receive a response to comments.

15 HEARING OFFICER RENAUD: Could you site us to  
16 which section of the regulations you're referring to?

17 MS. MILES: Just if you give me a moment, I will  
18 be happy to do that.

19 HEARING OFFICER RENAUD: Because we're aware of  
20 this type of comment period for proposed decisions,  
21 proposed rulings, that sort of thing.

22 MS. GANNON: I think what Ms. Miles is referring  
23 to is the need to do a recirculation of the draft very  
24 significant changes that indicate a new potentially impact  
25 that hasn't been identified. And our view as was

1 articulated in the PMPD, there was no new significant  
2 impacts. Your regulations anticipate that you're supposed  
3 to be making determinations and there would be revisions  
4 in response to the discussion. We think that was  
5 appropriate.

6 MS. MILES: That is the provision, is the  
7 requirement for re-circulation of any draft EIR or final  
8 EIR. And we --

9 HEARING OFFICER RENAUD: If it finds --

10 MS. MILES: All right. Or significant new  
11 mitigation that's required which would of course be  
12 because of the significant new impact. So we put evidence  
13 into the record that we believe there is a significant  
14 impact and staff also came to that conclusion.

15 HEARING OFFICER RENAUD: All right. Thank you.

16 While we are on Soil and Water 2, CURE's position  
17 is that that entire Condition of Certification should be  
18 deleted. Does anybody wish to add to that? I think we  
19 understand CURE's position, and I would imagine applicant  
20 would not agree with that deletion.

21 MS. GANNON: That's correct.

22 HEARING OFFICER RENAUD: Staff, anything to add  
23 to that? No. All right.

24 The next Condition of Certification or item for  
25 soil and water would be Condition Soil and Water 9. Staff



1 is proposing the addition of language referencing a water  
2 purchase agreement or option between Imperial Valley Solar  
3 and Dan Boiler Water Company. What was the reason for  
4 that suggested change, staff?

5 MR. MEYER: Staff wanted a way of ensuring  
6 compliance with the -- what we believe to be the intent of  
7 the condition of limiting water -- the amount of water  
8 delivered just to give staff an ability to track it as the  
9 project goes forward.

10 HEARING OFFICER RENAUD: All right.

11 Applicant, would you wish to comment on this  
12 proposed change to Soil and Water 9?

13 MS. GANNON: It's similar to Soil and Water 2.  
14 We don't think it's necessary, but we don't object to it.

15 HEARING OFFICER RENAUD: All right. Okay. And  
16 CURE, with Soil and Water 9, is this proposed condition  
17 you're submitting a replacement for the one in the PMPD?

18 MS. MILES: That's correct.

19 HEARING OFFICER RENAUD: All right. Applicant,  
20 would you like to comment on that, please?

21 MS. GANNON: We do not believe that this  
22 condition as proposed by CURE is consistent with the  
23 analysis or the conclusions made by the Commission and we  
24 would urge you not to accept it.

25 HEARING OFFICER RENAUD: All right. What is the

1 reason CURE is proposing to add this language?

2 MS. MILES: Because we believe that the Seely  
3 wastewater treatment facility is the water supply that  
4 should be relied upon for the project and the project  
5 should not move for the until that facility is operational  
6 and providing water for the project.

7 HEARING OFFICER RENAUD: All right. Thank you.

8 Staff wish to comment on CURE's proposed Soil and  
9 Water 9?

10 MR. MEYER: No. Staff does not have a comment.

11 HEARING OFFICER RENAUD: Thank you. All right.  
12 And let's see. Applicant, I think you actually had  
13 something on this, too. Yes. Your Exhibit A for Soil and  
14 Water 9 proposes some changes to that language.

15 MS. GANNON: Yes. And this is consistent with  
16 what staff was proposing. Page 86 of their comments. And  
17 we think this was just -- the way that the sentence reads  
18 it's actually not clear the way it is in the PMPD. We  
19 think this is a clean up. We think it's the consistent  
20 with the intent. As we presented evidence during the  
21 hearing, our intent is to use the Seely water as soon as  
22 it's available regardless of whether the pipe has been  
23 constructed completely at this time because we would like  
24 to switch to using recycled water.

25 HEARING OFFICER RENAUD: Thank you. I think

1 we'll just take that as suggested clarification to the  
2 language that's in the PMPD.

3 MS. GANNON: That was the intent.

4 HEARING OFFICER RENAUD: All right. Thank you.

5 Now, staff, on your comments on page 88, you've  
6 proposed to strike the sentence that says that, "project  
7 shall not use recycled connection to a recycled water  
8 pipeline for project use." What's the reason for that  
9 proposal? While you're looking at that, maybe, applicant,  
10 do you have a comment on that?

11 MS. GANNON: I read this as they were trying to  
12 clarify the same condition we just talked about, because  
13 there was confusing language about how it would relate to  
14 the pipeline and whether the use of it had to be pushed  
15 off until the pipeline was completed. So I thought we  
16 were trying to clarify the same thing that we commented on  
17 in our Attachment A.

18 HEARING OFFICER RENAUD: So it pertains to nine?

19 MS. GANNON: I believe it does, doesn't it?

20 MR. MEYER: I think staff may have been unclear  
21 as far as what the Committee was trying to prohibit in  
22 that sentence and was concerned it would be quite a bit of  
23 connection to the future Seely plant.

24 MS. GANNON: It is in Soil and Water 9, yeah. On  
25 page 47 of the PMPD.

1 HEARING OFFICER RENAUD: Well, let's see. Okay.

2 I see. All right. So --

3 MS. GANNON: It's the same thing.

4 HEARING OFFICER RENAUD: Nobody has a problem  
5 with that? All right. Thank you.

6 Okay. Let's move on to -- I think the next topic  
7 would be cultural resources then. Staff's proposing a  
8 number of changes to Condition of Certification in the  
9 cultural resources section. We'll just take them number  
10 by number.

11 Applicant, do you wish to comment on the cultural  
12 one?

13 MS. GANNON: Maybe if we do talk about these more  
14 collectively, because I have to say I'm confused by these  
15 proposed revisions. I don't understand what the intent of  
16 it is. And we could talk to the specific language of it,  
17 but I was having a hard time formulating a response  
18 because I was confused by the intent.

19 MR. MEYER: I can give sort of an idea. The  
20 general intent was since under our -- the authority of the  
21 Energy Commission, we can enforce in the compliance unit  
22 compliance with the conditions on the applicant but not on  
23 third parties. So the intent of the re-writes was to make  
24 sure that since they were written by the BLM, who has a  
25 different jurisdiction, different methodology how they

1 write their conditions, we were trying to re-write them in  
2 a format that was enforceable by the Energy Commission to  
3 place the restrictions or any conditions on the applicant  
4 or project owner/operator rather than on a third party.  
5 And that was the basic intent of trying to re-write it.  
6 And since it was starting with the condition that wasn't  
7 an Energy Commission condition, that's why it got a little  
8 difficult for us to do the re-write.

9           MR. BABULA: Yeah. What I was trying to do was  
10 to take these lines that are originally from an NPIS and  
11 make them so that compliance would know what to do with  
12 them and they were appropriately targeted on what the  
13 applicant is to do and -- because occasionally there would  
14 be -- because BLM when they wrote it said we'll do this.  
15 BLM will be doing this. But we really can't have a  
16 direction that directs beyond to do anything. So I tried  
17 to make those changes and clear them up.

18           And I use some of the prior ones that we'd had in  
19 other projects like in Genesis, Calico, so forth. So I  
20 tried to keep the intent of what the main goal of each of  
21 the conditions was from the FEIS so there's consistency.  
22 But just to modify it a bit so it fit more into our  
23 format. So that was the main goal.

24           And with the last one, twelve, was just to  
25 clarify that a PA would hold if there's conflicts with the

1 one through 11, just to make sure that it was clear that  
2 if there's conflicts in the conditions one through eleven  
3 with the PA, then the PA would be the document to use. So  
4 that was the main goal.

5 MR. MEYER: Staff was intent was to not change  
6 the content of the conditions but make them easily  
7 enforceable by the Energy Commission time frames and  
8 things of that nature. And as Jared says, to make sure  
9 that staff's major concern originally that they don't run  
10 into conflict with the PA. And it was clear that that  
11 sort of true up condition that was at the end was clear to  
12 everyone that it applied to every condition that we  
13 wouldn't have to come back for any amendments.

14 MR. BABULA: The other problem I had was on the  
15 verifications. A lot of times, the FEIS versions didn't  
16 really have real verifications that normally our  
17 compliance folks would look at and say, okay, that's a  
18 verification which we can see that condition as being met.  
19 Sometimes it just said something will happen. There was  
20 no time lines. It was unclear. So I tried to put in some  
21 sort of trigger so that there would be like based on  
22 either starter construction or some sort of time period,  
23 but something that would fit with the condition.

24 HEARING OFFICER RENAUD: So the proposed  
25 deletions of the second -- second and third paragraphs of

1 cultural have CUL 1 would be in difference to the PA,  
2 basically? Is that the idea of that? That the PA will  
3 cover those details?

4 MR. BABULA: Right. Because the -- it says  
5 cultural resource (inaudible) shall be conducted by  
6 professionals to meeting these standards, but that would  
7 be something that I think was in other conditions or it  
8 would be deference to the PA because there would be some  
9 standards about who's doing the data collection and that  
10 they're competent.

11 HEARING OFFICER RENAUD: The PA --

12 MS. GANNON: I think it's fine to leave it in  
13 there. I think it's a pretty standard condition. But I  
14 don't have any objection to taking it out.

15 HEARING OFFICER RENAUD: All right.

16 MR. BABULA: Like, for example, preliminary  
17 determinations of national registry -- this is the second  
18 paragraph that we had taken out -- will be made by the  
19 BLM. So that could be deemed sort of the Energy  
20 Commission as saying the BLM will be doing this. And I  
21 just tried to anticipate compliance folks telling me,  
22 "Where did that come from?"

23 MS. GANNON: I think that's just stating sort of  
24 what the legal requirement is. They aren't the ones that  
25 make the determination. It's not that they have a

1 requirement under this Conditions of Certification. It  
2 was just -- again I don't have any problem -- I think that  
3 is stated in the analysis. So I don't think that is a  
4 problem. It doesn't need to be in the conditions.

5 HEARING OFFICER RENAUD: Okay. Thank you. I  
6 think we get the gist of that.

7 Cultural 2, again, staff is proposing deletion of  
8 some language. Would basically the same comments you've  
9 made, Jared, apply to these as well?

10 MR. BABULA: Correct.

11 HEARING OFFICER RENAUD: Applicant wish to  
12 comment on the proposed changes to CUL 2?

13 MS. GANNON: We have no objection.

14 HEARING OFFICER RENAUD: Any party wish to weigh  
15 in on CUL 1 or KUL 2? All right.

16 Now, I think we're going to move on to CUL 5  
17 unless anybody wishes to stop and look at CUL 3 or CUL 4.

18 Number 5, in the verification, staff is adding a  
19 prior to construction proviso. Maybe staff can enlighten  
20 us on that. Page 95.

21 MR. MEYER: Yeah, that's actually already been  
22 addressed through our compliance, but that's a standard  
23 condition with the Energy Commission that prior to start  
24 of construction we want to make sure that the people that  
25 are doing the actual monitoring are qualified to protect



1 the resource. So and I believe --

2 MS. GANNON: I believe this has been submitted  
3 and --

4 MR. MEYER: Right. It's been submitted and  
5 reviewed by staff.

6 HEARING OFFICER RENAUD: So applicant's okay with  
7 this?

8 MS. GANNON: Yes.

9 HEARING OFFICER RENAUD: Any party wish to  
10 comment on that, CUL 5?

11 I'm going to skip 6 and 7. Again, these look  
12 like clarifications, unless anybody wishes to comment on  
13 them?

14 MR. BABULA: A quick thing on it. Applicant  
15 is -- they're not (inaudible) now. By the time they're  
16 doing these conditions --

17 HEARING OFFICER RENAUD: Yes. Yes. I think  
18 that's a good suggestion is that when we're referencing to  
19 the applicant in the conditions should be changed to  
20 project owner because you won't be the applicant anymore.

21 All right. I think we've pretty much gotten the  
22 cultural issues then.

23 Anybody wish to add anything further on cultural  
24 before we move on?

25 Hearing none, let's move to land use. All right.

1 In the discussion -- well, staff has suggested some  
2 comments, some changes on land use and looking at page 102  
3 of staff comments suggested language to be added or to  
4 replace a reference on page 2 of the land use section. I  
5 believe again this is a clarification. Any party wish to  
6 say anything about that?

7 MS. GANNON: No objection.

8 HEARING OFFICER RENAUD: All right.

9 And then moving to page 5 and -- pages 5 and 6 of  
10 the land use section, there is language in there  
11 concerning PMMP. And staff is telling us that we should  
12 delete that language. Anybody wish to comment on that? I  
13 think staff is suggesting there is an error there. And I  
14 think what we'll do is just go check ourselves and see if  
15 we agree with you. And if we do, we'll make the change.  
16 All right.

17 MS. GANNON: I think we believe that staff is  
18 correct.

19 HEARING OFFICER RENAUD: All right. Thank you.

20 Any party wish to add further on that? Now on  
21 page 103 of staff's comments, referring to the land use  
22 section at page 10, staff is asking that we add a  
23 section -- a sentence stating therefore staff concluded  
24 that the proposed project does not qualify as a similar  
25 use that can be conditionally permitted in the S2 zone.

1 What is the reason for that suggestion of staff, please?

2 MR. MEYER: Staff was trying to be consistent  
3 with our previous testimony and information we placed in  
4 the record based on information we received from Imperial  
5 County. So this shouldn't be any new information.

6 HEARING OFFICER RENAUD: All right.

7 MS. GANNON: No, we agree with it. We think that  
8 there was sudden debate about this within the county  
9 originally. And then they came down saying they couldn't  
10 make a similar use finding. So we don't object to this  
11 clarification.

12 HEARING OFFICER RENAUD: Okay. Thank you. Any  
13 party wish to weigh in on that?

14 Okay. Now, finding of fact number two, the staff  
15 is suggesting a change to that. Staff, can you explain  
16 that one to us, please? Applicant, you wish to?

17 MS. GANNON: We think this is an accurate  
18 clarification of how the CDCA should work.

19 MR. MEYER: Staff has nothing to add other than  
20 the staff comment, which is clear in my understanding.

21 HEARING OFFICER RENAUD: All right. And again,  
22 is a suggested changes to finding number 5. Acceptable to  
23 applicant?

24 MS. GANNON: It is.

25 HEARING OFFICER RENAUD: It appears to be a

1 correct change.

2           Number 6, basically a re-write of the sentence  
3 for clarity. Does this look good to the applicant?

4           MS. GANNON: I think they're clarifying the  
5 agricultural lands issue, which I think is fine.

6           HEARING OFFICER RENAUD: Okay. Good, staff. And  
7 deletion of 7, can you tell us what your reasoning is on  
8 that one?

9           MR. MEYER: The original language I think that's  
10 based on was we were talking about impacts on the  
11 transmission line, not the construction lay down area.

12           HEARING OFFICER RENAUD: I think that's a good  
13 clarification. Applicant?

14           MS. GANNON: We agree.

15           HEARING OFFICER RENAUD: All right. Let's talk a  
16 little about finding 13. What is the reasoning behind  
17 staff's suggestion that the solar power plant is not a  
18 conditionally permitted use? That is, it would need a  
19 conditional use permit, but factually we know one has not  
20 been issued but it could be if the jurisdiction were so  
21 inclined. Did you read it that way or did you read it as  
22 the Committee declaring that the county has found it to be  
23 conditionally permitted and issue a CUP.

24           MR. MEYER: I think staff's reading was that the  
25 S2 zone does not -- that the power plant is not one of the

1 conditional uses within an S2 zone.

2 HEARING OFFICER RENAUD: Which leads us to the  
3 finding of inconsistency is the applicant --

4 MS. GANNON: This goes to the same issue we were  
5 just discussing that there are some power generating  
6 facilities that are allowed in the zone as a conditional  
7 use. There was some debate about whether the scale of a  
8 project could be allowed in the zoning. I think we agree  
9 with staff that because we can't get a confirmation it's  
10 allowed, it's probably appropriate to say that it's not,  
11 and make a finding of inconsistency.

12 HEARING OFFICER RENAUD: I think what's confusing  
13 here is that the term outside the project a solar power  
14 plant is a conditional -- if it was a one megawatt, the  
15 county might have found it consistent.

16 MS. GANNON: They have done that on some other  
17 projects. So there was some confusion. But we think with  
18 the land use LORS oversight that is already included in  
19 the PMPD and for the same reasons it's probably --

20 HEARING OFFICER RENAUD: I think whether or not  
21 the statement is correct, I think fact is it's probably  
22 not necessary to say this because we are finding an  
23 override -- we're in an override situation anyway.

24 MR. MEYER: And staff would agree.

25 HEARING OFFICER RENAUD: All right. Any party

1 wish to add to that, that discussion?

2 Staff is suggesting I think clarifying language  
3 for finding 14.

4 Applicant wish to comment on that?

5 MS. GANNON: We're fine with that.

6 HEARING OFFICER RENAUD: All right. Okay. Now,  
7 finding 20, staff is suggesting the deletion of a  
8 reference to direct or indirect land use impacts. I think  
9 what we're trying to do here is distinguish between  
10 directing cumulative. So in 21, we found there are  
11 cumulative impacts. But in 20, we're finding that there  
12 were no direct impacts. Did staff read it that way or  
13 were you reading it a different way? Perhaps you can  
14 enlighten us on that.

15 MR. MEYER: Staff was reading it as the -- as  
16 typically indirect or cumulative impacts are considered  
17 indirect and from staff's understanding. So that was our  
18 reading of it.

19 HEARING OFFICER RENAUD: All right. Applicant  
20 wish to --

21 MS. GANNON: We think the PMPD is fine as it is.

22 HEARING OFFICER RENAUD: All right. Well, we'll  
23 go back and take another look at that one. Thank you.

24 Okay. Now staff on conclusion of law 3, you  
25 suggested deleting the reference to NEPA. Can you

1 enlighten us on that?

2           MR. BABULA: Yeah. It's the -- being in  
3 compliance with NEPA would be the BLM doing their  
4 appropriate procedures so that they followed NEPA and they  
5 have adequate notice and they have basis for their  
6 decision. So we felt that any finding -- it's not the  
7 project's confirming it. It would be the BLM and the Feds  
8 are comporting with what NEPA requires. So we thought it  
9 would be appropriate to take that out, because the  
10 Commission doesn't need to make a finding that the BLM  
11 follow NEPA.

12           HEARING OFFICER RENAUD: I understand that. I  
13 think we were just trying to indicate that we considered  
14 NEPA.

15           Applicant, do you wish to add to that?

16           MS. GANNON: We think that the document in  
17 several places refers to the fact that NEPA was part of  
18 the process. We don't have any objection to it either  
19 way.

20           HEARING OFFICER RENAUD: All right. Parties?  
21 No.

22           Anything further from any party on the topic of  
23 land use? No.

24           Okay. Well, let's move on to traffic and  
25 transportation. I think staff is just suggesting a

1 clarification to language on page 5. You were trying to  
2 avoid any possible inference that staff prepared its own  
3 cumulative impact analysis regarding traffic

4 MR. MEYER: That is correct.

5 HEARING OFFICER RENAUD: Okay. That makes sense.  
6 Applicant?

7 MS. GANNON: No.

8 HEARING OFFICER RENAUD: Well then, let's move on  
9 to visual resources. The staff suggestion is to remove a  
10 portion of Vis 6, Condition of Certification 6 regarding  
11 the metal diffusion shield. Staff, you wish to comment on  
12 that?

13 MR. MEYER: Just very simply, we believe that  
14 during the evidentiary process that the staff and parties  
15 reached an agreement and there was a stipulated removal.  
16 So if the applicant might be able to clarify. But that's  
17 our understanding.

18 MS. GANNON: We do. And we thank you for  
19 catching it.

20 HEARING OFFICER RENAUD: So we'll just take out  
21 the reference to Item 2.

22 MS. GANNON: Thank you a lot.

23 HEARING OFFICER RENAUD: I recall that as well.  
24 So thank you for pointing that out.

25 All right. Before we move on to biological



1 resources, go back and clean up one thing. In applicant's  
2 comments, you've suggest the addition of a Condition of  
3 Certification called REL 1, which I take it refers to  
4 reliability.

5 MS. GANNON: That's correct.

6 HEARING OFFICER RENAUD: What is your basis for  
7 that?

8 MS. GANNON: Our basis for that is that that was  
9 something that staff had requested and we had agreed to.  
10 We don't -- if the Commission decides not to include it,  
11 we have no objection. But we stipulated to it, so we have  
12 no problem with it.

13 HEARING OFFICER RENAUD: A stipulation is a  
14 stipulation is correct.

15 MR. MEYER: That is correct. Staff felt that if  
16 the Committee decided not to put the condition in, staff  
17 could work with it. But we did agree with the applicant  
18 was a good condition.

19 HEARING OFFICER RENAUD: Any party wish to weigh  
20 in on that? All right.

21 MR. MEYER: Hearing Officer Renaud, something I  
22 forgot to mention earlier, more of a global -- I think  
23 just an air quality -- we just noticed there was a few  
24 places that there is in consistency in the project name  
25 between the Imperial, Imperial Valley, Imperial Valley

1 Solar, or IVS. And we just recommendation since some of  
2 the other projects we noticed some our cumulative analysis  
3 are popping up in the area that if we just use the IVS, it  
4 might eliminate conclusion with other projects, other  
5 renewables.

6 HEARING OFFICER RENAUD: Would that just be in  
7 the air quality section then or --

8 MR. MEYER: That is where I noticed it. And  
9 anyone else can add to that. But I was thinking just as a  
10 global change.

11 HEARING OFFICER RENAUD: Anybody wish to comment  
12 on that?

13 MS. GANNON: Makes sense.

14 HEARING OFFICER RENAUD: Very good. Let's see  
15 here. I think that's every thing other than biological  
16 resources. Any party wish to throw anything else in here  
17 before we move to biological resources? Anybody?

18 All right. Staff has suggested a lot of changes  
19 to biological resources. Let me turn to those. Thank  
20 you. Starts on page 12.

21 Applicant, have you had a chance to review the  
22 proposed changes from staff?

23 MS. GANNON: We have.

24 HEARING OFFICER RENAUD: Okay. And CURE, you  
25 have, too, I take it and you've submitted some proposed

1 changes as well.

2 MS. MILES: That's correct.

3 HEARING OFFICER RENAUD: And we thank you for  
4 those. Applicant has as well.

5 All right. With reference to the speed limit,  
6 the PMPD lowered the 25 to 20 and that reflected a  
7 judgment of the Committee. You understand that the staff  
8 and the applicant had agreed to 25. But your suggestion  
9 is simply that was informing the Committee as far as  
10 you're concerned you had agreed to 25 and you're making  
11 sure we know that.

12 MR. MEYER: That is correct. Since we did  
13 stipulate to that, we felt it was fair to the applicant  
14 just to make that clear.

15 HEARING OFFICER RENAUD: But you understand it's  
16 still within the Committee's prerogative to make a  
17 different finding?

18 MS. GANNON: And we had just assumed that you had  
19 made a different finding.

20 HEARING OFFICER RENAUD: And staff does not  
21 disagree. Is applicant -- I'm sorry. Any of the other  
22 parties wish to bring up anything on the speed limit  
23 issue?

24 MS. GANNON: The only thing that comes in later  
25 on one of the comments on it, we had stimulated to

1 language about doing a study and if it was shown that the  
2 higher speed limits were causing a problem in that  
3 particular area that it would be re-visited. We did  
4 include that language in there. We can get to it when we  
5 get to that page. Staff was suggesting putting it in and  
6 I think there was just some confusion about where it was  
7 located in the PMPD. So I think that it -- that the PMPD  
8 was consistent with everything else we had agreed to  
9 September 20 instead of 25.

10 HEARING OFFICER RENAUD: Okay.

11 MR. GALLAGHER: Ella, you're suggesting that I  
12 think that was suggesting one of the reason the Committee  
13 might consider going back the 25 is that Bio 9 requires  
14 the before and after study some involves some evaluation  
15 of impacts in the flat tail and adoption of the additional  
16 adaptive management strategies which could result in  
17 lowering the speed limit. At that point, it was found  
18 that the higher speed limit actually made a difference.

19 HEARING OFFICER RENAUD: Okay. We'll address  
20 nine when we get there. But I understand what you're  
21 saying.

22 All right. Staff is suggesting with reference to  
23 pages 34 and 35 of the biological resource section of the  
24 PMPD the addition of the word operational and noise  
25 impacts to wildlife movement through the project site.

1 Does applicant have any comment on that?

2 MS. GANNON: We think that the PMPD's analysis on  
3 these issues was correct. We don't think these changes  
4 are necessary.

5 HEARING OFFICER RENAUD: Okay. Staff, you wish  
6 to say anything about that?

7 MS. NISHIDA: Yes. Joy Nishida, Biological  
8 Resources.

9 HEARING OFFICER RENAUD: Thank you for joining  
10 us. Appreciate it.

11 MS. NISHIDA: Energy Commission. We had  
12 determined that operation noise would not be mitigated and  
13 would be considered a consider unmitigable impact. So  
14 therefore, we are (inaudible) here operation notice impact  
15 of wildlife movement through project site would not be in  
16 audible. And part of this is that that the operational  
17 noise -- staff concluded it was going to be very noisy and  
18 essentially would not be very hospitable habitat for the  
19 animals. Therefore, during operations, we probably would  
20 not see very much movement through the site while these  
21 noisy conditions were taking place.

22 HEARING OFFICER RENAUD: Okay. Applicant,  
23 anything to add to that?

24 MS. GANNON: Again, we think this was just a  
25 difference of opinion, that there was evidence on both

1 sides of the issue and we assume that the Committee made a  
2 determination.

3 HEARING OFFICER RENAUD: Thank you. Okay, CURE,  
4 anything to add to that?

5 MS. MILES: We support the staff as analysis on  
6 this matter.

7 HEARING OFFICER RENAUD: All right. Any other  
8 party wish to add to that? All right. Now, turning to  
9 staff's comments on pages 36 and 37 of the biological  
10 resources section, staff proposed an addition of a couple  
11 of paragraphs. And this really pertains to the  
12 enhancement and rehabilitation of Carrizo Creek and Marsh.  
13 It appears to me staff is asking the Committee to insert  
14 language that would reference staff's view of the matter  
15 but not -- but it isn't -- you're not correcting anything  
16 basically. You're asking that we acknowledge staff's  
17 information. After I reading that correctly?

18 MS. NISHIDA: Correct. And also that you  
19 definitely consider the original mitigation measure for  
20 bio 17.

21 HEARING OFFICER RENAUD: Applicant wish to --

22 MS. GANNON: We strongly object to the inclusion  
23 of this language and we believe that the PMPD had the  
24 correct analysis. There was sufficient evidence in the  
25 record to support that determination. And we hope that

1 the condition will not be changed.

2 HEARING OFFICER RENAUD: All right. Thank you.

3 And CURE, I can tell from your comments that  
4 you're on staff's side with this.

5 MS. MILES: Yes. And in addition, we submitted  
6 expert testimony at the evidentiary hearing of Dr. Vernon  
7 Blake. But this is not an adequate mitigation measure.  
8 And we also object to this mitigation of using Carrizo  
9 Creek instead of staff's suggested Condition of  
10 Certification Bio 17 because this mitigation of removal of  
11 tamarisk from Carrizo Creek was submitted two days before  
12 evidentiary hearing. And there was not adequate time for  
13 staff or parties to review this new mitigation and view  
14 the necessary discovery and evaluate this proposal and the  
15 problem was not given an opportunity to comment on this  
16 proposal. And we are talking about impacts to federally  
17 endangered species and also state listed species, bighorn  
18 sheep.

19 So we strongly urge the Committee to adopt our  
20 proposal to use staff's original mitigation.

21 HEARING OFFICER RENAUD: Okay. Thank you.

22 Any other party wish to comment on that?

23 All right. Let's move on then to staff's next  
24 suggestion, which is on page 38, the addition of some  
25 language regarding the plants. And particularly the

1 outside mitigation -- the mitigation for off site --  
2 sorry -- the off site acquisition of habitat. Staff,  
3 perhaps you can summarize your thinking on this.

4 MS. NISHIDA: There was some confusion at some  
5 point regarding what -- which species constituted a CMDD  
6 rank one versus a rank two. So part of it was to clarify  
7 this. Also, we -- staff feels that the along project  
8 linears these special status plant species can be avoided.  
9 Can be avoided. So that's part of the reasoning for  
10 inserting some of this language.

11 HEARING OFFICER RENAUD: All right. Does  
12 applicant object to it?

13 MS. GANNON: We had agreed to avoidance on the  
14 linears. Where we would like to have clarification is  
15 that's just for the project linears, not just all off site  
16 features. There are lay down areas which are considered  
17 off site features and necessarily we did not agree to or  
18 stipulate the avoidance in those lay down areas.

19 HEARING OFFICER RENAUD: There is reference to  
20 the lay down areas in the sixth line of your suggested  
21 language. Do you agree with what applicant is saying  
22 about that?

23 MS. NISHIDA: No.

24 HEARING OFFICER RENAUD: Because the added  
25 language appears to me to summarize a so-called conceptual



1 agreement between applicant and staff. Was there such an  
2 agreement of any kind --

3 MS. GANNON: We never agreed to construction of  
4 lay down areas.

5 HEARING OFFICER RENAUD: And what's staff's  
6 position on that? Was there any agreement to the lay down  
7 areas?

8 MS. NISHIDA: Not that I recall.

9 HEARING OFFICER RENAUD: Mr. Meyer, anything to  
10 add to that?

11 MR. MEYER: No. I do not recall the agreement  
12 expanding to the construction lay down areas. I know that  
13 we discussed in great detail the project linears and  
14 avoidance of.

15 HEARING OFFICER RENAUD: But you're not sure  
16 about the lay down?

17 MR. MEYER: I do not recall the discussion going  
18 into the lay down areas. And it's not -- and correct me  
19 if I'm wrong. But I don't believe that we in this  
20 agreement that's talked about here, I don't think we  
21 talked about the lay down areas.

22 HEARING OFFICER RENAUD: And that agreement was  
23 reduced to writing I take it.

24 MS. GANNON: No. There was conceptual agreement.  
25 We proposed conditions based upon that conceptual

1 agreement. Staff proposed conditions based on this  
2 conceptual agreement. There was some difference in those  
3 proposals which demonstrate that conceptually we may not  
4 have been exactly in the same place.

5 HEARING OFFICER RENAUD: What about the lay down  
6 areas? Is that a problem?

7 MS. GANNON: It is a problem. The reason we are  
8 able to stipulate for the off site linears is because you  
9 have a lot of flexibility and placement of the near  
10 features. A lay down area is very different.

11 HEARING OFFICER RENAUD: All right. Well, we'll  
12 take that back to consider. We appreciate your comments.

13 Any of the parties wish to add to that? Any  
14 other party? Okay. Let's move on then to staff's next  
15 comment, which is page 42 to 43. We're suggesting the  
16 addition of the wording 881 acres of compensation land.  
17 Does that accurately reflect an agreement applicant had?

18 MS. GANNON: Never.

19 HEARING OFFICER RENAUD: All right. Staff, do  
20 you wish to comment on it?

21 MS. NISHIDA: We did not agree on the conditions  
22 bio 17.

23 HEARING OFFICER RENAUD: All right. So again,  
24 this is going to be something the Committee will need to  
25 just recheck, but basically you're in disagreement it was

1 something we adjudicated?

2 MS. GANNON: Correct.

3 MS. MILES: I have a comment. I believe CURE's  
4 witness Dr. Velicus (phonetic) is quoted in the PMPD as  
5 stating that the weight of the evidence showed that the  
6 use of the site is transitory at most. And I just wanted  
7 to clarify for the record this he actually was stating  
8 that transitory movements are actually very essential part  
9 of the range, expansion, for example, and survival of this  
10 endangered species. So they need to be able to move from  
11 one area to another. And so I just felt this was a  
12 mischaracterization of his conclusion.

13 Additionally, I just CURE definitely supports  
14 staff's analysis. We feel that the numbers provided by  
15 the CRAM assessment were not reliable data and we  
16 submitted expert testimony to that effect at the hearings.

17 HEARING OFFICER RENAUD: So you're looking at  
18 page 42 then I take it?

19 MS. MILES: So this is PMPD pages 42 to 43 is  
20 where it's Dr. Blake is referred to.

21 HEARING OFFICER RENAUD: As agreeing. Yeah,  
22 we'll go back and check the record on that and if a  
23 correction is warranted, we'll make it.

24 MS. MILES: Thank you.

25 HEARING OFFICER RENAUD: Thank you.

1           Let's turn then to page 44. CURE, if I ever skip  
2 over one of yours, let me know. I'm using staff's page  
3 references. Yours are sometimes in the middle of the text  
4 and I might miss one. So please let me know if I do.

5           On page 44, this is getting back to the other  
6 issue of basically the extent to which this site is  
7 autopsied by the FTHL. Again, it appears to me that  
8 staff's proposal here is suggested -- is basically arguing  
9 with the Committee's finding. Reiterating staff's  
10 information which is in the evidence.

11           MS. NISHIDA: Yes.

12           HEARING OFFICER RENAUD: I think we could -- we  
13 could acknowledge staff's position on this at least  
14 without necessarily agreeing with it. And the Committee  
15 may in fact wish to add some language simply setting forth  
16 staff's position. But at any rate, this is an issue that  
17 was adjudicated and we may flush it out a little bit. We  
18 will certainly take a look at it. We thank you.

19           Applicant?

20           MS. GANNON: We agree with that analysis, your  
21 analysis.

22           HEARING OFFICER RENAUD: The Committee's  
23 analysis. I do want to ask staff a question, though.  
24 You've suggested that -- staff's suggested that because  
25 the FTHL is a candidate species for federal listing, the

1 loss would be an unmitigable adverse impact. Does the  
2 candidacy effect your thinking on that?

3 MS. NISHIDA: Definitely it does add weight to  
4 our conclusions.

5 HEARING OFFICER RENAUD: Why is that?

6 MS. NISHIDA: Well, because of the range -- the  
7 50 percent reduction of range for the species and this --  
8 and also correspondingly, the numbers of Flat-Tailed  
9 Horned Lizard which population numbers have gone down due  
10 to this developed -- due to the development of the range.  
11 Their numbers are going to be compromised. Putting in a  
12 6,000 acre plus site is not going to help them.

13 MR. MEYER: If I can add a little bit to that.

14 HEARING OFFICER RENAUD: Yes, please.

15 MR. MEYER: It started very early on in our  
16 process when we started reading the case going back and  
17 forth on the listing of the Flat-Tailed Horned Lizard  
18 and the direction from the court of appeals. We started  
19 having discussions with the other resource agencies  
20 including the BLM and the BLM's biologist when was an  
21 expert on this species. And in those meetings, we the  
22 agencies -- we've shared this with the applicant that we  
23 felt that the most responsible way was the look at the  
24 species as likely being listed and to be conservative in  
25 our treatment of this species. So we did not come out

1 with recommendations for decision that would within  
2 six months of the decision be not nearly as protective as  
3 the new regulations would be, so since we knew these  
4 things were coming up.

5 MS. GANNON: If we could respond to that, we  
6 agree with approaching it. It's a level of treatment that  
7 you would with a listed species federally listed species  
8 and we've never on thing to that. We're doing a  
9 consultation for the species with the U.S. Fish and  
10 Wildlife Service. What we have objected to, what we  
11 discuss in our briefs is this new level of significance  
12 for based on some number of take of a listed species.  
13 We've never seen that before. I don't understand how you  
14 reconcile that with the general approach to how you design  
15 level of significance under CEQA. We've discussed this in  
16 our briefs for the legal reasoning, but we don't think  
17 this is appropriate. So that's what we would object to  
18 having the sentence included.

19 HEARING OFFICER RENAUD: Okay. Thank you. CURE,  
20 you wish to add to that?

21 MS. MILES: Question. I'd like to add not only  
22 is the species listed because it's losing its range,  
23 but -- and it's declining in numbers but because the range  
24 wide management strategy has not shown to be effective in  
25 recovering the species. And so because the primary

1 mitigation underlying this project approval would be based  
2 on the range wide management strategy, we don't feel that  
3 that is going to be a full mitigation or effective  
4 mitigation necessarily. And we reviewed the annual  
5 reports that were coming out regarding the implementation  
6 of the range wide management strategy and found that there  
7 isn't evidence that's been effective. And so we believe  
8 that there is an unmitigated significant adverse impact to  
9 the species, and that would (inaudible) mitigation that is  
10 a part of this proposal.

11 HEARING OFFICER RENAUD: Okay. Thank you. Any  
12 other party wish to comment on this?

13 All right. Let's see here. Moving to staff's  
14 comments on page 48, you were asking that we put in the  
15 881 acres again. But this is again a re-statement of  
16 staff's position. Okay. Now, I see on page 49 comment is  
17 the addition of Wiggins's Croton to the finding of fact  
18 number six appears to be a correction. Is that  
19 acceptable?

20 MS. GANNON: That's acceptable.

21 MS. NISHIDA: Yes. You skipped over 44, 45, 46.

22 HEARING OFFICER RENAUD: I did. I'm sorry about  
23 that. Thanks for pointing that out. You're right. Okay.

24 Applicant, would you wish to comment on that?

25 MS. GANNON: The comment on page 44, we think

1 that was a typo. So that's -- we have no objection to  
2 correcting that.

3 HEARING OFFICER RENAUD: 45 to 46?

4 MS. GANNON: 45 to 46, we also propose language  
5 to allow for the ground truthing of the phasing numbers  
6 and the mitigation numbers. The numbers that were  
7 included in the staff's assessment and the supplemental  
8 staff assessment were based on the AFC numbers and as well  
9 as the calculation that have been provided by the BLM.  
10 They were listed as approximation. So we had suggested  
11 putting a foot number in to the Flat-Tailed Horned Lizard  
12 chart which says these numbers will be based upon the  
13 legal descriptions of the areas and will be ground truth.  
14 We think that makes more sense than having the Committee  
15 try to haggle with whether it should be 6152.8 or whatever  
16 the specific number is, we think we can do it through a  
17 ground truthing.

18 HEARING OFFICER RENAUD: Staff, you wish to  
19 respond to that?

20 MS. NISHIDA: In the conditions, we do expect  
21 some sort of ground truthing or actually aerial using the  
22 use of aerial photography afterwards to determine the  
23 final acreage impacts. So what I'm doing here is  
24 providing an estimate based on the applicant's latest  
25 acreage calculations.



1 HEARING OFFICER RENAUD: Applicant, your  
2 response?

3 MS. GANNON: We think the (inaudible) that's  
4 included in the PMPD is accurate enough. I mean, we're  
5 close enough we had some confusion about the way the staff  
6 was calculating the off site impacts and what was included  
7 in that. Again, we thought the PMPD's numbers that have  
8 been consistently used it would be ground truth. And  
9 what's important is we've agreed on the ratio of  
10 mitigation. We've agreed on phasing and suggested some  
11 different types of phasing. But if you stick with what  
12 was in the PMPD, there would be a phasing process that's  
13 set up and will be adequate to ensure the mitigation is  
14 provided based on the actual impacts.

15 HEARING OFFICER RENAUD: All right. Thank you.  
16 Other party wish to add to this discussion? All  
17 right. Well, we'll take a look at that and then see what  
18 we need to do, if anything.

19 Let's back at page -- staff's comment with  
20 respect to page 48, biological resources section adding  
21 the 881 acres. Again, I think that's we already said that  
22 is a re-statement of staff's position. Applicant would  
23 disagree with it.

24 MS. GANNON: Correct.

25 HEARING OFFICER RENAUD: We'll look at it.

1           Okay. Now we're moving on to some changes  
2 proposed by staff to the -- well, let's see. First look  
3 at page 54, conclusion of law --

4           MS. NISHIDA: Excuse me. Did you want to go over  
5 page 49, minor -- a minor change.

6           HEARING OFFICER RENAUD: No. I think that was  
7 grammatical typographical issue that we'll deal with.  
8 Thank you. Okay. Let's -- suggested change to  
9 condition -- conclusion of law number one, staff. What is  
10 your thinking behind that, please?

11           MS. NISHIDA: This is mainly for clarification  
12 here. It says that the -- impacts to Flat-Tailed Horned  
13 Lizard would not be mitigated below the level of  
14 significance and we wanted to clarify notice impacts. We  
15 want to include notice impacts and the impacts resulting  
16 from the loss of --

17           HEARING OFFICER RENAUD: Okay. Applicant?

18           MS. GANNON: We disagree with this proposed  
19 change. We believe as described in the PMPD that the  
20 significant and unavoidable impacts to the Flat-Tailed  
21 Horned Lizard are from project and cumulative loss of the  
22 habitat and not related to the loss of individuals and not  
23 related to noise. We don't think it's necessary.

24           HEARING OFFICER RENAUD: CURE, anything?

25           MS. MILES: We support staff's proposal.

1 HEARING OFFICER RENAUD: All right. Other  
2 parties, anything? Okay. Thank you.

3 Let's move on then to Conditions of  
4 Certification. First one would be Bio 6. Staff has  
5 proposed -- again, I see we have the speed limit issue,  
6 we've discussed that before. All right. Proposed an  
7 additional paragraph --

8 MS. GANNON: Again, I suggest you look down at  
9 the last paragraph before staff comment. That's the same  
10 paragraph. So it doesn't need to be added.

11 HEARING OFFICER RENAUD: Does staff agree with  
12 that? That's the way it looks to me, too.

13 MS. NISHIDA: We agree.

14 HEARING OFFICER RENAUD: All right. Then on Bio,  
15 more speed limit. We'll deal with that.

16 Bio 10, looks like staff and applicant have some  
17 proposals here. I was turning to page 70. Okay.

18 Applicant, you've proposed -- you've got -- I guess  
19 proposing an addition of a footnote to the table on page  
20 77 to 78.

21 MS. GANNON: Correct. And this is going to the  
22 issue we were discussing about clarifying how the numbers  
23 will actually be ground truth and what will be the basis  
24 for the mitigation payments.

25 HEARING OFFICER RENAUD: Okay. Does staff have

1 anything to add to that?

2 MS. NISHIDA: Yes. We would like to see the  
3 payments -- the payments are supposed to be phased in so  
4 they are the securities are even prior to any sort of  
5 disturbance, pre-project or project disturbance. That's  
6 why we have this. This is an estimate. But we need to  
7 put -- have the applicant put up some securities up front  
8 initially before any sort of disturbance, not afterwards.

9 MS. GANNON: But the disturbance numbers would  
10 not be the basis of the mitigation as we are proposing.  
11 What we're saying is that we will be getting a legal right  
12 and legal access to a certain acreage of land both on the  
13 BLM and on private lands that would be the basis for these  
14 calculations which are acreage based. So it's not saying  
15 we have proposed to have a mitigation paid before ground  
16 disturbance. We are saying the numbers can be calculated  
17 and based upon the actual areas that we have the legal  
18 right to as part of the project size.

19 MS. GANNON: And that's correct. And this is  
20 what I based my estimate on.

21 HEARING OFFICER RENAUD: So you're in agreement  
22 about this language proposed by applicant?

23 MS. NISHIDA: Not necessarily. I still would  
24 like to see -- we still need to have some sort of dollar  
25 amount. And what I'm doing is basing this on the

1 estimated Flat-Tailed Horned Lizard habitat being impacted  
2 by each phase.

3 HEARING OFFICER RENAUD: So you want to have some  
4 firm dollar amounts in the condition, whereas, applicant's  
5 position is that we all have to determine those once we  
6 know.

7 MS. GANNON: If it has to be paid before ground  
8 disturbance but the actual number and the actual payment  
9 should be based on the size of the area as a project,  
10 that's what we are mitigating for. We think it's fairly  
11 simple.

12 MS. NISHIDA: And this is -- my calculations are  
13 based on the size of the area that you have supplied  
14 staff.

15 MS. GANNON: We're just saying there should be a  
16 footnote that says it should be ground truth.

17 HEARING OFFICER RENAUD: All right. I think we  
18 understand your position and we'll take a look at that.  
19 Does any other party wish to add to that discussion?

20 All right. Also on Bio 10, staff has got a  
21 table -- let's see here. Would this be a new table you're  
22 proposing we add?

23 MS. NISHIDA: Yes. Based on applicant phasing  
24 proposal.

25 HEARING OFFICER RENAUD: All right. Does

1 applicant wish to comment on the addition of that table  
2 proposed by staff?

3 MS. GANNON: The table is on which page? I'm  
4 lost in this.

5 HEARING OFFICER RENAUD: Page 26 of staff's  
6 comments. I guess it would be inserted into Bio 10.

7 MS. GANNON: I don't think we have a problem of  
8 inserting a table as long as again there is a footnote  
9 that says that the actuals will be reflective of the areas  
10 to be incorporated in each one of those phases.

11 MR. MEYER: Just a really quick question. Does  
12 the applicant anticipate those numbers changing  
13 significantly over what staff has at this point that we  
14 base these numbers on?

15 MS. GANNON: The numbers that we saw them I think  
16 there's some confusion about the off site features that  
17 we're included and where they are impacts to the water  
18 line. I think you didn't include it, but I'm not entirely  
19 clear. That's not impacting Flat-Tailed Horned Lizard  
20 habitat. It's just making sure these are corrected.  
21 These numbers do not match up with what our specific  
22 numbers that we have. So I think there is just going to  
23 have to be ground truthing.

24 HEARING OFFICER RENAUD: Your focus is based on  
25 the off site.

1 MS. GANNON: The off site, yes.

2 MS. NISHIDA: I did not include the off site  
3 water line along the Evan Hughes Highway. You only  
4 included what was on the project site, which was about,  
5 what, three acres.

6 MS. GANNON: For some reason, it's just not  
7 adding up. The last week I tried to figure this out and I  
8 haven't been able to figure out why your numbers and my  
9 numbers are not matching up. But I think this is  
10 something that can be easily fixed. We will have specific  
11 legal descriptions that set forth acreage. And we will  
12 have areas that we will have rights to do work in it for  
13 we're going to get limited noticed to proceed from the BLM  
14 that will be a legal description which will be just a  
15 factual number.

16 MR. BABULA: How close were the numbers?

17 MS. GANNON: Within a couple percent. But  
18 they're just not lining up. And I don't like when numbers  
19 don't line up.

20 MR. BABULA: How many significant figures then?

21 MS. GANNON: Well, when you start multiplying by  
22 things.

23 MR. MEYER: Just a brief question. Staff, on  
24 Page 25 of our comments, on Bio 10, we suggested some  
25 additions as well as a change in the acreage. Did the

1 Committee have any questions for staff on that?

2 HEARING OFFICER RENAUD: Well, let's see first if  
3 applicant has any comments on the proposed change to  
4 language, the open language in Bio 10.

5 MS. GANNON: We ask that be taken out in our  
6 earlier comments and briefs and for the same reasons we  
7 would ask it not be included here.

8 HEARING OFFICER RENAUD: And staff's reasoning  
9 for adding that?

10 MS. NISHIDA: Because the Committee had initially  
11 put down -- put on here the paragraph prior to Bio 10.  
12 The special status species habitat compensates for  
13 mitigation. It lists all these other special status  
14 species, the Veron elk, Golden Eagle, American badger,  
15 Desert Kit Fox. There's why it was reinserted into this  
16 paragraph.

17 HEARING OFFICER RENAUD: What about the acreage?

18 MS. NISHIDA: The acreage is --

19 HEARING OFFICER RENAUD: The change in acreage.  
20 This is -- I'm basing this on -- okay. Let's see. Yes.  
21 I'm basing it on the acreages provided by the applicant  
22 for the phasing.

23 HEARING OFFICER RENAUD: The applicant?

24 MS. GANNON: That goes back to the acreage  
25 numbers. I think that we would propose we keep the



1 acreage numbers the same as they were in the PMPD and that  
2 we put up a mechanism for ground truthing as we've  
3 discussed. In terms of listing the other species, the  
4 analysis that was included in the PMPD recognized that the  
5 Flat-Tailed Horned Lizard mitigation would likely benefit  
6 these species, but was not establishing a performance  
7 standard that these areas had to be included. So that's  
8 why we would suggest it's appropriate to not include them  
9 here in the condition itself.

10 HEARING OFFICER RENAUD: Thank you very much. I  
11 understand that.

12 CURE, anything to add on that?

13 MS. MILES: We support the staff. We believe  
14 that these species, these special status species, should  
15 be recognized and specifically in the mitigation language.

16 HEARING OFFICER RENAUD: Anything else on that?

17 COMMISSIONER BOYD: Hearing Officer Renaud, let's  
18 conference.

19 HEARING OFFICER RENAUD: Okay. On page 27 of  
20 staff's comments, there's a change to the acreage from  
21 6619.9 to 7001.8. Does applicant wish to comment on the  
22 change in acreage?

23 MS. GANNON: I'm sorry. Can you repeat the  
24 question?

25 HEARING OFFICER RENAUD: Sure. Staff's change in

1 the acreage page 27 of their comments, does applicant  
2 agree with that?

3 MS. GANNON: No, we do not agree to it. Again,  
4 this is the same thing. I don't understand how they got  
5 their numbers there. They're not adding up with our  
6 numbers. And we just suggest keeping them as they were in  
7 the PMPD and provided those were approximations and they  
8 will be trued up.

9 HEARING OFFICER RENAUD: All right. And let me  
10 ask about the truing up the ground truthing and so on.  
11 Are you suggesting that the Committee add a provision for  
12 that or are you suggesting it's already here?

13 MS. GANNON: We suggest you put a footnote in  
14 that we provide in our comment and we think that gets you  
15 there.

16 HEARING OFFICER RENAUD: Well, okay. Now, your  
17 footnote says that the acreage will be confirmed prior to  
18 the start of ground disturbance. What would that  
19 mechanism be?

20 MS. GANNON: The mechanism will be that we will  
21 have rights in excess to certain areas of land on the BLM  
22 land we will be getting limited notice to proceed. For  
23 the entire acreage we will have the project site that with  
24 have -- that will be a legal description and that will be  
25 an acreage associated with it. Within each phase, we will

1 have a limited notice to proceed which allows us access to  
2 a certain acreage of land. So that acreage of land would  
3 be the basis for the mitigation.

4 HEARING OFFICER RENAUD: All right. So the  
5 determination of the actual acreage associated with each  
6 phase, would that be made by the applicant?

7 HEARING OFFICER RENAUD: We would submit the  
8 support that says this is the acreage, this is what we  
9 have right to have access to this and this is the -- this  
10 is what will be involved in this particular phase.

11 HEARING OFFICER RENAUD: And submit that to whom?

12 MS. GANNON: To the CPM.

13 HEARING OFFICER RENAUD: And would the CPM in  
14 your view then would have discretion to address that if  
15 necessary?

16 MS. GANNON: It has a ratio number and it has a  
17 dollar amount associated with it. So it would just be  
18 correcting the calculation.

19 HEARING OFFICER RENAUD: In terms of the acreage  
20 though, would that be subject to --

21 MS. GANNON: Verification.

22 HEARING OFFICER RENAUD: To verification. All  
23 right.

24 I know you were conferring, staff. Did you hear  
25 our discussion over here?

1 MS. NISHIDA: No, I did not.

2 HEARING OFFICER RENAUD: We're talking about the  
3 whole topic of ground truthing and adjustment of acreage.  
4 And staff's -- sorry -- applicant's proposal is in the  
5 footnote on Bio 10. And we're talking about how would  
6 that -- what would the mechanism be. Seeing that  
7 applicant would determine the acreage, but it would be  
8 subject to verification and submitted to the CPM.

9 MR. MEYER: I would just a slight -- from  
10 thinking as a compliance project manager from the aspect  
11 of giving the time frames we're looking at these projects,  
12 there's not going to be a lot of time for staff to do  
13 anything quickly. And so we're trying to think of a way  
14 we can do it.

15 Also I'd want to make sure that if there is  
16 something that is a provision for ground truthing that it  
17 is called out for a little bit more obviously than just a  
18 footnote. Because we do understand that these numbers  
19 have changed a lot. So there's certain number in the PMPD  
20 that were numbers that came from the applicant later that  
21 didn't have a lot of input from staff because the phasing  
22 and everything else is changing a lot. So we do agree  
23 there's going some misunderstandings. There's not as much  
24 disagreements, but just trying to get down to what the  
25 basis for calculating these numbers are.

1           So staff does agree that we want to get the most  
2 accurate information, more accurate clear information to  
3 make sure that we're all comparing apples to apples comes  
4 in, we agree there should be a provision to make sure that  
5 the applicant isn't either over-mitigated or  
6 undermitigating for impacts.

7           HEARING OFFICER RENAUD: All right. Thank you.  
8 That's helpful.

9           MR. BABULA: I would also agree that probably a  
10 footnote is a little too subtle if you're going to have  
11 something. It should be stand out a bit more in the  
12 condition perhaps to acknowledge that the numbers -- while  
13 the scope is what the mitigation is and understanding what  
14 the impacts are is set. That's understood. It's fine  
15 tuning the exact numbers for the acreage and so forth. So  
16 it should be clear that this isn't an issue where, oh, the  
17 problem didn't get an opportunity or there would be some  
18 new impacts, but taking some range and very narrowly  
19 specifying now it's this is the numbers. So probably  
20 something in the footnote.

21           MR. MEYER: Just to clarify when counsel is  
22 talking about percentage points or two and 6500 or 6,000  
23 acre project, we're talking about almost 400 acres. So a  
24 few percentage points on a project this size do add up  
25 pretty quickly.

1 MS. GANNON: Also do the compensatory numbers  
2 associated with it.

3 COMMISSIONER BYRON: We get your point.

4 Hearing Officer Renaud, in response to Mr.  
5 Meyer's argument as I read those proposed decision, not  
6 just this one but all of them and there are an enormous  
7 number of compliance conditions that staff is going to  
8 have to work on immediately following their approval. So  
9 this ground truthing notion, the true up of numbers can  
10 also take place afterwards. I'm inclined to agree with  
11 staff that we have sufficient compensation set aside at  
12 the beginning so that there is no conflict or difficulty  
13 in the early approval process. So I think we can find a  
14 remedy to this. But I don't want to make a condition  
15 that's going to make a burden on the staff at this point.

16 HEARING OFFICER RENAUD: All right. So --

17 MS. GANNON: We can also submit by the close of  
18 public comment period, we can submit what we believe are  
19 the numbers and the support for it.

20 HEARING OFFICER RENAUD: Okay.

21 MS. GANNON: If that's helpful.

22 HEARING OFFICER RENAUD: What I'm looking for  
23 right now is is there a place we should add something  
24 that's stronger than the footnote? And I think off the  
25 top of my head it should be in Bio 10.

1 MS. GANNON: It should be in Bio 10, yes.

2 HEARING OFFICER RENAUD: And that's a long, long  
3 Condition of Certification. Perhaps in section 3 review  
4 and approval of compensation lands prior the acquisition?

5 MS. GANNON: I think that relates actually to the  
6 actual identification and purchase of the lands themselves  
7 rather than the -- I think it's more related to the  
8 security provisions.

9 HEARING OFFICER RENAUD: I'll tell you what.  
10 While we are moving through things here, why doesn't  
11 everybody kind of be keeping an eye out for a good place  
12 to put that and perhaps suggest a couple of sentences that  
13 we could add to this that would accomplish what everyone  
14 is talking about.

15 MR. MEYER: Staff agrees with the applicant that  
16 somewhere around section 5 under the security mitigation,  
17 security would be appropriate.

18 MS. GANNON: Or we have the compensatory  
19 mitigation land funds. We have the fund payment and  
20 that's where we have the phasing table. So it's probably  
21 the right place.

22 HEARING OFFICER RENAUD: Okay. Good. Thank you.

23 I think maybe the Committee has enough  
24 information here. We understand what everyone is talking  
25 about and we can come up with something that will work.

1 All right. Now, moving through the suggested  
2 changes to Bio 10 that are suggested by staff, I guess  
3 we've dealt with the new table, the additional table.  
4 Under Section 4, there is an added proposed language about  
5 the possibility that an approved nonprofit organization  
6 holds fee title to the land. Does anyone wish to comment  
7 on that?

8 MS. NISHIDA: This was in the original Condition  
9 of Certification that the -- that was approved by the  
10 applicant.

11 HEARING OFFICER RENAUD: Okay. Does the  
12 applicant agree with that?

13 MS. GANNON: I am sorry.

14 HEARING OFFICER RENAUD: Page 29 of staff's  
15 comments.

16 MS. GANNON: We have no objection to that. There  
17 was back in paragraph 1 on page 27 of staff's comments,  
18 there was the suggestion to remove the requirement that  
19 the CPM respond within 30 days of receiving the proposal.

20 HEARING OFFICER RENAUD: Yes. Thank you.

21 MS. GANNON: And the reason that we asked for  
22 these 30 days initially was if we are trying to make --  
23 are able to purchase land acquisition, the normal process  
24 is we're going to get option agreements and we need to  
25 have a time period in which we're going to be getting a



1 response. Otherwise, obviously there can be considerable  
2 funds associated with that.

3 HEARING OFFICER RENAUD: Can I hear from staff on  
4 that, please?

5 MS. NISHIDA: Given our workload, I'm not certain  
6 we'll be able to accommodate the 30 day limit.

7 HEARING OFFICER RENAUD: What kinds of limit  
8 could you accommodate?

9 MR. MEYER: Applicant is making a good point  
10 here. Staff could should be able to turn that around in  
11 45 days, if that's acceptable to the applicant.

12 MS. GANNON: That's acceptable.

13 HEARING OFFICER RENAUD: All right. Thank you.

14 MS. GANNON: Thank you. And there was a similar  
15 provision in paragraph 3 on the top of page 29 of staff's  
16 condition -- comments.

17 MR. MEYER: We just want the 15 days. So 15 on  
18 that one.

19 MS. GANNON: Oh, right.

20 HEARING OFFICER RENAUD: So we're going to change  
21 the 30 to 45? You're on page 29.

22 MS. GANNON: Yes. We're okay with that.

23 HEARING OFFICER RENAUD: Any party wish to weigh  
24 in on this bit?

25 No. All right. Okay. Going back to the bottom

1 of page 28, staff's proposing to remove a phrase, "If the  
2 project owner assumes responsibility for acquiring the  
3 compensation lands," does applicant have any concern about  
4 that?

5 MS. GANNON: I think if we are not acquiring the  
6 lands, we don't think we should be the one to formally  
7 commit that position proposal.

8 HEARING OFFICER RENAUD: What's the staff's  
9 thinking behind removing that phrase?

10 MS. NISHIDA: Probably removed that in error.

11 HEARING OFFICER RENAUD: All right. We'll  
12 re-insert that. Let's then turn to page 30 of staff's  
13 comments. If I'm skipping anybody else's comments, let me  
14 know. I'm kind of juggling them all here. There are some  
15 on Bio 10. And staff's proposed additional section 6 --  
16 not a section all section 6 -- it's additional language on  
17 section 6, compensatory mitigation land improvements. Has  
18 applicant -- what do you think of that?

19 MS. GANNON: We felt that this detail -- level of  
20 detail was not necessary here. We -- this has to do with  
21 the long-term management.

22 HEARING OFFICER RENAUD: Maybe we can hear from  
23 staff about what they're thinking was here.

24 MS. NISHIDA: If I recall, this was the land  
25 improvements requirement compensatory land improvements.

1 We're in a different section of the condition and staff  
2 felt that this should -- we should be in section 6.

3 MS. GANNON: This was moving it up from -- this  
4 was a reorganization

5 MS. NISHIDA: Right.

6 HEARING OFFICER RENAUD: I see that now.

7 MS. GANNON: We have no objection to that.  
8 That's fine.

9 HEARING OFFICER RENAUD: Okay. And the proposed  
10 change on page 31 adding the language numbers four to six  
11 above and long term maintenance and management funding.  
12 Acceptable?

13 MS. GANNON: That's acceptable.

14 HEARING OFFICER RENAUD: Change to -- looking at  
15 page 31 to 32 of staff's comments, the table entitled  
16 estimated land acquisition costs per acre or parcel.  
17 Applicant wish to comment on that?

18 MS. GANNON: I think the main difference here is  
19 they're just taking out the BLM option, because during the  
20 workshop BLM clarified they would not be purchasing land.  
21 So we don't have any objections taking that out.

22 HEARING OFFICER RENAUD: So we probably just  
23 remove that entire column.

24 Now, on the next table, total estimated land  
25 acquisition cost. This appears at 73 to 74 of the

1 resources section of PMPD. Again, we removed the BLM  
2 column obviously. And as far as the changes to the  
3 figures --

4 MS. GANNON: Is this an acreage question? It's  
5 the same acreage question we've been discussing here. And  
6 the only other thing is the partial (inaudible) which is  
7 derived from the acreage.

8 HEARING OFFICER RENAUD: All right. So same  
9 issue we've talked about before.

10 MS. GANNON: Right.

11 HEARING OFFICER RENAUD: All right.

12 And then for the long-term management section,  
13 which begins on page 75 of the PMPD section, page 33 of  
14 the staff's comments, applicant, do you have any comments  
15 on that?

16 MS. GANNON: I think the first language that was  
17 removed was put up earlier which we don't have an  
18 objection to that. And the long-term management plan, we  
19 were trying to clarify that the project owner would be  
20 responsible for preparing the plan if we were the ones who  
21 were carrying it out. And again, if there is a third  
22 party doing this and we were paying them up front, the  
23 financing, we shouldn't be responsible for preparing the  
24 plan. So it was a clarification we had put in and staff  
25 was changing that.

1 HEARING OFFICER RENAUD: All right. So staff is  
2 suggesting that the project owner fund the development of  
3 the management plan for the entity that will be managing  
4 the lands. Why is staff suggesting that?

5 MS. NISHIDA: This is how I understood the  
6 applicant had stated they would do. Because they felt  
7 they did not -- they shouldn't -- they should not write up  
8 a long-term management plan that they said they would fund  
9 any entity that is going to manage it.

10 MR. MEYER: We think we're in agreement. They  
11 just might be saying the same thing with slightly  
12 different language.

13 MS. GANNON: I think we were having it as an  
14 and/or. We would do it for funding for a third party. I  
15 think we're in conceptual agreement.

16 HEARING OFFICER RENAUD: You know, something like  
17 this and maybe elsewhere throughout these conditions if  
18 the parties feel that it would be helpful to have the  
19 opportunity to discuss these in a workshop type of  
20 setting, the Committee can order a Committee-sponsored  
21 workshop to take place today. Would that -- what do  
22 people think about that? Applicant?

23 MS. GANNON: Today? A workshop today?

24 HEARING OFFICER RENAUD: Yeah. Right now. We're  
25 going to get to an appropriate stopping point.

1 MS. GANNON: I think we should be able to --  
2 we've probably got like two conditions doing wording on  
3 and I think we can problem resolve this very quickly.

4 HEARING OFFICER RENAUD: Just by convening a  
5 workshop?

6 MS. GANNON: I don't think so.

7 HEARING OFFICER RENAUD: Okay.

8 MR. MEYER: I think we can probably solve them  
9 faster than getting our seating arranged.

10 HEARING OFFICER RENAUD: Let's do that then.  
11 What would be the staff's and the applicant's take on the  
12 proposed changes to the long-term management costs  
13 language?

14 MR. MEYER: Does the applicant have any objection  
15 to the staff's wording? Or do you want to use that as a  
16 starting point?

17 MS. GANNON: We can use it as a starting point.  
18 Let me just look at this one second. Excuse me.

19 I think we're okay with your language. See, we  
20 don't need a workshop.

21 MR. MEYER: We are done.

22 HEARING OFFICER RENAUD: That's good. Any of the  
23 other parties care or wish to weigh in on that? Staff's  
24 language looks good. I'm seeing nods, by the way, for the  
25 record.

1           Continuing then through Bio 10 on page 35,  
2 applicant, what do you think of staff's proposed changes?

3           MR. MEYER: Here we had an addition on 34, two  
4 additions --

5           HEARING OFFICER RENAUD: That's not what you were  
6 just talking about?

7           MR. MEYER: No.

8           MS. GANNON: We were just on the management plan,  
9 the cost.

10          HEARING OFFICER RENAUD: The long-term management  
11 plan.

12          MS. GANNON: We had discussed doing a first  
13 comment in the first paragraph under 3. We had talked  
14 about doing the par analysis as providing the final  
15 number. And we don't have any objection to that language.

16          HEARING OFFICER RENAUD: Okay. What about the  
17 big chunk of language there in the middle of page 34?  
18 Again, you see there's reference to the estimate of the  
19 dollar amount per acre and a mechanism for adjusting that.  
20 Staff, do you want to comment on that at all? Tell us  
21 what your thinking was here.

22          MS. NISHIDA: We wanted to acquire funding for  
23 the long-term management costs. It's been calculated  
24 through a PAR analysis that was initially done by  
25 California Department of Fish and Game \$692 per acre in

1 the Imperial County area. And based on that and taking  
2 the acreage that I calculated for total amount of land  
3 that needs to be compensated for, calculated -- I  
4 calculated an amount that needs to be reflected in the  
5 security.

6 HEARING OFFICER RENAUD: Does the applicant have  
7 any --

8 MS. GANNON: I think we're conceptually in  
9 agreement with this. I want to make sure this isn't  
10 intending to say we can clarify it's not saying this is an  
11 additional security amount. The long-term management was  
12 included in the full security amount. So this is trying  
13 to clarify how the long-term management number is going to  
14 be trued up. I have no problem with it. And I think  
15 that's consistent with what we've been intending. But if  
16 you just read this language on its own, it could be read  
17 to sound like there's some additional -- apart from the  
18 total number that's provided in the chart, there could be  
19 some additional money that is necessary. And this doesn't  
20 reference phasing. This doesn't reference anything else.  
21 So I think we need to clarify that.

22 HEARING OFFICER RENAUD: Can you suggest some  
23 clarification that would address your concerns?

24 MS. GANNON: Think we should just say it's 692  
25 acres for every of the compensation lands or par and par



1 like number. And then I think we should take out the  
2 whole thing about security and refer back to the earlier  
3 table, which is going to provide the phasing.

4 HEARING OFFICER RENAUD: So starting with the  
5 words, "the amount of the required initial payment," take  
6 that out?

7 MS. GANNON: That's right. Because we've already  
8 said the amount of the required funding is initial is 692.  
9 I think that's fine.

10 So I think we have to start within the second  
11 sentence that they're adding where they say if  
12 compensation lands will not be identified, the project  
13 owner shall provide initial payment -- I think we have to  
14 say as provided in table X above.

15 HEARING OFFICER RENAUD: There is a reference to  
16 the compensation mitigation land funds section above.  
17 Does that help?

18 MS. GANNON: But see, the sentence that I'm very  
19 concerned about here is it says if the compensation lands  
20 have not been identified and the analysis hasn't been  
21 cleared, the project owner shall either provide the  
22 initial payment of \$4,845,246 calculated 692 acres for the  
23 7,000. That's not what we're proposing to do. We're not  
24 providing four million and change for up front. We are  
25 doing it so used and it will be part of the -- again the

1 phased security. And so this seems to me to be not  
2 consistent with that.

3 HEARING OFFICER RENAUD: Staff, response?

4 MR. MEYER: Staff's in agreement with that. The  
5 intent is phased. So I think the clarification that the  
6 applicant provided staff is okay.

7 HEARING OFFICER RENAUD: Just so we have the  
8 clarification clarified, tell us what you've just agreed  
9 to.

10 MS. GANNON: We're going into the second sentence  
11 that was added by staff which is the sentence that  
12 beginning, "if compensation lands will not be identified  
13 in the power product analysis completed within the time  
14 period specified for this payment, the project owner  
15 shall" -- shouldn't be either -- "shall provide the  
16 security payment provided in table" -- what's the table  
17 number? We don't have the table numbers here?

18 HEARING OFFICER RENAUD: Here's a suggestion so  
19 we're not doing this -- working at this level of detail in  
20 this hearing. Set forth your proposed language in an  
21 e-mail to everybody

22 MS. GANNON: Okay.

23 HEARING OFFICER RENAUD: Staff, you can indicate  
24 your assent or disagreement in a response to everybody.  
25 And that should cover it. We'll include that as a

1 comment.

2 MS. GANNON: Okay. That makes sense.

3 COMMISSIONER BYRON: Just so I make sure I  
4 understand what we're doing. We're moving towards the  
5 phased approach. We want to make sure that the section is  
6 clarified and incorporates a phased payment schedule.

7 MS. GANNON: Correct.

8 MR. MEYER: That is correct.

9 MS. WHITE: And that the evidence in terms of  
10 security is provided prior to the start of construction  
11 for each phase.

12 MS. NISHIDA: That's correct.

13 MS. WHITE: So what's referenced on the table on  
14 page 26, that would be reflected subsequent in the  
15 provisions of that condition

16 MS. GANNON: Correct.

17 MS. WHITE: Okay. Thanks.

18 HEARING OFFICER RENAUD: Okay. Thank you. And  
19 for the record in those listening on the phone, that was  
20 Lorraine White, Commissioner Eggert's advisor. Thank you.  
21 So we'll proceed in that fashion.

22 Turning to staff's proposed changes to this  
23 condition on page 35, before we do that, let's call a  
24 ten-minute break here. We've been at it for quite a while  
25 here. We'll be back in ten minutes and right now we'll go

1 off the record.

2 (Thereupon a recess was taken from  
3 11:12 To 11:29 a.m.)

4 HEARING OFFICER RENAUD: We're back at the  
5 Committee conference for the Imperial Valley Solar PMPD.  
6 And we're still slogging our way through Condition of  
7 Certification Bio 10.

8 COMMISSIONER BYRON: Actually, Mr. Renaud, I  
9 think we're doing quite well here. I wouldn't  
10 characterize it as slogging. Just somebody happened to  
11 write an extremely long condition here.

12 HEARING OFFICER RENAUD: Yeah. Okay.  
13 Productively talking. How about that? We're being very  
14 productive, and I thank you all for that.

15 Anyone, what should we address next in this  
16 condition? I think we understand the issue on the  
17 long-term management costs language. Turning to staff's  
18 comments starting on page 35, applicant, would you care to  
19 respond to those at all?

20 MS. GANNON: I think the insertion regarding the  
21 interest we have no objection to taking out the CDFG  
22 language and withdraw of principle. I think we have no  
23 objection to (inaudible) of funds. Seems to be consistent  
24 with the normal language relating to long-term management  
25 funds. We don't have any objection to that, nor to the

1 reimbursement fund provisions.

2 HEARING OFFICER RENAUD: Okay. Thank you. And  
3 the next bullet point, which is 36, there is a change in  
4 the 4.5 million to 4.8 million. Again, I guess we're  
5 looking at the same issue.

6 MS. GANNON: That's the acreage times the number.

7 HEARING OFFICER RENAUD: Now, there is a cost  
8 added to call for and process to proposed modified RFP or  
9 RFP of \$30,000. Do we know about that?

10 MS. GANNON: Ask them.

11 HEARING OFFICER RENAUD: Okay. What is that?  
12 Ask staff.

13 MS. NISHIDA: This is regarding the REAT, NFWF  
14 table. And this reflects one of their latest updates to  
15 costs if NFWF is going to be involved.

16 HEARING OFFICER RENAUD: Applicant, anything?  
17 Are you familiar with that at all? Does that sound --

18 MS. GANNON: I am not. And I know these numbers  
19 are moving targets. They all seem to be moving targets  
20 going one way. And I guess it's sort of when do these get  
21 cemented down. I guess it's when we get the decision  
22 issued. There are true up provisions that are provided  
23 throughout. So I guess -- we don't know if this needed to  
24 add --

25 HEARING OFFICER RENAUD: We'll look at it and see

1 what we think. But maybe, Joy, you can tell us where you  
2 get that.

3 MS. NISHIDA: All right. We've added -- on page  
4 82 of staff comments here, we have REAT biological  
5 resources mitigation compensation cost estimate table.  
6 And if you look on page 83, scan down to NFWF fees, there  
7 is in there calls for and process pre-proposal modify RFP  
8 or RFP, which has a fee one time fee of \$30,000.

9 HEARING OFFICER RENAUD: Okay. No. Ten  
10 referenced there. Somehow in mine I don't have that ten.  
11 Did anybody get footnote ten?

12 MS. GANNON: No. To the chart you mean?

13 HEARING OFFICER RENAUD: Yeah

14 MS. GANNON: We did not either.

15 HEARING OFFICER RENAUD: Staff, do you have  
16 footnote ten? I'd like to know what this says. Because  
17 it's about this specific number.

18 MS. NISHIDA: Can I get that to you later?

19 HEARING OFFICER RENAUD: Okay. Well, we'll get  
20 to that table when we get to page 82. You might find out  
21 between now and then?

22 MS. NISHIDA: Not if I'm sitting here, no.

23 HEARING OFFICER RENAUD: All right.

24 MR. MEYER: We're getting that.

25 HEARING OFFICER RENAUD: Okay. Good. That would

1 be great. Let me ask a big question. Is there anything  
2 else on Bio 10 that we need to discuss here? I see again  
3 not changes in figures, numbers and some additional  
4 language in paragraphs four and five on page 38.

5 MS. GANNON: I guess if staff could just explain  
6 the reason for moving the language about the financial  
7 assurances from the verification to the condition, why  
8 that was necessary

9 MS. NISHIDA: Since that was already in the  
10 condition, we felt it wasn't necessary to put in the  
11 verification.

12 MS. GANNON: I thought you moved it to the  
13 condition. I'm asking for the reason for moving it to the  
14 condition from the verification.

15 HEARING OFFICER RENAUD: It does appear more  
16 appropriate in the verification.

17 MR. MEYER: If you look at the first on page 39  
18 of the comments, the last -- second to last paragraph of  
19 five, is that what we are looking at?

20 HEARING OFFICER RENAUD: Well, we're looking  
21 at -- no.

22 MR. MEYER: Sorry. Let me clarify. Are you  
23 looking at basically the same language there that's  
24 already in the condition we are just moving it?

25 HEARING OFFICER RENAUD: There and there in the

1 verification the language has been deleted.

2 MR. MEYER: I think it was in five, taking it out  
3 of the verification made sense. You're saying that  
4 paragraph --

5 HEARING OFFICER RENAUD: Adding it to five,  
6 removing it from the verification. It looks to me like  
7 verification type of language. If there is a good reason  
8 for moving it, we'd like to hear about it.

9 MR. MEYER: I guess I'm confused. We didn't  
10 actually -- we moved it from the verification.

11 HEARING OFFICER RENAUD: Yeah.

12 MR. MEYER: But we moved it from within the  
13 condition to another part of the condition.

14 MR. BABULA: It's on the top of page 39.

15 MR. MEYER: If you look at the -- just you have  
16 six just above the verification. Five just above that.  
17 You'll see that language in there.

18 MS. GANNON: It still seems to me language that  
19 is appropriate in the verification. I see what you're  
20 saying it was in multiple places. But it seems to me it  
21 should be in the verification it's appropriate  
22 verification language rather than condition language or it  
23 would be more appropriate?

24 MS. NISHIDA: Usually verifications determine a  
25 timeline. And I could see the last sentence that we



1 struck in that paragraph from that verification project  
2 owner or improved third party shall complete and provide  
3 written verification, blah, blah, blah, within 18 months.  
4 That probably should stay within the verification. But  
5 the rest of it, I struck it mainly because it's elsewhere  
6 in the condition.

7 MR. MEYER: So basically what staff did, you're  
8 right, part of it should be verification. We just moved  
9 it from one part of five up to a different part of five in  
10 the condition. But since up in five, we have the project  
11 owner shall provide financial assurances to the CPM with  
12 copies of the documents to BLM. With that language  
13 already in there, can the first part of five can staff  
14 agree that we move that to verification? Because it says  
15 it already has the requirement for those assurances. And  
16 then we just clarify in the verification that what we're  
17 looking for --

18 HEARING OFFICER RENAUD: Okay. Staff is okay  
19 with the language in the first part of five, striking that  
20 addition and putting it back into the condition -- back  
21 into the verification.

22 MR. MEYER: Right.

23 MS. GANNON: Thank you. And also on the bottom  
24 of page 38 of staff's comments in the last paragraph,  
25 there was the language that was deleted that if there was

1 nesting of mitigations obtained as well as in coordination  
2 with bio 17 and you were suggesting to delete that  
3 language.

4 MS. NISHIDA: Yes. And in Bio 17, we point out  
5 that what we get -- what compensation lands are required  
6 through Bio 10 will apply to Bio 17 as well and will be  
7 reduced.

8 MS. GANNON: So I guess the nesting is important  
9 for security purposes. For the provision of security?

10 HEARING OFFICER RENAUD: Ms. White has  
11 clarification.

12 MS. WHITE: If I might, just backing up a little  
13 bit. On five, are you also agreeing, staff, then to take  
14 out the provision which requires CPM approval in  
15 consultation with CDFG and BLM on the form of the  
16 securities? Because if you delete that section on the top  
17 of page 39 and also do not add it in the paragraph, the  
18 first paragraph there were five, you don't have CPM  
19 approval.

20 MS. NISHIDA: Correct. So for that -- for that  
21 section that staff initially lined out we'd like that  
22 portion to stand -- not stand, but to remain, yes.

23 MS. WHITE: But the specific timing requirement  
24 of the 18 months and such would go down on the  
25 verification?

1 MS. NISHIDA: Correct.

2 MS. WHITE: Is that what you were talking about?

3 MS. NISHIDA: Correct.

4 MS. WHITE: So ostensibly, you want to just keep  
5 the area that struck on the top of page 39?

6 MS. NISHIDA: Correct.

7 MS. WHITE: Not add what's on the bottom of page  
8 38?

9 MS. NISHIDA: Yes.

10 MS. WHITE: And keep the last comparison since in  
11 the first area struck under the verification regarding  
12 time?

13 MR. MEYER: Yes.

14 MS. WHITE: Is that what I'm understanding was  
15 just agreed so?

16 MR. MEYER: Maybe I'm misunderstanding. I think  
17 what we're saying is the financial -- the financial  
18 assurance can be provided to the CPM in a form of language  
19 on the top of page 39. I think we agree that that was  
20 more of a verification as far as how we would comply with  
21 what's stated previously on the top of condition five --  
22 part five of that condition where it says the project  
23 owner should provide the financial assurances to the BLM,  
24 CDFG, et cetera. But you are correct that the language as  
25 far as prior to submitting the security to the CPM, the

1 project owner shall obtain CPM approval in consultation.

2 I believe that should stay in there.

3           So the only thing that we would be deleting is  
4 the financial assurance down to security in the top of  
5 page 39. Staff agrees that that should be deleted, but  
6 from prior to submitting through form of security we would  
7 request that that's left in.

8           HEARING OFFICER RENAUD: All right. I think we  
9 understand the positions here and can address this. Thank  
10 you.

11           Page 40, we have had -- oh, we have footnote ten.

12           MR. YORK: My name is Rick York. I'm a biologist  
13 at the Energy Commission.

14           I have brought a somewhat more recent table. I  
15 hate to -- try not to confuse here. The table that Joy  
16 used did not have a footnote 10. It has a footnote nine  
17 which is associated with the line item that was being  
18 discussed.

19           MS. NISHIDA: Okay. Footnote nine, this is  
20 regarding the pre-proposal modified RFP or RFP processing.  
21 Footnote nine says, "if determined necessary by REAT  
22 agency if multiple third parties have expressed interest  
23 for transparency and objective selection of third party to  
24 carry out acquisition."

25           HEARING OFFICER RENAUD: Well, are we going to

1 get a table in here somehow that have foot notes that line  
2 up with the numbers? Now, you have one that's got nine  
3 footnotes.

4 MS. NISHIDA: Right.

5 HEARING OFFICER RENAUD: And the one that we've  
6 gotten the staff corrections has ten numbers but only  
7 eight -- the text of only eight.

8 MS. NISHIDA: Right. And what happened is --  
9 this looks like it got cut off.

10 HEARING OFFICER RENAUD: All right. Well --

11 MR. MEYER: Staff will provide a corrected table.

12 HEARING OFFICER RENAUD: We need a corrected  
13 table.

14 MR. BABULA: In this table I don't see a  
15 footnote. I see if you look on the actual little numbers,  
16 there's no footnote nine in the number nine. There is a  
17 nine down in the bottom. But it may be the numbers got  
18 shifted.

19 HEARING OFFICER RENAUD: All right. Well, we  
20 need this table cleaned up obviously. From what you read,  
21 it sounds like the \$30,000 is kind of a placeholder, not a  
22 direct -- not a certain amount or even a certain item at  
23 all. Did you --

24 MS. GANNON: Think if we go with the NFWF fees,  
25 we're going to have to pay whatever the NFWF fees are. I

1 think that -- I don't think there's any reason to -- YY it  
2 is a line item in the table. It's in the earlier table  
3 which we used and it's on this table which we're not going  
4 to use for this project. But it is a set amount.

5 HEARING OFFICER RENAUD: We'll leave it at that.

6 MS. GANNON: Do we get a response to why the  
7 nesting language was taken out on page 38? I am sorry.

8 HEARING OFFICER RENAUD: No.

9 MS. NISHIDA: No.

10 HEARING OFFICER RENAUD: Why do you want to take  
11 that out?

12 MR. MEYER: Okay. It sounds like the staff --  
13 the reason it was struck, it wasn't in our original  
14 condition. I think there may have been something that was  
15 added by the Committee and my question for staff would be  
16 if we object to that addition. And staff does not object  
17 to the addition. It's just we were trying to get it back  
18 to how the condition was originally written by staff.

19 MS. GANNON: And we think it's appropriate to  
20 clarify I think this was just supposed to be in there to  
21 help clarify what the money could be used for. And again,  
22 if there is nesting of those mitigation, it's appropriate  
23 to say that money could be used to satisfy every one of  
24 those conditions or in furtherance of satisfaction of  
25 those two conditions.

1 HEARING OFFICER RENAUD: All right. Well, what I  
2 see -- it looks to me like it was not in staff's proposed  
3 condition, but in the one we received from applicant. And  
4 that's why it's there. But anyway, everybody is okay with  
5 it, so we will un-delete that.

6 Let's move on then to staff's proposed addition  
7 on page 40 of the comments. Does that appear okay to  
8 applicant?

9 MS. GANNON: The language regarding the  
10 alternatives in lieu fee program, we are in agreement with  
11 including it in the PMPD. I guess our only question is --  
12 and we know this was in the supplemental staff assessment  
13 prior to this and we didn't discuss this. But whether  
14 there was a need to have to go back to the Commission for  
15 approval if it's a program that's approved by CDFG. And  
16 we were utilizing a program that was approved (inaudible)  
17 if there is a need to go back to the Commission.

18 HEARING OFFICER RENAUD: I take just the fact  
19 that it's in here means that you don't.

20 MS. GANNON: So we just have to notify which is  
21 what you think this says.

22 HEARING OFFICER RENAUD: Yes.

23 MS. GANNON: Okay.

24 HEARING OFFICER RENAUD: Ms. Miles.

25 MS. MILES: I just wanted to add that in SBX 834

1 there is a provision 2069(F) which does say that the --  
2 actually, what this law does is it's financing mechanism.  
3 It allows the applicant to use an alternative means of  
4 complying with mitigation requirements. But it's simply a  
5 financing mechanism and it does not excuse the lead  
6 agencies requirement to ensure that all of the provisions  
7 of CEQA are still met. And so I would urge you to look at  
8 that Q section 2069(F) and specifically (F)(2). And I  
9 believe that this provisions needs to be in here as a  
10 result of that language.

11 HEARING OFFICER RENAUD: All right. Anything  
12 from staff on that? All right. Thank you. I think we're  
13 done with Bio 10 then, unless anybody has any further, any  
14 parties? No. All right. Let's move on to 11. I think  
15 we addressed the speed limit issue already. And the  
16 Committee knows what to do about that or has no questions  
17 about that. And staff's next comment is on 17. Did you  
18 have an item before that?

19 MS. MILES: No.

20 HEARING OFFICER RENAUD: All right. I don't  
21 think applicant did either. No. Okay.

22 So moving on to 17. This is mitigation of  
23 bighorned sheep foraging habitat. Is there a significance  
24 to the blue and red as opposed to just red which we've had  
25 heretofore? Staff? Is this a different person or



1 something?

2 MR. MEYER: I think counsel that was working on  
3 this one had a color fetish. Yes, it was not signifying  
4 anything. It doesn't mean anything to us.

5 HEARING OFFICER RENAUD: All right. Good.  
6 Staff, does -- does staff as proposed changes to this Bio  
7 17 propose anything other than staff's disagreement with  
8 the Committee's finding?

9 MS. NISHIDA: That's correct. And we have our  
10 comments on page 36 and 37. Is that it? They're  
11 somewhere. We do have our comments on those.

12 MR. BABULA: So it's nothing different than what  
13 we previously discussed?

14 HEARING OFFICER RENAUD: Applicant wish to  
15 comment on this?

16 MS. GANNON: As we previously discussed, we agree  
17 with the analysis and conditions included in the PMPD and  
18 we urge you to retain them.

19 HEARING OFFICER RENAUD: All right. Thank you.

20 I do want to ask staff about the proposed change  
21 for addition on page 54 of staff's comments. This is  
22 still on Bio 17. What is your thinking behind that  
23 proposed addition?

24 MS. NISHIDA: Is this the after all the bulletin  
25 points?

1 HEARING OFFICER RENAUD: Yes.

2 MS. NISHIDA: You know, unfortunately --

3 HEARING OFFICER RENAUD: It's just a moving of  
4 language.

5 MS. NISHIDA: It's just a moving of the previous  
6 paragraph. I just wanted to just break it off there. It  
7 should have been bulleted as well. My mistake.

8 HEARING OFFICER RENAUD: So we don't do that.  
9 All right. And staff has proposed to delete the first  
10 paragraph of the verification. What is the thinking  
11 there?

12 MS. NISHIDA: Well, this is the bring us in line  
13 with what we originally proposed for Bio 17.

14 HEARING OFFICER RENAUD: Okay. So again, it  
15 reflects staff's differing opinion with the Committee --

16 MS. NISHIDA: Correct.

17 HEARING OFFICER RENAUD: All right. Anything  
18 further on Bio 17 before we move on?

19 CURE, I see you've proposed --

20 MS. MILES: Basically we agree with staff's  
21 changes.

22 HEARING OFFICER RENAUD: Okay. I see. Okay.

23 All right. Good. Let's move on then to 19.  
24 Applicant, are you -- do you have anything to say about  
25 these proposed changes to Bio 19?

1 MS. GANNON: Overall, I think that staff is  
2 trying to get to the same place as we are. There was  
3 again a conceptual agreement and there seems to have been  
4 the transation of it has not been perfect. I think that  
5 the overall agreements that we made with staff was a  
6 gradance of 75 percent of the list one species and the  
7 mitigation ratio at three to one and the mitigation was  
8 two to one and the avoidance complete avoidance of the  
9 List 1 and List 2 for the off site linears. And then  
10 there is a ground disturbance areas that the laid out  
11 discussed which we discussed previously which we did not  
12 stipulate to to avoidance completed in those areas.

13 I think that the way that the condition was  
14 written in the PMPD did reflect this. There was some  
15 confusion base of the division of those sections A, B, and  
16 C, with A relating to the species that had been located  
17 during earlier surveys and B and C addressing how species  
18 that were found in the fall survey would be handled. But  
19 it's in C where they talk about the avoidance plans and  
20 the management plans that will be included and those are  
21 where the 75 percent is referenced. So it's not entirely  
22 clear that that also pertains to the plans that are  
23 discussed in section A. So we don't have any objection.  
24 We can talk to each of these. We don't have any objection  
25 to clarifying those avoidance measures also apply to the

1 plants that were previously found. Does that make sense  
2 to staff?

3 HEARING OFFICER RENAUD: All right. So now there  
4 is a -- the sub-part H seed collection has been deleted.

5 MS. NISHIDA: And that has been moved elsewhere.

6 HEARING OFFICER RENAUD: All right. Fine. And  
7 on page 62, beginning on page 62 of staff's comments,  
8 again, it looks like we've deleted it and re-inserted some  
9 language here. Is there a change there, staff?

10 MS. NISHIDA: This was just to again -- just to  
11 break off this one section. It was originally section C  
12 and staff's proposed (inaudible) 19 wanted to separate  
13 that out from B.

14 HEARING OFFICER RENAUD: Okay. Thank you for  
15 that comment.

16 MR. MEYER: Hearing Officer Renaud, just a quick  
17 question before I lose my place. At the beginning of the  
18 condition first on the first bullet and I believe on a few  
19 places after that on this page 57 at the last part of  
20 number one (inaudible) a biologist, staff recommends the  
21 deletion of "as practicable." Staff does not have an  
22 objection to having some provision of sort of feasibility  
23 if it's defined and what that is. Otherwise, from a  
24 compliance standpoint, it becomes unenforceable. So we  
25 don't -- we're not against the concept, but we would

1 prefer that there's some sort of performance standard if  
2 we are going to have an out clause on the condition.

3 HEARING OFFICER RENAUD: All right. We'll look  
4 at that. Thank you. I think we don't need to discuss  
5 that one further.

6 MS. GANNON: And part of the language that you  
7 did remove like on page 58 and several other places  
8 throughout this condition, we were trying to define some  
9 of the practicability or when avoidance would not be  
10 required and it was making the finding where avoidance  
11 will not allow for long-term viability of the species we  
12 would not be avoiding them. And we think that's still an  
13 appropriate standard to include to have the avoidance be  
14 meaningful.

15 HEARING OFFICER RENAUD: I think the Committee  
16 understands the general issue here about keeping things  
17 both enforceable but also allowing for reason. And we'll  
18 look through it with that eye -- an eye for that.

19 Now, on page 63 under item 2, staff has proposed  
20 some additional language. Applicant, what do you think of  
21 that?

22 MS. GANNON: For the 75 percent avoidance, we  
23 agree with that.

24 HEARING OFFICER RENAUD: Right. Next one under  
25 two.

1 MS. GANNON: Under two, project linears, with  
2 agree with.

3 Construction lay down areas, we do not. And the  
4 staff has proposed this exception to this avoidance. We  
5 don't object to having additional exceptions put in there.  
6 But it seems that if there is going to be exceptions to  
7 when avoidance has to happen, they should be consistent.

8 HEARING OFFICER RENAUD: Okay. I think we  
9 understand that. Thank you.

10 Any other party wish to weigh in on this?  
11 Looking at the top of page 64, staff's language eliminates  
12 the practicable avoidance and substitutes complete  
13 avoidance. Applicant accept that language?

14 MS. GANNON: We accept the language that that had  
15 been included previously. The retained that this does  
16 include a performance standards for how practicability is  
17 going to be defined which is again partial (inaudible) of  
18 whether the avoidance would allow for the meaningful  
19 retention of the avoided species. And that's the same  
20 discussion as before.

21 HEARING OFFICER RENAUD: I think we understood  
22 your position on that.

23 MR. MEYER: Just a supplemental question. Was  
24 "achieve" a word that we added in there?

25 HEARING OFFICER RENAUD: That would achieve a

1 complete --

2 MR. MEYER: I'm just wondering if that should  
3 have been underlined and we forgot it or if that was part  
4 of the original condition.

5 HEARING OFFICER RENAUD: Yes. It probably was.  
6 You're right. Okay. All right. Good.

7 Now, now at the bottom of the page 64, this may  
8 be what you were referring to before Mr. Schneider that  
9 says "mitigation shall include seed collection." I  
10 noticed you deleted a provision regarding seed collection  
11 on page 59 of your comments. So --

12 MS. NISHIDA: This is -- I eliminated from 59 and  
13 it had been also restated in number five. So I eliminated  
14 the other one.

15 HEARING OFFICER RENAUD: All right. Do we still  
16 have the seed collection details somewhere?

17 MS. NISHIDA: Yes.

18 HEARING OFFICER RENAUD: All right.

19 MS. GANNON: And we can just clarify in the other  
20 seed collection provision, we did have the exception that  
21 seed collection was required where I think this is  
22 consistent with our stipulation where it was allowed with  
23 timing.

24 MS. NISHIDA: Right.

25 MS. GANNON: And the concern is we can't go and

1 do seed collection right now, because we don't have the  
2 right grants from the BLM. So we had talked about that it  
3 wouldn't be required per species before we couldn't do it  
4 before Phase IA or B as needed for the construction.

5 MS. NISHIDA: I got the impression that 1B was  
6 going to be later. Phase IA was going to be -- was going  
7 to be starting this fall and going into next year. So --

8 MS. GANNON: Our concern is that the collection  
9 timing for these species obviously varies per species. So  
10 we're looking at a full year. And that's the way the  
11 current schedule is set. We may be in 1B before that time  
12 period is up. So we were trying to define practicability  
13 here to recognize within the first year of construction  
14 seed collection and may not be possible for the activities  
15 that will be occurring.

16 HEARING OFFICER RENAUD: So basically we're  
17 talking about whether or not to include the word  
18 available. Is that really what we're --

19 MR. BABULA: I think they want to put back in and  
20 1B.

21 MS. GANNON: And 1B, yes.

22 MR. BABULA: This is on page 65, top paragraph.  
23 Because I guess our understanding was this only one 1A  
24 would be of concern and that by the time 1B comes around  
25 they would have time to collect. But they indicated that



1 may not be the case.

2 MS. GANNON: Correct.

3 HEARING OFFICER RENAUD: Staff's position on that  
4 is not to do that?

5 MR. MEYER: Just a clarifying question. Given  
6 the type of development you're doing on the project where  
7 you're avoiding many of the areas and you are just  
8 basically moving disturbance to the pedestals rather than  
9 avoiding the entire environment, is there a problem with  
10 seed collection outside the areas you're immediately  
11 impacting?

12 MS. GANNON: We think where it's feasible to do  
13 this, we don't have a problem with doing it.

14 HEARING OFFICER RENAUD: Okay. So we're not  
15 talking about doing any seed collection. You're just  
16 saying that you would ask that there wouldn't be a  
17 requirement for seed collection in those areas that are  
18 being actively developed.

19 MS. GANNON: Within the first year.

20 HEARING OFFICER RENAUD: Okay.

21 MS. GANNON: Yes.

22 HEARING OFFICER RENAUD: But you would be doing  
23 seed collection within the first year in areas that are  
24 not directly impacted by construction activities on those?

25 MS. GANNON: Within the first year, correct. So

1 that obviously for fall species we wouldn't be doing  
2 collection until next fall. But as feasible, we would be  
3 doing it. But what makes this problematic is the prior to  
4 construction language and then the exclusion of 1B.

5 HEARING OFFICER RENAUD: Okay. Thank you.

6 All right. Is there anything further on  
7 Condition of Certification Bio 13? I see there are some  
8 small changes. No. What are we talking about? Bio 19.  
9 Any further on Bio 19? In particular, I'm wondering about  
10 the mitigation security issue on page 70 prior to the  
11 start of ground disturbing project activity. Applicant  
12 have a comment on that?

13 MS. GANNON: I will be providing the language  
14 earlier that relates to the relates to the long-term  
15 management funding and I think we would cross check to see  
16 that that's consistent with this language.

17 HEARING OFFICER RENAUD: All right. And I think  
18 that also goes over to the verification. The language in  
19 the PMPD a big on page 73 was saying that the security had  
20 to be provided as described above. And staff is proposing  
21 to ensure language security adequate to acquire  
22 compensation mitigation lands or take the habitat  
23 enhancement. I guess our concern would be here that that  
24 may not therefore allow for the nesting, which was  
25 contemplated in the PMPD analysis and language. Or we'd

1 like to make sure it does explicitly allow for that.

2 HEARING OFFICER RENAUD: Where is this again?

3 MS. GANNON: On page 73 of staff's comments under  
4 verification, the middle of the page.

5 HEARING OFFICER RENAUD: Staff, why did you want  
6 to add that language?

7 MS. NISHIDA: We do have item number four, page  
8 67. We do have the allowance for the nesting of  
9 mitigation here.

10 HEARING OFFICER RENAUD: Well, that was already  
11 in the condition.

12 MS. GANNON: I think what we're concerned about  
13 is the nesting of mitigation but also the nesting of  
14 security.

15 HEARING OFFICER RENAUD: So staff, again, what's  
16 your reasoning for adding this language in the middle of  
17 page 73?

18 MS. NISHIDA: Okay. In case the rare plant  
19 habitat acquisition is not satisfied with acquisition  
20 through Bio 10, that's why we wanted to break out the  
21 security for the rare plants.

22 MS. GANNON: We think this goes down to this is a  
23 decision again that you were adjudicating earlier.

24 HEARING OFFICER RENAUD: Very good. We'll take  
25 it back. Thank you. Now, on page 74, staff has proposed

1 deleting a -- about the status and distribution study.

2 Applicant, do you have a response to that?

3 MS. GANNON: We agree with that.

4 HEARING OFFICER RENAUD: Okay. Anything else on  
5 Bio 19 then?

6 MS. GANNON: Not from the applicant.

7 HEARING OFFICER RENAUD: Bio 19, anything?

8 MS. MILES: Not from CURE.

9 HEARING OFFICER RENAUD: Let's move on to staff's  
10 new Condition 22. Applicant, want to tell us what you  
11 think about this?

12 MS. GANNON: We think that the PMPD's language  
13 about phasing and nesting is appropriate. We would urge  
14 the Commission to -- Committee to stay with the language  
15 that is as it is described in each one of the conditions.  
16 We think that this is -- we found the way this language is  
17 proposed is confusing and hard to refer back and to relate  
18 to the other conditions. We think it's cleaner and better  
19 to retain the approach that has been adopted by the  
20 Committee.

21 HEARING OFFICER RENAUD: All right. And staff,  
22 what's your reasoning? I see your comment here that  
23 you're trying to -- looks like you're trying to be  
24 helpful.

25 MS. NISHIDA: Yes. This is very similar to what

1 is being used for Calico.

2 MS. GANNON: And for the record, we have not  
3 agreed to it in Calico either.

4 COMMISSIONER BYRON: Can the staff speak to  
5 whether or not this alternative condition is being used in  
6 any other proposed decisions?

7 MS. NISHIDA: There are these phasing -- phasing  
8 Conditions of Certification for other projects. Ivanpah  
9 has something but not quite, and I believe Blythe has  
10 something which brings in the phasing. But they're all  
11 different. And this is most similar to Calico. In fact,  
12 Calico was used as the model for this one.

13 COMMISSIONER BYRON: As I understand it as an  
14 alternative condition whether or not the applicant agrees  
15 to it, they're not required to use this condition;  
16 correct?

17 UNIDENTIFIED SPEAKER: The opening paragraph  
18 says, "As an alternative to providing mitigation of  
19 security, et cetera, the project owner may elect" --

20 MS. GANNON: But I think the way that if you read  
21 all of the comments together they were striking out the  
22 posing and the nesting provisions and a lot of the other  
23 conditions and placing it here. So I think that the way I  
24 read it was the proposal was we either provide everything  
25 up front, we don't phase at all, or we go with this

1 language. Is that what you're intending?

2 MR. MEYER: Maybe I misunderstood your question.

3 COMMISSIONER BYRON: Go ahead and repeat it,  
4 because it's a good question.

5 MS. GANNON: The way I was reading this was  
6 Commissioner Byron was saying this is an alternative. And  
7 what you're really proposing is this an alternative to the  
8 phasing and nesting that was included in the PMPD and this  
9 would be another option that would be exercised to phase  
10 the security and to address the mitigation needs. I don't  
11 think we would have an objection to it.

12 But again, we felt that the phasing and nesting  
13 was appropriate with the PMPD and superior to this.

14 MR. GALLAGHER: But your question was, ELLA, if I  
15 may restate, virtually your other language taking out the  
16 other phasing and nesting language in Bio 10 and Bio 17  
17 and Bio 19 --

18 MS. GANNON: So this was the override.

19 MR. GALLAGHER: And in those conditions just  
20 leaving it as you pay all the security up front. And the  
21 only way you would do phasing is through this new  
22 condition. I think that the question was wasn't that the  
23 way you sort of framed the issues? So this wasn't really  
24 an alternative way of doing phasing. It's the way to do  
25 phasing as an alternative to do all the mitigation

1 security up front. And if the answer to that question is  
2 yes, then we think it's as Ella said, it's cleaner and  
3 more straight forward to retain the structure of the PMPD  
4 rather than separating it all in this new condition.

5 HEARING OFFICER RENAUD: I think at least me, I  
6 still don't understand staff's motivation here. Why is  
7 this here? This is completely new for this case. The  
8 phasing proposed conditions in your brief wasn't in there.  
9 I mean, so what is this about?

10 MS. NISHIDA: Okay.

11 COMMISSIONER BYRON: I suggest you look at your  
12 staff comment.

13 MR. BABULA: I did look at that. It wasn't very  
14 helpful.

15 MR. MEYER: Basically was written by the counsel  
16 that was working with biology that as unfortunately not  
17 here the moment. Generally to try to work a way through  
18 the compliance unit for them to be able to enforce the  
19 whole phasing options so they're trying to find a way that  
20 it would allow the Energy Commission as compliance unit  
21 post certification to make sure that all of the various  
22 phasing requirements were actually complied with rather  
23 than having it spread throughout the very long bio  
24 condition. So that was the intent.

25 HEARING OFFICER RENAUD: As we understand it

1 though, it is spread throughout. Right? And then we're  
2 adding this other layer. There was not a wholesale  
3 removal of those provisions from the conditions.

4 MR. MEYER: That's correct.

5 MS. GANNON: That's correct.

6 HEARING OFFICER RENAUD: Anything further from  
7 applicant or anybody?

8 MS. GANNON: No. Again, I think we object to  
9 many of the details in here. I don't know if there is any  
10 reason of going into it.

11 HEARING OFFICER RENAUD: I think the Committee  
12 has enough information here on this one. Thank you.

13 Okay. Well, that seems to conclude our run  
14 through staff's comments. Let's see. CURE, were there  
15 any of your comments that we did not touch upon or would  
16 you like to expand upon?

17 MS. MILES: This is sort of a bit of a summation,  
18 but it does include a few new facts. I'm concerned about  
19 a number of impacts that were identified after the staff  
20 assessment was released, the initial staff assessment.  
21 And this include impacts to flat-tailed horn Lizard  
22 movement corridors, impacts related to the water supply  
23 and the proposed new water supply, the Dan Boyer Well.  
24 Also since the replacement of the staff assessment, it was  
25 determined by the agencies and by staff and in the PMPD



1 itself that there is a significant impact to foraging  
2 habitat for Peninsular bighorn sheep, which is an  
3 endangered species.

4           And in addition, in the initial staff assessment,  
5 there was no mitigation included for impacts to cultural  
6 resources, which are significant and unmitigable. So I  
7 just wanted to point out that the public has never had an  
8 opportunity to comment on these and receive a response to  
9 comment as would typically occur. And as is required by  
10 CEQA and in addition to that, there are the new  
11 alternatives, the 709 megawatt configuration and the big  
12 horn mitigation for tamarisk removal. Those were not  
13 included in the initial staff assessment. And in  
14 addition, they were not analyzed by staff, and we feel  
15 that in addition to violating CEQA's requirements these  
16 changes be recirculated for public comment. We also think  
17 that in particular the 709 megawatt reconfiguration and  
18 the tamarisk removal proposal need to be analyzed by staff  
19 subject to Commission regulation Section 1742. And so we  
20 believe that this project is not ready to be approved.

21           HEARING OFFICER RENAUD: Thank you.

22           Anyone else here wish to state anything before I  
23 ask the parties who are on the phone?

24           MR. MEYER: Just very brief just to let people  
25 know I've developed some additional comments on the PMPD

1 and in the cultural resource section which I will send an  
2 e-mail to all parties simply correcting -- it was when the  
3 BLM vote the original suggested condition they just  
4 referred to the CEC in general. But we just want to  
5 replace the -- CEC with CPM, so it doesn't require a  
6 business meeting for these issues.

7 MS. GANNON: We would support that change.

8 MR. MEYER: We'll e-mail that out to all parties  
9 in a few minutes.

10 HEARING OFFICER RENAUD: Thank you, Mr. Meyer.  
11 And the applicant.

12 MS. GANNON: On behalf of the applicant, we would  
13 like to thank the Committee for all the work on this  
14 project and for the PMPD and for going through the  
15 conditions today. It's obviously been a challenging  
16 process for all of us, but I think that the PMPD decision  
17 is a sound and well supported decision and we appreciate  
18 all of your effort.

19 HEARING OFFICER RENAUD: Thank you.

20 Mr. Budlong, I see you're still there. Do you  
21 have anything to state to the Committee with respect to  
22 the PMPD?

23 MR. BUDLONG: Yes. I'm still here. No, I have  
24 nothing more to add.

25 HEARING OFFICER RENAUD: Thank you for your

1 participation.

2 Mr. Allen McDonney, are you still there?

3 MR. MC DONNEY: Yes, sir.

4 HEARING OFFICER RENAUD: Have anything to add to  
5 the proceedings here?

6 MR. MC DONNEY: No, sir. Thank you. It was very  
7 educational, and I'm looking for in future to see what's  
8 going to happen. Thank you.

9 HEARING OFFICER RENAUD: Thank you.

10 Anyone from California Native Plant Society on  
11 the line? All right. Thank you.

12 At this point, we will accept public comment.  
13 This will be an opportunity for members of the public who  
14 have been participating or listening in to address the  
15 Committee briefly. Is there anyone here in the room in  
16 Sacramento who would wish to comment?

17 Seeing none, is there anyone on the phone who  
18 would wish to comment to the Committee? If you want to  
19 just go ahead and start. No one. All right.

20 Thank you. We do appreciate everyone's comments  
21 on the PMPD here. The process now will take the Committee  
22 back to its offices to consider these comments and prepare  
23 a document which we will call an errata. The errata will  
24 contain any changes that the Committee decides are  
25 appropriate to make to the PMPD. And the errata and the

1 PMPD together would then be presented to the full  
2 Commission for a vote on the project the September 29th  
3 business meeting. The public comment period is still  
4 open. Feel free to submit your comments as to parties.  
5 We did ask that the party's comments be submitted by  
6 September 16th and you did comply with that. We  
7 appreciate that very much. I think --

8 MS. MILES: Just to clarify. I believe you asked  
9 for initial comments; is that correct?

10 HEARING OFFICER RENAUD: Yes. Meaning that if  
11 you had comments in response to the comments of others,  
12 then you would be able to respond to those.

13 All right. And with that, I think we'll adjourn.  
14 Thank you.

15 (Thereupon the hearing concluded at 12:26 p.m.)

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## 1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand  
3 Reporter of the State of California, and Registered  
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the  
6 foregoing hearing was reported electronically by JOHN COTA,  
7 and thereafter transcribed into typewriting by me, Tiffany  
8 C, Kraft, a Certified Shorthand Reporter of the State of  
9 California.

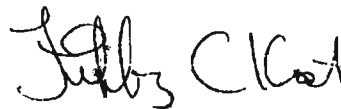
10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said hearing nor in any  
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 23rd day of September, 2010.

15 

16 JOHN COTA

17 Electronic Reporter

18 

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