

MANDATORY STATUS CONFERENCE  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

**DOCKET**  
**08-AFC-13C**

DATE	JUL 19 2011
RECD.	JUL 28 2011

In the Matter of: )  
 )  
Application for Certification for the )  
Calico Solar Project Amendment )  
\_\_\_\_\_ )

Docket No.  
08-AFC-13C

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM B  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

TUESDAY, JULY 19, 2011  
9:30 a.m.

Reported by:  
Ramona Cota  
Contract No. 170-09-002

COMMITTEE MEMBERS

Karen Douglas, Commissioner and Presiding Member

Robert B. Weisenmiller, Chairman and Associate Member

HEARING OFFICER, ADVISORS

Kourtney Vaccaro, Hearing Officer

Susan Brown, Advisor to Commissioner Weisenmiller

Galen Lemei, Advisor to Commissioner Douglas

STAFF, CONSULTANTS AND STAFF WITNESSES

Stephen Adams, Senior Staff Counsel

Craig Hoffman, Project Manager

Kerry Willis, Senior Staff Counsel

OFFICE OF THE PUBLIC ADVISER

Jennifer Jennings, Public Adviser (via WebEx)

Lynn Sadler, Deputy Public Adviser

APPLICANT

Ella Foley Gannon, Attorney  
Bingham McCutchen LLP

Gerrit Nicholas  
kRoad Power

Bob Therkelsen  
Therkelsen Energy and Environmental Consulting

INTERVENORS

Kevin Emmerich (via WebEx)  
Basin and Range Watch

Bill Thorpe  
BNSF Railroad

Helen B. Kim (via WebEx)  
Katten Muchin Rosenman LLP  
*representing* BNSF Railroad

Tanya A. Gulesserian (via WebEx)  
Adams Broadwell Joseph and Cardozo  
*representing* California Unions for Reliable Energy (CURE)

Bart W. Brizzee (via WebEx)  
County of San Bernardino

Patrick C. Jackson (via WebEx)

Travis Ritchie (via WebEx)  
Sierra Club

ALSO PRESENT

Governmental Agencies

Steven Ingram (via WebEx)  
California Department of Fish and Game

Members of the Public

Fred Stern (via WebEx)

I N D E X

	<u>Page</u>
Proceedings	1
Call to Order and Introductions	1
Opening Remarks by Hearing Officer Vaccaro	4
Lead Agency	
Parties	
Applicant	5
Staff	12
Sierra Club	18
CURE	35
Patrick Jackson	35
San Bernardino County	36
BNSF	36
Governmental Agencies	
California Department of Fish and Game	37
Letter from NRDC	38
Baseline	39
Applicant's Responses	41
Public Comment	49
Adjournment	51
Reporter's Certificate	52



1 who is a consultant to the applicant.

2 PRESIDING MEMBER DOUGLAS: Staff.

3 MS. WILLIS: Good morning. My name is Kerry  
4 Willis, I am senior staff counsel. With me is Craig  
5 Hoffman, the project manager, and Steve Adams, senior staff  
6 counsel.

7 PRESIDING MEMBER DOUGLAS: Very good. Are there  
8 any other parties? Are there any intervenors in the room?

9 (No response).

10 PRESIDING MEMBER DOUGLAS: Thank you. Sierra  
11 Club?

12 MR. RITCHIE: Yes, thanks. This is Travis Ritchie  
13 with the Sierra Club on the phone.

14 PRESIDING MEMBER DOUGLAS: Thank you.  
15 California Unions for Reliable Energy?

16 MS. GULESSERIAN: Good morning, Tanya Gulesserian  
17 on behalf of CURE.

18 PRESIDING MEMBER DOUGLAS: Thank you. Basin and  
19 Range Watch?

20 (No response).

21 PRESIDING MEMBER DOUGLAS: It sounds like nobody  
22 from Basin and Range Watch yet.

23 Is Patrick Jackson on the phone?

24 MR. JACKSON: Yes I am.

25 PRESIDING MEMBER DOUGLAS: Thank you. Newberry

1 Community Services District?

2 (No response).

3 PRESIDING MEMBER DOUGLAS: Society for the  
4 Conservation of Bighorn Sheep?

5 (No response.)

6 PRESIDING MEMBER DOUGLAS: Not yet. Defenders of  
7 Wildlife?

8 (No response.)

9 PRESIDING MEMBER DOUGLAS: Not yet. And County of  
10 San Bernardino County?

11 MR. BRIZZEE: Yes, good morning. Bart Brizzee  
12 with the County Counsel's Office on behalf of the County.

13 PRESIDING MEMBER DOUGLAS: Good morning, thanks  
14 for being here. Anyone from BNSF Railroad Company?

15 MS. KIM: Yes, Helen Kim at Katten Muchin Rosenman  
16 on the phone.

17 PRESIDING MEMBER DOUGLAS: Okay, thank you.

18 Is anybody here representing any state, local or  
19 federal agencies in person or on the phone? We have heard  
20 from Mr. Brizzee; is there anybody else from other agencies.

21 MR. INGRAM: Steve Ingram with the California  
22 Department of Fish and Game's Office of General Counsel.

23 PRESIDING MEMBER DOUGLAS: Thank you. Anybody  
24 else?

25 MR. THORPE: Bill Thorpe on behalf of BNSF.

1           PRESIDING MEMBER DOUGLAS: Thanks. All right, now  
2 that we finished introductions I will turn this over to the  
3 Hearing Officer.

4           HEARING OFFICER VACCARO: We here we are again.  
5 We are meeting at fairly regular intervals, which I think is  
6 really helpful and informative for the Committee, hopefully  
7 for the parties as well.

8           I think before we get into today's discussion I  
9 would like to extend an apology to BNSF. I had given a  
10 projected timeline the last time we spoke at the status  
11 conference for when we believed the Committee would respond  
12 to the proposed data requests. So many things have happened  
13 between then and now that those have not yet issued. But  
14 please know that that will be forthcoming in very short  
15 order. And again I apologize that we didn't stick to the  
16 original proposed time frame.

17           I think with that we'll get straight to I think  
18 the matter at hand which is, one, to understand what  
19 progress has been made to date in the proceeding. There  
20 were still a number of things, I think, that were being  
21 worked on where the follow-up is after the workshop.

22           As well as to understand questions, concerns and  
23 perhaps, I think more pointedly, recommendations that the  
24 parties might have as we look at the next steps in view of  
25 the Committee's July 1st ruling. I think the ruling itself



1 in terms of language and the conclusions is pretty clear. I  
2 think what might not be clear is, where do we go from here.

3 And I think the Committee is very interested in hearing  
4 from the parties, getting recommendations so that the  
5 Committee can make some further informed decisions and give  
6 a road map to the parties about what the expectations are as  
7 we move forward.

8 So I think with that we'll follow the approach  
9 that we have been following which is, we'll start with the  
10 applicant. We'll hear from all of the parties. We'll let  
11 folks give each other responses. You'll hear from the  
12 Committee and then we'll turn to public comment. So  
13 Ms. Foley Gannon, I think we'll hear from you first on  
14 behalf of the applicant.

15 MS. FOLEY GANNON: Thank you. Responding first to  
16 the issue of the scheduling and what's happened since we  
17 were last together. We are still working on the studies  
18 which we have outlined in the earlier submittals that we  
19 have made.

20 We have had a little bit of slippage in the time.  
21 Unfortunately, the first piece of the analysis that we  
22 needed to do for the hydrology studies, which will also  
23 influence the glint and glare ultimately, was getting the  
24 soil borings done so we could get the update of the  
25 geotechnical report.

1           As we have reported previously, we had gotten a  
2 permit from BLM to go out and take the soil borings. There  
3 were two borings which we needed to change the way we were  
4 going to be accessing them to ensure that we weren't using a  
5 road which could possibly be in BNSF's right-of-way, so we  
6 needed to get a new permit to do those two soil borings. It  
7 just took a little bit of time to process with the BLM's  
8 permitting.

9           They have issued that permit as of yesterday and  
10 we will be doing those two last soil borings on Friday. So  
11 with that, that will be the final piece of information that  
12 we need to do the geotechnical reports.

13           But again, since everything is kind of, you know,  
14 hinged upon that, that's putting us out, we're anticipating,  
15 three weeks from what we had thought previously. And we can  
16 submit an updated schedule but essentially it has the  
17 geotechnical report going in on August 10th instead of July  
18 20th and with everything sequentially falling back those  
19 three weeks. So the final submittal of the information we  
20 would anticipate to be September 12th rather than September  
21 1st for all of those studies.

22           So that's where we are on our analysis and our  
23 studies that we are conducting.

24           Turning then to our recommendations with how to go  
25 forward. It appears, you know, that there are really three

1 major questions regarding the environmental review document  
2 itself, the first being, who is the lead agency for the PV  
3 portion of the project? What documents should be produced?

4 Should there be one document, should there be multiple  
5 documents for the one project? And finally, what should the  
6 CEC's document look like? And then there are the baseline  
7 issues. But I would like to just briefly address our  
8 thought on those first three questions.

9           And with regard to the lead agency. We concur  
10 with the Order that the CEC has a non-delegable duty to be  
11 the lead agency for the solar thermal component of the  
12 project.

13           And because of that and because you were the lead  
14 agency when the project was first approved we think that you  
15 need to need to be the lead agency for the entirety of the  
16 project. And that's based on several I think legal bases in  
17 both CEQA and CEQA guidelines and also for practical  
18 reasons.

19           In CEQA, again, you have to be looking at the  
20 whole of the project. And since you have to be the lead  
21 agency over the solar thermal component and the related  
22 facilities, which as you listed in the order are the, you  
23 know, the main service complex, the water lines, all of --  
24 the bridge, the other features, the access roads.

25           You need to produce a document that looks at the

1 whole of the project so that means you need to look at the  
2 PV portions of the project. Since you will be looking at  
3 that in the document it really only makes sense for you then  
4 to be the lead agency as well on that portion of the  
5 project.

6           We also think it's significant, again, that you  
7 have already acted as a lead agency. And under the CEQA  
8 guidelines 15052 there is a provision that says you only  
9 shift the lead agency when there is a situation in which you  
10 have to do subsequent environmental review and the initial  
11 lead agency has no more discretionary authority over the  
12 project. You clearly do have discretionary authority over  
13 the project and therefore we believe that you should be  
14 acting as lead agency.

15           Again, we don't see what the benefit or even how  
16 you really would say that there's two lead agencies when  
17 you're saying there is a whole of a project. So we think  
18 that you should be acting as lead agency over the entirety  
19 of the, of the project.

20           We also think that your analysis should be  
21 included in one document. And again, this is both for  
22 practical purposes and to ensure the legal legality of the  
23 document that you produce. To try to divide up the analysis  
24 between two different documents, we have been struggling  
25 with what they would even look like and what would be the

1 purpose served by that.

2           Again, there are many facilities which are parts  
3 of that -- because it's a whole of a project, if you were  
4 just trying to analyze the PV you would have to analyze the  
5 PV plus the main service complex plus the access roads plus  
6 the substation plus the, you know, the water line, the  
7 bridge, all of those components.

8           Then you would have to -- if you were trying to do  
9 two documents you would have to then in the second document  
10 analyze the SunCatchers and the main service complex and the  
11 access road and the water line and all the rest of that.  
12 And so we don't understand what would be the basis for doing  
13 that. And again, we don't see anything in CEQA or any case  
14 law that compels that and just simply also for the  
15 practicality of how it would be carried out. We don't think  
16 that that is something that we would recommend or think is  
17 the appropriate way to move forward.

18           Finally, we believe that you should do this  
19 document under your Certified Regulatory Program. Again,  
20 there is nothing in either the Warren-Alquist Act or the  
21 nature of the Certified Regulatory Program that precludes  
22 you from considering things that are outside of your siting  
23 jurisdiction.

24           And in fact you often do consider things that are  
25 outside your siting jurisdiction. You know, there are

1 issues that have been raised about, you know, looking at  
2 transmission line upgrades that are outside of your  
3 jurisdiction. There are numerous examples of, you know,  
4 considering other upgrades, of projects that had, you know,  
5 geothermal wells. Other components, again, that you just  
6 clearly didn't have permitting authority over. But because  
7 you were the lead agency you needed to and you did and you  
8 have, considered the whole of the document.

9           Now the Sierra Club raised the issue saying that  
10 there are -- they read a couple of cases as saying that this  
11 is not allowed, that all you can do is the things that you  
12 actually have certification -- that you are actually  
13 permitting yourself. But the cases that they are  
14 referencing actually did not involve a agency trying to act  
15 under a Certified Regulatory Program to issue a lease or a  
16 permit or to issue the -- or to take the actions that were  
17 part of their Certified Regulatory Program.

18           That's a very different situation here. Here you  
19 are going to be issuing an amendment. You are going to be  
20 siting a power plant. So you will be taking the very action  
21 that is contemplated by your Certified Regulatory Program.  
22 And while you are carrying out that action you will just be  
23 satisfying the other requirements of CEQA, which again  
24 require that you consider the whole of the action and that  
25 you do a complete analysis.

1           And there are numerous examples of earlier  
2 documents that you have completed that also can be used to  
3 illustrate how this analysis can be done, just that you can  
4 clarify there are certain things that you are doing for  
5 mitigation that under CEQA you have determined are necessary  
6 to mitigate an impact to less-than significant. And then  
7 there are things that you would actually be putting in your  
8 conditions of certification.

9           And again we say, looking at these questions in  
10 its totality it is also consistent with the way we read  
11 CDFG's Certified Regulatory Program for issuing Incidental  
12 Take Statements. And we would also note that in Sierra  
13 Club's letter which they docketed, they were suggesting that  
14 CDFG should be the lead agency and that they should go  
15 through the normal EIR process. But CDFG also has a  
16 Certified Regulatory Program which is in place and controls  
17 when they are issuing Incidental Take Statements. So even  
18 under that process it is not the normal EIR process, it's a  
19 separate process.

20           And there also is in CDFG's regulations provisions  
21 that provide that generally they do act as a responsible  
22 agency when another state agency also has permitting  
23 authority over a project. And again, because this is one  
24 project -- it is a project with different components but  
25 it's one project, you are a state agency that is acting

1 under that.

2           So for all of these reasons, for your program, for  
3 the Warren-Alquist Act, for CDFG's regulatory program as  
4 well as its Certified Regulatory Program, we believe that it  
5 is appropriate for, again, you to act as the lead agency, to  
6 issue a single document and to do it under your Certified  
7 Regulatory Program.

8           Would you like to talk about the baseline issues  
9 now or would you like to move on, let other parties address  
10 these more procedural issues?

11           HEARING OFFICER VACCARO: I think maybe if we  
12 stick to lead agency designation for now because that really  
13 is the, I think, more pertinent issue on the table. We can  
14 certainly hear from folks on baseline if we need to discuss  
15 that today but I think this is the one that we're probably  
16 going to spend the most energy on today. So we'll go ahead  
17 and finish with lead agency.

18           Staff?

19           MS. WILLIS: Thank you. Once again, my name is  
20 Kerry Willis, I am senior staff counsel.

21           To a certain extent we agree with the applicant's  
22 comments and then we differ as far as when we get to the  
23 documents. We do agree that -- and concur with the Order  
24 that the Energy Commission has a non-delegable duty for the  
25 solar thermal portion of the project. And we would -- and



1 we believe that the Energy Commission would be the lead  
2 agency for that, that portion of the project.

3 We also agree that the Energy Commission should be  
4 the lead agency for the entire project, which we stated  
5 earlier and our arguments for that haven't changed. We  
6 would have to look at the whole of the project and so it  
7 would make more sense that the Energy Commission's staff  
8 would be looking at both portions, the PV portion and the  
9 solar thermal at the same time.

10 And we do believe that there is commonality so  
11 there is the common facilities that would be required for  
12 both projects could be -- would be permitted by the Energy  
13 Commission through the Certified Regulatory Program for the  
14 solar thermal and the amendment to that project.

15 So we do believe that there is reason for us to --  
16 for the Energy Commission to be lead agency. There would be  
17 some action that would need to be taken by this agency when  
18 it approves some of the areas that Ella just stated, the  
19 access roads and, you know, the transmission lines and such.

20 Having said that I think we differ when it comes  
21 to under what program and what documents we produce. It is  
22 our opinion and we have had a lot of discussion over this,  
23 that we would process the amendment -- we would recommend  
24 processing the amendment as the way we would normally  
25 process an amendment. With the Certified Regulatory Program

1 with the parties as we have.

2           We would be required to look at the whole of the  
3 project, which would be the remaining portion of the site.  
4 Which has already been considered prior by staff so it isn't  
5 a big stretch for us to continue doing a subsequent document  
6 or, you know, an EIR or a staff assessment that would review  
7 the remainder of the whole site as it is.

8           That can be done as part of the amendment process  
9 but it doesn't -- it isn't going to be any extra work if we  
10 do two documents or a document that would be split, let's  
11 say, in half. There is nothing that says that we can't, you  
12 know, just cut and paste the part of the analysis from the  
13 amendment portion into another document. I don't see that  
14 as being an excessive, you know, amount of work for staff to  
15 do. It's something that we would be looking at. And in  
16 fact it would be, I think, easier for staff to be reviewing  
17 the whole site because they have done that in the past.

18           So our recommendation would be to kind of do a  
19 parallel process. On one hand we would be doing the  
20 amendment process as we have and then on the other -- the  
21 other path, let's say, we would be looking at the PV portion  
22 as an EIR process using -- it would include a Draft EIR and  
23 public comments, a Final EIR, a Notice of Determination.

24           The action, as I said before, for us to be lead  
25 agency would be we would be taking action on the commonality

1 portion that is required for both projects.

2           There are provisions in our regulations for staff  
3 to carry out an EIR process. It does require that the  
4 applicant provide -- they would be required to pay a  
5 reasonable fee for the preparation of an EIR so it is a  
6 little bit different.

7           We don't believe -- at least our interpretation  
8 and this is obviously what we're here for is to discuss the  
9 ruling from July 1st, but our interpretation was when the  
10 Committee ruled that the Energy Commission did not have  
11 jurisdiction over the PV portion of the project, that would  
12 have removed it out of our Certified Regulatory Program.  
13 And that's why we are recommending kind of a parallel path.

14           And we have kind of looked at the timing and all  
15 of that and we don't think that it adds an extraordinary  
16 amount of time or maybe any time at all because we would  
17 just be working in kind of in parallel.

18           The nightmare part of it would be for staff to be  
19 preparing the documents and to making sure that we have  
20 covered all the bases. But for the PV portion, if the  
21 Energy Commission is the lead agency they are going to be  
22 needing to send this document out to the responsible  
23 agencies. We are going to need separate conditions or  
24 mitigation measures under CEQA separate from our conditions  
25 of certification.

1           And we believe this is a cleaner approach.  
2 Whether it's one document with two portions or two documents  
3 I don't think that really matters to us. But we do think  
4 that one analysis with some kind of other, you know,  
5 mitigation and conditions of certification becomes  
6 confusing. And I think it's confusing probably for the  
7 public, it could be confusing for the courts. What part is  
8 part of our regulatory program and what part is not under  
9 our jurisdiction. So I think that was our recommendation  
10 for an approach.

11           HEARING OFFICER VACCARO: Okay, thank you. I just  
12 have a clarification question. And I think you were very  
13 clear in what you were saying, I think I just want to make  
14 sure I am understanding it the way that you were meaning to  
15 say it.

16           As I understand it the applicant's position is  
17 that one document under the Certified Regulatory Program is  
18 appropriate and sufficient to address both components of the  
19 single project.

20           I am hearing, I think, that you're saying two  
21 documents or one document would be appropriate. But in any  
22 event you believe the PV portion must be done under an EIR  
23 and that it is not appropriate for it to be done under the  
24 Certified Regulatory Program. And I might be misstating and  
25 if I am please correct me.

1 MS. WILLIS: No, that's correct. And one of the  
2 other -- one of the points I think I failed to mention was  
3 that we do believe -- because we were talking about timing.  
4 That the decision would be considered a substitute EIR but  
5 we would still be able to do a subsequent EIR. I think I  
6 failed to mention that at the beginning.

7 So therefore some of the steps in the EIR process  
8 could be eliminated because we wouldn't have to do the  
9 scoping and the Notice of Preparation. So we would still  
10 consider doing -- and I think this goes back to probably,  
11 maybe into the baseline issues, but we do still believe we  
12 could do a subsequent EIR and then a supplemental type of  
13 staff assessment for the modification.

14 HEARING OFFICER VACCARO: Okay, just one follow-up  
15 question. So I think I understand what you're saying if it  
16 were two documents. But you also indicated that one  
17 document might be appropriate; but in that instance you're  
18 saying all of it being done then under an EIR process?

19 MS. WILLIS: No, it would still be the -- we'd  
20 still have to have -- we still believe there's two paths.  
21 So it's a Certified Regulatory Program path for the  
22 amendment and an EIR process for the PV portion. How the  
23 documents come together I guess is maybe something that  
24 might be -- the Committee may want to recommend to us  
25 depending on what the need is.

1           Because ultimately our opinion is, is that the --  
2 for the PV portion the EIR document, the subsequent EIR  
3 would need to be certified by the Commission as opposed to a  
4 decision written on the amendment portion. So it's  
5 confusing but I think -- I think that -- I mean, we've  
6 talked about this a bit and I think it can work with two  
7 paths.

8           HEARING OFFICER VACCARO: Okay, thank you. I  
9 think now Mr. Ritchie on behalf of the Sierra Club, if you  
10 would like to weigh in. And for the benefit of those who  
11 might not understand some of the references already made to  
12 Sierra Club, Sierra Club and a number of other entities did  
13 submit to the Committee and to California Department of Fish  
14 and Game a letter. They submitted this letter after the  
15 ruling, explaining their point of view and discussing some  
16 issues of law on which agency really ought to be the lead  
17 agency and why.

18           That's some of what, I think, both the staff and  
19 applicant have referred to, either directly or indirectly.  
20 But just for the benefit of the public and those who weren't  
21 aware of that letter, that's what those references were.  
22 So, Mr. Ritchie, I suspect we might hear a bit more from you  
23 about the letter.

24           MR. RITCHIE: Yes, Ms. Vaccaro. Or just in  
25 response to what has been said today.

1           You are correct, Sierra Club and several other  
2 parties who are not intervenors in the Commission  
3 proceedings did submit that letter. And our attempts there,  
4 and I hope it was useful, was to kind of give you our take  
5 on what we see as the requirements of CEQA moving forward  
6 and the context of the Committee's July 1st Order on the  
7 jurisdiction.

8           From what the staff said today and the applicant  
9 said today, I agree with some things, I disagree with some  
10 other things. I do agree, I think everyone agrees, that  
11 it's complicated. This is something that we haven't really  
12 seen, I think, in a lot of other CEQA-context or Certified  
13 Regulatory Program context so I think it is difficult to  
14 kind of see the way out.

15           From Sierra Club's point of view though, and we  
16 try to say this in the letter is, I think what the July 1st  
17 Order makes clear is that for the PV component CEQA really  
18 does have to be the guiding light for how we figure out what  
19 to do with the PV component of the project.

20           And we also agree that the Warren-Alquist Act and  
21 the Commission's Certified Regulatory Program, that does  
22 apply to the solar thermal component.

23           So you have two separate things, you have CEQA on  
24 one hand that has certain requirements for the project and  
25 for the PV component and then you have the solar thermal

1 component, which is almost like a separate, independent  
2 license or entitlement, if you will, that's a subpart of the  
3 project as a whole.

4 Now Sierra Club is not contending -- and the  
5 applicant brought this up. CEQA requires review of the  
6 project as a whole and that is absolutely correct, we agree  
7 with that, you have to look at the whole project.

8 But what we believe is the way to look at it is,  
9 you know, consider this kind of -- if we can forget all of  
10 what has happened in the past and look at this as the  
11 project began. This is a -- it is a single project that  
12 requires multiple licenses and multiple approvals from  
13 different agencies and CEQA is kind of the umbrella that all  
14 of those different entitlements fall under.

15 And so -- but one of those is from the Department  
16 of Fish and Game, which is the Incidental Take Statement  
17 that has to be issued. And there is no denying now that  
18 that does have to be issued. It has to be a decision from  
19 Fish and Game that covers the 85 percent of the project  
20 that's PV.

21 Now it doesn't cover the 15 percent that's solar  
22 thermal because that is a separate entitlement under the  
23 CEC's program that, as you well know and you're well-  
24 practiced in, the section that is the solar thermal, the  
25 Commission's action on that, to proceed with all the



1 licenses and authorities that are otherwise required. So  
2 those are just two entitlements right there or two licenses  
3 or whatever you would call them, that are subparts of the  
4 project as a whole.

5           So the question going forward, how do you,  
6 whatever agency it is, how do you comply with CEQA, given  
7 these multiple requirements and these multiple triggers that  
8 are there? We laid out in our letter somewhat our reasons  
9 that we think that Department of Fish and Game is probably  
10 the most appropriate given both the timing and the size of  
11 the project.

12           One, the timing issue. It is very clear that the  
13 PV issue will go first. We have also discussed somewhat  
14 that there are some concerns with the commercial  
15 availability of SunCatchers today and so that has pushed  
16 their availability off to years in the future. So from a  
17 pure timing perspective, you know, PV is going in the ground  
18 first.

19           And then also from a size component, 85 percent of  
20 the project as proposed by the applicant is going to be PV,  
21 the other 15 percent is solar thermal. So from purely a  
22 land use component the Fish and Game has more to do than or  
23 more to approve than the CEC has. So, you know -- and  
24 that's one issue.

25           And we also discussed, I believe, there are common

1 structures and the things like the roads and the main  
2 facility structure. And I think the argument about this is  
3 those fall under the Commission's Certified Regulatory  
4 Program because they are facilities that are pertinent to  
5 the solar thermal plant.

6 And, you know, I do see that argument if you were  
7 just building the solar thermal plant and those, you know,  
8 those roads and facilities were there. I would see how  
9 those could be, you know, would be facilities that are  
10 pertinent. But I am somewhat --

11 I think it confuses the -- it confuses the matter  
12 somewhat because you can construct those roads and common  
13 facilities without having to connect to the solar thermal  
14 component. You can do the first phase and have it be a  
15 strictly PV project in the first phase. So I don't think  
16 that necessarily triggers the Commission's review process  
17 and brings them in. If you're looking at this on a map and  
18 you're drawing a boundary around, you know, what falls  
19 within the Energy Commission's jurisdiction and what falls  
20 without, if you include all these pertinent facilities and  
21 related facilities from the get-go it ends up looking like a  
22 strange, gerrymandered congressional district map that just  
23 kind of jumps all over the place.

24 I think we shouldn't forget that, you know, the  
25 solar thermal component really is the section of SunCatchers

1 that's kind of up in the northeast of the project and those  
2 will be tapping into a common infrastructure that by the  
3 time those are built that common infrastructure will already  
4 be there. Now there may be some additional requirements.  
5 I'm sure the engineers could explain more what additional  
6 things the SunCatchers might need. But those, I think,  
7 would be the things that are best to look at.

8           So that's how we see the project and I'll leave it  
9 at that. I realize that whether those facilities are under  
10 the Energy Commission's jurisdiction or not that's, you  
11 know, a whole area of space that I don't want to get into  
12 much more because I think there are a lot of important  
13 questions that were brought up about what the documents look  
14 like and what the process looks like.

15           And so for that matter I'll even leave aside the  
16 issue of the appropriate lead agency for now. Sierra Club  
17 believes that Fish and Game, and we stated our reasons for  
18 that both in the letter and then a little bit just now.

19           But I think looking at the document it's important  
20 to consider both what staff said and what the applicant said  
21 and I'll start with staff. They mentioned a kind of a  
22 parallel process where the PV portion is in an EIR process  
23 and results in an EIR document. We agree with that and  
24 that's, I think, what our letter was trying to articulate is  
25 that, you know, there is a great interest here in --

1           There is a time and place for the Commission  
2 proceedings and the Certified Regulatory Program and we all  
3 went through that last year and are still going through it  
4 now. But following the July 1st Order, that time and place  
5 for the PV component is no longer.

6           There is a recognition that that doesn't fall  
7 under the structure that the Energy Commission is used to  
8 dealing with or most commonly deals with for power plant  
9 sitings. And so we believe staff said that, you know, the  
10 Energy Commission is fully capable of doing an EIR document  
11 and following typical EIR procedures and we support that, we  
12 think that's appropriate for the PV component.

13           But moving on from that, though, is whether this  
14 is, you know, one document or two documents or whether it's  
15 a parallel process. I think there is a way to do this where  
16 I think of it as two documents but they can still come out  
17 as one document.

18           You will often see EIRs, CEQA documents that have  
19 as an appendix or as an attachment to it some separate  
20 authority or some separate license or decision-making  
21 process. Some of the cases that Sierra Club cited in our  
22 letter, you know, those are the issue where you have some  
23 other decision being made in almost a black box under the  
24 Certified Regulatory Program where they follow their own  
25 internal procedures and they come out with a document and

1 then that document gets incorporated into the broad EIR.

2           And that's how we see this project being the  
3 cleanest moving forward. You have -- you have the EIR as  
4 the umbrella and then the CEC's final decision and that  
5 license is an appendices to that, so to speak. So the CEC  
6 retains all of its authority and jurisdiction and complies  
7 with its statutory mandate within the confines of its  
8 authority for the solar thermal and then that document is  
9 included in the final EIR. And whether that -- you know,  
10 there are ways that you can do that as a programmatic EIR,  
11 there are ways you can do it with a master EIR. There are  
12 various things that CEQA deals with frequently where there's  
13 that separate license.

14           I think a good comparison that we all might be  
15 familiar with is if you look at the federal process and  
16 NEPA, which is similar to CEQA but not, obviously has some  
17 important differences. But BLM prepared the draft EIS, that  
18 went out to public comment and the final EIS. But in the  
19 final decision US Fish and Wildlife Service still had to  
20 issue their biological opinion. And that was under their  
21 separate authority, it requires separate, independent  
22 analysis by Fish and Wildlife. And that was included in the  
23 broader EIS document.

24           Now that -- you know, they work together and those  
25 documents referenced each other and they relied on a common

1 base of information but they were still two separate  
2 documents with two separate authorities. And I think that  
3 that provides a good parallel of what, moving forward, it  
4 should look like.

5 CEQA requires an EIR document. So just like the  
6 FEISS out there, or the draft EIS and the final EIS, we  
7 should see a draft EIR and a final EIR. And as part of  
8 that, as a subset of that we can see, just as we saw the  
9 biological opinions of US Fish and Wildlife, we can see from  
10 Energy Commission and also maybe from Fish and Game, we can  
11 see their independent certifications, their independent  
12 document they consider those aspects of the project that  
13 fall in their jurisdiction.

14 So that's what -- that's how we see the process  
15 going forward from the document standpoint. Now let me see  
16 if there are any other points that I jotted down from what  
17 other folks had said.

18 I would contest a couple of things that the  
19 applicant said. One was that, you know, in some of the  
20 cases that Sierra Club had noted were distinguishable from  
21 -- they rely on Certified Regulatory Programs were  
22 distinguishable because the initial lead agency had no  
23 discretionary authority over the project.

24 I think it's important to remember that the July  
25 1st decision actually clarified that the Energy Commission

1 has no discretionary authority over the PV component of the  
2 project. Now I realize that the license as it exists today  
3 has to be modified and that's something that the Energy  
4 Commission has to do. But moving forward for 85 percent of  
5 the project the Energy Commission is not the -- is not  
6 responsible and does not have the authority to issue a  
7 license.

8           Now it may be that they are responsible for doing  
9 the environmental review for complying with CEQA. But as  
10 far as the enabling statute and the authority to grant a  
11 license to build something, that's not coming from the  
12 Energy Commission for that 85 percent of the project, the PV  
13 component.

14           So I don't think it's true that the CEC has  
15 discretionary approval over the first actions that the  
16 project is going to be taking because I think that that  
17 falls under Fish and Game's authority and BLM as the land  
18 use agent and it doesn't trigger the Energy Commission's  
19 Certified Regulatory Program for those portions of the  
20 project that aren't solar thermal.

21           And then the applicant also stated that nothing  
22 precludes -- nothing in the Energy Commission's enabling  
23 statute precludes it from looking at things that are within  
24 a Certified Regulatory Program that are beyond its  
25 jurisdiction. And I don't think that's correct. I think

1 CEQA precludes the Energy Commission from doing that.

2 But again, the Certified Regulatory Program  
3 applies to the solar thermal so the Energy Commission should  
4 and must apply its procedures to the solar thermal  
5 component. But for the CEQA component I think CEQA is very  
6 clear in that it requires environmental review and it  
7 requires agencies to follow CEQA as a general matter of  
8 course, then it carves out certain exceptions for Certified  
9 Regulatory Programs for agencies that are acting under very  
10 specific authorities.

11 And that's not the case for this project for the  
12 PV component. That carve out doesn't apply to the PV  
13 component of this project because if the Energy Commission  
14 was acting on the PV component it would be outside of its  
15 authority and it would be outside of those very specified  
16 areas that CEQA has carved out to treat differently. So  
17 because CEQA doesn't carve this out to treat differently,  
18 CEQA does preclude the Energy Commission from processing the  
19 PV components or the whole of the project under its  
20 Certified Regulatory Program. And so without that you have  
21 to go under the formal CEQA process.

22 And so that raised some concern for me but then I  
23 believe that staff actually said that they agree with that  
24 and that the whole of the project or the PV components of  
25 the project would be done by the Energy Commission under an



1 EIR process.

2           So I'll conclude with, as I said right at the  
3 beginning, Sierra Club still believes that Fish and Game  
4 would likely be the more appropriate agency to act as lead  
5 agency for the reasons we have stated. But regardless of  
6 who is lead agency, we agree with staff that there has to be  
7 an EIR process.

8           I'll end with my concern was that even though I  
9 believe that that is correct in moving forward I am very  
10 concerned based on what we saw last year that it's going to  
11 be very tricky to make a standard draft EIR that's available  
12 for public comment, that's available for other responsible  
13 agencies to review and consult on, to have that comply with  
14 CEQA if we follow the type of process that we had last year.

15       And I realize last year was different because we were --  
16 there was a lot of time pressure there and there were a lot  
17 of projects. But if the frequent changes and addendum and  
18 -- the project was constantly in flux.

19           And I am not blaming anyone. A lot of people put  
20 in a lot of hours to continue to look at the -- continually  
21 look at this project. But I don't think CEQA allows that.  
22 I think that once that -- you have to finish the project  
23 before you send that draft for, draft out for circulation.  
24 And it has to include all of the relevant information. And  
25 that's what gets into the draft EIS and that is what is

1 circulated. And then all the public comment.

2           And the people who signed on to Sierra Club's  
3 letter aren't intervenors. They want to comment on that  
4 document. They want to provide meaningful comments that the  
5 agency will take a real look at and really consider. All  
6 those comments are submitted and then whoever the lead  
7 agency is has the responsibility to respond to each and  
8 every one of those comments.

9           And if that changes the project, if we get new  
10 studies in or we see new information on the impacts to  
11 Desert Tortoise, that it impacts a significant --  
12 significant environmental impacts of the project. If those  
13 things come in and they trigger a significant change to the  
14 project CEQA requires a recirculation and that has to go  
15 back out again.

16           That is not something that I think would have been  
17 compatible with our process last year and I'm concerned that  
18 we'll run into, run into some of those blocks as well.

19           So as long as we're moving forward with this, with  
20 that understanding and recognition that we need to see that  
21 kind of more final process and be aware of that  
22 compatibility problem, then Sierra Club will be interested  
23 in seeing how this moves forward. And we think there is a  
24 way forward.

25           And we may see a way forward, and we noted this in

1 our letter, that actually allows for a joint CEQA/NEPA  
2 document. And I think that that would be more compatible  
3 with kind of a general EIR, CEQA EIR document, than perhaps  
4 the Certified Regulatory Program was for the same  
5 compatibility issues.

6 So again, that was long and complicated, thank you  
7 for bearing with me. And I will yield the floor.

8 HEARING OFFICER VACCARO: Okay, thank you,  
9 Mr. Ritchie. This is Kourtney Vaccaro again. Actually you  
10 did say quite a bit but I think all of it, is actually  
11 pretty clear.

12 I think that I do want to understand just a little  
13 bit more what was stated in Sierra Club's letter regarding  
14 the recommendation on scoping. And staff might jump in in  
15 just a bit and correct me if I am misstating but I got the  
16 impression that Ms. Willis and Mr. Hoffman were suggesting  
17 that under their proposed parallel document production  
18 process that scoping and the like would not be required or  
19 necessary. Do you have any thoughts or opinions about that  
20 or can you clarify what the intent was of the letter when it  
21 was discussing the scoping?

22 MR. RITCHIE: I can. And I think -- first of all  
23 I actually don't think that's correct. I believe the point  
24 that I heard Ms. Willis attempting to make as she was  
25 discussing whether this was probably a subsequent EIR or

1 kind of starting from scratch. And I do agree that there is  
2 a lot of information out there that is already on the record  
3 and, you know, we have to use that.

4           But I think that a subsequent EIR versus a project  
5 EIR, if you're starting from scratch it's kind of a typical  
6 project EIR. That's a type of EIR. And there are several  
7 types of EIRs. There are project EIRs, subsequent EIRs,  
8 master EIRs, programmatic EIRs. Whatever type of EIR you're  
9 doing you still kind of fall under the status and procedures  
10 that are required of CEQA and one of those is the scoping  
11 meeting.

12           And I think the scoping meeting is still very much  
13 required here because you're switching from an area where  
14 you have one agency that issued every permit necessary at  
15 the state and local level. So that one agency was  
16 responsible for covering all those things. That's no longer  
17 the case. You have to make sure that you bring in all of  
18 these other state and local agencies.

19           And I realize that the Energy Commission, through  
20 its process, you know, consulted with and identified the  
21 different agencies and those different requirements. You  
22 know, but it's a little different when you're called upon to  
23 consult upon something than when you are called upon to say  
24 hey, you need to have a document, prepare a document and you  
25 need to sign your name to it and your agency has to stand

1 behind it. I think that's a different case. So I do  
2 believe that kind of the scoping meetings with the other  
3 agencies are an important thing.

4           And also, this is an extremely complicated process  
5 that we have been going over and I think we need the input  
6 of the other agencies and the other responsible agencies to  
7 work through these issues and to figure out, okay, if Fish  
8 and Game is in fact doing this, you know, where does their  
9 jurisdiction start, where does it end? If they are looking  
10 at the impact on Desert Tortoise for 85 percent of the  
11 project but the 15 percent of the project that is not within  
12 their jurisdiction happens to have the highest concentration  
13 of densities of Desert Tortoise how do those two agencies  
14 work together? I think those -- identifying those issues  
15 early is what CEQA envisioned and is something that I think  
16 should be done here.

17           HEARING OFFICER VACCARO: Okay, thank you.  
18 Ms. Willis, Mr. Hoffman, could you clarify perhaps what it  
19 was you were saying earlier about scoping. Or if you  
20 completely agree with what Mr. Ritchie has stated, you know,  
21 you can say that as well and we can move on.

22           MR. HOFFMAN: Sure; this is Craig Hoffman. We  
23 took a look at the letter dated July 13th and it does  
24 identify a process that identifies completing an EIR I think  
25 from a raw dirt process, that there hasn't been a previous

1 project.

2           And I think how we are looking at the project is  
3 we are not doing an EIR on a new project, this is an EIR,  
4 it's a subsequent EIR, we have already done an exhaustive  
5 review on this project. It has gone through a great deal of  
6 interaction with other agencies and so we aren't looking to  
7 do a scoping process or a scoping meeting. Filing a Notice  
8 of Preparation with the State Clearinghouse and sending it  
9 out for 45 days and taking in agency comments.

10           We have a number of those agency comments already;  
11 they have been involved in our process. And even though we  
12 issue the permit, all those agencies that normally would  
13 comment on the project, they already have. So we really  
14 have done a scoping process already with the previous Calico  
15 project.

16           What we are looking at is a subsequent EIR in  
17 which we would prepare the draft EIR, route it under our  
18 process. We route it for public comments a minimum,  
19 anywhere from 45 days and the Commission has the ability to  
20 extend that up to 90 days. We'd file a Notice of Completion  
21 with the OPR. We would have a public hearing for comments  
22 on the draft EIR. It wouldn't be a process in which it was  
23 like an evidentiary hearing; it's more the Committee would  
24 take in comments. There wouldn't be parties.

25           We would take those comments and then we would

1 prepare the final EIR. We would publish that. There would  
2 be a hearing in which, again, whether it's the Committee or  
3 the Commission, certifies that document and then we file a  
4 Notice of Determination with OPR. We are looking at  
5 definitely sending out notices, public agencies being  
6 involved. But I don't think we are looking at going back to  
7 square one because we are tiering off the previous  
8 environmental review that we have done.

9 HEARING OFFICER VACCARO: Okay, thank you.  
10 Ms. Gulesserian, if you are still on the line we'd be happy  
11 to hear from CURE at this time.

12 MS. GULESSERIAN: Yeah. I don't have really  
13 anything to add at this time. I just don't, thank you.

14 (Laughter.)

15 MS. GULESSERIAN: It's a morass.

16 HEARING OFFICER VACCARO: Okay, thank you.

17 Mister --

18 MS. GULESSERIAN: There are several ways to  
19 accomplish the objectives of this mission. I tend to agree  
20 that it could be accomplished in one environmental review  
21 document.

22 HEARING OFFICER VACCARO: Okay, thank you.  
23 Mr. Jackson, if you are still on the line we would like to  
24 hear from you.

25 MR. JACKSON: Yes, good morning. I have no

1 comment at this time.

2 HEARING OFFICER VACCARO: Okay, thank you. County  
3 of San Bernardino. Bart Brizzee, if you are still on the  
4 line we would like to hear from you.

5 MR. BRIZZEE: I'm still here, thank you. No  
6 comments at this time.

7 HEARING OFFICER VACCARO: Okay, thank you. BNSF,  
8 we have two individuals. I think, Ms. Kim, we'll start with  
9 you.

10 MS. KIM: I am going to defer to Bill Thorpe.

11 HEARING OFFICER VACCARO: Okay.

12 MR. THORPE: Thank you. We have really nothing  
13 additional to offer, although we generally agree with what  
14 the Sierra Club said.

15 HEARING OFFICER VACCARO: Okay, thank you.

16 I think at this time -- there were some parties  
17 who it wasn't clear whether they were on the line or not  
18 earlier so I'm just going to do sort of a roll call and see  
19 if we have a representative of Basin and Range Watch on the  
20 line.

21 MR. EMMERICH: Yes, this is Kevin Emmerich. We  
22 are here. We tried to call in earlier and had some  
23 technical difficulties.

24 We do concur with the Sierra Club. We think --  
25 we'll seek what review is necessary for this.



1 HEARING OFFICER VACCARO: Okay, thank you.

2 Newberry Community Services District?

3 (No response).

4 HEARING OFFICER VACCARO: Okay, I am not hearing  
5 anyone.

6 Society for the Conservation of Bighorn Sheep?

7 (No response.)

8 HEARING OFFICER VACCARO: Okay, hearing no one.

9 Defenders of Wildlife?

10 (No response.)

11 HEARING OFFICER VACCARO: Okay, I'm hearing no one  
12 so at least we have gone through all of the parties at this  
13 time on the lead agency designation issue.

14 I think because we do have someone on the line  
15 from Department of Fish and Game and the issue before us is  
16 lead agency, Mr. Ingram, if there is anything at all you  
17 wanted to say we would be happy to listen. And if you would  
18 like to just keep listening that's fine with us as well.  
19 What's your pleasure.

20 MR. INGRAM: I am not in a position today to state  
21 a position for the Department. And my primary reason for  
22 getting on the call today was simply to be able to inform  
23 everyone that the Department has been following this  
24 discussion. We have received Sierra Club's letter as well  
25 as the Committee's Order and we are preparing a written

1 response that we will be sending to the Committee, I hope  
2 early next week.

3 HEARING OFFICER VACCARO: Okay, thank you,  
4 Mr. Ingram.

5 MR. INGRAM: That will be addressing -- at this  
6 point I believe that letter will be addressing just the CEQA  
7 lead agency issue from Fish and Game's perspective.

8 HEARING OFFICER VACCARO: Okay, thank you.

9 I think that is probably a perfect segue into  
10 another brief topic on lead agency designation. I was  
11 advised just before this morning's status conference that  
12 NRDC has also submitted a letter to the Commission with  
13 respect to the lead agency designation. I have not read it,  
14 I have not seen it, it was not submitted to me, it has not  
15 been docketed. Or at least if it has, Dockets has not  
16 submitted it to all of the parties.

17 After today's conference I will ensure that the  
18 Hearing Advisor's Office gets that letter docketed. I  
19 suspect people might want to read it and if you have  
20 comments we would ask the parties to please submit any  
21 written comments to the Committee. And ensure that it's  
22 docketed and that everyone receives a copy of whatever your  
23 written comments are.

24 But I didn't want to be remiss because if we do  
25 have anyone from NRDC on the line, the letter is not being

1 ignored. But unfortunately because everyone has not read it  
2 we can't really discuss it today. With that, though, is  
3 there anyone from NRDC on the line who would like to  
4 summarize the letter?

5 (No response.)

6 HEARING OFFICER VACCARO: Okay, I am not hearing  
7 any. So I think --

8 MR. RITCHIE: Hearing Officer Vaccaro, this is  
9 Travis Ritchie. I'll let other folks read the letter and  
10 thank you for pointing it out. I can summarize it in that I  
11 read it. It substantially agrees with Sierra Club's legal  
12 conclusions in our own letter. Beyond that I'll allow other  
13 folks to read it.

14 HEARING OFFICER VACCARO: Okay, thank you,  
15 Mr. Ritchie. I think we are at sort of a decision tree  
16 point. We could certainly discuss baseline. I think  
17 there's a lot to be said, perhaps, on the baseline issue, a  
18 lot of questions. But I don't know that today is  
19 necessarily the best day to really have a full-blown  
20 discussion or any discussion on baseline.

21 I think the threshold issue truly is the lead  
22 agency designation. And we are in a wait-and-see type mode  
23 because I think the true next step is hearing back from  
24 California Department of Fish and Game and then having this  
25 Committee move forward in response to that.

1           So unless anyone has a truly pressing need to ask  
2 questions on baseline or discuss it I propose that we save  
3 that for the next time that we, that we meet.

4           MR. FOLEY GANNON: That's acceptable.

5           HEARING OFFICER VACCARO: Okay, Ms. Foley Gannon  
6 on behalf of the applicant has no problem with that. Staff?

7           MS. WILLIS: That's fine with us.

8           HEARING OFFICER VACCARO: Any of the other parties  
9 who are on the line, do you have a concern with that or is  
10 that an acceptable proposal?

11          MS. KIM: On behalf of BNSF that's acceptable.

12          MR. JACKSON: This is Patrick Jackson, that's  
13 acceptable.

14          HEARING OFFICER VACCARO: Ms. Gulesserian, do you  
15 have an opinion?

16          MS. GULESSERIAN: Yes. That's fine, thank you  
17 very much.

18          HEARING OFFICER VACCARO: Thank you. Mr. Brizzee?

19          MR. BRIZZEE: No objection.

20          HEARING OFFICER VACCARO: Okay. And Mr. Emmerich?

21          MR. EMMERICH: That's acceptable to us.

22          HEARING OFFICER VACCARO: Okay, thank you.

23                Unless there are any questions or comments from  
24 the Committee I think we'll turn to the public comment  
25 section.

1           MR. FOLEY GANNON: Could we have an opportunity to  
2 respond to some of the issues that were raised by the other  
3 parties?

4           HEARING OFFICER VACCARO: You can but I would ask  
5 one thing before you do. Some of what the conversation  
6 turned to was a little bit of legal argument and I think  
7 it's fair to say that the Committee has the Sierra Club's  
8 letter and is aware of the cases and all that was stated.  
9 But yes, I think it is reasonable for the applicant to  
10 briefly respond without going too far into turning this into  
11 law and motion.

12           MR. FOLEY GANNON: Certainly, thank you. I would  
13 just like to state that our position is that this is not  
14 that complicated, that this is not unprecedented. And we  
15 would just like to have an opportunity to have  
16 Mr. Therkelsen address some of the times historically when  
17 the Commission has handled a similar situation in which you  
18 are considering a whole of a project. You are setting forth  
19 mitigation measures under CEQA which are not conditions of  
20 certification. How you have gone through the analysis. And  
21 we have several examples here with us; maybe just we can  
22 talk about those just briefly in a second.

23           The other thing I would like to, to point our  
24 attention to is this is also not something that is not  
25 contemplated by CEQA. In the guidelines they contemplate

1 the fact that responsible agencies will rely upon a  
2 certified regulatory equivalent document. And it provides  
3 specifically what you have to ensure has been done during  
4 the processing of that certified regulatory document. Which  
5 are things that we believe you did the first time and we  
6 believe that you would do it again in the amendment process.

7           So it's contemplated and it says that in that  
8 circumstance you -- the responsible agency relies upon the  
9 document for compliance with CEQA. So again I don't, I  
10 don't see how this has to be so different. Why we should be  
11 contemplating doing this EIR and this Certified Regulatory  
12 Program. You have a Certified Regulatory Program which  
13 applies whenever you are taking a siting decision. You are  
14 making a siting decision here. So it seems to me we should  
15 just then look how does that get processed and how should  
16 you be doing that.

17           You have -- again, we have guidance in CEQA  
18 guidelines, we have guidance in the Warren-Alquist Act and  
19 we have guidance and precedent from this agency on actions  
20 that you have taken. So we hope that you will go back and  
21 look at those things and we hope that we can have a way to  
22 make this not be a complicated process. To not make it be  
23 something that we have to be breaking new ground and doing  
24 new things. We really don't think that that's necessary and  
25 we think you can accomplish a much more holistic analysis by

1 relying upon what you do best, how you process siting  
2 decisions.

3           And again, if I could just have Mr. Therkelsen  
4 briefly address some of the historic context.

5           HEARING OFFICER VACCARO: Yes, please.

6           MR. THERKELSEN: Thank you. Commissioners, I  
7 guess I would echo one of the things that Ella said. I  
8 think this is, in my opinion, a simple concept that we are  
9 making very complicated. It's something that the Commission  
10 has done before and it has done successfully. It has done  
11 successful integrated, joint federal/state documents, had  
12 them approved and gone forward without any problem.

13           And in terms of projects or types of projects that  
14 have included both jurisdictional and non-jurisdictional  
15 components the Commission has done the complete  
16 environmental analysis on basically three categories,  
17 projects with transmission lines, projects with oil fields  
18 and projects with geothermal fields.

19           Using the example of oil fields, the Commission  
20 has permitted power plants that the steam has then been  
21 directed to oil fields. The oil fields have had steam wells  
22 and oil wells that have subsequently been permitted by the  
23 Division of Oil and Gas. And the Commission's environmental  
24 document considered the whole of the project, identified  
25 mitigation measures for the whole of the project. Has done

1 the same thing with geothermal fields as well and  
2 transmission lines the same.

3           And the way the Commission has done that, it has  
4 been using its Certified Regulatory Program. And the  
5 Commission's environmental documents were utilized by state,  
6 federal and local agencies subsequently for their permits.  
7 It's been done; it's been done successfully and in one  
8 document. And again, using the Certified Regulatory  
9 Program.

10           I point to you first the Sycamore project. And  
11 keep in mind the construct. And I've worked with Resources  
12 Agency on every instance where the Commission has proposed  
13 or modified the Certified Regulatory Program so I know the  
14 process, the questions. And the intent of that program was  
15 to basically come up with a process and documents that fully  
16 complied with the intent of CEQA, recognizing the unique  
17 aspects of the Commission's process. But it was, again,  
18 intended to make sure that the full intent of CEQA was met  
19 and would be applicable not only to CEC decisions but  
20 anybody else's who was in there.

21           In the Sycamore case -- Sycamore was, again, a  
22 thermal enhanced oil recovery project. There was a  
23 cogeneration facility, 300 megawatts, I believe and it had  
24 multiple steam lines going out to the field where the steam  
25 was injected.



1           The Commission determined under CEQA it had CEQA  
2 jurisdiction, if you will, to review those steam lines and  
3 the steam wells and consequently in its environmental  
4 document. And when I say "environmental document" I'm  
5 talking about the Preliminary Staff Assessment and the Final  
6 Staff Assessment. In the Preliminary Staff Assessment the  
7 staff worked very closely with Fish and Game, Division of  
8 Oil and Gas and other agencies to make sure that there was a  
9 complete project description and that project description  
10 defined the power plant portion of the project as well as  
11 the non-CEC jurisdictional portion of the project. So they  
12 were defined.

13           It included an alternatives analysis that, you  
14 know, focused on the power plant portion of the project. In  
15 each environmental section it looked at what the setting  
16 was; it looked at what the impacts were for the Commission's  
17 consideration. It also looked at LORS conformance, it had a  
18 section on that.

19           And it looked at mitigation measures. And it  
20 identified the mitigation measures responsible both for the  
21 CEC jurisdictional portion of the project and the non-  
22 jurisdictional portion of the project. It made  
23 recommendations. And finally it listed conditions of  
24 certification that the Energy Commission would use to carry  
25 out its enforcement responsibilities.

1           Later on it had an additional section that talked  
2 about CEQA-specific topics. Growth-inducing impacts or  
3 reversible changes, et cetera. So those subjects were there  
4 and could be utilized by other agencies if they wanted to.

5           That was the environmental document. It was sent  
6 out for public review for 30 days in most cases, some cases  
7 45 days. Comments were received. The staff worked closely  
8 with the other agencies -- and that's key to part of this.  
9 So the responsible agencies were part of the administrative  
10 process. And those comments were responded to and included  
11 in the final document; the document tweaked as necessary.

12           That then was sent to the Commission through the  
13 hearing process and there was a separate, what Sierra Club  
14 said, an appendix if you will, decision, which was the  
15 Commission's decision. That included the Commission's  
16 requirements, the Commission's conditions of certification.

17           The environmental document was used by other agencies for  
18 their determinations.

19           A more recent example was the Sutter Power  
20 Project. Sutter Power Project was a joint federal/state  
21 project. Western Area Power Authority was the federal  
22 agency involved. The County of Sutter used the document to  
23 make General Plan amendments. Again, it included that  
24 breakdown. So it was used by all of those agencies in one  
25 environmental document.

1           Probably in a document that included even more  
2 detail on how mitigation was identified by different  
3 responsible agencies was Three Mountain. Three Mountain  
4 Power Project was located up in Shasta County. It included  
5 -- responsible agencies included several tribes, US Forest  
6 Service, Department of Fish and Game, several agencies.

7           And in this document we actually took -- I  
8 shouldn't say "we" I am no longer part of the Commission.  
9 It took several -- each of the agencies identified  
10 mitigation measures that they proposed or required. They  
11 were identified. The Commission then adopted specific  
12 conditions of certification related to its responsibilities  
13 and other mitigation measures were included for other  
14 agencies.

15           And I've got one, SMUDGeo, that is the same thing.  
16 Again, it looks at a geothermal project where there were --  
17 this was a joint document with Bureau of Land Management and  
18 USGS. But again it identified those sections. It  
19 identified the whole scope of mitigation required by all of  
20 the responsible agencies and the lead agency and then it  
21 split out separately the Commission's conditions of  
22 certification. Those things went forward into the  
23 Commission's decision.

24           So I believe this has been done. It can be  
25 simple, it can be clear. It can be something that -- in my

1 opinion, one document is more easily understood by the  
2 public, more easily understood by other staff, by other  
3 agencies rather than a mix of multiple documents. And which  
4 one are you supposed to look at and which one are you  
5 supposed to pay attention to, et cetera. So I believe it  
6 can be done; I believe it has been done.

7 HEARING OFFICER VACCARO: Okay, thank you. So,  
8 applicant, you got the final word. Was that it, Ms. Foley  
9 Gannon or is there one last comment you needed to make to  
10 respond to what you've heard?

11 MR. FOLEY GANNON: The only other comment we would  
12 make is there has been -- it has been suggested that the  
13 difference here is that there is this 85 percent of the  
14 thermal generation components are outside of the siting  
15 jurisdiction. And again, we don't see any statutory  
16 relevance to it being 85 percent versus 15 percent. Again,  
17 you issued a permit, you're amending a permit, you have  
18 siting authorization.

19 And if you are considering the fact that 85  
20 percent should be somehow influential in your decision. We  
21 would also suggest that you should consider the fact that  
22 your authority is much broader and much more plenary of land  
23 use, really, authority over the project than any other  
24 agency who will be approving this project has.

25 CDFG is going to be issuing an Incidental Take

1 Permit for a portion of the project. Therefore, their  
2 permitting authority is related to listed species and that's  
3 it. The Regional Board would be permitting the project.  
4 Their authority is going to be related to water quality and  
5 that's it. The Air Board may be issuing a permit. Again,  
6 their authority is going to be related to air quality. You  
7 have broad authority to consider all of these different  
8 aspects and to have conditions related to those aspects.

9           So we think that really when you're looking at who  
10 is the agency who has the broadest, you know, perspective  
11 and authority over this project. It really is you when  
12 we're talking about the state agencies. Obviously the BLM,  
13 as a federal agency, has broad authority and has exclusive  
14 federal authority over the land use authority over the  
15 entire project so we would also ask you to take that into  
16 consideration. Thanks.

17           HEARING OFFICER VACCARO: Thank you. I think with  
18 that we will turn to public comment now. I'm looking in the  
19 room in front of me and it appears that I don't have any  
20 members of the public.

21           So on the telephone are there any members of the  
22 public? Not parties, please, because everyone has had an  
23 opportunity to speak, but members of the public who might  
24 wish to make a comment at this time.

25           MR. STERN: I'm Fred Stern in Newberry Springs. I

1 do have a question, not a comment. Can I ask it?

2 HEARING OFFICER VACCARO: You can ask it and we'll  
3 see if we are able to answer at this time.

4 MR. STERN: It is: is the BLM-approved access  
5 route for the soil boring announced today by the applicant's  
6 attorney, north of the railroad tracks? Is that also  
7 approved or even applied for as being the primary access  
8 route for the solar project, north of the railroad tracks?

9 HEARING OFFICER VACCARO: We'll have Ms. Foley  
10 Gannon briefly answer that question.

11 MR. FOLEY GANNON: No it is not. And it's not an  
12 access road for the project at all, it's just how we will be  
13 getting to the part where we need to take the soil borings.

14 So it's not an access road that is being approved by the  
15 BLM.

16 Just in a brief summary, when the BLM is  
17 considering a request to take like ground-disturbing actions  
18 on the project now we just need to say, this is how we are  
19 going to get to the project, these are the measures that we  
20 are implementing. So this is just saying, this is how we  
21 are going to drive to the one specific spot. The two  
22 specific spots where we're taking the soil borings.

23 So it has nothing to do with access, formal access  
24 routes of the project.

25 MR. STERN: Thank you.

1 HEARING OFFICER VACCARO: Thank you. Any other  
2 members of the public who wish to make a public comment?

3 (No response.)

4 HEARING OFFICER VACCARO: Okay, I am hearing none  
5 so I'll turn this back over to Commissioner Douglas to  
6 adjourn today's status conference.

7 PRESIDING MEMBER DOUGLAS: Thank you. Thank you  
8 to all of the parties who have been here or on the phone.  
9 We're adjourned.

10 (Whereupon, at 10:47 a.m. the Mandatory  
11 Status Conference was adjourned.)

12 --oOo--

13

14

15

16

17

18

19

20

21

22

23

24

25

## CERTIFICATE OF REPORTER

I, RAMONA COTA, an Electronic Reporter and Transcriber, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Mandatory Status Conference, that I thereafter transcribed it into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said conference, nor in any way interested in the outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of July, 2011.

---

RAMONA COTA