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11-AFC-2

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STATUS CONFERENCE

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

In the Matter of the)
Application For Certification:)
Hidden Hills Solar Electric) Docket No. 11-AFC-2
Generating System)
_____)

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

TUESDAY, JANUARY 24, 2012

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Contract No. 170-09-002

EHLERT BUSINESS GROUP (916) 851-5976

APPEARANCES

COMMITTEE MEMBERS

Karen Douglas, Presiding Member

Carla Peterman, Associate Member

HEARING OFFICERS, ADVISERS

Ken Celli, Hearing Officer

Galen Lemei, adviser to Commissioner Karen Douglas

Eileen Allen, Technical Adviser

PUBLIC ADVISER

Lynn Sadler, Assistant Public Adviser

ENERGY COMMISSION STAFF

Mike Conway

Mike Monasmith, Senior Project Manager

Melissa Mourkas

Richard Ratliff, Staff Counsel

RESPONDENT

Jeffrey D. Harris, Esq.
Samantha G. Pottenger, Esq.
Ellison, Schneider & Harris, LLP

Susan Strachan
Strachan Consulting

Clay Jensen, Senior Director
BrightSource

INTERVENORS

Ileene Anderson
Center for Biological Diversity

APPEARANCES CONTINUED

ALSO PRESENT

Kevin Carunchio
Inyo County

Dana Crom, County Counsel
Inyo County

Dr. Robert Harrington
Inyo County

Larry Levy
Southern Inyo Fire Protection District

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1 PROCEEDINGS

2 PRESIDING MEMBER DOUGLAS: Good morning. This is
3 the Hidden Hills Energy Generating Systems Project. My
4 name is Commissioner Karen Douglas. I'm the Presiding
5 Member of this Siting Committee.

6 To my not immediate left, but next to the Hearing
7 Officer is Commissioner Peterman, the Associate Member of
8 the Committee. To my immediate left, Hearing Officer Ken
9 Celli. To my right, my adviser, Galen Lemei. And to the
10 far left Eileen Allen, who is serving as a technical
11 adviser on siting, and who we're very pleased to have
12 assisting us on this case.

13 So I wanted to ask if the applicant could
14 introduce yourself, please.

15 MR. HARRIS: Good morning. My name is Jeff
16 Harris. I'm here on behalf of the applicant. I'm with
17 Ellison, Schneider & Harris. To my right is Susan
18 Strachan with Strachan Consulting. And then we have a
19 plethora of folks in the audience behind me who will
20 introduce themselves when they speak.

21 PRESIDING MEMBER DOUGLAS: Thank you.

22 And staff.

23 SENIOR PROJECT MANAGER MONASMITH: Good morning,
24 Commissioners. Mike Monasmith, Project Manager. Staff
25 Counsel, Dick Ratliff is on his way in. Apologize for

1 that. We have a number of Energy Commission staff here as
2 well.

3 PRESIDING MEMBER DOUGLAS: Thank you.

4 Intervenors. Center for Biological Diversity.

5 MS. ANDERSON: Hi. This is Ileene Anderson with
6 the Center.

7 PRESIDING MEMBER DOUGLAS: Thank you. John
8 Zellhoefer, are you on the line?

9 Intervenor Mr. Zellhoefer?

10 Okay. Not yet. We'll check again.

11 Are there any representatives here of any
12 federal, State of California, or State of Nevada or county
13 or city government agencies?

14 HEARING OFFICER CELLI: Please come to the podium
15 and identify yourself.

16 MR. CARUNCHIO: Good morning. Kevin Carunchio,
17 County Administrative Officer for the County of Inyo. And
18 I'm joined by staff. They'll introduce themselves if and
19 when they speak.

20 PRESIDING MEMBER DOUGLAS: Thank you. Thanks for
21 being here.

22 Anybody else from government agencies?

23 On the phone?

24 MR. LEVY: Larry Levy, Southern Inyo Fire
25 Protection District.

1 PRESIDING MEMBER DOUGLAS: Thank you.

2 Anybody else?

3 Excellent.

4 The Public Advisers's office. Lynn Sadler is
5 here from the Public Adviser's office in the back of the
6 room.

7 And with that, I will turn this over to the
8 Hearing Officer.

9 Thank you.

10 HEARING OFFICER CELLI: Thank you, Commissioner
11 Douglas.

12 Good morning, everyone.

13 On August 5th, 2011, Hidden Hills Solar I and II,
14 LLC, which are both wholly-owned subsidiaries of
15 BrightSource Energy, Inc. submitted an Application for
16 Certification. Oh, I'm sorry. Can you all hold one
17 moment, while I find the outline for the Status Conference
18 rather than Informational Hearing.

19 Okay. Sorry about that.

20 This status conference on the proposed Hidden
21 Hills Solar Energy Generation systems was set at the
22 applicant's request and with the concurrence of staff at
23 the Informational Hearing. The Committee scheduled
24 today's event, and we put out a notice on January 11th,
25 2012. That notice is on the Energy Commission's website.

1 For anyone who is a member of the public or
2 anyone who's here today, we have a stack of those notices
3 sitting on the table out when you came in in the foyer
4 here.

5 Today's procedure, this is going to be a fairly
6 informal conference. We're going to first provide the
7 applicant an opportunity to summarize their views of the
8 case status and their recommendations for future
9 scheduling. Then we will follow that with staff, followed
10 by Intervenor CBD. I usually like to proceed by -- with
11 intervenors in the order in which they intervened. Mr.
12 Zellhoefer, or Zellhoefer was the first intervenor. I
13 would go with him before CBD, but he doesn't appear to be
14 here yet.

15 Mr. Zellhoefer, are you on the phone?

16 Okay, not yet. Okay. Thank you. The Public
17 Adviser has indicated that she's going to try to give him
18 a call, wake him up, get him here.

19 We will then provide an opportunity for the
20 general public to make comments afterwards. I just want
21 to say that this is free form. I'm going to let the
22 parties really do it they want. But I think it might just
23 be the way of organization if applicant you wanted to go
24 topic by topic.

25 The Committee is interested in knowing what are

1 the issues -- what are the topics that have no issues,
2 what are the issues for those topics that do have issues,
3 what's the status. So if you would, please, Mr. Harris.
4 Thank you.

5 MR. HARRIS: Thank you, and good morning. I
6 appreciate the opportunity to be here. And we really want
7 to thank the Committee for scheduling this event and the
8 ones that are coming up in the future. We think it's very
9 important to have more time with you. And we're also
10 going to try to be very mindful that you're very busy, and
11 be as expeditious as we can.

12 We will answer every question that you want to
13 put to us, but we're going to try to summarize what we
14 think the state of the application is in moving forward.

15 You know, we're happy to report that things are
16 in very good shape. We have a very good working
17 relationship with the staff. I think everybody's ARRA's
18 adrenaline rush is over, and we've kind of returned to
19 some sense of normalcy. Although, it hasn't been normal
20 in the 25 years I've been working with the Commission
21 ever.

22 But I think people are beginning to understand
23 that that was a kind of unique period of time. And we're
24 very happy with the interactions with staff and the
25 intervenors frankly. It's been very open, and there's

1 been a lot of workshops so far, which has been very
2 helpful.

3 So many of the issues that came up in the past
4 were communication issues. And, you know, by God, those
5 things are solved when people communicate. So we're in a
6 very good spot, I think, for this application moving
7 forward.

8 You know, as an applicant, we always have issues
9 about schedule. And we can talk about that one last, if
10 you would. But we'd like to go through some of the issues
11 that are, I think, uncontroverted this morning, appear to
12 be, at least between staff and applicant.

13 So by our count, there are 16 subject matters
14 where there are either no issues or very little issues,
15 minor cleanup kind of things. And those are -- and I'll
16 just go through them in the order they're presented in the
17 AFC.

18 Project description -- executive summary of
19 course -- facility design, reliability, transmission
20 lines, safety, and nuisance, natural gas supply, air
21 quality. Although, there are always continuing questions
22 to come up from the Air District and intervenors, but that
23 issue is largely, I think, uncontroverted at this point.

24 Geological hazards and resources, hazard
25 materials handling, noise, paleontological resources. If

1 I could say that word, that's what I'd say. Public
2 health, soils, traffic and transportation, waste
3 management, and worker health and safety.

4 And those issues, as I said, they're either
5 completely uncontroverted or just minor cleanup
6 clarification kind of things.

7 HEARING OFFICER CELLI: Let me just, because I'm
8 quickly trying to stick with you here. So I've got
9 executive summary project description is no dispute yet,
10 no issue. Hazardous materials, transmission line safety
11 and nuisance, facility design, geo and paleo, air quality,
12 public health, noise, reliability, worker safety and fire
13 protection. And I didn't get the other ones. I couldn't
14 write that fast.

15 MR. HARRIS: Sorry. I didn't -- facility design,
16 transmission line safety and nuisance, natural gas supply,
17 efficiency. I guess it was actually not on this list. It
18 should have been. I can go through it again slowly, if
19 you'd like.

20 HEARING OFFICER CELLI: I think I have it. So
21 you said soil and water. Well, I think that's an issue.
22 Cultural --

23 MR. HARRIS: The soil portion of soil and water.

24 HEARING OFFICER CELLI: Okay.

25 MR. HARRIS: We broke it out as a separate

1 chapter in the AFC. We understand the Commission --

2 HEARING OFFICER CELLI: Traffic and
3 transportation is -- is that --

4 MR. HARRIS: Correct

5 HEARING OFFICER CELLI: -- a non-issue?

6 MR. HARRIS: At this point, we see it as
7 uncontroverted. I'll use that term. I think there may be
8 some questions and clarifications, but basically I think
9 they're resolved.

10 HEARING OFFICER CELLI: You mentioned the gas
11 supply, which isn't its own topic for us usually, but that
12 raises -- it reminds me that we have a standing order from
13 the Chairman to investigate gas lines. And I just -- I
14 guess you'll be plugging into a gas line with this one,
15 that's, Mr. Harris?

16 MR. HARRIS: Yes. There's a gas supply.

17 HEARING OFFICER CELLI: Okay. So I just want to
18 reiterate that. I see Mr. Monasmith nodding. That is
19 something we need to include in the investigation here.

20 So facility design, geo paleo, power plant
21 efficiency, air quality, public health, noise.
22 Transmission systems engineering I didn't hear you
23 mention, so I'm just going to leave that as an open. He
24 touched on transmission system --

25 MR. HARRIS: It is mentioned in the staff's

1 report, but it's pretty much, I think, a CalISO issue.
2 And it's the same issue that every project faces. The ISO
3 has switched to this new cluster process. And phase 1,
4 phase 2. And it's -- there's nothing unique about our
5 project in that respect. I think that process is still
6 working out.

7 And lining up the Commission and the ISO process,
8 as you already know, is an interesting proposition.

9 HEARING OFFICER CELLI: Okay. Great. The other
10 thing I would say, and this is just to staff, this was --
11 I was looking at another -- an AFC we were working on, and
12 in the geo paleo section, I noted that -- I was actually
13 helping someone else with not one of my projects. But in
14 writing the geo paleo, I noticed that the analysis didn't
15 include other proposed projects in the area.

16 I understand it doesn't really lend itself very
17 easily, and yet I think that every cumulative an analysis
18 better include what other projects are going in, even if
19 it doesn't seem to relate very well, just because I think
20 that that's what the analysis is supposed to be about.

21 So with that, go ahead, Mr. Harris.

22 MR. HARRIS: And on that point, too, we have
23 provided a cumulative impacts analysis as part of our air
24 quality submissions, the typical six-mile radius type
25 analysis.

1 So, you know, those subjects are in very good
2 shape. That's, as by my count, over two-thirds of the
3 entire subject matter that are covered by a typical Energy
4 Commission decision. So we feel very good about that. We
5 want to thank the staff for their hard work on those
6 issues. And a lot of the ground work you guys have laid
7 through, you know, conditions and other projects. And our
8 understanding is that a lot of those certain standard
9 conditions has really helped winnow down that list.

10 So we're really down to about eight issues were
11 identified by staff, and we'd like to basically go through
12 those eight one by one. And I'll handle the first four,
13 and my colleague Ms. Pottenger will handle the second
14 four. So we debated about how to do those, whether, you
15 know, alphabetical or chronological. We just ended up
16 dividing up the way we did.

17 So just to give some staff some warning, that
18 what we would propose to go through in this order would be
19 first do alternatives, second do biology, third do
20 transmission system engineering, because staff has raised
21 that issue. Although, we maybe be able to scratch that
22 one off already. Fourth, visual issues -- visual
23 resources. Fifth, water resources, so the water half of
24 soil and water. Six would be the socioeconomics. Seventh
25 land use, and eighth cultural resources.

1 And again, I believe those are the same issues
2 that staff has identified in their status report. And I
3 think they were also identified in the Issues
4 Identification Report. So we wanted to take them in that
5 order.

6 And as I said, I'll start with our view on
7 alternatives. I think it might be good -- let me suggest
8 to the Committee that maybe we want to give all the
9 parties a chance to talk about alternatives after the
10 applicant goes, and go through topic by topic, if that's
11 acceptable to the Committee.

12 HEARING OFFICER CELLI: That works. I think that
13 would work great.

14 MR. HARRIS: Good, so we don't have any
15 short-term memory, so that works better.

16 We think the alternative section is in pretty
17 good shape. The staff has asked us for some additional
18 information about one of the alternatives that's being
19 called Sandy Valley. It's identified in the AFC as being
20 down in the -- basically in the corner of Inyo County near
21 San Bernardino county.

22 So staff has asked for some additional
23 information on that alternative. It was one that we had
24 eliminated as infeasible. And I think the issue is going
25 to really come around the whole question of the ability to

1 gain site control. There's multiple ownerships in this
2 area. And the staff has asked us for additional
3 information on the ownership question. And we're going to
4 provide that information. So I think we're going to be
5 able to meet staff's data needs.

6 We did eliminate that particular alternative,
7 based upon the inability to acquire site control. And if
8 you look back through the CEQA provisions on alternatives,
9 I think it's 15126.6(f) as in Frank talks about
10 application of the rule of reason to alternatives. And
11 (f)(1) talks about feasibility.

12 And that specifically goes into the idea of
13 whether the proponent can reasonably acquire control or
14 otherwise have access to the site. And that's actually
15 language from CEQA feasibility.

16 HEARING OFFICER CELLI: And I was -- yesterday, I
17 quickly ran through -- I looked at all of the docketed
18 material. I can't say I looked at it really closely, but
19 I looked closely enough to realize that this came up, and
20 I thought that staff was asking for an identification of
21 the number of parcels that weren't -- that you'd have to
22 get control of.

23 I just want to say that for -- we're not
24 prejudging the evidence or anything like that, but I have
25 to -- I can't ignore the fact that there's a 750-foot

1 tower in this -- involved in this. There's -- here in
2 Sacramento, the tallest building, because I went on the
3 internet and checked this out, is the Wells Fargo
4 building. It's 429 feet.

5 This thing is going to be twice the height of the
6 tallest building in Sacramento, and there might be a need
7 for an override in this case. And if that's the case, the
8 Committee is going to heavily rely on the alternatives
9 section. And it's going to need a really robust analysis
10 from staff from all the parties really with regard to
11 alternatives.

12 And, of course, the more alternatives, or at
13 least the more data we have, the more in-depth and better
14 a decision, I think, we would be able to repair. So I'm
15 just throwing this out there now, because alternatives is
16 going to, I think, be a bigger deal than it would be say a
17 standard gas-fired power plant type situation.

18 MR. HARRIS: We appreciate those insights and the
19 candor. We would encourage you to make a field trip to
20 the Ivanpah site. One of the things that impressed me the
21 most when I was there was how small the power looked
22 compared to what I thought it was going to look like.

23 Now, we have taller towers in this case, and
24 those aren't complete yet, but I think that would be, just
25 for your own edification, a very good field trip, at some

1 point, to get out there and take a look at that site.

2 Having said that, absolutely agree about the
3 alternatives. We need to have a defensible position. We
4 will provide the information staff is asking about for
5 this third alternative. I personally -- and I'm sorry Mr.
6 Ratliff is not here. I personally feel like the staff has
7 sort of suggested that they're going to not consider or
8 eliminate for further consideration the two alternatives
9 that are in the AFC.

10 And we would encourage the staff to, I guess,
11 maybe change that rhetoric a little bit. They may
12 ultimately determine that those alternatives are not
13 superior to the project, but we still feel like they're in
14 that reasonable range of feasible alternatives that can be
15 looked at.

16 And so I think by providing this additional
17 information, our objective is to give staff three off-site
18 alternatives that are within that reasonable range. We
19 obviously feel like they're not superior to our project,
20 but that will be the area-by-area analysis that goes
21 through the subject matter.

22 And again, I didn't have a chance to talk to Mr.
23 Ratliff about that sort of rhetorical twist on the two
24 that are in there, but we'll talk off line.

25 HEARING OFFICER CELLI: And on alternatives,

1 anything further on that?

2 MR. HARRIS: No, I think that's pretty much it
3 from our perspective on alternatives.

4 HEARING OFFICER CELLI: The other thing on
5 alternatives, as long as we're having an informal
6 conference, is I did see there was a comment letter from
7 someone, I didn't get who, that mentioned these boxes -- I
8 forget the name -- that seemed to me like something that
9 since you're aware of it now, you might as well throw it
10 in the mix. What do you think, Mr. Monasmith?

11 SENIOR PROJECT MANAGER MONASMITH: Yes. Mike
12 Monasmith, Project Manager. That was a comment from Cindy
13 MacDonald, who participated. She's a local resident,
14 property owner, adjacent to the project -- proposed
15 project site. And she provided those comments at our
16 workshop on the 18th, and asked that we docket that.

17 She had a very thorough analysis quite honestly.
18 She looked at the project and wanted us to docket that for
19 consideration and we are looking at that.

20 HEARING OFFICER CELLI: Thank you.

21 MR. HARRIS: If I could add something on this, on
22 the bloom box.

23 HEARING OFFICER CELLI: That's what it was, the
24 Bloom Box.

25 MR. HARRIS: The Bloom Box. First off, it's an

1 excellent product. And I say that, not just because
2 they're a client.

3 (Laughter.)

4 MR. HARRIS: But because it's true. That
5 particular technology is designed more for distributed
6 generation configuration. It's a fuel cell, even though
7 it's called a Bloom Box. It is a fuel cell. And they
8 typically put them in in one half to, you know, two
9 megawatt configurations.

10 I don't think they have anything larger than
11 three or four megawatts. It's a very useful tool for
12 transmission planners. It's exactly the kind of thing you
13 want to locate at a substation to make sure your voltage
14 support stays up, but it has never been scaled up to this
15 extent. And we'll be happy to work with staff and provide
16 them with some additional information on the technology,
17 which again is outstanding. But I think in this
18 application, it wouldn't be a good alternative, and we can
19 help explain why.

20 HEARING OFFICER CELLI: Thank you. Go head, Mr.
21 Monasmith. Anything else on alternatives, please?

22 SENIOR PROJECT MANAGER MONASMITH: Yeah. I would
23 like to -- if it's okay with you, I'd like to go back a
24 bit and give staff's take at least on the uncontroverted
25 disciplines that the applicant has listed, and give you an

1 indication of where we are on the 2021 technical
2 disciplines as staff is assessing this Application For
3 Certification

4 We often break them down by tiers, Tier 1, 2, and
5 3. We've done this in the past, Hearing Officer Celli, as
6 you remember in the Genesis proceeding.

7 Tier 1 are those which there were no data
8 requests or where data requests were asked and answered,
9 and we pretty much are moving through discovery at this
10 point. They are not controversial. Those would include
11 all those indicated by Mr. Harris, with the exception of
12 worker safety.

13 You mentioned the natural gas supply. There is,
14 in fact, a new natural gas pipeline that's going to be
15 built. It will be part of the BLM's review under the NEPA
16 process, within Nevada, the transmission line and the
17 natural gas line, but we are looking at it.

18 The size of that is still something that we're
19 trying to definitively determine, anywhere between 18 and
20 36 inches from Kern River. And there's certain concerns
21 on the size of this pipeline. Southern Inyo Fire
22 Protection District who are on the line with us, and are
23 an agency that is mixed from local, California, and Nevada
24 with Nye County, Inyo County, others. They have indicated
25 a concern about the size of this pipeline.

1 We've also asked the applicant an issue on a
2 health risk fire risk assessment, which we are still
3 waiting for a response on that. So I would not put worker
4 safety in the category of uncontroverted.

5 HEARING OFFICER CELLI: Can I ask you something,
6 Mr. Monasmith?

7 SENIOR PROJECT MANAGER MONASMITH: Yes.

8 HEARING OFFICER CELLI: I'm looking at this
9 Figure 1.2-3 --

10 SENIOR PROJECT MANAGER MONASMITH: Sure.

11 HEARING OFFICER CELLI: -- which just shows the
12 project. It's a bird's eye view, very high, even above
13 the towers. And it shows the pipeline sort of running
14 between the two where the towers would be and then running
15 along the border of Nevada and California.

16 SENIOR PROJECT MANAGER MONASMITH: Right.

17 HEARING OFFICER CELLI: But then it goes off the
18 page.

19 SENIOR PROJECT MANAGER MONASMITH: It shoots off
20 about nine and a half miles south, southeast of there, and
21 hooks up with -- and that would be the part of the
22 analysis that BLM will be conducting under the NEPA
23 review.

24 HEARING OFFICER CELLI: Is it all in Nevada or
25 California?

1 SENIOR PROJECT MANAGER MONASMITH: The majority
2 of it is in Nevada. Obviously, they have to bring it into
3 California, and we're looking at it for those aspects,
4 which is part --

5 HEARING OFFICER CELLI: I mean, the part as it
6 runs down south, is that on the California side?

7 SENIOR PROJECT MANAGER MONASMITH: Actually,
8 Nevada. It goes -- right from where you're looking, it
9 goes east into Nevada and runs about nine and a half miles
10 south, southeast.

11 HEARING OFFICER CELLI: Thank you. Go ahead.

12 SENIOR PROJECT MANAGER MONASMITH: Also, I would
13 agree that traffic and transportation and TSE, while they
14 are -- at this point, they're looking good. We are doing
15 a glint and glare study under the traffic transportation
16 component. That is being conducted, so that's still
17 outstanding work that we are doing, in terms of discovery
18 and the cluster study, and determination from TSE is still
19 outstanding. So at this point, I don't really put them in
20 as a Tier 1.

21 And then, in terms of the others, I would agree
22 with those that were indicated in our status report as
23 varying degrees of divergence between staff and the
24 applicant in terms of data requests, data responses that
25 we've received, the adequacy of those responses, and our

1 need for additional information. And some of the
2 technical disciplines as we get to that divide is not very
3 good. With a couple, it is something that is potentially
4 schedule problems and reflected in our revised
5 determination on a PSA publication date from February 29th
6 to now, April 13th.

7 In terms of alternatives, the applicant had
8 forwarded a number, I think, six or seven within the AFC.
9 And they forwarded two sites within Inyo County, one
10 called Trona, another one called Calvada South. The staff
11 has looked at both of those. We continue to look at them.
12 We are, by no means, completely through with our analysis,
13 in terms of the off-sites.

14 But those two, for a number of reasons, including
15 the high level of habitat, Desert Tortoise habitat, as
16 well as the proximity to military facilities, both gave us
17 pause. When we were looking at the alternative sites, it
18 seemed to us that Sandy Valley, which is, essentially when
19 you look at the California-Nevada border, it's -- you just
20 go down about eight or nine miles as the crow flies, and
21 it's right on the very corner of Inyo County, right where
22 Inyo and San Bernardino County meet on the Nevada border.

23 When we were down in Inyo County last week, we
24 actually visited -- the team visited Sandy Valley. We
25 drove around. It currently has a mix of agricultural use,

1 a number of large central-pivot irrigation sod farms that
2 are currently in existence on both Inyo and San
3 Bernardino.

4 In looking forward in what could potentially be
5 significant issues on the project site, visual, water,
6 biology, all of those are issues that would seem to point
7 to an alternative like Sandy Valley, which is why we've
8 investigated it, why we've asked the applicant for
9 additional questions.

10 We do understand the issue on site control, but
11 we need more information before we would be convinced that
12 it's an issue that's infeasible due to that factor. We've
13 also asked for additional information on alternative
14 technologies. And as Ms. MacDonald had provided with the
15 fuel sells and the Bloom Boxes, that's something that on
16 our alternative analysis, Jeanine Hinde who's doing a very
17 robust job, and you will, I think, be impressed by the
18 level of analysis that will come out in our PSA in the
19 alternatives sections.

20 We will most certainly make sure that that's
21 included under alternatives technology, at least look at
22 it to make sure it deserves the review that we told Ms.
23 MacDonald it would get. But it's -- we're still waiting
24 for some information on the -- from the applicant.

25 HEARING OFFICER CELLI: Let me ask you this, with

1 regard to that projected delay of the PSA now two months
2 out, looks like, April 13th from February 29th.

3 SENIOR PROJECT MANAGER MONASMITH: Six weeks
4 more, yes.

5 HEARING OFFICER CELLI: Is that delay largely
6 predicated upon the alternatives issues?

7 SENIOR PROJECT MANAGER MONASMITH: No. No, it's
8 not. It's part of the picture. Really, if you look at
9 the issues, and these -- as we all know, the bio,
10 cultural, water issues are always issues that, given the
11 environment in which we are reviewing and that these
12 projects are the three disciplines that are the most
13 involved, of those three -- because of those three and
14 primarily because of cultural resources, and issues that
15 are outstanding between the applicant and staff, we made
16 an estimation that the earliest that we would be able to
17 put a PSA out in a form that would be absent major gaps in
18 information and analyses would be mid-April. And we can
19 talk more about that when we get to the cultural
20 resources.

21 HEARING OFFICER CELLI: Okay. I just want -- I
22 was trying to isolate what the delay was centered on.

23 I'm going to move on to Ms. Anderson. Before I
24 do, I just want to -- is Lisa Belenky on the phone?

25 MS. ANDERSON: No, she isn't.

1 HEARING OFFICER CELLI: Okay. Ms. Anderson,
2 we're talking now about alternatives. Would you have any
3 comments on alternatives from CBD?

4 MS. ANDERSON: Yeah, I do. But before we get to
5 that, I also wanted to mention that these status
6 conferences, it would have been nice to also include the
7 intervenors on when these were timed, because I think that
8 there's going to be some significant conflicts in our
9 participation because of the time that they're scheduled.

10 HEARING OFFICER CELLI: I appreciate that, but I
11 just wanted you to know that you weren't left out, because
12 everybody was left out. The conferences are at the
13 convenience of the Commissioners. I didn't consult staff,
14 applicant, or anyone, because really what I'm interested
15 in is making sure I've got a hearing where I have both
16 Commissioners fully available, I have a room to have it
17 in. And so, I'm sorry, but that's one of these unilateral
18 things we do from the dais, where we just basically say
19 these are the dates, and we do what we can to facilitate
20 participation by having WebEx.

21 So if you're out doing something else, like in
22 this case, Ms. Anderson, I see you're on the phone and
23 maybe Ms. Belenky is somewhere else, but we're doing what
24 we can to make it available to everybody. But I just
25 wanted you to know, you weren't left out anymore than

1 everyone else was left out.

2 MS. ANDERSON: Oh, okay. Well, it was my
3 misunderstanding then, because I thought you said it was
4 set at the applicant's request and the staff's
5 concurrence.

6 HEARING OFFICER CELLI: It was. At the
7 informational hearing, I put it out there and said do you
8 think it would be useful to have status conferences, and
9 everybody said yes, but we didn't talk about dates.

10 MS. ANDERSON: Got it.

11 HEARING OFFICER CELLI: Go ahead.

12 MS. ANDERSON: Thank you. We'll, I'd like to go
13 on to the alternatives then. And I'm not clear what all
14 the alternatives are being considered, so this may be
15 redundant with what's already being proposed. But one
16 thing we'd like to see is the analysis of a photovoltaic
17 alternative, as well as a distributed generation
18 alternative.

19 And primarily, the reason for that is our
20 understanding that this technology is perhaps, in the
21 future, not as efficient as some or of -- or cost
22 efficient as some of these other technologies. So I think
23 it would be helpful to have that included in the
24 alternatives. Not to mention, for distributed generation,
25 the lack of need for additional transmission and gas

1 pipelines et cetera.

2 HEARING OFFICER CELLI: Okay. I think that
3 that's pretty much an automatic thing anyway. I'm looking
4 at -- just so you know, I've got a sort of a nod from
5 staff that they usually will be looking at photovoltaics
6 and distributed generation alternatives in the analysis.
7 Anything --

8 MS. ANDERSON: Terrific.

9 HEARING OFFICER CELLI: Anything further, Ms.
10 Anderson, on alternatives?

11 MS. ANDERSON: No, I think that's it today.
12 Thank you.

13 HEARING OFFICER CELLI: Yeah, just to reiterate,
14 we're going to go topic by topic, so -- just we're talking
15 about alternatives right now.

16 Is Mr. Zellhoefer on the phone, Zellhoefer?

17 Jon Zellhoefer?

18 Okay. And let me just ask the Public Adviser,
19 have we had any contact from Mr. Zellhoefer?

20 She's indicating no. So from time to time, I'll
21 check in and see if he's calling in late. I hope he's not
22 on a flight up here or something.

23 Anything further on alternatives, Mr. Harris?

24 MR. HARRIS: No, we do appreciate the opportunity
25 to be involved in that. I guess to the merits, we

1 question whether a DG alternative is something you ought
2 to be looking at in any real detail the alternatives
3 analysis, or alternatives to the project, and the project
4 location, and without a specificity on a DG alternative.

5 A generic, you know, why don't we just do rooftop
6 everywhere in California, in my mind, doesn't meet CEQA's
7 requirements. If there's a specific DG project that wants
8 to -- that they want to propose, then that's a different
9 matter. But I'd put that out there. I know you guys have
10 dealt with this issue in other cases as well, so -- and I
11 think I'll stop there with alternatives.

12 HEARING OFFICER CELLI: Okay.

13 MR. HARRIS: Can we move on to our second
14 subject, which is biological resources. And I'm going to
15 ask my colleague Mr. Strachan to address these issues on
16 our behalf.

17 HEARING OFFICER CELLI: Thank you.

18 MS. STRACHAN: We are making progress on biology.
19 As we've stated in our status report, we responded to the
20 staff's data request. What else I think has been helpful
21 is that we've had site visits with CEC biological staff,
22 California Department of Fish and Game, U.S. Fish and
23 Wildlife Service, and a representative from the Regional
24 Water Quality Control Board.

25 I think, in terms of those site visits, seeing is

1 believing. And I think it helps in staff's ability to
2 work on the project once they've actually seen the site.
3 So it's been our pleasure to be able to take them out
4 there.

5 In terms of the items that staff has identified
6 in the status report, we concur with those, in terms of
7 work that needs to be addressed to finish biology. As we
8 discussed in our staff report, there are several
9 documents, reports that we're providing with survey
10 results, et cetera, that I think will satisfy the concerns
11 that they have in order to allow them to complete their
12 analysis.

13 One item I do want to point on is there's
14 reference to some bird surveys. And we're working with
15 staff and Fish and Wildlife Service to ensure concurrence
16 on the surveys that are being conducted for the site, and
17 making sure that everyone agrees that those are the
18 appropriate surveys.

19 HEARING OFFICER CELLI: Staff.

20 SENIOR PROJECT MANAGER MONASMITH: Yes. I think
21 we've a good collaborative work with the other Resource
22 agencies, our staff, and Fish and Game, Fish and Wildlife
23 Service, BLM, and we've had six workshops, data requests,
24 data response workshops, dating back to the 21st of
25 October, which was specifically about biology. Biology

1 has been a component of nearly every workshop.

2 We have -- I've been grateful for the opportunity
3 to go out to the site, for other biologists and analysts
4 from other agencies to do the same. We continue to work
5 on a number of issues. There are some outstanding survey
6 information. But in terms of a schedule, this is
7 relatively good shape.

8 We still have some work to do. Obviously,
9 there's issues with the 10 special status plants that we
10 continue to need some additional information on.
11 Information and analysis, survey information related to
12 Golden Eagles, bats, avian issues, and given the
13 technology and the project's location are components
14 they're obviously interested in and we need to continue to
15 work on.

16 But, you know, we're having the conversations
17 about compensatory mitigation strategies that we're
18 beginning to look forward to, as we make our
19 determinations on significance, giving an eye to that. So
20 this one is moving relatively good, but we still have a
21 lot of work to do obviously.

22 HEARING OFFICER CELLI: I just want to make note
23 that Commissioner Peterman brought to my attention that
24 there are a couple of January reports that were due.
25 There was -- let's see, we have an off-site botany survey

1 report and an on-site fall botany. Oh, that's January
2 2012. Yeah, we're in January 2012.

3 So you have fall botany survey, off-site botany
4 survey. We have an avian bird count and Golden Eagle
5 ground survey report to be submitted in January. Also,
6 the fall Golden Eagle helicopter survey report in January.
7 Are we current with those?

8 SENIOR PROJECT MANAGER MONASMITH: Yeah. Well,
9 the applicant should probably provide that.

10 MS. STRACHAN: We are working on those. The
11 off-site report, we anticipate to get submitted this week.
12 A lot of those are just being finished up with the
13 biologists and then they'll go into internal review before
14 they get them into the agencies, but we're moving forward.

15 There could be a couple that, given the volume of
16 them, that are coming together for review internally that
17 may move into February, but the survey work has been done.
18 It's just getting the documentation, getting them in the
19 form to be submitted.

20 MR. HARRIS: And I want to add one thing the
21 avian, the bird and bat issues. That work is being done
22 in concert with your staff and the Resource Agency staffs.
23 I guess I'd point out that a lot of the requests are
24 coming from guidance documents. There's not even
25 regulations out there on a lot of these things.

1 And so it's not fair to describe it as a moving
2 target, but it's evolving. And I think we're part of that
3 evolution. We appreciate the staff helping us come up to
4 speed on those things. But, for example, with Golden
5 Eagles, the controlling document today is something from
6 last January that's dated, you know, draft -- it's titled
7 "Draft Interest Guidance", as opposed to regulations.

8 And so we actually hope to be able to shape that
9 a little bit moving forward and let people know what's
10 practical in your one-year time frame. One of the first
11 challenges is distinguishing solar technology from wind
12 technology, especially as it relates to bats.

13 And there's a big difference in wind permitting.
14 As you probably know, there's a two or three year process
15 that typically involves a right-of-way grant, where they
16 set up a weather station and do all the kind of
17 monitoring. So the regulatory agencies and the
18 wind-setting are used to longer lead time permitting
19 processes. And so we appreciate the staff's effort to
20 kind of basically conform these new issues to your process
21 and continue to work with them closely moving forward.

22 HEARING OFFICER CELLI: I have to say I'm really
23 looking forward to reading the bio section in the PSA when
24 it comes out, because I'm dying to find out why bats, that
25 I always assumed went out at night, so they're not going

1 to get singed at night, and they echo locate instead of
2 just fly. So they're not going to fly into that tower,
3 unless they're a bat that probably shouldn't be in the
4 gene pool.

5 (Laughter.)

6 HEARING OFFICER CELLI: So I'm eager to find out
7 how this is going to affect bats, because I might have it
8 all wrong there, but in any event.

9 Let me just ask, Commissioner, do you have any
10 questions?

11 Okay. And then anything further on bio from
12 staff?

13 SENIOR PROJECT MANAGER MONASMITH: No. I think
14 those are the high points, Hearing Officer.

15 HEARING OFFICER CELLI: Thank you. And, Mr. Jon
16 Zellhoefer, are you on the phone?

17 Okay. Ms. Anderson, Ileene Anderson, anything on
18 bio regarding the Hidden Hills Project?

19 MS. ANDERSON: Yeah. And I think it's perhaps a
20 bit beyond Hidden Hills. But the notion is, is that --
21 you know, we've also intervened in the Rio Mesa project as
22 well. And there's a sort of level of surveys,
23 particularly for Golden Eagles and such, is different than
24 what's being required on this project. And we'd certainly
25 like to see some consistency between the level of efforts

1 for surveys on these different projects.

2 HEARING OFFICER CELLI: So is Rio Mesa more or
3 less detailed? What is the difference, if you could say?

4 MS. ANDERSON: More surveys.

5 HEARING OFFICER CELLI: There are more surveys
6 required in Rio Mesa than in Hidden Hills?

7 MS. ANDERSON: Yes.

8 HEARING OFFICER CELLI: Okay. Is that -- do we
9 know why that is?

10 SENIOR PROJECT MANAGER MONASMITH: Well, in
11 general, Hearing Officer, the length of the surveys as
12 they relate to birds, bats, avian issues are, I believe,
13 two years -- is what is the recommended -- is being
14 recommended potentially for some of these surveys, given
15 the project's location along the Colorado River, given the
16 relative major fly way, in terms of migratory birds.

17 The Migratory Bird Office at the U.S. Fish and
18 Wildlife Service. We've been working with Heather Beeler
19 here in Sacramento. We've been working close with them,
20 with Ray Bransfield out of the Ventura office, U.S. Fish
21 and Wildlife Service, who are doing the Section 9
22 Consultation with BLM, over at the BABO.

23 We've been working with them on the Hidden Hills
24 project. We do have -- we will have year-long surveys
25 that have been asked with quarterly reports for bats. We

1 are in the process, staff is, of making sure that there's
2 not a wide gap of inconsistency between the two
3 proceedings in relation to Eagles, especially, but
4 recognizing that they are different projects, they are in
5 different locations, and one-size-fits-all may not
6 necessarily be appropriate.

7 However, we are still looking at that, and are
8 obviously open to input from folks like the Center for
9 Biological Diversity and others, who might want to see
10 something more detailed perhaps.

11 HEARING OFFICER CELLI: And also, Ms. Anderson,
12 as you may have heard, we are expecting more reports
13 coming off in January. So I hope that answers that
14 question.

15 MS. ANDERSON: Yes. I'm aware of that. It's
16 just it's still, you know, less rigorous than what's being
17 required at Rio Mesa, which, you know, I'll note is under
18 a different Fish And Wildlife Service office than this
19 project.

20 HEARING OFFICER CELLI: Very clear.

21 Anything else on biology, Ms. Anderson?

22 MS. ANDERSON: No, I think that's it today.

23 Thank you.

24 MS. STRACHAN: If I could -- excuse me.

25 HEARING OFFICER CELLI: Go ahead, Ms. Strachan.

1 MS. STRACHAN: If I could just add. There are
2 different folks, but I think from a bird standpoint, there
3 is some consistency in terms of the staff that are
4 involved in some respects. I also want to add that when
5 we met with Fish and Wildlife Service in January, there
6 was discussion from the Service standpoint about looking
7 at each project individually, and not necessarily adopting
8 a one type of survey protocol for each. And I think that
9 that's appropriate.

10 We are having the similar discussions as staff is
11 having with the agencies to make sure that what is being
12 done for the project is appropriate.

13 HEARING OFFICER CELLI: Very clear.

14 With that, then the next topic we're on to, Mr.
15 Harris.

16 MR. HARRIS: Is actually transmission system
17 engineer. And again, this in response to staff for
18 putting it into their status report, which is in response
19 to staff in their issues identification.

20 There's nothing unique about the project, as I've
21 said. We're in the same CalISO process. We're going
22 through the cluster process as well. And it's exactly the
23 same thing you've seen on the other projects. So that's
24 all we really have to say on that issue, and we just
25 wanted to flag it because maybe staff had raised it.

1 HEARING OFFICER CELLI: We've now lived through a
2 few of these clusters, so I understand the delay.

3 Any questions on TSE, Commissioners?

4 No questions.

5 Staff nothing.

6 Ileene Anderson, anything on transmission systems
7 engineering?

8 MS. ANDERSON: No, thank you.

9 HEARING OFFICER CELLI: Thank you.
10 Please.

11 ASSOCIATE MEMBER PETERMAN: Hi. This is
12 Commissioner Peterman. I did want to make one comment
13 about biological and the difference in surveys across this
14 project and Rio Mesa. I'm presiding on Rio Mesa and
15 Commissioner Douglas is Associate Commissioner. And so
16 we'll be involved in both cases, and we'll be able to have
17 a sense of the comparative nature of the number of surveys
18 going forward.

19 HEARING OFFICER CELLI: Thank you, Commissioner.

20 Now, we're on -- after TSA -- TSE, you have what?

21 MR. HARRIS: Visual.

22 HEARING OFFICER CELLI: Visual, yes.

23 MR. HARRIS: Visual resources. And again, I
24 think we're making good progress in this area. There are
25 a couple of KOPs that are at issue that staff has

1 identified in their staff status report, and one issue
2 that's new to us, that we'd actually like to hear more
3 about.

4 But if you will, I'll go through each of the KOPs
5 briefly. The first one is KOP 7, which relates to the Old
6 Spanish Trail Association. There was recently a KOP
7 picked in this area in the Pahrump wilderness area, but it
8 wasn't accessible to the general public. And, as you
9 know, that sort of violates the whole tenant of a KOP.
10 And so that was a KOP that was agreed to be dropped, and
11 so it was dropped. But staff has asked has for a new KOP,
12 and asked us to work with the Old Spanish Trail
13 Association, or OSTA sometimes.

14 HEARING OFFICER CELLI: Oh, that's right. We
15 just received a petition to intervene from them yesterday.

16 MR. HARRIS: Correct, yes.

17 HEARING OFFICER CELLI: I wonder, is there
18 someone on the phone from the Old Spanish Trail
19 Association?

20 Okay. I just wanted to acknowledge that I
21 received your email that said that you weren't sure
22 whether they were an organization or an individual. I
23 think that was the question.

24 MR. HARRIS: I think they may have checked --
25 they checked the box that suggested they were associated

1 with another party. And I actually kind of wonder if
2 maybe that was just a mischeck of the box, because I don't
3 they're associated with any of the other parties, but --

4 HEARING OFFICER CELLI: I think, Ms. Sadler, I'm
5 just going to ask that you be in contact with the -- I
6 don't know if you received the petition or not. She's
7 nodding yes.

8 ASSISTANT PUBLIC ADVISER SADLER: (Nods head.)

9 HEARING OFFICER CELLI: It looked like they can
10 definitely use your help, from what I could see, just
11 because there was a lot of cross-outs and things like that
12 on the documentation, the POS and so forth. So I'm just
13 going to ask that if you can help shepherd their
14 participation, that would be great.

15 So anyway, I didn't mean to interrupt. Go ahead.

16 MR. HARRIS: No, point taken. Thank you. So
17 there's been some discussion with the Old Spanish Trail
18 Association, even before their petition to intervene about
19 a location along that trail corridor. And we were asked
20 to work with the Trail Association. And then the BLM
21 actually asked that that be directed through them.

22 So there was a little, I guess, time delay
23 associated with getting us a map of the location they were
24 interested in having us look at. There's been a
25 suggestion that there may be muse -- muse -- mule

1 trace -- mule trace, which I guess is a layman's term, a
2 place where mules walk, as opposed to wagons, on or near
3 the site.

4 We have been provided that map now. Our experts
5 have actually been out in the field and looked at the
6 those mule trace and determined that there is nothing
7 there in that respect, but we need to document that
8 obviously. And so we are preparing a technical
9 memorandum, is the term we use, to explain our analysis of
10 that particular KOP.

11 And I think it will actually help inform the
12 staff's review of KOPs, of whether we even need KOP 7. So
13 that's forthcoming. It's in production. The folks who
14 have done that survey are here today, if you want to go
15 into details about mule trace. We will provide that
16 with -- to the staff, probably as a supplemental data
17 response.

18 HEARING OFFICER CELLI: But you said it was not
19 accessible to the public, this area?

20 MR. HARRIS: The original KOP selected was not,
21 for KOP 7. That was dropped. The issue came back up
22 again with the Trail Association concerned about the
23 trail. So the next number is 7. So there's an old 7 and
24 this one is the new 7.

25 MS. STRACHAN: What I think would help with the

1 confusion is that, Jeff's correct is that we have taken
2 out the original 7. The numbering system was already
3 developed, so we didn't change that. The new KOP that
4 went in is in a publicly accessible area adjacent to the
5 Pahrump Wilderness Area, and also at a location of the Old
6 Spanish Trail.

7 Staff had asked us to verify with the Old Spanish
8 Trail Association if that location was accurate. There
9 was back and forth on that data being publicly available,
10 and that we needed to go through BLM. We weren't able to,
11 at the time, to meet the schedule for the data response,
12 get that data. We looked at National Parks Service data.
13 And then based on that data, verified that the location
14 was correct.

15 Now, we've gotten additional maps that show other
16 locations the mule trace that Mr. Harris suggested that --
17 I think that also gets into a cultural issue, but we'll be
18 provide some documentation on that.

19 HEARING OFFICER CELLI: All right. So bottom
20 line, are we going to have a KOP 7 from this mule trace
21 spot?

22 MS. STRACHAN: I think we need to have further
23 discussions with staff in terms of identifying what's what
24 and what's where to determine whether -- because I'm not
25 quite clear, in terms of the location that we selected

1 versus another location, so we need to have further
2 dialogue on that.

3 HEARING OFFICER CELLI: Very good. Again, I just
4 want to reiterate that we're not passing judgment. We
5 don't have any evidence before us yet. This is our first
6 of five noted status conferences, but I can't turn a blind
7 eye to the fact that there's a 750-foot tower, and that
8 visual is going to be an important area that needs a solid
9 analysis.

10 Go ahead, Mr. Monasmith. Welcome, Mr. Ratliff.

11 SENIOR PROJECT MANAGER MONASMITH: Yes, visual
12 resources is obviously one of the Tier 3, one of the large
13 issues that we will be investigating in terms of our
14 analysis.

15 We are still awaiting some information from the
16 applicant. We are, in fact, have a couple additional data
17 requests that we are just about ready to issue, that will
18 ask for more information as it relates to the visual
19 impacts from the solar field, from the 180,000 mirrors
20 that are approximately 12 by 30 feet elevated in
21 concentric circles around these two solar fields.

22 And we continue to work with the Old Spanish
23 Trail Association, as well as with Native American
24 representatives in making sure that our Key Observation
25 Points, the KOPs, are reflective of multiple perspectives

1 throughout the valley.

2 We, most likely, will be workshopping this issue.
3 Of the six workshops that we've had so far, visual
4 resources has not been explicitly discussed. It's always
5 part of the discussion. On the upcoming one on February
6 7th, probably most likely, will not only be biology, but
7 visual resources as well. And we -- our analyst has done
8 a number of field trips, done reconnaissance work. We
9 were down there last week doing the same. We have hired
10 and consulted with a Bill Kanemoto, who has worked with us
11 before on past proceedings, on the Genesis proceedings and
12 others, on the I-10 corridor.

13 We're doing this glint and glare study, which
14 will also lend itself well to the visual resources
15 analysis, and we'll be discussing this on the 7th. But
16 this is clearly going to be an impact of significance in
17 our determination.

18 HEARING OFFICER CELLI: And is -- so the
19 subsequent data requests that you've put out and your
20 discussions, is that part of the reason for the six-week
21 delay, visual?

22 SENIOR PROJECT MANAGER MONASMITH: Visual is part
23 of that, that's correct, because we may need to do some of
24 this work in-house. The applicant did object initially to
25 Data Request 33, which related to a KOP 8. There has been

1 some divergence between applicant and staff on the
2 specific locations, the Key Observation Points. Sometimes
3 this issue does blend somewhat into the cultural resources
4 issue.

5 And so this is not an easy up and down analysis.
6 Obviously, it's going to be complicated by the nature of,
7 as you indicated in your opening remarks, Hearing Officer,
8 the nature of this technology and the impacts that can be
9 expected. So we continue to work on this vigorously.

10 HEARING OFFICER CELLI: I just -- I would say, in
11 general, in my own experience, I think, eight KOPs is on
12 the high side. And so I -- have you resolved this eighth
13 KOP yet or...?

14 SENIOR PROJECT MANAGER MONASMITH: Well, in terms
15 of the numbers, I think just given the nature of the
16 Pahrump Valley, this technology, and concerns that have
17 been voiced by local residents and organization, the fact
18 that the Old Spanish Trail Association has now filed for
19 Intervenor status on this issue, is one of the most
20 important to them. The Native Americans --

21 HEARING OFFICER CELLI: But they wanted KOP 7, I
22 thought, the --

23 SENIOR PROJECT MANAGER MONASMITH: I think they
24 want a voice. Yes, they'd like a voice and a
25 determination of a Key Observation Point, not -- but

1 additional issues that they obviously feel important, Jack
2 Prichett and whom our staff have worked with vigorously on
3 this issue as well.

4 That's correct as well. And Ms. Mourkas, our Vis
5 analyst, reminded me that three of them are with Nevada as
6 well. As you know, this project's location, right on the
7 California-Nevada border, presents inherent conflicts --
8 or not conflicts, but difficulties and challenges, in
9 terms of our assessment, as it relates to Nevada, and
10 Nevadans, and under CEQA. So it's one that we continue to
11 work on.

12 HEARING OFFICER CELLI: Okay. Let me hear from
13 Ms. Anderson regarding visual impacts.

14 MR. HARRIS: We have other visual issues, but if
15 you want to stay on this KOP 7, however, you want to
16 proceed then.

17 HEARING OFFICER CELLI: I'm sorry. Hold on, Ms.
18 Anderson. Let me -- let's let the applicant finish and
19 then I'll call on you. Go ahead.

20 MR. HARRIS: We have --

21 MS. ANDERSON: No problem.

22 MR. HARRIS: -- basically -- thank you. Sorry,
23 Ileene -- four issues. The KOP 7 which we've been talking
24 about. KOP 8 is the one that staff has asked for. We
25 actually did object to this data request. And we did that

1 for reasons that aren't explained in the staff analysis.

2 I want to kind of layout why we did object.

3 This was a request to look at a place up in the
4 Nopah Range, which is in California, but at quite some
5 distance from the project site. Our first concern was
6 that we were not going to be allowed to participate in the
7 selection of that KOP off site. So in our objection, we
8 actually -- we raised three issues in our objection.

9 And the first one was that, that if you're going
10 to select a KOP for the project site, that the applicant
11 needs to be part of that process, so our experts can
12 provide you with input. We don't go down a path that's
13 wasteful of time and resources.

14 Secondly, we think that KOP should be mutually
15 agreeable to the local tribes, to the Las Vegas tribal
16 officials, and to the staff and the applicants. So again,
17 let us participate, and then let us have a consensus on
18 where that location ought to be.

19 And then the third thing I think was probably the
20 biggest issue, and this is one we'll keep coming back to,
21 is the selection criteria. The Commission has an
22 established criteria as to location, and it needs to be a
23 representative view that would be experienced by the
24 general public. I guess, in this instance, maybe the
25 Native American tribes.

1 And that really is the key. The KOP is not just
2 a place you go to that shows you the project in the best
3 light. It's a place where people will actually go, people
4 in general. And that criteria we think is very important.

5 This is getting complex in this subject matter,
6 because I think we're kind of combining visual issues with
7 cultural issues on this KOP 8.

8 And we think, again, if you're going to go down
9 this route, we want to participate in that and we want to
10 have everybody reach a consensus, and it ought to be a
11 representative view, something that is actually related to
12 the viewing experience.

13 So we have investigated this site. There's no
14 recorded use of this site by the general public. The only
15 record that we're aware of -- and we'll make this
16 information available to staff. We haven't done this yet.
17 We realized yesterday in our discussion -- is that the BLM
18 has two -- in the last five years has two requests for
19 camp fire permits in this area, okay? So it's not a
20 heavily used area on the only record system that is out
21 there.

22 And frankly, we're quite concerned about staff's
23 suggestion that they may go off and prepare their own
24 analysis and what that does to schedule. And when we talk
25 about schedule at the end of the day, we can maybe talk

1 about that issue as well. So that's the KOP 8 in the
2 Nopah Range. I wanted the Committee to understand why we
3 did object. We have, in all of our objections though,
4 stated our intent to continue to work with staff and the
5 other interested parties and we will do that there. So
6 that's the second issue, KOP 8.

7 The third issue is the staff discussion with
8 property owners regarding night light impacts, nighttime
9 lighting. This is really the first I think we've heard of
10 this issue. There is, in Tecopa, you know, you can
11 already see a bit of a glow from Las Vegas. And if you
12 line up the project, you're going to have Tecopa project
13 and Las Vegas.

14 The only nighttime source of lighting on this
15 project will be the FAA required lighting on the towers,
16 and then any safety lighting that's required around the
17 facility itself, a little lighting associated with mirror
18 washings. And so --

19 HEARING OFFICER CELLI: Is there going to -- may
20 I ask. Normally, on a tower, there's red blinking lights.
21 But given the height of this one, are they going to
22 require anything like a big beacon on the top or something
23 like that.

24 MR. HARRIS: We will do whatever the FAA requires
25 for airport safety. And I don't know the answer to

1 whether it would be, you know, more than one light or
2 strobing. Obviously, there are buildings this tall and
3 taller, so there's some kind of standards that the FAA
4 imposes, and we'll be meeting those.

5 But again, that's the only night light that is
6 going to be, you know, above the ground level that's going
7 one. And from Tecopa, that's actually shielded. There
8 are mountains, as you know, between the project site and
9 Tecopa. You won't be able to see it from there. So this
10 is a new issue to us, and we'd like to hear more from
11 staff about their concern.

12 And then finally, this was probably, I'll use the
13 word "alarming" to us, in certain respects, the discussion
14 about the accuracy of the KOPs that have been provided to
15 to date. We've heard nothing about concerns about the
16 accuracy of those KOPs that were submitted in September
17 time frame. So we would definitely like to hear from
18 staff on their concerns about that and work with them if
19 they have legitimate concerns.

20 So those are our four visual issues.

21 HEARING OFFICER CELLI: Okay. I just want to
22 acknowledge that when we were in Las Vegas going to the
23 informational hearing, we did see that there is one
24 structure that's about 750 feet in Las Vegas. I didn't
25 notice what kind of lighting they had on it. We were

1 there in the daytime, but it would be interesting to find
2 out.

3 But anyway, go ahead, Mr. Monasmith.

4 SENIOR PROJECT MANAGER MONASMITH: In terms of a
5 KOP 8, we had meetings on November 19th, with local Native
6 American organizations. And as a result of that meeting,
7 we've dropped the KOP 8 request, so that's no longer an
8 issue.

9 In terms of night --

10 MS. MOURKAS: Melissa Mourkas --

11 HEARING OFFICER CELLI: Hang on a minute. You're
12 not on the air. You need to get your mic going. Please,
13 introduce yourself again.

14 MS. MOURKAS: Melissa Mourkas. I'm the technical
15 analyst for visual resources.

16 HEARING OFFICER CELLI: You're with staff.

17 MS. MOURKAS: I'm with CEC staff, yes.

18 HEARING OFFICER CELLI: Thank you.

19 MS. MOURKAS: I also attended the January 19th
20 meeting that Mr. Monasmith was referring to. At this
21 time, there is still one tribe that is considering the
22 need for a KOP.

23 HEARING OFFICER CELLI: Can you speak right into
24 your microphone. I'm doing this for the benefit of the
25 telephone people.

1 MS. MOURKAS: Oh, thank you. I appreciate that.

2 At this time, there's still members of the Moapa
3 Tribe who want to confer with their elders as to whether
4 there is anything of interest in the Nopah Wilderness
5 Range to them. The Paiute of Las Vegas and Pahrump
6 indicated it's a closed subject, at this time.

7 HEARING OFFICER CELLI: So KOP 8 is --

8 MS. MOURKAS: We should have an indication of
9 whether that's something we need to look at shortly.

10 HEARING OFFICER CELLI: Great. Now, let's just
11 say KOP 8 comes off the table, does that affect our
12 timeline in any way?

13 SENIOR PROJECT MANAGER MONASMITH: It's a factor
14 that's -- you know, there's obviously other issues that
15 are moving along at the same time. This is one of them
16 that will need resolution. It's been an outstanding issue
17 and we continue to work with the tribes closely and we'll
18 shortly have a determination on that.

19 HEARING OFFICER CELLI: It sounds like progress.

20 SENIOR PROJECT MANAGER MONASMITH: Yeah,
21 definitely.

22 HEARING OFFICER CELLI: Great. Thank you.

23 SENIOR PROJECT MANAGER MONASMITH: And while
24 Melissa is still up here, I also wanted to -- you know, as
25 we wanted to do within our status report, we took all the

1 issues that had identical -- we had technical disciplines
2 that we talked about within the issues identification
3 report, which was written by our technical authors.

4 So that component of the status report was
5 written by Melissa, so I'm glad that she's up to talk.

6 The nighttime issue was one that had been voiced
7 by some of the local residents. And really it was, as we
8 indicated in our status report, part of that, our field
9 trip on the 18th and 19th was to look at these issues too,
10 to see if this was something that merited further
11 discussions and analysis.

12 And I think it would be something that we might
13 talk with the applicant about on the 7th of February.
14 And, at that time, I don't believe we will have a data
15 request at this point, in regard to this specifically,
16 although one could potentially come.

17 MS. MOURKAS: I think it's unlikely that a data
18 request will be necessary. It was simply staff responding
19 to a comment from a member of the public, and doing as
20 part of our discovery a little bit of research on this
21 issue. Frankly, I suspect that with typical conditions of
22 certification for nighttime lighting control, this
23 project, in and of itself, probably won't hurt the dark
24 sky community in Tecopa.

25 HEARING OFFICER CELLI: Right. I member reading

1 that there was actually a dark sky tourist industry that
2 felt that they might be affected by this night lighting.

3 MS. MOURKAS: Staff did not have an opportunity
4 to speak to the members of the Tecopa community who had
5 these concerns during last week's site visit, but we would
6 like to continue to have those discussions and find out if
7 there is an issue here.

8 HEARING OFFICER CELLI: Okay. Good. So thank
9 you for that clarification.

10 SENIOR PROJECT MANAGER MONASMITH: In terms of
11 the accuracy of the KOPs, I think that was something that
12 was reflective, not only of our concerns about the
13 heliostats within the visual representations that we'd
14 received, but also some comments that we had that come in
15 from other organizations about the accuracy. I believe
16 that was what was at the heart of that mention within the
17 status report, Melissa.

18 MS. MOURKAS: Yeah. Both the representation of
19 the field of heliostats in one or two of the KOPs, but
20 there was also a general consensus amongst CEC staff at
21 several levels, not just visual resources staff, who were
22 uncomfortable with the representations that have been
23 provided, the simulations that had been provided. And
24 that was part of the reason for hiring an outside
25 consultant to do an independent analysis.

1 HEARING OFFICER CELLI: So the stimulation -- I
2 know that we usually have simulations in the context of
3 visual. I'm just trying to think where else -- what other
4 areas we have simulations.

5 MS. MOURKAS: I didn't mean to indicate that
6 there were other areas, other disciplines that were
7 uncomfortable with it, but that it wasn't just one analyst
8 that was uncomfortable with it, a number of management
9 team members were also uncomfortable with the simulation
10 that was provided.

11 HEARING OFFICER CELLI: Okay. So when we're
12 talking about the accuracy, we're going to get yet another
13 batch of simulations.

14 SENIOR PROJECT MANAGER MONASMITH: We continue to
15 verify these as well, which is obviously our
16 responsibility and our job is to take these and to make
17 sure that they are, in fact, accurate, that they, in fact,
18 do represent this area, and that there is as close to
19 possible depiction of what this facility would like once
20 built and operating, if licensed.

21 HEARING OFFICER CELLI: That's great. So it
22 sounds to me like a KOP 8 issue may be going away
23 altogether. I don't imagine that applicant would have an
24 object to yet another set of simulations, correct me if
25 I'm wrong.

1 MR. HARRIS: Well, they're very time intensive
2 and very resource intensive, so we actually might. We
3 would like to understand the basis of the concern. If
4 it's just a visceral, we don't know that they're
5 representative of what it looks like, then that's one
6 thing.

7 I guess I would remind folks that it's actually
8 not twice as tall as some of these buildings. And the
9 other thing is it won't be a building profile, it will be
10 much narrower than that.

11 And so my impression of the visual simulations is
12 that it's sort of my same impression I had at Ivanpah, it
13 doesn't look like it's been described by certain project
14 opponents.

15 And if that's the tissue, that's fine. If there
16 are questions with technical issues -- and again, this is
17 the first we're hearing about this. If there are concerns
18 about how the wire frames are put together or things like
19 that, then we ought to let our technical experts talk to
20 the staff's technical experts.

21 But if it's just more visceral than maybe it's
22 not representative, then that is going to be a concern.

23 HEARING OFFICER CELLI: We'll see. You know, I
24 think that we've now done so many solar installations
25 that -- and I'm thinking in my mind, I'm remembering the

1 Beacon abutted a tall cliff that people were looking down
2 on an array of mirrors. Also, the Blythe, Palen, Genesis
3 had mountains right there, the McCoy Mountains, where it
4 was a public area and people could look down.

5 So I think the Committee will have a point of
6 reference and comparison for other solar installations to
7 see whether the simulations really -- we think that
8 they're valid or accurate simulations or not. So I don't
9 think -- I don't think new simulations are going to hurt.
10 I actually -- in this case, it might be just nice to see
11 somebody else's rendition.

12 I'm thinking really it's somebody sitting at a
13 computer doing photo shop more than -- you know, I don't
14 know how much -- how intensive that is. I mean, it
15 probably might take a week or two to knock it out, but I
16 hope it wouldn't eat up that much of the clock.

17 But in any event, let's hear from CBD. Ms.
18 Anderson, anything on visual?

19 MS. ANDERSON: No comment on visual. Thanks.

20 HEARING OFFICER CELLI: Thank you. Anything
21 further on visual, Commissioners?

22 Okay. Then let's -- shall we move to the next.

23 MR. HARRIS: Yes. I'm going to turn to my
24 colleague, Ms. Pottenger at this point.

25 MS. POTTENGER: Good morning. I'm Samantha

1 Pottenger on behalf of applicant. Applicant has read the
2 concerns of the stakeholders and the public and from CEC
3 staff regarding the potential impacts to water uses as a
4 result of this project. And we've been very encouraged,
5 because we've been actively working with concerned
6 stakeholders on potential ways to mitigate any concerns
7 from this project.

8 We are encouraged by that dialogue and we're
9 moving forward with continuing discussions as to a
10 potential range of mitigation -- potential mitigation
11 measures that can be employed by the Hidden Hills project.

12 A couple comments on staff's status report. We
13 just want to clarify that, at this time, the project owner
14 is not necessarily proposing to secure water rights. It
15 is an option that the project will consider, but at this
16 time, it's not a proposed mitigation measure.

17 The second thing that we'd like to address is a
18 statement by CEC staff that applicant has provided
19 information regarding a recent failed pump test. To our
20 knowledge, applicant has provided any such data to staff,
21 so we're kind of a little bit curious as to where that
22 statement came from. We've heard staff's concerns
23 regarding the amount or whether the project can actually
24 obtain the amount of water needed for the project, and we
25 are moving forward with pump tests for the project, and we

1 will give that information to staff once it's available.

2 HEARING OFFICER CELLI: Thank you.

3 SENIOR PROJECT MANAGER MONASMITH: Yeah, if you
4 don't mind, I'd like to ask our water analyst Mike Conway
5 to come up just in case we get the questions.

6 Mike.

7 HEARING OFFICER CELLI: Now, my recollection is
8 we're talking about 140 acre feet a year of operational
9 use and 240 or so for consumption.

10 SENIOR PROJECT MANAGER MONASMITH: Correct.

11 HEARING OFFICER CELLI: And we have concerns, I
12 guess, in bio because there are mesquite bosques or
13 mesquite hummocks in the vicinity.

14 SENIOR PROJECT MANAGER MONASMITH: Potentially,
15 yes, that was the subject of a couple data requests on the
16 impacts from groundwater pumping on dependent vegetation.
17 And the data response on that, I think, was something that
18 we still -- left us yearning for some more information.
19 So that's something we continue to investigate.

20 I can just tell you, in general, from our very
21 first trip down to Tecopa on the 21st of October, that
22 water is clearly the issue that matters most to the local
23 residents. This is a groundwater basin that's in
24 overdraft, severe overdraft with more water portion by a
25 factor of three than would be available.

1 It's an issue that affects people, in terms of
2 their groundwater wells. They're concerned about their
3 wells going dry. They're concerned about the overall
4 health of the valley as it relates to springs and rivers,
5 Amargosa River, and others. There's a number of issues.
6 Organizations are clearly focused on this issue. Our
7 workshop last week with the applicant that we had on 18th
8 was specifically organized and scheduled for water. We
9 talked about other issues as well, but we had made that
10 indication to stakeholders late last year, when it became
11 clear this was an important issue.

12 I don't know, Mike, if you wanted to elaborate on
13 anything at this point in terms of where our analysis is.
14 And we will certainly answer questions. This is an issue
15 that we continue to investigate. We've asked for these
16 new pump tests in our latest round of data requests that
17 came out, again, Request Set 2A. I know the applicant is
18 now in the process of conducting those pump tests on the
19 wells there on the project site. I think staff are
20 planning to go down and be present when the first results
21 for those come to fruition in a couple weeks.

22 We are clearly open to input from a number of
23 stakeholders, Amargosa River Conservancy, Nature
24 Conservancy, a number of local and national organizations
25 who are concerned about the water issue.

1 Mitigation, obviously, is an issue that we have
2 to be mindful of. But before we get there, we continue to
3 do our analysis in terms of impacts and what this
4 groundwater pumping would do to the groundwater basin and
5 how we would account for that.

6 HEARING OFFICER CELLI: I just want to
7 acknowledge that I did read a comment letter there. I
8 think we've received a couple of written comments about
9 water. And one of them was from the Amargosa River, I
10 think, Conservancy.

11 SENIOR PROJECT MANAGER MONASMITH: Conservancy,
12 correct.

13 HEARING OFFICER CELLI: Right. And they spoke, I
14 thought, very thoughtfully and evenly, and they were
15 expressing their concerns. And I was just wondering
16 whether we knew -- is this a -- are these individuals?
17 Are these farmers? Do we know anything about --

18 SENIOR PROJECT MANAGER MONASMITH: We actually
19 do. We also thought that the Amargosa River comment
20 letter was helpful. We met with the -- we've met with
21 them a number of times. They've been active participants.
22 Donna Lamm, who's the executive director of the Amargosa
23 Conservancy. Brian Brown, who is involved with the
24 organization, a local landowner. And Bill Christian with
25 The Nature Conservancy.

1 We've been meeting with -- we met with them this
2 past trip. We were -- a senior water -- a technical
3 senior here, Paul Marshall and myself were lucky enough to
4 actually be able to hike around a bit and look at the
5 Amargosa River, and to see exactly what it looks like, and
6 find out more about the hydrology and the geology of this
7 area, the potential impacts.

8 I think the question, and Mike can answer this in
9 terms of his assessment analysis, it's still outstanding
10 in terms of the connectivity between this groundwater
11 basin and that of the Amargosa River. They're separated
12 my mountain ranges. They're in different valleys. They
13 aquifer structure is complex, and there hasn't been a lot
14 of investigation. We don't know a lot.

15 But what we do know, based on modeling that has
16 been done, this is obviously -- this is not obviously.
17 This is an issue of concern to BLM. The Amargosa River is
18 a wild and scenic river. It's the subject of an ongoing
19 investigation by BLM. They've had a meeting that the
20 applicant participated in in Henderson, Nevada back on the
21 12th. We listened to that. I think CBD also listened in
22 for that.

23 So we continue to gather information on this and
24 other resources in the area, including Stump Springs, an
25 area of ACEC for BLM, Area of Environmental Concern,

1 that's just east of the project site within Nevada.
2 There's information from that that we are gleaning
3 through. We've received information from Inyo County.
4 They continue to be very active and concerned about this
5 issue as it relates to the wells and water. We also have
6 a lot of input from the Nye County Water District, who
7 also participated in our workshop back on the 18th.

8 So we continue to do investigations, to do work,
9 and to try to make the best determination we can with what
10 we have. These pump tests should be informative.

11 HEARING OFFICER CELLI: Anything further on that?

12 MR. CONWAY: Good morning. My name is Mike
13 Conway, and I'm one of the members of the Soil and Water
14 staff doing analysis on this project.

15 I want to respond to the applicant. They asked a
16 question about a failed pump test and where that was
17 reported. And that was in the AFC appendices -- it was
18 reported as a 2006 pump test. The pumps were shut off
19 after 22 hours due to declining water levels. And that
20 was the last reported pump test we know of in the
21 immediate vicinity of the project. And the pump test is a
22 very important indicator of how the effects of pumping
23 will propagate away from the pump well. So that was one
24 indicator that we might need more information about this.

25 And so there was a data request most recently put

1 out by us asking for a pump test, especially given all the
2 recent concerns voiced by some intervenors and other
3 interested parties.

4 And then one other thing to comment on was about
5 how the applicant is not interested in obtaining water
6 rights. Staff's first data request asked about, you know,
7 what water rights may be available, and if that would be
8 considered, sort of to get the applicant looking at the
9 market to see what's available.

10 Knowing that this basin is definitely in
11 overdraft, we do foresee some sort of mitigation necessary
12 to offset pumping to some degree. So their response was
13 that we would be receiving a plan this month explaining
14 what rights are available.

15 HEARING OFFICER CELLI: And have the discussions
16 with regard to mitigation, I mean, what kind of mitigation
17 is available out there? Is there a recharge?

18 MR. CONWAY: There's a lot of people in this
19 valley, so there is a lot of pumping. There are all kinds
20 of different water rights available. So there are
21 potential opportunities to mitigate in a number of
22 different ways.

23 Water rights retirement is one way to mitigate,
24 and that was one thing we wanted them to look at sooner
25 rather than later, again, because the basin is pretty

1 obviously in overdraft. So we will likely -- we would
2 typically require some sort of mitigation for that.

3 STAFF COUNSEL RATLIFF: Mr. Celli, if I may. The
4 water issue -- I should say the water issues really are
5 several and the pump test goes to one of those issues,
6 which is the first one, and perhaps the most fundamental
7 to all of us, and that is, is there enough water for the
8 project at the site from wells?

9 I think secondarily, we have the issue of the
10 impacts to local well owners, and how those impacts might
11 be mitigated.

12 Third, we have the issue of whether there would
13 be impacts to local springs or to the biology of the area.

14 And then finally, we have the issue of whether
15 this water use would have any impact on the drainage to
16 the Amargosa River. And really none of these issues is
17 answered easily, or so it seems to me.

18 And the mitigation, for one, may not be a
19 mitigation for another. And so we have, I think, still a
20 ways to go before we're ready to reach conclusions about
21 the significance of the impact or of the impacts in each
22 of these areas, or whether mitigation would be required or
23 is feasible.

24 HEARING OFFICER CELLI: Certainly. This is our
25 first status conference, so I acknowledge that. I'm just

1 probing into some of these areas to kind of find out
2 really, and what I'm interested in is, how much does this
3 water analysis -- how much more water analysis is needed
4 and how is this going to burden our schedule, and how does
5 this affect, you know, the discovery process, and how much
6 more time are you going to need, that kind of thing.

7 MR. CONWAY: The pump test, that we've been told
8 to expect sometime in the near future, is very critical to
9 actually all these issues. And it will be the most
10 important piece of evidence that we need to base our
11 conclusions upon. So we're very much looking forward to
12 that. We were told to expect a seven-day pump test, which
13 means we'll expect continuous pumping for seven days. It
14 should give us a pretty good idea of the aquifer's
15 response to pumping.

16 But we don't have that. We really do need that
17 in order to understand how the local well owners will be
18 impacted, and how the groundwater dependent vegetation may
19 be impacted, and also look at outside of this valley
20 impacts, because this valley is unique, in that it's sort
21 of not really an enclosed valley to groundwater flow and
22 that groundwater does flow out of this valley under the
23 ground. So that will help with this also.

24 HEARING OFFICER CELLI: So are there any
25 discovery problems with regard to water right now?

1 SENIOR PROJECT MANAGER MONASMITH: I don't see
2 any, Commissioner. I mean with this pump test coming
3 through -- if this comes on, as the applicant has
4 indicated, I don't see the water resources discipline
5 being an outlier, in terms of schedule, especially when
6 compared to some of the others. It should be fine.

7 MS. POTTENGER: Hearing Officer Celli, may I add
8 something?

9 HEARING OFFICER CELLI: Please.

10 MS. POTTENGER: I just want to make clear that
11 applicant understands the importance of this issue to both
12 staff and interested stakeholders and the public. And I
13 heard a comment -- I'm not sure if I heard it
14 incorrectly -- it was a little concerning stating that
15 applicant is not interested in obtaining water rights. I
16 just want to make it clear that applicant is working with
17 stakeholders to determine what is the appropriate
18 mitigation for this project once we get an idea of what
19 the potential impacts are.

20 And we look forward to working, not only with
21 staff, but with interested stakeholders and the public to
22 obtain some guidance as to what should be employed to meet
23 these concerns. And we will be collaborating with all
24 parties in the future as to what the appropriate
25 mitigation for this project should be.

1 Thank you.

2 HEARING OFFICER CELLI: Thank you for that. I'm
3 going to ask, Ileene Anderson, did you have a comment on
4 water?

5 MS. ANDERSON: Actually, I have a comment and --
6 maybe two comments and a question. First, I just wanted
7 to clarify that the Center was denied access to listen
8 into the BLM meeting with the applicant. So we don't have
9 a clue as to what went on there with the Nevada office,
10 despite the fact that we asked to be included.

11 And then I wanted to clarify when the pump tests
12 are scheduled. I think you said so, but I was so
13 furiously typing, I didn't catch that.

14 HEARING OFFICER CELLI: When is the pump test,
15 the seven-day pump test?

16 MS. ANDERSON: Scheduled yeah. When is it
17 scheduled for?

18 MS. POTTENGER: I'd like to introduce Clay
19 Jensen. He's the project manager.

20 HEARING OFFICER CELLI: Hello again, Mr. Jensen.

21 MR. JENSEN: Hi, how are you doing?

22 HEARING OFFICER CELLI: Good.

23 MR. JENSEN: Clay Jensen with BrightSource
24 Energy, representing Hidden Hills Solar.

25 We've just completed the workplan, and we've

1 promised staff a quick turnaround for a draft review of
2 that plan. That will be in today. The contractor is
3 mobile -- getting ready to mobilize. And once we get
4 concurrence that the direction we're proceeding is
5 accurate, they could be out there as soon as early next
6 week to start some of the testing procedures.

7 So provided that gives staff enough time to look
8 at the plan and provide concurrence, we could start
9 getting some of those results very, very quickly. So
10 within the next two weeks, we hope to have some of that
11 early result data come in.

12 HEARING OFFICER CELLI: Okay. So we're talking
13 about really the first or second week of February, Ms.
14 Anderson?

15 MS. ANDERSON: Great. Thank you.

16 And then just as you know a general comment, you
17 show, we are very concerned about the water drawdown in
18 the Pahrump Valley and how this project is going to add to
19 that already problematic issue with regards, in
20 particular, to its effects on the Amargosa River and all
21 of the downstream resources including Desert Pupfish that
22 rely on that water.

23 HEARING OFFICER CELLI: Thank you. So I'm sure
24 in your workshops and in your participation, I'm sure that
25 you will raise that to staff.

1 Is Mr. Zellhoefer, Zellhoefer, are you on the
2 phone?

3 Mr. Zellhoefer?

4 Okay.

5 Yes. We're interested in knowing why you were
6 denied from the BLM meeting in Nevada, Ms. Anderson, or
7 how did that come about?

8 MS. ANDERSON: I think it's -- the BLM didn't
9 want to go through a public process with FACA, is what
10 they responded to us with.

11 HEARING OFFICER CELLI: So did you attempt to get
12 in the building and they didn't let you in or something
13 like that?

14 MS. ANDERSON: No. We asked to just be able to
15 call into the meeting.

16 HEARING OFFICER CELLI: Ah, I see.

17 Please, Mr. Harris.

18 MR. HARRIS: I just would add, first off, that
19 wasn't an Energy Commission Meeting, that was a BLM
20 meeting. I want to make that clear.

21 HEARING OFFICER CELLI: Certainly not.

22 MR. HARRIS: And, then second, we were actually a
23 last minute invite as well, so it was not our meeting to
24 control. I just wanted to make sure people understand
25 that.

1 HEARING OFFICER CELLI: I want to be clear that
2 as far as the Energy Commission is concerned, this is
3 really -- the reason we're doing this is for the public.
4 And so we're very concerned whenever we hear something
5 like that. Obviously, that wasn't our hearing, and we
6 couldn't -- or meeting, and we couldn't do anything about
7 that, Ms. Anderson.

8 MS. ANDERSON: No, I know. I just wanted to
9 clarify that point, because I think it was alluded to that
10 we did attend that meeting, but we don't have a clue as to
11 what went on there, that's the purpose for me even
12 bringing it up.

13 HEARING OFFICER CELLI: What about that, Mr.
14 Monasmith, in terms of discovery for CBD?

15 SENIOR PROJECT MANAGER MONASMITH: Well, I just
16 wanted to indicate that we just listened in to this. It
17 was a BLM invite -- invited event or organized event. I'd
18 actually had forwarded the -- I'd asked Lisa Belenky if
19 she was going to call in too, as a suggestion, because
20 like we were just curious to know what BLM was going to be
21 discussing, in terms of potential mitigation.

22 This involved a number of projects in southern
23 Nevada. For us, it was positive in that we did learn
24 about some new projects within Nevada that will be part of
25 our cumulative Impact Analysis. And perhaps we can do a

1 quick record of conversation, if the Committee would like.

2 I don't -- I didn't listen in. I Water staffed
3 it. I think most of it was focused on issues such as
4 that. And I do apologize for indicating -- I thought by
5 sending it off to CBD they would be able to call in. I
6 didn't realize that there had been a problem with that.

7 HEARING OFFICER CELLI: That would be great, and
8 I appreciate your offer of that. Thank you.

9 Anything further, Ms. Anderson, regarding water?

10 MS. ANDERSON: No, but thank you for -- you know,
11 I assuming you're going to write something up about that.
12 I appreciate that.

13 HEARING OFFICER CELLI: Yes. And staff will be
14 doing that. We appreciate that Mr. Monasmith.

15 Thank you.

16 Mr. Zellhoefer, are you out there on the phone?

17 No. Okay.

18 Anything further on water?

19 What's next, Ms. Pottenger?

20 MS. POTTENGER: Next up is socioeconomic.
21 Again, this is an area where we've heard everybody's
22 concerns, and the project and the applicant has been
23 actively engaged with both the Southern Inyo Fire
24 Protection District and the Sheriff's office.

25 There was a field visit to the Ivanpah Project

1 where the Southern Inyo Fire Protection District met with
2 San Bernardino Fire and they were able to discuss the
3 safety plans at the site, and security precautions that
4 are involved at the Ivanpah Project to give them kind of
5 an idea of what might be employed at Hidden Hills.

6 The Sheriff has received a copy of the draft
7 security plan for the project, and we're very encouraged
8 with discussions going forward.

9 HEARING OFFICER CELLI: Thank you. I did read
10 that there was that letter from the CHP indicating that
11 they have two people who live somewhere out in the general
12 vicinity, and they felt that that was inadequate coverage.

13 Anything from staff on those services?

14 SENIOR PROJECT MANAGER MONASMITH: Yes on that.
15 As we've indicated in our status report, we have been
16 working very closely with Inyo County on this project, the
17 review of this project, especially as it relates to
18 socioeconomics. We indicated as such in our status
19 report.

20 And if it would be okay with the Committee,
21 perhaps Inyo County could come up at this point maybe. I
22 know they wanted to say just a bit about socioeconomics.
23 I don't know if this would be a time or do you want to
24 wait till the end.

25 HEARING OFFICER CELLI: It's fine if they -- it's

1 appropriate for them to come up. I have Kevin Carunchio.

2 SENIOR PROJECT MANAGER MONASMITH: I only
3 indicate as much, because we have been working extremely
4 closely with the impacts that would potentially from this
5 project as they relate to county services, everything from
6 workers to impacts that we have -- we've looked at the --
7 we're looking at the specifics on the positives that this
8 project would bring, in terms of economics, tax revenues.

9 And we continue -- we've had a very healthy set
10 of data requests, responses from the applicant have been
11 good to mostly good. And we've also found a number of
12 Record of Conversations on our outreach to Southern Inyo
13 Fire Protection District, to the Sheriff, to local labor,
14 and a number of folks that would be potentially helping us
15 with the assessment on the socioeconomics.

16 And I don't know if it's inappropriate, I just
17 thought I would mention it to Dana Crom, who we've been
18 working with the good team with Inyo County. I just want
19 to make sure that they are provided an opportunity to
20 speak in the vein that they have been working
21 collaboratively with us.

22 HEARING OFFICER CELLI: Certainly.

23 MR. CROM: And Dan Crom on behalf of Inyo County.
24 I think that it would probably be best if we waited until
25 the end, because socioeconomic, land use, and water are

1 all of the issues that we would like to discuss, and they
2 kind of overlap. And so in order to keep the momentum
3 going, probably wait until then.

4 HEARING OFFICER CELLI: We'll do. Thank you.

5 MR. CROM: Thank you.

6 HEARING OFFICER CELLI: So. Anything further on
7 the socioeconomics?

8 SENIOR PROJECT MANAGER MONASMITH: No, and I
9 don't -- we don't consider this impacting the schedule
10 unnecessarily.

11 HEARING OFFICER CELLI: The Tier 1.

12 SENIOR PROJECT MANAGER MONASMITH: It's a Tier 2
13 actually.

14 HEARING OFFICER CELLI: Tier 2, okay.

15 Ileene Anderson, anything regarding worker safety
16 and fire protection?

17 MS. ANDERSON: No.

18 HEARING OFFICER CELLI: Thank you.

19 MS. ANDERSON: And I thought it was socioeconomic
20 we were on actually?

21 HEARING OFFICER CELLI: Well, you're right.

22 Anything on socio?

23 MS. ANDERSON: No either.

24 (Laughter.)

25 HEARING OFFICER CELLI: Thank you.

1 Commissioner, did you have any questions on any
2 of this?

3 Okay. Then lets' move on to the next, which is
4 what, land use?

5 MS. POTTENGER: Correct. The next one is land
6 use. Just to kind of give a little bit of background to
7 the project, when the AFC for Hidden Hills was filed, the
8 project was in compliance with the general plan for Inyo
9 County.

10 The renewable energy wind energy general plan
11 amendment was actually revoked by Inyo County as a result
12 litigation. Moving forward, applicant still believes that
13 the project is consistent with the general plan despite
14 the revocation of the general plan amendment.

15 This has been a challenging subject. We have
16 been working with both CEC staff and Inyo County on this
17 subject, and we look forward to continuing the dialogue
18 and responding to both staff and Inyo County's concern in
19 this area.

20 HEARING OFFICER CELLI: Now, if I understand this
21 correctly, I remember reading that there was a -- there
22 was a renewable energy overlay in the area, at the time of
23 the application. That was since revoked. And now it
24 reverts back to its old status, which was open space,
25 right?

1 MS. POTTENGER: That's correct.

2 HEARING OFFICER CELLI: Okay. Staff, anything on
3 that?

4 SENIOR PROJECT MANAGER MONASMITH: I think that
5 the issue on the need for a general plan amendment and the
6 zoning issue is one that we continue to analyze and
7 investigate. We're working closely with Inyo County. I
8 think the comments from Inyo County will obviously speak
9 to themselves, in terms of this issue, which is obviously
10 of paramount importance to them.

11 And, you know, staff has issued a number of data
12 requests of this area. We continue to work closely with
13 Inyo County. And if there are any other specific
14 questions that might arise after Inyo County makes its
15 remarks, we might, at that time, reserve time, if it's
16 okay, for --

17 HEARING OFFICER CELLI: That's a good idea.

18 STAFF COUNSEL RATLIFF: It's our understanding
19 that Inyo County thinks that there is inconsistency with
20 their land use provisions, and I'm sure they'll address
21 that later.

22 We've discussed with them how that inconsistency
23 might be addressed by amending their general plan
24 provisions, but we haven't resolved that issue. I think
25 it's completely unresolved, and I suspect that they'll

1 have something to say about that when they address it
2 today.

3 HEARING OFFICER CELLI: Okay. Ms. Anderson,
4 anything on land use?

5 MS. ANDERSON: I'm sorry. No, thank you.

6 HEARING OFFICER CELLI: Thank you. Then we'll
7 move on. I just want to say, Mr. Harris, that when we
8 were -- Mr. Harris represented the applicant in the
9 Mariposa case. And I remember there were land-use issues
10 there, which, to my way of thinking, could have easily
11 been quickly resolved by a quick resolution of the Alameda
12 County in that case. And we didn't have to go that way,
13 but I just think that if there are resolutions required,
14 then we better get on the stick, if we're going to stay on
15 schedule with land-use issues.

16 Ms. Pottenger, you have another -- any further
17 issues? Did we cover them all?

18 Cultural.

19 MS. POTTENGER: Actually, we have one more.
20 Everybody's favorite topic I think, cultural. I think
21 Mike would agree this is probably not a Tier 1 subject.
22 But even though this has been a challenging subject in
23 terms of getting staff's informational needs met, I think
24 applicant has been very encouraged with how willing staff
25 is to engage in dialogue. We've been working actively

1 with staff to respond to data requests.

2 There was a note in staff's status report that a
3 petition to compel might be necessary to obtain
4 information that staff believes is necessary relating to
5 data requests 127 and 128.

6 Just to give a quick summary about those two data
7 requests. Those requests, a Phase 2 field plan and
8 investigation of some of the cultural resources found on
9 the project site.

10 I believe nine were identified by staff in the
11 data requests where staff wanted a Phase 2 examination of
12 those resources. Applicant agreed to the Phase 2
13 evaluation of two of those resources. And what is in
14 dispute right now is the relevance of the remaining seven.

15 Applicant would like to continue to work with
16 staff to obviate the need for a petition to compel, and we
17 would request that the Committee issue an order directing,
18 if staff is willing, both staff's experts and applicant's
19 experts to sit down and discuss to see if there's a
20 potential compromise regarding the remaining seven,
21 because we believe that there's room for compromise there
22 without having to go to the Committee for a petition to
23 compel.

24 HEARING OFFICER CELLI: I just want to say that
25 if we need to get to the point of a petition to compel,

1 we'd sure like to do that sooner not later. So if there
2 are -- if we know that there are impasses, let's get that
3 petition filed, because --

4 STAFF COUNSEL RATLIFF: Mr. Celli, I think we
5 have to file our motion to compel this week, I believe, or
6 very soon, in any case, if we're going to do so. And we
7 may do so before we have a chance to further discuss with
8 the applicant how staff's needs for information might be
9 met.

10 And Ms -- I think Ms. Pottenger suggested that
11 they wanted to have that discussion. And I think we need
12 to have it, because there hasn't, I think, been a chance
13 to fully understand what it is we're after and what they
14 would be need to do to satisfy that needed information.

15 So we hope we can resolve it, and we'll try to do
16 so soon. I very well may file for staff a motion to
17 compel, so we will not miss the deadline for doing so, but
18 hopefully we won't need to. If we're fortunate to agree
19 on things about what they're going to provide us, then it
20 won't hopefully require a hearing.

21 HEARING OFFICER CELLI: So in that regard, we
22 have -- do you have some sort of ballpark figure of how
23 many data requests are at issue?

24 STAFF COUNSEL RATLIFF: It's, you know, either
25 one or two, I believe.

1 HEARING OFFICER CELLI: And are we in a situation
2 where it's because you had a series in time of data
3 requests that the early-on data requests are an issue, but
4 subsequent data requests might also be an issue? I just
5 want to see if we have to go through rounds of petitions
6 to compel.

7 STAFF COUNSEL RATLIFF: Well, we don't intend to
8 have rounds. Everything should be in this motion, in
9 terms of what data requests we feel need to be answered.

10 HEARING OFFICER CELLI: Okay.

11 MS. POTTENGER: And, Hearing Officer Celli, I
12 would just like to add that applicant would be willing to
13 stipulate to an extension of staff's deadline to file that
14 petition to compel just so we do have that additional time
15 to engage in dialogue with staff on Data Requests 127 and
16 128.

17 I think part of the difficulty in discussing
18 these two data requests in a workshop environment is
19 because they are cultural resources. And to fully discuss
20 them or at least to give our experts a chance to fully
21 engage in a dialogue would involve the discussion of
22 confidential materials. And that's one of the reasons why
23 we asked for the order directing the experts to meet
24 together and discuss after the status conference.

25 HEARING OFFICER CELLI: Before we get to that,

1 because I've got a number of thoughts, in my mind, right
2 now. One is I really would like to do anything I can to
3 avoid dealing with confidential documents, because that
4 throws a wrench in the works later when it comes to
5 writing a decision and you find out that a chunk of your
6 record is confidential, how are you supposed to use it?
7 We don't really -- I would like to circumvent that, if we
8 can.

9 Secondly, I'm not sure how important it is.
10 Let's talk about -- let me find out how quickly could your
11 experts confer on Data Requests 127 and 128? I mean, how
12 soon are we talking about so much -- in other words, how
13 much of an extension do we need to stipulate to, if you're
14 going to?

15 MS. POTTENGER: I think 10 days should be
16 sufficient.

17 STAFF COUNSEL RATLIFF: I agree.

18 HEARING OFFICER CELLI: Okay. So if we accept
19 that 10-day extension for the time by which staff must
20 file their petition to compel to remain in compliance with
21 our regs, would that -- do we think that that would settle
22 the whole question?

23 STAFF COUNSEL RATLIFF: We hope so.

24 HEARING OFFICER CELLI: Okay. Then --

25 MS. POTTENGER: Applicant hopes so as well. As I

1 stated earlier, staff and applicant have been very engaged
2 in dialogue. It's by been a very encouraging
3 collaboration. And I think our preference is to keep
4 things collegial and working together rather than moving
5 to the petition to compel environment.

6 HEARING OFFICER CELLI: Okay. So if those
7 discussions, which we encourage occur, those discussions
8 would necessarily require participation by the
9 intervenors?

10 MS. POTTENGER: Yeah, exactly. The difficulty is
11 due to the confidential nature of these resources, these
12 sites are identified generally in the AFC by numbers. For
13 example, S-2, S-10. Staff identifies the remaining
14 numbers in their status report.

15 The difficulty is is for the experts to actually
16 engage in the dialogue as to why certain sites might be
17 potentially eligible or not, involves, I believe, the
18 discussion of the actual confidential nature of these
19 materials. And so it's hard to balance those competing
20 interests between the public interest in participating in
21 this proceeding, but also the public interest in
22 maintaining the confidentiality of these.

23 HEARING OFFICER CELLI: Right. I don't have a
24 problem excluding the public generally, but I do see a
25 problem with excluding an intervenor where we could get a

1 nondisclosure agreement from them.

2 One moment. Off the record for a second.

3 (Thereupon a discussion occurred off the record.)

4 HEARING OFFICER CELLI: Let's go back on the
5 record.

6 Go ahead.

7 STAFF COUNSEL RATLIFF: This is not a meeting to
8 make decisions about the significance of the impact and
9 it's not a meeting to determine what the mitigation is to
10 be. It's a meeting to determine what kind of information
11 is going to be provided to the staff, hopefully to avoid
12 the requirement for a motion to compel.

13 We're going to have that meeting. There's
14 nothing in our regulations which would prevent us from
15 doing so. I don't -- we didn't -- we do not intend to
16 involve other persons in that meeting.

17 HEARING OFFICER CELLI: Well, let us -- let's do
18 this. Let's take the stipulation, if you could just state
19 the stipulation on the record, Ms. Pottenger, and then
20 we'll hear from the other parties. Go ahead.

21 MS. POTTENGER: Applicant stipulates to a 10-day
22 extension in staff's deadline to file a petition to compel
23 relating to Data Requests set 1D.

24 HEARING OFFICER CELLI: And staff?

25 STAFF COUNSEL RATLIFF: We agree to that

1 stipulation.

2 HEARING OFFICER CELLI: Okay, so stipulated.

3 Let's hear from Ileene Anderson regarding these
4 conversations having to do with confidential cultural
5 resources.

6 MS. ANDERSON: I don't have any comment at this
7 time.

8 HEARING OFFICER CELLI: Thank you.

9 Mr. Zellhoefer, are you out there?

10 Are you on the telephone, Mr. Zellhoefer,
11 Zellhoefer?

12 Jon Zellhoefer?

13 No.

14 Okay. Well, the stipulation is into the record.
15 The Committee certainly recommends and encourages these
16 discussions, and certainly hopes that you will be able to
17 have fruitful discussions and you can resolve the --
18 whatever this dispute is.

19 If you can't, then we would certainly look
20 forward to a petition as quickly as possible, so we can
21 get right on that. So anything further, Ms. Pottenger, on
22 cultural?

23 MS. POTTENGER: Not at this time. Thank you.

24 HEARING OFFICER CELLI: Thank you. At this point
25 in our process then, I would -- since we've heard from all

1 of the parties on all of the areas, let me just ask if
2 there's anything further that is of a procedural nature
3 rather than substantive that needs to be discussed from
4 the applicant?

5 MR. HARRIS: We do have some interest in talking
6 about schedule, but we thought that would probably be more
7 appropriate for the end after we hear from all the parties
8 on the substantive issues.

9 HEARING OFFICER CELLI: Okay. And anything
10 procedural from staff?

11 STAFF COUNSEL RATLIFF: No.

12 HEARING OFFICER CELLI: Anything procedural from
13 Ileene Anderson representing Center for Biological
14 Diversity?

15 MS. ANDERSON: Nope.

16 HEARING OFFICER CELLI: Thank you. Then how
17 would you envision that we proceed. I thought we wanted
18 to hear from County of Inyo, because that kind of gets
19 into a substantive area, and then we can talk about
20 scheduling after that. How does -- does that work you,
21 Mr. Harris?

22 MR. HARRIS: Yeah, I think that would work well.
23 Thank you.

24 HEARING OFFICER CELLI: Ms. Pottenger, thank you.

25 So then with that --

1 MR. LEVY: Excuse me.

2 HEARING OFFICER CELLI: Please, who's on the
3 phone?

4 MR. LEVY: Larry Levy, Southern Inyo Fire.

5 HEARING OFFICER CELLI: Hello. Mr. Levy, go
6 ahead.

7 MR. LEVY: Somehow, the traffic, transportation,
8 worker safety, and EMF kind of got by me. We are
9 preparing to return our assessment -- our needs assessment
10 form. And we had been focusing primarily on supporting
11 activities at the site. And the understanding, I'm not
12 exactly sure where I got it, was that most of the traffic
13 would be from the Nevada side, the Old Spanish Trail
14 Highway 160, which leaves about two miles of road within
15 our district to be concerned about the traffic.

16 But questions have come up locally about how much
17 traffic will be coming from the other direction on Old
18 Spanish Trail from the area of Tecopa and Highway 127
19 points south in southern California. And I saw on the
20 website a letter from the Building Trades Council about
21 where workers might be coming from.

22 If there's a significant amount of traffic coming
23 from Highway 127 within California, it makes a big
24 difference in our fire and emergency services response.
25 Two miles of road versus closer to a hundred miles of road

1 with significant amounts of traffic on it.

2 So I have sent an information request to Candace
3 Hill and she's working on some kind of a traffic pattern
4 analysis, but this has become a concern of ours lately.

5 HEARING OFFICER CELLI: Okay. Mr. Levy, I'm
6 going to let staff respond to that.

7 SENIOR PROJECT MANAGER MONASMITH: Yes. Candace
8 Hill is our traffic and trans analyst. And we are aware
9 of the concerns. We are looking at traffic patterns.
10 This goes hand in hand with the socioeconomic component of
11 our assessment of looking at traffic counts, estimations.
12 I think the applicant has provided some information in
13 this regard. I know they've been working in the past with
14 Inyo County on this. And maybe Inyo County may have
15 something specifically to talk about that when they
16 provide their comments.

17 But we are looking at this. We're in contact
18 with CalTrans to make the best determination that we
19 possibly can, in terms of patterns for workers during
20 construction. So we're looking at it.

21 HEARING OFFICER CELLI: That's great. And, Mr.
22 Levy, you probably should be in communication with Mr.
23 Monasmith anyway, because of -- he's got a whole section
24 on that, that staff is going to be dealing with.

25 Let's hear from the County of Inyo now, at this

1 time. Is it -- did I pronounce your name correctly, is it
2 Mr. Carunchio, or Carunchio?

3 MR. CARUNCHIO: That's better than I can
4 pronounce it. Carunchio is just fine.

5 HEARING OFFICER CELLI: If it were Italian, it
6 would be Carunchio.

7 MR. CARUNCHIO: There you go. Well, good morning
8 again. Kevin Carunchio, CAO with the County Inyo. And I
9 was thinking back, I think, Commissioner Douglas, you were
10 in Inyo County with staff meeting with the Board of
11 Supervisor almost a year ago. And in light of my
12 recollection of the dialogue during that meeting, I think
13 I'd like to preface my remarks today by stating that Inyo
14 County and the Board of Supervisors fully recognizes the
15 CEC's sole jurisdiction for permitting facilities, such as
16 Hidden Hills, and certainly appreciates the public policy
17 considerations that have led to vesting the Commission
18 with that authority.

19 Like the Commission, Inyo County is committed to
20 ensuring that the State of California meets its renewable
21 energy portfolio standard, and likes to think that it's
22 been a leader in promoting local policies to encourage the
23 development of renewable energy facilities in the state.

24 We've talked a little bit about Title 21 or
25 you've talked about Title 21 today. And the County is

1 also on the record as trying to establish renewable energy
2 zones not only in its general plan, but in State and
3 federal planning documents.

4 So whereas we've demonstrated, you know,
5 proactivity in trying to diversify the state's energy
6 portfolio, and prefer to view the siting of these
7 facilities as a collaborative partnership between state
8 and local entities, as well as the industry, we also
9 recognize that at the end of the day, we must rely on
10 Committee and your Commission to represent a lot of the
11 counties' reasonable concerns and interests.

12 And I think to understand those concerns, it's
13 really important to consider what we have in Inyo County.
14 And although it's the second largest county in California,
15 encompassing over 10,000 square miles, the County has less
16 than two percent of that geography in private ownership.
17 The County's opportunities for economic development are
18 severely restricted because of a land tenure pattern that
19 includes over 92 percent of the land being managed by
20 federal agencies, over three percent being owned by the
21 City of Los Angeles.

22 And so when we look at the projects site, it
23 encompasses over three percent of the private property in
24 Inyo County. And if we consider options to lease, other
25 private contract in the area, or what land mitigation

1 might be required for this project, the project could
2 easily account for over 10 percent of the counties'
3 private property. So obviously, when we get concern and
4 interest in a project of this nature, it's not something
5 we take lightly.

6 Unlike other counties in the State dealing with
7 these types of projects, this project is over 240 miles
8 away from our population center in the city of Bishop
9 we're 92 percent of the counties population resides, and
10 obviously where most of our county services are
11 concentrated.

12 So we're not really in a position to simply
13 integrate project needs into an existing base level of
14 services. We're talking about building those services
15 from the ground up, or trying to provide them from a
16 distance that is basically akin to a round trip from
17 Sacramento down to Monterey and back, which is okay,
18 unless you're waiting for, you know, a couple extra
19 sheriff's deputies to respond, and you might want a little
20 more response time that way.

21 Staff also asked me just in talking about this
22 project site, although it's remote and it's, you know,
23 nice to talk about Pahrump or Las Vegas, they're actually
24 is a community residence directly cross Old Spanish Trail
25 from this proposed project site, that, you know, we're

1 concerned about their interests as well.

2 So I share that background with you, because I
3 think it provides a little context where some of the
4 City's -- or County's concerns are here.

5 And the first would be in land use. And, you
6 know, I think as indicated in the staff report, it's
7 certainly the County's position that the project is
8 currently not consistent with our general plan, or zoning
9 designations, and there's some other little cleanup things
10 that need to occur.

11 We certainly stand willing to work with the
12 applicant on that, but I think there's been a degree of
13 frustration, in that that inconsistency has been known for
14 several months now. I understand from Mr. Hart, our
15 planning director, it's not a particularly rigorous
16 process. I think we've got a three-page application that
17 needs to be submitted. Yet, to date, we haven't received
18 any application for it.

19 And the attitude seems to be that we don't need
20 to try to get conformance with your local ordinances,
21 regulations, or statutes because we can simply rely on an
22 override from the Commission. And that seems to be taking
23 those public policy considerations to ensure consistent
24 reliable permitting of these facilities in the State and
25 almost abusing that authority, that, you know, please

1 we've demonstrated a willingness to work with the State
2 and the industry on these issues, at least do us the
3 courtesy of putting in an application and seeing what we
4 can do with it. To date, that has not occurred.

5 Similarly, there are some zoning designations
6 that Title 21 was actually intended to facilitate. By
7 compliance with Title 21, it would eliminate the need for
8 that zoning consistency. But to date, Title 21 hasn't
9 been complied with.

10 And I think one of the things that's really
11 important to distinguish when looking at Inyo County's
12 ordinance in this matter is that Title 21 expands the
13 definition of environment and environmental assessment
14 that it requires to include a socioeconomic analysis
15 that's far greater than the traditional CEQA analysis.

16 So where a lot of emphasis has been placed on
17 public safety concerns, police and fire type issues, that
18 the County's analysis needs to go quite a bit further.
19 And I think staff has been very patient in waiting for
20 some indication from the County as to what those impacts
21 appear to be. We hope to actually get that submittal in
22 in the next week and a half.

23 But one of the challenges that we've had is that
24 really there's not a lot of information in which to make a
25 good guesstimate of what those impacts might be, beyond

1 just police and fire services. And I think the Chief
2 made, you know, the perfect point, that depending on which
3 way traffic is coming, that's a whole different analysis.
4 For the provision of social services that the County is
5 responsible for, unless we're talking about having, you
6 know, child protective services staff come out from
7 Bishop, it makes a big difference whether we're relying on
8 the five percent workforce residing in Inyo County as
9 contemplated in the AFC versus something much larger than
10 that envisioned by the trade union letter that came in
11 yesterday.

12 And so kind of working this information vacuum
13 creates some challenges in terms of getting an accurate
14 assessment. But that that we're putting together right
15 now would seem to indicate that the cost to the County of
16 providing these direct and indirect services, as a result
17 of the project, could be three to four times more than
18 what the applicant's economic analysis shows it's going to
19 generate in activity.

20 And if there's actually, you know, a greater
21 workforce presence in the county than was currently being
22 contemplated, I think those impacts are going to increase.
23 But I don't know that we can rely on the economic benefit
24 to go up a corresponding amount. So that's another area
25 for concern.

1 And then last on hydrology -- and I'm going to
2 turn this over to Dr. Robert Harrington from our Water
3 Department, with just a couple remarks.

4 As an aside, when you talk about water being of
5 primary interest for the residents out there, it's not
6 just the folks over at the Amargosa River Conservancy who
7 are interested in protecting a wild and scenic river, but
8 it's important to understand we're dealing with a
9 community and a segment of the county where the people
10 line up outside the local elementary school with jugs to
11 fill up their drinking water from a spigot. So water is
12 that critical. There's stories in the Tecopa area of
13 somebody trying to sink a well. Suddenly all the hot
14 water to the baths out there gets turned off and he's high
15 tailing it out of town, because he doesn't want to deal
16 with the repercussions, you know, leaving his well
17 uncapped.

18 So water is a tremendous issue. And obviously,
19 Inyo County has a very storied water history in our
20 dealings with the City of Los Angeles. And I think one of
21 the best ways to sum it up and one of the, you know,
22 reasons we're not here with a larger contingent today is
23 because the other half of our office is -- are down in Los
24 Angeles in dispute resolution with the City right now
25 basically over this difference of opinion of whether

1 impacts from water management activities can just simply
2 be mitigated.

3 That seems to be the tenor of that analysis
4 taking part place so far here or whether those impacts
5 need to be avoided up front. And it's the County's
6 position that hydrologic impacts from this project or
7 anything in the county really need to be avoided wherever
8 possible.

9 And to speak on that, Dr. Harrington is going to
10 share a little bit about some of the mitigation measures
11 the County has required and would require on this type of
12 project, if not for the CEC sole jurisdiction and
13 permitting.

14 And I want to just, you know, point out that
15 these mitigation measures have been required on the
16 largest taxpayers to Inyo County. We take water that
17 seriously.

18 And with that, thank you again for your
19 indulgence and taking the time to listen to us. We really
20 enjoyed working with the staff and I look forward to
21 continue to doing so. And at this point I want to turn it
22 over to Dr. Harrington.

23 HEARING OFFICER CELLI: Thank you, Mr. Carunchio.

24 DR. HARRINGTON: Thanks, Kevin. Bob Harrington,
25 Water Director for Inyo County.

1 My department is charged with implementing Inyo
2 County's water policy, a fairly succinct policy by the
3 Board of Supervisors resolution to protect our environment
4 and economy and the citizens from adverse impacts
5 resulting from water transfers, water extraction, water
6 management.

7 And our principal governance tools we use for
8 implementing this policy, one, related to the City of Los
9 Angeles and their water transfer activities in Inyo
10 County, is a long-term water agreement that we've
11 negotiated with City of Los Angeles, whereby we regulate
12 their water transfers to avoid negative impacts to the
13 environment and to our economy. And when we're not
14 successful in avoiding those impacts, those impacts are
15 mitigated through some other means.

16 For other water management activities, we have a
17 groundwater ordinance where inter-basin transfers are so
18 regulated to avoid impacts.

19 And as Mr. Carunchio mentioned, we've imposed
20 this sort of regulatory framework on, besides the City of
21 Los Angeles on a large geothermal plant in the county, one
22 of our largest taxpayers. And so far, we feel this has
23 been a fairly successful framework for the County.

24 The means we would use to mitigate a project such
25 as this would be to use predictive hydrologic tools,

1 whatever would be appropriate in a particular situation,
2 to assess what the impacts may be from a project, design a
3 monitoring program around those pre-project predictions to
4 verify that the predictions were, in fact, accurate, and
5 also to assess what a level of significant impact would be
6 from the project, conduct that monitoring and then
7 adaptively manage according to that monitoring effort to
8 avoid negative impacts.

9 Potential affects we see from this project
10 include impacts to the properties south of the project.
11 There's a handful of residences out there, isolated
12 properties relying on -- each individual relying on a
13 domestic well on their property. They have no other
14 source of water. These are isolated places that
15 potentially could be impacted by the amount of water
16 proposed to be extracted for this project.

17 We see possibilities of affecting local
18 groundwater dependent vegetation. That was discussed
19 earlier. This is principally on the Nevada side of the
20 line. Among these areas is a Bureau of Land Management
21 designated Area of Critical Environmental Concern.

22 Another potential effect we see is effects on
23 downgradient users through California Valley to Amargosa
24 River, China Ranch, Tecopa area. Even though these are
25 fairly distant from the project, a much greater spatial

1 scale than the local users just south of the project,
2 we're concerned about these, because interbasin flow is a
3 fairly well established hydrologic condition in this area.
4 And pumpage in the Pahrump Valley can affect adjacent
5 valleys like the Tecopa area and the Amargosa corridor.

6 Besides these downgradient users, we're concerned
7 about the downgradient habitat, and water-dependent
8 resources, principally the springs in the Tecopa area,
9 Resting Springs, and the recently designated Amargosa Wild
10 and Scenic River, which is a river supported by
11 groundwater discharge that may come from the Pahrump
12 Valley area, as was discussed before by your staff.

13 There's sort of an absence of information
14 concerning what that connection is between the Pahrump
15 Valley and the Amargosa area.

16 It's been discussed that the 140-acre feet
17 proposed for this project is a relatively small amount of
18 water to envision having impacts at that great a distance,
19 but I would encourage that that thinking be tempered by
20 the consideration that these downstream resources are
21 totally groundwater dependent, so they're highly sensitive
22 to diminished groundwater availability.

23 And because of the long distances involved
24 between Pahrump Valley and potential effects in the
25 Amargosa area, any effects that should occur, would likely

1 be irreversible, if we were to simply wait until we
2 observed a diminished resource at that distant receptor,
3 and also that effects from this project may be cumulative
4 with the existing pumping going on in the Pahrump Valley.

5 The Pahrump Valley has been recognized by the
6 Nevada State engineer, the regulator of groundwater rights
7 in Nevada as being overdraft. So there's already a
8 potentially harmful situation existing out there.

9 Also, we're concerned about compliance with State
10 mandated groundwater monitoring requirements. In the fall
11 of '09 as part of SB 7-6, the Legislature and Governor
12 adopted legislation that would require monitoring of
13 ground water elevations in all the groundwater basins
14 throughout the State. And this, of course, includes
15 Pahrump Valley, California Valley adjacent to Pahrump
16 Valley, and the Tecopa basin as well.

17 The mechanism that was adopted was that a host of
18 local agencies, special districts, such as water districts
19 and irrigation districts, counties, cities, may assume
20 responsibility for this monitoring. If none of those
21 potential monitoring entities stepped up and assumed
22 responsibility, then the Department of Water Resources
23 would assume that responsibility and all those local
24 agencies would be then ineligible for State water grants.

25 So that's the motivation that the legislation

1 holds over local governments and districts to assume
2 responsibility for fulfilling this unfunded, I might say,
3 mandate.

4 Inyo County has got 36 of these groundwater
5 basins within our county. Mostly on federal land that we
6 have no real jurisdiction, much less the capability to do
7 any monitoring on.

8 So last year the State adopted some cleanup
9 legislation, whereby we could use some alternative
10 monitoring methods in these basins where really there was
11 no groundwater development activity. With this proposed
12 project coming on line, and it's groundwater use, whether
13 it be a modest use or not, this basin will no longer be
14 eligible for the alternative groundwater monitoring
15 methods, and groundwater elevations will have to be
16 monitored in this basin by someone.

17 So we would encourage that as part of this the
18 mitigation for this project, that a comprehensive regional
19 groundwater monitoring system be part of the project. The
20 Legislature has recognized that we need to view these
21 basins as whole entities, not just at the local scale, but
22 on the regional scale, and that should be a part of this
23 project as well.

24 HEARING OFFICER CELLI: Can I ask you, I'm -- in
25 back of my mind, I recounted this before, is this that --

1 are you referring to that water monitoring that was
2 required of residential projects? And I thought it had
3 like a 500-acre feet a year threshold number, or am I
4 confusing this with a different requirement?

5 DR. HARRINGTON: That's a different regulation.
6 That's a requirement that -- if I'm understanding what
7 you're referring to, it's a requirement that developments
8 be on a certain size to demonstrate availability of a
9 water supply.

10 HEARING OFFICER CELLI: So that's different.

11 DR. HARRINGTON: This was part of the water
12 bond -- water bond legislation that was passed late in
13 Governor Schwarzenegger's term. And the Department of
14 Water Resources is just in the throws of bringing the
15 monitoring commitments on line.

16 Inyo County has assumed responsibility for one
17 basin where the groundwater transfer prerogative for the
18 coastal operating company's geothermal plant is taking
19 place. City of Los Angeles has assumed responsibility for
20 Owens Valley, where their principal well fields are
21 located. But we've got 34 basins left that many of them
22 are inaccessible wilderness areas in Death Valley National
23 Park. These basins will fall under the alternative
24 monitoring methods. We can easily show that nothing is
25 going on out there.

1 But in the California part of the Pahrump Basin,
2 we won't be able to sustain that argument. DWR is going
3 to expect that this basin be monitored, and the
4 legislation requires it.

5 Thank you, and I thank your staff for their
6 diligent work on this as well.

7 HEARING OFFICER CELLI: Thank you, Mr.
8 Harrington. And was there anyone else from the County of
9 Inyo that wanted to address the Commissioners?

10 Okay. And, staff, can you just briefly tell us
11 how you're working with the County of Inyo with regard to
12 these water issues that are raised, please.

13 SENIOR PROJECT MANAGER MONASMITH: Yes. Well,
14 Mike Conway is in contact with Dr. Harrington on a regular
15 basis. We met with the County prior to our December 16th
16 workshop, where issues in terms of the pump test came up.
17 We discussed it with the applicant at the subsequent
18 workshop that afternoon, and Data Requests Set 2A were
19 then issued, which we are all looking forward to results
20 of.

21 But it's an ongoing collaboration. The County
22 has a lot of understanding of this area with lots of
23 resources, and we are taking full advantage of those.

24 HEARING OFFICER CELLI: And, Mr. Ratliff, are we
25 talking about LORS compliance with regard to this piece of

1 monitoring requirements?

2 STAFF COUNSEL RATLIFF: I'm hesitant to say no,
3 but I don't know what LORS we're talking about, if we are.
4 We're really talking about, at least to our mind, the real
5 issue is environmental impact. And if such impact does
6 exist, what kind of mitigation is feasible.

7 I might add, the County has many resources that
8 they've brought to bear on this, and we're very
9 appreciative of that. But we've also been able to get
10 some information from the Nevada Counties as well,
11 particularly, I believe, Clay County -- Nye County, I'm
12 sorry, and Clark County.

13 So we've also got additional counties with
14 expertise in water that we've been trying to get useful
15 information from. And I guess I would just emphasize that
16 underground water and water basins is a fairly difficult
17 area of analysis, much more so in some ways than surface
18 water analysis.

19 HEARING OFFICER CELLI: How -- we keep coming
20 back to the same question, how does this -- these concerns
21 with regard to hydrology and transmissivity and all of
22 that kind of stuff going to affect our schedule?

23 I guess I should start with applicant on that and
24 we'll kind of come around. Ms. Pottenger or Mr. Harris,
25 whoever is going to talk about scheduling.

1 MR. HARRIS: Well, as the water or the schedule
2 in general?

3 HEARING OFFICER CELLI: Well, let's first talk
4 about water, since that's what's up, and then we'll talk
5 about the general schedule.

6 MR. HARRIS: Yeah, I think what you heard from
7 the county was very consistent with Mr. Ratliff's very
8 concise four point summary, which I wrote down, because I
9 always listen when Dick speaks.

10 And I think the consensus, at that time, was that
11 the pump test was the critical path item. And you heard
12 from Mr. Jensen that that's ongoing. So I actually don't
13 think that there's going to be a big lag on the water
14 issue, but I'd like to hear from staff too.

15 HEARING OFFICER CELLI: Anything further from
16 staff before I go to CBD?

17 SENIOR PROJECT MANAGER MONASMITH: Yeah.

18 MR. CONWAY: This is Mike Conway again. I think
19 I would agree with that. There are a couple impacts that
20 we think are for sure. The lowering of water levels in
21 neighboring wells, and the pump test will help refine
22 those numbers.

23 But that won't holdup anything, you know, with
24 this publication of the PSA. The concerns that are
25 further away from the pump wells, depending on the results

1 of pump tests, that that might bring to light impacts that
2 we're not aware of right now or change how we look at
3 those impacts in the future.

4 So there could be some major revisions based on
5 these pump tests. But I think we know roughly the scope
6 already and it should be a matter of finding the impacts.

7 HEARING OFFICER CELLI: Thank you. And before I
8 go back out to Ms. Anderson, I was going to ask you, Mr.
9 Harris or Ms. Pottenger, because we got -- the County of
10 Inyo spoke of many things, and I was engaged in the water,
11 but also the land-use issue is very important.

12 And there was a mention of an application that
13 should have been forthcoming that wasn't or -- I don't
14 know if it was discretionary or whatever, but I just
15 wanted to know what steps can be taken to resolve that
16 issue, the application for the conformance with the land
17 use.

18 MR. HARRIS: Yeah, sure. We continue to work
19 with Inyo County. And despite what you heard today,
20 that's a very important and valuable relationship, and
21 we're working on that.

22 In terms of the land-use issue, I think the most
23 important thing to recall is the context here, which is
24 this project was consistent when it was filed. I think
25 that makes it different than some other circumstances

1 where an applicant comes in with an applications knowing
2 that they're inconsistent.

3 The change happened after the filing of the AFC.
4 And it certainly happened many years after the due
5 diligence on the project site began. As I said, I think
6 we believe -- and I'd say we, I mean the lawyers sitting
7 here -- that there is evidence that can show consistency
8 with the plans that exists today. I know that Inyo
9 doesn't necessarily share that view, but we haven't
10 articulated it in a way -- and reduce it to writing in a
11 way that they can analyze that I think.

12 We're hoping to be able to make that showing. In
13 terms of an interim process here, I think the Commission
14 is very divided historically about doing an interim
15 process. There is one case that talks about using a Final
16 Staff Assessment as an environmental document for a local
17 government to take a land-use action.

18 That's not required by your law, but it has been
19 done in the past. That case also said very clearly that
20 it may be limited to the facts on that case. And so --
21 and then there's the whole question about, you know, how
22 would that play forward.

23 So we were continuing to look at those issues.
24 We know your staff is frustrated with us, and rightfully
25 so for not having us declare which path we think things

1 should go down, but there are a lot of different options
2 available. And we would like to continue to have the
3 discussions with staff and Inyo County and try to move
4 these things forward.

5 HEARING OFFICER CELLI: Is there -- is anyone --
6 maybe Inyo County can tell us. What the -- how long would
7 a general plan amendment process take, if there were some
8 changes in the works? What kind of a timeline are we
9 looking at?

10 MR. CROM: Dana Crom on behalf of Inyo County and
11 I also have Joshua Hart, who is our planning director with
12 us, who can kind of address the general time frame.
13 Clearly, as -- well, first, I want to make one
14 clarification. The general plan overlay that was
15 rescinded by the Board of Supervisors shortly after the
16 AFC came out, had only been in place for about 90 days.

17 We were sued under CEQA. And as a resolution to
18 that lawsuit, Ileene Anderson who is on the phone is well
19 aware of this, but as a resolution to that lawsuit, we
20 rescinded the general plan amendment.

21 So it isn't as though the general plan amendment
22 has been out there forever and this solar zoning existed
23 forever, and the applicant was consistent with it up until
24 that point in time. It was an overlay that the County
25 attempted. And for primarily financial reasons, we had to

1 rescind that. So I just wanted to clarify that so there's
2 no misunderstanding.

3 As for the processing of the general plan
4 amendment, obviously, it is a discretionary act, and it
5 will require compliance with CEQA. And so the timing of
6 that from a legal standpoint does get down to what
7 document we rely upon. And I know all of the lawyers in
8 this room and probably those that are on the phone have a
9 different idea of what document we can rely on.

10 But from the processing standpoint, I'll defer to
11 Mr. Hart.

12 MR. HART: Thank you, Ms. Crom. I'm Josh Hart,
13 Inyo County Planning Director. And I was going to say the
14 same thing --

15 (Laughter.)

16 MR. HART: -- the big issue is CEQA compliance
17 with the general plan amendment.

18 The actual amendment itself requires some
19 analysis and hearings, and those don't take very long.
20 The application, as Mr. Carunchio indicated, is pretty
21 simple to submit. So again, the real driving issue is
22 what document can we use for CEQA compliance.

23 HEARING OFFICER CELLI: But you mentioned, or
24 somebody mentioned, that it's a three-page application.

25 MR. CROM: Yes.

1 HEARING OFFICER CELLI: And then the process
2 really. What are we talking about in terms of time?

3 MR. HART: Staff will need to review the
4 application, make sure that we can make the findings, and
5 prepare a staff report, and proceed to the Planning
6 Commission. This is ignoring the fact that we have to
7 comply with CEQA.

8 And once we have a hearing before the Planning
9 Commission, we would then -- assuming the Planning
10 Commission recommended that the Board approve, we would
11 proceed to the Board. And so all of that takes, without
12 CEQA, a couple months.

13 HEARING OFFICER CELLI: Thank you.

14 STAFF COUNSEL RATLIFF: So Commissioners, perhaps
15 you have inferred that the real critical path to the
16 county conforming its land-use provisions is having a CEQA
17 document, which would allow it to do so. And that
18 document typically because it involves a similar kind of
19 analysis to the one that we're doing for the power plant
20 itself, would presumably be our document. When I say our
21 document, I mean the staff FSA, and any other documents,
22 such as the PMPD that the Commission provides for the
23 County to use for its CEQA compliance.

24 The position of the general counsel in the past
25 has been for such decisions local governments should rely

1 on the FSA and/or the PMPD as well, pursuant to Section
2 25519, which allows the Commission to designate such
3 documents. And that those documents would allow the
4 County to make such changes to its ordinances.

5 But that means that the actual act by the County
6 would occur late in the process, usually right before our
7 final decision.

8 HEARING OFFICER CELLI: Right. I'm just
9 wondering whether you have any experience with Conditions
10 of Certification that are prospective in that, you know,
11 upon -- conditional upon a County's approval of a permit,
12 in that way.

13 STAFF COUNSEL RATLIFF: You mean about the County
14 subsequently conforming its ordinances?

15 HEARING OFFICER CELLI: Right, like land use.
16 So, for instance, if there's a pending resolution, let's
17 say, that would cure some defect in the process, so
18 that -- are you aware of the Commission ever creating a
19 Condition of Certification that said pending this
20 resolution, then there would be no impact or then they
21 would be in conformance or something like that?

22 STAFF COUNSEL RATLIFF: The opinion of the
23 general counsel in the past is that the findings of
24 conformity can only be made if the project has been
25 conformed prior to our decision. So it can't be

1 conditioned for a subsequent action.

2 HEARING OFFICER CELLI: Right, that's what I was
3 looking for. That's what I wanted to know.

4 MR. CROM: Unfortunately that -- I'm sorry.
5 That -- I understand that. I think where we're all having
6 a problem is that what the Public Resources Code says is
7 that we need to rely on the report, and that this
8 Commission must act first before we can rely on that
9 certified environmental document.

10 And that's that actually chicken and the egg
11 problem that we've having. And I think as lawyers, we can
12 probably come up with a resolution to this. The problem
13 is we don't have an application. And I think, as Mr.
14 Carunchio so artfully put it in his presentation, as far
15 as the County of Inyo is concerned, the project as it
16 stands right now is not in conformance with the Inyo
17 County General Plan, period.

18 HEARING OFFICER CELLI: We do have some --

19 MR. HARRIS: If I could weigh in just real quick
20 on that.

21 HEARING OFFICER CELLI: Go ahead.

22 MR. HARRIS: First off, I guess I want to
23 reiterate that our legal argument is that we were
24 consistent before the general plan. And so the fact that
25 it was recently overturned, I mean, that timing shouldn't

1 really affect the discussion here. But I think the
2 critical issue here is that it may be a three-page
3 application, but attached to that will be probably a
4 thousand page EIR document.

5 You're going to have to have an EIR-level
6 document to make this change. In fact, the litigation
7 involving Inyo County, the issue there was whether they
8 should have used an EIR to do the general plan amendment.
9 So clearly, it's going to require an EIR level. This is
10 not a mitigated Negative Dec or Initial Study. It's a
11 massive CEQA compliance study for them to take action.

12 On the issue of perspective licensing, I think
13 Mr. Ratliff covered that well, in the sense that, for you
14 to condition your approval upon local government actions,
15 is contrary to the Warren Alquist provision.

16 I did want to point out though, maybe a little
17 ray of hope in this bit of sunshine, that there is a
18 practice of applicants, after the fact, voluntarily going
19 to local governments and then doing conforming land-use
20 changes.

21 And a specific example of that is the Metcalf
22 Energy Center Project. And in that case, between the City
23 of San Jose and the County, there was an agreement to
24 after your approval -- because it would be a futile act if
25 you didn't approve the project in the first place, to go

1 in for a conforming land-use change.

2 And they followed that process. And, in that
3 case, there was actually annexation of that land by the
4 City and the general plan amendment, once it was moved
5 into the city.

6 And that practice is something to think about.
7 But I know that may not give some people comfort, because
8 it's not contingent upon -- the project will be approved
9 by you. But that's another practice that I think is worth
10 putting into everybody's thoughts as well.

11 HEARING OFFICER CELLI: Well, we do have
12 experience at least running concurrently with the BLM or
13 with the federal process. So it's not unheard of that we
14 have two processes running in parallel.

15 But we will -- we'll have to see how you all
16 figure that out. I think it's interesting to see that
17 Inyo County at least is of the opinion that there's a
18 non-conformity.

19 MR. HARRIS: And we take that very seriously.
20 Dana is a good lawyer.

21 HEARING OFFICER CELLI: Thank you. Anything
22 further from the County, please?

23 MR. CROM: Thank you very much for your time.

24 HEARING OFFICER CELLI: Thank you.

25 PRESIDING MEMBER DOUGLAS: I wanted to just

1 briefly comment. I really appreciated the opportunity to
2 go to Inyo County and meet with the Board of Supervisors.
3 It was a really good dialogue, and I was really pleased to
4 do it.

5 And I also have some experience, not only that
6 trip, but others, to know how far you all travel to come
7 here. So we appreciate you being here.

8 Of course, you're always welcome to call in, but
9 it's great to see you here in person. And that
10 underscores the importance that the County is taking in
11 approaching this project with the level of importance.

12 So I just wanted to also thank Inyo County for
13 your engagement in the Desert Renewable Energy
14 Conservation Plans. I've seen Josh Hart many, many, many
15 times over the course of the meetings and stakeholder
16 group meetings on this plan. So it's been a very good
17 working relationship, a very good partnership.

18 I wanted to just take this moment to encourage
19 both staff and the applicant to work closely with the
20 County. I know that you do, and I know that you will.
21 But particularly on the issues that we heard today,
22 land-use conformance, water, and socioeconomic.

23 This project is quite remote from Bishop, and
24 it's remote from other California population centers. You
25 know, I don't know if there's -- if there are services

1 that could be brought -- provided potentially from the
2 Nevada side or what creative solutions there are or might
3 be.

4 But it is clear that under socioeconomic
5 providing services from Bishop, in some cases, could be a
6 challenge. So I just wanted to -- I just wanted to say
7 that I definitely heard the County, appreciated their
8 comments, and encourage all of you to work with them.

9 HEARING OFFICER CELLI: Thank you, Commissioner.
10 Anything, Commission Peterman?

11 Okay. I just wanted to check in with Ileene
12 Anderson, if there was any further comment on any of the
13 comments from the County of Inyo, Ms. Anderson?

14 MS. ANDERSON: The only comment I have is that we
15 share many of the concerns that the County has with
16 regards to water and the effect upon the world-renowned
17 resources of Inyo County.

18 HEARING OFFICER CELLI: Thank you.

19 At this time, unless there's anything that the
20 parties want the Committee to cover, I think we're ready
21 to go to the public comment section. Is there anything
22 further from applicant?

23 MR. HARRIS: We still have schedule to discuss,
24 if that's appropriate.

25 HEARING OFFICER CELLI: Oh, let's talk about

1 schedule. Go ahead.

2 MR. HARRIS: We'll hand this out. What we
3 attempted to do last night at five o'clock was just
4 basically provide you with an informational document. And
5 what it compares is two things. It's the schedule that
6 was in the Committee's hearing order in the left-hand
7 column. I guess the middle column of the three. And then
8 on the right-hand side is the staff's proposed schedule
9 for the status report number 1.

10 HEARING OFFICER CELLI: Do the intervenors have
11 this?

12 MR. HARRIS: They don't. I'm going to file and
13 serve this. I've marked it 124 draft on the theory that
14 at six o'clock last night, I may have missed something.

15 If I didn't, I'll file it with that form on it
16 though. And again, this is -- just to be clear, this is
17 intended to be strictly a compilation of existing
18 information, okay? You could literally -- if I did it
19 correctly, and I'm not going to say that I did. But if I
20 did it correctly, you should literally be able to lay the
21 staff's schedule from their status report on the table
22 right next to your order and get these two columns.

23 But in court, my partner always had to check my
24 citations because I'm dyslexic, I think, partly. So
25 that's why the caveat on the draft.

1 And again, it's only intended to show the
2 differences between what your order says and what the
3 staff's schedule is. You know, we actually have enjoyed a
4 very good working relationship with staff, and continue to
5 do so. We know that they have worked very hard on this
6 project, including working through the holidays. And the
7 progress to date, in my mind, has been really remarkable.
8 So I am not here to beat the staff up on schedule.

9 I'm definitely here on behalf of the applicant to
10 say how much we appreciate the hard work they've done. To
11 show you the comparisons of the schedule, I mean, we're
12 obviously concerned about the potential slippage in time
13 of six weeks. That's a significant time frame in a
14 one-year process. We don't have any solutions for you yet
15 on how to deal with that. We would like to see some of
16 these analysis done. The one concern that I guess I would
17 put out there is that, to the extent staff is going to,
18 you know -- they've indicated, I think, in culture and
19 maybe in visual doing their own documents, and maybe doing
20 their own original research. That process will take time
21 and it may take time in areas that we feel may not be
22 relevant to your decision. And so that would be time, you
23 know, wasted essentially.

24 And so we wonder if there's some way to put some
25 kind of parameters around the staff's additional work that

1 they're intending to do, because right now, as we stand, I
2 think in terms of data, we've provided the data with the
3 exception of the two questions that Ms. Pottenger
4 referenced, 127 and 128, that the cultural folks have
5 talked about. We provided the data. And we think it's
6 time to move forward.

7 I guess we'd also note too that staff's
8 intending, in this case, to put together a Preliminary
9 Staff Assessment. That means there will be a second
10 document, so there will be time to deal with some of these
11 things down the road. And maybe that gets incorporated
12 into the Committee's thinking.

13 Overall, I want to stay positive, so I think I'm
14 going to stop there and again thank the staff for their
15 good hard work. I'll let the Committee, you know, look at
16 the document and draw their own conclusions about where
17 there may be time that can be made up.

18 HEARING OFFICER CELLI: Yes, I think we're going
19 to hear from staff in a minute. But I just want to say
20 that I really would discourage staff from deviating from
21 the PSA/FSA model. I personally really like receiving a
22 Preliminary Staff Assessment. It's good for us. We get
23 to know what's going on, as long as it's a useful
24 document, and doesn't have a bunch of, well, we don't have
25 enough information, so we're leaving this blank or we'll

1 get back to you on it kind of information.

2 But a PSA is a welcome document. We really like
3 having that. So I'm not going to ask staff to do the
4 kinds of things we had to do during the ARRA rush, like
5 just have one document, that sort of thing.

6 Having said that, I think the Committee really
7 isn't prepared to act without some sort of petition to
8 compel at this time. I think I'm encouraged by the
9 discussions already. It sounds like there's been movement
10 in a number of areas, and that might streamline things.

11 Staff knows that, of course, the sooner the
12 better, we can get a PSA off. But I wonder how much --
13 how firm is that six week slippage. Is there any way we
14 can shorten that?

15 SENIOR PROJECT MANAGER MONASMITH: Well, you
16 know, we wanted to try to give you a relatively good day
17 to not have to come back to you every four weeks, asking
18 for more and more time. Really, you know, you've gotten
19 the overview of all the technical disciplines, the one --
20 the real outlier, and the reason why that we felt that we
21 should provide another six weeks is cultural resources.

22 And we do appreciate the discussions on Data
23 Requests 127 and 128. Data request Set 2, 1-D was
24 primarily all cultural resources, about 35 questions on
25 cultural resources. Of those 35, the applicant objected

1 to four, partially objected to seven, wants to additional
2 time for another five.

3 The two that you've asked for an additional 10
4 days on for a motion to compel, 127, 128, are but two of
5 those. There's another five that we have indicated that
6 we would be willing to do internally. This work needs to
7 be done. That would involve contractors, and that is
8 going to take time. We also have some outstanding data
9 requests, 104, a number of others, which we have -- we're
10 still waiting on information from the applicant.

11 Things are working well with bio and water and
12 some of the other, Tier 2, the difficult -- the technical
13 disciplines. But with cultural and the need for this
14 information and the -- this is not really negotiable in
15 terms of our cultural resources staff. The information
16 they need, the archaeological studies, the Phase 2 studies
17 they need are absolute in order for them to make a
18 determination of significance on these resources. There's
19 not any give and take on this. We have to have it.

20 So the discussion is are we going to have to
21 compel the applicant to do so, or are we going to have to
22 do it ourselves? In order for us to provide a Staff
23 Assessment that is tight, that is -- will meet legal
24 scrutiny, we need to have this information. We need to do
25 it, and we're going to need more time. Six weeks, I feel

1 we might be able to come back and tell you on the 15th,
2 when our Status Report number 2 is filed in February, that
3 that's six weeks is now five, maybe four, depending on how
4 the applicant responds and provides us this information
5 that we need. We hope we don't have to do more.

6 STAFF COUNSEL RATLIFF: And, Commissioners, we
7 hope to avoid having a motion to compel hearing today.

8 HEARING OFFICER CELLI: Right.

9 STAFF COUNSEL RATLIFF: And so we really don't
10 want to do that. And overall, I think the applicant has
11 been very responsive and has tried to very quickly respond
12 to our data requests. We've -- I think the issue in
13 cultural sources, in part, turns on the scope of the
14 analysis that we think is required. Understandably, the
15 applicant would like that scope to be narrow. Staff
16 believes that if we're to do a complete analysis, it has
17 to be broader than they would like it to be.

18 That has led to this friction over the data
19 requests that we're still trying to resolve, and we hope
20 that we can. Some of the work we've determined would best
21 be undertaken by our own staff. Some of it, we think,
22 needs to be done by the applicant because we don't have
23 the resources to do it.

24 And that's what we're talking -- that's what
25 we're going to talk about and discuss. But for us to do

1 the work that we think provides complete analysis in that
2 area, we have to have further information. And we can't
3 provide it as quickly as the original schedule called for.

4 HEARING OFFICER CELLI: Well, as you know, we've
5 seen projects slip before. I'm -- this Committee is
6 probably loathe to put out another scheduling order every
7 other week. I think what we should do is let's see what
8 you can accomplish with -- we've got a 10-day stipulation.
9 You've got a stipulation to work together, to try to
10 resolve these issues. Maybe we can do it short of a
11 petition to compel, and then we'll find out your status
12 reports, because our next conference -- or next Status
13 Conference is the 28th of February -- February 28, at
14 which time I think we'll know whether we have a petition
15 to compel, and then we'll start moving on it, if we do.

16 So I'm hoping that you'll be able to resolve the
17 issues informally without the petition, but at least we'll
18 know pretty quickly whether we need a petition or not. Go
19 ahead, Mr. Harris. Do you have a question?

20 MR. HARRIS: Yes, just on the other mention of a
21 petition to compel. I guess I want to be clear, we're not
22 asking -- we're not making a motion for you to change your
23 scheduling order, so we're not petitioning to change that
24 order by this. This is, again, informational.

25 But I guess I want to make sure I understand that

1 you're not also agreeing to change -- staff -- change the
2 order to meet the staff's requirement?

3 HEARING OFFICER CELLI: No.

4 MR. HARRIS: They haven't made a petition either,
5 right?

6 HEARING OFFICER CELLI: That's not an order.
7 That's not the standing order. The standing or is that
8 which was in our hearing order of last month. I believe
9 we published that. And that was -- that's standing until
10 such time as we really need to start focusing. And
11 usually we will put out another scheduling order as we
12 near evidentiary hearings.

13 MR. HARRIS: I appreciate that clarification. I
14 just wanted to make sure that I wasn't missing an
15 opportunity to, you know -- the schedule remains
16 unchanged, and that's important for clarification.

17 I do think we're also making a lot of progress
18 here. I think we work well with staff. We're going to be
19 providing a next answer on Friday, I think it is, the
20 27th. And I think we'll get through this motion to compel
21 this on cultural resources. And I know that biology has
22 to be staff -- they have to be happy that we're not
23 talking about biology issues in this case than water
24 cultural staff. Unusual for these cases.

25 But we're going to be able to get that

1 information together, I think, quickly. We get our expert
2 dock Dr. Spaulding and Natalie Lawson in the room together
3 with your experts and talk about whether those five sites
4 or seven however they are, are relevant or not, whether
5 they require additional investigation. So we really think
6 we're going to be able to meet those informational needs
7 rather quickly.

8 HEARING OFFICER CELLI: Excellent. And we're
9 encouraged by that. I appreciate your efforts. Ileene
10 Anderson, anything on scheduling from CBD?

11 MS. ANDERSON: No comments at this time.

12 HEARING OFFICER CELLI: Say again, please?

13 MS. ANDERSON: No comments.

14 HEARING OFFICER CELLI: Okay. Thank you. And
15 then, at this time, I believe we're going to go to public
16 comment.

17 I'm going to take the people who are in the room
18 first. We've heard from Kevin Carunchio. Did you want to
19 hear -- did you want to make further comment Mr.
20 Carunchio?

21 MR. CARUNCHIO: Thank you, no.

22 HEARING OFFICER CELLI: Thank you, sir. Thanks
23 for being here.

24 We also have -- did -- Jon Zellhoefer, did you
25 ever come on the telephone?

1 No.

2 Is there anyone -- Bill Christian here from The
3 Nature --

4 MR. CHRISTIAN: No comments, at this point.

5 HEARING OFFICER CELLI: Okay. Just for the
6 record, Bill Christian from the Nature Conservancy is
7 here, but has no comments, at this time -- has indicated
8 he had no comment.

9 Is there any member of the public who's here in
10 the room who wishes to make a comment at this time, and
11 address the Committee?

12 Hearing none, I'll go to the telephone. Some of
13 you I've had to mute because your dogs were barking or
14 doors were slamming. This always happens.

15 So, Amber Grady, did you wish to make a comment?

16 Oh, Amber Grady is listening in on the headphones
17 and isn't hooked in by phone.

18 Andrew Miller, did you wish to make a comment?

19 MS. MILLER: No. No comment.

20 HEARING OFFICER CELLI: Thank you. I have
21 Elizabeth Stewart, who's also -- I believe, they call it
22 the VOIP, she's with staff.

23 Ileene Anderson, we've heard from.

24 Jeanine Hinde is also -- she is with staff.

25 Jeanine Hinde is with staff.

1 Jennifer Jennings is listening in. She's the
2 Public Adviser.

3 I have John Doe. If John Doe is out there, he's
4 on the head phones. I don't think he's able to make a
5 comment, but this would be your time, Mr. Doe.

6 Okay. Kathleen, no last name, if you wish to
7 make a comment.

8 Oh, okay. Good.

9 That's Commissioner Peterman's assistant,
10 Kathleen.

11 Larry Levy, you made a comment earlier. Did you
12 wish to make a comment at this time?

13 MR. LEVY: Just that we'll be consulting with the
14 County to see if they have any kind of baseline traffic
15 studies, and we'll be filing our Needs Assessment shortly.

16 HEARING OFFICER CELLI: Thank you very much, and
17 thank you for listening in today.

18 I have Lisa Worrall. She's with staff. And
19 Shaelyn Strattan is with staff.

20 Is there anyone else on the telephone who wishes
21 to make a comment at this time?

22 And hearing none, let's hear from the Public
23 Adviser's Office, Ms. Stadler.

24 (Ayes.)

25 ASSISTANT PUBLIC ADVISER STADLER: I believe a

1 representative from the Old Spanish Trail Association is
2 on the line.

3 HEARING OFFICER CELLI: Is there anyone on the
4 line who is a representative of the Old Spanish Trail
5 Association?

6 They may have hung up.

7 With that then, I will hand the meeting back to
8 Commissioner Douglas for adjournment.

9 PRESIDING MEMBER DOUGLAS: All right. Well, I'd
10 like to thank all the parties and the County as well for
11 their engaged discussion here. This has been a really
12 helpful status conference for us. It's definitely given
13 us a good picture of where things are. We'll be looking
14 forward to hearing from staff and applicant, in
15 particular, on progress resolving data issues.

16 And, you know, we'll address the schedule
17 questions subsequent, but we're definitely looking forward
18 to progress, resolving those issues.

19 So thank you very much. We're adjourned.

20 (Thereupon the California Energy Commission
21 hearing concluded at 11:55 a.m.)

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11 I further certify that I am not of counsel or
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13 way interested in the outcome of said hearing.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 30th day of January 2011.

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