EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:

Application for Certification for The Genesis Solar Energy Project, Genesis Solar, LLC

Docket No. 09-AFC-8

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
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Contract No. 170-09-002

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# INDEX

| Opening remarks by Presiding Member Boyd | 1 |
| Opening remarks by Hearing Officer Celli | 2 |

## SOIL AND WATER

| Applicant's Panel (Mike Tietze, Jeff Harvey) | |
| Direct Examination by Mr. Galati | 24 |
| Cross-Examination by Ms. Koss | 27 |
| Cross-Examination by Ms. Belenky | 28 |
| Cross-Examination by Mr. Silver | 35 |
| Redirect Examination by Mr. Galati | 40 |
| Recross-Examination by Ms. Koss | 43 |
| Recross-Examination by Ms. Belenky | 44 |
| Recross-Examination by Ms. Koss | 45 |

| Staff's Panel (Michael Donovan) | |
| Direct Examination by Ms. Holmes | 48 |
| Cross-Examination by Mr. Galati | 50 |

| CBD's Panel (Greg Okin) | |
| Direct Examination by Ms. Koss | 61 |
| Cross-Examination by Mr. Galati | 67 |
| Redirect Examination by Ms. Koss | 75 |
| Recross-Examination by Mr. Galati | 76 |

## PROJECT DESCRIPTION AND ALTERNATIVES

| Staff's Panel (David Vidaver, Susan Lee, Mike Monasmith) | |
| Direct Examination by Ms. Holmes | 93 |
| Cross-Examination by Ms. Belenky | 100 |
| Cross-Examination by Mr. Budlong | 113 |

<p>| Adjournment | 184 |
| Reporter's Certificate | 185 |</p>
<table>
<thead>
<tr>
<th>EXHIBIT NO.</th>
<th>DESCRIPTION</th>
<th>MOID</th>
<th>REC'D</th>
</tr>
</thead>
<tbody>
<tr>
<td>69</td>
<td>Rebuttal Testimony from Genesis Solar, LLC, relating to Transmission Systems Engineering</td>
<td>146</td>
<td>146</td>
</tr>
<tr>
<td>70</td>
<td>Revised Opening Testimony from Genesis Solar, LLC, relating to Socioeconomic Resources</td>
<td>146</td>
<td>146</td>
</tr>
</tbody>
</table>
HEARING OFFICER CELLI: This is the Hearing Advisor, Kenneth Celli, C-e-l-l-i, on behalf of the Genesis Solar Energy Project's committee reviewing the application for certification.

And we were -- well, history, we were set to start at 10:00 this morning, but the parties requested some time to discuss and negotiate points having to do with Soil and Water, so we gave them that opportunity. They apparently are having productive discussion and have requested additional time so that we would begin at 11:00 this morning. And the committee has agreed to let them have until 11:00. So I'm going to ask the parties to commence and go forth and be productive until 11:00, if you can.

So at 11:00, we will have the Applicant call their first Soil and Water witness, unless you can come back and tell me everything's all sewn up and you're going to stipulate or whatever; but in any event, hope springs eternal. So we'll see you at 11:00.

(Recess.)

PRESIDING MEMBER BOYD: Our second extension having arrived, I think we'll get underway.

Welcome all to this Tuesday, July 13th, second day of the Genesis Energy Project evidentiary hearing.
And thank you all for being here. And most of you look very familiar. It wasn't very long ago that we were looking at each other like this. And I appreciate all the hard work that has -- that you all went through yesterday and the fact that you've been meeting, some of you for up to two hours this morning trying to go over some of the issues. So I hope you were successful with that.

I'm not going to go through the ritual of introductions and what have you; this is literally a continuation of the hearing, day two, hopefully destined not to go as late today as yesterday, but we'll see if our hearing officer can keep this moving.

It's on you. Mr. Celli, take over.

HEARING OFFICER CELLI: Thank you, Commissioner Boyd.

I trust everybody got their copy of the survivor magazine this morning, did their fascinating article. That's Exhibit 710.

Thank you, Mr. Budlong, for sending that, we received it.

Today we're going to start off -- before we begin, there was some discussion last night about the lattice mono-pole. Did we come to any resolution on that?

MS. MEYER: Yes, we did. We're all for the mono-pole, it just needs to be written up basically.
HEARING OFFICER CELLI: Okay. So the condition --

MS. MEYER: Well, I think I have to -- I still have to call my staff number, but he had said last night that the biological condition, you know, requirement, would prevail over the visual, and so that would result in him stipulating, I believe, to all the conditions that are already in the exhibit from the Applicant, but I just have to make that call.

HEARING OFFICER CELLI: Excellent. Thank you. And so I'll get -- you will e-mail me some sort of modified language to --

MS. MAYER: Yeah, I can -- we can resend what they had already written up, and then I'll just -- and say that staff has stipulated.

HEARING OFFICER CELLI: Thank you. You know, I just have to say, as -- I want to encourage all of the negotiations that are going on and do everything we can to get these conditions down to a -- into a condition that everybody is satisfied with. My problem is I start getting these piecemeal conditions, and then when I go to write the thing, I can't remember which condition was the one that was governing. So maybe we'll revisit this later, but it would be nice if I could have it in a nice, neat package. So thank you for taking care
of that.

We are ready to start Soil and Water. And I wanted to hear from Applicant to see if there was something or anything that we need to take care of before you call your first witnesses.

MR. GALATI: I actually think that -- this is Scott Galati, for the record, I actually think that we made a lot of progress. I think that we have a budding accord, maybe not 100 percent accord, with staff.

Another issue has come up in the last few minutes that we've been trying to resolve, but the -- is it okay, Ms. Holmes, if I try to summarize?

MS. HOLMES: Certainly, please do.

MR. GALATI: The dispute between staff and the Applicant have been whether or not pumping in the Chuckwalla Valley, which then has a -- a change in flow between the Chuckwalla Valley and something we're calling the Palo Verde Valley Mesa, and then whether or not the change in flow between the Palo Verde Valley Mesa and the Chuck-- excuse me, the valley or the change between the mesa and the river actually result in impacts to the Colorado River.

MS. HOLMES: If I could interrupt just one moment.

I think that since we're starting Soil and Water,
we have, I can't remember, it was -- Exhibit 421, which is a picture, a depiction -- 429, which is a depiction of the groundwater basins, it might be helpful for all of the discussions if we just put it up on the board. I don't think it's controversial or --

MR. GALATI: Is it the cutaway diagram, or is it the flat --

MS. HOLMES: It's the flat, it's the flat one we believe lifted it from a USGS publication.

HEARING OFFICER CELLI: That would be great. And based on our experience yesterday, it took about half an hour to figure out how to do that. Maybe we'll just keep talking --

MS. HOLMES: This is not MacIntosh.

HEARING OFFICER CELLI: Okay. Are you able to get it up there?

MS. MAYER: I can't. We can keep talking, and just give me -- you'll see it in a second.

MR. GALATI: Okay. Basically we had disagreements between what happens with the boundary of the Chuckwalla Valley Basin and the mesa from there to the river. And there's just disagreement between Applicant and staff what happens. And so what we've agreed to do is to agree to disagree what happens in that area.

But we, the Applicant has agreed, and I think
that the mitigation burden is higher to make this
agreement, is to mitigate and offset the water -- changing
water between the Chuckwalla Valley and the mesa, rather
than argue about what the effect of that is on the
Colorado River. So it is important to see the map.

HEARING OFFICER CELLI: That makes sense to me.
I -- I don't want to put the cart before the horse, but I
want to know, if you don't mind telling me, what is the
difference between -- what's the savings percentage-wise
by going to dry cooling over the wet cooling that was
originally proposed? How much water are we talking about?

MR. GALATI: I think we're 80 -- yeah, 80 percent
less.

HEARING OFFICER CELLI: So the AFY is how much
now?

MR. GALATI: 202 acre feet per year.

HEARING OFFICER CELLI: From 1600.

MR. GALATI: Yes.

HEARING OFFICER CELLI: Okay. And in a valley
that has a net positive inflow, if I recall reading the --
it's the testimony I received from staff, in Soil and
Water.

MS. HOLMES: The issue isn't -- the issue isn't
about for the staff, it may be different for other
parties. The issue isn't about the effect on the
Chuckwalla Valley Groundwater Basin. As Mr. Galati has correctly characterized it, it's on the reduction and underflow between Chuckwalla Valley and Palo Verde Mesa, and the result is the effect from that change on Colorado River.

HEARING OFFICER CELLI: Okay.

MS. HOLMES: So it's not about -- directly about the -- well, okay.

HEARING OFFICER CELLI: Okay. So do you have that -- the infrared, whatever, laser beam pointer?

Scott Cashen stole it.

Now, this is -- we're looking at, for you on the telephone, folks, we can't -- can't get this up on the screen for you, but we are looking at what looks like an aerial photograph of the subject area with I-10 bisecting the photograph. And what exhibit is this?

MS. MAYER: This is the staff Exhibit 431.

HEARING OFFICER CELLI: Exhibit 431. Is there a page number, or this is the only page of the Exhibit 431?

Mr. Monasmith, would you -- this is the only page, okay; so we're looking at Exhibit 431.

And if -- Applicant, are you going to be speaking to this or is this -- are we handing it over to staff at this point?

MR. GALATI: Yes. I need to find another
HEARING OFFICER CELLI: Okay.

MR. GALATI: Okay. This, for the committee, this area here is Chuckwalla Valley, and it's Chuckwalla Valley Groundwater Basin. There is a connection between the basins or where they're different basins between -- this is the Chuckwalla Valley, this is the Palo Verde Mesa, this is the Palo Verde Valley.

And so we -- we have basically made an agreement to take this point as the point where modeling impacts are mitigated. We have been disagreesing what happens from here to there.

Staff believes that what happens from here to there is Colorado River water, and we do not. We -- staff was willing to accept a condition that has us model what happens from here to there and then offset. The -- I think all the experts will agree that the amount of mitigation or offsets at this point would be greater than the amount of mitigation and offsets at this point. Our concern --

MR. BUDLONG: Can I interrupt for a moment?

Using a lot of the same, "from here to there."

THE REPORTER: Commissioner Celli, who is this?

HEARING OFFICER CELLI: Mr. Budlong, could you hold on a moment?
We have a party, ladies and gentlemen, just to bring you up to date, we have a different court reporter than yesterday, so when you're speaking, you will need to identify yourself. Those of you who are here who are going to -- witnesses testifying, especially those of you with unusual names, spellings, please give your business card to John, the court reporter.

And, Mr. Budlong --

MR. BUDLONG: Yes.

HEARING OFFICER CELLI: -- I'm sorry for cutting you off. Go ahead. You had an objection?

MR. BUDLONG: Yeah. I think you're pointing with a pointer that I can't see. You're using a lot of words like "from here to there," and I don't know where "from here to there" is.

MR. GALATI: Thank you, Mr. Budlong. I forgot about the people on the phone. I'll do better. I'm going to go back.

The project is in the Chuckwalla Valley Basin.

On my diagram that is on the far left of the diagram to the -- about the middle of the diagram there is a point that we're showing on the map that shows that the Chuckwalla Valley Basin, for lack of a better term, communicates with the next basin to the east, which would be to the right on this map. It is colored in blue. And
it is called the Palo Verde Mesa Groundwater Basin.

If you travel southeast, probably as more of a direct line towards the Colorado River, the -- the -- we cross another boundary which is shown on this map. And I'm pointing probably to the lower right third of the map. And my pointer is shaking because apparently I have the onset of dementia. And the Palo Verde Valley is this section, which -- that I'm pointing at here, that is in the bottom third, and it is the large irrigated area right before you got to the Colorado River.

If I move back up to the middle of the map to the boundary between the Chuckwalla Valley Basin and the Palo Verde Mesa, we did modeling, and I think there might be some agreement; there certainly, I think, is agreement between staff and us that this modeling should be based on something more sophisticated than the USGS simple model. We've done that.

And so the amount of -- and what we've done is identified the change inflow that is attributable to the project from water that is already flowing from the Chuckwalla Valley Basin into the mesa.

The original condition of certification said take that number and run another model to determine what the impacts would be from pretending a pump is there. That's probably the best way to describe it, and all the way to
the Colorado River.

And we have disagreed with staff on which model to use and on the characterization of whether that results in impacts to the Colorado River.

We all agree, I think the experts all agree that if we did that modeling exercise, the number would be lower at the river. And the conditions require us to engage in an offset program for whatever number that is. So in the spirit of cooperation and to limit these hearings, NextEra has agreed to, rather than discuss the fight of what happens between Chuckwalla and the river, we would just take the number at that boundary between the Chuckwalla Valley and the Palo Verde Mesa Groundwater Basin in the middle of the map, and then we would offset that number.

So our position is that it results in more mitigation than if we went through the exercise in exchange for not fighting something that, something that we, in our opinion, will be adjudicated some day later, and probably not in this forum, on how Colorado River is treated.

I think that, Ms. Holmes, correct me if I'm wrong, but one of the values is we did not want to get caught up in future adjudication of Colorado River entitlement. Staff has agreed we don't need an
entitlement for this activity to pump in the Chuckwalla Valley, it was an impact driven, and we didn't want to have the record confused so that at a later date someone would believe that we admitted or agreed to needing a Colorado River entitlement.

HEARING OFFICER CELLI: Let's hear from staff on that.

MS. HOLMES: That's correct. I think Mr. Galati has provided an accurate characterization. Staff has never argued that there is an existing legal requirement for this project to obtain a Colorado River entitlement. The dispute that was before you or may still be before you, depending upon how the other parties react to the proposed settlement, is, in staff's opinion solely, about whether or not there's significant adverse impacts under CEQA and how best to mitigate them.

It has always been staff's position and continues to be staff's position that when you have a surface water body, such as the Colorado River, that is threatened by overuse and environmental degradation, we'd like to see no net change to that surface water body.

We believe that the proposal that the Applicant made will help us achieve that result. We disagree with them about the ultimate conclusion about impacts on the Colorado River, but from staff's perspective, the proposed
settlement addresses that concern.

HEARING OFFICER CELLI: Excuse me a moment.
Ken Waxlax, your phone is making percussion noises. And -- can you hear me?
It appears to have stopped.
MR. WAXLAX: Yes, I had to take you off mute.
HEARING OFFICER CELLI: Oh, okay.
MR. WAXLAX: I'm sorry.
HEARING OFFICER CELLI: I can -- I don't know what was going on with your phone, but it appeared that yours was the one that was making these popping noises.
MR. WAXLAX: Oh, my. I'll hang up and try a different phone.
HEARING OFFICER CELLI: Thank you.
MR. WAXLAX: Sorry about that.
HEARING OFFICER CELLI: No problem.
Sorry for the interruption. Go ahead.
MS. HOLMES: Well, I think that was, as I said, pretty much it. Staff believes that all impacts to the Colorado River should be mitigated. We believe they do exist. We believe that the proposed agreement that we have with the Applicant does, in fact, address all of those concerns. We understand they disagree about the ultimate conclusion. We think this is a good way for the commission to move forward.
HEARING OFFICER CELLI: So this proposed offset of mitigation to the Palo Verde Mesa --

MS. HOLMES: Correct. Because you're capturing all of the effects that occur in Palo Verde Mesa as a result of this project that necessarily means that there would be no further impacts, which staff believe would otherwise occur, that would be transmitted to the Colorado River.

HEARING OFFICER CELLI: And do we have a number? Is there agreement as to what the offset is?

MS. HOLMES: I think we're still -- I think we're still discussing -- I think we're still discussing the final, the final modeling.

HEARING OFFICER CELLI: Okay. Well, let's hear from the other parties. Thank you for that explanation.

Ms. Koss, good morning.

MS. KOSS: Good morning. I've had a very limited amount of time to review this. Apparently these discussions occurred previously, but I was not privy to them, between Applicant and staff counsel; so I at about 10:00 or so became privy to them.

I quickly reviewed this model that they are relying on and have been in contact with my consultants, but at this point I can't really come to a conclusion, especially if staff has not determined exactly what the
impact is or what the offset amount would be. And I still have some questions.

HEARING OFFICER CELLI: Okay.

MS. KOSS: So at this point we are not in agreement.

HEARING OFFICER CELLI: Well, but it doesn't sound like you're opposed, per se, it's just a question of not having enough information in your view; is that right?

MS. KOSS: I suppose that's a possibility.

HEARING OFFICER CELLI: So because you just -- you said that you didn't know whether there was an impact. You're not sure --

MS. KOSS: Well, I think Ms. Holmes just said that staff still concludes that there is a significant impact to the Colorado River and what has been decided is this mitigation will reduce that impact to less than significant, but it sounds like the mitigation isn't certain yet. So I can't really --

HEARING OFFICER CELLI: So let's just assume that -- I just want to get a sense of where we're at. Assuming they can come up with some sort of figure based on some reasonable evidence today, then when you get that information, would you -- would that be acceptable in your point of view that that impact is mitigated?

MS. KOSS: I don't think I can agree with that at
HEARING OFFICER CELLI: Okay. Just wanted to know.

MS. HOLMES: Can I -- Hearing Officer Celli, if I can, the approach that is the basis of this agreement is already contained in the staff proposed Soil and Water conditions. We're already suggested refined modeling. What's different is one or two elements of the refinements and the point at which the impact is measured. And we're happy to put our witnesses on this morning in order to have them be available for cross-examination about these points.

This is all information, as I said, that's -- that's basically contained in the staff's pre-file testimony.

HEARING OFFICER CELLI: Well --

MS. KOSS: I'm sorry. May I ask a question? Are you talking about Soil and Water 19?

MS. HOLMES: Yes.

MS. KOSS: I thought earlier you said that was going to go away.

MS. HOLMES: No.

MS. KOSS: I'm -- I'm -- I'm --

MS. HOLMES: I mean, there's --

MS. KOSS: I'm a little confused about -- could
we have a summary, written summary about what is being proposed?

MS. HOLMES: Let me just -- let me put it this way: There were two conditions that were contained in this staff pre-filed testimony relating to impacts to the Colorado River. One was a condition that said you have to provide mitigation for your impacts. That was Soil and Water 15. And we used a maximum worst-case estimate for purposes of Soil and Water 15.

And then in Soil and Water 19 we said, if you choose to refine that estimate, you want to get something that's more realistic, you need to do the following type of modeling exercise. And the parameters for that were laid out in Soil and Water 19.

What we discussed this morning was, as I said, changing one or two elements of the modeling protocol and measuring the impact at the boundary between Chuckwalla Valley and Palo Verde Mesa instead of at the river. We could do that either by changing -- by pulling Soil and Water 19 into 15, or we could do it by pulling 15 into 19, or we could keep them separate. It doesn't really matter.

What we're proposing to do at this point, and we could do it other ways, is to keep Soil and Water 19 and have it reflect the point that there be mitigation at the boundary and that one or two of the conditions associated
with the modeling would be slightly different.

So, you know, as I said, I really do believe that all of the information is in the record already.

HEARING OFFICER CELLI: Okay. Well, my intention really, I just wanted to see if there was any sort of testimony that I could take out of the mix, but apparently I can't. So we're just going to have to call witnesses and take it from there.

So Applicant, why don't you just call your first -- is this a panel or one witness? Who are we calling?

MR. GALATI: Okay. I have probably an hour of direct testimony of why this is not Colorado River water.

HEARING OFFICER CELLI: Okay.

MR. GALATI: If we are -- did I hear that CURE is disputing the concept, or are you disputing the number at that boundary?

HEARING OFFICER CELLI: That was my question, and I'm not sure I got the answer.

Can you answer that, Ms. Koss?

MS. KOSS: Well, if I understand correctly -- and again, I'd like something in writing so that I can really take it in and understand what's being proposed. I don't believe we have a number, and from now what I understand is there will be modeling to determine a number? Is
MR. GALATI: The conditions have always required a number to be modeled after certification. So if you disagree with that concept, I think you can put on a witness to that concept no matter what the condition looks like.

MS. KOSS: Okay. But the difference is rather than -- so now the modeling will determine the flux between Chuckwalla and Palo Verde; that's the difference?

MR. GALATI: That has always been in the record, we've always done that modeling, it's been done for wet cooling, we've always known what that number is. It's in our data responses. We provided an estimate of that number in our Biology testimony in rebuttal to groundwater dependent vegetation, because it was the same model.

MS. KOSS: I'm just trying -- sorry. I'm just trying to determine what the difference in the condition is.

MR. GALATI: The difference in the condition is step two of the modeling, you don't have to do anymore. Step two of the modeling is what happens between the Chuckwalla Valley and Mesa boundary to the Colorado River. We just assume now, and under no -- under all circumstances that number will be higher than if we accepted staff's condition today.
MS. KOSS: Uh-huh.

MS. HOLMES: Staff would like to support that statement and say that we believe it's more conservative than what staff had originally requested.

HEARING OFFICER CELLI: It's like one of these worst-case scenario performance conditions.

MS. KOSS: Right. So there will be no modeling regarding the Palo Verde Mesa Basin.

MR. GALATI: There will be modeling to determine what the impact is on the Palo Verde Mesa Basin, but it will not then be modeled further to determine what that impact is, which would be lower to the valley, and then what that impact is to the river. Each step will result in reduction.

HEARING OFFICER CELLI: Clear?

MS. KOSS: Clearer. But I don't think we can come to a settlement at this point. I think I need to have more discussions with my consultant.

HEARING OFFICER CELLI: Okay. Well, then let's call up the panel.

MR. GALATI: Sure.

MS. MAYER: I just have a clarifying question because I wasn't privy to the water negotiations, I wasn't trying to listen to the Bio.

Wouldn't the -- because of dry cooling now, the
maximum amount of water we're ever talking about would be 202, correct? 202 acre feet a year?

MR. GALATI: That's correct. And so whatever that impact is there, it's something far less than that, but it is --

MS. MAYER: But just to give that outside boundary to make it clear to the -- every party.

HEARING OFFICER CELLI: So do you understand that, Ms. Koss?

MS. KOSS: Yeah.

HEARING OFFICER CELLI: I mean, obviously their impact can't be more than their water use.

MS. KOSS: Of course.

HEARING OFFICER CELLI: So and they have a reduced amount of water use now because they're going to dry cooling. And rather than going through all of the presentations to figure out how much Colorado River water would be towards -- whatever we're -- our impact is at the border of the Chuckwalla Valley and Palo Verde Mesa, that's the number they're going to go with, which is a higher number, a greater mitigation than if they had followed the rest of the calculations down to the Colorado River.

MS. KOSS: I understand.

HEARING OFFICER CELLI: Okay.
MS. HOLMES: May I ask a question before we begin? And I guess I'm trying to understand who's cross-examining who; I'm trying to understand what this looks like for the next couple of hours.

For example, I don't know if CURE or CBD has cross-examination of the Applicant or the staff.

HEARING OFFICER CELLI: You know, I -- that's one of the reasons I wanted everyone to get together this morning, to see whether we could curtail some of that. But go ahead.

MS. KOSS: I would just have one question for the Applicant.

HEARING OFFICER CELLI: That's fine.

And CBD?

MS. BELENKY: Yeah, I just wanted to clarify. We don't have any questions for the Applicant.

I think we've agreed with the Applicant and staff and the other parties that they will not -- that our witness does not need to testify either because they have no cross-examination. At this point I don't think we have any questions.

We have a few questions about this model, but it's not something that needs to be in testimony at this time.

HEARING OFFICER CELLI: Okay. Thank you. That's
And, Mr. Silver, on behalf of Mr. Budlong.

MR. SILVER: I'm not anticipating any cross-examination. I think that, however, the one issue on which we do need clarification of how the model was developed, the Staff Assessment does indicate as of June 2010, that there's approximately 400 acre feet per year of outflow is attributed to subsurface outflow to the adjacent Palo Verde Mesa Groundwater Basin. So it is not totally clear in my mind, considering that there's a use of 202 acre feet per year, as to how that use relates to the staff's statement that 400 acre feet per year of outflow to the Palo Verde Mesa Groundwater Basin. We're not mitigating 202 acre feet. My understanding is that I think that the proposal is to mitigate something like 50 acre feet, plus or minus, subject to refinement.

So I'm just saying that I don't think that Mr. Budlong is opposed in principle to this, but we need some explanation as to how the model works with regard to the flow between these basins.

HEARING OFFICER CELLI: Fair enough. And I think you will achieve that through cross-examination. So I will preserve that right.

I think we'll have the panel and then we'll allow Mr. Budlong's attorney to ask those questions and get
clarification.

MR. GALATI: And I'd like to call our water panel now, which is Mr. Mike Tietze and Dr. Jeff Harvey.

HEARING OFFICER CELLI: I'm going to have everyone sworn in again today. There's just something about swearing in that I just don't think it lasts over night.

MR. GALATI: Mr. Celli, I have a very large water panel, about all the issues that were on there, we're down, I think, to just this one. Is it okay if I just swear them in? We've already entered into the evidence the testimony that was signed by everyone under declaration. Is it okay if I just use these two?

HEARING OFFICER CELLI: Let's do that. Hopefully we won't need to go deeper into your bench.

John, would you swear them in, please? Please stand and be sworn.

(Witnesses sworn.)

HEARING OFFICER CELLI: Mr. Galati, go ahead.

DIRECT EXAMINATION

BY MR. GALATI:

Thank you. I'd like the panel to introduce themselves.

Dr. Harvey, could you please introduce yourself and spell your name for the record?
DR. HARVEY: I'm Jeff Harvey, H-a-r-v-e-y. I'm an environmental consultant. I've been working in California and on the Colorado River for the last 25, 30 years.

MR. TIEZTE: Michael Tietze, T-i-e-t-z-e. I'm a hydrogeologist with Worley Parsons, responsible for performing the groundwater impact assessment for the project.

MR. GALATI: Mike, could you turn on your microphone. Jeff as well. And speak right directly into it. And for the court reporter, if you could make sure that you say your name when you answer any question.

At this time I'm just going to ask you guys, did you -- and I'll direct this to Dr. Harvey to speak for the panel -- did you prepare written testimony in this matter which we've identified as Exhibit 60?

DR. HARVEY: Yes, I did.

MR. GALATI: And do you have any changes to that testimony at this time?

DR. HARVEY: No, I do not.

MR. GALATI: And did you also prepare rebuttal testimony, which we've identified as part of Exhibit 63?

DR. HARVEY: I participated in but did not have specific rebuttal testimony.

MR. GALATI: Mr. Tietze, did you prepare rebuttal
testimony as part of our panel for Exhibit 63?
   MR. TIEZTZE: Yes, I did.
   MR. GALATI: And do you have any changes to that testimony?
   MR. TIEZTZE: No, I do not.
   MR. GALATI: I'm going to ask either one of you to answer.
   Were you listening intently when I was describing the interaction between the basins on the map earlier today?
   MR. TIEZTZE: Of course.
   DR. HARVEY: Yes.
   MR. GALATI: I'm going to pull that one out.
   Thank you.
   Did I describe it correctly? And if I did not, could you clarify or fix anything that I misrepresented?
   MR. TIEZTZE: I think you described it correctly. I can provide clarification if that's necessary.
   MR. GALATI: Okay. At this point I think I'll turn over the witnesses for cross-examination or questions from the committee.
   HEARING OFFICER CELLI: Thank you.
   Mr. Tietze and Mr. Harvey, what I'm going to ask you to do, because the habit seems to be the way we unfortunately, we configured this room, is everybody is
turning and doing this, and as you can see, you don't hear
the microphone anymore. So I'm going to ask you to move
your microphones to the side so that when you succumb to
the temptation to look to the questioner, we can still
hear you. So we want to make sure that you're talking
right into that mic to the best of your ability.

Staff, you may cross.

THE REPORTER: Hearing Officer Celli, it's better
that they stay facing the mic when they talk, at least my
mics.

HEARING OFFICER CELLI: That's what I'm trying to
do.

So basically address the committee, if you would,
the dais, as these questions come to you.

Staff.

MS. HOLMES: No questions.

HEARING OFFICER CELLI: Ms. Koss.

MS. KOSS: Thank you. Just one question.

CROSS-EXAMINATION

BY MS. KOSS:

Did you conduct any modeling in the Palo Verde
Mesa Groundwater Basin?

MR. TIEZTE: We conducted modeling that simulates
or estimates the amount of groundwater flow going from the
Chuckwalla Valley Groundwater Basin into the Palo Verde
Mesa Groundwater Basin.

MS. KOSS: Did you conduct any modeling in the Palo Verde Mesa groundwater?

MR. TIEZTE: We did not model what happens with the water after its -- after it goes into the Palo Verde Mesa Groundwater Basin.

MS. KOSS: Thanks. No further questions.

HEARING OFFICER CELLI: Thank you.

Ms. Belenky.

CROSS-EXAMINATION

BY MS. BELENKY:

I do have one question. It's a -- I was looking at this document that was in the biological section. And I think you know the document I mean, this Worley Parsons document. And on page 3 of that document, I believe it references something called Table 4.

HEARING OFFICER CELLI: Can I have an exhibit number on that, please?

MS. BELENKY: Okay. It's the revised opening testimony from Genesis. Exhibit 60. Biology section. And on the pdf, the page I'm talking about is page 97. There's a lot of different page numbers because there's different documents.

And on that page, it says that a forecast groundwater budget for the Chuckwalla Valley Groundwater
Basin through the end of the project life is presented in Table 4. And then it indicates that Table 4 is attached, but I don't see Table 4 attached.

So if you had a copy of Table 4, that would help resolve; we would just like to see that and make sure we understand that everyone's talking about.

HEARING OFFICER CELLI: Or perhaps it's a typo.

MR. TIETZE: I do have that electronically. I do not appear to have a hard copy here.

HEARING OFFICER CELLI: Mr. Tietze, if you want, you can get up, walk around, and take a look at her --

MS. BELENKY: You know the table I'm talking about?

MR. TIETZE: Yes. Now, you're referring to the technical memorandum predicted effects of dry cooling water demand on groundwater resources dated June 9th, 2010, and that refers to a Table 4, which is an updated water budget of Chuckwalla Valley Groundwater Basin under the dry cooling assumptions. And evidently that was not included in what you're looking at.

MS. BELENKY: Thank you. So do you have an electronic version you could send around to all of us today?

MR. TIETZE: Yes, I do.

MS. BELENKY: That would be great.
HEARING OFFICER CELLI: I'm wondering if we could get one right now. Is that possible?

Whose exhibit is that? Applicant's or staff's?

MR. GALATI: Yeah, I'll take responsibility for including, unfortunately, a draft report, so it was missing Table 4. I think the intent of the report was to cut off and not need the forecasted budget, so I think that the table -- the figure and table were left out, but the text was not modified. We didn't -- we didn't think it was necessary for the purposes of that report, but we have that information; I do not have it here.

HEARING OFFICER CELLI: So, Ms. Belenky, do you need the information from that table right now?

MS. BELENKY: Let me check.

MR. GALATI: What I can do is maybe after a break -- or Mr. Tietze might be able to acquire Table 4 from his office electronically.

MR. TIE TZE: I can do that. I can also describe what the changes are to the water budget that was presented in our groundwater resources investigation.

MR. GALATI: So this is a modification of a -- of an earlier table?

MR. TIE TZE: That's correct.

MR. GALATI: Maybe we could use that one, because I think I have those exhibits.
HEARING OFFICER CELLI: Would that be acceptable to you, Ms. Belenky, in the interim?

MS. BELENKY: Yes.

HEARING OFFICER CELLI: Okay. Let's do that. Maybe Mr. Tietze can give us sort of a summary explanation, and then we will use that in the record.

MR. TIETZE: So to explain the changes, the groundwater resources investigation dated January of this year had a table which presented the water budget for the Chuckwalla Valley Groundwater Basin. Give me a moment, I can --

MS. KOSS: What exhibit number?

MS. HOLMES: I believe it's Exhibit 27, but there's a -- there's a problem, and Mr. Galati will probably figure this out very quickly. There seems to be an error in the table, in the exhibit list with respect to this exhibit.

Actually, the date on the exhibit is January 2009, and it was docketed February 16th, and that's not reflected in the exhibit list. Excuse me, it's not -- I'm sorry, it's not 27. 27 was revised.

HEARING OFFICER CELLI: Mr. Tietze, are you able to find the data that you were looking for?

MR. TIETZE: I'm looking at it right now, but I can't vouch for the exhibit number.
MR. GALATI: I think it might be Exhibit 43.

MS. HOLMES: That's correct. No, I believe -- actually, I believe 43 is -- and this was the -- I think there's two supplemental, both 27 and 43 are listed as supplements. And I think 43 is, in fact, a supplement with the -- well, it's got different dates on it than listed in the exhibit list.

Perhaps we should go off the record and get the exhibits.

MR. TIETZE: Okay. It's not Exhibit 43.

MS. HOLMES: That's the March 10th document?

HEARING OFFICER CELLI: We'll stay on the record, please.

MS. HOLMES: I believe it's Exhibit 27.


MS. HOLMES: Except that I believe the date on the front of the document is actually 2009.

MR. TIETZE: That's correct. The error is on the date on the front of the document.

MS. HOLMES: Thank you.

HEARING OFFICER CELLI: So that's a typo. In other words, it should have read 2010?
MR. TIETZE: That's correct.
MR. GALATI: For the record, if I could just make that clear. I'm not sure where the error is. Is it on the exhibit list, Mr. Tietze, or the cover of the document?
MR. TIETZE: It's on the cover of the document.
MR. GALATI: So it was a 2010 document.
MR. TIETZE: That's correct.
MS. HOLMES: And it actually wasn't docketed January 19th, it was docketed February 16th.
HEARING OFFICER CELLI: Okay. Glad we cleared that up.
MS. HOLMES: Well, there are two groundwater exhibits that have similar titles that I believe both have potential discrepancies with the dates. I just wanted to make sure that if people need to refer to these in the record, that it's completely clear.
HEARING OFFICER CELLI: So now, Ms. Belenky, this is really addressing your question; so, Mr. Tietze was going to summarize for you the table.
So if you would, please.
MS. BELENKY: Yes, I'm listening.
MR. TIETZE: There is a Table 5-2, Cumulative Water Budget Forecast in that document; and what we did for the analysis of the effects of dry cooling was that we
updated that Cumulative Water Budget Forecast, and
specifically the columns that we changed were the -- I'm
going to move from left to right -- it's divided up into
water budget elements for the western Chuckwalla Valley
Groundwater Basin and the eastern Chuckwalla Valley
Groundwater Basin. The only changes were to the eastern
Chuckwalla Valley Groundwater Basin where the project is
located.

We changed the -- under inflow, we changed the
numbers for increased inflow from the western basin
because there's less of an increase in inflow with less
pumping.

We changed the numbers for outflow to the
Palo Verde Mesa Basin based on two things.

The first is that we have done a more detailed
specific analysis of outflow to the Palo Verde Mesa Basin
that indicated that it is likely higher than 400 acre feet
per year, and that was in the data -- response to data
requests from CURE, set number two.

And we changed the -- the erosion of that number,
or the decrease of that underflow number based on the
model that we had done for dry cooling because it does not
decrease by as much with a lower amount of pumping.

And we changed the total future operations
pumping from 1644 acre feet per year to 202 acre feet per
year. We did not change the total future construction pumping; that remains the same.

Those were the changes, and so these are the conceptual changes to pull the effects of the dry cooled project into the water budget for the project.

MS. BELENKY: And then you will send us, someone will send us a copy so we can look at it.

MR. TIE TZE: Yes, we will.

MS. BELENKY: Thank you.

HEARING OFFICER CELLI: Any further cross from CBD?

MS. BELENKY: Not at this time.

HEARING OFFICER CELLI: Thank you.

Mr. Silver?

MR. SILVER: Cross on behalf of Tom Budlong, please.

CROSS-EXAMINATION

BY MR. SILVER:

Could you give us some general description then of the -- how the model worked, just looking at it from a purely lay perspective. We know that there will be during the operation period 202 acre feet, approximately, being used.

You just indicated that you did find a number somewhat higher than 400 acre feet per year of outflow to
the adjacent Palo Verde Mesa Groundwater Basin.

How -- so just in terms of the parameters of this model, why is that 202 acre feet per year reduction inflow to the Palo Verde Mesa -- how do we determine then using the model that it is a substantially lesser amount, and I think in this case 50 acre feet that needs to be mitigated?

MR. TIETZE: I think I understand the question. I'll go ahead and take it. I'll take a stab at answering it, and if I don't answer your question correctly, then please let me know.

The model itself utilizes what's called the "super position modeling approach," which means that it models changes to the groundwater flow system. That's the output of the model. So, you know, the model itself does not predict how much water flows from Chuckwalla Valley Groundwater Basin to Palo Verde Mesa Basin, but it predicts what the project -- what change in that flow will result from the project.

When you pump at the project location at a certain amount, in this case 202 acre feet per year, some of that water is derived from a decrease in the basin storage, which is what causes modest decline in the groundwater levels. Some of that water is derived from increased inflow of groundwater from other parts of the...
basin. The project will draw more water toward the well as the water levels drop and that inflow increases from all sides. And so there will be more inflow from the western Chuckwalla Valley Groundwater Basin and the tributary valley to the north. And then finally there will be less water that flows out from the basin into the Palo Verde Mesa Basin.

And so what the model predicts is that the amount of decrease inflow from the one basin to the other will increase over the life of the project from zero at the start and it will slowly increase to where it's approximately 52 acre feet per year less flow from Chuckwalla Valley to Palo Verde Mesa.

MR. SILVER: Although it is true, I take it that the rate of flow may be somewhat immediately affected. I take it that during construction the water use for a variety of purposes would be more like 1300 acre feet per year. So is that factored into this model in terms of over time the impacts on the Palo Verde Mesa?

MR. TIETZE: Yes, that's correct. Two things. One is the construction water use that was incorporated into the model actually exceeds our anticipated construction water use. We modeled the cap or the maximum that could be used under the conditions of certification for three years, and so we modeled that cap continuing for
three years.

And then we had model outputs for each year, what the decrease in underflow would be. And in the memorandum that was referenced earlier, the June 19th, 2010, technical memorandum regarding predicted effects of dry cooling, we summarized that -- just a moment.

HEARING OFFICER CELLI: And while you're looking at that, is this memorandum also part of Exhibit 27?

MR. GALATI: No, I believe this is -- you're now referring to the memorandum as part of Exhibit 60, Mike, your testimony?

MR. TIEFZE: This memorandum was included in the Bio testimony --

MR. GALATI: Correct.

MR. TIEFZE: -- or in the Bio conditions of --

MR. GALATI: So this is in the revised opening testimony, Exhibit 60, an attachment to the Bio testimony.

MR. TIEFZE: So Table 3 of that memorandum indicates Reach Number 3, which is the boundary between Chuckwalla Valley and Palo Verde Mesa after three years. So at the end of the construction period there will be nine acre feet per year less flow to the Palo Verde Mesa Basin. After five years, or two years of operation, it will be 29 acre feet per year less. And after 33 years, the model predicts 52 acre feet per year less.
So it increases over time. But as you mentioned, because the construction water demand is greater than the operating water demand, we start to see that decrease almost right away.

MR. SILVER: And does the model take into account the effects in the Palo Verde Mesa Groundwater Basin that would continue after the cessation of operations?

MR. TIETZE: No, it does not. The model extends currently for 33 years and does not include a recovery period.

MR. SILVER: And would you anticipate that there would be any significant effects -- what would you anticipate would be the effects after the cessation of operations before there is full recovery of the Palo Verde Mesa Groundwater Basin, or do you not have information at this point in time with respect to that?

MR. TIETZE: I can answer the question based on basic hydrogeologic principles, which is that after you draw water down, it takes a while for it to recover. So we could see, you know, a similar reduction in underflow for a period of time after project pumping discontinues. The recovery would be expected to be relatively rapid as the draw down was also relatively rapid.

The reason that we did not include that in our analysis is because the -- we believe the model to be
inherently conservative. It does not currently consider that any recharge occurs in Chuckwalla Valley Groundwater Basin over the 33-year project period. So therefore, we made the decision to only model the draw down period.

MR. SILVER: Do I have a correct understanding that there is at least a tentative agreement at this point in time to further refine the modeling to take into account the recovery period?

MR. TIE TZE: That's correct. There's discussion right now regarding exactly what that modeling would look like in terms of a condition of certification 15.

MR. SILVER: I have no further questions.

HEARING OFFICER CELLI: Thank you, Mr. Silver. Redirect?

REDIRECT EXAMINATION

BY MR. GALATI:

Mr. Tietze, you were asked a question by Ms. Koss about did you model in the Palo Verde Mesa Basin. Do you remember that question?

MR. TIE TZE: Yes, I do.

MR. GALATI: And you answered no; is that correct?

MR. TIE TZE: That's correct. In terms of the exhibits that we've provided, they do not include actual -- construction of an actual model of the
MR. GALATI: If you do the modeling in the
Palo Verde Mesa Basin, would the ultimate impact be less
than or greater than the impact at the boundary between
the Chuckwalla Valley and the Palo Verde Mesa?

MR. TIETZE: It would be less. Similar to the
situation with Chuckwalla Valley, when you pump water or
when you remove water from that water budget, it will
express itself in various different water budget
components, and the amount of impact that that would have
on the Palo Verde Valley Groundwater Basin would be less
than the upstream reduction and flow into the basin.

So in other words, some of that reduction and
underflow from the upstream basin to the Palo Verde Mesa
Basin would express itself in -- in a very slight lowering
of the water table. Some of it would express itself in
less water flowing into the Palo Verde Mesa -- or the
Palo Verde Valley Basin or perhaps some water flowing from
the Palo Verde Valley Basin into the Palo Verde Mesa
Basin. And then there's other effects that could account
for some of the decrease in underflow as well.

MR. GALATI: One last question regarding the
conservative nature of the model that you testified in
response to Mr. Budlong's cross-examination.

You said that you neglected to recharge?
MR. TIETZE: That's correct. We assumed for the sake of simplicity and conservatism that no recharge would occur for the 33-year life of the project.

MR. GALATI: You also in response to questions about recovery said that recovery would expect to be -- recovery to be somewhat, I guess, quick or rapid. Maybe you could define that.

MR. TIETZE: You would expect that most of the recovery would occur within the first three to five or six years after pumping ceases.

MR. GALATI: When would you expect the impacts to be seen when pumping begins at that boundary? Would that be immediate?

MR. TIETZE: No. The draw down would take some time to propagate away from the site and toward the -- toward the boundary between the basins.

MR. GALATI: Based on those two facts and the neglecting recharge, do you believe that under the proposal to offset the amount of water calculated under the modeling conditions you just described, do you believe that that would adequately mitigate the project's impact to the Palo Verde Mesa Basin?

MR. TIETZE: Yes, I do.

MR. GALATI: No further questions.

HEARING OFFICER CELLI: Thank you.
Recross?

MS. MAYER: None.

HEARING OFFICER CELLI: Recross, CURE, Ms. Koss?

MS. KOSS: Thank you.

RECROSS-EXAMINATION

BY MS. KOSS:

Similar to my prior questions, slightly different, did your modeling include impacts of Palo Verde Mesa Groundwater Basin?

MR. TIETZE: We -- can you define what you mean by "impacts"?

MS. KOSS: Significant impacts pursuant to CEQA.

MR. TIETZE: Okay. Significant impacts pursuant to CEQA would be defined for water as a draw down that's sufficient to effect a well owner's ability to use their well. Subsidence impacts the water quality and impacts to surface water and biological resources. And we concluded based on our modeling in the Chuckwalla Valley Groundwater Basin and our understanding of the relationship between the two basins, that there's -- that there's no significant impacts predicted for the Palo Verde Mesa Groundwater Basin.

MS. KOSS: And does your modeling include any other impacts to the Palo Verde Mesa Groundwater Basin?

MR. TIETZE: We predicted that there would be an
effect of less inflow into the Palo Verde Mesa Groundwater Basin, so by definition there will be an effect on the groundwater budget of the Palo Verde Mesa Groundwater Basin.

MS. KOSS: And in -- I'm sorry, I don't know the exhibit number, I believe it's revised staff -- revised opening testimony, the dry cooling report that was discussed this morning, it states that that flow will be -- the reduction will be relatively small; is that correct?

MR. TIE TZE: Yes, that's correct.

MS. KOSS: Thank you. No further questions.

HEARING OFFICER CELLI: Cross, Center for Biological Diversity.

MS. BELENKY: Let me just check. I think this was cleaned up, but let me just make sure.

RE CROSS-EXAMINATION

BY MS. BELENKY:

So I just want to make sure I understand your testimony.

When you were asked what the recovery period would be, first you said it would be relatively rapid, and then you said it may be five to six years after pumping. Is that -- I just want to make sure that that's your testimony.
MR. TIEZTE: In general terms you can expect that recovery mimics or mirrors draw down.

MS. BELENKY: Right.

MR. TIEZTE: So most of the recovery would happen in a relatively short period of time after the pumps are turned off. And similar to the pumping, it would take a little while for that recovery to propagate to the boundary between the basins, and then it would happen relatively quickly. And you would expect it to continue to recover for roughly the same amount of time as pumping takes place.

MS. BELENKY: Okay. Thank you. So the initial in recovery would be rapid, but then usually the full recovery period would be the same as the period of pumping.

MR. TIEZTE: There is a tail over which some residual recovery takes place.

MS. BELENKY: Okay. Thank you.

MS. KOSS: Hearing Officer Celli, I'm sorry, I just want to clarify his -- I have no memory, I can't remember if I phrased my question correctly.

RECROSS-EXAMINATION

BY MS. KOSS:

My question was meant to be -- this is not what it was -- on page 3 of that dry cooling evaluation in the
revised opening testimony it says --

HEARING OFFICER CELLI: Exhibit number?

MR. GALATI: It's Exhibit Number 60 attached to
the Biological Resources testimony.

MS. KOSS: Thank you, Mr. Galati.

HEARING OFFICER CELLI: Go ahead.

MS. KOSS: It states that due to dry cooling, the
change inflow between the basins would be relatively
small. That's what my question was meant to be. Because
of dry cooling, the change would be relatively small.

MR. TIEFZE: That's correct. At the bottom of
the page it says pumping will also result in a relatively
small decrease in the amount of water that discharges to
the Palo Verde Mesa Groundwater Basin to the east.

MS. KOSS: Thank you.

I really don't have any more questions.

HEARING OFFICER CELLI: Thank you.

Mr. Silver.

MR. SILVER: I don't have any additional
questions.

HEARING OFFICER CELLI: Any redirect from
Applicant?

MR. GALATI: No.

HEARING OFFICER CELLI: Thank you.

Then we are -- are we finished with this panel?
The record should reflect a consultation has occurred at the conference table.

MR. GALATI: No more questions for this panel. I might need to ask some questions of staff's witness.

HEARING OFFICER CELLI: Okay. So there are no further Applicant's witnesses as to Soil and Water at this time, so I want to thank you gentlemen for your testimony. You are excused, or at least excused to the audience.

Now, we are on to staff's case in chief as it relates to Soil and Water. So does staff have a panel as well?

MS. HOLMES: Staff does.

HEARING OFFICER CELLI: Let's bring them on down

MS. HOLMES: It looks like Mr. Donovan is going to be representing the panel. I think the testimony is already in the record. I believe that since the testimony is already in the record, we may not need to have everybody present at the table.

I don't know, are there questions by any party of anybody other than Mr. Donovan?

MR. GALATI: No.

MS. HOLMES: Then let's just have Mr. Donovan sworn and sponsor the testimony.

HEARING OFFICER CELLI: Okay.

(Witness sworn.)
HEARING OFFICER CELLI: Please have a seat, state your name and spell it for the record.

MR. DONOVAN: My name is Michael Donovan, a hydrogeologist, consultant to the --

MS. HOLMES: Your mic is not on, Mike.

MR. DONOVAN: My name is Michael Donovan.

HEARING OFFICER CELLI: Spell your last name, Mr. Donovan, please.

MR. DONOVAN: D-o-n-o-v, as in Victor, a-n.

DIRECT EXAMINATION

BY MS. HOLMES:

Mr. Donovan, did you sponsor the -- help prepare the Soil and Water Resources section of the Revised Staff Assessment?

MR. DONOVAN: Yes, I did.

MS. HOLMES: And did you also prepare Exhibit 434, which is Soil and Water Resources CEC staff memo in response to Applicant's proposed changes to Revised Staff Assessment?

MR. DONOVAN: Yes, I did.

MS. HOLMES: And I believe you have a correction to that with respect to Soil and Water 19.

MR. DONOVAN: Yes.

MS. HOLMES: Could you please state what that correction is for the record?
MR. DONOVAN: Yes. We are intending to take the modeling element of that particular Soil and Water 19 and put it in with Soil and Water 15, and that specifically it would address the modeling, revised modeling effort to calculate what the difference inflow from the Chuckwalla Valley to the Palo Verde Mesa. That would be the mitigation.

MS. HOLMES: Thank you. And, Mr. Donovan, could you please provide a very brief explanation of what staff's position is with respect to the settlement that was discussed by Applicant's witnesses a few moments ago?

MR. DONOVAN: Yes. What we explained is that the -- that the Applicant would model the particular -- with respect to what the change is from the Chuckwalla Valley to the Palo Verde Mesa, and that would include from the period of -- from the beginning of the operations through operations, and what that particular amount of water that would be reduced from the Chuckwalla Groundwater Basin to the Palo Verde Mesa.

MS. HOLMES: And with the understanding that there are still some unsettled issues with respect to capturing the recovery that was discussed a few moments ago, does staff believe that this agreement will ensure that there are no significant adverse impacts associated with water supply issues for this project?
MR. TIEZE: Correct. And the modeling effort would take into consideration that amount of water during the recovery period from the end of operations through the end of the recovery with respect to -- so the entire period of what that reduction would be to the Palo Verde Mesa Groundwater Basin.

MS. HOLMES: Thank you.

The witness is available for cross-examination.

HEARING OFFICER CELLI: Thank you.

Applicant, any cross?

MR. GALATI: Yes.

MS. MAYER: I'm sorry, Hearing officer Celli. I just want to explain the exhibits I just handed out. They were served on Sunday, and they're Exhibits 434, staff Exhibits 434, 436. Obviously there have been changes to Soil and Water 19 that we -- as of this morning. So that statement about -- I believe it's just 19 that's affected on this list. So just bear that in mind.

CROSS-EXAMINATION

BY MR. GALATI:

Mr. Donovan, I wanted to direct your attention -- I don't know if you have it in front of you, I'll hand you a copy, it's the Applicant's revised testimony, Exhibit 60, section Soil and Water Resources, specifically
on page 16 there's a heading called "Condition of Certification, Soil, Water 4." And it's a verification, specifically item E, that deals with the removal of drilling mud from the site. And that was a section that staff originally did not agree with Applicant's change. Is that still the case?

MR. DONOVAN: No, that's not the case.

MR. GALATI: So you agree with Applicant's change to Soil and Water 4?

MR. DONOVAN: No. What we agree -- what the COC staff is -- would revise number 4 so that at the end of groundwater production, it would include in parentheses, "including removal of the mud pits," end parentheses.

MR. GALATI: That would be acceptable to the Applicant.

No further questions.

HEARING OFFICER CELLI: Okay. Before I move on, I'm just starting to feel a little pressure with all these changes to the conditions. And I'm going to ask that the parties provide some sort of a joint statement so that I can have a unanimous, or whatever I can get, one place where we have the most up-to-date conditions of certification.

So I'm just going to ask is the Applicant to sort of be in charge of that so I have the final COCs in my
MR. GALATI: We certainly will. I don't believe that all the parties agree, so there would be many places where it is just staff and Applicant agreement.

HEARING OFFICER CELLI: Okay. But at least that's a start.

MR. GALATI: I'll circulate it to all the parties.

HEARING OFFICER CELLI: What I find myself doing a lot of times is working on changes, when there was a subsequent change that had I known I wouldn't have spent the time or needed to put in. So I'm just trying to stay current.

MR. GALATI: I was intending to provide that in my brief and in a Word version so that the committee could use it; but I will do my best to get it done ahead of time so that staff can and the parties can review, and where there's agreement, it can be indicated, and we can call it stipulated.

HEARING OFFICER CELLI: That would be great. I appreciate that.

MS. KOSS: Can I -- sorry.

HEARING OFFICER CELLI: Ms. Koss, go ahead.

MS. KOSS: -- to interrupt the flow, but I think that applies to Biological Resource -- actually several
resource areas as well at this time.

   HEARING OFFICER CELLI: All of them.

   MS. KOSS: And at this point I don't even know what I'm briefing on.

   HEARING OFFICER CELLI: That's true.

   MS. KOSS: So --

   HEARING OFFICER CELLI: We don't even know if we're going to require briefs yet.

   MS. KOSS: Well, I think in the prehearing conference that was established.

   HEARING OFFICER CELLI: Well, we discussed the possibility of it, and it's starting to sound like we're going to have at least some briefing; but, yes, you're right, we need it in every topic area, we're going to need the new conditions.

   MS. KOSS: And I think that needs to be an exhibit that we can refer to in our briefs, cite to.

   HEARING OFFICER CELLI: Right.

   MS. KOSS: So when will we potentially be getting that?

   HEARING OFFICER CELLI: What we had agreed on was that the briefs would be due seven days from the date or eight days from the date the transcript was available. And so Mr. Galati is offering to put together in one place with all of the conditions to circulate amongst the
parties so that the parties can either say yea or nay on
the conditions as they exist as provided by Mr. Galati.

MR. GALATI: Yeah. And again, I wouldn't -- I
don't want to characterize this as an exhibit. That
implies that it must be taken in as evidence.

HEARING OFFICER CELLI: Right.

MR. GALATI: I believe what I'll be compiling is
everything that is in this record, either said orally or
in writing. And if anything else changes such that we
have to submit it in writing, I think that needs to be
marked as an exhibit; but I didn't want to open the door
for a request for another hearing to take the evidence of
my compiling this information. I can write it in my
brief; I'm trying to provide it as a courtesy.

MS. KOSS: I would like to know what conditions
staff is sponsoring. What is going to be in the -- what
is staff's assessment, what are the conditions they're
proposing?

HEARING OFFICER CELLI: That's in the transcript.

That, we have. So I'm not worried about that. We have
exactly what all of the party here are -- have sponsored
so far.

MS. KOSS: Well, it would be nice to have that in
writing so I can see the conditions.

HEARING OFFICER CELLI: Okay. So what we have
are is all of the testimony that's been received. You're
going to have a transcript that showed what evidence was
received. And all the evidence was received yesterday.

MS. KOSS: Okay. This morning there were
conversations on Biological Resources, changes to
conditions that I, a, didn't have an expert for, and, b
couldn't take part in myself for part of the time because
I was dealing with a Soil and Water issue. So at this
point I actually don't know what conditions are being
proposed by staff.

HEARING OFFICER CELLI: As to Biology?

Staff?

MS. HOLMES: I believe staff does plan to
distribute something to reflect further modifications. I
guess there is a question as to whether this needs to come
in as evidence or whether there is sufficient evidence in
the record to support those modifications already. Our
plan was to distribute the document before the hearing on
the 21st.

HEARING OFFICER CELLI: This is this Biology --
changes to biology conditions.

MS. HOLMES: Actually, I would expect -- I would
expect that by the time of the hearing on the 21st,
changes to Biology, changes to Visual Resources and
changes to Soil and Water would all have been documented
and circulated.

HEARING OFFICER CELLI: We're having -- go on.

MS. MAYER: I can summarize the Bio conditions this morning in brief or that there was an agreement at least between Applicant and staff about Bio 8, Bio Condition 8, and there was some agreement about Bio 19, but not complete.

MS. KOSS: And it was my understanding that because I do not have an expert here for those discussions and those negotiations, that whatever was drawn up in writing, I could present to my expert to review and submit whatever evidence we needed to submit on that information. That's what I discussed with Ms. Holmes. And I guess my recommendation would be if this is going to be finalized by the 21st, then I would request all briefing flow from that on, for example, Biology.

HEARING OFFICER CELLI: Well, Ms. Holmes, you had a --

MS. HOLMES: Staff is indifferent as to whether these documents and any subsequent documents that Ms. Koss submits come in at the hearing or not as long as the hearing is limited to the 21st. I can see -- I can see advantages to taking them in to -- into the record at that time.

It's also possible if not, even likely, that
there already is sufficient evidence in the record to reflect both the position that the staff would be representing in these documents as well as any position that Ms. Koss would be representing.

And I would point out that with respect to Mr. Cashen not being available this morning, Hearing Officer Celli, you did indicate that the parties should be -- you were encouraging us to get together at 9:00 this morning to try to resolve some of these issues. So we brought our biologist and our water people this morning prepared to work.

HEARING OFFICER CELLI: Okay. You know what, we are going to have to have a discussion about briefing, we are going to have to have a discussion about where there are going to be motions from the parties about reopening. Remember, we talked about the fact that we would allow limited reopening of the record on the 21st on motion of the parties, and we're going to have to hear that at the end of today's close evidence. So I'm going to put this discussion on the shelf, and we're going to finish taking the testimony, and then we will deal with that.

I apologize. This was my fault. Because I was basically in the back of my mind I was thinking how am I going to keep up with all the changes to these conditions, because there are been iterations of them; and so that
was -- that was me thinking with my external speaker on, and I apologize.

MR. GALATI: And, Mr. Celli, if I could just add, when I said I did not want it to be an exhibit, I was responding to your request to have all of the conditions placed in one place in every subject area.

HEARING OFFICER CELLI: Right, and I don't need another exhibit.

MR. GALATI: But I do agree -- I do agree that these new conditions that the Intervenors have not been able to see, they should have an opportunity to see them, and that those should be moved in as an exhibit into the record.

So I didn't mean to imply anything that is changed. In my mind we're talking a handful of conditions as opposed to the other maybe 30 conditions that may have been changed by the different agreements about testimony.

So that document I don't think needs to be an exhibit. It would be a summary of evidence.

HEARING OFFICER CELLI: Okay. Appreciate that.

So I'm sorry about that.

Where we were is we were -- there was cross by the Applicant of this witness.

MR. GALATI: No, I think I was done.

HEARING OFFICER CELLI: So you just finished.
So now we're on to Ms. Koss.

Do you have cross, cross-examination, CARE -- for CURE?

MS. KOSS: I don't think so.

HEARING OFFICER CELLI: Ms. Belenky, cross-examination?

MS. BELENKY: No, thank you.

HEARING OFFICER CELLI: Mr. Silver, please.

MR. SILVER: No, I have no cross.

HEARING OFFICER CELLI: Thank you.

Staff, redirect? Nothing?

MS. HOLMES: Nothing.

HEARING OFFICER CELLI: Thank you.

Thank you, Mr. Donovan.

HEARING OFFICER CELLI: Now, we're on to -- does staff have any other witnesses for Soil and Water?

MS. HOLMES: No.

HEARING OFFICER CELLI: Okay. Then, Ms. Koss, your witness, please.

MS. KOSS: We have Dr. Okin here. Mr. Galati requested time to cross-examine Dr. Okin. Staff, I believe, has not pushed to cross-examine Dr. Okin.

HEARING OFFICER CELLI: Shall we call him and have him sworn?

MS. KOSS: Well, I don't know, Mr. Galati, do you
still have cross-examination?

    MR. GALATI: Can you just give me a moment, 
because I have to remember which -- what subject area
Mr. Okin's testimony is. We went too late last night.
    No, I don't have any cross-examination for
Mr. Okin.

    HEARING OFFICER CELLI: So and staff has
indicated they have no cross for Mr. Okin.
    Center for Biological Diversity, any cross of
Mr. Okin?

    MS. BELENKY: No, thank you.

    HEARING OFFICER CELLI: And as to Mr. Okin --
    MR. SILVER: No.

    HEARING OFFICER CELLI: Thank you, Mr. Silver.
    So with that then, we would just accept his
testimony, his written testimony as you've already
provided and rebuttal.

    MS. KOSS: I may just have a couple direct
questions for him.

    HEARING OFFICER CELLI: Call him up and have him
sworn.

    MR. GALATI: I do reserve the right to cross now
that he's going to testify.

    HEARING OFFICER CELLI: Naturally.

    (Witness sworn.)
HEARING OFFICER CELLI: Perhaps rather than going through all of his testimony, if Mr. Okin could give us sort of a paraphrased summary.

MS. KOSS: That's what I'm trying to work out.

DIRECT EXAMINATION

BY MS. KOSS:

I think we'll just start from the beginning and I can cut in if needed.

Please state your name for the record.

MR. OKIN: My name is Greg Okin, O-k-i-n.

MS. KOSS: And whose testimony are you sponsoring?

MR. OKIN: My own.

MS. KOSS: Do you have any changes to your sworn testimony?

MR. OKIN: No.

MS. KOSS: Are the opinions in your testimony your own?

MR. OKIN: Yes.

HEARING OFFICER CELLI: Please take that mic and bend it up right to your mouth.

MS. KOSS: Can you please summarize your principle findings briefly?

MR. OKIN: Well, I had three basic findings.

The first was that the project diversion of water
flow will result in significant off-site impacts to vegetation downwind -- I'm sorry, downstream of the facility, and that these were not analyzed.

The second was that the large scale disturbance of soils within the project would lead to extensive new aeolian activity resulting in a plume of sand extending south of the project, and that this has the potential to impact vegetation downwind of the project.

And then last, in addition -- well, sorry, in addition to that that there would also be a potential of significant dust emission from the project in areas that were disturbed.

And last, that the conditions to reduce the project's impacts from dust emission, I didn't see any evidence that those would actually work.

MS. KOSS: Is your finding that the project's diversion of the flow of ephemeral streams will result in significant off-site impacts to vegetation based on Appendix E of the Revised Staff Assessment which describes a drainage plan resembling that used on Interstate 10 where large areas of fan would be intercepted and concentrated into a small number of channels?

MR. OKIN: Yes, it was.

MS. KOSS: And have you reviewed staff's rebuttal testimony that states that the current drainage plan
utilizes a series of dissipates located approximately every 100 feet?

MR. OKIN: Yes.

MS. KOSS: And is it your opinion that the project's drainage plan will still result in significant downstream impacts on vegetation south of the project?

MR. OKIN: Yes, it is. I see potentially significant off-site impacts from the concentration of flow that either does not provide sheet wash or sheet flow, which appears to be what plants in this region need, or could potentially result in erosion, which then leads to exhumation of plants and kills them.

MS. KOSS: Thank you. Based on your review of the Air Quality, Biological Resources, and Soil and Water Resources conditions of certification in the Revised Staff Assessment, would you consider your findings and conclusions addressed or adequately mitigated?

MR. OKIN: No.

MS. KOSS: Can you briefly, perhaps more briefly than you've prepared, explain why?

MR. OKIN: Briefly, once you disturb a desert soil, there's very little to do to actually keep it from moving due to wind. There's lots of wind energy in this area, which then moves both sand, and the movement of sand creates dust.
We've seen lots of places where building of windbreaks or replanting the vegetation or natural regrowth of vegetation, even in places where there's actually more vegetation than there was naturally, still doesn't result in the suppression of aeolian activity.

MS. KOSS: Thank you. Did you review the Applicant's rebuttal testimony?

MR. OKIN: I did, such as it was.

MS. KOSS: Do you have any points regarding their rebuttal testimony that you'd like to make?

MR. OKIN: Well, the rebuttal states that, quote, "We feel the siting reference is a study that is not specifically relevant to the facts surrounding the Genesis Project and we feel that opinions of Mr. Okin should not be considered."

There's lots of reasons why this study is relevant to the facts surrounding the case. First of all, the climate and vegetation are similar. The study is just in the Coxco Mountains, the Chuckwalla Valley. The soils are similar. Both are on varnished alluvial fans with significant pavements, and both have linear disturbance to surface -- the Coxco one has a current linear disturbance to surface hydrology than the potential Genesis linear disturbance to surface hydrology, which will cut out sheet flow, and sheet flow appears to be what's necessary for
sustenance of vegetation.

MS. KOSS: Did you review staff's rebuttal testimony?

MR. OKIN: I did.

MS. KOSS: Do you have any responses to their testimony regarding your findings?

MR. OKIN: It's my opinion that large scale disruption of the soil surface will make the surface erodable, as I've just said, and then a significant amount of sand can actually leave the facility. And in my work I've seen many case where sand fences, either in the form of construction materials or vegetation, they trap material, but they let a plume of sand actually leave the area that was disturbed.

So in other words, some of it might get trapped. A lot of it will probably leave. Even if it did succeed in trapping all of the blowing sand, there's still two issues.

First, we can expect a significant dust emission from the disturbed areas of the project, not only the roads. In this type of environment, saltating sands bounce across the surface. When they do, they abrade the surface, and that is what produces dust.

So my understanding of chemical dust suppressants is that they work for a while, but usually not longer than
one or two years; and this means that there would need to be constant reapplication on the disturbed areas. And I don't see any -- I didn't read any plan for how you do dust suppression after the decommissioning.

Second of all, when you get this -- when you get soil moving around due to wind erosion, you get deflation in some areas, and that leads to winnowing of particles. And we get deposition in other areas; particularly if you have a fence you would have deposition. So when they decommission the facility, there's going to be piles of one kind of sand one place and a place where you've had winnowed and also deflated soils in another place, and it would be very hard to reestablish vegetation of these areas. And even if you do establish the vegetation, they will continue to be dust sources.

Again, one other thing; the question of whether or not the panels will actually serve as effective roughness elements to keep wind erosion from happening, to my mind, has not actually been studied.

HEARING OFFICER CELLI: What panels? I'm sorry.
MR. OKIN: The solar panels. Excuse me.
HEARING OFFICER CELLI: Okay.
MR. OKIN: Haven't really been studied, and so we don't know the extent to which they will actually protect the surface.
MS. KOSS: I just have one more question for you. In your expertise and in your investigation, can you please tell us how long it takes vegetation to recover in the desert?

MR. OKIN: Well, the question is if it recovers. A lot of times it doesn't. And studies, there's been a recent review on this, that even very serious efforts for recovery are usually very expensive and often ineffective, but when it does occur, it usually takes -- typically takes between 50 and 300 years, but can take as long as 3,000 years. I've seen many cases where it doesn't happen at all.

MS. KOSS: Thank you. No further direct.

HEARING OFFICER CELLI: Thank you.

Cross-examination by the Applicant, please.

And, Mr. Okin, you're going to need to -- even though they're talking to you, you need to address the committee here.

CROSS-EXAMINATION

BY MR. GALATI:

Mr. Okin, did you review the Biology conditions and certification in the Revised Staff Assessment?

MR. OKIN: I did.

MR. GALATI: Did you see in those conditions certification that the Applicant is mitigating for
downstream impact to washes and streams?

MR. OKIN: Yes, I did. Are you talking about the dispersers?

MR. GALATI: No, I'm also talking about the mitigation acreage for impacts to state waters.

MS. KOSS: Mr. Galati, maybe you could present the condition to him.

MR. GALATI: Sure. Sure. I didn't think we were getting into Biology today and didn't think we'd have a Biology witness, but apparently we do.

HEARING OFFICER CELLI: Well, we have a cross-over between Soil and Water and Biology where we have --

MR. GALATI: That's right. I would love to put on rebuttal testimony as to the impacts to vegetation downstream.

MS. KOSS: Well, Mr. Galati, just so it's clear, you requested to examine Dr. Okin in the Soil and Water Resources in the Prehearing Conference Statement. That's why I brought him today.

HEARING OFFICER CELLI: So that's what we're going to do --

MR. GALATI: Didn't quite see his Biology testimony.

HEARING OFFICER CELLI: Let's -- what we're
waiting for is for Mr. Okin to have an opportunity to look
at the condition, Bio condition as it affected the Soil
and Water testimony of today. Not all these topics are
nicely contained in the classifications of Soil and Water.

MR. GALATI: I'll withdraw that question. I'll
try to stay out of Biology, because I don't want to take
more time.

The appendix in Soil and Water that had to do
with -- I don't know if it's Dr. or Mr. Collison's
analysis of the wind shadow, the sand shadow, did you
review that report?

MR. OKIN: I did. My understanding -- I did.

MR. GALATI: Do you have any knowledge of whether
or not an applicant of a solar trough facility has an
incentive to minimize dust collection on the mirrors?

MR. OKIN: Of course they do.

MR. GALATI: Can you explain to me how
simultaneously the project can create a sand shadow but
also create sand leaving the site?

MR. OKIN: The reason is, is because the project
straddles two geomorphic surfaces. The geomorphic surface
on the right, which -- sorry, on the east, is an active
aeolian land surface. And the concern on the active
aeolian surface is whether or not the project will limit
sand movement, which is required for the
Fringe-toed Lizards.

On the west side of the project, and my testimony was related to the west side of the project, the geomorphic surface is an alluvial surface with various degrees of pavement development, but everything I saw there also showed basically a significant content of silt and clay and also what's called an AV horizon, which is almost always made of silt and clay.

Those surfaces on the western side, the alluvial surfaces, are incredibly stable if undisturbed. However, they're very easily disturbed. In fact, I was just at a conference last week talking about this -- there's a study that's currently in press around Las Vegas showing that the most delicate area for dust emission is actually the alluvial surface, because it has this -- because the pavement actually protects a huge amount of material underneath that is wind erodable.

So it's possible on the east side where you have an active aeolian surface that you might cut off the aeolian sediment transport. On the west side you have the potential of actually creating a new aeolian source where there wasn't one.

MR. GALATI: So are you talking about on the west side, just for clarification, the sort of crust that if you step into, you crack, and there's sand and stuff
underneath? Is that the type of surface you're talking about on the west side?

MR. OKIN: No. These are -- these are not generally called "crusts"; they're generally called "pavements," which is a series of interlocking rocks on the surface. You can generally walk on them without too much damage, but wheels or other traffic can certainly degrade them. Mix up those rocks that are on the surface with the fine material underneath.

MR. GALATI: Okay. And you understand that after the west side is graded, it will be compacted and there will be soil stabilizers, correct?

MR. OKIN: Yeah. My question is about what the soil stabilizers will be.

MR. GALATI: I can't answer that question, and the rules of evidence prevent me from doing so, because if they did, I could probably get someone up here to tell you.

But here is the question I have for you: Do you believe that after soil stabilizers are added, that that area will be more susceptible to disturbance and causing aeolian emissions than the surface that stands out -- that's out there now that you cannot drive on without breaking through the pavement?

MR. OKIN: Did I -- I -- just to make sure I
understood your question, will it have more aeolian activity afterwards with the compaction and, et cetera, or at present? That's your question?

MR. GALATI: Yes.

MR. OKIN: I think it will almost certainly be more -- have more aeolian activity afterwards.

MR. GALATI: Even with soil stabilizers?

MR. OKIN: Yes.

MR. GALATI: No further questions.

HEARING OFFICER CELLI: Staff, cross-examination.

MS. HOLMES: No.

HEARING OFFICER CELLI: CBD, please, Ms. Belenky.

MS. BELENKY: No, thank you.

HEARING OFFICER CELLI: Mr. Silver for Mr. Budlong.

MR. SILVER: No.

HEARING OFFICER CELLI: Well, I'm sorry, but I just have to ask why, you know, I need to -- I would like to ask why you answered the question you just answered the way you did.

Why would it -- with compaction and soil stabilizers would you have greater aeolian activity?

MR. OKIN: Well, as I said, I could actually provide a better answer if I knew what the soil stabilizer was going to be and what the dust suppressant was going to
be. So without that --

HEARING OFFICER CELLI: So let's say the worst and the best; can you give us a range?

MR. OKIN: Okay. Well, you could do the worst, right, if you put down petroleum products. That will stabilize it, but it will also make it irreclaimable. And my understanding is that those still only last a few years.

There are various other soil stabilization things. I'm not sure what's been planned here. We've talked about salts will not work in this region because they typically count on humid air, which you don't have here.

There are products which use organic but non-petroleum-based products. Now those, from everything I've read, those last one or two years. They have an efficacy of, say, 80 to 90 percent. So you're dropping the amount of dust that would be leaving the surface by 80 or 90 percent.

HEARING OFFICER CELLI: So during those first two years, if I understand this correctly -- and I'll let everybody cross when I'm done, so forgive me, I'm just trying to get my brain around this.

MR. OKIN: Fine.

HEARING OFFICER CELLI: For those one or two
years, you have really a more protected sand aeolian area, for the first two years before it breaks down. It's an improvement.

MR. OKIN: It's an improvement over the disturbed state, but it's not an improvement over the original state. The original state -- these alluvial surfaces, if undisturbed, produce no dust; in fact, they're a sink for dust. But that means when you disturb it, there's a mantle of dust underneath. So you disturb it, now it's no longer protected, it becomes a massive dust source.

So, yeah, you can suppress it for a while, but my understanding is that those suppressants don't work forever. There are other questions which would have to do with the environmental impacts of those suppressants, because they will blow away eventually.

HEARING OFFICER CELLI: Okay. Anything further from Applicant in this regard?

MR. GALATI: Would you agree that the primary wind direction is from the west to the east?

MR. OKIN: Not -- yeah, I mean, it's a little bit north, northwest than east, southeast; but, yeah, basically.

MR. GALATI: Would you agree that if we did not maintain either through soil -- through a variety of soil stabilization techniques, the sand or dust blowing from
the west, that it would below right on the mirrors to the east?

MR. OKIN: You -- yeah, I think that would be -- I think that would be a huge deal. You're already going to have that problem though, of course, because there's plenty of dust blowing around the basin to begin with.

MR. GALATI: No further questions.

HEARING OFFICER CELLI: Staff, cross, please?

MS. HOLMES: Nothing.

HEARING OFFICER CELLI: Ms. Belenky?

MS. BELENKY: No, thank you.

HEARING OFFICER CELLI: Mr. Silver?

MR. SILVER: No.

HEARING OFFICER CELLI: Redirect by Ms. Koss?

REDIRECT EXAMINATION

BY MS. KOSS:

So you're saying with, again, depending on what dust print, dust suppressants or soil stabilizers are used, best case scenario, there would be ten percent increase aeolian activity as a result of the project, best-case scenario.

MR. OKIN: No. You're -- when you go from the undisturbed surface to the disturbed surface, you go from basically something with zero flux to something with very high flux to go up several orders of magnitude. So even
if you -- let's say it goes up two orders of magnitude, so if you then tamp that down by 90 percent, you're still one order of magnitude above what you were before.

MS. KOSS: Thank you. No further questions

HEARING OFFICER CELLI: Recross, Applicant?

MR. GALATI: One.

RECROSS-EXAMINATION

BY MR. GALATI:

So is it fair to say you can't construct in the desert without creating more dust?

MR. OKIN: It's not completely fair, but if you were trying to actually do a decommissioning after the end, then you'd be really very hard pressed to do it. I mean, you could go out -- I mean, you can build a road out there; just pave it. But then if you're trying to decommission it afterwards, you're in deep yogurt.

MR. GALATI: No further questions.

HEARING OFFICER CELLI: Recross by staff?

MS. HOLMES: Nothing.

HEARING OFFICER CELLI: Recross by CBD?

MS. BELENKY: No.

HEARING OFFICER CELLI: Mr. Silver?

MR. SILVER: No.

HEARING OFFICER CELLI: Thank you, Mr. Okin, for your testimony --
MR. OKIN: You're welcome.

HEARING OFFICER CELLI: -- for coming on down.

Am I correct in assuming we just finished Soil
and Water? Or is there more to come?

MR. GALATI: I think the only outstanding issue
is the specific language of Soil and Water 19 and the
specific language of Soil and Water 4 Verification
Item D --

HEARING OFFICER CELLI: Okay.

MR. GALATI: -- which had to do with the disposal
of drilling mud. And we're going to capture that for the
21st, and make sure the parties have that.

I must tell you while I have taken the drafting
tool on that, I'm not the drafter of either one of those,
so I'll be depending on staff to provide those. And the
same with the Biology. I don't think I'm the drafter on
those.

HEARING OFFICER CELLI: Well, thank you all very
much.

Then I won't say that Soil and Water is closed
because we have these unresolved issues, but I don't
anticipate taking any other evidence as to Soil and Water.

That takes us next to Project Description.

MS. HOLMES: I'd like to ask a question about
that. I got the sense from reading the prehearing
conference statements that the questions that people had under the topic of Project Description had to do with project objectives, which in the staff testimony is typically covered in the Alternative Section. So we need to know whether or not the questions for -- regarding Project Description should be directed towards Mr. Monasmith or whether they should be directed towards Ms. Lee who prepared the Alternative Section.

HEARING OFFICER CELLI: My notes indicate -- what I do when I put this -- my outline together, is I put in parentheses who's raising the issue. And in my parentheses next to Project Description it says CBD and Budlong. So those are the parties that had issues with regard to Project Description.

Maybe if I can inquire, we can find out what witness you'll need.

Ms. -- I'm sorry, I'm losing it today.

MS. BELENKY: Belenky.

HEARING OFFICER CELLI: Belenky. I misspelled your name in my mind.

Ms. Belenky, as to CBD's concerns with regard to Project Description, what was that -- what was the specific area that you wanted to get into?

MS. BELENKY: Well, I think that our issues have possibly been raised throughout the hearing so far, and it
has to do with -- and of course, the Project Description, we're now saying is one of the alternatives --

HEARING OFFICER CELLI: Correct.

MS. BELENKY: -- is the Project Description. So it's a little -- not linear, perhaps. And I think that most of the issues that I would have raised in Project Description we have raised in the other, in the Biological and other sections, because our issue is how the project is described and then the impact it would have on Biology.

I think there may be one lingering question having to do with, but I think it could be looked at as an alternative -- I'm sorry to go on like this -- but whether the access road, whether there was any discussion or any consideration of the access road being gated or limited so that the, whatever you want to call them, secondary effects or indirect effects that will be created by off-road vehicles using this area and accessing an area that is now extremely remote, and having an additional effect on the environment, whether that has been addressed anywhere in this record. As far as I can tell, it hasn't been.

I think we may be reaching some at least understanding that these parties here today don't object to such a condition but believe that it may have to go through a BLM door rather than a CEC door. And I'm not
sure I agree with that.

HEARING OFFICER CELLI: Okay. But it sounds to me like that's a Project Description issue, not a --

MS. HOLMES: I think it came up yesterday in Biological Resources under cross-examination, and it certainly was a subject of the discussion this morning.

HEARING OFFICER CELLI: Right. And I don't recall whether Project Description even dealt with the road, the access road, whether it needs to come out, whether we need to address it at all.

MS. HOLMES: It was identified as a project feature; but, again, the Project Description is simply a factual statement of what's been proposed, it's not an analytical section of the Revised Staff Assessment.

HEARING OFFICER CELLI: Right. But it is something that Mr. Monasmith could probably handle for you.

MS. HOLMES: Well, he can say that one was proposed.

HEARING OFFICER CELLI: So let's hear from Mr. Silver regarding Mr. Budlong's concerns with regard to the Project Description.

MR. SILVER: And I'd like the indulgence of the hearing officer to see that Mr. Budlong is on now.

HEARING OFFICER CELLI: Yes, let me tell you,
because he is on -- Mr. Budlong, can you hear me?

    MR. BULDONG: Yes, I can.

    HEARING OFFICER CELLI: Okay. Go ahead, Mr. Silver.

    MR. SILVER: Let me just give a stab at this, and then I'd like to have Mr. Budlong, since he's not here so I can consult with him, indicate whether he agrees with me.

    I think that Mr. Budlong's principle issue with the Project Description had to do -- is this not on? It is on now -- had to do with the description of the, for want of a better word, the power of attributes or the capacity in the actual production of this. And I think that a large number of his issues with regard to this really go to the comparison of alternatives and would be discussed under that rubric. And so if I could just ask Mr. Budlong whether or not he has any -- whether I characterized that correctly, in which case we would deal with those issues under alternatives.

    HEARING OFFICER CELLI: Mr. Budlong?

    MR. BULDONG: (Inaudible).

    HEARING OFFICER CELLI: I'm sorry, Mr. Budlong, I just got the sort of the thumbs down from the court reporter. I need you to speak right into your telephone, please; and if everyone here could please be quiet so we
can hear better.

So please speak up, Mr. Budlong.

MR. BUDLONG: All right. Let's try it this way:

Court reporter, are you happy with this?

THE REPORTER: That's better.

MR. BUDLONG: Better, all right.

My problem with the Project Description was characterization of it has a 250-megawatt facility when, in fact, there's a (inaudible) factor involved taking it down to about a quarter of that. This was covered well in my testimony. I could go into further detail if you'd like.

HEARING OFFICER CELLI: Thank you. I actually did read your testimony, and I thought you did a good job. I'm actually interested in hearing a little more about that, but for our purposes right now, it sounds to me like that's Project Description, not Alternative, so I'll leave that to staff.

MR. BUDLONG: (Inaudible) because some of your alternatives assume that the alternative has to put out a (inaudible) 250 megawatts (inaudible).

HEARING OFFICER CELLI: Right. So in any event, do you have some sense of who he has -- your witness in this?

MS. HOLMES: Staff has added a witness to the
Alternative Section to discuss some of the issues or be available to discuss some of the issues raised by Mr. Budlong with respect to the distributed solar potential, and he is also available to address questions having to do with energy capacity.

HEARING OFFICER CELLI: Okay. So at this time, since this is really about the Project Description, which is really in staff's court, not the Applicant's, I'm going to basically treat staff as the proponent in this evidence. And so unless Applicant has a problem with that procedurally, Mr. Galati?

MR. GALATI: No, I do not.

HEARING OFFICER CELLI: Okay. Thank you.

So in other words, I'm skipping over from that to staff. So if you want to call your witnesses with regard to Project Description and Alternatives, we can --

MS. HOLMES: We need to find -- we need to find the remaining witness.

MR. GALATI: While we are -- if I could ask the committee, there were two things that we addressed in our Project Description written testimony. I don't know if you want to hear anything live about it. We're fine living on the pleadings.

We asked for two things. One was a global condition that dealt with being able to start limited
amount of work to begin our funding. It's explained in this.

The second is a global condition allowing the -- making sure that the verifications across the board allow timing to be negotiated between the CPM and the Applicant at the time of submittal of plans. This is language that we used during the energy crisis on a lot of projects where it was, for example, it would say submit a plan 30 days prior to construction or at a lesser time as mutually agreed between the CPM and the Applicant, project owner.

Because what we found is oftentimes the verification timelines are the amount that staff is going to need, assuming they're working on lots of other things, but if for some reason the staff member is available or could work on something else during compliance, they might be able to do that quicker. And if that -- my experience is that it happens any way. That you sit down with the compliance project manager, you lay down all the things you have to submit. Applicant says, I can do this one, this one, this one. This one's going to take me a little longer to do, do you need the full 60?

I just wanted the committee to understand that, and whether or not there could be an acknowledgement. We put it in our Project Description, you can consider it a
HEARING OFFICER CELLI: Well, let me just discuss this with you for a second.

I know that in Beacon there was some question about that, and we had to enable the project owner to commence five percent of the construction in order to qualify for the ARRA funding. And their way of dealing with that, as I understood it, was to -- was to refurbish a well. And that that was adequate to qualify for that five percent.

But we had to take some testimony from the cultural resources people because that was the only impediment that I was aware of to their ability to do that construction prior to the start of construction. That was the issue, the language of -- the definition of things, like start of construction, remote site mobilization.

And I wonder what -- so is this the same problem that we're faced with here, or do we have a different situation?

MR. GALATI: Yes, this is the same issue.

HEARING OFFICER CELLI: And is there -- would another like a qualifying well perhaps or that kind of thing, would that take care of it? What I really need to do are -- what are the impediments? Is it cultural or is it something bigger than that, more global, like the terms
as defined in general conditions?

MR. GALATI: Basically the problem is doing a cultural plan that -- for the entire site in order to get to do that construction. Those kinds of things take a lot longer and staff is allowed longer timelines for that, doing a drainage erosion control plan for the whole site as opposed to that minimal activity.

The point was we can prepare plans for that activity, get an interim approval to do it, prepare the rest of the plans, and that was the -- that's why we asked for it as a global condition. In some, may be practical to do that, some may not.

HEARING OFFICER CELLI: Would it be productive and useful, perhaps, to have the CPM in here? Do you understand, Ms. Holmes, what the problem we --

MS. HOLMES: I understand, yeah, I do understand the issue. And my understanding is also that we're meeting with BLM on a similar issue this week or sometime very soon. I think we don't -- we don't have a problem with the concept.

I'm not sure a global condition is the best way to deal with it, and I'm not sure I can get you anything more specific than that. We would like to try to work something out. As I said, we're not having a problem with
the concept, we're just -- I'm a little concerned about a
global condition. And I would like to have a chance to
talk with BLM to see what their approach is as well.

HEARING OFFICER CELLI: Yeah, but that doesn't
get -- what I'm trying to figure out is does there need to
be any sort of change in a condition or some language just
to enable.

And what happened at Beacon was there was this
one little remote corner that cultural pretty much said,
we sign off, there's no impacts here, you can do whatever
you want, that's a remote corner and that's not a problem,
because it was so disturbed. And that was where the well
was located. And so they were able to accomplish what
they needed to.

And there was testimony from Ms. Bastion with
regard to the ability to include some certain broad
language that enabled this commencement of activity, even
though it was before start of construction but after site
mobilization, or some timing like that.

MS. HOLMES: But it was project specific?

HEARING OFFICER CELLI: It was.

MS. HOLMES: Yeah, I don't know that we've
addressed that in this case yet. We'd be happy to try to
do so by next week.

HEARING OFFICER CELLI: Oh, boy.
MR. GALATI: I wanted to avoid bringing and opening up these conditions; that's why we propose it as a global change. And we wanted to make sure that at the CPM's direction. So again, it effects many. And some are no big deal, like the Air Quality Management Plan, the way we're going to handle dust and the types of things we're going to do when we start grading, it's going to be probably the same types of things we're going to do when we finish grading.

But when this comes to your drainage erosion control plan, you probably need to have certain best management practices right at that piece. And some of these things are phased, and they're big sites. And so you're going to submit a plan, very thick, that staff will have to review to do a very limited activity.

We'd like to submit a plan for that activity and then submit a global plan. And we could take a condition that said, you know, at the CPM's direction. We sit down and we go through it. It may not apply to every plan, but I think it would be difficult at this time to say, well, we have a problem with this one cultural issue, and, therefore, that's what should be -- this activity should be allowed. I think of it more as a global thing limited to these projects that are qualifying for our funding. And then also, the global insurance that the CPM can agree
to a lesser time as long as the CPM agrees, just an
acknowledgement of that.

    I believe that it's in the general conditions,
but there's a lot of confusion. I'd love it to be in the
record that the CPM, if he works out an agreement, or he
or she works out an agreement with the project owner, the
90-day timing verification doesn't mean you're not in
compliance, you can negotiate a different time based on
staff's availability and those items.

    MS. HOLMES: Staff has no concerns about that
particular issue.

    HEARING OFFICER CELLI: What I would like to do
is go off the record for a moment.

    (Recess.)

    HEARING OFFICER CELLI: On the record. Ladies
and gentlemen, thank you for your indulgence. From time
to time we go off the record, and it's very helpful to
have the committee confer on certain issues.

    What we're going to need to do is we're going to
ask the parties to workshop this issue because it is -- we
just don't have enough right now at this time to be able
to make a determination about how to deal with this.
Maybe this is something the parties can come up with quick
language, hopefully, and discuss it. I don't know how
you're going to be able to fit a workshop in between now
and the 21st, but we would need this thing to be resolved by then or at least have proposals on the table.

MR. GALATI: Well, yeah, there's a proposal in our revised opening testimony on Project Description with language. So I -- we'd be more than happy to discuss it, but I think there's evidence in the record that you can consider and agree or not agree. If we can get the parties to agree to that, we'll certainly try, but I don't want to delay the proceedings for that issue. But I would still like to preserve the right that I believe it's in the record and can argue my brief why you should adopt the wonderfully-crafted language.

HEARING OFFICER CELLI: And we have lunchtime today, too, coming up. We're thinking maybe in the next half hour or so. And you can all discuss it over lunch. What -- where we're at then is Project Description and Alternatives. And then, so, staff, who's going to call a panel?

MS. HOLMES: We do have a panel, and I'd like to call the panel up to the table.

HEARING OFFICER CELLI: Please come forward and be sworn.

MS. BELENKY: Could I just ask a time question?

HEARING OFFICER CELLI: Yes.

MS. BELENKY: Because we have one witness on
Alternatives, but I'm not sure what we think is going to be the timing right now.

HEARING OFFICER CELLI: Yeah, how much -- okay, let me ask.

Staff, how much time are we going to take on direct of the panel?

MS. HOLMES: 30 seconds?

HEARING OFFICER CELLI: How much cross, Mr. Galati, on this panel?

MS. HOLMES: Oh, no, five minutes.

MR. GALATI: Zero.

HEARING OFFICER CELLI: Zero cross.

And CURE would be the next. How much cross do you --

MS. KOSS: Zero.

HEARING OFFICER CELLI: Zero cross.

And, Ms. Belenky, how much cross of this panel?

MS. BELENKY: Well, this panel is now Project Description and Alternatives.

HEARING OFFICER CELLI: Right. So give me an estimate of how much time you need to cross-examine.

MS. BELENKY: I think probably only like five minutes.

HEARING OFFICER CELLI: Okay. Well, I think we'll be able this get panel out of here by 1:30, don't
you think? It's ten after 1:00 now.

Oh, I'm sorry, Mr. --

MR. SILVER: And I do think that Mr. Budlong -- I hope he's on -- may well have some questions of this witness panel.

HEARING OFFICER CELLI: He is on.

So, Mr. Budlong, how much time do you think you need to cross-examine this panel?

MR. BUDLONG: That's a good question. I don't know.

HEARING OFFICER CELLI: All right. I'll tell you what. I'm not going to corner you into a commitment here, but what -- let's see how far we can go with this panel; but I'm going to say for your benefit, Ms. Belenky, that the odds are we'll get your witness after lunch.

MS. BELENKY: Thank you.

HEARING OFFICER CELLI: And we're taking about a 45-minute lunch break.

So with that, have you been sworn in?

Please rise, raise your right hand.

(Witnesses sworn.)

HEARING OFFICER CELLI: Thank you. Have a seat.

Going from right, your left to my left, your right, please state your name and spell it for the record.

MR. VIDAVER: David Vidaver, V-, as in Victor,
---i-d, as in David, -a-, V as in Victor, -e-r.

HEARING OFFICER CELLI: Ms. Lee.


MR. MONASMITH: Mike Monasmith, M-i-k-e, Monasmith, M-o-n-a-s-m-i-t-h.

HEARING OFFICER CELLI: Thank you.

Staff, you may proceed.

DIRECT EXAMINATION

BY MS. HOLMES:

Thank you. The testimony I believe has already been admitted, and the qualifications of Mr. Monasmith and Ms. Lee were presented in the Revised Staff Assessment and the qualifications of Mr. Vidaver were presented in the Prehearing Conference Statement. Mr. Vidaver was added to the Alternatives panel in order to answer any questions that parties may have about the energy and capacity issues that Mr. Budlong has raised as well as questions about the availability of distributed generation.

I think that we will skip the rest of the questions and just ask Ms. Lee to present a brief summary of the staff's testimony.

MS. LEE: Thank you. I have a little bit of summary testimony here because the Alternatives section is different than all the impact analysis, so I'm just going
to run briefly through the alternatives that we looked at and where we came out at the end of the analysis and touch on a couple of the questions that came up from the parties in the proceeding.

First, we want it to be clear that the Alternatives analysis that was present here is entirely guided by CEQA and not by NEPA. There is a fair amount of NEPA language, the federal environmental law in the section, but it doesn't apply here. It remains from the Draft EIS that was BLM's component of our Staff Assessment from March.

So in the RSA we considered a total of 25 alternatives to the Genesis Project. Four of these were analyzed in detail, and an additional 21 are looked at and described but not in detail.

The four that we looked at in detail are the reduced acreage alternative, which essentially is half of the proposed project, the western half; the dry cooling alternative, which fortunately is no longer needed as an alternative; a private land alternative called the Galbrych, which would be on agricultural land south of Blythe; and the no-project alternative, which looks at what would happen if the project were not approved.

To clarify the analysis of those alternatives, three of the four alternatives were analyzed by each staff
author in their own sections.

So for dry cooling, reduced acreage and no project, the impact analysis of those alternatives is in other staff's testimony. The reduced acreage -- I'm sorry, the Galbrych alternative, the private land one, the impact analysis for that is in the Alternative Section. And the reason it's organized like that, again, goes back to the BLM and Energy Commission organization and the original Staff Assessment. So my testimony includes the analysis of the private land alternative, but not the impact analysis of those other three. However, I will summarize where those three came out based on staff's analysis.

The reduced acreage alternative clearly would reduce the impacts of the project. It's half as big, so it would reduce the -- basically all the impacts by about half, but it would not eliminate the significant impacts that remain with the proposed project, the cumulative, visual, and land use impacts that we discussed last night. The dry cooling alternative I'll skip.

The Galbrych alternative, again, is a private land alternative on agricultural land. It would eliminate a lot of the impacts to Biological Resources because there wouldn't be much natural desert habitat affected, and it would reduce the likelihood of effects to cultural
resources because it's ag land; but it would create a new
impact, the loss of productive ag land, which would not
occur with the proposed project, and it would also require
a different transmission intersection study because it
would connect to the transmission system at, again, the
Colorado River substation, but by a different transmission
line route.

We also looked at the no-project alternative.
The conclusion there is that this does not reduce the
impacts of the project because it would essentially shift
those impacts to another renewable energy project that
would still be required as a result of the state's need to
comply with the renewable portfolio standard.

The other 21 alternatives that we looked at are
addressed much more briefly in the Staff Assessment. And
these are presented either because they were suggested in
scoping comments, because the Applicant suggested them, or
because we wanted to give information to decision makers
about some other technologies that are available.

These include looking very briefly at other site
alternatives; other solar technologies, including rooftop
solar and distributed PV, other renewable technologies
like wind, geothermal and biomass, conventional
generation, natural gas, coal and nuclear and
conservation.
So the two issues that were raised by intervenor testimony that I'll just very briefly summarize, the first one is related to distributed photovoltaics as an alternative. There's no single definition of what is considered distributed PV. It clearly includes a lot more than just rooftop PV. The general idea, of course, of distributed -- any distributed power is that it's something that's generated near the point of use. So we generally consider it to be something up to about 20 megawatts. And this is something that can be built on about 200 acres of urban or suburban land.

California right now has between 500 and 600 megawatts of rooftop -- not rooftop, of distributed solar PV. We know that's going to continue to grow. There are several of the investor-owned utilities right now have major plans to increase their own use of solar PV.

Southern Cal Edison has a 250-megawatt purchase agreement, basically an agreement with the PUC to provide that much PV based on mainly industrial rooftops. PG&E also has a 250-megawatt commitment. One interesting thing that is part of guiding our concern about this alternative is that Edison system, the 250 megawatts proposed by Edison in early 2008 so far is up to about 3 megawatts of the 250 megawatts that they proposed to add.

So our conclusion about distributed PV, while we
know that it's going to be growing and we know that costs
are coming down and we clearly know that the environmental
impacts of PV are small, we've not considered it as a
viable alternative because there are several big
challenges to making a large increase in rooftop PV that
would be required to replace this project.

The first one is that there are limited levels of
government support; but even with that, the cost is very
high.

Second, with less than 600 megawatts of PV in the
whole state right now, we're just not comfortable that we
can get an additional 250 megawatts to replace this
project in addition to the other IOUs, commitments that
they've made to try and increase PV statewide.

Third, there would be required updates basically
to the electric distribution system to allow local
generation to be basically coming into a distribution
substation, rather than just having electricity go out of
the substation.

And finally, that really kind of a big-picture
concern is that we don't think it's appropriate that
distributed PV be the only solar technology that's
implemented in the state, because we think in order to
meet the state's RPS goals, there really is needed a mix
of both solar and other renewable technologies.
The second topic that I'll touch on quickly, and this ties into the Project Description questions that came up in testimony, relates to project objectives.

The testimony filed I think was really focused on the concern that the project objectives may too narrowly constrain the development of alternatives. CEQA requires that we define objectives in our document that represent the agency's objectives and not only the Applicant's objectives. And then it requires that when we look at alternatives, we look at alternatives that can feasibly attain most of the basic project objectives.

So there are two steps here. What we usually do is we look at the Applicant's objectives, and generally we broaden them somewhat because, for example, in this case, the Applicant included an objective that they use wet cooling; we did not incorporate that into our -- into our objectives. And they also included an objective that wanted to use solar trough technology, and we did not include that into the agency project objectives.

So we have six objectives that are retained in the Alternative Section. The objectives are also repeated with slightly different language in the Project Description in the Executive Summary. But that's some background.

So that concludes my statement.
MS. HOLMES: Thank you. The witnesses are available for cross-examination.

HEARING OFFICER CELLI: Cross by the Applicant?

MR. GALATI: None.

HEARING OFFICER CELLI: Cross by Ms. Koss.

MS. KOSS: No, thank you.

HEARING OFFICER CELLI: Cross by Ms. Belenky.

CROSS-EXAMINATION

BY MS. BELENKY:

Sorry. I just have a couple of questions on, I guess, it's the project alternative, Project Description alternative.

The dry cooling alternative in the Revised Staff Assessment mentioned a zero emission scenario for water; is that correct?

HEARING OFFICER CELLI: That would be zero liquid discharge?


MS. LEE: I'm not sure. Do you have a page number for that?

MS. BELENKY: Oh, yeah, I did have a page number last night.

It's -- sorry.

MR. MONASmith: I'm Mike Monasmith, project manager.
I think in general in terms of evaporation ponds, which I know is a discussion that Sarah from Biodiversity was interested in yesterday, and the reduced anticipated flow into the evaporation ponds as a result of dry cooling, we identified that would be smaller than those in the Project Description. Dry cooling, it would be a lesser number needed for each 125 meg unit. That would be potentially zero liquid discharge. But then there's also the ZLD, a liquid discharge technology, which was also discussed in the Soil and Water section. So I think there may be a little bit of confusion there.

But in terms of the lower level of groundwater that would be used, that dry cooling, water that would only be used for mirror washing and more industrial steam purposes, we anticipated a lower level for the evaporation ponds.

MS. BELENKY: Okay. I just want to clarify. My question was -- it is on page C.2-99, which I realize is part of the final section, but it's about explaining this alternative and what it would look like. And staff did say that they could achieve, they believed the project could achieve zero liquid discharge; is that correct?

MS. LEE: I guess I can't testify to that if it's in the water section. I can give just background -- or the Bio section, sorry.

The sort of generalized description that we've
presented for this alternative was one that was developed from looking at the Palen Project and Blythe Project, both of which were proposed with dry cooling. This is not a description that was proposed by the Applicant, of course, because they proposed wet cooling. So this -- what was presented here as an alternative may not be exactly what's implemented, because we just found out yesterday morning that the dry cooling is, in fact, going to be implemented by the Applicant, but I think we should not assume that what's presented here, which is really only a three-page description of dry cooling is the detailed description of what the Applicant's going to present.

MS. BELENKY: Thank you. That's very helpful, and, in fact, that is exactly my concern, that we don't have a clear Project Description at this point that takes into account this change; and so I'm just trying to make sure I understand what people -- what the staff believes they did put in the record as to this alternative and it's fleshed out sufficiently that we all know what we're discussing.

MR. GALATI: And I would object to that characterization as mischaracterizing the evidence. And if I may explain.

HEARING OFFICER CELLI: But before you do, actually, that was a comment without a question. And
there's no question pending. And she's on cross. And so
I'm just basically going to give it the weight it deserves
and let her ask the next question.

MR. MONASmith: Can I clarify, still?

HEARING OFFICER Celli: Well, let's -- you need
to respond to the question. So just maybe she'll ask the
question you want to answer; you never know.

Go ahead, Ms. Belenky, you have the floor.

MS. BELENKY: Yes. Could staff clarify what they
believe to be the current Project Description?

MR. MONASmith: Yes. And in terms of dry cooling
and zero liquid discharge or in general?

MS. BELENKY: I think, yes, we could narrow it to
the dry cooling alternative and how it's different than
the Project Description.

MR. MONASmith: Well, a little background. You
know, dry cooling is something that staff from the very
beginning, we stated so in our executive summary and
throughout the Staff Assessment, Draft Environmental
Impact Statement, Revised Staff Assessment, Notice of
Filings, that was our preferred alternative. We went to
great lengths in our analysis on dry cooling. And it is
within every single individual section, an analysis on dry
cooling.

In terms of the zero liquid discharge and zero
liquid coming out of the system and requiring evaporation ponds, a goal for that which may have been stated by the biologists, our team of seven biologists, a goal of zero liquid coming -- as a use of dry cooling, however, other sections identified that it would be a lesser amount, that we would make accommodations to appropriately handle any kind of excess water that would need an evaporation pond as a result of industrial purposes.

And so I think that you'll find the Project Description is specific. It covered not only the project as proposed for use of 1600 acre feet a year, a wet cooling set up, but also for dry cooling. And we went to a lot of length in this analysis, and something that, quite honestly, that we don't typically do under our CEQA analysis, but as a result of joining hands with BLM, doing the CEQA, NEPA analysis, doing the Staff Assessment, Draft Environmental Impact Statement, we really went above and beyond in our analysis specifically related to the preferred alternative, which BLM identified and which staff clearly stipulates throughout the document, which is dry cooling. So we're obviously quite happy that this proceeding has moved in that direction. And we feel the Staff Assessment, Revised Staff Assessment, it supplements to handle this inappropriate detail for CEQA.

MS. BELENKY: Thank you. Now, I just have one
question about the access road. And my reading of the
document, I didn't see any discussion under any
alternative of limiting access to that road by the general
public; is that correct?

MR. MONASMITH: The access road in terms of what
was (inaudible) by staff in the Revised Staff Assessment,
we refer to it as the spur road, is that --

MS. BELENKY: No, the main access road, the full
main access road.

MR. MONASMITH: The full main access road and
access to the general public?

MS. BELENKY: Uh-huh.

MR. MONASMITH: Yeah, with -- and I think Negar
Vahidi has spoken to this as well in the land use section
where we talk about rules that -- for BLM, BLM
administered land. That in terms of access, BLM obviously
has in the FEIS, their Final Environmental Impact
Statement, to be released in the next weeks and month,
will specifically address the issues that they're
overriding regulations in terms of public access.

Also, it's obviously a concern, the biologist
talked about that, Dr. Alan Greenberg spoke to the
Workers' Fire Safety Protection, and we feel we've
adequately addressed it in the Staff Assessment.

MS. BELENKY: I just want to clarify, yesterday
the land use panel said they did not consider the question.

        MR. MONASMITH: Again, I don't want to -- what I believe was said was that BLM in land use as the land owner on BLM-administered property, that they, in fact, would have, quote, unquote, the final say in terms of access to their land, in terms of public access, and that we would anticipate seeing that in the Final Environmental Impact Statement. Obviously it was something that was looked at. It may not have been a specific condition within land use, in the land use testimony, but obviously it was something that was, it terms of the overall analysis, looked at for recreation, for all over recreation information.

        MS. BELENKY: I'm sorry, I don't want to belabor this, but is your testimony that the Staff Assessment and the other staff documents actually consider limiting the access on this road to the public?

        MS. MAYER: Asked and answered. We discussed this extensively in workers' safety, we've discussed in land use.

        HEARING OFFICER CELLI: Overruled. It's cross. He can answer the question.

        MR. MONASMITH: I'm sorry, repeat it again. What was my testimony?
MS. BELENKY: I'm asking you if it is your testimony that the staff documents, the Staff Assessment actually consider limiting the access along this main access road to the public in order to limit impact to the environment.

MR. MONASmith: The reasoning for staff considering public access to this land may not have necessarily been -- the only reason may not necessarily have been biological impacts. We obviously discussed and were sensitive to the issues of opening up potentially new areas to -- with new roads and access points that would have potential biological consequences. We were going to be sensitive to this with the access road issue.

This came up in terms of conversations with BLM, the Riverside County Fire Department on a secondary access road, and we might need to access the solar fields from the westerly area that would go -- would exit off (inaudible) I-10 as opposed to Wiley and would head north through potentially-sensitive biological areas. And staff was very concerned about that. In fact, the reason was -- the primary reason why that access road idea was nixed, it didn't advance to the committee for consideration, was the biological impacts.

So staff's been extremely concerned about the biological access, biological impacts to the access road,
in addition to the fact that recreational users may potentially want to use this area and how we -- BLM, again, we defer to them on this area, this is their land, they are a multi-use agency, this is their purview. They do this as a matter of day in and day out managing this land for a multitude of uses including recreation, and we looked at that. I think that we have crafted conditions that will handle not only the biological impacts but the potentially cultural impacts, which we'll talk to next week and our testimony talks to. So it was -- it was a consideration, yes, staff did consider that in its analysis. And it, is in my opinion, captured within the Staff Assessment.

MS. BELENKY: I'm sorry, I think I asked you a yes or no question. I was really trying hard to --

MR. MONASMITH: Yes, staff considered the access roads to the solar field.

MS. BELENKY: Did staff's -- I think you already answered this at the beginning. I wish I had a transcript in front of me. I really am trying very simply to find out, and perhaps I should ask it this way: Can you show me where in the Staff Assessment or the Revised Staff Assessment the impacts of the use of the access road by members of the public and the increased impacts that will have on the environment or could have on the environment
by increasing off-road vehicle use in the back country, in the area around this site, six and a half miles off of I-10, where that is analyzed? Can you show me where that is analyzed within the staff document?

MR. MONASMITH: I cannot show you that, what you just said, where you would find that specifically stipulated within one of the nearly 2000 pages of staff's testimony, conditions and declarations.

I can tell you that it is a concern that the BLM, as a multi-use agency, in their Final Environmental Impact Statement and that the land use analysts have indicated that this is something that our biologists have considered, but in terms of specific recreational use that could potentially be opened up, how we appropriately deal with the desire of a member of the public to access McCoy Wilderness Area as a result of this new road, how that would be handled by BLM in consultation with this project proponent in order to assure that biological impacts, that is something that we obviously are concerned about. I think that it's really a question that goes to the BLM as the administer of this land, as a multi-use agency, where they mandate to handle these interests, recreational and protection and sustaining this public land really is a matter that I think is very important to them and one that you will see specifically addressed in the FEIS.
We talk about it as well in our testimony, but I can't necessarily point you to an exact page where you would find all of those different issues in one condition, only that the spirit of those are important to us, that we've addressed them, that we have not been oblivious to them or disregarded them.

MS. BELENKY: Thank you.

HEARING OFFICER CELLI: Any further cross-examination by CBD?

MS. KOSS: None at this time.

We've gone through all of alternatives now as well?

HEARING OFFICER CELLI: This is Alternatives and -- this is Alternatives and Project Description.

MS. KOSS: Thank you.

HEARING OFFICER CELLI: Thank you.

Mr. -- now, I note that it's 1:35. Should we -- see if we could do this in ten minimums and then take a break? Let's see if we can do this.

The last cross-examiner would be Mr. Budlong.

And, so Mr. Silver, let's see what we can accomplish here in the next ten minutes.

MR. SILVER: Okay. I'm going to defer to Mr. Budlong on this. I hope he's still there.

MR. BUDLONG: I am still here.
HEARING OFFICER CELLI: Go ahead, Mr. Budlong.

MR. BUDLONG: Mr. Celli, if you want to go to lunch and do this after lunch, that's fine by me.

HEARING OFFICER CELLI: Are you telling me that you suspect you'll go longer than ten minutes?

MR. BUDLONG: Could be, yes.

HEARING OFFICER CELLI: Okay. Well, I appreciate that. Why don't we just go off the record for a moment.

(Recess.)

HEARING OFFICER CELLI: We're back on the record. It's now almost 20 to 2:00. We're going to go to 20 after 2:00. So at 2:20, please be back in your seats, ready to go. We will begin with Mr. Budlong's cross-examination of this panel.

You're still under oath, you're still sworn. And we will see you all at 2:20.

MR. BABULA: Mr. Celli --

HEARING OFFICER CELLI: Yes.

MR. BABULA: Before you go, this is Jared. I just want you to know you had spoken earlier about meeting for a potential workshop or to discuss (inaudible) proposal. There is a workshop scheduled tomorrow, which is from 10:00 to 4:00, covers cultural and (inaudible) but (inaudible). I sent out some comments on -- the Applicant's comments on our (inaudible) time frame for
various CEC --

HEARING OFFICER CELLI: And for the record, this is Jared Babula from -- he's staff counsel.

MR. BABULA: Correct. So I know that the parties received staff comments last night and we had to (inaudible) time frame, but that could be a possibility (inaudible).

HEARING OFFICER CELLI: Thank you. I appreciate that. We will revisit that again probably when we get back this afternoon, but thanks for that information, Jared Babula.

And we are off the record, and we'll see you all at 2:20.

(Lunch recess.)
AFTERNOON SESSION

HEARING OFFICER CELLI: Folks, CURE is here. I have -- I think we have a representative from all of the parties. I've got Applicant, I have staff, I have CBD, I have Mr. Budlong's attorney Mr. Silver, we have Ms. Koss here, we have all of our witnesses who are still under oath. So as people straggle in, it's just the nature of this particular form of entertainment. Nobody wants to be here for the kick off.

So we are about to embark on Mr. Budlong's cross-examination of the panel. And we're having problems hearing him and have had problems hearing Mr. Budlong since we've started using WebEx, and so I'm going to ask the Applicant to please manage your people and have them -- we just need it to be quiet so we can hear Mr. Budlong.

And, Mr. Budlong, again, we're going to ask you to use your outside voice as you ask your questions.

So we're back on the record. And go ahead and begin your cross, Mr. Budlong.

CROSS-EXAMINATION

BY MR. BUDLONG:

Well, my first question is to the lady who described the project objectives and the alternatives.

HEARING OFFICER CELLI: Ms. Lee.
MR. BUDLONG: Ms. Lee. Basically, I think you testified that you did not accept as CEQA objectives the -- many of the Applicant project objectives, one of which was dry cooling. You used that as an example -- or wet cooling, excuse me.

The CEQA objectives came through as requiring parabolic trough technology; is that correct?

MS. LEE: That's not correct, actually. I think there may be some confusion because the objectives are presented several different places in the RSA. They're presented in the Executive Summary and in the Project Description where it essentially repeats the project objectives of the Applicant. But in the Alternative Section, the objectives are presented in section B-241 we present the Applicant's objectives, and B-242 we present the -- basically the energy commissioner, the CEQA project objectives. And in that section we do not repeat the parabolic trough.

MR. BUDLONG: Will you look at page 5 of the RSA where it talks about both project objectives?

MS. LEE: Right. Right. I don't have that in front of me, but I looked at it earlier this morning, and that is the Applicant's project objectives. And I know it doesn't state that, but it does say the objectives of the Genesis Solar Energy Project.
MR. BUDLONG: That's right, it does not state the Applicant's objectives. But I presume if you'll -- this describes the Genesis Solar Energy Project. And right there it does say with this objective, what is the (inaudible) utility scale, (inaudible) parabolic trough technology. If that's a point of confusion, then I don't know how you quite clear that up.

MS. HOLMES: I'm going to object to that --

MR. BUDLONG: -- (Inaudible).

MS. HOLMES: -- characterization of the testimony. It clearly states that the specific objectives and purpose of the GSEPS identified by the Applicant are to develop utility scale solar energy project utilizing parabolic trough technology. This is Exhibit 400 page A6. It's actually also the testimony of Mr. Monasmith. And I just want the record to reflect that that particular section that Mr. Budlong is citing is specifically identified as Applicant's objectives.

HEARING OFFICER CELLI: Sustained.

MS. HOLMES: And perhaps if the witness would like this in front of them.

HEARING OFFICER CELLI: That objection is sustained.

Mr. Budlong?

MR. BUDLONG: Yes.
HEARING OFFICER CELLI: When -- I know it's --
you're not on a speaker phone, are you?

MR. BUDLONG: Yes, I am.

HEARING OFFICER CELLI: Can you get on the
receiver?

MR. BUDLONG: Let me get off the speaker here.
Is that any better?

HEARING OFFICER CELLI: Yes, that's much better.

Thanks for doing that.

One of the problems you have --

MR. BUDLONG: Wait, wait, wait, wait, wait, wait.

HEARING OFFICER CELLI: Apparently your canary is
going.

MR. BUDLONG: Maybe that will help.

HEARING OFFICER CELLI: That helps a lot. Thank
you. And you sound much better.

The reason I wanted you to get off the speaker is
because when you're speaking to a speaker box, you can't
hear the incoming objection, and there was an objection
just now. You were both speaking at the same time, and
since we are trying to get a transcript of everything, we
can't have two people talking at the same time.

MR. BUDLONG: All right.

HEARING OFFICER CELLI: So the objection was
sustained. Did you hear --
MR. BUDLONG: Yes, I did hear that.

HEARING OFFICER CELLI: Okay, great.

Go ahead.

MR. BUDLONG: Can we go to section A-4, which is page A6. Section A-4 talks about CEQA's project objectives, A-5, and it also talks about developing utility scale solar energy project utilizing parabolic trough technology. Specific objectives and purpose of GSEP, as identified by the Applicant are, but this does come under the superior heading of CEQA Project Objectives. And these two sections make it look to be like the RSA has indeed adopted two things. One is parabolic trough technology, and the other one that I haven't mentioned yet is to put the project in an area of high solarity.

HEARING OFFICER CELLI: Okay. So your question is?

MR. BUDLONG: My question is does that indicate that it's CEQA's objective to use parabolic trough technology? And when I say that, I'm meaning section A4, it's headed CEQA Project Objectives.

MR. MONASMITH: Mike Monasmith, project manager. I'd like to speak to the process really by which we review an application for certification when they are submitted to the Energy Commission, and then development
of the Executive Summary and the Project Description.

And perhaps Ms. Lee can talk to the specifics of CEQA in that context, if you have a more defined or refined question in that regard.

When we review initial application for certification, each will state the objectives of the project in terms of goals, in terms of what the purpose, what kind of achievements the project may or may not have. Staff reviews that, we use our independent analysis. And oftentimes in reviewing these and looking at this project in terms of providing renewable energy, meeting the needs of the renewable standard in terms of being located in an area with high intense solar exposure, any listing of objectives, we make determination if, in fact, those are what we feel this project to be complete ASC document, in fact, speaks to. And then they're listed in terms of what we analyzed. And what we analyzed is presented. We make an independent analysis of that.

We then look in terms of impacts and compliance with laws, regulations, and standards, make an assessment, use our independent judgment, and confirm with the public intervenors, agencies, and others, and then make a call on the impacts, and then condition it appropriate and make sure there are no significant acts and that we're meeting our goals, protecting the environment, furthering economic
reliability and economic future of the state,
electricity's structure and its reliability and making
sure the public health and welfare are protected along the
way. So, you know, those are the goals that we look at.

And what we looked at in terms of this particular
project and solar trough technology was, in fact, it was a
solar trough technology proposal. It was projected to be
250 megawatts. All those we looked at, if it would, in
fact, comply with goals set up by the legislature and
signed by the governor in terms of renewable energy and
meeting the renewable portfolio standards and goals in
terms of that. And that's kind of the guidance that we
use in that regard.

So I don't know if that helps.

MS. LEE: And this is Susan Lee. Let me just
clarify one more thing.

The objectives that were used for assessment of
alternatives are presented in section B2. And as I
mentioned earlier, B-241 has the Applicant's project
objectives, and B-242 presents the Energy Commission CEQA
objectives.

And another thing that I mentioned in my initial
testimony was that the CEQA does not require that all
project objectives be met when you're evaluating
alternatives. It specifically says most. So if there is
one problematic objective or one that feels constraining, that is something that we always are open to looking at an alternative that meets most project objectives but not all.

But that said, the objectives that were retained under CEQA that are presented in B-242 do not require either solar trough or wet cooling, as I mentioned before.

MR. BUDLONG: Okay. Now, I think, Ms. Lee, in your testimony you mentioned that for -- I think it was for PV, there was limited government financial support and that would increase the cost of the project; is that correct? Is that what you testified to?

MS. LEE: I'm not sure that was the exact words, but I think that the point was that the cost of PV is one of the issues that is of concern to us as far as rooftop PV or distributed PV being a viable alternative to a utility scale solar project.

MR. BUDLONG: Did you analyzed the cost of PV with respect to the cost of the proposed project?

MS. LEE: Not in any detail. But we do have an energy expert here from the commission staff, David Vidaver, who can talk more about that.

MR. BUDLONG: I guess the question is to him then.

MR. VIDAVER: Your question, was it analyzed, and
Ms. Lee said not in any detail. So I'm afraid you'll have to ask another question of me. I'm afraid that's what Hearing Officer Celli will tell you.

MR. BUDLONG: Okay. Can you characterize how much higher the cost would be for PV compared to the proposed project?

MR. VIDAVER: It's -- I'll try. It's a little bit difficult because the cost of energy from the project is, unless the Applicant wants to reveal that here today, is not public information. He has a pending approval by the California Public Utilities Commission. The Applicant has a contract with Pacific Gas & Electric. And the price terms of that contract are not public.

What I can tell you is that we have information about the generic cost of utility scale, solar thermal, and in comparing that to the cost of various forms of distributed photovoltaics, despite recent substantial declines in the levelized cost of energy from the latter, the cost of energy from distributed photovoltaics remains somewhat above that of the costs that we would expect from Genesis. And given the location of alternatives to Genesis, being in the Pacific Gas & Electric service area, the cost difference would be even higher.

So does that go part way toward answering your question?
MR. BUDLONG: I was hoping you could quantify it.

MR. VIDAVER: I can -- I have a document in front of me upon which I would rely. It is solar photovoltaics performance and cost estimates done by a consultant to the Public Utility Commission's long-term procurement proceeding. It's a document that was produced on June 18th of 2010. It reflects the most current assumptions about the cost of both distributed and utility scale photovoltaics.

I need to look around the room to ask if I can refer to it. I have ten copies of it.

HEARING OFFICER CELLI: You can. And as an expert, you can certainly rely on any books, treatises, information that you would normally rely on to form your opinions.

MS. HOLMES: We have copies available if the committee would like to look at them. We didn't plan to introduce this as our own exhibit, but he is relying on it in response to cross. So it's up to the committee.

HEARING OFFICER CELLI: Well, it's -- it's really -- I'm going to ask you, Mr. Budlong, whether you want this document -- can you hold it up for me, Mr. Vidaver, so I can describe it to him? It looks like a --

MR. VIDAVER: Powerpoint presentation.
HEARING OFFICER CELLI:  -- Powerpoint that's probably a half an inch thick. And if you want, Mr. Budlong, I suppose you could make a request that we mark it in evidence and bring it in, but it may be subject to objection. And I'm personally disinclined to take it in, because I just don't see how it's going to make a difference in Genesis. But you go ahead, Mr. Budlong.

MR. BUDLONG: I imagine the document discusses utility scale photovoltaics.

MR. VIDAVER: Yes, sir.

MR. BUDLONG: And we're talking about distributed.

MR. VIDAVER: It discusses the levelized cost of energy from both utility scale photovoltaics and various distributed photovoltaics ranging from half megawatt rooftop projects to five to twenty megawatt ground bound and fixed tilt projects. And I can -- I will just -- I will give you two numbers that you can respond to from the presentation. In the Mohave Desert, the estimated levelized costs of energy from a utility scale thin film fixed tilt resource is on the order of 13 cents. A 0.5 to 2 megawatt fixed tilt rooftop resource located in the north coast of California, which is where most of the small rooftops that are in the PG&E service area are located, have a levelized cost of energy on the order of
28 cents. So the cost difference there would be roughly
14, 15 cents.

MR. BUDLONG: Is there any way we could compare
that with the proposed project?

MR. VIDAVER: Only if the Applicant graces us
with the price that he has negotiated with PG&E. And I
would wager that he is not willing to do that, but he can
tell you.

MR. GALATI: It's not that we're not willing;
we're not allowed, we're bound by our agreements.

HEARING OFFICER CELLI: Let me ask you,
Mr. Vidaver, is that presentation, that Powerpoint
presentation on the Internet?

MR. VIDAVER: My guess is that this presentation
is available at the California Public Utilities Commission
website, www.cpuc.ca.gov. It is -- I can send the exact
link to Mr. Budlong if he asks.

MR. BUDLONG: Yeah, I would appreciate that.

MR. VIDAVER: Will do.

PRESIDING MEMBER BOYD: I would -- this is
Commissioner Boyd.

I would suggest you might send him a copy or two,
since they've already been made. While it may not be that
relevant to this proceeding, it's obviously information
that would be of interest to him as he's obviously
interested in PV versus solar trough technology costs, economics thereof, what have you. It might prove to be informative for him.

MR. VIDAVER: Will do.

PRESIDING MEMBER BOYD: I think we can afford a stamp.

HEARING OFFICER CELLI: Mr. Budlong, you still have the floor. Go ahead.

MR. BUDLONG: I think also, Ms. Lee, you indicated in your testimony that something of -- maybe you can repeat for me. Updating the distribution system with distributed PV, and whether that was feasible and what the problems -- you testified to something, and it went by so quick, I couldn't copy it down.

MS. LEE: Actually, yes, that information was from a presentation made in the Ivanpah hearing by the Applicant's witness, Mr. Gray, who was a distribution engineer and made quite a long presentation about why the implementation of a lot of urban photovoltaics would have an effect on the distribution system, and especially distribution substations because they are -- you know, they were designed to have power come in and then go out to residences and users around the grid and not so much to have a lot of generation coming back and being redistributed.
So again, I'm not a -- I'm not an electrical engineer, but there was -- the concept makes sense to me; and it's my understanding it's not infeasible, but it takes time and money in order to adjust the transmission system, the distribution system so that it works properly. And I'm sure Mr. Vidaver can make that more technical.

MR. BUDLONG: Did you analyze how the company, the power companies that are doing distributed are able to solve this problem?

MS. LEE: I didn't, but I thought it was interesting. And I don't know exactly why it is that Edison is moving so slowly on its implementation of their 250-megawatt commitment, which was intended to be primarily industrial rooftops, and they in two and a half years have made almost no progress at all. And they're the ones with the best ability to make something like that happen. So the published data just is that they're up to something like three megawatts, but I don't know the background as to what's holding them back.

MR. BUDLONG: So you did not do an analysis as to what problems they're having and industrial companies (inaudible).

MS. LEE: That's correct.

MR. BUDLONG: I think also in your testimony you mentioned that many technologies are required in order to
meet California's obligations, and solar trough is one of them. And that's one of your reasons, one of the challenges.

MS. LEE: I don't think I said solar trough was one of them. It's my opinion that utility scale solar is part of the mix of renewables that will get California to 33 percent, but I don't think I made a statement in particular about trough.

MR. BUDLONG: Okay. Like I say, it went by fairly fast.

MS. LEE: Sure.

MR. BUDLONG: I had trouble taking notes. Is it -- and I think you used that as a reason why this project prefers solar troughs.

MS. LEE: The example -- well, yeah, that was one of the reasons that I presented for why the solar photovoltaic, distributed photovoltaic alternative was not carried forward as an alternative to be fully considered. You know, it's an argument that if you carry it beyond a single project means that essentially you would have no utility scale projects at all because you could theoretically do everything with distributed PV; and I don't think there's any evidence out there that that really is feasible. I mean, there is data saying there are 60,000 megawatts of rooftops available in some way,
but there is no data that I know of that really says that
that is achievable within any small number of years.

MR. BUDLONG: I think the rest of my comments are
taken care of in my testimony. I can ask you about
biomass because I think there was a bad calculation there
in that, in the biomass analysis. It looked like the
biomass was rejected because you couldn't get
250 megawatts from it, whereas indeed we're only using 25
percent of 250 megawatts.

MS. LEE: In the big picture, the biomass was
rejected because it does have a lot of impacts that are
considered in addition to -- in a comparison to solar.
The question on the capacity factor and biomass, I think
Mr. Vidaver's prepared to address. But I think in the
bigger picture, from the environmental perspective, when
you compare a biomass facility with a solar facility, we
looked at issues relating to waste and air emissions and
toxic emissions and things like that. So that is one of
the factors we considered. But Mr. Vidaver in particular,
I know, is prepared to address the capacity issue.

MR. VIDAVER: Mr. Budlong, you make a very valid
point that the energy from -- the amount of energy that
Genesis will provide is equivalent to the amount of energy
that roughly a 70-megawatt biomass facility would produce.
But the comparison of a solar project to a biomass project
is complicated by the fact that Genesis will provide about 250 megawatts of capacity on peak. So at 4:00 in the afternoon on the hottest day of August, it's going to make a rather significant contribution to keeping the lights on when we all have our air conditioners running.

The 68-megawatt, 70-megawatt biomass facility, while providing an equivalent amount of energy, in order to provide the same amount of capacity and the same contribution to keeping the lights on on the hottest day of the year would have to be accompanied by a 180-megawatt gas-fired peaking power plant. And the impact of that plant would have to be considered if we were to compare them on that basis.

So it's not an easy matter to compare the impacts of two disparate technologies based solely on the capacity and solely on the energy they have to be combined, and it wasn't explicitly clear in one section of the Staff Assessment. Perhaps the wording could have been a bit better.

MR. BUDLONG: I guess my problem is that I didn't see any of that discussion in the biomass discussion.

MR. VIDAVER: Perhaps we should have -- I think we might occasionally make the mistake of assuming that the reader is somewhat familiar with concepts that, based on our professions and years of experience, we think to be
somewhat simple and easy to understand and occasionally fail to realize that they're not.

MR. BUDLONG: All right. I have no more questions.

HEARING OFFICER CELLI: Thank you very much, Mr. Budlong.

Any redirect by the staff?

MS. HOLMES: No.

HEARING OFFICER CELLI: Okay. Then we can dismiss this body of witnesses.

Thank you for your testimony today. This concludes the discussion -- well, this concludes staff's case in chief.

Well, this concludes staff's case in chief regarding Alternatives and Project Description. I guess we're with CURE next.

Do you have a witness?

MS. KOSS: We do not.

HEARING OFFICER CELLI: Okay. Then we're on to CBD.

Do you have a witness with regard to Project Description and Alternatives?

MS. BELENKY: We discussed this with the other parties, and our witness, Bill Powers, is available, but there was no cross-examination, and as long as the panel,
the commission doesn't have any additional questions, I can get him on the phone if you do, we would just accept the testimony that's already in the record.

HEARING OFFICER CELLI: Okay. And so Applicant, that's acceptable to you to submit on declaration?

MR. GALATI: Yes.

HEARING OFFICER CELLI: And staff?

MS. HOLMES: I beg your pardon?

HEARING OFFICER CELLI: That it's acceptable -- that Mr. Powers is available for cross, and did you want -- but CBD is offering to submit his declaration.

MS. HOLMES: That's acceptable.

HEARING OFFICER CELLI: Okay. And, CURE, any objection?

MS. KOSS: No.

HEARING OFFICER CELLI: Mr. Silver?

MR. SILVER: No objection.

HEARING OFFICER CELLI: Okay. Thank you. Then that will be the way that we'll do it. And I don't believe the committee has any questions of Mr. Powers, so --

MS. BELENKY: I just want to make clear, he would love to come and he loves to talk to you because you understand what he's saying. And when he goes on like that sometimes, I don't know what he's saying. But I
thought in the interest of time everyone would prefer to
take it on the record.

HEARING OFFICER CELLI: Thank you.

PRESIDING MEMBER BOYD: I know and enjoy

Mr. Powers. I think I could recite his presentation.

HEARING OFFICER CELLI: So with that,

Mr. Budlong, you're the last remaining person who wanted
to put on some evidence with regard to Alternatives and --
Project Alternatives and Project Description.

MR. SILVER: Well, my understanding, correct me
if I'm wrong, Mr. Budlong, but I think this discussion has
been presented in the course of this testimony, which is
in evidence. He has analyzed the alternative discussion
but does not have any witnesses with respect to
alternatives -- other alternatives.

HEARING OFFICER CELLI: Okay. Did he intend to
testify in any way to supplement what he's already
submitted?

MR. BUDLONG: No. I think my testimony, my
written testimony is sufficient.

HEARING OFFICER CELLI: Thank you.

MR. BUDLONG: There's been no rebuttal to it,
except for one point which I'm not challenging.

HEARING OFFICER CELLI: I'm sorry, you sort of
faded out. One point that what?
MR. BUDLONG: Which I'm not challenging.

HEARING OFFICER CELLI: Okay. Thank you. So with that then, we will declare at this time the record closed on Project Description and Alternatives.

That takes us -- so all we -- oh, to be clear, did we receive all the evidence on socioeconomics? That's in the record. We don't have to do socio next time?

MR. GALATI: That's correct. I believe it was moved into the undisputed topics and entered all at once.

HEARING OFFICER CELLI: Okay.

MS. HOLMES: That's correct.

HEARING OFFICER CELLI: That, according to my list, my running list here, we have Transmission Systems Engineering, which we will take next, and that's all, because what remains is cultural resources, which we haven't heard at all. And I think there might be motions which we will entertain after TSE is heard, with regard to Bio and possibly Soil and Water for some residual conditions, and clean up evidence as needed on the 21st.

Is that the extent of it?

MS. HOLMES: Well, there will be Cultural and Air Quality as well.

HEARING OFFICER CELLI: Oh, air quality, that's what it was. Air quality, Cultural, possibly Bio, and possibly Soil.
Well, very good. Let's go ahead and -- you know, Applicant, did you have witnesses on TSE?

MR. GALATI: I would make as an offer of proof to see if the committee wanted, we've agreed with the conditions of certification in a filing on the Transmission System Engineering, I think rebuttal testimony to, I believe, Appendix A, which was adopted about the Colorado River substation. We filed in our testimony that we ask the committee to look at Exhibit 62, which is -- is that the exhibit -- no. Yes, we wanted the committee to look at Exhibit 62 for a more accurate description we thought of the Colorado River substation action.

HEARING OFFICER CELLI: Okay. So essentially you're offering to submit your testimony by declaration on your Exhibit 62.

MR. GALATI: Correct. It's already into evidence. I can bring it -- yeah, it's already into evidence. I don't have anything to add. Those are the only related issues.

HEARING OFFICER CELLI: And who was the proponent; who is the sponsor?

MR. GALATI: Mr. Stein.

HEARING OFFICER CELLI: Okay. Any need on behalf of staff to cross-examine, cross-examine Mr. Stein on --
MS. HOLMES: No.

HEARING OFFICER CELLI: Thank you.

Ms. Koss, any need to cross-examine Mr. Stein on the issue of Transmission Systems Engineering?

MS. KOSS: No.

HEARING OFFICER CELLI: CBD, Ms. Belenky?

MS. BELENKY: No, thank you.

HEARING OFFICER CELLI: And --

MR. SILVER: No.

HEARING OFFICER CELLI: Thank you, Mr. Silver, on behalf of Mr. Budlong.

So with that, then we will move to staff. And do you have a witness to call?

MS. HOLMES: We have two possible witnesses. One is the witness who prepared the TSE section of the Revised Staff Assessment, and the other is the person who prepared the Appendix A that addresses some of the impacts associated with the substation expansion. So we don't really know what people would like to cross-examine on.

HEARING OFFICER CELLI: According to my notes, I may have this wrong, I had that CURE was the -- wanted to cross-examine on TSE.

Is that correct?

MS. KOSS: I have no cross.

HEARING OFFICER CELLI: Okay. So CBD, did you
want to cross-examine on Transmission Systems Engineering?

    MS. BELENKY: I don't believe so. I think there's some confusion because the biological surveys were brought in at the same time on that area. And so it's not really a transmission issue. It is biological impacts of the increase in size of that substation.

    HEARING OFFICER CELLI: Okay. But that, now, was that evidence handled in Biology, Biological Resources? We're talking about the Colorado River substation.

    MR. GALATI: Yes. The Colorado River substation, there was a description provided, and then there was an analysis done in TSE Appendix A, and I believe that that analysis included all the sections, the environment sections in one place. Is that -- that's my understanding.

    MS. MAYER: My recollection is that Susan Sanders also conducted some detailed analysis within the Biological Resources section.

    MS. HOLMES: In fact, we had testimony about that yesterday. We had -- there was cross-examination of her about that yesterday.

    MR. GALATI: I'd like Mr. Stein to be able to get -- provide some clarification for the committee. Is that okay?

    HEARING OFFICER CELLI: Certainly.
MR. STEIN: Kenny Stein. When I looked at the supplement that came out, it looked to me appropriately so that in Susan's section on Biology she focused on aspects of our project, which meant focusing on the six poles and the spur road and a few other things. But in terms of impacts to the Colorado River substation expansion, that was put and addressed over in the TSE Appendix A.

When you go over to TSE Appendix A to look at how they addressed impacts to Biological Resources, it, unfortunately, was incorrect. It did not incorporate the biological impact assessment that we had submitted on the Colorado River substation on June 18th. That's why in our rebuttal we tried to correct that by stating that TSE Appendix A needed to be revised to incorporate the biological impact assessment that we had provided on June 18th.

Does that make sense?

HEARING OFFICER CELLI: Yes. It does to me.

I don't know, Ms. Belenky, does that make sense to you?

MS. BELENKY: It does; but the only thing that I'm not clear is that Biological Impact Assessment, is that currently an exhibit in the record?

MR. STEIN: It is. It's in our --

MS. BELENKY: Okay.
MR. STEIN: It's in our June 18th --
MR. GALATI: Exhibit 62 perhaps?
MR. STEIN: -- supplement. And I don't have the
exhibit number.

HEARING OFFICER CELLI: It's in the rebuttal
testimony?

MR. STEIN: It's not -- it was not rebuttal
testimony.

MR. GALATI: It was Exhibit 62, supplemental
information. And in that was a description of the spur
road and a description of the Colorado River substation
along with analyses in Bio, Cultural, Transmission Line
Safety, Nuisance, Transmission Systems Engineering, and
Workers' Safety. At least it was relevant to those areas.

MR. STEIN: That supplement included Biological
Resource impact analysis and the Colorado River substation
expansion and six poles and other things. And when it
came out from staff, it -- the Colorado River substation
expansion discussion, TSE Appendix A just somehow missed
that.

MS. BELENKY: So if I understand, we have the
Applicant's submission but not one from staff that's
directly on point. I just wanted to make sure what's in
the record.

HEARING OFFICER CELLI: Okay. And so it sounds
to me like you've got the Applicant's submission by way of
that, what is Exhibit 62, supplemental testimony, but it
also sounds to me, if I'm not mistaken that staff's
biological analysis of the Colorado River substation is in
Transmission Systems Engineering section, not in the
Biological Resources section.

Ms. Belenky: That might be why I missed it.

Hearing Officer Celli: Do I have that right or

wrong?

Ms. Holmes: Susanne Phinney, are you on the

line?

Ms. Phinney: Yes, I am.

Ms. Holmes: Can you offer any clarification?

I'm not quite certain -- I want to make sure we get this

right.

Ms. Phinney: I believe that that bid has the

biological survey data for the station's expansion when we

prepared the Transmission Systems Engineering Appendix A

and that it was dealt with. We did not have --

Ms. Holmes: There is a --

Ms. Phinney: -- (inaudible) information.

Ms. Holmes: There is a section of Biological

Resources in the -- in the supplement, which is

Exhibit 403, that includes Golden Eagle survey results,

secondary access road, distribution telecommunications
line, redundant telecommunications line, six pole
transmission line extension, so -- and removal of the toe
and changes to --

MR. STEIN: And you can see that the Colorado
River substation expansion is specifically missing from
that list that you just mentioned.

MS. HOLMES: I believe that's in the Biological
Resources section of the Staff Assessment.

MR. STEIN: Yes, but unfortunately it did not
include the information from our supplement.

MS. HOLMES: I see what you're saying.

HEARING OFFICER CELLI: Okay. So where are we to
find the discussion -- the staff's assessment of the
Colorado River substation in the RSA or any evidence?

MS. HOLMES: Many places, unfortunately.

HEARING OFFICER CELLI: In the evidence I would
say.

MS. HOLMES: So there is a discussion that
Mr. Stein says does not include the information contained
in Exhibit 62, the analysis that doesn't reflect that
information is included in the RSA, which is section 400,
with respect to the substation.

There's also a section in the supplement, which
is Exhibit 403, that addresses all of the other
information in Exhibit 62 except for the information you
provided about the substation.

Did I get that correct?

MR. STEIN: You did. I'd like to state that what we provided on June 18th was a little more detail on Biology for the Colorado River substation expansion, but we had provided earlier some information on that and we felt actually sufficient amount to -- that staff could use in the Revised Staff Assessment.

The Revised Staff Assessment did -- the Revised Staff Assessment, not the supplement earlier, did address the Colorado River substation expansion, but they felt that they needed a little bit more detail, and that's what we had provided.

MS. MAYER: Thank you.

HEARING OFFICER CELLI: Okay. So --

MS. MAYER: It's C.2-125.

HEARING OFFICER CELLI: So, Ms. Belenky, then you should have all of that.

MS. BELENKY: I think so. And I know that we did look at the Applicant's piece of it; so I just wanted to make sure because there does seem to be a little bit of a -- there's a little bit of unclarity because that substation approval is not going to be done by the CEC, it's going to be done by the CPUC, and yet it is to some extent a connected action with this.
HEARING OFFICER CELLI: I understand what you're saying. And what I think -- there is analysis in the record; we have that. We have whatever analysis there is, is in the record and we know now where it is, 400, 403, and 62.

So the question before us now is that for all of the information contained within the umbrella of the Transmission Systems Engineering section, whether you needed to cross any witnesses that the staff is calling.

MS. BELENKY: No. Now that I understand that the staff believes their analysis is contained in the record. I don't have any other questions.

HEARING OFFICER CELLI: Thank you.

So then, Mr. Silver, on behalf of Mr. Budlong, do you need to cross-examine the witnesses with regard to Transmission Systems Engineering?

MR. SILVER: No.

HEARING OFFICER CELLI: Okay. And so who did I forget? There's no cross?

So with that then, we've already received all of the evidence as relates to Transmission Systems Engineering.

I just want to say that Mr. Hesters has spent the night here. And has been waiting for his shot at the airwaves. And sorry about that. Thanks for being here.
If it's any consolation to you.

Then, CURE, do you have any Transmission Systems Engineering evidence, direct evidence to put on?

MS. KOSS: No.

HEARING OFFICER CELLI: And I don't know if I've already asked you this, but is there any direct evidence from CBD?

MS. BELENKY: No.

HEARING OFFICER CELLI: And any direct evidence from Mr. Budlong?

MR. SILVER: No.

HEARING OFFICER CELLI: Okay. Then we have finished Transmission Systems Engineering.

MR. GALATI: Excuse me, Mr. Celli. I have a procedural problem. And that is that I have, I thought, two pieces of testimony were included in one of our area's testimony submittals, including one I represented in Socioeconomic Resources, which I now see was docketed on Friday but did not make it on to my exhibit list.

It is a simple test -- it is a simple document that says we agree with the staff analysis. I have it coming over to me now and would ask you to bring it into the record, or I can put a witness right there to say it. And you don't need a written document. That's all it says. The opinion is we reviewed the RSA and we agree
with the analysis.

The second document is the one I referred to in transmission engineering, which said -- which was rebuttal to the Appendix A that said we reviewed it, please use Exhibit 62 in the description. I can bring in a witness to do that. I don't need anymore document exhibits, unless you would prefer to.

It was docketed and served on the parties, but I failed to mark it as an exhibit number and take care of that on Monday morning.

PRESIDING MEMBER BOYD: Well, I have the document with the docket stamp.

HEARING OFFICER CELLI: Genesis, LLC, rebuttal testimony, Transmission Systems Engineering?

MR. GALATI: Yes, that was docketed, that's -- that's a plus.

HEARING OFFICER CELLI: Docketed July 9th?

PRESIDING MEMBER BOYD: I can't tell which one of your late Sunday night e-mails I was reading, or your Friday night e-mails.

MR. GALATI: I appreciate that.

PRESIDING MEMBER BOYD: I do print these things.

HEARING OFFICER CELLI: So what's your pleasure? Do you want to put it on oral testimony, or do you want to just submit the documents and let's hear from the parties?
MR. GALATI: If the parties would not object, I will have the documents submitted. They were served. I don't know if anyone needs to see a copy of it now to make sure that I am not misrepresenting what they said, but I would like to mark the next in line, and when they come, provide them to you or have leave to provide them to the hearing office if the hearing adjourned before I get them.

HEARING OFFICER CELLI: So according to my calculation, next in line is Exhibit 69.

MR. GALATI: Correct, 69. And I'll identify it for the record. It is the rebuttal testimony from Genesis Solar, LLC, relating to Transmission System Engineering dated July 9, docketed July 9.

HEARING OFFICER CELLI: Okay. And the other?

MR. GALATI: Exhibit 70, which is revised opening testimony for Genesis Solar, LLC, relating to Socioeconomic Resources. Docketed on July 9, dated July 9 and docketed on July 9.

HEARING OFFICER CELLI: Now, staff, have you had chance to receive and review these records?

MS. HOLMES: I'm sure I have had a chance. Have I taken advantage of that chance; the answer is no.

HEARING OFFICER CELLI: Well, I just wanted to make sure that this isn't some new something that is completely --
MS. HOLMES: If Mr. Galati says that what those
documents are is accepting the staff conclusion on Socio
and TSE, I am willing to accept his representation that
that is so.

HEARING OFFICER CELLI: Okay. And so there's no
objection to the receipt of these documents into evidence?

MS. HOLMES: No.

HEARING OFFICER CELLI: Okay. CURE, any
objection to Exhibit 69 or 70 being received into
evidence?

MS. KOSS: No.

HEARING OFFICER CELLI: CBD, any objection to
Exhibit 69 or 70?

MS. BELENKY: No.

HEARING OFFICER CELLI: Any objection, Mr. Silver?

MR. SILVER: No.

HEARING OFFICER CELLI: Okay. Then Exhibit 69
and 70 marked for identification will be received into
evidence as 69 and 70.

(Thereupon, Exhibits 69 and 70 were marked for
identification and received into evidence.)

MR. GALATI: Thank you, Mr. Celli; and, thank
you, parties.

HEARING OFFICER CELLI: Thank you, all.
So that means that we just finished Transmission Systems Engineering.

MS. HOLMES: I'd like to make one point about that, and that's that we still don't have a Phase 2 study, which we had hoped to have by now. We can move forward without the Phase 2 study; obviously the Phase 2 study identifies downstream facilities. And there is a potential problem the committee will have to deal with if that, in fact, is the case. Staff always prefers to have those studies in hand before the record is closed so that we can --

HEARING OFFICER CELLI: This is a great opportunity for you to bring Mr. Hesters up, make his wait worth his while, so he can explain to us about the Phase 2 study. And I guess we will have you sworn.

Mr. Hesters, please raise your right hand.

(Witness sworn.)

HEARING OFFICER CELLI: Please state your name and spell it for the record.

MR. HESTERS: My name is Mark Hesters. And it's M-a-r- -- Mark with a K, last name is Hesters, H-e-s-t-e-r-s, exactly as it sounds.

MS. HOLMES: Can you explain what your responsibilities with respect to this project?

MR. HESTERS: I was a coauthor of the
Transmission System Engineering testimony.

HEARING OFFICER CELLI: Is your mic on?

MR. HESTERS: It looks like it is. I can try and bring it closer.

HEARING OFFICER CELLI: That's much better.

Thank you.

MR. HESTERS: And I'm not exactly sure what question I'm responding to at the moment.

HEARING OFFICER CELLI: Phase 2 studies status.

MR. HESTERS: I don't have the Phase 2 study. I understand that the ISO and Southern California Edison were about a week late in providing them to the generators for the Applicant. There is also an ongoing issue with what we call critical energy infrastructure information and how that relates to confidentiality and our process. And that's hindering the Applicant's ability to submit them to us.

HEARING OFFICER CELLI: That's not unique to this application, is it?

MR. HESTERS: No.

HEARING OFFICER CELLI: So what have we been doing in other situations like this?

MR. HESTERS: We, actually, for the Phase 1 study, it was an issue that we had when we when we had -- when the Phase 1 studies were submitted. And the Phase 1
studies came in with applications for confidential
treatment here. Those were actually even submitted
multiple times and often -- and were denied. That's where
we are with those.

There is an issue in the -- and this is just in
discussions, that the generators feel like they are -- I
don't want to say liable if they provide that data to us
and it then becomes public. And it's probably better for
the Applicant to explain that than me.

HEARING OFFICER CELLI: Mr. Galati, please.

MR. GALATI: I certainly can. This has actually
been an issue since data adequacy on the Phase 1 cluster
projects where at some point between the filing of one
project and the filing of another project. SCE made it
very clear that they considered it to be a violation of
the non-disclosure agreement if the Applicant provided the
Phase 1 study.

And so in two projects I'm involved with, an
application for request for confidentiality based on SCE's
assertions was placed over the entire study since the
bottom of the study had a disclaimer. And it was
counsel's office did not want to grant it confidentiality
in its entirety. So there became a long discussion about
what was confidential and what's not. And SCE's position
was it all is.
And so our position, as an applicant's claim, was it has to be confidential if we're going to be held liable for giving it over and violating our agreement. Somehow, since there was a study that the energy commission got submitted before there was clear direction not to provide it, since it was the same study because it was the Phase 1, we got through data adequacy and moved forward on Phase 1.

I was hoping that somehow this issue would be worked out before the Phase 2 came out. And that I know there was ongoing conversations between Mr. Hesters and SCE and Cal ISO, and apparently SCE is still taking the same position, because now that the Phase 2 is out, SCE has instructed us as well as the Solar Millennium Projects that that is confidential.

If the energy commission counsel would receive it and grant it confidential treatment, we could provide it right away, but it was -- looked like we were going to head down that same path again, and that's seems to be an impasse.

You also know my personal opinion that you've heard many times and rejected is that the commission does not need to go forward, does not need to have the Phase 2 to go forward. And in this case, I would give another reason. The Phase 2, the way the Phase 2 upgrades,
downstream upgrades work, the Genesis Project does not go forward; the same upgrades will occur as -- if the Genesis Project is the only project to go forward, that's the way the cluster works. The question is who pays for it.

So this is very much unlike what we normally deal with when we have a system impact study and a detailed facility study where we have a report in front of us that say exactly what the foreseeable consequences of this project are. Now that there's a cluster study I think the commission can rely on from a CEQA perspective, is that this project does not cause those upgrades. Those upgrades will occur without this project. And allow the PUC to comply with CEQA for each and every one of those downstream upgrades, as those downstream upgrades have to be permitted, and how they'll be permitted in chunks, in timing, we don't know what those are.

And I know this is a departure from what the commission has normally done, but I think there is a path forward on CEQA, and I also believe for the same reasons I believed before, the path forward on LORS is requiring the interconnection agreement. That's all I can come up with at this moment.

COMMISSIONER WEISENMILLER: It does seem like the problem with my understanding is part of the Phase 2 studies included stability analysis, and I don't -- that
depending on the results of the stability analysis, that may or may not have implications for staff's assessment.

    MR. GALATI: Yeah, I think that might be better for Mr. Hesters, because that's far beyond.

    MR. HESTERS: I actually haven't seen a Phase 2 study yet, so I don't know what exactly they're going to contain or what they're going to look like. I haven't seen them for any projects.

    COMMISSIONER WEISENMILLER: I guess in terms of the factual stuff, so what you've said, Scott, is basically they're done, they've gone through the ISO process, the Applicant has those, but the issue is this confidentiality question; is that correct?

    MR. GALATI: Yeah. It is two things. The confidentiality question, and also the obligation of the commission to include in its license an analysis from a CEQA perspective of the effects of those downstream upgrades, which I also find to be problematic, again, as to how that will be accomplished at this late date without delaying the projects. And so that's why I went into offering, again, that here's a unique situation with a Phase 2 study, because those upgrades will occur without the Genesis Project.

    So I don't believe -- I believe the commission can find as a matter of law from CEQA that those are not
impacts that need to be evaluated.

COMMISSIONER WEISENMILLER: Yeah, I think that may work. Sort of thinking through in the Sunrise case where the ISO was reviewing Sunrise, but they did not only power plant studies, but they did a number of stability studies. And certainly the stability studies got to -- mitigation measures really got to the question of what alternatives the PUC could consider to be viable or not viable, again, because different stability issues were there. And my impression has been that part of what ISO is going through with similar stability studies for that cluster, and so, again, what those -- so again, far beyond a simple power flow study.

MR. GALATI: And that would make sense because -- that would make sense because of how the cluster is looked at.

And again, just also to reinforce the CEQA issue, is the upgrades are from the cluster, and the cluster includes CEC commission projects and non-CEC jurisdiction projects; yet the upgrades are going to occur without or with all of them. So they're going to happen. Even if only one project in the entire queue were to go forward, the question is how much would SCE pay versus how much the Applicant -- the proponent of that project would pay. That's how the current system works.
PRESIDING MEMBER BOYD: Mr. Weisenmiller, I don't think we can resolve this in the context of this siting committee, but I'm glad you chimed in because my thinking was to turn to you as a member of our siting committee as well as our transmission committee and suggest that we need a little internal discussion on process and procedure; something new has happened that's not acknowledged by our process, and we need to see if we can quickly find a way out of this.

There may be some correspondence between us and the ISO with regard to each one of these situations that clears a hurdle for us, or there may be a way to bring confidentiality; there's a host of different things we could look at pretty quickly.

COMMISSIONER WEISENMILLER: Exactly. I was going to ask one more question.

Is that -- I assume you're in the midst of negotiating with Edison and the ISO on this; and the question is will that ultimately be filed in this docket?

MR. BUSA: We actually have 30 days to have our first meeting, would be ISO and SCE on the study results. That has not yet happened. That will be, and we expect them to tender an LGIA about that time. And then I believe we have 90 days to come to conclusions on the LGIA. So that then would be filed with FERC.
COMMISSIONER WEISENMILLER: And do you intend to try to have it approved by FERC before financing? Oh, I guess you're not -- you're doing (inaudible) financing, so you don't have to have the LGIA necessarily approved.

MR. BUSA: That's correct. We don't necessarily have to have one approved before financing.

COMMISSIONER WEISENMILLER: Okay.

MR. GALATI: And Commissioner Weisenmiller, to answer the second part of the question, yes, it will be filed in this proceeding as a compliance document with the staff's conditions. The certification requires the filing of that LGIA when it is executed.

PRESIDING MEMBER BOYD: Mr. Hesters, you're dying to say something.

MR. HESTERS: Well, I am in conversations with Edison, trying to figure out which parts of the Phase 2 study are actually critical energy infrastructure information and which aren't. They are supposed to be going through and redacting the parts that are and creating a document that could come here that wasn't -- wouldn't have to be confidential. I'm hoping that happens quickly, but I don't know how quickly.

PRESIDING MEMBER BOYD: Of course in my mind is would it be adequate for your analysis needs --

MR. HESTERS: I don't know that.
PRESIDING MEMBER BOYD: -- if it's substantially redacted. You won't know till you see one.

MR. HESTERS: Right. Their first decision was that the whole thing was critical energy infrastructure information; and that obviously didn't work, so I don't know whether it's going to be that same standard.

PRESIDING MEMBER BOYD: Perhaps in a forthcoming meeting that I'm aware of with Edison this issue can be brought up.

MR. GALATI: Commissioner Boyd, before that forthcoming meeting, I wanted to make sure I clarified something. I said something wrong.

Our confidentiality agreement was actually with Cal ISO, but it is -- it has been that SCE is the one who is concerned with the confidentiality; and I don't know how that works, but our confidentiality agreement was with the Cal ISO.

COMMISSIONER WEISENMILLER: I was going to say, this helps. The last assurance I had from Edison is that it was all out of their hands and it was in your hands.

MR. GALATI: I wish it were.

PRESIDING MEMBER BOYD: So, Mark, not only did you get up to the podium finally, but you turned over a rock and then walked away.
HEARING OFFICER CELLI: We need to go off the record for just a moment.

(Recess.)

HEARING OFFICER CELLI: Thank you, ladies and gentlemen.

Okay. So was there -- was there any request from any of the intervenors to cross-examine Mr. Hesters? I see shaking heads.

MR. SILVER: No.

HEARING OFFICER CELLI: They're all saying no.

Okay. Thank you.

So that closes Transmission Systems Engineering, in terms of taking in evidence.

We've covered a lot in these two days, and I want to thank all of the parties for your hard work and hanging in there and long hours. We have remaining Air Quality, and we're waiting for FDOC, which is due up when --

MS. HOLMES: Soon.

HEARING OFFICER CELLI: I'm so reassured.

MS. HOLMES: This week.

HEARING OFFICER CELLI: Okay.

MS. HOLMES: And there'll be additional changes to the conditions of certification to reflect that as well.

HEARING OFFICER CELLI: Okay. So Air Quality,
Cultural and Air Quality. And now it appears Transmission and Systems Engineering will be on the agenda for the 21st.

MS. HOLMES: Well, will there be anything to cover if we do not have the Phase 2 study available on TSE?

HEARING OFFICER CELLI: I'm not sure. We're trying to figure out.

COMMISSIONER WEISENMILLER: At least the status of trying to get that.

MS. HOLMES: Good point.

HEARING OFFICER CELLI: So Cultural -- we've received Socio, Cultural, Air, Transmission Systems Engineering.

What other areas? Is there any motion from any of the parties to reopen any of the other topic areas for the 21st hearing?

I'll start with the Applicant.

MR. GALATI: I think that there is going to be at least stipulated between staff and Applicant a couple of exhibits that need to come in. It might be all in one exhibit. There would be a change in testimony on visual in which the condition, I think, the condition that requires lattice towers would go away; so I don't know if that was enough, what we did, or we need an exhibit to
show that staff has agreed. There would be a --

HEARING OFFICER CELLI: Let's take a moment, and let me just poll the parties and see whether -- how can we streamline that.

MS. HOLMES: I'd point out that the condition of certification already states that biological or cultural concerns would override, if you will, the requirement to have the lattice towers. It's already in the conditional certification. We can make it explicit that that's the way we're going, but I'm not sure we need to reopen the record on that.

HEARING OFFICER CELLI: That sounds reasonable. Go ahead, Ms. Mayer.

MS. MAYER: Also, I talked to Mr. Cannalato at lunch, and he confirmed that indeed a biological concern is overriding and that it's fine with him to have the mono poles instead of lattice.

HEARING OFFICER CELLI: Okay. So it sounds to me like we probably don't need to reopen on Visual, if that's okay with CURE, Ms. Koss.

MS. KOSS: That's fine.

HEARING OFFICER CELLI: And Ms. Belenky?

MS. BELENKY: Yes. I think so. I'm a little concerned that we won't have the clean copy of the condition, but I guess that doesn't matter as long as
that's in the record that that's what we're all agreeing.

HEARING OFFICER CELLI: And what we're agreeing to is that they're essentially stipulating that in Visual the concerns of Biology or Biological Resources that preferred mono pole over the lattice pole would take precedence in that condition and that the language is adequate to ensure that there will be mono poles.

MS. BELENKY: I think that's what we're all agreeing to, yes; in which case, yes, I would agree as well.

HEARING OFFICER CELLI: Thank you.

And do you agree, Mr. Silver, on behalf of Mr. Budlong?

MR. SILVER: Yes.

HEARING OFFICER CELLI: Thank you. So with that, we don't really need to reopen Visual, and we will accept and it's understood what that condition is; and if need be, we can refine the language --

MR. GALATI: Okay. I --

HEARING OFFICER CELLI: -- on our own notion, the committee.

MS. MAYER: I don't have the text right in front of me, but I believe what that means is instead of disagreeing with Applicant's proposal for Vis 3, that the Applicant's proposal for Vis 3 would become Vis 3.
MR. GALATI: Yeah, I don't think we need to open the record because I think there's enough in the record for me to ask you in a brief not to include Vis 3. I think there's evidence in there that's not necessary; or you can keep Vis 3, and we've already got a preview of the decision under Vis 3 that it won't be required. I would just prefer to take it out. But I thought we talked about preparing a -- so Visual, we don't need a document.

The next one seems to be that Biology, which I think we do need a document for Biology because in the workshop earlier this morning there were changes coming from staff that I think should be put into a written exhibit. Hopefully we can talk about them tomorrow in the workshop. And if there is an exhibit, I'll take the burden of presenting it as -- so I think that it needs to come in on Biology, into the record, as an exhibit.

MS. HOLMES: Mr. Galati, neither Ms. Mayer nor myself are available for tomorrow's workshop, and so my understanding is that the only subject that's going to be discussed is Cultural, although there may be the opportunity to address this issue of whether or not it's possible to craft some language to allow construction to commence in order to meet ARRA deadlines; but in terms of reviewing the Biological Resources language, that's not -- we're not going to get final agreement on that tomorrow
because neither one of us is available.

HEARING OFFICER CELLI: Well, so essentially
what's happening right now is there's a motion right now
on Bio to hear more evidence on Bio on the 21st of July.

MS. HOLMES: Which staff supports. I'm just
pointing out that we won't be -- we won't have resolved it
by tomorrow.

HEARING OFFICER CELLI: And I see nodding heads
from at least Ms. Belenky and everyone else, so we'll grab
the motion and reopen Bio limited to these conditions on
the 21st of July.

MR. GALATI: Thank you for that limiting
condition.

MS. BELENKY: Excuse me. Can I just clarify?
Limited to the conditions that we discussed in
Bio 19 and the Applicant's request to begin construction
at an earlier time?

HEARING OFFICER CELLI: The ARRA.

MS. BELENKY: The ARRA, okay.

MS. HOLMES: There's also -- there are additional
conditions --

MS. BELENKY: And the water issues that have --

HEARING OFFICER CELLI: We haven't gotten -- Soil
and Water would be a separate motion, which I'm sorry to
be all formalistic about it, but --
MS. HOLMES: There are other Bio conditions I believe that we believe that at least between the staff and the Applicant we've reached an agreement with respect to Bio 8.

HEARING OFFICER CELLI: Yeah, you know what I would like you to articulate on the record now so that next week we can we have clear cut, what are we doing with next week? What are the conditions that we're talking about?

MR. GALATI: Bio 19 and Bio 8, the area related to noise.

HEARING OFFICER CELLI: Just those two conditions.

MR. GALATI: Those are the two that we discussed and we're aware of.

HEARING OFFICER CELLI: And that the need to start construction early for ARRA funding purposes arises under Biology?

MR. GALATI: No, that was a Project Description. We proposed language in the Project Description; we'd ask that it be not identified in each resource area, but that it be global in the general condition.

HEARING OFFICER CELLI: Staff, do you have any position on that?

MS. HOLMES: Well, as I said, staff is -- has
been consulting with -- with the Bureau of Land Management. This is an issue that's come up in a number of the cases, the compliance staff is looking at it, working with the project managers, working with the Bureau of Land Management. We don't have -- we'd like to try to come up with a way to accommodate the Applicant's concern in a way that's not nearly as broad as what they have proposed, but we do not have a final resolution yet.

HEARING OFFICER CELLI: So here's what I think: To short-circuit the whole conversation basically and say that we will reopen the record to discuss the need for the five percent construction for ARRA purposes without tying it to any of our topic area categories, okay? So Bio 19, Bio 8, the ARRA issue.

Any further -- yes, please.

MS. MAYER: I just want to check with Mr. Stein because he was really the person who's most -- who saw the whole Bio conversation over any other Bio conditions we should be talking about.

HEARING OFFICER CELLI: Any other motion on behalf --

MR. GALATI: Soil and Water, there is a revision to Soil and Water Condition 4 that staff is working on that is related to the disposal of drilling mud. And there is a revision to some combination thereof or
revision to both Soil and Water 15 and Soil and Water 19
with respect to modeling and offsets, or mitigation. I
think that's all on Soil and Water.

HEARING OFFICER CELLI: Okay. So cultural, TSE,
or Transmission Systems Engineering, Air Quality, Biology,
Soil and Water, and Biology, limited to Bio 19, Bio 8,
Noise, Soil and Water limited to 4, Soil and Water 15,
Soil and Water 19, the ARRA issue.

Anything further from Applicant?

MR. GALATI: No, I don't believe so from us.

HEARING OFFICER CELLI: Thank you.

Staff, do you have a motion?

MS. HOLMES: We would join in the Applicant's
motion.

HEARING OFFICER CELLI: Okay. Ms. Koss for CURE?

MS. KOSS: We also join.

HEARING OFFICER CELLI: Okay. And Ms. Belenky.

MS. BELENKY: No objection.

HEARING OFFICER CELLI: And Mr. Silver.

MR. SILVER: Intervenor joins.

HEARING OFFICER CELLI: Thank you. Well, that
pretty much brings the issues. I don't think I'm going to
be able to -- I just don't think I'm going to get a notice
out in time because the 21st is -- we've got less than ten
days, so this is the notice, all the parties are here and
representing. So we will be having a hearing on the 21st, we're going to be having a highly efficient hearing on the 21st limited to the areas of Cultural, Transmission Systems Engineering with regard to the Phase 2 study, Air Quality, Bio, limited to Bio 19, Bio 8, and the ARRA funding issues, Soil and Water limited to Soil and Water Conditions 4, 15, and 19.

Now, having covered that, we -- I want to talk about briefing, because what we had initially -- it's tempting to say agreed to, but I know nobody agreed with this -- but what we imposed upon you is that opening briefs regarding the evidence received at the July 12th and 13th evidentiary hearings were to be due eight calendar days from the date the transcripts of the hearings are available. And I thought the way we'd deal with that to facilitate timing and scheduling would be to send out a notice of the availability of the transcript when we receive it. And that will start the clock.

There are certain issues that came up, one of which -- that require briefing. I want to be clear that -- I'm sorry, something's buzzing.

This briefing is largely in the discretion of the parties. If there's an issue that the parties need to raise, we are not -- the committee would welcome that. But there are certain issues that the committee needs to
have briefed as well.

Certainly in the area of Visual Resources, the idea of a -- of a project with no visual impact having a cumulative visual impact is going to be something we're going to need to hear some legal argument about.

This is briefing.

MS. MAYER: I'm sorry, could you repeat that?

HEARING OFFICER CELLI: Yes. The issue with regard to the cumulative impacts in Visual Resources of the Genesis Solar Energy Project -- let me think. I'm just going to go off the record real quick.

(Recess.)

HEARING OFFICER CELLI: We're going to get back on the record now. Just making sure everybody's in their seat.

So with regard to the -- there will be another round of briefs after probably the subsequent hearing on Cultural; but as to these briefs, we're going to ask that the parties address the premise in that Colorado River board's letter that groundwater pumping is prohibited and that water must be purchased from the -- what is it -- the metropolitan water district, or somebody. We're going to ask that you brief the significant impacts that have been deemed unmitigable in the staff analysis, including the cumulative impacts that have been deemed unmitigable. And
of course, we've got Visual and Land here, and anything we
may have missed that you deemed unmitigable.

And lastly, I know that everybody loves to write, write their briefs; the last set of briefs I got, I got an
80-page brief. I would really like to limit the briefs in
terms of their length to not more than 20-page opening
briefs.

We have rebuttal briefs -- now, remember we had
said that there was an eight-day -- eight-day calendar day
from the date the transcripts were available because we're
having another hearing date right in the middle of that on
the 21st, so the rebuttal briefs to this -- your opening
briefs will be due seven days from the date of the opening
brief.

We're going to have a hearing on July 21st on the
subjects we'd already discussed right now. In that
regard, opening briefs will be received seven calendar
days from the July 21st evidentiary hearing, and the
rebuttal briefs will be due seven calendar days from the
date of the opening briefs --

MS. HOLMES: Seven days from the hearing or seven
days from the date that the transcript's available?

HEARING OFFICER CELLI: I'm so sorry. Let me
read that again.

Seven calendar days from the date the transcript
of the additional evidentiary hearing is available; that's 
the July 21st, so whenever the transcript comes off from 
the July 21st hearing, we'll send out a notice saying -- a 
otice of availability, seven days from that date. 
And then once you've received that opening 
testimony, your rebuttal brief will be due seven calendar 
 days from the date of the opening briefs that you are 
rebutting. 
Then we're into the issuance of the PMPD, 
committee conference, and the 30-day comment period, 
et cetera. That's all still to be determined. We'll work 
as quickly as we can, but your briefs will be helpful. 
Anything further from Applicant? 
MR. GALATI: Just a clarification that the 
20-page opening brief, that was not 20 pages per issue, 
correct? 
HEARING OFFICER CELLI: Thank you. Lest there be 
any confusion, that would be a 20-page total -- 
MR. GALATI: I promise you I won't be taking 
that, I just want to make it clear for the record that 
that would be a 100-page brief. 
HEARING OFFICER CELLI: That would be a 20-page 
total maximum. Thanks for that point of clarification. 
Staff, anything further? 
MS. MAYER: Yes. I'm a little confused about
unmitigable impacts. Are we just trying to frame it as
the staff's conclusion regarding unmitigable impacts
legally valid, something like that?

HEARING OFFICER CELLI: Well, certainly there was
question raised by the Applicant in the course of the
hearing on -- was it Biological Resources? No, it was
during the Visual and Land --

MS. MAYER: It's Visual and Land Use, so it's
very related to the first question. That's why --

HEARING OFFICER CELLI: That's right, but we
wanted to expand that, the opportunity to brief on any
other issues having to do with unmitigable impacts,
whether they be cumulative or direct or whatever.

MS. MAYER: Thank you for that clarification.

HEARING OFFICER CELLI: Anything further we need
to cover before we adjourn today from staff?

MS. MAYER: No. But I support a ten-page length.

HEARING OFFICER CELLI: Let's hear from CURE.

Is there anything further you'd like us to
address while we're still in session here?

MS. KOSS: Just to make sure, there are three
topic areas that the committee would like briefing on,
correct? We have Visual Cumulative Impacts, Colorado
River board letter, and then we have Unmitigable Impacts,
correct? I wasn't sure if you had erased the first one.
HEARING OFFICER CELLI: You have it right, but I just want to tell you that we didn't limit the significant impacts that are unmitigable to just Visual.

MS. KOSS: Understood.

HEARING OFFICER CELLI: It's Visual, Land, and anything else that we may have missed.

MS. KOSS: Right. And then on a totally different note, in CURE's Prehearing Conference Statement, we requested that the committee take official notice of BLM's California Desert Conservation Area Plan as amended in 2002; and we don't have a decision on that. So I would just like to know if the committee would take notice of that. It's referenced numerous times in the Staff Assessment, it is, you know, the construction of a lot of the BLM. And I think it's important that we be able to -- it's a huge document, so I didn't want to enter it into the record.

HEARING OFFICER CELLI: Right. My inclination is to say what pages do you want us to take official notice of?

MS. KOSS: There's hundreds and hundreds and hundreds of them.

HEARING OFFICER CELLI: Any objection from Applicant?

MR. GALATI: No. We referred to that also to
remind the committee sometimes you've heard it referred to as the NECO Plan and its amendments. That's also -- I think it's the same document, and it's referred to throughout, and oftentimes where it's referred, there's some pages.

MS. HOLMES: I believe NECO is Exhibit 406.

MS. KOSS: NECO is a part of it, but the CDCA is larger than just the NECO.

MS. HOLMES: Thank you.

HEARING OFFICER CELLI: Still no objection.

MS. MAYER: One reason it was excerpted, it was excerpted for the relevant portions in biological sources.

HEARING OFFICER CELLI: Any objection to taking official notice?

MS. MAYER: No.

HEARING OFFICER CELLI: Any objection from CBD?

MS. BELENKY: To the CDCA plan as amended by the NECO Plan, I have no objection to that; and I just want to make sure my understanding of what is being asked here is the CDCA plan, which there was an update done that consolidated all the amendments to date in 1999, and then there was a 2002 update for the area that's here, this NECO area that people tend to refer to as the NECO Plan. That plan is part of the CDCA plan, and they work together, and so it has to be both documents.
HEARING OFFICER CELLI: And that's what you're referring to as the 2002 CDCA plan as amended by the NECO Plan. Do I have that right?

MS. KOSS: Well, I don't know if it's fair to say it's amended. I guess you could say it's amended by the NECO Plan, yes.

MS. BELENKY: It is.

HEARING OFFICER CELLI: And so there's no objection from CBD.

MS. BELENKY: No.

HEARING OFFICER CELLI: Any objection from Mr. Silver on behalf of Tom Budlong?

MR. SILVER: No. As I heard what you said though, Mr. Celli, just a minute ago, I think you sort of had it in reverse. That the NECO Plan constitutes an amendment to the CDCA plan. So it's the CDCA plan as amended, I think, by the NECO Plan. And I'm not sure that when you stated that on the record you stated it correctly.

HEARING OFFICER CELLI: Okay. So there being no objection, then the committee will take official notice of the CDCA plan as amended by the NECO Plan.

Anything further from CURE?

MS. KOSS: Actually, I have one more question on briefing, just for clarity.
I just want to make sure that anything that is covered at the 21st hearing can be covered in -- in the second round of briefing, including whatever Bio and Soil and Water topics which may be covered.

HEARING OFFICER CELLI: That's right; but, you know, again, it will be discretionary with the committee. So if -- at the 21st, if it appears that there's no need to brief something, the committee would say so and specify. So what I'm telling you is because we opened -- reopened Bio and Soil and Water for those limited conditions, that we wouldn't want to see briefing on anything that went outside of the record on the 21st.

MS. KOSS: Yes, of course. I just don't want to -- today you said that if the parties would like to raise issues, the committee is not going to tell them not to; and I would not want to not raise issues that may be covered then and then the committee tell me that I can't brief them.

HEARING OFFICER CELLI: There you go. So once again, you're keeping me honest.

These are the opening -- that specification that we leave it open to the parties to brief that which they feel needs to be briefed relates to this round of -- this particular round of briefs, and it would not relate to the briefs on the 21st unless specifically articulated by the
committee. Okay?

MS. KOSS: So I should brief Bio 19 and Bio 8 and Soil and Water 15 and Soil and Water 19 and Soil and Water 4 now, and the committee might tell me I can't brief them later, even though the record is still open on those.

HEARING OFFICER CELLI: Okay, time out. You're asking me to look at a separate sheet of paper that I don't have open in front of me.

We had -- time out.

Okay. So you just mentioned -- so Bio 19, Bio 8, the ARRA issues, Soil and Water four, Soil and Water 15 and 19; you want to brief them in this round, you can.

MS. KOSS: But the record isn't closed on those yet.

HEARING OFFICER CELLI: That's right, that's correct.

MS. KOSS: So I would prefer to brief them after all the evidence is in, but --

HEARING OFFICER CELLI: Right, and we will limit it, that next hearing, just to those conditions that I just read off to you.

MS. KOSS: Perfect. As long as the committee is not telling me that that 21st hearing that I can't brief those.

HEARING OFFICER CELLI: No, we wouldn't do that.
When you were listing them off, I wasn't sure if you had more than I had written down in your list and so that's why I was concerned.

MS. KOSS: Okay.

HEARING OFFICER CELLI: So if you want to, you could have two bites at the apple on these limited issues.

MS. KOSS: And you're only giving me 20 pages.

HEARING OFFICER CELLI: I know that's killing you.

So any question, any further question for CURE?

MS. KOSS: No, thank you.

HEARING OFFICER CELLI: Okay. From CBD?

MS. BELENKY: Okay. I just have two small clarifying questions.

In addition to that list, Air is also open, but we won't be briefing that on this round.

HEARING OFFICER CELLI: That's correct.

MS. BELENKY: And you said 20-page limit on the opening brief. I don't -- I didn't hear you say a limit on the rebuttal. Are you saying also 20 or --

HEARING OFFICER CELLI: Yes.

MS. BELENKY: Okay. I just didn't know. I want a number there.

HEARING OFFICER CELLI: 20 words.

MS. BELENKY: Okay. And then I will just say I
personally think it's better to consolidate all the briefing and just push it all back, but I understand that's not what you would prefer; but I do, for the Center, I think that there's enough integral about what's going to happen next week that we would prefer to brief it all in one brief.

HEARING OFFICER CELLI: No, I understand that; and we heard those arguments before at the prehearing conference, too.

Anything further from CBD --

MS. BELENKY: No.

HEARING OFFICER CELLI: -- before we get into public comment.

Mr. Silver, on behalf of Mr. Budlong, anything further?

MR. SILVER: No, not really. Other than to supplement Ms. Belenky's comments that I'm not sure why we're briefing matters relating to the Colorado River commission letter when conceivably that might not be, at least in the eyes of the Applicant and staff, an issue.

HEARING OFFICER CELLI: You make a good point. And I would say that that issue -- make sure I'm doing this right -- that issue -- one moment, let me go off the record.

(Recess.)
HEARING OFFICER CELLI: So that particular issue is optional; the parties are invited to but are not required to brief the Colorado River board's letter.

MR. SILVER: And by a similar token, were that to become relevant by reason of the hearing on the 21st, nothing would preclude the respective parties from briefing it in that supplement briefing.

HEARING OFFICER CELLI: That's true, but I -- here's what would preclude it though. But what I think you can do is bring a motion if it becomes relevant. And when I say "bring a motion," I'm just saying make a request at the time on the 21st, because at the end of the hearing on the 21st, just as we did today, we're going to say okay, what needs to be briefed, and we'll have some discussion about that; and if that needs to be briefed, then you can make that request then.

MR. SILVER: With respect to the hearing on the 21st, since there's not going to be a notice, am I to assume that it would begin at 10:00 a.m. in this building?

HEARING OFFICER CELLI: There was a notice actually. The notice has already gone out. I hope everybody received a notice. I have it here.

Do you have it, July 2nd? The notice is on the Internet. And I don't -- and it is going to be here in Sacramento, and they're usually at 10:00, and I can't
remember whether it's in Hearing Room A or B.

Are you looking at it, Mr. Monasmith?

MS. HOLMES: We're looking at it. We don't remember receiving it. We're wondering if it was posted but not --

HEARING OFFICER CELLI: That went out to the POS or --

MS. HOLMES: Hearing Room B at 10:00.

HEARING OFFICER CELLI: Hearing room B at 10:00.

Well, luckily we're down to just a few issues, so we don't need the crowd of people that we had before.

MS. BELENKY: I'm sorry, I did have one other question.

When you said calendar days --

HEARING OFFICER CELLI: Yes.

MS. BELENKY: -- do you expect briefing to be due on the weekend, or would it go to the next Monday?

HEARING OFFICER CELLI: If would be the next Monday, if it falls on a Saturday or Sunday.

MS. BELENKY: Thank you.

HEARING OFFICER CELLI: Good question.

With that, I'm going to open the podium to public comment. As I look around the room, I'm going to say for the record that it's pretty sparsely populated. But we have -- do we have anyone here who is a member of the
public who would like to make a public comment here in the room today, Hearing Room A?

Seeing none. We'll go to the phone.

Is there any member of the public who would like to make a public comment on the telephone using WebEx?

For the record, I should say that I've got Tom Budlong, Jared, Dr. Elizabeth Bagwell on the phone. And then I have three other call-in users on the telephone.

Is there anyone on the telephone who would like to make a public comment?

Okay. Hearing none, Commissioner Boyd?

MS. KOSS: Sorry. There was a draft notice published for a potential cultural resource workshop tomorrow, and my understanding was, depending on whether the committee ordered us to have a workshop, we would or would not. I expressed my concerns about having the workshop, given two days of rather brutal hearings and being exhausted and having to start writing briefs, but the Applicant had requested it and there was a draft notice published.

So I just -- if the committee's going to order us to have one or not, I'd like to know.

HEARING OFFICER CELLI: I'm going to go off the record.

(Discussion off the record.)
HEARING OFFICER CELLI: The context of that came up as we were discussing the ARRA, the need for accelerated construction for ARRA, and in that Mr. Babula from chief counsel's office spoke up and said there was a hearing -- workshop, rather, that was already scheduled here tomorrow having to do with Cultural.

Do I have this right?

MS. HOLMES: That's my understanding as well. I'm sure he's on the phone.

PRESIDING MEMBER BOYD: Well, there is a notice out for a cultural proposal to be considered within the framework of the business meeting that is conducted here --

MS. HOLMES: That's a very --

PRESIDING MEMBER BOYD: So this is a different issue, all right.

MS. HOLMES: Very different issue, yeah.

PRESIDING MEMBER BOYD: All right. Very.

HEARING OFFICER CELLI: So this is -- do I understand this to be a workshop dedicated to just the Genesis Project?

MR. BABULA: Yeah, that's -- this is Jared, and that was -- the design was primarily cultural, though the actual notice did indicate that Soil and Water and other areas could be discussed if necessary, and it was set up
for tomorrow from 10:00 to 4:00. It's now (inaudible) Conference Room A (inaudible) and my -- the initial primary thing was to allow for the parties to review staff's recent comment that we had just put out, the Applicant's comment regarding our (inaudible) certificate, proposal 1 through 7(e) and (inaudible) through the comments (inaudible) we are trying to knock out the issues prior to that hearing on the 21st. So that was a (inaudible) and I know Dr. Bagwell's on the phone now, she's going to be participating by phone and Beverly Bastion will be participating. So that was the goal of having the workshop.

HEARING OFFICER CELLI: Is there a telephone option?

MR. BABULA: There is a telephone option; it's on the notice. I know (inaudible) Kenny Stein said (inaudible) phone, too, and the Applicant didn't (inaudible) but you have (inaudible) --

MR. GALATI: Mr. Celli, let me just cut to the chase.

There was a draft notice that went out, and it was drafted because I believe there was not a senior person to sign it. It wasn't to everybody in this room. And you can fix it today so that there's no claim of defective notice, that you see there's no members of the
public that care about, they know it's there, and we think
it would be very good to participate so that we can
streamline, because we have not yet talked about cultural
conditions as a group.

So if you simply say we order you to do this
tomorrow, you will fix any defective noticing that anyone
could claim by Friday; but everybody here knows it, we
filed testimony, let's go talk about it so on the 21st we
don't waste everybody's time, especially yours.

MS. HOLMES: The notice was e-mailed, but it was
not served and it was not docketed.

MS. KOSS: And I'd also like to just point out
it's noticed as 10:00 a.m. to 2:00 p.m., not 4:00 p.m.
That's in the draft notice. So if we're going to have
one, it's 10:00 to 2:00.

HEARING OFFICER CELLI: Well, that seems
reasonable. And you will -- you now have two days of
efficiency training, so we will -- hopefully you can get
your workshop done in that amount of time. So with that,
I wish you good luck tomorrow.

PRESIDING MEMBER BOYD: Do we have to make this a
formal order to comply?

MS. HOLMES: I think there's a request that you
bless --

MR. GALATI: He's ratified this discussion.
PRESIDING MEMBER BOYD: We need an order from the committee to carry forth.

HEARING OFFICER CELLI: So with your ascent, the committee orders that the workshop take place tomorrow from 10:00 until 2:00 --

MS. HOLMES: Thank you.

HEARING OFFICER CELLI: -- as noticed in the draft notice received by all the parties.

With that, Commissioner Boyd.

PRESIDING MEMBER BOYD: It's funny how much procedural stuff has come up in the last hour when we thought we were done.

Anyway, thank you everybody. The crowd is thin, but the regulars have stood in. This has been productive, and I appreciate all the work you've all done; and yeah, I look forward to seeing you all on 21st.

Thank you.

(Thereupon the hearing adjourned at 4:16 p.m.)
CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing Evidentiary Hearing Before the California Energy Resources Conservation and Development Commission, that I thereafter had it transcribed under my direction.

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

I WITNESS WHEREOF, I have hereunto set my hand this 16th day of July 2010.

John Cota

JOHN COTA