

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No. 09-AFC-8
for The Genesis Solar Energy)
Project, Genesis Solar, LLC)
_____)

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

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EXHIBITS

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69	Rebuttal Testimony from Genesis Solar, LLC, relating to Transmission Systems Engineering	146	146
70	Revised Opening Testimony from Genesis Solar, LLC, relating to Socioeconomic Resources	146	146

1 And thank you all for being here. And most of you look
2 very familiar. It wasn't very long ago that we were
3 looking at each other like this. And I appreciate all the
4 hard work that has -- that you all went through yesterday
5 and the fact that you've been meeting, some of you for up
6 to two hours this morning trying to go over some of the
7 issues. So I hope you were successful with that.

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

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

14 HEARING OFFICER CELLI: Thank you,
15 Commissioner Boyd.

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

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

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

24 MS. MEYER: Yes, we did. We're all for the
25 mono-pole, it just needs to be written up basically.

1 HEARING OFFICER CELLI: Okay. So the
2 condition --

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

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

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

16 HEARING OFFICER CELLI: Thank you.

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

1 of that.

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

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

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

13 MS. HOLMES: Certainly, please do.

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

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

25 I think that since we're starting Soil and Water,

1 we have, I can't remember, it was -- Exhibit 421, which is
2 a picture, a depiction -- 429, which is a depiction of the
3 groundwater basins, it might be helpful for all of the
4 discussions if we just put it up on the board. I don't
5 think it's controversial or --

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

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

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

14 MS. HOLMES: This is not MacIntosh.

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

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

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

25 But we, the Applicant has agreed, and I think

1 that the mitigation burden is higher to make this
2 agreement, is to mitigate and offset the water -- changing
3 water between the Chuckwalla Valley and the mesa, rather
4 than argue about what the effect of that is on the
5 Colorado River. So it is important to see the map.

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

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

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

16 MR. GALATI: 202 acre feet per year.

17 HEARING OFFICER CELLI: From 1600.

18 MR. GALATI: Yes.

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

23 MS. HOLMES: The issue isn't -- the issue isn't
24 about for the staff, it may be different for other
25 parties. The issue isn't about the effect on the

1 Chuckwalla Valley Groundwater Basin. As Mr. Galati has
2 correctly characterized it, it's on the reduction and
3 underflow between Chuckwalla Valley and Palo Verde Mesa,
4 and the result is the effect from that change on
5 Colorado River.

6 HEARING OFFICER CELLI: Okay.

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

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

11 Scott Cashen stole it.

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

17 MS. MAYER: This is the staff Exhibit 431.

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

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

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

25 MR. GALATI: Yes. I need to find another

1 pointer.

2 HEARING OFFICER CELLI: Okay.

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

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

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

21 MR. BUDLONG: Can I interrupt for a moment?

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

23 THE REPORTER: Commissioner Celli, who is this?

24 HEARING OFFICER CELLI: Mr. Budlong, could you
25 hold on one moment?

1 We have a party, ladies and gentlemen, just to
2 bring you up to date, we have a different court reporter
3 than yesterday, so when you're speaking, you will need to
4 identify yourself. Those of you who are here who are
5 going to -- witnesses testifying, especially those of you
6 with unusual names, spellings, please give your business
7 card to John, the court reporter.

8 And, Mr. Budlong --

9 MR. BUDLONG: Yes.

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

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

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

19 The project is in the Chuckwalla Valley Basin.
20 On my diagram that is on the far left of the diagram to
21 the -- about the middle of the diagram there is a point
22 that we're showing on the map that shows that the
23 Chuckwalla Valley Basin, for lack of a better term,
24 communicates with the next basin to the east, which would
25 be to the right on this map. It is colored in blue. And

1 it is called the Palo Verde Mesa Groundwater Basin.

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

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

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

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

1 the Colorado River.

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

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

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

22 I think that, Ms. Holmes, correct me if I'm
23 wrong, but one of the values is we did not want to get
24 caught up in future adjudication of Colorado River
25 entitlement. Staff has agreed we don't need an

1 entitlement for this activity to pump in the Chuckwalla
2 Valley, it was an impact driven, and we didn't want to
3 have the record confused so that at a later date someone
4 would believe that we admitted or agreed to needing a
5 Colorado River entitlement.

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

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

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

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

1 settlement addresses that concern.

2 HEARING OFFICER CELLI: Excuse me a moment.

3 Ken Waxlax, your phone is making percussion
4 noises. And -- can you hear me?

5 It appears to have stopped.

6 MR. WAXLAX: Yes, I had to take you off mute.

7 HEARING OFFICER CELLI: Oh, okay.

8 MR. WAXLAX: I'm sorry.

9 HEARING OFFICER CELLI: I can -- I don't know
10 what was going on with your phone, but it appeared that
11 yours was the one that was making these popping noises.

12 MR. WAXLAX: Oh, my. I'll hang up and try a
13 different phone.

14 HEARING OFFICER CELLI: Thank you.

15 MR. WAXLAX: Sorry about that.

16 HEARING OFFICER CELLI: No problem.

17 Sorry for the interruption. Go ahead.

18 MS. HOLMES: Well, I think that was, as I said,
19 pretty much it. Staff believes that all impacts to the
20 Colorado River should be mitigated. We believe they do
21 exist. We believe that the proposed agreement that we
22 have with the Applicant does, in fact, address all of
23 those concerns. We understand they disagree about the
24 ultimate conclusion. We think this is a good way for the
25 commission to move forward.

1 HEARING OFFICER CELLI: So this proposed offset
2 of mitigation to the Palo Verde Mesa --

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

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

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

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

16 Ms. Koss, good morning.

17 MS. KOSS: Good morning. I've had a very limited
18 amount of time to review this. Apparently these
19 discussions occurred previously, but I was not privy to
20 them, between Applicant and staff counsel; so I at about
21 10:00 or so became privy to them.

22 I quickly reviewed this model that they are
23 relying on and have been in contact with my consultants,
24 but at this point I can't really come to a conclusion,
25 especially if staff has not determined exactly what the

1 impact is or what the offset amount would be. And I still
2 have some questions.

3 HEARING OFFICER CELLI: Okay.

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

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

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

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

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

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

25 MS. KOSS: I don't think I can agree with that at

1 this point.

2 HEARING OFFICER CELLI: Okay. Just wanted to
3 know.

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

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

16 HEARING OFFICER CELLI: Well --

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

19 MS. HOLMES: Yes.

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

22 MS. HOLMES: No.

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

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

25 MS. KOSS: I'm a little confused about -- could

1 we have a summary, written summary about what is being
2 proposed?

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

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

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

22 What we're proposing to do at this point, and we
23 could do it other ways, is to keep Soil and Water 19 and
24 have it reflect the point that there be mitigation at the
25 boundary and that one or two of the conditions associated

1 with the modeling would be slightly different.

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

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

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

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

14 HEARING OFFICER CELLI: Okay.

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

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

20 Can you answer that, Ms. Koss?

21 MS. KOSS: Well, if I understand correctly -- and
22 again, I'd like something in writing so that I can really
23 take it in and understand what's being proposed. I don't
24 believe we have a number, and from now what I understand
25 is there will be modeling to determine a number? Is

1 that --

2 MR. GALATI: The conditions have always required
3 a number to be modeled after certification. So if you
4 disagree with that concept, I think you can put on a
5 witness to that concept no matter what the condition looks
6 like.

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

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

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

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

1 MS. KOSS: Uh-huh.

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

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

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

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

15 HEARING OFFICER CELLI: Clear?

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

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

21 MR. GALATI: Sure.

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

25 Wouldn't the -- because of dry cooling now, the

1 maximum amount of water we're ever talking about would be
2 202, correct? 202 acre feet a year?

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

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

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

10 MS. KOSS: Yeah.

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

13 MS. KOSS: Of course.

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

24 MS. KOSS: I understand.

25 HEARING OFFICER CELLI: Okay.

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

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

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

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

13 HEARING OFFICER CELLI: That's fine.
14 And CBD?

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

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

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

25 HEARING OFFICER CELLI: Okay. Thank you. That's

1 helpful.

2 And, Mr. Silver, on behalf of Mr. Budlong.

3 MR. SILVER: I'm not anticipating any
4 cross-examination. I think that, however, the one issue
5 on which we do need clarification of how the model was
6 developed, the Staff Assessment does indicate as of June
7 2010, that there's approximately 400 acre feet per year of
8 outflow is attributed to subsurface outflow to the
9 adjacent Palo Verde Mesa Groundwater Basin. So it is not
10 totally clear in my mind, considering that there's a use
11 of 202 acre feet per year, as to how that use relates to
12 the staff's statement that 400 acre feet per year of
13 outflow to the Palo Verde Mesa Groundwater Basin. We're
14 not mitigating 202 acre feet. My understanding is that I
15 think that the proposal is to mitigate something like 50
16 acre feet, plus or minus, subject to refinement.

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

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

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

1 clarification.

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

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

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

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

16 John, would you swear them in, please?

17 Please stand and be sworn.

18 (Witnesses sworn.)

19 HEARING OFFICER CELLI: Mr. Galati, go ahead.

20 DIRECT EXAMINATION

21 BY MR. GALATI:

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

24 Dr. Harvey, could you please introduce yourself
25 and spell your name for the record?

1 DR. HARVEY: I'm Jeff Harvey, H-a-r-v-e-y. I'm
2 an environmental consultant. I've been working in
3 California and on the Colorado River for the last 25,
4 30 years.

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

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

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

17 DR. HARVEY: Yes, I did.

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

20 DR. HARVEY: No, I do not.

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

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

25 MR. GALATI: Mr. Tietze, did you prepare rebuttal

1 testimony as part of our panel for Exhibit 63?

2 MR. TIETZE: Yes, I did.

3 MR. GALATI: And do you have any changes to that
4 testimony?

5 MR. TIETZE: No, I do not.

6 MR. GALATI: I'm going to ask either one of you
7 to answer.

8 Were you listening intently when I was describing
9 the interaction between the basins on the map earlier
10 today?

11 MR. TIETZE: Of course.

12 DR. HARVEY: Yes.

13 MR. GALATI: I'm going to pull that one out.
14 Thank you.

15 Did I describe it correctly? And if I did not,
16 could you clarify or fix anything that I misrepresented?

17 MR. TIETZE: I think you described it correctly.
18 I can provide clarification if that's necessary.

19 MR. GALATI: Okay. At this point I think I'll
20 turn over the witnesses for cross-examination or questions
21 from the committee.

22 HEARING OFFICER CELLI: Thank you.

23 Mr. Tietze and Mr. Harvey, what I'm going to ask
24 you to do, because the habit seems to be the way we,
25 unfortunately, we configured this room, is everybody is

1 turning and doing this, and as you can see, you don't hear
2 the microphone anymore. So I'm going to ask you to move
3 your microphones to the side so that when you succumb to
4 the temptation to look to the questioner, we can still
5 hear you. So we want to make sure that you're talking
6 right into that mic to the best of your ability.

7 Staff, you may cross.

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

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

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

15 Staff.

16 MS. HOLMES: No questions.

17 HEARING OFFICER CELLI: Ms. Koss.

18 MS. KOSS: Thank you. Just one question.

19 CROSS-EXAMINATION

20 BY MS. KOSS:

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

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

1 Mesa Groundwater Basin.

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

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

7 MS. KOSS: Thanks. No further questions.

8 HEARING OFFICER CELLI: Thank you.

9 Ms. Belenky.

10 CROSS-EXAMINATION

11 BY MS. BELENKY:

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

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

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

24 And on that page, it says that a forecast
25 groundwater budget for the Chuckwalla Valley Groundwater

1 Basin through the end of the project life is presented in
2 Table 4. And then it indicates that Table 4 is attached,
3 but I don't see Table 4 attached.

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

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

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

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

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

14 MR. TIETZE: Yes. Now, you're referring to the
15 technical memorandum predicted effects of dry cooling
16 water demand on groundwater resources dated June 9th,
17 2010, and that refers to a Table 4, which is an updated
18 water budget of Chuckwalla Valley Groundwater Basin under
19 the dry cooling assumptions. And evidently that was not
20 included in what you're looking at.

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

24 MR. TIETZE: Yes, I do.

25 MS. BELENKY: That would be great.

1 HEARING OFFICER CELLI: I'm wondering if we could
2 get one right now. Is that possible?

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

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

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

14 MS. BELENKY: Let me check.

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

18 MR. TIETZE: I can do that. I can also describe
19 what the changes are to the water budget that was
20 presented in our groundwater resources investigation.

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

23 MR. TIETZE: That's correct.

24 MR. GALATI: Maybe we could use that one, because
25 I think I have those exhibits.

1 HEARING OFFICER CELLI: Would that be acceptable
2 to you, Ms. Belenky, in the interim?

3 MS. BELENKY: Yes.

4 HEARING OFFICER CELLI: Okay. Let's do that.

5 Maybe Mr. Tietze can give us sort of a summary
6 explanation, and then we will use that in the record.

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

12 MS. KOSS: What exhibit number?

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

18 Actually, the date on the exhibit is January
19 2009, and it was docketed February 16th, and that's not
20 reflected in the exhibit list. Excuse me, it's not -- I'm
21 sorry, it's not 27. 27 was revised.

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

24 MR. TIETZE: I'm looking at it right now, but I
25 can't vouch for the exhibit number.

1 MR. GALATI: I think it might be Exhibit 43.

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

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

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

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

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

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

15 MR. TIETZE: Yes. Okay. It's Exhibit 27 dated
16 January 13th, 2010, and docketed on January 19th, 2010.
17 Entitled, "Groundwater Resources Investigation Genesis
18 Solar Energy Project, Riverside County, California."

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

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

23 MS. HOLMES: Thank you.

24 HEARING OFFICER CELLI: So that's a typo. In
25 other words, it should have read 2010?

1 MR. TIETZE: That's correct.

2 MR. GALATI: For the record, if I could just make
3 that clear. I'm not sure where the error is. Is it on
4 the exhibit list, Mr. Tietze, or the cover of the
5 document?

6 MR. TIETZE: It's on the cover of the document.

7 MR. GALATI: So it was a 2010 document.

8 MR. TIETZE: That's correct.

9 MS. HOLMES: And it actually wasn't docketed
10 January 19th, it was docketed February 16th.

11 HEARING OFFICER CELLI: Okay. Glad we cleared
12 that up.

13 MS. HOLMES: Well, there are two groundwater
14 exhibits that have similar titles that I believe both have
15 potential discrepancies with the dates. I just wanted to
16 make sure that if people need to refer to these in the
17 record, that it's completely clear.

18 HEARING OFFICER CELLI: So now, Ms. Belenky, this
19 is really addressing your question; so, Mr. Tietze was
20 going to summarize for you the table.

21 So if you would, please.

22 MS. BELENKY: Yes, I'm listening.

23 MR. TIETZE: There is a Table 5-2, Cumulative
24 Water Budget Forecast in that document; and what we did
25 for the analysis of the effects of dry cooling was that we

1 updated that Cumulative Water Budget Forecast, and
2 specifically the columns that we changed were the -- I'm
3 going to move from left to right -- it's divided up into
4 water budget elements for the western Chuckwalla Valley
5 Groundwater Basin and the eastern Chuckwalla Valley
6 Groundwater Basin. The only changes were to the eastern
7 Chuckwalla Valley Groundwater Basin where the project is
8 located.

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

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

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

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

24 And we changed the total future operations
25 pumping from 1644 acre feet per year to 202 acre feet per

1 year. We did not change the total future construction
2 pumping; that remains the same.

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

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

8 MR. TIETZE: Yes, we will.

9 MS. BELENKY: Thank you.

10 HEARING OFFICER CELLI: Any further cross from
11 CBD?

12 MS. BELENKY: Not at this time.

13 HEARING OFFICER CELLI: Thank you.

14 Mr. Silver?

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

17 CROSS-EXAMINATION

18 BY MR. SILVER:

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

24 You just indicated that you did find a number
25 somewhat higher than 400 acre feet per year of outflow to

1 the adjacent Palo Verde Mesa Groundwater Basin.

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

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

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

20 When you pump at the project location at a
21 certain amount, in this case 202 acre feet per year, some
22 of that water is derived from a decrease in the basin
23 storage, which is what causes modest decline in the
24 groundwater levels. Some of that water is derived from
25 increased inflow of groundwater from other parts of the

1 basin. The project will draw more water toward the well
2 as the water levels drop and that inflow increases from
3 all sides. And so there will be more inflow from the
4 western Chuckwalla Valley Groundwater Basin and the
5 tributary valley to the north. And then finally there
6 will be less water that flows out from the basin into the
7 Palo Verde Mesa Basin.

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

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

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

1 three years.

2 And then we had model out puts for each year,
3 what the decrease in underflow would be. And in the
4 memorandum that was referenced earlier, the June 19th,
5 2010, technical memorandum regarding predicted effects of
6 dry cooling, we summarized that -- just a moment.

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

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

12 MR. TIETZE: This memorandum was included in the
13 Bio testimony --

14 MR. GALATI: Correct.

15 MR. TIETZE: -- or in the Bio conditions of --

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

18 MR. TIETZE: So Table 3 of that memorandum
19 indicates Reach Number 3, which is the boundary between
20 Chuckwalla Valley and Palo Verde Mesa after three years.
21 So at the end of the construction period there will be
22 nine acre feet per year less flow to the Palo Verde Mesa
23 Basin. After five years, or two years of operation, it
24 will be 29 acre feet per year less. And after 33 years,
25 the model predicts 52 acre feet per year less.

1 So it increases over time. But as you mentioned,
2 because the construction water demand is greater than the
3 operating water demand, we start to see that decrease
4 almost right away.

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

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

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

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

24 The reason that we did not include that in our
25 analysis is because the -- we believe the model to be

1 inherently conservative. It does not currently consider
2 that any recharge occurs in Chuckwalla Valley Groundwater
3 Basin over the 33-year project period. So therefore, we
4 made the decision to only model the draw down period.

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

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

12 MR. SILVER: I have no further questions.

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

15 REDIRECT EXAMINATION

16 BY MR. GALATI:

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

20 MR. TIETZE: Yes, I do.

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

23 MR. TIETZE: That's correct. In terms of the
24 exhibits that we've provided, they do not include
25 actual -- construction of an actual model of the

1 Palo Verde Mesa Basin.

2 MR. GALATI: If you do the modeling in the
3 Palo Verde Mesa Basin, would the ultimate impact be less
4 than or greater than the impact at the boundary between
5 the Chuckwalla Valley and the Palo Verde Mesa?

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

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

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

25 You said that you neglected to recharge?

1 MR. TIETZE: That's correct. We assumed for the
2 sake of simplicity and conservatism that no recharge would
3 occur for the 33-year life of the project.

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

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

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

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

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

23 MR. TIETZE: Yes, I do.

24 MR. GALATI: No further questions.

25 HEARING OFFICER CELLI: Thank you.

1 Recross?

2 MS. MAYER: None.

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

4 MS. KOSS: Thank you.

5 RECROSS-EXAMINATION

6 BY MS. KOSS:

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

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

12 MS. KOSS: Significant impacts pursuant to CEQA.

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

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

25 MR. TIETZE: We predicted that there would be an

1 effect of less inflow into the Palo Verde Mesa Groundwater
2 Basin, so by definition there will be an effect on the
3 groundwater budget of the Palo Verde Mesa Groundwater
4 Basin.

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

11 MR. TIETZE: Yes, that's correct.

12 MS. KOSS: Thank you. No further questions.

13 HEARING OFFICER CELLI: Cross, Center for
14 Biological Diversity.

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

17 RECROSS-EXAMINATION

18 BY MS. BELENKY:

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

21 When you were asked what the recovery period
22 would be, first you said it would be relatively rapid, and
23 then you said it may be five to six years after pumping.
24 Is that -- I just want to make sure that that's your
25 testimony.

1 MR. TIETZE: In general terms you can expect that
2 recovery mimics or mirrors draw down.

3 MS. BELENKY: Right.

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

12 MS. BELENKY: Okay. Thank you.

13 So the initial in recovery would be rapid, but
14 then usually the full recovery period would be the same as
15 the period of pumping.

16 MR. TIETZE: There is a tail over which some
17 residual recovery takes place.

18 MS. BELENKY: Okay. Thank you.

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

22 REXCROSS-EXAMINATION

23 BY MS. KOSS:

24 My question was meant to be -- this is not what
25 it was -- on page 3 of that dry cooling evaluation in the

1 revised opening testimony it says --

2 HEARING OFFICER CELLI: Exhibit number?

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

5 MS. KOSS: Thank you, Mr. Galati.

6 HEARING OFFICER CELLI: Go ahead.

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

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

15 MS. KOSS: Thank you.

16 I really don't have any more questions.

17 HEARING OFFICER CELLI: Thank you.

18 Mr. Silver.

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

21 HEARING OFFICER CELLI: Any redirect from
22 Applicant?

23 MR. GALATI: No.

24 HEARING OFFICER CELLI: Thank you.

25 Then we are -- are we finished with this panel?

1 The record should reflect a consultation has
2 occurred at the conference table.

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

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

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

12 MS. HOLMES: Staff does.

13 HEARING OFFICER CELLI: Let's bring them on down

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

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

21 MR. GALATI: No.

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

24 HEARING OFFICER CELLI: Okay.

25 (Witness sworn.)

1 HEARING OFFICER CELLI: Please have a seat, state
2 your name and spell it for the record.

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

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

6 MR. DONOVAN: My name is Michael Donovan.

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

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

10 DIRECT EXAMINATION

11 BY MS. HOLMES:

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

15 MR. DONOVAN: Yes, I did.

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

20 MR. DONOVAN: Yes, I did.

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

23 MR. DONOVAN: Yes.

24 MS. HOLMES: Could you please state what that
25 correction is for the record?

1 MR. DONOVAN: Yes. We are intending to take the
2 modeling element of that particular Soil and Water 19 and
3 put it in with Soil and Water 15, and that specifically it
4 would address the modeling, revised modeling effort to
5 calculate what the difference inflow from the Chuckwalla
6 Valley to the Palo Verde Mesa. That would be the
7 mitigation.

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

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

20 MS. HOLMES: And with the understanding that
21 there are still some unsettled issues with respect to
22 capturing the recovery that was discussed a few moments
23 ago, does staff believe that this agreement will ensure
24 that there are no significant adverse impacts associated
25 with water supply issues for this project?

1 MR. TIETZE: Correct. And the modeling effort
2 would take into consideration that amount of water during
3 the recovery period from the end of operations through the
4 end of the recovery with respect to -- so the entire
5 period of what that reduction would be to the Palo Verde
6 Mesa Groundwater Basin.

7 MS. HOLMES: Thank you.

8 The witness is available for cross-examination.

9 HEARING OFFICER CELLI: Thank you.

10 Applicant, any cross?

11 MR. GALATI: Yes.

12 MS. MAYER: I'm sorry, Hearing officer Celli. I
13 just want to explain the exhibits I just handed out.

14 They were served on Sunday, and they're Exhibits
15 434, staff Exhibits 434, 436. Obviously there have been
16 changes to Soil and Water 19 that we -- as of this
17 morning. So that statement about -- I believe it's just
18 19 that's affected on this list. So just bear that in
19 mind.

20 CROSS-EXAMINATION

21 BY MR. GALATI:

22 Mr. Donovan, I wanted to direct your attention --
23 I don't know if you have it in front of you, I'll hand you
24 a copy, it's the Applicant's revised testimony,
25 Exhibit 60, section Soil and Water Resources, specifically

1 on page 16 there's a heading called "Condition of
2 Certification, Soil, Water 4." And it's a verification,
3 specifically item E, that deals with the removal of
4 drilling mud from the site. And that was a section that
5 staff originally did not agree with Applicant's change.
6 Is that still the case?

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

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

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

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

16 No further questions.

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

24 So I'm just going to ask is the Applicant to sort
25 of be in charge of that so I have the final COCs in my

1 document?

2 MR. GALATI: We certainly will. I don't believe
3 that all the parties agree, so there would be many places
4 where it is just staff and Applicant agreement.

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

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

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

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

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

22 MS. KOSS: Can I -- sorry.

23 HEARING OFFICER CELLI: Ms. Koss, go ahead.

24 MS. KOSS: -- to interrupt the flow, but I think
25 that applies to Biological Resource -- actually several

1 resource areas as well at this time.

2 HEARING OFFICER CELLI: All of them.

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

5 HEARING OFFICER CELLI: That's true.

6 MS. KOSS: So --

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

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

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

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

18 HEARING OFFICER CELLI: Right.

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

21 HEARING OFFICER CELLI: What we had agreed on was
22 that the briefs would be due seven days from the date or
23 eight days from the date the transcript was available.
24 And so Mr. Galati is offering to put together in one place
25 with all of the conditions to circulate amongst the

1 parties so that the parties can either say yea or nay on
2 the conditions as they exist as provided by Mr. Galati.

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

6 HEARING OFFICER CELLI: Right.

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

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

19 HEARING OFFICER CELLI: That's in the transcript.
20 That, we have. So I'm not worried about that. We have
21 exactly what all of the party here are -- have sponsored
22 so far.

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

25 HEARING OFFICER CELLI: Okay. So what we have

1 are is all of the testimony that's been received. You're
2 going to have a transcript that showed what evidence was
3 received. And all the evidence was received yesterday.

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

11 HEARING OFFICER CELLI: As to Biology?
12 Staff?

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

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

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

1 and circulated.

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

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

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

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

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

25 It's also possible if not, even likely, that

1 there already is sufficient evidence in the record to
2 reflect both the position that the staff would be
3 representing in these documents as well as any position
4 that Ms. Koss would be representing.

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

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

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

1 was -- that was me thinking with my external speaker on,
2 and I apologize.

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

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

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

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

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

20 HEARING OFFICER CELLI: Okay. Appreciate that.
21 So I'm sorry about that.

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

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

25 HEARING OFFICER CELLI: So you just finished.

1 So now we're on to Ms. Koss.

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

4 MS. KOSS: I don't think so.

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

7 MS. BELENKY: No, thank you.

8 HEARING OFFICER CELLI: Mr. Silver, please.

9 MR. SILVER: No, I have no cross.

10 HEARING OFFICER CELLI: Thank you.

11 Staff, redirect? Nothing?

12 MS. HOLMES: Nothing.

13 HEARING OFFICER CELLI: Thank you.

14 Thank you, Mr. Donovan.

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

17 MS. HOLMES: No.

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

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

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

25 MS. KOSS: Well, I don't know, Mr. Galati, do you

1 still have cross-examination?

2 MR. GALATI: Can you just give me a moment,
3 because I have to remember which -- what subject area
4 Mr. Okin's testimony is. We went too late last night.

5 No, I don't have any cross-examination for
6 Mr. Okin.

7 HEARING OFFICER CELLI: So and staff has
8 indicated they have no cross for Mr. Okin.

9 Center for Biological Diversity, any cross of
10 Mr. Okin?

11 MS. BELENKY: No, thank you.

12 HEARING OFFICER CELLI: And as to Mr. Okin --

13 MR. SILVER: No.

14 HEARING OFFICER CELLI: Thank you, Mr. Silver.

15 So with that then, we would just accept his
16 testimony, his written testimony as you've already
17 provided and rebuttal.

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

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

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

24 HEARING OFFICER CELLI: Naturally.

25 (Witness sworn.)

1 HEARING OFFICER CELLI: Perhaps rather than going
2 through all of his testimony, if Mr. Okin could give us
3 sort of a paraphrased summary.

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

5 DIRECT EXAMINATION

6 BY MS. KOSS:

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

9 Please state your name for the record.

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

11 MS. KOSS: And whose testimony are you
12 sponsoring?

13 MR. OKIN: My own.

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

16 MR. OKIN: No.

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

19 MR. OKIN: Yes.

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

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

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

25 The first was that the project diversion of water

1 flow will result in significant off-site impacts to
2 vegetation downwind -- I'm sorry, downstream of the
3 facility, and that these were not analyzed.

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

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

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

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

23 MR. OKIN: Yes, it was.

24 MS. KOSS: And have you reviewed staff's rebuttal
25 testimony that states that the current drainage plan

1 utilizes a series of dissipates located approximately
2 every 100 feet?

3 MR. OKIN: Yes.

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

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

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

18 MR. OKIN: No.

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

21 MR. OKIN: Briefly, once you disturb a desert
22 soil, there's very little to do to actually keep it from
23 moving due to wind. There's lots of wind energy in this
24 area, which then moves both sand, and the movement of sand
25 creates dust.

1 We've seen lots of places where building of
2 windbreaks or replanting the vegetation or natural
3 regrowth of vegetation, even in places where there's
4 actually more vegetation than there was naturally, still
5 doesn't result in the suppression of aeolian activity.

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

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

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

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

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

1 sustenance of vegetation.

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

4 MR. OKIN: I did.

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

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

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

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

24 So my understanding of chemical dust suppressants
25 is that they work for a while, but usually not longer than

1 one or two years; and this means that there would need to
2 be constant reapplication on the disturbed areas. And I
3 don't see any -- I didn't read any plan for how you do
4 dust suppression after the decommissioning.

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

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

20 HEARING OFFICER CELLI: What panels? I'm sorry.

21 MR. OKIN: The solar panels. Excuse me.

22 HEARING OFFICER CELLI: Okay.

23 MR. OKIN: Haven't really been studied, and so we
24 don't know the extent to which they will actually protect
25 the surface.

1 MS. KOSS: I just have one more question for you.
2 In your expertise and in your investigation, can
3 you please tell us how long it takes vegetation to recover
4 in the desert?

5 MR. OKIN: Well, the question is if it recovers.
6 A lot of times it doesn't. And studies, there's been a
7 recent review on this, that even very serious efforts for
8 recovery are usually very expensive and often ineffective,
9 but when it does occur, it usually takes -- typically
10 takes between 50 and 300 years, but can take as long as
11 3,000 years. I've seen many cases where it doesn't happen
12 at all.

13 MS. KOSS: Thank you. No further direct.

14 HEARING OFFICER CELLI: Thank you.

15 Cross-examination by the Applicant, please.

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

19 CROSS-EXAMINATION

20 BY MR. GALATI:

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

23 MR. OKIN: I did.

24 MR. GALATI: Did you see in those conditions
25 certification that the Applicant is mitigating for

1 downstream impact to washes and streams?

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

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

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

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

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

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

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

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

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

25 HEARING OFFICER CELLI: Let's -- what we're

1 waiting for is for Mr. Okin to have an opportunity to look
2 at the condition, Bio condition as it affected the Soil
3 and Water testimony of today. Not all these topics are
4 nicely contained in the classifications of Soil and Water.

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

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

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

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

16 MR. OKIN: Of course they do.

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

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

1 Fringe-toed Lizards.

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

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

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

23 MR. GALATI: So are you talking about on the west
24 side, just for clarification, the sort of crust that if
25 you step into, you crack, and there's sand and stuff

1 underneath? Is that the type of surface you're talking
2 about on the west side?

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

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

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

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

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

25 MR. OKIN: Did I -- I -- just to make sure I

1 understood your question, will it have more aeolian
2 activity afterwards with the compaction and, et cetera, or
3 at present? That's your question?

4 MR. GALATI: Yes.

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

7 MR. GALATI: Even with soil stabilizers?

8 MR. OKIN: Yes.

9 MR. GALATI: No further questions.

10 HEARING OFFICER CELLI: Staff, cross-examination.

11 MS. HOLMES: No.

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

13 MS. BELENKY: No, thank you.

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

16 MR. SILVER: No.

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

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

23 MR. OKIN: Well, as I said, I could actually
24 provide a better answer if I knew what the soil stabilizer
25 was going to be and what the dust suppressant was going to

1 be. So without that --

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

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

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

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

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

24 MR. OKIN: Fine.

25 HEARING OFFICER CELLI: For those one or two

1 years, you have really a more protected sand aeolian area,
2 for the first two years before it breaks down. It's an
3 improvement.

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

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

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

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

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

23 MR. GALATI: Would you agree that if we did not
24 maintain either through soil -- through a variety of soil
25 stabilization techniques, the sand or dust blowing from

1 the west, that it would below right on the mirrors to the
2 east?

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

7 MR. GALATI: No further questions.

8 HEARING OFFICER CELLI: Staff, cross, please?

9 MS. HOLMES: Nothing.

10 HEARING OFFICER CELLI: Ms. Belenky?

11 MS. BELENKY: No, thank you.

12 HEARING OFFICER CELLI: Mr. Silver?

13 MR. SILVER: No.

14 HEARING OFFICER CELLI: Redirect by Ms. Koss?

15 REDIRECT EXAMINATION

16 BY MS. KOSS:

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

22 MR. OKIN: No. You're -- when you go from the
23 undisturbed surface to the disturbed surface, you go from
24 basically something with zero flux to something with very
25 high flux to go up several orders of magnitude. So even

1 if you -- let's say it goes up two orders of magnitude, so
2 if you then tamp that down by 90 percent, you're still one
3 order of magnitude above what you were before.

4 MS. KOSS: Thank you. No further questions

5 HEARING OFFICER CELLI: Recross, Applicant?

6 MR. GALATI: One.

7 RECROSS-EXAMINATION

8 BY MR. GALATI:

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

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

17 MR. GALATI: No further questions.

18 HEARING OFFICER CELLI: Recross by staff?

19 MS. HOLMES: Nothing.

20 HEARING OFFICER CELLI: Recross by CBD?

21 MS. BELENKY: No.

22 HEARING OFFICER CELLI: Mr. Silver?

23 MR. SILVER: No.

24 HEARING OFFICER CELLI: Thank you, Mr. Okin, for
25 your testimony --

1 MR. OKIN: You're welcome.

2 HEARING OFFICER CELLI: -- for coming on down.

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

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

9 HEARING OFFICER CELLI: Okay.

10 MR. GALATI: -- which had to do with the disposal
11 of drilling mud. And we're going to capture that for the
12 21st, and make sure the parties have that.

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

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

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

23 That takes us next to Project Description.

24 MS. HOLMES: I'd like to ask a question about
25 that. I got the sense from reading the prehearing

1 conference statements that the questions that people had
2 under the topic of Project Description had to do with
3 project objectives, which in the staff testimony is
4 typically covered in the Alternative Section. So we need
5 to know whether or not the questions for -- regarding
6 Project Description should be directed towards
7 Mr. Monasmith or whether they should be directed towards
8 Ms. Lee who prepared the Alternative Section.

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

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

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

18 MS. BELENKY: Belenky.

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

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

24 MS. BELENKY: Well, I think that our issues have
25 possibly been raised throughout the hearing so far, and it

1 has to do with -- and of course, the Project Description,
2 we're now saying is one of the alternatives --

3 HEARING OFFICER CELLI: Correct.

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

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

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

1 sure I agree with that.

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

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

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

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

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

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

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

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

25 HEARING OFFICER CELLI: Yes, let me tell you,

1 because he is on -- Mr. Budlong, can you hear me?

2 MR. BUDLONG: Yes, I can.

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

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

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

20 HEARING OFFICER CELLI: Mr. Budlong?

21 MR. BUDLONG: (Inaudible).

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

1 can hear better.

2 So please speak up, Mr. Budlong.

3 MR. BUDLONG: All right. Let's try it this way:
4 Court reporter, are you happy with this?

5 THE REPORTER: That's better.

6 MR. BUDLONG: Better, all right.

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

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

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

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

25 MS. HOLMES: Staff has added a witness to the

1 Alternative Section to discuss some of the issues or be
2 available to discuss some of the issues raised by
3 Mr. Budlong with respect to the distributed solar
4 potential, and he is also available to address questions
5 having to do with energy capacity.

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

12 MR. GALATI: No, I do not.

13 HEARING OFFICER CELLI: Okay. Thank you.

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

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

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

24 We asked for two things. One was a global
25 condition that dealt with being able to start limited

1 amount of work to begin our funding. It's explained in
2 this.

3 The second is a global condition allowing the --
4 making sure that the verifications across the board allow
5 timing to be negotiated between the CPM and the Applicant
6 at the time of submittal of plans. This is language that
7 we used during the energy crisis on a lot of projects
8 where it was, for example, it would say submit a plan
9 30 days prior to construction or at a lesser time as
10 mutually agreed between the CPM and the Applicant, project
11 owner.

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

23 I just wanted the committee to understand that,
24 and whether or not there could be an acknowledgement. We
25 put it in our Project Description, you can consider it a

1 PMPD or we can provide testimony on it.

2 HEARING OFFICER CELLI: Well, let me just discuss
3 this with you for a second.

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

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

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

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

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

1 as defined in general conditions?

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

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

13 HEARING OFFICER CELLI: Would it be productive
14 and useful, perhaps, to have the CPM in here?

15 Do you understand, Ms. Holmes, what the problem
16 we --

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

22 I'm not sure a global condition is the best way
23 to deal with it, and I'm not sure I can get you anything
24 more specific than that. We would like to try to work
25 something out. As I said, we're not having a problem with

1 the concept, we're just -- I'm a little concerned about a
2 global condition. And I would like to have a chance to
3 talk with BLM to see what their approach is as well.

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

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

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

20 MS. HOLMES: But it was project specific?

21 HEARING OFFICER CELLI: It was.

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

25 HEARING OFFICER CELLI: Oh, boy.

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

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

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

1 to a lesser time as long as the CPM agrees, just an
2 acknowledgement of that.

3 I believe that it's in the general conditions,
4 but there's a lot of confusion. I'd love it to be in the
5 record that the CPM, if he works out an agreement, or he
6 or she works out an agreement with the project owner, the
7 90-day timing verification doesn't mean you're not in
8 compliance, you can negotiate a different time based on
9 staff's availability and those items.

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

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

14 (Recess.)

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

19 What we're going to need to do is we're going to
20 ask the parties to workshop this issue because it is -- we
21 just don't have enough right now at this time to be able
22 to make a determination about how to deal with this.
23 Maybe this is something the parties can come up with quick
24 language, hopefully, and discuss it. I don't know how
25 you're going to be able to fit a workshop in between now

1 and the 21st, but we would need this thing to be resolved
2 by then or at least have proposals on the table.

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

13 HEARING OFFICER CELLI: And we have lunchtime
14 today, too, coming up. We're thinking maybe in the next
15 half hour or so. And you can all discuss it over lunch.

16 What -- where we're at then is Project
17 Description and Alternatives. And then, so, staff, who's
18 going to call a panel?

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

21 HEARING OFFICER CELLI: Please come forward and
22 be sworn.

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

24 HEARING OFFICER CELLI: Yes.

25 MS. BELENKY: Because we have one witness on

1 Alternatives, but I'm not sure what we think is going to
2 be the timing right now.

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

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

7 MS. HOLMES: 30 seconds?

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

10 MS. HOLMES: Oh, no, five minutes.

11 MR. GALATI: Zero.

12 HEARING OFFICER CELLI: Zero cross.

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

15 MS. KOSS: Zero.

16 HEARING OFFICER CELLI: Zero cross.

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

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

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

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

24 HEARING OFFICER CELLI: Okay. Well, I think
25 we'll be able this get panel out of here by 1:30, don't

1 you think? It's ten after 1:00 now.

2 Oh, I'm sorry, Mr. --

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

6 HEARING OFFICER CELLI: He is on.

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

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

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

16 MS. BELENKY: Thank you.

17 HEARING OFFICER CELLI: And we're taking about a
18 45-minute lunch break.

19 So with that, have you been sworn in?

20 Please rise, raise your right hand.

21 (Witnesses sworn.)

22 HEARING OFFICER CELLI: Thank you. Have a seat.

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

25 MR. VIDAVER: David Vidaver, V-, as in Victor,

1 ---i-d, as in David, -a-, V as in Victor, -e-r.

2 HEARING OFFICER CELLI: Ms. Lee.

3 MS. LEE: Susan Lee. Susan, S-u-s-a-n, Lee,
4 L-e-e.

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

7 HEARING OFFICER CELLI: Thank you.
8 Staff, you may proceed.

9 DIRECT EXAMINATION

10 BY MS. HOLMES:

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

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

23 MS. LEE: Thank you. I have a little bit of
24 summary testimony here because the Alternatives section is
25 different than all the impact analysis, so I'm just going

1 to run briefly through the alternatives that we looked at
2 and where we came out at the end of the analysis and touch
3 on a couple of the questions that came up from the parties
4 in the proceeding.

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

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

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

24 To clarify the analysis of those alternatives,
25 three of the four alternatives were analyzed by each staff

1 author in their own sections.

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

14 The reduced acreage alternative clearly would
15 reduce the impacts of the project. It's half as big, so
16 it would reduce the -- basically all the impacts by about
17 half, but it would not eliminate the significant impacts
18 that remain with the proposed project, the cumulative,
19 visual, and land use impacts that we discussed last night.

20 The dry cooling alternative I'll skip.

21 The Galbrych alternative, again, is a private
22 land alternative on agricultural land. It would eliminate
23 a lot of the impacts to Biological Resources because there
24 wouldn't be much natural desert habitat affected, and it
25 would reduce the likelihood of effects to cultural

1 resources because it's ag land; but it would create a new
2 impact, the loss of productive ag land, which would not
3 occur with the proposed project, and it would also require
4 a different transmission intersection study because it
5 would connect to the transmission system at, again, the
6 Colorado River substation, but by a different transmission
7 line route.

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

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

20 These include looking very briefly at other site
21 alternatives; other solar technologies, including rooftop
22 solar and distributed PV, other renewable technologies
23 like wind, geothermal and biomass, conventional
24 generation, natural gas, coal and nuclear and
25 conservation.

1 So the two issues that were raised by intervenor
2 testimony that I'll just very briefly summarize, the first
3 one is related to distributed photovoltaics as an
4 alternative. There's no single definition of what is
5 considered distributed PV. It clearly includes a lot more
6 than just rooftop PV. The general idea, of course, of
7 distributed -- any distributed power is that it's
8 something that's generated near the point of use. So we
9 generally consider it to be something up to about
10 20 megawatts. And this is something that can be built on
11 about 200 acres of urban or suburban land.

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

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

25 So our conclusion about distributed PV, while we

1 know that it's going to be growing and we know that costs
2 are coming down and we clearly know that the environmental
3 impacts of PV are small, we've not considered it as a
4 viable alternative because there are several big
5 challenges to making a large increase in rooftop PV that
6 would be required to replace this project.

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

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

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

20 And finally, that really kind of a big-picture
21 concern is that we don't think it's appropriate that
22 distributed PV be the only solar technology that's
23 implemented in the state, because we think in order to
24 meet the state's RPS goals, there really is needed a mix
25 of both solar and other renewable technologies.

1 The second topic that I'll touch on quickly, and
2 this ties into the Project Description questions that came
3 up in testimony, relates to project objectives.

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

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

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

25 So that concludes my statement.

1 MS. HOLMES: Thank you. The witnesses are
2 available for cross-examination.

3 HEARING OFFICER CELLI: Cross by the Applicant?

4 MR. GALATI: None.

5 HEARING OFFICER CELLI: Cross by Ms. Koss.

6 MS. KOSS: No, thank you.

7 HEARING OFFICER CELLI: Cross by Ms. Belenky.

8 CROSS-EXAMINATION

9 BY MS. BELENKY:

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

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

16 HEARING OFFICER CELLI: That would be zero liquid
17 discharge?

18 MS. BELENKY: Yeah. Zero discharge.

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

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

23 It's -- sorry.

24 MR. MONASMITH: I'm Mike Monasmith, project
25 manager.

1 I think in general in terms of evaporation ponds,
2 which I know is a discussion that Sarah from Biodiversity
3 was interested in yesterday, and the reduced anticipated
4 flow into the evap ponds as a result of dry cooling, we
5 identified that would be smaller than those in the Project
6 Description. Dry cooling, it would be a lesser number
7 needed for each 125 meg unit. That would be potentially
8 zero liquid discharge. But then there's also the ZLD, a
9 liquid discharge technology, which was also discussed in
10 the Soil and Water section. So I think there may be a
11 little bit of confusion there.

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

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

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

25 The sort of generalized description that we've

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

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

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

24 HEARING OFFICER CELLI: But before you do,
25 actually, that was a comment without a question. And

1 there's no question pending. And she's on cross. And so
2 I'm just basically going to give it the weight it deserves
3 and let her ask the next question.

4 MR. MONASMITH: Can I clarify, still?

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

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

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

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

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

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

25 In terms of the zero liquid discharge and zero

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

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

25 MS. BELENKY: Thank you. Now, I just have one

1 question about the access road. And my reading of the
2 document, I didn't see any discussion under any
3 alternative of limiting access to that road by the general
4 public; is that correct?

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

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

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

12 MS. BELENKY: Uh-huh.

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

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

25 MS. BELENKY: I just want to clarify, yesterday

1 the land use panel said they did not consider the
2 question.

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

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

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

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

24 MR. MONASMITH: I'm sorry, repeat it again. What
25 was my testimony?

1 MS. BELENKY: I'm asking you if it is your
2 testimony that the staff documents, the Staff Assessment
3 actually consider limiting the access along this main
4 access road to the public in order to limit impact to the
5 environment.

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

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

24 So staff's been extremely concerned about the
25 biological access, biological impacts to the access road,

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

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

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

18 MS. BELENKY: Did staff's -- I think you already
19 answered this at the beginning. I wish I had a transcript
20 in front of me. I really am trying very simply to find
21 out, and perhaps I should ask it this way: Can you show
22 me where in the Staff Assessment or the Revised Staff
23 Assessment the impacts of the use of the access road by
24 members of the public and the increased impacts that will
25 have on the environment or could have on the environment

1 by increasing off-road vehicle use in the back country, in
2 the area around this site, six and a half miles off of
3 I-10, where that is analyzed? Can you show me where that
4 is analyzed within the staff document?

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

9 I can tell you that it is a concern that the BLM,
10 as a multi-use agency, in their Final Environmental Impact
11 Statement and that the land use analysts have indicated
12 that this is something that our biologists have
13 considered, but in terms of specific recreational use that
14 could potentially be opened up, how we appropriately deal
15 with the desire of a member of the public to access McCoy
16 Wilderness Area as a result of this new road, how that
17 would be handled by BLM in consultation with this project
18 proponent in order to assure that biological impacts, that
19 is something that we obviously are concerned about. I
20 think that it's really a question that goes to the BLM as
21 the administer of this land, as a multi-use agency, where
22 they mandate to handle these interests, recreational and
23 protection and sustaining this public land really is a
24 matter that I think is very important to them and one that
25 you will see specifically addressed in the FEIS.

1 We talk about it as well in our testimony, but I
2 can't necessarily point you to an exact page where you
3 would find all of those different issues in one condition,
4 only that the spirit of those are important to us, that
5 we've addressed them, that we have not been oblivious to
6 them or disregarded them.

7 MS. BELENKY: Thank you.

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

10 MS. KOSS: None at this time.

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

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

15 MS. KOSS: Thank you.

16 HEARING OFFICER CELLI: Thank you.

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

20 The last cross-examiner would be Mr. Budlong.
21 And, so Mr. Silver, let's see what we can accomplish here
22 in the next ten minutes.

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

25 MR. BUDLONG: I am still here.

1 HEARING OFFICER CELLI: Go ahead, Mr. Budlong.

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

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

6 MR. BUDLONG: Could be, yes.

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

9 (Recess.)

10 HEARING OFFICER CELLI: We're back on the record.

11 It's now almost 20 to 2:00. We're going to go to
12 20 after 2:00. So at 2:20, please be back in your seats,
13 ready to go. We will begin with Mr. Budlong's
14 cross-examination of this panel.

15 You're still under oath, you're still sworn.

16 And we will see you all at 2:20.

17 MR. BABULA: Mr. Celli --

18 HEARING OFFICER CELLI: Yes.

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

1 various CEC --

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

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

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

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

14 (Lunch recess.)

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

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

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

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

21 MS. LEE: Right. Right. I don't have that in
22 front of me, but I looked at it earlier this morning, and
23 that is the Applicant's project objectives. And I know it
24 doesn't state that, but it does say the objectives of the
25 Genesis Solar Energy Project.

1 MR. BUDLONG: That's right, it does not state the
2 Applicant's objectives. But I presume if you'll -- this
3 describes the Genesis Solar Energy Project. And right
4 there it does say with this objective, what is the
5 (inaudible) utility scale, (inaudible) parabolic trough
6 technology. If that's a point of confusion, then I don't
7 know how you quite clear that up.

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

9 MR. BUDLONG: -- (Inaudible).

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

19 HEARING OFFICER CELLI: Sustained.

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

22 HEARING OFFICER CELLI: That objection is
23 sustained.

24 Mr. Budlong?

25 MR. BUDLONG: Yes.

1 HEARING OFFICER CELLI: When -- I know it's --
2 you're not on a speaker phone, are you?

3 MR. BUDLONG: Yes, I am.

4 HEARING OFFICER CELLI: Can you get on the
5 receiver?

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

8 HEARING OFFICER CELLI: Yes, that's much better.
9 Thanks for doing that.

10 One of the problems you have --

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

12 HEARING OFFICER CELLI: Apparently your canary is
13 going.

14 MR. BUDLONG: Maybe that will help.

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

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

23 MR. BUDLONG: All right.

24 HEARING OFFICER CELLI: So the objection was
25 sustained. Did you hear --

1 MR. BUDLONG: Yes, I did hear that.

2 HEARING OFFICER CELLI: Okay, great.

3 Go ahead.

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

16 HEARING OFFICER CELLI: Okay. So your question
17 is?

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

22 MR. MONASMITH: Mike Monasmith, project manager.

23 I'd like to speak to the process really by which
24 we review an application for certification when they are
25 submitted to the Energy Commission, and then development

1 of the Executive Summary and the Project Description.

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

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

19 We then look in terms of impacts and compliance
20 with laws, regulations, and standards, make an assessment,
21 use our independent judgment, and confirm with the public
22 intervenors, agencies, and others, and then make a call on
23 the impacts, and then condition it appropriate and make
24 sure there are no significant acts and that we're meeting
25 our goals, protecting the environment, furthering economic

1 reliability and economic future of the state,
2 electricity's structure and its reliability and making
3 sure the public health and welfare are protected along the
4 way. So, you know, those are the goals that we look at.

5 And what we looked at in terms of this particular
6 project and solar trough technology was, in fact, it was a
7 solar trough technology proposal. It was projected to be
8 250 megawatts. All those we looked at, if it would, in
9 fact, comply with goals set up by the legislature and
10 signed by the governor in terms of renewable energy and
11 meeting the renewable portfolio standards and goals in
12 terms of that. And that's kind of the guidance that we
13 use in that regard.

14 So I don't know if that helps.

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

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

22 And another thing that I mentioned in my initial
23 testimony was that the CEQA does not require that all
24 project objectives be met when you're evaluating
25 alternatives. It specifically says most. So if there is

1 one problematic objective or one that feels constraining,
2 that is something that we always are open to looking at an
3 alternative that meets most project objectives but not
4 all.

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

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

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

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

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

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

25 MR. VIDAVER: Your question, was it analyzed, and

1 Ms. Lee said not in any detail. So I'm afraid you'll have
2 to ask another question of me. I'm afraid that's what
3 Hearing Officer Celli will tell you.

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

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

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

24 So does that go part way toward answering your
25 question?

1 MR. BUDLONG: I was hoping you could quantify it.

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

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

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

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

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

25 MR. VIDAVER: Powerpoint presentation.

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

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

10 MR. VIDAVER: Yes, sir.

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

13 MR. VIDAVER: It discusses the levelized cost of
14 energy from both utility scale photovoltaics and various
15 distributed photovoltaics ranging from half megawatt
16 rooftop projects to five to twenty megawatt ground bound
17 and fixed tilt projects. And I can -- I will just -- I
18 will give you two numbers that you can respond to from the
19 presentation. In the Mohave Desert, the estimated
20 levelized costs of energy from a utility scale thin film
21 fixed tilt resource is on the order of 13 cents. A 0.5 to
22 2 megawatt fixed tilt rooftop resource located in the
23 north coast of California, which is where most of the
24 small rooftops that are in the PG&E service area are
25 located, have a levelized cost of energy on the order of

1 28 cents. So the cost difference there would be roughly
2 14, 15 cents.

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

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

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

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

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

18 MR. BUDLONG: Yeah, I would appreciate that.

19 MR. VIDAVER: Will do.

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

22 I would suggest you might send him a copy or two,
23 since they've already been made. While it may not be that
24 relevant to this proceeding, it's obviously information
25 that would be of interest to him as he's obviously

1 interested in PV versus solar trough technology costs,
2 economics thereof, what have you. It might prove to be
3 informative for him.

4 MR. VIDAVER: Will do.

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

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

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

15 MS. LEE: Actually, yes, that information was
16 from a presentation made in the Ivanpah hearing by the
17 Applicant's witness, Mr. Gray, who was a distribution
18 engineer and made quite a long presentation about why the
19 implementation of a lot of urban photovoltaics would have
20 an effect on the distribution system, and especially
21 distribution substations because they are -- you know,
22 they were designed to have power come in and then go out
23 to residences and users around the grid and not so much to
24 have a lot of generation coming back and being
25 redistributed.

1 So again, I'm not a -- I'm not an electrical
2 engineer, but there was -- the concept makes sense to me;
3 and it's my understanding it's not infeasible, but it
4 takes time and money in order to adjust the transmission
5 system, the distribution system so that it works properly.
6 And I'm sure Mr. Vidaver can make that more technical.

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

10 MS. LEE: I didn't, but I thought it was
11 interesting. And I don't know exactly why it is that
12 Edison is moving so slowly on its implementation of their
13 250-megawatt commitment, which was intended to be
14 primarily industrial rooftops, and they in two and a half
15 years have made almost no progress at all. And they're
16 the ones with the best ability to make something like that
17 happen. So the published data just is that they're up to
18 something like three megawatts, but I don't know the
19 background as to what's holding them back.

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

23 MS. LEE: That's correct.

24 MR. BUDLONG: I think also in your testimony you
25 mentioned that many technologies are required in order to

1 meet California's obligations, and solar trough is one of
2 them. And that's one of your reasons, one of the
3 challenges.

4 MS. LEE: I don't think I said solar trough was
5 one of them. It's my opinion that utility scale solar is
6 part of the mix of renewables that will get California to
7 33 percent, but I don't think I made a statement in
8 particular about trough.

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

11 MS. LEE: Sure.

12 MR. BUDLONG: I had trouble taking notes.

13 Is it -- and I think you used that as a reason
14 why this project prefers solar troughs.

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

1 but there is no data that I know of that really says that
2 that is achievable within any small number of years.

3 MR. BUDLONG: I think the rest of my comments are
4 taken care of in my testimony. I can ask you about
5 biomass because I think there was a bad calculation there
6 in that, in the biomass analysis. It looked like the
7 biomass was rejected because you couldn't get
8 250 megawatts from it, whereas indeed we're only using 25
9 percent of 250 megawatts.

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

21 MR. VIDAVER: Mr. Budlong, you make a very valid
22 point that the energy from -- the amount of energy that
23 Genesis will provide is equivalent to the amount of energy
24 that roughly a 70-megawatt biomass facility would produce.
25 But the comparison of a solar project to a biomass project

1 is complicated by the fact that Genesis will provide about
2 250 megawatts of capacity on peak. So at 4:00 in the
3 afternoon on the hottest day of August, it's going to make
4 a rather significant contribution to keeping the lights on
5 when we all have our air conditioners running.

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

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

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

22 MR. VIDAVER: Perhaps we should have -- I think
23 we might occasionally make the mistake of assuming that
24 the reader is somewhat familiar with concepts that, based
25 on our professions and years of experience, we think to be

1 somewhat simple and easy to understand and occasionally
2 fail to realize that they're not.

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

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

7 Any redirect by the staff?

8 MS. HOLMES: No.

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

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

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

17 Do you have a witness?

18 MS. KOSS: We do not.

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

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

23 MS. BELENKY: We discussed this with the other
24 parties, and our witness, Bill Powers, is available, but
25 there was no cross-examination, and as long as the panel,

1 the commission doesn't have any additional questions, I
2 can get him on the phone if you do, we would just accept
3 the testimony that's already in the record.

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

6 MR. GALATI: Yes.

7 HEARING OFFICER CELLI: And staff?

8 MS. HOLMES: I beg your pardon?

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

12 MS. HOLMES: That's acceptable.

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

15 MS. KOSS: No.

16 HEARING OFFICER CELLI: Mr. Silver?

17 MR. SILVER: No objection.

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

22 MS. BELENKY: I just want to make clear, he would
23 love to come and he loves to talk to you because you
24 understand what he's saying. And when he goes on like
25 that sometimes, I don't know what he's saying. But I

1 thought in the interest of time everyone would prefer to
2 take it on the record.

3 HEARING OFFICER CELLI: Thank you.

4 PRESIDING MEMBER BOYD: I know and enjoy
5 Mr. Powers. I think I could recite his presentation.

6 HEARING OFFICER CELLI: So with that,
7 Mr. Budlong, you're the last remaining person who wanted
8 to put on some evidence with regard to Alternatives and --
9 Project Alternatives and Project Description.

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

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

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

21 HEARING OFFICER CELLI: Thank you.

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

24 HEARING OFFICER CELLI: I'm sorry, you sort of
25 faded out. One point that what?

1 MR. BUDLONG: Which I'm not challenging.

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

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

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

10 HEARING OFFICER CELLI: Okay.

11 MS. HOLMES: That's correct.

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

20 Is that the extent of it?

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

23 HEARING OFFICER CELLI: Oh, air quality, that's
24 what it was. Air quality, Cultural, possibly Bio, and
25 possibly Soil.

1 Well, very good. Let's go ahead and -- you know,
2 Applicant, did you have witnesses on TSE?

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

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

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

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

23 MR. GALATI: Mr. Stein.

24 HEARING OFFICER CELLI: Okay. Any need on behalf
25 of staff to cross-examine, cross-examine Mr. Stein on --

1 MS. HOLMES: No.

2 HEARING OFFICER CELLI: Thank you.

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

5 MS. KOSS: No.

6 HEARING OFFICER CELLI: CBD, Ms. Belenky?

7 MS. BELENKY: No, thank you.

8 HEARING OFFICER CELLI: And --

9 MR. SILVER: No.

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

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

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

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

23 Is that correct?

24 MS. KOSS: I have no cross.

25 HEARING OFFICER CELLI: Okay. So CBD, did you

1 want to cross-examine on Transmission Systems Engineering?

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

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

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

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

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

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

25 HEARING OFFICER CELLI: Certainly.

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

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

17 Does that make sense?

18 HEARING OFFICER CELLI: Yes. It does to me.

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

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

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

25 MS. BELENKY: Okay.

1 MR. STEIN: It's in our June 18th --

2 MR. GALATI: Exhibit 62 perhaps?

3 MR. STEIN: -- supplement. And I don't have the
4 exhibit number.

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

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

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

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

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

25 HEARING OFFICER CELLI: Okay. And so it sounds

1 to me like you've got the Applicant's submission by way of
2 that, what is Exhibit 62, supplemental testimony, but it
3 also sounds to me, if I'm not mistaken that staff's
4 biological analysis of the Colorado River substation is in
5 Transmission Systems Engineering section, not in the
6 Biological Resources section.

7 MS. BELENKY: That might be why I missed it.

8 HEARING OFFICER CELLI: Do I have that right or
9 wrong?

10 MS. HOLMES: Susanne Phinney, are you on the
11 line?

12 MS. PHINNEY: Yes, I am.

13 MS. HOLMES: Can you offer any clarification?
14 I'm not quite certain -- I want to make sure we get this
15 right.

16 MS. PHINNEY: I believe that that bid has the
17 biological survey data for the station's expansion when we
18 prepared the Transmission Systems Engineering Appendix A
19 and that it was dealt with. We did not have --

20 MS. HOLMES: There is a --

21 MS. PHINNEY: -- (inaudible) information.

22 MS. HOLMES: There is a section of Biological
23 Resources in the -- in the supplement, which is
24 Exhibit 403, that includes Golden Eagle survey results,
25 secondary access road, distribution telecommunications

1 line, redundant telecommunications line, six pole
2 transmission line extension, so -- and removal of the toe
3 and changes to --

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

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

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

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

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

15 MS. HOLMES: Many places, unfortunately.

16 HEARING OFFICER CELLI: In the evidence I would
17 say.

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

23 There's also a section in the supplement, which
24 is Exhibit 403, that addresses all of the other
25 information in Exhibit 62 except for the information you

1 provided about the substation.

2 Did I get that correct?

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

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

14 MS. MAYER: Thank you.

15 HEARING OFFICER CELLI: Okay. So --

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

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

19 MS. BELENKY: I think so. And I know that we did
20 look at the Applicant's piece of it; so I just wanted to
21 make sure because there does seem to be a little bit of
22 a -- there's a little bit of unclarity because that
23 substation approval is not going to be done by the CEC,
24 it's going to be done by the CPUC, and yet it is to some
25 extent a connected action with this.

1 HEARING OFFICER CELLI: I understand what you're
2 saying. And what I think -- there is analysis in the
3 record; we have that. We have whatever analysis there is,
4 is in the record and we know now where it is, 400, 403,
5 and 62.

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

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

13 HEARING OFFICER CELLI: Thank you.

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

17 MR. SILVER: No.

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

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

23 I just want to say that Mr. Hesters has spent the
24 night here. And has been waiting for his shot at the
25 airwaves. And sorry about that. Thanks for being here.

1 If it's any consolation to you.

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

4 MS. KOSS: No.

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

8 MS. BELENKY: No.

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

11 MR. SILVER: No.

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

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

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

1 with the analysis.

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

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

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

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

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

17 HEARING OFFICER CELLI: Docketed July 9th?

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

21 MR. GALATI: I appreciate that.

22 PRESIDING MEMBER BOYD: I do print these things.

23 HEARING OFFICER CELLI: So what's your pleasure?
24 Do you want to put it on oral testimony, or do you want to
25 just submit the documents and let's hear from the parties?

1 MR. GALATI: If the parties would not object, I
2 will have the documents submitted. They were served. I
3 don't know if anyone needs to see a copy of it now to make
4 sure that I am not misrepresenting what they said, but I
5 would like to mark the next in line, and when they come,
6 provide them to you or have leave to provide them to the
7 hearing office if the hearing adjourned before I get them.

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

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

14 HEARING OFFICER CELLI: Okay. And the other?

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

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

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

23 HEARING OFFICER CELLI: Well, I just wanted to
24 make sure that this isn't some new something that is
25 completely --

1 MS. HOLMES: If Mr. Galati says that what those
2 documents are is accepting the staff conclusion on Socio
3 and TSE, I am willing to accept his representation that
4 that is so.

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

7 MS. HOLMES: No.

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

11 MS. KOSS: No.

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

14 MS. BELENKY: No.

15 HEARING OFFICER CELLI: Any objection,
16 Mr. Silver?

17 MR. SILVER: No.

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

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

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

25 HEARING OFFICER CELLI: Thank you, all.

1 So that means that we just finished Transmission
2 Systems Engineering.

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

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

16 Mr. Hesters, please raise your right hand.

17 (Witness sworn.)

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

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

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

25 MR. HESTERS: I was a coauthor of the

1 Transmission System Engineering testimony.

2 HEARING OFFICER CELLI: Is your mic on?

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

5 HEARING OFFICER CELLI: That's much better.
6 Thank you.

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

9 HEARING OFFICER CELLI: Phase 2 studies status.

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

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

20 MR. HESTERS: No.

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

23 MR. HESTER: We, actually, for the Phase 1 study,
24 it was an issue that we had when we when we had -- when
25 the Phase 1 studies were submitted. And the Phase 1

1 studies came in with applications for confidential
2 treatment here. Those were actually even submitted
3 multiple times and often -- and were denied. That's where
4 we are with those.

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

10 HEARING OFFICER CELLI: Mr. Galati, please.

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

18 And so in two projects I'm involved with, an
19 application for request for confidentiality based on SCE's
20 assertions was placed over the entire study since the
21 bottom of the study had a disclaimer. And it was
22 counsel's office did not want to grant it confidentiality
23 in its entirety. So there became a long discussion about
24 what was confidential and what's not. And SCE's position
25 was it all is.

1 And so our position, as an applicant's claim, was
2 it has to be confidential if we're going to be held liable
3 for giving it over and violating our agreement. Somehow,
4 since there was a study that the energy commission got
5 submitted before there was clear direction not to provide
6 it, since it was the same study because it was the
7 Phase 1, we got through data adequacy and moved forward on
8 Phase 1.

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

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

21 You also know my personal opinion that you've
22 heard many times and rejected is that the commission does
23 not need to go forward, does not need to have the Phase 2
24 to go forward. And in this case, I would give another
25 reason. The Phase 2, the way the Phase 2 upgrades,

1 downstream upgrades work, the Genesis Project does not go
2 forward; the same upgrades will occur as -- if the Genesis
3 Project is the only project to go forward, that's the way
4 the cluster works. The question is who pays for it.

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

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

23 COMMISSIONER WEISENMILLER: It does seem like the
24 problem with my understanding is part of the Phase 2
25 studies included stability analysis, and I don't -- that

1 depending on the results of the stability analysis, that
2 may or may not have implications for staff's assessment.

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

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

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

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

24 So I don't believe -- I believe the commission
25 can find as a matter of law from CEQA that those are not

1 impacts that need to be evaluated.

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

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

17 And again, just also to reinforce the CEQA issue,
18 is the upgrades are from the cluster, and the cluster
19 includes CEC commission projects and non-CEC jurisdiction
20 projects; yet the upgrades are going to occur without or
21 with all of them. So they're going to happen. Even if
22 only one project in the entire queue were to go forward,
23 the question is how much would SCE pay versus how much the
24 Applicant -- the proponent of that project would pay.
25 That's how the current system works.

1 PRESIDING MEMBER BOYD: Mr. Weisenmiller, I don't
2 think we can resolve this in the context of this siting
3 committee, but I'm glad you chimed in because my thinking
4 was to turn to you as a member of our siting committee as
5 well as our transmission committee and suggest that we
6 need a little internal discussion on process and
7 procedure; something new has happened that's not
8 acknowledged by our process, and we need to see if we can
9 quickly find a way out of this.

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

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

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

20 MR. BUSA: We actually have 30 days to have our
21 first meeting, would be ISO and SCE on the study results.
22 That has not yet happened. That will be, and we expect
23 them to tender an LGIA about that time. And then I
24 believe we have 90 days to come to conclusions on the
25 LGIA. So that then would be filed with FERC.

1 COMMISSIONER WEISENMILLER: And do you intend to
2 try to have it approved by FERC before financing? Oh, I
3 guess you're not -- you're doing (inaudible) financing, so
4 you don't have to have the LGIA necessarily approved.

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

7 COMMISSIONER WEISENMILLER: Okay.

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

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

15 MR. HESTERS: Well, I am in conversations with
16 Edison, trying to figure out which parts of the Phase 2
17 study are actually critical energy infrastructure
18 information and which aren't. They are supposed to be
19 going through and redacting the parts that are and
20 creating a document that could come here that wasn't --
21 wouldn't have to be confidential. I'm hoping that happens
22 quickly, but I don't know how quickly.

23 PRESIDING MEMBER BOYD: Of course in my mind is
24 would it be adequate for your analysis needs --

25 MR. HESTERS: I don't know that.

1 PRESIDING MEMBER BOYD: -- if it's substantially
2 redacted.

3 You won't know till you see one.

4 MR. HESTERS: Right. Their first decision was
5 that the whole thing was critical energy infrastructure
6 information; and that obviously didn't work, so I don't
7 know whether it's going to be that same standard.

8 PRESIDING MEMBER BOYD: Perhaps in a forthcoming
9 meeting that I'm aware of with Edison this issue can be
10 brought up.

11 MR. GALATI: Commissioner Boyd, before that
12 forthcoming meeting, I wanted to make sure I clarified
13 something. I said something wrong.

14 Our confidentiality agreement was actually with
15 Cal ISO, but it is -- it has been that SCE is the one who
16 is concerned with the confidentiality; and I don't know
17 how that works, but our confidentiality agreement was with
18 the Cal ISO.

19 COMMISSIONER WEISENMILLER: I was going to say,
20 this helps. The last assurance I had from Edison is that
21 it was all out of their hands and it was in your hands.

22 MR. GALATI: I wish it were.

23 PRESIDING MEMBER BOYD: So, Mark, not only did
24 you get up to the podium finally, but you turned over a
25 rock and then walked away.

1 HEARING OFFICER CELLI: We need to go off the
2 record for just a moment.

3 (Recess.)

4 HEARING OFFICER CELLI: Thank you, ladies and
5 gentlemen.

6 Okay. So was there -- was there any request from
7 any of the intervenors to cross-examine Mr. Hesters? I
8 see shaking heads.

9 MR. SILVER: No.

10 HEARING OFFICER CELLI: They're all saying no.
11 Okay. Thank you.

12 So that closes Transmission Systems Engineering,
13 in terms of taking in evidence.

14 We've covered a lot in these two days, and I want
15 to thank all of the parties for your hard work and hanging
16 in there and long hours. We have remaining Air Quality,
17 and we're waiting for FDOC, which is due up when --

18 MS. HOLMES: Soon.

19 HEARING OFFICER CELLI: I'm so reassured.

20 MS. HOLMES: This week.

21 HEARING OFFICER CELLI: Okay.

22 MS. HOLMES: And there'll be additional changes
23 to the conditions of certification to reflect that as
24 well.

25 HEARING OFFICER CELLI: Okay. So Air Quality,

1 Cultural and Air Quality. And now it appears Transmission
2 and Systems Engineering will be on the agenda for the
3 21st.

4 MS. HOLMES: Well, will there be anything to
5 cover if we do not have the Phase 2 study available on
6 TSE?

7 HEARING OFFICER CELLI: I'm not sure. We're
8 trying to figure out.

9 COMMISSIONER WEISENMILLER: At least the status
10 of trying to get that.

11 MS. HOLMES: Good point.

12 HEARING OFFICER CELLI: So Cultural -- we've
13 received Socio, Cultural, Air, Transmission Systems
14 Engineering.

15 What other areas? Is there any motion from any
16 of the parties to reopen any of the other topic areas for
17 the 21st hearing?

18 I'll start with the Applicant.

19 MR. GALATI: I think that there is going to be at
20 least stipulated between staff and Applicant a couple of
21 exhibits that need to come in. It might be all in one
22 exhibit. There would be a change in testimony on visual
23 in which the condition, I think, the condition that
24 requires lattice towers would go away; so I don't know if
25 that was enough, what we did, or we need an exhibit to

1 show that staff has agreed. There would be a --

2 HEARING OFFICER CELLI: Let's take a moment, and
3 let me just poll the parties and see whether -- how can we
4 streamline that.

5 MS. HOLMES: I'd point out that the condition of
6 certification already states that biological or cultural
7 concerns would override, if you will, the requirement to
8 have the lattice towers. It's already in the conditional
9 certification. We can make it explicit that that's the
10 way we're going, but I'm not sure we need to reopen the
11 record on that.

12 HEARING OFFICER CELLI: That sounds reasonable.
13 Go ahead, Ms. Mayer.

14 MS. MAYER: Also, I talked to Mr. Cannalato at
15 lunch, and he confirmed that indeed a biological concern
16 is overriding and that it's fine with him to have the mono
17 poles instead of lattice.

18 HEARING OFFICER CELLI: Okay. So it sounds to me
19 like we probably don't need to reopen on Visual, if that's
20 okay with CURE, Ms. Koss.

21 MS. KOSS: That's fine.

22 HEARING OFFICER CELLI: And Ms. Belenky?

23 MS. BELENKY: Yes. I think so. I'm a little
24 concerned that we won't have the clean copy of the
25 condition, but I guess that doesn't matter as long as

1 that's in the record that that's what we're all agreeing.

2 HEARING OFFICER CELLI: And what we're agreeing
3 to is that they're essentially stipulating that in Visual
4 the concerns of Biology or Biological Resources that
5 preferred mono pole over the lattice pole would take
6 precedence in that condition and that the language is
7 adequate to ensure that there will be mono poles.

8 MS. BELENKY: I think that's what we're all
9 agreeing to, yes; in which case, yes, I would agree as
10 well.

11 HEARING OFFICER CELLI: Thank you.

12 And do you agree, Mr. Silver, on behalf of
13 Mr. Budlong?

14 MR. SILVER: Yes.

15 HEARING OFFICER CELLI: Thank you. So with that,
16 we don't really need to reopen Visual, and we will accept
17 and it's understood what that condition is; and if need
18 be, we can refine the language --

19 MR. GALATI: Okay. I --

20 HEARING OFFICER CELLI: -- on our own notion, the
21 committee.

22 MS. MAYER: I don't have the text right in front
23 of me, but I believe what that means is instead of
24 disagreeing with Applicant's proposal for Vis 3, that the
25 Applicant's proposal for Vis 3 would become Vis 3.

1 MR. GALATI: Yeah, I don't think we need to open
2 the record because I think there's enough in the record
3 for me to ask you in a brief not to include Vis 3. I
4 think there's evidence in there that's not necessary; or
5 you can keep Vis 3, and we've already got a preview of the
6 decision under Vis 3 that it won't be required. I would
7 just prefer to take it out. But I thought we talked about
8 preparing a -- so Visual, we don't need a document.

9 The next one seems to be that Biology, which I
10 think we do need a document for Biology because in the
11 workshop earlier this morning there were changes coming
12 from staff that I think should be put into a written
13 exhibit. Hopefully we can talk about them tomorrow in the
14 workshop. And if there is an exhibit, I'll take the
15 burden of presenting it as -- so I think that it needs to
16 come in on Biology, into the record, as an exhibit.

17 MS. HOLMES: Mr. Galati, neither Ms. Mayer nor
18 myself are available for tomorrow's workshop, and so my
19 understanding is that the only subject that's going to be
20 discussed is Cultural, although there may be the
21 opportunity to address this issue of whether or not it's
22 possible to craft some language to allow construction to
23 commence in order to meet ARRA deadlines; but in terms of
24 reviewing the Biological Resources language, that's not --
25 we're not going to get final agreement on that tomorrow

1 because neither one of us is available.

2 HEARING OFFICER CELLI: Well, so essentially
3 what's happening right now is there's a motion right now
4 on Bio to hear more evidence on Bio on the 21st of July.

5 MS. HOLMES: Which staff supports. I'm just
6 pointing out that we won't be -- we won't have resolved it
7 by tomorrow.

8 HEARING OFFICER CELLI: And I see nodding heads
9 from at least Ms. Belenky and everyone else, so we'll grab
10 the motion and reopen Bio limited to these conditions on
11 the 21st of July.

12 MR. GALATI: Thank you for that limiting
13 condition.

14 MS. BELENKY: Excuse me. Can I just clarify?

15 Limited to the conditions that we discussed in
16 Bio 19 and the Applicant's request to begin construction
17 at an earlier time?

18 HEARING OFFICER CELLI: The ARRA.

19 MS. BELENKY: The ARRA, okay.

20 MS. HOLMES: There's also -- there are additional
21 conditions --

22 MS. BELENKY: And the water issues that have --

23 HEARING OFFICER CELLI: We haven't gotten -- Soil
24 and Water would be a separate motion, which I'm sorry to
25 be all formalistic about it, but --

1 MS. HOLMES: There are other Bio conditions I
2 believe that we believe that at least between the staff
3 and the Applicant we've reached an agreement with respect
4 to Bio 8.

5 HEARING OFFICER CELLI: Yeah, you know what I
6 would like you to articulate on the record now so that
7 next week we can we have clear cut, what are we doing with
8 next week? What are the conditions that we're talking
9 about?

10 MR. GALATI: Bio 19 and Bio 8, the area related
11 to noise.

12 HEARING OFFICER CELLI: Just those two
13 conditions.

14 MR. GALATI: Those are the two that we discussed
15 and we're aware of.

16 HEARING OFFICER CELLI: And that the need to
17 start construction early for ARRA funding purposes arises
18 under Biology?

19 MR. GALATI: No, that was a Project Description.
20 We proposed language in the Project Description; we'd ask
21 that it be not identified in each resource area, but that
22 it be global in the general condition.

23 HEARING OFFICER CELLI: Staff, do you have any
24 position on that?

25 MS. HOLMES: Well, as I said, staff is -- has

1 been consulting with -- with the Bureau of Land
2 Management. This is an issue that's come up in a number
3 of the cases, the compliance staff is looking at it,
4 working with the project managers, working with the Bureau
5 of Land Management. We don't have -- we'd like to try to
6 come up with a way to accommodate the Applicant's concern
7 in a way that's not nearly as broad as what they have
8 proposed, but we do not have a final resolution yet.

9 HEARING OFFICER CELLI: So here's what I think:
10 To short-circuit the whole conversation basically and say
11 that we will reopen the record to discuss the need for the
12 five percent construction for ARRA purposes without tying
13 it to any of our topic area categories, okay? So Bio 19,
14 Bio 8, the ARRA issue.

15 Any further -- yes, please.

16 MS. MAYER: I just want to check with Mr. Stein
17 because he was really the person who's most -- who saw the
18 whole Bio conversation over any other Bio conditions we
19 should be talking about.

20 HEARING OFFICER CELLI: Any other motion on
21 behalf --

22 MR. GALATI: Soil and Water, there is a revision
23 to Soil and Water Condition 4 that staff is working on
24 that is related to the disposal of drilling mud. And
25 there is a revision to some combination thereof or

1 revision to both Soil and Water 15 and Soil and Water 19
2 with respect to modeling and offsets, or mitigation. I
3 think that's all on Soil and Water.

4 HEARING OFFICER CELLI: Okay. So cultural, TSE,
5 or Transmission Systems Engineering, Air Quality, Biology,
6 Soil and Water, and Biology, limited to Bio 19, Bio 8,
7 Noise, Soil and Water limited to 4, Soil and Water 15,
8 Soil and Water 19, the ARRA issue.

9 Anything further from Applicant?

10 MR. GALATI: No, I don't believe so from us.

11 HEARING OFFICER CELLI: Thank you.

12 Staff, do you have a motion?

13 MS. HOLMES: We would join in the Applicant's
14 motion.

15 HEARING OFFICER CELLI: Okay. Ms. Koss for CURE?

16 MS. KOSS: We also join.

17 HEARING OFFICER CELLI: Okay. And Ms. Belenky.

18 MS. BELENKY: No objection.

19 HEARING OFFICER CELLI: And Mr. Silver.

20 MR. SILVER: Intervenor joins.

21 HEARING OFFICER CELLI: Thank you. Well, that
22 pretty much brings the issues. I don't think I'm going to
23 be able to -- I just don't think I'm going to get a notice
24 out in time because the 21st is -- we've got less than ten
25 days, so this is the notice, all the parties are here and

1 representing. So we will be having a hearing on the 21st,
2 we're going to be having a highly efficient hearing on the
3 21st limited to the areas of Cultural, Transmission
4 Systems Engineering with regard to the Phase 2 study, Air
5 Quality, Bio, limited to Bio 19, Bio 8, and the ARRA
6 funding issues, Soil and Water limited to Soil and Water
7 Conditions 4, 15, and 19.

8 Now, having covered that, we -- I want to talk
9 about briefing, because what we had initially -- it's
10 tempting to say agreed to, but I know nobody agreed with
11 this -- but what we imposed upon you is that opening
12 briefs regarding the evidence received at the July 12th
13 and 13th evidentiary hearings were to be due eight
14 calendar days from the date the transcripts of the
15 hearings are available. And I thought the way we'd deal
16 with that to facilitate timing and scheduling would be to
17 send out a notice of the availability of the transcript
18 when we receive it. And that will start the clock.

19 There are certain issues that came up, one of
20 which -- that require briefing. I want to be clear
21 that -- I'm sorry, something's buzzing.

22 This briefing is largely in the discretion of the
23 parties. If there's an issue that the parties need to
24 raise, we are not -- the committee would welcome that.
25 But there are certain issues that the committee needs to

1 have briefed as well.

2 Certainly in the area of Visual Resources, the
3 idea of a -- of a project with no visual impact having a
4 cumulative visual impact is going to be something we're
5 going to need to hear some legal argument about.

6 This is briefing.

7 MS. MAYER: I'm sorry, could you repeat that?

8 HEARING OFFICER CELLI: Yes. The issue with
9 regard to the cumulative impacts in Visual Resources of
10 the Genesis Solar Energy Project -- let me think. I'm
11 just going to go off the record real quick.

12 (Recess.)

13 HEARING OFFICER CELLI: We're going to get back
14 on the record now. Just making sure everybody's in their
15 seat.

16 So with regard to the -- there will be another
17 round of briefs after probably the subsequent hearing on
18 Cultural; but as to these briefs, we're going to ask that
19 the parties address the premise in that Colorado River
20 board's letter that groundwater pumping is prohibited and
21 that water must be purchased from the -- what is it -- the
22 metropolitan water district, or somebody. We're going to
23 ask that you brief the significant impacts that have been
24 deemed unmitigable in the staff analysis, including the
25 cumulative impacts that have been deemed unmitigable. And

1 of course, we've got Visual and Land here, and anything we
2 may have missed that you deemed unmitigable.

3 And lastly, I know that everybody loves to write,
4 write their briefs; the last set of briefs I got, I got an
5 80-page brief. I would really like to limit the briefs in
6 terms of their length to not more than 20-page opening
7 briefs.

8 We have rebuttal briefs -- now, remember we had
9 said that there was an eight-day -- eight-day calendar day
10 from the date the transcripts were available because we're
11 having another hearing date right in the middle of that on
12 the 21st, so the rebuttal briefs to this -- your opening
13 briefs will be due seven days from the date of the opening
14 brief.

15 We're going to have a hearing on July 21st on the
16 subjects we'd already discussed right now. In that
17 regard, opening briefs will be received seven calendar
18 days from the July 21st evidentiary hearing, and the
19 rebuttal briefs will be due seven calendar days from the
20 date of the opening briefs --

21 MS. HOLMES: Seven days from the hearing or seven
22 days from the date that the transcript's available?

23 HEARING OFFICER CELLI: I'm so sorry. Let me
24 read that again.

25 Seven calendar days from the date the transcript

1 of the additional evidentiary hearing is available; that's
2 the July 21st, so whenever the transcript comes off from
3 the July 21st hearing, we'll send out a notice saying -- a
4 notice of availability, seven days from that date.

5 And then once you've received that opening
6 testimony, your rebuttal brief will be due seven calendar
7 days from the date of the opening briefs that you are
8 rebutting.

9 Then we're into the issuance of the PMPD,
10 committee conference, and the 30-day comment period,
11 et cetera. That's all still to be determined. We'll work
12 as quickly as we can, but your briefs will be helpful.

13 Anything further from Applicant?

14 MR. GALATI: Just a clarification that the
15 20-page opening brief, that was not 20 pages per issue,
16 correct?

17 HEARING OFFICER CELLI: Thank you. Lest there be
18 any confusion, that would be a 20-page total --

19 MR. GALATI: I promise you I won't be taking
20 that, I just want to make it clear for the record that
21 that would be a 100-page brief.

22 HEARING OFFICER CELLI: That would be a 20-page
23 total maximum. Thanks for that point of clarification.

24 Staff, anything further?

25 MS. MAYER: Yes. I'm a little confused about

1 unmitigable impacts. Are we just trying to frame it as
2 the staff's conclusion regarding unmitigable impacts
3 legally valid, something like that?

4 HEARING OFFICER CELLI: Well, certainly there was
5 question raised by the Applicant in the course of the
6 hearing on -- was it Biological Resources? No, it was
7 during the Visual and Land --

8 MS. MAYER: It's Visual and Land Use, so it's
9 very related to the first question. That's why --

10 HEARING OFFICER CELLI: That's right, but we
11 wanted to expand that, the opportunity to brief on any
12 other issues having to do with unmitigable impacts,
13 whether they be cumulative or direct or whatever.

14 MS. MAYER: Thank you for that clarification.

15 HEARING OFFICER CELLI: Anything further we need
16 to cover before we adjourn today from staff?

17 MS. MAYER: No. But I support a ten-page length.

18 HEARING OFFICER CELLI: Let's hear from CURE.

19 Is there anything further you'd like us to
20 address while we're still in session here?

21 MS. KOSS: Just to make sure, there are three
22 topic areas that the committee would like briefing on,
23 correct? We have Visual Cumulative Impacts, Colorado
24 River board letter, and then we have Unmitigable Impacts,
25 correct? I wasn't sure if you had erased the first one.

1 HEARING OFFICER CELLI: You have it right, but I
2 just want to tell you that we didn't limit the significant
3 impacts that are unmitigable to just Visual.

4 MS. KOSS: Understood.

5 HEARING OFFICER CELLI: It's Visual, Land, and
6 anything else that we may have missed.

7 MS. KOSS: Right. And then on a totally
8 different note, in CURE's Prehearing Conference Statement,
9 we requested that the committee take official notice of
10 BLM's California Desert Conservation Area Plan as amended
11 in 2002; and we don't have a decision on that. So I would
12 just like to know if the committee would take notice of
13 that. It's referenced numerous times in the Staff
14 Assessment, it is, you know, the construction of a lot of
15 the BLM. And I think it's important that we be able to --
16 it's a huge document, so I didn't want to enter it into
17 the record.

18 HEARING OFFICER CELLI: Right. My inclination is
19 to say what pages do you want us to take official notice
20 of?

21 MS. KOSS: There's hundreds and hundreds and
22 hundreds of them.

23 HEARING OFFICER CELLI: Any objection from
24 Applicant?

25 MR. GALATI: No. We referred to that also to

1 remind the committee sometimes you've heard it referred to
2 as the NECO Plan and its amendments. That's also -- I
3 think it's the same document, and it's referred to
4 throughout, and oftentimes where its referred, there's
5 some pages.

6 MS. HOLMES: I believe NECO is Exhibit 406.

7 MS. KOSS: NECO is a part of it, but the CDCA is
8 larger than just the NECO.

9 MS. HOLMES: Thank you.

10 HEARING OFFICER CELLI: Still no objection.

11 MS. MAYER: One reason it was excerpted, it was
12 excerpted for the relevant portions in biological sources.

13 HEARING OFFICER CELLI: Any objection to taking
14 official notice?

15 MS. MAYER: No.

16 HEARING OFFICER CELLI: Any objection from CBD?

17 MS. BELENKY: To the CDCA plan as amended by the
18 NECO Plan, I have no objection to that; and I just want to
19 make sure my understanding of what is being asked here is
20 the CDCA plan, which there was an update done that
21 consolidated all the amendments to date in 1999, and then
22 there was a 2002 update for the area that's here, this
23 NECO area that people tend to refer to as the NECO Plan.
24 That plan is part of the CDCA plan, and they work
25 together, and so it has to be both documents.

1 HEARING OFFICER CELLI: And that's what you're
2 referring to as the 2002 CDCA plan as amended by the NECO
3 Plan. Do I have that right?

4 MS. KOSS: Well, I don't know if it's fair to say
5 it's amended. I guess you could say it's amended by the
6 NECO Plan, yes.

7 MS. BELENKY: It is.

8 HEARING OFFICER CELLI: And so there's no
9 objection from CBD.

10 MS. BELENKY: No.

11 HEARING OFFICER CELLI: Any objection from
12 Mr. Silver on behalf of Tom Budlong?

13 MR. SILVER: No. As I heard what you said
14 though, Mr. Celli, just a minute ago, I think you sort of
15 had it in reverse. That the NECO Plan constitutes an
16 amendment to the CDCA plan. So it's the CDCA plan as
17 amended, I think, by the NECO Plan. And I'm not sure that
18 when you stated that on the record you stated it
19 correctly.

20 HEARING OFFICER CELLI: Okay. So there being no
21 objection, then the committee will take official notice of
22 the CDCA plan as amended by the NECO Plan.

23 Anything further from CURE?

24 MS. KOSS: Actually, I have one more question on
25 briefing, just for clarity.

1 I just want to make sure that anything that is
2 covered at the 21st hearing can be covered in -- in the
3 second round of briefing, including whatever Bio and Soil
4 and Water topics which may be covered.

5 HEARING OFFICER CELLI: That's right; but, you
6 know, again, it will be discretionary with the committee.
7 So if -- at the 21st, if it appears that there's no need
8 to brief something, the committee would say so and
9 specify. So what I'm telling you is because we opened --
10 reopened Bio and Soil and Water for those limited
11 conditions, that we wouldn't want to see briefing on
12 anything that went outside of the record on the 21st.

13 MS. KOSS: Yes, of course. I just don't want
14 to -- today you said that if the parties would like to
15 raise issues, the committee is not going to tell them not
16 to; and I would not want to not raise issues that may be
17 covered then and then the committee tell me that I can't
18 brief them.

19 HEARING OFFICER CELLI: There you go. So once
20 again, you're keeping me honest.

21 These are the opening -- that specification that
22 we leave it open to the parties to brief that which they
23 feel needs to be briefed relates to this round of -- this
24 particular round of briefs, and it would not relate to the
25 briefs on the 21st unless specifically articulated by the

1 committee. Okay?

2 MS. KOSS: So I should brief Bio 19 and Bio 8 and
3 Soil and Water 15 and Soil and Water 19 and Soil and Water
4 4 now, and the committee might tell me I can't brief them
5 later, even though the record is still open on those.

6 HEARING OFFICER CELLI: Okay, time out. You're
7 asking me to look at a separate sheet of paper that I
8 don't have open in front of me.

9 We had -- time out.

10 Okay. So you just mentioned -- so Bio 19, Bio 8,
11 the ARRA issues, Soil and Water four, Soil and Water 15
12 and 19; you want to brief them in this round, you can.

13 MS. KOSS: But the record isn't closed on those
14 yet.

15 HEARING OFFICER CELLI: That's right, that's
16 correct.

17 MS. KOSS: So I would prefer to brief them after
18 all the evidence is in, but --

19 HEARING OFFICER CELLI: Right, and we will limit
20 it, that next hearing, just to those conditions that I
21 just read off to you.

22 MS. KOSS: Perfect. As long as the committee is
23 not telling me that that 21st hearing that I can't brief
24 those.

25 HEARING OFFICER CELLI: No, we wouldn't do that.

1 When you were listing them off, I wasn't sure if you had
2 more than I had written down in your list and so that's
3 why I was concerned.

4 MS. KOSS: Okay.

5 HEARING OFFICER CELLI: So if you want to, you
6 could have two bites at the apple on these limited issues.

7 MS. KOSS: And you're only giving me 20 pages.

8 HEARING OFFICER CELLI: I know that's killing
9 you.

10 So any question, any further question for CURE?

11 MS. KOSS: No, thank you.

12 HEARING OFFICER CELLI: Okay. From CBD?

13 MS. BELENKY: Okay. I just have two small
14 clarifying questions.

15 In addition to that list, Air is also open, but
16 we won't be briefing that on this round.

17 HEARING OFFICER CELLI: That's correct.

18 MS. BELENKY: And you said 20-page limit on the
19 opening brief. I don't -- I didn't hear you say a limit
20 on the rebuttal. Are you saying also 20 or --

21 HEARING OFFICER CELLI: Yes.

22 MS. BELENKY: Okay. I just didn't know. I want
23 a number there.

24 HEARING OFFICER CELLI: 20 words.

25 MS. BELENKY: Okay. And then I will just say I

1 personally think it's better to consolidate all the
2 briefing and just push it all back, but I understand
3 that's not what you would prefer; but I do, for the
4 Center, I think that there's enough integral about what's
5 going to happen next week that we would prefer to brief it
6 all in one brief.

7 HEARING OFFICER CELLI: No, I understand that;
8 and we heard those arguments before at the prehearing
9 conference, too.

10 Anything further from CBD --

11 MS. BELENKY: No.

12 HEARING OFFICER CELLI: -- before we get into
13 public comment.

14 Mr. Silver, on behalf of Mr. Budlong, anything
15 further?

16 MR. SILVER: No, not really. Other than to
17 supplement Ms. Belenky's comments that I'm not sure why
18 we're briefing matters relating to the Colorado River
19 commission letter when conceivably that might not be, at
20 least in the eyes of the Applicant and staff, an issue.

21 HEARING OFFICER CELLI: You make a good point.
22 And I would say that that issue -- make sure I'm doing
23 this right -- that issue -- one moment, let me go off the
24 record.

25 (Recess.)

1 HEARING OFFICER CELLI: So that particular issue
2 is optional; the parties are invited to but are not
3 required to brief the Colorado River board's letter.

4 MR. SILVER: And by a similar token, were that to
5 become relevant by reason of the hearing on the 21st,
6 nothing would preclude the respective parties from
7 briefing it in that supplement briefing.

8 HEARING OFFICER CELLI: That's true, but I --
9 here's what would preclude it though. But what I think
10 you can do is bring a motion if it becomes relevant. And
11 when I say "bring a motion," I'm just saying make a
12 request at the time on the 21st, because at the end of the
13 hearing on the 21st, just as we did today, we're going to
14 say okay, what needs to be briefed, and we'll have some
15 discussion about that; and if that needs to be briefed,
16 then you can make that request then.

17 MR. SILVER: With respect to the hearing on the
18 21st, since there's not going to be a notice, am I to
19 assume that it would begin at 10:00 a.m. in this building?

20 HEARING OFFICER CELLI: There was a notice
21 actually. The notice has already gone out. I hope
22 everybody received a notice. I have it here.

23 Do you have it, July 2nd? The notice is on the
24 Internet. And I don't -- and it is going to be here in
25 Sacramento, and they're usually at 10:00, and I can't

1 remember whether it's in Hearing Room A or B.

2 Are you looking at it, Mr. Monasmith?

3 MS. HOLMES: We're looking at it. We don't
4 remember receiving it. We're wondering if it was posted
5 but not --

6 HEARING OFFICER CELLI: That went out to the POS
7 or --

8 MS. HOLMES: Hearing Room B at 10:00.

9 HEARING OFFICER CELLI: Hearing room B at 10:00.

10 Well, luckily we're down to just a few issues, so we don't
11 need the crowd of people that we had before.

12 MS. BELENKY: I'm sorry, I did have one other
13 question.

14 When you said calendar days --

15 HEARING OFFICER CELLI: Yes.

16 MS. BELENKY: -- do you expect briefing to be due
17 on the weekend, or would it go to the next Monday?

18 HEARING OFFICER CELLI: It would be the next
19 Monday, if it falls on a Saturday or Sunday.

20 MS. BELENKY: Thank you.

21 HEARING OFFICER CELLI: Good question.

22 With that, I'm going to open the podium to public
23 comment. As I look around the room, I'm going to say for
24 the record that it's pretty sparsely populated. But we
25 have -- do we have anyone here who is a member of the

1 public who would like to make a public comment here in the
2 room today, Hearing Room A?

3 Seeing none. We'll go to the phone.

4 Is there any member of the public who would like
5 to make a public comment on the telephone using WebEx?

6 For the record, I should say that I've got Tom
7 Budlong, Jared, Dr. Elizabeth Bagwell on the phone. And
8 then I have three other call-in users on the telephone.

9 Is there anyone on the telephone who would like
10 to make a public comment?

11 Okay. Hearing none, Commissioner Boyd?

12 MS. KOSS: Sorry. There was a draft notice
13 published for a potential cultural resource workshop
14 tomorrow, and my understanding was, depending on whether
15 the committee ordered us to have a workshop, we would or
16 would not. I expressed my concerns about having the
17 workshop, given two days of rather brutal hearings and
18 being exhausted and having to start writing briefs, but
19 the Applicant had requested it and there was a draft
20 notice published.

21 So I just -- if the committee's going to order us
22 to have one or not, I'd like to know.

23 HEARING OFFICER CELLI: I'm going to go off the
24 record.

25 (Discussion off the record.)

1 HEARING OFFICER CELLI: The context of that came
2 up as we were discussing the ARRA, the need for
3 accelerated construction for ARRA, and in that Mr. Babula
4 from chief counsel's office spoke up and said there was a
5 hearing -- workshop, rather, that was already scheduled
6 here tomorrow having to do with Cultural.

7 Do I have this right?

8 MS. HOLMES: That's my understanding as well.
9 I'm sure he's on the phone.

10 PRESIDING MEMBER BOYD: Well, there is a notice
11 out for a cultural proposal to be considered within the
12 framework of the business meeting that is conducted
13 here --

14 MS. HOLMES: That's a very --

15 PRESIDING MEMBER BOYD: So this is a different
16 issue, all right.

17 MS. HOLMES: Very different issue, yeah.

18 PRESIDING MEMBER BOYD: All right. Very.

19 HEARING OFFICER CELLI: So this is -- do I
20 understand this to be a workshop dedicated to just the
21 Genesis Project?

22 MR. BABULA: Yeah, that's -- this is Jared, and
23 that was -- the design was primarily cultural, though the
24 actual notice did indicate that Soil and Water and other
25 areas could be discussed if necessary, and it was set up

1 for tomorrow from 10:00 to 4:00. It's now (inaudible)
2 Conference Room A (inaudible) and my -- the initial
3 primary thing was to allow for the parties to review
4 staff's recent comment that we had just put out, the
5 Applicant's comment regarding our (inaudible) certificate,
6 proposal 1 through 7(e) and (inaudible) through the
7 comments (inaudible) we are trying to knock out the issues
8 prior to that hearing on the 21st. So that was a
9 (inaudible) and I know Dr. Bagwell's on the phone now,
10 she's going to be participating by phone and Beverly
11 Bastion will be participating. So that was the goal of
12 having the workshop.

13 HEARING OFFICER CELLI: Is there a telephone
14 option?

15 MR. BABULA: There is a telephone option; it's on
16 the notice. I know (inaudible) Kenny Stein said
17 (inaudible) phone, too, and the Applicant didn't
18 (inaudible) but you have (inaudible) --

19 MR. GALATI: Mr. Celli, let me just cut to the
20 chase.

21 There was a draft notice that went out, and it
22 was drafted because I believe there was not a senior
23 person to sign it. It wasn't to everybody in this room.
24 And you can fix it today so that there's no claim of
25 defective notice, that you see there's no members of the

1 public that care about, they know it's there, and we think
2 it would be very good to participate so that we can
3 streamline, because we have not yet talked about cultural
4 conditions as a group.

5 So if you simply say we order you to do this
6 tomorrow, you will fix any defective noticing that anyone
7 could claim by Friday; but everybody here knows it, we
8 filed testimony, let's go talk about it so on the 21st we
9 don't waste everybody's time, especially yours.

10 MS. HOLMES: The notice was e-mailed, but it was
11 not served and it was not docketed.

12 MS. KOSS: And I'd also like to just point out
13 it's noticed as 10:00 a.m. to 2:00 p.m., not 4:00 p.m.
14 That's in the draft notice. So if we're going to have
15 one, it's 10:00 to 2:00.

16 HEARING OFFICER CELLI: Well, that seems
17 reasonable. And you will -- you now have two days of
18 efficiency training, so we will -- hopefully you can get
19 your workshop done in that amount of time. So with that,
20 I wish you good luck tomorrow.

21 PRESIDING MEMBER BOYD: Do we have to make this a
22 formal order to comply?

23 MS. HOLMES: I think there's a request that you
24 bless --

25 MR. GALATI: He's ratified this discussion.

1 PRESIDING MEMBER BOYD: We need an order from the
2 committee to carry forth.

3 HEARING OFFICER CELLI: So with your ascent, the
4 committee orders that the workshop take place tomorrow
5 from 10:00 until 2:00 --

6 MS. HOLMES: Thank you.

7 HEARING OFFICER CELLI: -- as noticed in the
8 draft notice received by all the parties.

9 With that, Commissioner Boyd.

10 PRESIDING MEMBER BOYD: It's funny how much
11 procedural stuff has come up in the last hour when we
12 thought we were done.

13 Anyway, thank you everybody. The crowd is thin,
14 but the regulars have stood in. This has been productive,
15 and I appreciate all the work you've all done; and yeah, I
16 look forward to seeing you all on 21st.

17 Thank you.

18 (Thereupon the hearing adjourned at 4:16 p.m.)

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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.

A handwritten signature in cursive script that reads "John Cota". The signature is written in black ink and is positioned above a horizontal line.

JOHN COTA