

DOCKETED

Docket Number:	09-AFC-07C
Project Title:	Palen Solar Power Project - Compliance
TN #:	201110
Document Title:	10/29/13 Transcript of the Palen Evidentiary Hearing
Description:	Transcript of the 10/29/13 Palen Evidentiary Hearing - Day 2
Filer:	Ken Celli
Organization:	California Energy Commission
Submitter Role:	Committee
Submission Date:	11/4/2013 4:04:40 PM
Docketed Date:	11/4/2013

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EVIDENTIARY HEARING FOR THE AMENDMENT TO THE
PALEN SOLAR ENERGY GENERATING SYSTEMS
BEFORE THE CALIFORNIA ENERGY COMMISSSION

In the Matter of the:)
)
)
Palen Solar Energy Generating) Docket No. 09-AFC-07C
Systems Amendment)

)

UNIVERSITY OF CALIFORNIA, RIVERSIDE
PALM DESERT CAMPUS, BUILDING B AUDITORIUM
75080 FRANK SINATRA DRIVE
PALM DESERT, CALIFORNIA

TUESDAY, OCTOBER 29, 2013
DAY 2

Reported By:
Kimberly Novak, CSR 13135

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

HEARING ADVISOR:

Kenneth D. Celli, California Energy Commission

PANEL:

Commissioner Karen Douglas, California Energy Commission
Commissioner David Hochschild, California Energy Commission
Gabriel Taylor, Advisor to Commissioner David Hochschild
Jennifer Nelson, Advisor to Commissioner Karen Douglas
Eli Harland, Advisor to Commissioner Karen Douglas
Eileen Allen, Advisor at Large

PETITIONER/APPLICANT:

Scott Galati, Esq., attorney for Palen Solar Holdings, LLC
Matthew Stucky, Abengoa Solar, Inc.

CEC STAFF:

Jennifer Martin-Gallardo, Attorney for California Energy
Commission
Jeff Ogata, Attorney for California Energy Commission
Christine Stora, Compliance Project Manager

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES
(Continued.)

INTERVENOR:

- Lisa Belenky, Center for Biological Diversity
- Alredo Acosta Figueroa, Californians for Renewable Energy
- Laura Cunningham, Basin and Range Watch
- Kevin Emmerich, Basin and Range Watch

ALSO PRESENT:

- Hilarie Anderson, CEC Energy Analyst
- Blake Roberts, CEC Assistant Public Advisor
- Kim Marsden, Bureau of Land Management (Telephonically)
- Andrea Compton, Joshua Tree National Park (Telephonically)
- Sara Clark, Colorado River Indian Tribes (Telephonically)

WITNESSES:

- Charles Turlinsky, Palen Solar Holdings
- Matthew Stucky, Palen Solar Holdings
- Dr. Alice Karl, Centerline
- Fred Nials, Centerline
- Wes Alston, Palen Solar Holdings
- Clay Jenson, Palen Solar Holdings
- Wallace Erickson, Environmental & Statistical Consultants
- Michael Kuehn, Ph.D, Bloom Biological, Inc.
- Ann Crisp, CEC Staff Biologist

1 Dr. Nicholas Lancaster, Desert Research Institute
(Telephonically)
2
3 Carol Watson, CEC Staff Biologist
4
5 Chris Huntley, Aspen Environmental Group
6
7 Jeanine Hinde, CEC Planner II
8
9 Eric Knight, CEC Environmental Office Manager
10
11 Alvin J. Greenberg, Ph.D, Risk Science Associates, CEC
12
13 Deputy Chief Dorian Cooley, Cal Fire, RCFD
14
15 Magdalena Rodriguez, California Department of Fish and
Wildlife
16
17 Thomas Dietsch, U.S. Fish & Wildlife, Migratory Birds,
Wildlife Biologist
18
19 Jody Fraser, U.S. Fish & Wildlife, Biologist
20
21 Dr. Allan Muth, UC Riverside Department of Biology
22
23 Ileene Anderson, Center for Biological Diversity
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

PAGE

1. Call to order	11
2. Exhibits	17
3. Alternatives	42
4. Biological Resources (Afternoon Session)	91
5. Worker Safety and Fire Protection	228
6. Public Comment	263
7. Adjournment	270
Reporter's Certification	271

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

COMPLIANCE:

PETITIONER:	MOTION	ENTERED
1001, 1002, 1041, 1057, 1076	17	19

STAFF:

2000, 2002, 2003, 2008	20	21
------------------------	----	----

FACILITY DESIGN:

PETITIONER:	MOTION	ENTERED
1003, 1076	19	20

STAFF:

2000, 2002, 2008	21	22
------------------	----	----

POWER PLANT EFFICIENCY:

PETITIONER:	MOTION	ENTERED
1003, 1017, 1076	33	33

STAFF:

2000, 2008	33	34
------------	----	----

POWER PLANT RELIABILITY:

PETITIONER:	MOTION	ENTERED
1003, 1076	34	34

STAFF:

2000, 2008	34	34
------------	----	----

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS (Continued.)

TRANSMISSION SYSTEMS ENGINEERING:

PETITIONER: MOTION ENTERED

1003, 1010, 1021, 1031, 1076 35 35

STAFF: MOTION ENTERED

2000, 2008 35 35

TRANSMISSION LINES SAFETY & NUISANCE:

PETITIONER: MOTION ENTERED

1003, 1076 36 36

STAFF: MOTION ENTERED

2000, 2003, 2008 36 36

PUBLIC HEALTH:

PETITIONER: MOTION ENTERED

1003, 1007, 1021, 1043, 1045, 1055 36 37
1056, 1060, 1077

STAFF: MOTION ENTERED

2000, 2002, 2008 37 37

HAZARDOUS MATERIALS:

PETITIONER: MOTION ENTERED

1003, 1021, 1029, 1041, 1057, 1076 37 37

STAFF: MOTION ENTERED

2000, 2008 38 38

1	EXHIBITS (Continued.)		
2	WASTE MANAGEMENT:		
3	PETITIONER:	MOTION	ENTERED
4	1003, 1021, 1040, 1076	38	38
5	STAFF:	MOTION	ENTERED
6	2000, 2008	38	38
7			
8	LAND USE:		
9	PETITIONER:	MOTION	ENTERED
10	1003, 1076	38	39
11	STAFF:	MOTION	ENTERED
12	2000, 2008	39	39
13			
14	SOCIOECONOMICS:		
15	PETITIONER:	MOTION	ENTERED
16	1003, 1021, 1026, 1046, 1052, 1060, 1076, 1101	39	39
17	STAFF:	MOTION	ENTERED
18	2000, 2008	40	40
19			
20	NOISE AND VIBRATION:		
21	PETITIONER:	MOTION	ENTERED
22	1003, 1044, 1076	40	40
23	STAFF:	MOTION	ENTERED
24	2000, 20008	40	40
25			

1 EXHIBITS (Continued.)

2 ALTERNATIVES:

3 PETITIONER: MOTION ENTERED

4 1013, 1077 84 84

5 STAFF: MOTION ENTERED

6 2000, 2002, 2003 84 84

7 CBD: MOTION ENTERED

8 3000, 3001, 3036, 3051 85 85

9

10 BIOLOGY:

11 PETITIONER: MOTION ENTERED

12 1003,1004, 1005, 1006, 1010, 1012, 1013 224 226

1014, 1019, 1021, 1022, 1026, 1027, 1032

13 1035, 1036, 1037, 1038, 1040, 1041, 1047

1048, 1049, 1050, 1057, 1058, 1059, 1060,

14 1061, 1062, 1068, 1070, 1071, 1072, 1075

1077, 1078, 1080, 1082, 1083, 1084, 1085

15 1086, 1087, 1088, 1089, 1090, 1091, 1093

1094, 1095, 1096, 1097, 1098, 1099, 1100

16

17 STAFF: MOTION ENTERED

18 2000, 2003, 2005, 2008 226 226

19 CBD: MOTION ENTERED

20 3064, 3000-3050, 3052-3064 226 227

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS (Continued.)

WORKER SAFETY AND FIRE PROTECTION:

PETITIONER:	MOTION	ENTERED
1003, 1012, 1019, 1030, 1041, 1051 1057, 1059, 1060, 1077	256	257

STAFF:	MOTION	ENTERED
2000, 2002, 2003, 2008, 2012	257	257

Palen Solar Holdings Responses to Staff's changes
the to conditions of certification

PETITIONER:	MOTION	ENTERED
1122	98	263

CULTURAL:

CFRN:	MOTION	ENTERED
	29	32

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PALM DESERT, CALIFORNIA

TUESDAY, OCTOBER 29, 2013

10:00 A.M.

-oOo-

HEARING ADVISOR CELLI: Today is October 29th.

Halloween is upon us. This is the Evidentiary Hearing for the Amendment to the Palen Solar Energy Generating Systems. We're at the University of Riverside's Palm Desert campus, Building B auditorium in beautiful Palm Desert, California.

Yesterday was Day 1 of our hearing. We introduced everybody. I'll introduce everybody again this morning.

You may recall that we said yesterday that Commissioner Douglas has a bad cold. I'm told she's on her way, but Commissioner Hochschild is here. And so I think for our purposes, I can at least get started on the introductions.

The Committee for this, for what I'm calling the PSEGS, P-S-E-G-S, which is the acronym for the Palen Solar Electric Generating Systems, is made up of Commissioner Douglas, who is the presiding member, and Commissioner Hochschild, who is the associate member sitting on my left. Then to his left is Gabe Taylor, his

1 advisor. The record should reflect that none of the other
2 advisors or Commissioner Douglas are here yet. But on my
3 right will be sitting Commissioner Douglas, to her right
4 will be Eli Harland and Jennifer Nelson, who are both
5 Commissioner Douglas' advisors. And then next to Jennifer
6 will be Eileen Allen, who is what's known as the advisor
7 at large.

8 We have Dr. Blake Roberts here. He's sitting in
9 the back. He's stepping out. He's the public advisor
10 today, and he is the person you want to talk to if you are
11 a member of the public and would like to make a comment.
12 You'll talk to Blake Roberts, and he will give you a
13 little blue card, and you fill that out, and he hands that
14 to us, and that's how we are informed that there are
15 people here who want to make a comment. If you don't want
16 to make a verbal comment, you can make a written comment
17 on the card, and we'll read that into the record for you.
18 So we understand that public speaking is the most dreaded
19 thing that people ever want to do.

20 The record should reflect that
21 Commissioner Douglas is here. And Eli Harland and
22 Jennifer Nelson and Eileen Allen are all here this
23 morning.

24 Good morning, everybody.

25 The Petitioner, BrightSource Energy or the Palen

1 Solar Holdings, LLC is represented by Scott Galati, the
2 attorney. Sitting with Mr. Galati is Mr. Stucky,
3 Matt Stucky with -- Abengoa?

4 MR. MATTHEW STUCKY: Correct.

5 HEARING ADVISOR CELLI: To their left is the
6 Energy Commission's Staff's attorneys. That's Jennifer
7 Martin-Gallardo, to her left is Jeff Ogata, and behind
8 them is sitting the compliance project manager,
9 Christine Stora. To their left is Alfredo Figueroa with
10 the Californians for Renewable Energy. To Mr. Figueroa's
11 left is Laura Cunningham, and to her left is
12 Kevin Emmerich from the Basin and Range Watch. And to
13 their left is Lisa Belenky from the Center for Biological
14 Diversity.

15 Throughout the day we're going to be referring
16 to these people by their acronyms, CBD for Center for
17 Biological Diversity, BRW, Basin and Range Watch. There
18 are a couple of other acronyms you might want to know
19 about. We'll use terms like FSA, that would be Final
20 Staff Assessment. If we use the term the AFC, that's the
21 Application for Certification. I try to be as
22 user-friendly as I can as we're doing these proceedings
23 and spell out the acronyms, at least the first time, so
24 I'll try to do that some more today.

25 I'm going to ask whether we have any public

1 agencies who are present here this morning. First I'm
2 going to ask if there are any Federal Government agencies,
3 any representatives from the BLM who are here in the room?

4 Seeing none, we're going to ask if we have any
5 officials representing native tribes or nations besides
6 the Colorado River Indian Tribes, who are an intervenor in
7 this case. Do we have anyone?

8 And it looks like it's no, we do not.

9 And I also note that we're going have to make
10 some room when the representatives from the Colorado River
11 Indian Tribes get here.

12 MS. LISA BELENKY: They're not coming.

13 HEARING ADVISOR CELLI: Oh, they're not?

14 They're done. Okay. They were a one-issue party, which
15 was cultural yesterday.

16 Any elected officials from State Government who
17 are present here today?

18 Seeing none.

19 And then, whether they're in the County, County
20 of Riverside elected officials who are present here today
21 in the room? Or local jurisdictions?

22 Seeing none.

23 Let me go to the phone and ask if there are any
24 members of the Federal Government on the telephone? This
25 would be a good time to introduce yourselves.

1 MS. KIM MARSDEN: This is Kim Marsden from the
2 Bureau of Land Management.

3 HEARING ADVISOR CELLI: Can you say your name
4 again, please.

5 MS. KIM MARSDEN: Kim Marsden.

6 HEARING ADVISOR CELLI: Kim Marsden. Thank you.
7 Good morning.

8 MS. KIM MARSDEN: Good morning.

9 MS. ANDREA COMPTON: Andrea Compton, Joshua Tree
10 National Park, with the Nation Park Service.

11 HEARING ADVISOR CELLI: Thank you. Good
12 morning, Ms. Compton.

13 MS. ANDREA COMPTON: Good morning.

14 MS. SARA CLARK: This is Sara Clark representing
15 the Colorado River Indian Tribes, and I'm appearing by
16 phone this morning.

17 HEARING ADVISOR CELLI: Good morning, Ms. Clark.

18 And --

19 DR. SHANKAR SHARMA: Dr. -- Hi, this is
20 Dr. Shankar Sharma, CDFW. Good morning.

21 HEARING ADVISOR CELLI: Good morning. Was that
22 Dr. Parma, P-a-r-m-a? Could you please spell that for the
23 court reporter?

24 DR. SHANKAR SHARMA: Sure. My name is
25 Dr. Shankar, S-h-a-n-k-a-r, last name Sharma, S-h-a-r-m-a.

1 And I'm from California Department of Fish and Wildlife.

2 Good morning.

3 HEARING ADVISOR CELLI: Good morning. Thank you
4 for being on the phone Dr. Sharma.

5 DR. SHANKAR SHARMA: It's Sharma, Dr. Sharma,
6 S-h-a-r-m-a.

7 HEARING ADVISOR CELLI: Sharma?

8 DR. SHANKAR SHARMA: Yes.

9 HEARING ADVISOR CELLI: Dr. Sharma. Thank you.
10 When we're talking on the phone with people on
11 the telephone, it's going to be very important that if you
12 want to be heard that you use your handsets instead of
13 speakerphones. And if you are just listening in, I'm
14 going to ask the people who are participating
15 telephonically to please mute your phone so that we don't
16 hear things like your dogs barking, your doorbell ringing,
17 and anything else that may be in the background.

18 So let's see, I see Sara Clark is on the phone.

19 Good morning, Ms. Clark.

20 MS. SARA CLARK: Good morning.

21 HEARING ADVISOR CELLI: And Sara Clark is with
22 the Colorado River Indian Tribes.

23 MS. SARA CLARK: Yes, that's correct.

24 HEARING ADVISOR CELLI: Thank you.

25 I'm getting a little background noise from you,

1 Ms. Clark, so I think the best thing would be if you can
2 mute your phone unless you need to speak, that would be
3 great.

4 MS. SARA CLARK: I will do that. Thank you.

5 HEARING ADVISOR CELLI: Thank you.

6 So yesterday, we went through the procedures,
7 general overview of the rules, exhibits and witnesses, we
8 talked about the taking of testimony. We're engaging in
9 an informal hearing process.

10 Yesterday we had a pretty productive day. We
11 got through Cultural, we took care of Visual, Geology, and
12 Paleontology, Project Description, Soil and Water, and
13 Traffic and Transportation.

14 The only topic area left over for today would be
15 Alternatives, which we were going to tackle first thing
16 this morning. But before we do, I need to take -- ask the
17 parties to move into evidence those areas that we are not
18 taking live testimony on.

19 So I'm going to start -- so basically, if we can
20 do this quickly, I'm going to ask if you can just move in
21 your exhibits. First is Compliance.

22 I'm going to ask the Petitioner, do you have a
23 motion with regard to Compliance?

24 MR. SCOTT GALATI: We move to enter into the
25 record Exhibit 1001, 1002, 1041, 1057, and 1076 and ask

1 those be admitted into the record.

2 HEARING ADVISOR CELLI: The motion is to move
3 into evidence exhibits marked for identification 1001,
4 1002, 1041, 1057, and 1076.

5 Any objection from staff?

6 MR. JEFF OGATA: No objection.

7 HEARING ADVISOR CELLI: Any objection from
8 Californians for Renewable Energy?

9 MR. ALFREDO FIGUEROA: No.

10 HEARING ADVISOR CELLI: Any objection from Basin
11 and Range Watch?

12 MS. LAURA CUNNINGHAM: No.

13 HEARING ADVISOR CELLI: Any objection from the
14 Center for Biological Diversity?

15 MS. LISA BELENKY: No objection.

16 HEARING ADVISOR CELLI: Is that Ms. King up
17 there, Ms. King? It's not? Okay.

18 I just want to ask Sara Clark, I have a question
19 with regard to your participation today. Were you just
20 going to listen in today?

21 MS. SARA CLARK: That's the plan. I don't -- I
22 can -- if it's easier for you to switch me from mute to
23 unmute, I will -- I can message you privately if we're
24 going to have an objection or anything like that, or I can
25 unmute myself and say, "No objection." It's up to you.

1 HEARING ADVISOR CELLI: That's great. So I'm
2 just basically going to assume that the Colorado River
3 Indian Tribes have no objection unless you interpose an
4 objection.

5 MS. SARA CLARK: Yes, that's fine.

6 HEARING ADVISOR CELLI: Fair enough? Okay.
7 Thank you very much.

8 MS. SARA CLARK: Thank you.

9 HEARING ADVISOR CELLI: With that, Exhibits
10 1001, 1002, 1041 -- oh, have I heard from Basin and Range
11 Watch if there's any objection to those exhibits?

12 MS. LAURA CUNNINGHAM: No.

13 HEARING ADVISOR CELLI: Center for Biological
14 Diversity?

15 MS. LISA BELENKY: No objection. I think we
16 just did that.

17 HEARING ADVISOR CELLI: Thank you. Sorry. Just
18 covering bases here.

19 Okay. Exhibits 1001, 1002, 1041, 1057, and 1076
20 are admitted.

21 Next we have Facility Design. Is there a
22 motion?

23 MR. SCOTT GALATI: The Petitioner would move
24 Exhibits 1003 and 1076 into the record.

25 HEARING ADVISOR CELLI: Any objection from

1 Staff?

2 MS. JENNIFER MARTIN-GALLARDO: No.

3 HEARING ADVISOR CELLI: Any objection from
4 Californians for Renewable Energy?

5 MR. ALFREDO FIGUEROA: No.

6 HEARING ADVISOR CELLI: Any objection from Basin
7 and Range Watch?

8 MS. LAURA CUNNINGHAM: No.

9 HEARING ADVISOR CELLI: Any objection from the
10 Center for Biological Diversity?

11 MS. LISA BELENKY: No.

12 HEARING ADVISOR CELLI: Exhibits 1003 through
13 1076 -- not -- I'm sorry, 1003 and 1076 are received into
14 evidence.

15 Power Plant Efficiency.

16 MS. JENNIFER MARTIN-GALLARDO: Mr. Celli, I
17 don't know if Staff wants to move some exhibits, or if
18 some of these can be done at the end.

19 HEARING ADVISOR CELLI: Let's do that. I'm not
20 going to take Power Plant Efficiency yet.

21 First, let me ask Staff, do you have any motions
22 with regard to Compliance?

23 MS. JENNIFER MARTIN-GALLARDO: Yes, we'd like to
24 to move into the record Exhibits 2000, 2002, 2003, and
25 2008.

1 HEARING ADVISOR CELLI: Under the topic of
2 Compliance, Staff moves 2000 through 2000- -- 2000, 2002,
3 2003, and 2008.

4 Any objection from the Californians --

5 MR. ALFREDO FIGUEROA: No.

6 HEARING ADVISOR CELLI: BRW?

7 MS. LAURA CUNNINGHAM: No.

8 HEARING ADVISOR CELLI: CBD?

9 MS. LISA BELENKY: No.

10 HEARING ADVISOR CELLI: Petitioner?

11 MR. SCOTT GALATI: No.

12 HEARING ADVISOR CELLI: Okay. Exhibits 2000,
13 2002, 2003, and 2008 are received.

14 For Facility Design, Staff, do you have a
15 motion?

16 MS. JENNIFER MARTIN-GALLARDO: Yes. We'd like
17 to move in 2000, 2002, 2008.

18 HEARING ADVISOR CELLI: Any objection,
19 Californians for Renewable Energy?

20 MR. ALFREDO FIGUEROA: No.

21 HEARING ADVISOR CELLI: Basin and Range Watch?

22 MS. LAURA CUNNINGHAM: No.

23 HEARING ADVISOR CELLI: CBD?

24 MS. LISA BELENKY: No.

25 HEARING ADVISOR CELLI: Petitioner?

1 MR. SCOTT GALATI: No.

2 HEARING ADVISOR CELLI: Exhibits 2000, 2002, and
3 2008 are received into evidence for Facility Design.

4 Let me ask, Mr. Figueroa, you have no exhibits?

5 MR. ALFREDO FIGUEROA: Excuse me?

6 HEARING ADVISOR CELLI: You have no exhibits, so
7 we don't have to --

8 MR. ALFREDO FIGUEROA: Well, I -- well, I was
9 just going to say something, but you have it already in
10 the Tom Gates report about Tamoanchan, so I don't know if
11 you -- if I could say something again.

12 HEARING ADVISOR CELLI: Well, let me -- let me
13 just ask you to hold that thought for a second because
14 you -- we had a prehearing conference, we did not receive
15 any prehearing conference statement from Californians for
16 Renewable Energy seeking to put in any evidence, so our
17 assumption was that there was no evidence that was going
18 to be moved by Californians for Renewable Energy.

19 MR. ALFREDO FIGUEROA: Well, there was a
20 misunderstanding, then, because I sent all this booklet of
21 all the research that we have done that covers the Palen
22 project, all around it, beginning from the Eagle Mountain
23 down to the Ripley Intaglio up to Old Women Mountain and
24 ends with the Whipple Mountains, and the Center focus
25 being Granite Peak. So this is it right here.

1 So it was a misunderstanding; otherwise, I would
2 have brought my -- my -- I had PowerPoint to present it so
3 you could have saw it. Because last time that you -- that
4 we had the meeting, I made a brief presentation, not a --

5 (Interruption in the proceedings.)

6 HEARING ADVISOR CELLI: Go ahead.

7 MR. ALFREDO FIGUEROA: So naturally, I'd like to
8 present this if people have been -- not -- if we don't
9 have that -- this included as part of the evidence, we
10 definitely want to include it.

11 HEARING ADVISOR CELLI: Let me ask you, do you
12 have any other evidence besides that that you want to put
13 into evidence?

14 MR. ALFREDO FIGUEROA: No, this is the main --
15 the main book.

16 HEARING ADVISOR CELLI: Well, that's the main,
17 but that implies that you have other evidence that you
18 want to put in besides your booklet?

19 MR. ALFREDO FIGUEROA: Yes.

20 HEARING ADVISOR CELLI: And what is that?

21 MR. ALFREDO FIGUEROA: The evidence is all how
22 Dragon Wash is the descending of Quetzalcoatl, the Plume
23 Serpent.

24 HEARING ADVISOR CELLI: I'm just asking in terms
25 of documents, the documents themselves.

1 MR. ALFREDO FIGUEROA: Okay. Yes, but I'd have
2 to get it back from my house, you know, to present it and
3 send it to the -- to the Commission.

4 HEARING ADVISOR CELLI: Right. Now, we sent out
5 a notice --

6 MR. ALFREDO FIGUEROA: Well, let me say, we're
7 people that -- our attorney and I -- our attorney is in
8 San Gabriel, and he's the one that filed the suit and all
9 this, but as far as procedures and all of this, it makes
10 it very confusing for our group, the Colorado -- I mean,
11 the La Cuna Sacred Sites Protection Circle, and we're --
12 that has a confusion because we're not a -- an attorney.

13 So otherwise, I would have definitely -- I would
14 have brought everything to -- to present here today.
15 Because it was all a misunderstanding, but we can send it.
16 Is there an extension we can continue to send this
17 information?

18 HEARING ADVISOR CELLI: Yeah, that was -- the
19 opportunity to do that was the prehearing conference that
20 we had last Thursday that was noticed a month before. So
21 what I need to know is what the sum total of exhibits that
22 you wanted to put in are, so then I would ask the other
23 parties whether they object to this new evidence coming in
24 this late in the record.

25 So you have -- what you just held up is -- that

1 booklet, what do you call that?

2 MR. ALFREDO FIGUEROA: It's called Tamoanchan,
3 where sky meets earth.

4 HEARING ADVISOR CELLI: Tamoanchan?

5 MR. ALFREDO FIGUEROA: Tamoanchan.

6 UNIDENTIFIED SPEAKER: Tata

7 MR. ALFREDO FIGUEROA: Tata. 27 grandchildren
8 and 28 great grandchildren. And it comes from Granite
9 Peak. And Palen Project is right within that whole area.
10 And we can show the images where the Plume Serpent, that's
11 why Dragon Wash is called Dragon Wash, where he descends
12 June the 21st, which is the summer solstice.

13 HEARING ADVISOR CELLI: Okay. Just for the
14 record, I want you to understand that on October 7th, a
15 notice was sent to all the parties at the addresses and
16 e-mails that were provided in their petitions to intervene
17 that a prehearing conference statement was required that
18 identified all witnesses and exhibits that the parties
19 wanted to put in for purposes of exchanging this
20 information amongst the parties, so that by the time we
21 get to hearing now, there would be no surprises.

22 We had a prehearing conference last week. It
23 was last Thursday, I think -- find out what date that
24 was -- October 24th at the California Energy Commission.
25 We used the WebEx. The parties discussed the -- their

1 exhibits and the witnesses, and you were not there and
2 there was nobody there from the Californians for Renewable
3 Energy, and we did not receive a prehearing conference
4 statement from Californians for Renewable Energy.

5 I am aware that you do have certain things filed
6 in the administrative record, but let me see briefly what
7 range we've given the -- okay. So the Californians for
8 Renewable Energy were Exhibits 5000 through 5999, so I
9 would mark for identification only Exhibit 5000, this --
10 this the booklet entitled Tamoanchan?

11 MR. SCOTT GALATI: Mr. Celli --

12 HEARING ADVISOR CELLI: I'm just marking it for
13 ID.

14 MR. ALFREDO FIGUEROA: T-a-m-o-a-n-c-h-a-n.

15 HEARING ADVISOR CELLI: Tamoanchan?

16 MR. ALFREDO FIGUEROA: Tamoanchan. "Ta" means
17 cosmos, "moan" means meet, "chan" means chante, house.
18 All this is translated in the --

19 HEARING ADVISOR CELLI: And what other exhibits
20 did you bring that you wanted to put in?

21 MR. ALFREDO FIGUEROA: I was going to show also
22 the exhibit how he descends, when he's descending,
23 Tamoanchan, the Plume Serpent, Quetzalcoatl, that's why
24 Dragon Wash is called Dragon Wash.

25 HEARING ADVISOR CELLI: What do you call -- what

1 I want to know, what do you call the document that you --

2 MR. ALFREDO FIGUEROA: What document?

3 HEARING ADVISOR CELLI: The document, the piece
4 of paper. What is the title of the document, besides that
5 one --

6 MR. ALFREDO FIGUEROA: What I have -- I haven't
7 got a title. I just -- the title is Dragon Wash.

8 HEARING ADVISOR CELLI: Okay. Do you have a
9 copy of it here with you?

10 MR. ALFREDO FIGUEROA: No, I was going to -- I
11 just got pictures of the image of how he descends.

12 HEARING ADVISOR CELLI: So when you say you have
13 pictures, do you actually have photographs --

14 MR. ALFREDO FIGUEROA: Photographs.

15 HEARING ADVISOR CELLI: -- or do you have a
16 flash drive with you?

17 MR. ALFREDO FIGUEROA: Photographs.

18 HEARING ADVISOR CELLI: Actual photographs? How
19 many photographs do you have?

20 MR. ALFREDO FIGUEROA: I got two photographs.

21 HEARING ADVISOR CELLI: So what is -- so the
22 first photograph will be Exhibit 5001. And what is --
23 what is contained in that? What's in that photograph?

24 MR. ALFREDO FIGUEROA: Excuse me?

25 HEARING ADVISOR CELLI: What is that a picture

1 of?

2 MR. ALFREDO FIGUEROA: This picture is of Eagle
3 Mountain and how the image is descending down through
4 Dragon Wash.

5 HEARING ADVISOR CELLI: And what does the second
6 photograph show, which would be Exhibit 5002?

7 MR. ALFREDO FIGUEROA: It shows the idol of him
8 down in Mexico City where they have the idol of his image
9 there in Eagle Mountain.

10 HEARING ADVISOR CELLI: An idol of --

11 MR. ALFREDO FIGUEROA: An idol -- so in this --
12 this face of the idol at the museum in Mexico City is the
13 image that's the top of Eagle Mountain as seen from --
14 from Palen -- from the Palen Project.

15 HEARING ADVISOR CELLI: And you are saying idol,
16 like i-d-l-e or i-d-o-l?

17 MR. ALFREDO FIGUEROA: An image. An image. An
18 image. A statue.

19 HEARING ADVISOR CELLI: A statue. Okay.
20 Statue -- photo of a statue.

21 Anything else that you wanted to put in today
22 that's of a documentary or photographic nature?

23 MR. ALFREDO FIGUEROA: Also, the -- well,
24 really, we wanted the book.

25 HEARING ADVISOR CELLI: Okay. Now, let me

1 ask -- so for purposes of identification only, I'm
2 referring to book as Exhibit 5000, the photograph of Eagle
3 Mountain as 5001, and the photograph of the statue as
4 5002.

5 I'm going to start with Petitioner and ask
6 whether there's any objection to the introduction of this
7 evidence at this time?

8 MR. SCOTT GALATI: Give me just a chance to take
9 a look at it.

10 HEARING ADVISOR CELLI: Sure.

11 MR. SCOTT GALATI: I'm happy to try to
12 accommodate. Something else, too, that we would be
13 willing to do is -- I understand, I've done projects with
14 Mr. Figueroa in the past, he normally has help, and if he
15 wants to docket everything by the end of this week, we'd
16 be happy to try to accommodate that evidence coming in
17 separately.

18 HEARING ADVISOR CELLI: I can tell you that the
19 booklet is docketed. I've seen it on -- I've seen it in
20 dockets.

21 MR. SCOTT GALATI: If it's docketed, then we
22 don't object.

23 MR. JEFF OGATA: This is Jeff Ogata. Actually,
24 Ms. Stora remembered that has been docketed. She's trying
25 to check the transaction number for you so that that

1 information, make it an exhibit.

2 HEARING ADVISOR CELLI: I would appreciate that.
3 I know I've seen it before, but I'm not sure I've seen
4 those other new photographs unless they were contained in
5 the same --

6 MR. ALFREDO FIGUEROA: No. They're new
7 photographs. We hadn't shown them, because we didn't want
8 to -- at first, we were very reserved, but now we're not
9 reserved because we have to go all out and show the world
10 the truth.

11 HEARING ADVISOR CELLI: Okay. So --

12 MR. SCOTT GALATI: We don't object to the
13 photographs coming in, as well. Again, I do want to
14 extend Mr. Figueroa the opportunity that if you -- you did
15 mention other documents, if you can get those to us or
16 docket them quickly, we'd be happy to try to accommodate.

17 HEARING ADVISOR CELLI: Okay. That's the
18 Petitioner's position on Exhibits 5000, 5001, 5002.

19 Staff, what's your position, please?

20 MS. JENNIFER MARTIN-GALLARDO: No objections.

21 HEARING ADVISOR CELLI: Any objections from
22 Basin and Range Watch?

23 MS. LAURA CUNNINGHAM: No.

24 HEARING ADVISOR CELLI: No objection from Center
25 for Biological Diversity, or is there any objection?

1 MS. LISA BELENKY: No objection.

2 HEARING ADVISOR CELLI: Okay. And I'm assuming
3 there's no objection from CRIT, and if there were, they
4 would call in and say so.

5 So with that --

6 And the situation we're faced with is that
7 yesterday, we handled all of the Cultural, the testimony
8 on Cultural, and we're done with the topic of Cultural.

9 Today we're going to be talking about
10 Alternatives, we're going to be talking about Biology, and
11 we're going to be finishing off with Worker Safety and
12 Fire Protection.

13 So if the parties don't mind, I would receive
14 those documents into evidence, and then move onto the
15 other undisputed topics to get those topics in.

16 So is there any objection from any party if I
17 take that evidence now?

18 MR. SCOTT GALATI: No.

19 HEARING ADVISOR CELLI: Okay. Then let's do
20 that.

21 The motion, then, from Californians for
22 Renewable Energy, is to move into evidence exhibits marked
23 for identification Exhibit 5000, Tamoanchan booklet, and
24 ask that Ms. Stora, when she gets the time, to tell me
25 what that TN number would be. Exhibit 5001, Eagle

1 Mountain, and I'm going to need to get those from you
2 today so I can have those in my possession. And Exhibit
3 5002, the photo of the statue.

4 That being a motion, any objection from the
5 Basin and Range Watch?

6 MR. KEVIN EMMERICH: No objections.

7 HEARING ADVISOR CELLI: CBD?

8 MS. LISA BELENKY: No objection.

9 HEARING ADVISOR CELLI: Petitioner?

10 MR. SCOTT GALATI: No objection.

11 HEARING ADVISOR CELLI: Staff?

12 MS. JENNIFER MARTIN-GALLARDO: No objection.

13 HEARING ADVISOR CELLI: Okay. Exhibits 5000
14 through 5002 are received into evidence.

15 So I -- and I believe that we received, or I'm
16 just going to state for the record, Exhibits 2000, 2002,
17 and 2003 were received into the record by Staff under the
18 heading of Facility Design.

19 Did -- Basin and Range Watch, you have no other
20 exhibits besides 4000; correct?

21 MR. KEVIN EMMERICH: Correct.

22 HEARING ADVISOR CELLI: Okay. CBD, did you have
23 any exhibits under Compliance or Facility Design?

24 MS. LISA BELENKY: No.

25 HEARING ADVISOR CELLI: Okay. Or actually, just

1 to save some time, Ms. Belenky, any of those topics that I
2 listed earlier as not requiring live testimony, do you
3 have any exhibits on any of those topics?

4 MS. LISA BELENKY: No.

5 HEARING ADVISOR CELLI: Okay. Thank you.

6 Then, pretty much, I'm basically just between
7 Staff now and Petitioner. So we have Compliance, we have
8 Facility Design. We're on Power Plant Efficiency.

9 Petitioner?

10 MR. SCOTT GALATI: I would move Exhibits 1003,
11 101- -- excuse me, 1017 and 1076, ask those be moved into
12 the record as evidence under Power Plant Efficiency.

13 HEARING ADVISOR CELLI: Any objection from
14 Staff?

15 MS. JENNIFER MARTIN-GALLARDO: No objection.

16 HEARING ADVISOR CELLI: Any objection by any
17 other party?

18 Hearing none, Exhibits 1003, 1071, and 1076 are
19 received into evidence under Power Plant Efficiency.

20 Staff, do you have a motion?

21 MS. JENNIFER MARTIN-GALLARDO: Yes. We would
22 move Exhibits 2002 and 2008 into evidence.

23 HEARING ADVISOR CELLI: Any objection by
24 Petitioner?

25 MR. SCOTT GALATI: No objection.

1 HEARING ADVISOR CELLI: Any objection to 2002
2 and 2008 from any other parties?

3 No objection. Everybody is shaking their heads
4 no.

5 Exhibits 2002 and 2008 are received.

6 Power Plant Reliability.

7 MR. SCOTT GALATI: I'd like to move Exhibits
8 1003 and 1076 into for Power Plant Reliability.

9 HEARING ADVISOR CELLI: Any objection, Staff?

10 MS. JENNIFER MARTIN-GALLARDO: No objection.

11 HEARING ADVISOR CELLI: Any objection from any
12 other parties?

13 All shaking their heads no. Thank you.

14 Exhibits 1003 and 1076 are received under Power
15 Plant Reliability.

16 Staff, your motion?

17 MS. JENNIFER MARTIN-GALLARDO: Staff would like
18 to move Exhibits 2000 and 2008 into evidence.

19 HEARING ADVISOR CELLI: Any objection,
20 Petitioner?

21 MR. SCOTT GALATI: None.

22 HEARING ADVISOR CELLI: Any other parties have
23 an objection?

24 Hearing none, Exhibits 2000 and 2008 are
25 received under Reliability.

1 Transmission Systems Engineering.
2 Applicant -- or Petitioner?
3 MR. SCOTT GALATI: Transmission System
4 Engineering, we'd like to move in Exhibit 1000- -- 1010 --
5 excuse me 1003, 1010, 1021, 1031, and 1076.
6 HEARING ADVISOR CELLI: Any objection to that
7 motion, Staff?
8 MS. JENNIFER MARTIN-GALLARDO: No objection.
9 HEARING ADVISOR CELLI: Any other parties
10 object?
11 (All answer no objection.)
12 HEARING ADVISOR CELLI: No objection. Exhibits
13 1003, 1010, 1021, 1031, 1076 are received.
14 Staff, motion with regard to TSE?
15 MS. JENNIFER MARTIN-GALLARDO: The staff moves
16 Exhibits 2000 and 2008 into evidence.
17 HEARING ADVISOR CELLI: 2000 and 2008?
18 MS. JENNIFER MARTIN-GALLARDO: Correct.
19 HEARING ADVISOR CELLI: Any objection,
20 Petitioner?
21 MR. SCOTT GALATI: No objection.
22 HEARING ADVISOR CELLI: Any objection by any
23 other parties?
24 MR. ALFREDO FIGUEROA: No objections.
25 HEARING ADVISOR CELLI: 2000 and 2008 are

1 received into evidence.

2 Transmission Lines Safety and Nuisance.

3 MR. SCOTT GALATI: Petitioner would like to move
4 in Exhibits 1003 and 1076, 1-0-7-6 into evidence.

5 HEARING ADVISOR CELLI: Objection by any party?

6 MS. JENNIFER MARTIN-GALLARDO: No objections
7 from Staff.

8 MR. ALFREDO FIGUEROA: No objections.

9 HEARING ADVISOR CELLI: No objections. Then
10 1003 and 1076 will be received.

11 Staff, TLSN?

12 MS. JENNIFER MARTIN-GALLARDO: Staff would like
13 to move Exhibits 2000, 2003, and 2008 into the record.

14 HEARING ADVISOR CELLI: Any objection from any
15 parties?

16 MR. SCOTT GALATI: No objection?

17 MR. ALFREDO FIGUEROA: No objection.

18 HEARING ADVISOR CELLI: No objections. Then
19 Exhibits 2000, 2002, and 2008 are received under
20 Transmission Lines Safety and Nuisance.

21 Public Health?

22 MR. SCOTT GALATI: We'd like to move in Exhibits
23 1003, 1007, 1021, 1043, 1045, 1055, 1056, 1060, and 1077.

24 HEARING ADVISOR CELLI: Any objection from any
25 party?

1 MR. ALFREDO FIGUEROA: No objection.

2 HEARING ADVISOR CELLI: Everyone is shaking
3 their head in the negative or saying no, thank you.

4 Exhibits 1003, 1007, 1021, 1043, 1045, 1055,
5 1056, 1060, and 1077 are received into evidence.

6 Staff, your motion regarding Public Health?

7 MS. JENNIFER MARTIN-GALLARDO: Staff would like
8 to move into evidence 2000, 2002 and 2008.

9 MR. SCOTT GALATI: No objection.

10 HEARING ADVISOR CELLI: 2000, 2002 and 2000- --

11 MS. JENNIFER MARTIN-GALLARDO: Eight.

12 HEARING ADVISOR CELLI: Eight. No objection
13 from any parties? Everybody, no objections.

14 Exhibits 2000, 2002, and 2008 are received under
15 Public Health.

16 Hazardous Materials.

17 MR. SCOTT GALATI: I'd like to move 1003, 1021,
18 1029, 1041, 1057, and 1076 into evidence.

19 HEARING ADVISOR CELLI: Any objection any from
20 any parties?

21 There being no objection, Exhibits 1003, 1021,
22 1029, 1041, 1057, and 1076 are received into evidence.

23 Staff, your motion regarding Hazardous
24 Materials?

25 MS. JENNIFER MARTIN-GALLARDO: Staff would like

1 to move into evidence Exhibits 2000 and 2008.

2 HEARING ADVISOR CELLI: Any objection by any
3 parties?

4 MR. SCOTT GALATI: No objection.

5 HEARING ADVISOR CELLI: Hearing none, Exhibits
6 2000 and 2008 are received into evidence for Hazardous
7 Materials.

8 Waste Management, Petitioner?

9 MR. SCOTT GALATI: I'd like to move into --
10 Exhibit 1003, 1021, 1040, and 1076 into the record.

11 HEARING ADVISOR CELLI: Any objection by any
12 parties?

13 There being none, Exhibits 1003, 1021, 1040, and
14 1076 are received into evidence.

15 Staff, your motion on Waste Management?

16 MS. JENNIFER MARTIN-GALLARDO: Staff would like
17 to move into evidence Exhibits 2000 and 2008.

18 HEARING ADVISOR CELLI: Any objection?

19 MR. SCOTT GALATI: No objection.

20 HEARING ADVISOR CELLI: There being no
21 objections, Exhibits 2000 and 2008, 2000 and 2008 are
22 received into evidence for Waste Management.

23 Okay. Land Use, motion by petitioner?

24 MR. SCOTT GALATI: Like to move in 1003 and
25 1076, 1-0-7-6.

1 HEARING ADVISOR CELLI: Any objection by any
2 party?

3 Hearing none, Exhibits 1003 and Exhibit 1076 are
4 received into evidence.

5 Staff's motion regarding Land Use?

6 MS. JENNIFER MARTIN-GALLARDO: Staff would like
7 to move into evidence Exhibits 2000 and 2008.

8 HEARING ADVISOR CELLI: Any objection by any
9 party?

10 MR. SCOTT GALATI: No objection.

11 HEARING ADVISOR CELLI: Exhibits 2000 and 2008
12 are received into evidence for Land Use.

13 Socioeconomics.

14 MR. SCOTT GALATI: Petitioner would like to move
15 in Exhibit 1003, 1021, 1026, 1046, 1052, 1060, and 1076.

16 HEARING ADVISOR CELLI: Any objection by any
17 party?

18 Hearing none, Exhibits 1003, 1021, 1026, 1046,
19 1052, 1060, and 1076 are received into evidence.

20 MR. SCOTT GALATI: Mr. Celli, I did forget
21 Exhibit 1101. I'd like that to be moved into evidence, as
22 well.

23 HEARING ADVISOR CELLI: Any objection by any
24 party to the admission of 1101 under Socioeconomics?

25 Hearing no objection, Exhibit 1101 is also

1 received.

2 And lastly, Noise and Vibr- -- oh, no, Staff, I
3 need to hear from Staff on Socio.

4 MS. JENNIFER MARTIN-GALLARDO: We'd like to move
5 into evidence Exhibits 2000 and 2008.

6 HEARING ADVISOR CELLI: Any objection?

7 MR. SCOTT GALATI: No objection.

8 HEARING ADVISOR CELLI: Exhibits 2000 and 2008
9 are received into evidence under Socioeconomics.

10 Lastly, Noise and Vibration. Petitioner?

11 MR. SCOTT GALATI: Petitioner move Exhibit 1003,
12 1044, 1076 into evidence.

13 HEARING ADVISOR CELLI: Any objection by any
14 party?

15 Hearing no objection, Exhibits 1003, 1044, and
16 1076 are received.

17 Motion by Staff under Noise and Vibration?

18 MS. JENNIFER MARTIN-GALLARDO: Staff would like
19 to move into evidence Exhibits 2000 and 2008.

20 HEARING ADVISOR CELLI: Any objection?

21 MR. SCOTT GALATI: No objection.

22 HEARING ADVISOR CELLI: Hearing no objection,
23 exhibits 2000 and 2008 are received into evidence under
24 Noise and Vibration.

25 And ladies and gentleman, just so you understand

1 what just happened, there were a number of topics, all the
2 topics we just covered were those topics that the parties
3 agreed in the prehearing conference statement did not
4 require live testimony. So what they just put into
5 evidence is basically things that everybody has already
6 seen in the Final Staff Assessment and petition to amend as it
7 relates to those topic areas.

8 So thank you for your patience, everyone. I
9 know it's not the most exciting thing to watch.

10 How are you doing, Ms. Novak? You good?

11 THE COURT REPORTER: Yes.

12 HEARING ADVISOR CELLI: So this morning we're
13 going to begin with Alternatives, so if we can have all of
14 the parties' Alternatives witnesses come down and sit at
15 the witness table before the Committee.

16 And one more housekeeping matter, I wanted to
17 just give everybody a heads up that it's looking right
18 now, assuming Staff gets their air quality FSA section
19 published by November 1st, it is looking like the date --
20 by the way, let me go just off the record for one second.

21 (A discussion was held off the record.)

22 HEARING ADVISOR CELLI: This date may change.
23 Again, we're subject to the FSA coming off on time and so
24 forth, but tentatively we're looking at Friday,
25 November 22nd at the California Energy Commission

1 headquarters on Ninth Street in Sacramento for an
2 evidentiary hearing on the sole topics of Air Quality and
3 Greenhouse Gases. More will come later. When we have --
4 when we have a firm date, we will actually send out a
5 notice to that effect.

6 We have this morning -- we have a panel. I'm
7 going to ask each member of the panel to identify
8 themselves, starting with Ms. Anderson.

9 MS. ILEENE ANDERSON: Ileene Anderson for the
10 Center for Biological Diversity.

11 HEARING ADVISOR CELLI: Thank you.

12 MR. CHARLES TURLINSKI: Charles Turlinski for
13 Palen Solar Holdings.

14 MS. JEANINE HINDE: Jeanine Hinde with the
15 Energy Commission.

16 HEARING ADVISOR CELLI: Good morning, Ms. Hinde.
17 Thank you for coming today.

18 Anyone else from Staff?

19 MR. CHRIS HUNTLEY: Chris Huntley, Biological
20 Resources, Energy Commission.

21 MS. CAROL WATSON: Carol Watson, Biological
22 Resources, Energy Commission.

23 HEARING ADVISOR CELLI: Good morning. May I
24 have all of you please stand, raise your right hand.

25 Do you solemnly swear to tell the truth, the

1 whole truth, and nothing but the truth under penalty of
2 perjury under the laws of the State of California?

3 (All answer in the affirmative.)

4 HEARING ADVISOR CELLI: Thank you. Please be
5 seated.

6 This is Alternatives. Today, as I understand
7 it, Staff and Petitioner are in agreement on Alternatives,
8 so this is -- this was -- this panel, I think, was the
9 panel that was requested by CBD, so I'm going to let CBD
10 begin with questioning.

11 MS. LISA BELENKY: I believe -- that's fine. I
12 believe both the Center and Basin and Range Watch had
13 questions, I thought, but I'm --

14 HEARING ADVISOR CELLI: Perhaps Ms. Anderson can
15 set the tone of the issues.

16 MS. ILEENE ANDERSON: Yes.

17 MS. JEANINE HINDE: I have a question. I do
18 have an opening statement that I prepared. Is that --
19 should that wait?

20 HEARING ADVISOR CELLI: Yes. Let's hear from
21 CBD first, and then perhaps if it's appropriate, we'll
22 hear from Staff on that.

23 Go ahead, Ms. Anderson.

24 MS. ILEENE ANDERSON: I have an opening
25 statement, as well, this morning. And I sent in an

1 Alternative, as part of my opening testimony, that would
2 reduce the encroachment in the sand transport corridor,
3 and therefore reduce impacts to the plants and animals
4 that rely on this unique landscape feature.

5 In addition, yesterday I heard that the project
6 proponent had acquired two new parcels, one in that little
7 northeast cut out area, and another one south and east of
8 the proposed -- or southeast of the proposed project. And
9 while the parcels may be proposed as mitigation, I think
10 the better use of those would be fore siting the project.
11 That parcel up in the northeast corner is surrounded on
12 three sides by the development, and is really not
13 appropriate for mitigation because of the edge effects
14 that compromise the ecological functions in this area.

15 The area southeast of the project, I believe, is
16 included in the alternative that I submitted.

17 So I think that the acquisition of these lands
18 that I learned about yesterday basically makes our
19 alternative closer to the I-10 corridor even more
20 feasible.

21 So based on that -- oh, and in addition, based
22 on the new information that's become available on wildlife
23 connectivity in the area, and this I'm referring to the
24 South Coast Wildlands desert connectivity, as well as the
25 kit fox data that was submitted and docketed by the

1 California Department of Fish and Wildlife.

2 I'm also concerned about the impacts of the
3 project on the existing connectivity relating to the
4 underpasses under the I-10. And the two that I'm
5 specifically concerned about are Numbers 11 and 12. And
6 I've asked Ms. Anderson, if she -- I gave her the figure
7 that I'd like to refer to this morning.

8 So Ms. Anderson, if you could put up that figure
9 from Soil and Water, Table 15 from the -- Page 927 on the
10 PDF.

11 HEARING ADVISOR CELLI: Ms. Ileene Anderson, it
12 looks like nobody is in the booth right now.

13 MS. ILEENE ANDERSON: Okay. Well --

14 HEARING ADVISOR CELLI: Eventually, I hope we
15 will get that picture up.

16 MS. ILEENE ANDERSON: -- I'll tell you about it
17 then --

18 HEARING ADVISOR CELLI: Oh, here she comes.

19 MS. ILEENE ANDERSON: -- so you can be all
20 prepared when --

21 HEARING ADVISOR CELLI: She's there now. If you
22 wouldn't mind saying again what it is you'd like to have
23 projected.

24 MS. ILEENE ANDERSON: Yes. Ms. Anderson, if you
25 can put up that figure that we spoke about earlier today

1 out of Soil and Water, Figure 15 that was on Page 927 of
2 the FSA, the PDF.

3 HEARING ADVISOR CELLI: So this is Figure 15 --

4 MS. ILEENE ANDERSON: It's Figure 15 of the Soil
5 and --

6 HEARING ADVISOR CELLI: In Bio?

7 MS. ILEENE ANDERSON: No, out of Soil and Water,
8 but it shows the underpasses.

9 HEARING ADVISOR CELLI: Okay. It looks like --
10 is what we're looking at now on the screen Exhibit -- I
11 see, Figure 15.

12 MS. ILEENE ANDERSON: Yeah.

13 HEARING ADVISOR CELLI: Okay. Very good.
14 That's the Soil and Water.

15 Go ahead.

16 MS. ILEENE ANDERSON: Okay. Great.

17 So I don't have a pointer, but you can see,
18 going from the left side of the -- or my left, looking at
19 that figure, that the two underpasses under the I-10
20 corridor that I'm concerned about is not the farthest left
21 one, but the next one in, which is Underpass Number 11,
22 and the next one over, which is Underpass 12. And I'm --

23 HEARING ADVISOR CELLI: Let me just say that in
24 the figure that I'm looking at now, which seems to show --
25 looks like I don't have a title, but it looks like it's

1 showing flows underneath I-10, but it doesn't have those
2 numbered segments that you were referring to. I remember
3 there was another one that had numbered segments. I
4 wonder if -- did you want to refer to those segments?

5 MS. ILEENE ANDERSON: Yeah.

6 HEARING ADVISOR CELLI: Let's put that map up,
7 if we could.

8 MS. ILEENE ANDERSON: And, you know, I think the
9 best place to find that, actually, is in the latest
10 submittal that Staff did on the desert tortoise fencing.

11 HEARING ADVISOR CELLI: You could easily have
12 the parties I think stipulate to call them 10, 11, 12 and
13 13 from the left to the right.

14 HEARING ADVISOR CELLI: Of what exhibit?

15 MR. SCOTT GALATI: The one you're looking at now
16 on the screen.

17 MS. ILEENE ANDERSON: The one we were looking at
18 it.

19 MR. SCOTT GALATI: Oh, okay. I was just going
20 to --

21 HEARING ADVISOR CELLI: Okay. Looks like
22 Ms. Anderson appears to be trying hard to find it.

23 MS. ILEENE ANDERSON: Yeah. I appreciate her
24 efforts very much. And had hoped that the figures in Soil
25 and Water sort of more clearly represented the issues I

1 was concerned about versus just the numbers on the --
2 under the I-10.

3 MS. HILARIE ANDERSON: Which one was -- do you
4 remember which one that was -- or keep the one you had up?

5 MR. SCOTT GALATI: Yeah, I think the -- if --
6 Mr. Celli, if Ms. Anderson just wants to use this figure,
7 these are named. We can stipulate on the record that the
8 other figure shows them as 10, 11, 12, and 13.

9 HEARING ADVISOR CELLI: So we're looking now at
10 Figure 10, Biological Resources Figure 10, where those
11 numbers originated from.

12 Is that correct, Ms. Anderson?

13 MS. ILEENE ANDERSON: Yes. And that was the
14 numbers to which I was referring, the underpass numbers.

15 HEARING ADVISOR CELLI: And those underpasses in
16 the exhibit, Figure 15 from Soil and Water, which are
17 actually 10, 11, and 12 in the Biological Figure 10, in
18 the -- if we can have Figure 15 from Soils and Water up
19 again -- are named something different in Figure 15. I
20 just want for clarity's sake to include those numbers and
21 those names. So oh, boy, Copa Ditch is -- looks like 10,
22 and what's the next one?

23 MR. SCOTT GALATI: Aztec.

24 HEARING ADVISOR CELLI: Aztec Ditch is 11, and
25 Tarantula Ditch is Number 12.

1 MS. ILEENE ANDERSON: I would prefer to refer to
2 them by number.

3 HEARING ADVISOR CELLI: Okay.

4 MS. ILEENE ANDERSON: So the two that I'm
5 concerned about is Number 11 and Number 12. And this
6 overlaps into the Biology section, but I wanted to discuss
7 it here in Alternatives, or start the discussion here in
8 Alternatives.

9 So as I see it, the proposed 11 underpass access
10 connectivity that appears to lead animals into a
11 triangular trap area that is bounded on the south side by
12 the I-10 fence, it's bounded on the north side by the
13 project fence, and it's bounded on the west side by the
14 access road. And so my concerns are that these are
15 effectively going to funnel animals into harm's way.

16 The other underpass, 12, I'm concerned about
17 because it also funnels animals directly into the fence of
18 the project on the south side, again, bounded by the I-10
19 fence, moves them right into the project fence, and then
20 those animals have to transit quite a long distance in
21 relatively narrow quarters before it reaches the open
22 desert again.

23 So I'm concerned about how the proposed project
24 is situated and how it really affects that connectivity
25 coming from south of the project site, which we know

1 animals definitely are using.

2 MR. SCOTT GALATI: I would like to lodge an
3 objection at this point. This issue was previous
4 adjudicated, and the evidence taken in this amendment
5 ought to be new scientific evidence that was not
6 considered during the first proceeding. So I think the
7 testimony should be limited to that or limited to the
8 change in the project that changed that connectivity.

9 HEARING ADVISOR CELLI: Can you speak to what
10 those changes are and the difference, Ms. Anderson?

11 MS. ILEENE ANDERSON: Sure. In my -- earlier,
12 when I talked about we have new information about desert
13 connectivity, and I think that there's not only from the
14 South Coast Wildlands Desert Connectivity Report, but also
15 that these underpasses are actually being used by desert
16 kit fox that were collared by Department of Fish and
17 Wildlife. And so, to me, that's new evidence that we have
18 of, you know, animals actually using these areas and the
19 impact that this project and the fencing is going to occur
20 -- is going to potentially have on the animals.

21 HEARING ADVISOR CELLI: Okay. I -- I'm trying
22 to address the objection. I haven't ruled on the
23 objection yet.

24 Does -- you're describing these corridors here,
25 and are they changed? Is the fencing and the ways by

1 which the animals are going to transport in this area --
2 in these areas, have they changed from the OPSBP project
3 the PSEG -- the PSEGS project?

4 MS. ILEENE ANDERSON: The fencing has changed in
5 its actual dimensions. The other project had -- as you
6 recall, had two alternatives that were permitted, and the
7 fencing on those projects are different than what the
8 PSEGS project is now proposing.

9 HEARING ADVISOR CELLI: So that would represent
10 a change in the project that she's addressing, Mr. Galati.

11 MR. SCOTT GALATI: Not on this side.

12 MS. LISA BELENKY: Can I -- may I address the
13 objection?

14 HEARING ADVISOR CELLI: Sure.

15 Jeff, can you hear that mic. It seems to have
16 fallen off the stand, too.

17 MS. LISA BELENKY: Well, it doesn't have a
18 stand.

19 I think there's two different questions going on
20 here. One is what Ms. Anderson stated, which is that
21 there is new information since the earlier approval by the
22 Commission. So new information under CEQA may change the
23 analysis at this stage.

24 The second question is that we're talking about
25 Alternatives, and the Staff did determine that they needed

1 to look at Alternatives, and so this question is relevant
2 to whether they looked at Alternatives that would reduce
3 this impact. And I think for both of those reasons, this
4 is perfectly reasonable to raise here.

5 The third question, as we found last night, is
6 that a large portion of the lower west -- the southwest
7 part of the project under the new Alternatives, the new
8 proposal is not even being used. It is unused area that
9 is being put behind the fence. There would be no mirrors
10 on it, there would be no other project-related activities
11 on it, and yet they have fenced in an additional 200 acres
12 that under their own proposal they're not using.

13 So it seems that this is relevant to whether
14 Staff considered Alternatives that would reduce the impact
15 to species and connectivity, et cetera.

16 HEARING ADVISOR CELLI: That makes sense to me.
17 What I'm trying to understand is, is the new information
18 the presence of kit fox? That wasn't --

19 MS. LISA BELENKY: That's one piece of new
20 information, that kit fox actually use it, actual data
21 showing actual use. There's another new information,
22 which is the new connectivity report that was published by
23 South Coast Wildlands. And I believe might have even been
24 a third new information. So those two are -- which we put
25 in the record, which were submitted as exhibits.

1 MR. SCOTT GALATI: If you listened carefully to
2 my objection, I don't object to that evidence. We're
3 talking about that evidence.

4 I would like to point to support my objection
5 that the there was new reason, you said the fence moved.
6 I would like to direct the Commission to the drawings in
7 the Final Staff Assessment of Project Description Figure 2
8 and Figure 3, and no change has been made to the lower
9 fencing.

10 MS. LISA BELENKY: And part of the point is
11 under Alternatives analysis, we are concerned that there
12 was no consideration, particularly where you are not using
13 close to 200 acres of land that, under your new different
14 Alternative, you're saying is behind the fence, but you're
15 not using it.

16 MR. SCOTT GALATI: Fair enough. I think you
17 made a record that there was -- that we're not using that,
18 and in legal briefs you can argue that we should be.

19 HEARING ADVISOR CELLI: I'd like to see Figure 1
20 and 2 from Project Description, if we could.

21 MR. SCOTT GALATI: Figures 2 and 3.

22 HEARING ADVISOR CELLI: 2 and 3.

23 MS. LISA BELENKY: I'm not trying to make a
24 legal argument, I'm trying to talk about Alternatives in
25 an evidentiary hearing so we can get on the record whether

1 Staff considered various Alternatives that would reduce
2 the impacts of the proposal.

3 HEARING ADVISOR CELLI: I think that point is
4 made.

5 I'm waiting to see whether there's a change in
6 the fence line from these two figures that are coming up,
7 Project Description 2 and 3, so then we can make a ruling
8 on the objection.

9 But I want to say that it seems to me that the
10 point -- let me just see if I -- if I am getting the
11 point, Ms. Belenky, that your assertion is that there's
12 this section that's not being used that's fenced in on
13 the -- we're going to call it the southwestern section of
14 the project, and there were some -- there's plenty of
15 testimony on that from last night. And so I think the
16 point is made that there's unused land that there -- could
17 have been used for other options.

18 MS. LISA BELENKY: We're trying to understand
19 what Staff considered in their Alternatives analysis?

20 HEARING ADVISOR CELLI: Okay.

21 MS. LISA BELENKY: And part that of is
22 presenting evidence on impacts, new evidence about
23 impacts, and whether Staff considered these matters.

24 HEARING ADVISOR CELLI: This is figure -- we had
25 Figure 2 there for a minute. There you go. Figure 2 is

1 now up. And this shows Alternative 2, I believe, from the
2 old project. Is that -- do I have that right?

3 I wonder if you could -- there you go.
4 Project -- I couldn't read the heading on that. See --
5 the Approved Project Reconfigured Alternative 3 is what
6 Figure 3 in Project Description shows.

7 And if you could slide back down again,
8 Ms. Anderson, and show us what the fence line on the
9 southern part looks like.

10 Now we're looking at --

11 MR. SCOTT GALATI: Just to be clear, the line
12 that we're looking at, the one that is labeled disturbance
13 line on the document, we understand that that's where the
14 outside security fence was going to be.

15 MS. LISA BELENKY: They do look different to me,
16 and I don't have an overlay. I feel like we need to look
17 at an overlay. This is the two -- this may be the two and
18 three versus two or three problem. Because one of these,
19 the fence comes further south than the other.

20 MR. SCOTT GALATI: Correct. Alternative 3, this
21 is the one where the fence comes very close to I-10.

22 HEARING ADVISOR CELLI: Let me ask a question
23 about that section there. Because as I look at Figure 15
24 from Soils and Water, which is up on that monitor back
25 there, there's a red square on the far western perimeter

1 of that area, and I don't recall what that square was
2 supposed to represent.

3 Perhaps Mr. Turlinski --

4 MR. CHARLES TURLINSKI: That's the construction
5 lay down yard.

6 HEARING ADVISOR CELLI: Okay. So that's just
7 temporary. And then on the far -- we'll just call it the
8 southern eastern corner of the unused space, that's where
9 the evaporation pond was. And was there anything else
10 besides the two evaporation ponds situated there?

11 MR. CHARLES TURLINSKI: Yeah, the common
12 facilities area, essentially the control room, et cetera,
13 the evaporation pond, and I'd have to look, there's one
14 other component.

15 MS. LISA BELENKY: Concrete batch plant.

16 MR. CHARLES TURLINSKI: Concrete batch plant.

17 HEARING ADVISOR CELLI: Which is also temporary.

18 So the permanent structures that would be in
19 that area would be the evaporation pond; right?

20 MR. CHARLES TURLINSKI: No, the common
21 facilities area is permanent, control room.

22 HEARING ADVISOR CELLI: Oh, I see. Okay.

23 So your point is, Ms. Belenky, if I understand
24 it, this fence could be brought in just around those
25 facilities and abut the rest of the heliostat field and

1 not have to use up so much space as you go west and south.

2 MS. LISA BELENKY: Well, that is certainly one
3 Alternative that Staff could have considered, or as we
4 mentioned, discussed last night, the original project that
5 was approved would have moved the transmission line, and
6 then this area could have been used for heliostat if they
7 still were moving the transmission line. And that could
8 have relieved pressure from other sand areas. So there's
9 a couple of ways in which this area is very relevant to
10 the alternatives analysis.

11 HEARING ADVISOR CELLI: So I understand the
12 relevance. I just want to talk of the discussion with
13 regard to moving the fence line of that unused section or
14 temporarily used section, I just want to make sure I'm
15 addressing the objection that there was no new information
16 being brought in or something to that effect.

17 MR. SCOTT GALATI: The objection is we don't
18 have any problem talking about the new biological
19 information and whether Staff should have evaluated new
20 alternatives or if staff should have evaluated
21 alternatives about unused areas. So my objection was we
22 didn't want to reopen issues of translocation or other
23 issues in the project that are unrelated to new
24 information or a change in the project.

25 HEARING ADVISOR CELLI: Then that would be a

1 sustained objection because we're focusing on the
2 difference between just the modified project at this time.

3 So if you can keep your comments to that,
4 Ms. Anderson, to modifications of the PSEGS project.

5 MS. ILEENE ANDERSON: Okay. But I still think
6 that there -- in looking at the old project footprint and
7 the fence line, that it's different from what that is, and
8 that's why I believed that it was new information and why
9 I even bothered to bring it up.

10 HEARING ADVISOR CELLI: I appreciate that.

11 MS. LISA BELENKY: And I just want to say to
12 preserve for the record that we do not agree that we
13 cannot raise an issue just because it was raised
14 previously if there's new information. We did raise this
15 issue about this very narrow corridor for wildlife
16 movement in the original, we were intervenors in that
17 matter, we raised it, it was a matter for hearing on
18 Biology, and we don't think that it was actually fully
19 adjudicated, and even if it had been, there is new
20 information relevant to that matter.

21 HEARING ADVISOR CELLI: Okay. Well --

22 MS. LISA BELENKY: I just wanted to say for the
23 record we do not agree that that is not an issue that can
24 be discussed.

25 HEARING ADVISOR CELLI: Okay. But the burden

1 would be on the proponent to put in the new information.

2 MS. LISA BELENKY: We did in put in new
3 information in our exhibits.

4 HEARING ADVISOR CELLI: Very good.

5 MS. ILEENE ANDERSON: So then, just couple of
6 other issues.

7 While the reduced size project alternative is a
8 less impactful proposal, it still remains in the sand
9 transport corridor. And a reconfigured reduced-sized
10 project should be crafted to move it out of the sand
11 transport corridor, which also reduces the impacts from
12 solar flux and visual resources, although some impacts
13 will still remain.

14 If the transmission lines remain as per the
15 permitted project, then, as we have already spoken about
16 today, that 200-plus acres of unused land could be
17 actually developed as part of the heliostat field, and
18 that more compact and efficient footprints would also
19 minimize impacts and decrease edge effects.

20 I also believe that the solar PV alternative,
21 and not necessarily the single access trackers, as
22 analyzed in the FSA, would also avoid some of the
23 significant unmitigable impacts by reducing some of the
24 avain impacts, by eliminating again the solar flux, from
25 the aerial landscape. It would also reduce the visual

1 impacts from the two 750-foot towers. And also, PVs allow
2 for greater flexibility in siting the panels, so important
3 landscape features, including, for example, the sand
4 transport corridor, the desert dry wash woodlands,
5 connectivity corridors, rare plants, kit fox complexes
6 could all be avoided.

7 I think the PV alternative could also reduced
8 the amount water that's needed for the operations. And so
9 I think that the new alternatives analysis was a little
10 shy on the different types of alternatives that could have
11 been analyzed to help reduce project impacts.

12 HEARING ADVISOR CELLI: Anything further on
13 Alternatives?

14 Let's hear from -- well, I was going to go to
15 Mr. Turlinski. Go ahead, Mr. Turlinski.

16 MR. CHARLES TURLINSKI: Okay. I just want to
17 make one correction. The lands that were -- you were
18 referring to, the private lands, I don't think they're
19 new, at least to my understanding they're not new. They
20 were included in the originally approved project
21 footprints, so I just wanted to highlight that.

22 I don't have much to say unless specific
23 questions, other than the project footprint, the primary
24 objectives, from our perspective, were to, A, fulfill the
25 project objectives, so 500 megawatts that executed on our

1 previously approved PCAs.

2 Beyond that, our subordinate objectives will
3 stay within the project footprint that was previously
4 licensed to the extent possible. They're also to avoid
5 and minimize wherever possible and avoid and minimize
6 impacts wherever possible. So those were -- that gives
7 you maybe an idea of a lens to the way we look at this and
8 the way we got to the project footprint that we had
9 proposed, but I don't have any more general statements
10 than that.

11 HEARING ADVISOR CELLI: Thank you.

12 Let's hear from Staff's witness, Ms. Hinde?

13 MS. JEANINE HINDE: Well, in response to CBD's
14 comments, I wasn't sure, it wasn't clear to me if you were
15 aware there was a full analysis of solar PV at --

16 HEARING ADVISOR CELLI: Excuse me, Ms. Hinde,
17 you speak softly, and I need you to bring that microphone
18 up to closer you so we can hear you better. So if you
19 could just drag it up closer.

20 MS. JEANINE HINDE: I'm pretty close.

21 HEARING ADVISOR CELLI: Okay. Speak up. Thank
22 you.

23 MS. JEANINE HINDE: There's a full analysis of
24 the utility-scale PV alternative, which in echoing the
25 reduction impacts that Ms. Anderson pointed out. That's

1 what the analysis in Staff's Alternatives analysis shows,
2 reduced impacts.

3 Staff concludes that constructing and operating
4 the PV alternative with single access tracking technology
5 would avoid or substantially reduce several impacts on
6 Biological Resources, Cultural Resources, Traffic and
7 Transportation, and Individual Resources, and that without
8 the solar power towers, three impacts identified by Staff
9 as potentially significant or significant and unavoidable
10 under the proposed modified project would not occur with
11 construction and operation of the solar PV alternative.

12 Those three impacts are potential impacts on
13 avian species and exposure to concentrated solar flux,
14 solar receiver glare impacts that could be hazardous to
15 motorists and pilots, and glint or glare under visual
16 resources, glint or glare impacts from high profile solar
17 receiver steam generators. So that, I think, should be
18 fully analyzed.

19 And there is -- Staff also considered a reduced
20 acreage alternative that was devised in consultation with
21 Biological Resources Staff, which retains the western
22 solar field and eliminates the eastern solar field. And
23 that analysis showed reduction, significant reduction of
24 several biological resource impacts.

25 As for the alternative that was submitted last

1 week from CBD, that was several days before this hearing,
2 and subsequently I -- I understand that CBD Staff seems to
3 be questioning why it wasn't evaluated when it wasn't
4 presented in time for Staff to do a kind of analysis on
5 it.

6 HEARING ADVISOR CELLI: Thank you.

7 Before we move on, let me just ask, how are you
8 doing? Do you need a break?

9 THE COURT REPORTER: I'm okay. Thank you.

10 HEARING ADVISOR CELLI: Go ahead, Mr. Huntley.

11 MR. CHRIS HUNTLEY: Chris Huntley. I wanted to
12 respond to a couple of the comments provided by CBD, and I
13 think this is important.

14 First is regarding new information and
15 connectivity issues. In a response to comment on the PSA,
16 Staff did review updated information from the Fish and
17 Wildlife Service, the BLM, solar EIS, among other
18 documents, to consider how those corridors and other areas
19 would be impacted by the proposed project. So we did
20 consider those and took a look at them. We didn't feel it
21 changed the conclusion in our analysis in the FSA.

22 We did conclude in the FSA that the project
23 would pose a significant barriered movement from various
24 species, and that's why in our conditions we have things
25 such as placing a culvert under the driveway as you drive

1 into the facility so animals would be funneled underneath
2 them should they come through the culverts. Part of the
3 I-10 fencing would prevent animals from walking on the
4 highway, but if they hit the fence, they could move through
5 the wash and there was at least that connectivity to open
6 space.

7 We also are aware that the culverts are being
8 used by a variety of wildlife. And I believe the
9 Applicant, in a study docketed for the original PSP
10 project, concluded the same thing, that a wide variety of
11 species were using those culverts.

12 Again, as far as new data goes, I don't believe
13 that any of the new data that has been provided or --
14 including the South Coast Wildlands Project, would alter
15 our current standing or our position on connectivity for
16 desert tortoise or other species at this time.

17 HEARING ADVISOR CELLI: Thank you.

18 Ms. Watson, did you have a statement you'd like
19 to make?

20 MS. CAROL WATSON: Nothing further to add.
21 Thank you.

22 HEARING ADVISOR CELLI: Okay. We've heard from
23 all of the parties. I'm going to allow the attorneys to
24 ask questions, and I'm going to kind of ask you to all
25 please design your questioning around allowing the

1 witnesses to expound upon their answer. We really want to
2 hear from the witnesses.

3 Go ahead, Mr. Galati.

4 MR. SCOTT GALATI: No questions.

5 HEARING ADVISOR CELLI: Staff, on Alternatives?

6 MS. JENNIFER MARTIN-GALLARDO: We have no
7 questions.

8 HEARING ADVISOR CELLI: Any questions,
9 Mr. Figueroa, at this time?

10 MR. ALFREDO FIGUEROA: No questions.

11 HEARING ADVISOR CELLI: Thank you.

12 Basin and Range Watch, please go ahead. This is
13 on Alternatives.

14 MS. LAURA CUNNINGHAM: Laura Cunningham, Basin
15 and Range Watch, one quick question to clarify. In the
16 FSA Page 6.1-7, this is a question to Staff.

17 We had requested a brown field alternative
18 analysis, and Staff responded that no suitable alternative
19 was identified, but we did identify Westlands Water
20 District. And in the footnote on that page, Footnote 2,
21 the term brownfield site generally refers to a piece of
22 industrial or commercial property that is abandoned or
23 under used and often environmentally contaminated, and that
24 is a perfect description of the Westlands Water District
25 area. So I just want to clarify why again that was not

1 analyzed?

2 MS. JEANINE HINDE: There is on Page 6.1-8 a
3 summary of what the Westlands Solar Park is. It is a
4 combined public and private effort to master plan
5 renewable development and infrastructures for large scale
6 solar projects.

7 The Westlands Solar Park has additional planning
8 estimates for development phased projects totaling up to
9 approximately 2400 megawatts of solar or rays by 2025.
10 That area is, as I understand it, is being developed with
11 PV, a much lower profile PV project. And development of
12 any type of solar energy by the PSEGS project owner at
13 Westlands Solar Park is extremely speculative. It's --
14 the project owner doesn't own or otherwise have any
15 development rights to that land being developed for, as I
16 said, for solar PV. There's also regional developed uses
17 near that solar park including rural residential areas and
18 several small- to medium-sized communities within five to
19 ten miles of the site. So it would not be -- it would not
20 be possible to -- to use that site for development of a
21 solar power tower project. It's very used to -- very near
22 to developed uses and communities, and it simply would not
23 be feasible.

24 MR. KEVIN EMMERICH: I have a question on that.
25 Does an off-site alternative analysis for this particular

1 case have to review a power tower and why couldn't it be
2 photovoltaic. Westlands has 2000 acres, and over a long
3 period of time, might be able to top the megawatts of the
4 Palen Project. So can an off-site alternative be analyzed
5 for this project for PV and not a power tower? I'm just
6 confused about that.

7 MS. JEANINE HINDE: Okay. Typically, an
8 alternatives analysis would involve either an off-site
9 alternative or a change in technology. But a change in
10 technology with an off-site alternative, it -- and at such
11 a location that is so far away, the project applicant has
12 no development, no possible reason to seek to develop that
13 area, it just -- it becomes more infeasible as -- as the
14 more one thinks about it, it isn't something that's in the
15 realm of possibility. Whereas something that is on the
16 project site becomes somewhat more feasible. I know it's
17 a difficult thing to -- I've thought about this a lot and
18 it's difficult to explain it, but my experience in
19 alternative analysis is it's either a change of technology
20 or a change in the project, not necessarily just
21 technologically, depending on the type of project, a
22 change in the project at the site or an alternative site
23 that would reduce or avoid impact, what's being proposed.

24 MS. LAURA CUNNINGHAM: Does the Energy
25 Commission or somewhere in CEQA have a distance in miles

1 that --

2 MS. JEANINE HINDE: No.

3 MS. LAURA CUNNINGHAM: No more questions. Thank
4 you.

5 HEARING ADVISOR CELLI: Thank you.

6 CBD, Ms. Belenky?

7 MS. LISA BELENKY: Thank you. I have a few
8 questions. They're fairly short, but I do have like four
9 or five.

10 Mr. Turlinski? Is that right? I'm sorry.

11 MR. CHARLES TURLINSKI: Yes.

12 MS. LISA BELENKY: Okay. I just wasn't sure
13 what you said about the private lands not being new. I
14 didn't know what you meant by that.

15 MR. CHARLES TURLINSKI: The land in particular
16 that we discussed yesterday in the northwest, northeast --
17 yeah northeastern corner, was included in the previously
18 approved project footprint. So it's my understanding that
19 that's not new, that was always part of the project
20 footprint.

21 MS. LISA BELENKY: It was not included. It was
22 just a carve out, I believe --

23 MR. SCOTT GALATI: No, it's included. If you
24 look at --

25 HEARING ADVISOR CELLI: What's going on here,

1 ladies and gentlemen --

2 MS. LISA BELENKY: It was in the old project but
3 now it's a carve out?

4 HEARING ADVISOR CELLI: Okay. So wait a minute.
5 I want to make something clear to all the parties, that we
6 want to hear from the experts. And Ms. Belenky has the
7 floor, it's her questioning at this time. I don't want to
8 hear disagreements amongst the lawyers. I want the facts
9 of the case, so I want to hear those disagreements amongst
10 the witnesses.

11 MR. SCOTT GALATI: I apologize. If Ms. Belenky
12 will direct her comments, instead of a comment as if
13 something is fact to a question for the witness, then I'll
14 let the witness answer.

15 HEARING ADVISOR CELLI: Right. But this
16 Committee is participating and understands that the
17 questions are not evidence.

18 Go ahead, Ms. Belenky.

19 MS. LISA BELENKY: I'm now trying to -- there is
20 no good overlay that shows them. It is very complicated
21 for me to understand what -- I'm just trying to find out
22 what you are saying.

23 In your -- to the best of your knowledge, the
24 part that is now not within the project footprint, you
25 believe was within the project footprint before?

1 MR. CHARLES TURLINSKI: That's correct.

2 MS. LISA BELENKY: But it is now -- that would
3 be a change, that it is not in the project footprint now?

4 MR. CHARLES TURLINSKI: Yeah, to the extent that
5 we've been trying to minimize the project footprint,
6 that's an area that we drew a line around.

7 MS. LISA BELENKY: Okay. So I just want to make
8 sure I understand. You changed the project specifically
9 to exclude private lands that you controlled from the
10 project?

11 MR. CHARLES TURLINSKI: That wasn't the
12 objective. If you're asking for what was the logic, the
13 logic was simply around the idea of minimizing and
14 optimizing the performance of the solar field.

15 MS. LISA BELENKY: Okay. Thank you.

16 I have a couple of short questions for Staff.
17 Maybe we could look at the reduced footprint alternative
18 that you spoke about, which I think is Figure 5a and 5b.

19 HEARING ADVISOR CELLI: Figure 5a and 5b in --

20 MS. LISA BELENKY: Alternatives.

21 HEARING ADVISOR CELLI: Alternatives. Okay.

22 MS. LISA BELENKY: It's at PDF, 1465. Yeah.

23 There you go.

24 That, I believe, was considered B and A -- well,
25 they both -- they don't include, as far as I can tell in

1 this figure, you are not considering a lay down area in
2 this figure.

3 HEARING ADVISOR CELLI: This figure being
4 Figure 5b.

5 MS. LISA BELENKY: Maybe we could go back to
6 Figure 5a -- well, maybe neither one of them does. Or
7 maybe there's a little pink line on the outside.

8 So Staff testified that this was your attempt to
9 avoid the sand. Did you consider --

10 MS. JEANINE HINDE: I didn't say the sand.

11 MS. LISA BELENKY: Oh, what did you say?

12 MS. JEANINE HINDE: If we take a look at the
13 summary table that is Appendix -- Alternatives Appendix 2,
14 under Biological Resources, and I will let Chris and Carol
15 respond to this in further detail, but for Biological
16 Resources, would a reduced acreage detail determine that
17 impacts on special status plant species, waters of the
18 state, desert tortoise and special status plants and
19 wildlife species, kit fox and American badger, would --
20 those impacts be much less than PSEGS's under the reduced
21 acreage alternative.

22 For impacts on ground water dependent
23 ecosystems, the impact was determined to be somewhat less
24 than PSEGS's.

25 Impacts on the sand transport corridor and sand

1 * and Mojave fringe-toed lizard, for direct impacts, they
2 were determined to be less than PSEGS's.

3 MS. CAROL WATSON: Thank you. Jeanine, this is
4 Carol Watson.

5 So just to -- to try to -- the Staff feels this
6 is a part of the original decision, but in order to
7 determine indirect impact on the sand transport corridor
8 is to have a viable and statistically -- or I should say a
9 scientifically valid determination on that, we feel that
10 that has to be modeled and that's how that was handled for
11 the original proceedings. So that's why we only have a
12 determination for direct impact, which we did conclude
13 would be lessened.

14 MS. LISA BELENKY: My question, did you consider
15 any other reduced footprint alternative that would avoid
16 the sand and the Mojave fringe-toed lizard habitat?

17 MR. CHRIS HUNTLEY: This is Chris Huntley. I
18 think Staff tried to look at a reasonable range of
19 alternatives that balanced a reduction of impacts from one
20 resource to the other.

21 So the impact -- or pardon me, the alternatives
22 we have are the alternatives we analyzed in the FSA. And
23 each one of these alternatives has pluses and minuses,
24 clearly. This one does avoid a lot of habitat occupied by
25 the Mojave fringe-toed lizard. Most of the site is within

1 the aeolian transports of four. We acknowledge it does
2 protrude into sand transport areas and it would be
3 indirect impact, but it does substantially reduce the
4 overall footprint of the project. And so again, we are
5 trying to look at a reasonable range of alternatives.

6 MS. LISA BELENKY: Thank you.

7 And then just going back to that area on the
8 southwest side, that on here you don't even really show,
9 did you consider going back to the original primitive
10 project which moved the transmission lines and utilizing
11 the habitat in that corner area there, which is now
12 primarily empty, in the current proposal?

13 MR. CHRIS HUNTLEY: Well, let me take a step
14 back and make sure I understand the question correctly.
15 If you are talking about did we consider how potential
16 changes in the project footprint from the PSBP or any of
17 the alternatives, including the proposed one for PSEGS, we
18 did consider the slight modifications within those areas.
19 We didn't find that the fence line changes resulted in a
20 substantial difference in impact connectivity for wildlife
21 or desert tortoise. For the alternatives that we're
22 looking at, this one clearly opens up that southern area
23 and would provide greater connectivity for wildlife. So
24 perhaps I'm misunderstanding the question.

25 MS. LISA BELENKY: Yeah, I think what -- so

1 you're -- I'm just confused. It's the lower, sorry,
2 southwest area. On this figure, you can't see, but you're
3 still assuming there's a fence for that whole area, which
4 I believe is 218 acres in the southwest, and so that would
5 still be blocked, and now you're saying they would be able
6 to go out through the --

7 MR. CHRIS HUNTLEY: Even with that alternative,
8 it would still maintain a corridor and there would still
9 be a culvert installed underneath that roadway that allows
10 passage. But forgive me, I did not notice the fence on
11 that area, so it would still prevent wildlife from using
12 that area.

13 MS. LISA BELENKY: Okay. Yeah. And that in
14 this alternative, I'm just trying to understand the
15 alternative you provided. Within that southwest section,
16 you are still assuming that there would be this lay down
17 area and the batch plant, et cetera, or is nothing going
18 in that area? It's very hard to understand.

19 MR. CHRIS HUNTLEY: Well, I'm not certain I can
20 answer that question.

21 MS. CAROL WATSON: I can't answer that, either.
22 I guess I would defer that to Jeanine.

23 MS. JEANINE HINDE: Could you repeat the
24 question?

25 MS. LISA BELENKY: I'm just trying to see -- the

1 original -- let me start over.

2 The original project that was earlier permitted,
3 the transmission line would have gone around the outside
4 of that southwest corner, and so this is already different
5 than the original proposal in that way, because now it's
6 leaving the transmission going through. That's the first
7 piece.

8 So my question is, did you consider keeping the
9 moving -- did you consider from the original approval that
10 to maintain or carry forward that the transmission line
11 would move, and then you could bring some of the
12 heliostats further down towards the road in a reduced
13 footprint alternative?

14 MS. JEANINE HINDE: I'm looking at Alternative
15 Figures 1a and 1b. These two figures show the gen-tie
16 line in the same location.

17 MS. LISA BELENKY: I don't think it's a gen-tie
18 line.

19 MS. JEANINE HINDE: That's not what you're
20 speaking about?

21 HEARING ADVISOR CELLI: We're getting the
22 Figure 1a and 1b now up on the projector.

23 MS. JEANINE HINDE: Right there. That's
24 Reconfigured Alternative 2. The next one is Reconfigured
25 Alternative 3.

1 MS. LISA BELENKY: We're talking about, I
2 believe, the yellow line that is a existing 160 KV, that
3 under the original project would have been moved to the
4 outside of the project footprint.

5 MS. JEANINE HINDE: That was not considered
6 under this alternatives analysis.

7 MS. LISA BELENKY: Thank you. So you didn't
8 consider bringing that forward and therefore being able to
9 utilize the land --

10 MS. JEANINE HINDE: Moving the 161 KV Southern
11 California Edison was not considered.

12 MS. LISA BELENKY: But it was approved as part
13 of the earlier project?

14 MS. JEANINE HINDE: I see it going through the
15 site.

16 MS. LISA BELENKY: That was not what was
17 testified to yesterday.

18 MS. JEANINE HINDE: I'm sorry, I don't know the
19 answer, then, to your question.

20 MS. LISA BELENKY: Well, we'll have to figure it
21 out later.

22 HEARING ADVISOR CELLI: Well, that would be
23 contained in the PSP. We can see it there.

24 MS. LISA BELENKY: I just have a couple of other
25 questions. I just wanted to ask Staff about the energy

1 storage alternative. It says in the PSA -- the FSA,
2 sorry, that when it was rejected for several bases, but
3 one of them was that it would have required an additional
4 18 percent heliostat. So I wanted to ask Staff if they
5 knew at that time that the company did have an option on a
6 parcel on the southeast side and had control of that
7 parcel that has been carved out on the top, and if you
8 looked at how many more heliostats they could get and
9 therefore -- and then be able to look at an energy storage
10 alternative?

11 MS. JEANINE HINDE: The reason the energy
12 storage alternative was not carried forward for full
13 analysis is because it would not have reduced or avoided
14 any significant impacts on the project, the proposed
15 modified project.

16 MS. LISA BELENKY: Thank you.

17 And then lastly, when Staff discussed
18 feasibility of the project, I believe it was for the
19 reduced footprint alternative -- and this may be in other
20 sections -- you discussed the need to meet deadlines for
21 the PPAs.

22 Did you consider at all that those are private
23 contracts that the company had the ability to adjust?

24 MS. JEANINE HINDE: Yes. And in fact, that's
25 stated in the Final Staff Assessment, that there was

1 potential feasibility issues and they were given little
2 consideration in Staff analysis. But they are called out
3 as potential feasibility issues.

4 MS. LISA BELENKY: I think -- I think in the
5 reduced footprint alternative, particularly you relied on
6 because you said it wouldn't meet the PPA requirement. I
7 think that was on page --

8 MS. JEANINE HINDE: Seventy-six?

9 MS. LISA BELENKY: Yes. Thank you.

10 MS. JEANINE HINDE: What it states is if the
11 total electrical capacity was reduced to approximately 250
12 megawatts under the reduced acreage alternative with SPT
13 technology, it is unknown whether an amendment to either
14 of the these current CPAs or CCP would be required.

15 It's also stated that reducing the electrical
16 capacity by approximately one half would presumably affect
17 the project owner's large generator inner connection with
18 Cal ISO, which is for 500 megawatts of interconnection
19 rights.

20 It's unknown -- these, I -- there are similar
21 statements. I'm not sure what you are referring to, but
22 this emphasizes that the others don't. But for each of
23 these alternatives, there are similar statements that it's
24 unknown how any one of these alternatives would affect the
25 project schedule.

1 MS. LISA BELENKY: I guess I'm just trying to
2 understand how you determined in your conclusion as to
3 feasibility.

4 MS. JEANINE HINDE: Well, it's not up to me to
5 conclude feasibility. I bring up potential feasibility
6 issues.

7 MS. LISA BELENKY: I see.

8 MS. JEANINE HINDE: It's the Energy Commission
9 or lead agency decision-makers who determine feasibility.

10 MS. LISA BELENKY: So your discussion of
11 feasibility is just a potential discussion?

12 MS. JEANINE HINDE: No, it's a discussion of
13 potential feasibility issues, and I don't have any way of
14 knowing, nor is it my -- nor is it something that I need
15 to conclude in the alternatives analysis, which is a
16 comparison, it's an environmental analysis, whether and to
17 what extent a delay of the project would impact
18 feasibility.

19 MS. LISA BELENKY: Thank you. I think those
20 were all my questions on Alternatives.

21 HEARING ADVISOR CELLI: Thank you, Ms. Belenky.

22 What we'd like to do at this time -- so where we
23 stand is we heard from everybody but Petitioner and Staff
24 on this panel; right? So let's take a break and resume.

25 You're all under oath. Please do not discuss

1 the case amongst yourselves. Come back in -- this is a
2 short break. It's 11:37 now. If everybody could be in
3 their seats by 11:45, we will resume at 11:45.

4 Off the record.

5 (Recess.)

6 HEARING ADVISOR CELLI: Welcome back, ladies and
7 gentleman. If everybody can please take their seats. If
8 the witnesses can resume their seats at the witness table,
9 parties resume their seats at counsel table.

10 For the questioning, do we have everybody here?

11 Looks like we do. All the witnesses are here.

12 Who is missing from the table, Mr. Figueroa?

13 But the questioning at this time is with
14 Petitioner, if you have any questions of any these
15 witnesses.

16 MR. SCOTT GALATI: No questions.

17 HEARING ADVISOR CELLI: Staff, any questions of
18 any of these witnesses? Mr. Ogata.

19 MR. JEFF OGATA: Thank you. We do have a few
20 questions for Ms. Hinde.

21 Ms. Hinde, you testified that when you
22 considered alternative technology possibly at the sites,
23 you looked at alternatives that mitigate the significant
24 impacts from the proposed project.

25 Do you consider other factors, as well?

1 MS. JEANINE HINDE: Yes. The project objectives
2 are primary -- are very important in the process to select
3 project alternatives, and also identifying what the
4 underlying purpose of the project is.

5 The project objective, if a potentially feasible
6 alternative would -- for it to be carried forward for full
7 analysis, there needs to be an initial overview of those
8 that are being considered at the outset to get a sense of
9 would they or wouldn't they or to what extent would they
10 achieve the project objectives.

11 In this case, it was a combination of the
12 applicant's -- the project owner's stated objectives in
13 the right-of-way application and the revised plan of
14 development that we submitted to BLM for the PSEGSs, as
15 well as other project objectives that -- basic objectives
16 that are consistent with the State's renewable energy
17 goals.

18 So that -- that really started out the process
19 of identifying what potentially feasible alternatives
20 were.

21 MR. JEFF OGATA: So you have analyzed three
22 alternatives fully?

23 MS. JEANINE HINDE: Correct.

24 MR. JEFF OGATA: What else did you do with
25 respect to coming up with alternatives?

1 MS. JEANINE HINDE: Staff or I also reviewed the
2 previous alternatives analysis for the licensed project,
3 Palen Solar Power Project, during that initial group. I
4 reviewed that analysis. The alternatives analysis for the
5 PSPP retained three reconfigured alternatives; a reduced
6 acreage alternative, which is different than the one that
7 I included in the current Staff Assessment; and one
8 off-site alternative, which was the north of Desert Center
9 alternative.

10 Of the three reconfigured alternatives, the
11 commission decision for the original project determined
12 that we reconfigure Alternatives 2 and 3 to reduce impacts
13 on the Mojave fringe-toed lizard and its habitat, and the
14 Staff biologists identified mitigation that would reduce
15 impacts on terrestrial and wildlife species and
16 fringe-toed habitat.

17 I looked in particular in thinking about -- in
18 my review of the alternatives analysis for the originally
19 licensed project, took another look at the north of the
20 Desert Center alternative, and it had been -- it was
21 carried forward for full analysis, but the Commission's
22 decision for the original project concluded that that
23 off-site alternative would have impacts similar to the
24 proposed PSPP, and that negotiations to acquire many
25 privately-owned properties for that alternative were

1 approximately 40 landowners, would have delayed the
2 project to an extent it would have rendered it infeasible.

3 One other thing that I want to mention, because
4 it is relevant to this discussion, is that the State CEQA
5 Guidelines includes guidance for circumstances under which
6 limited new analysis is required. The guidelines state
7 that "Where a previous document has sufficiently analyzed
8 a range of reasonable alternative locations and
9 environmental impacts for projects with the same basic
10 purpose, the lead agency should review the previous
11 document. The previous document may be used to assess the
12 feasibility of potential project alternatives."

13 There were also a number of other off-site
14 alternatives that were evaluated in the original project,
15 but not carried forward. They were not evaluated in
16 detail because they failed to meet most of the project
17 objectives from the original project or would not have
18 reduced or avoided significant impacts, and there were
19 four off-site alternatives.

20 I don't know how many that adds up to, but the
21 analysis was not simply limited to coming up with the
22 three project alternatives that were fully evaluated here.
23 There were also two alternatives that I considered and
24 Staff rejected, the SPT solar power tower with a lower
25 tower height. They determined that that would not reduce

1 or avoid impacts on key environmental resources.

2 And then I discussed earlier the solar power
3 tower with energy storage because it would not reduce or
4 avoid impacts.

5 MR. JEFF OGATA: Thank you. No further
6 questions.

7 HEARING ADVISOR CELLI: Thank you.

8 Then at this time, I'll ask if there's a motion
9 with regards to exhibits in Alternatives from the
10 Petitioner?

11 MR. SCOTT GALATI: I'd like to move in Exhibit
12 1003 and 1077, 1-0-7-7.

13 HEARING ADVISOR CELLI: Any objection by any
14 parties to the admission of Exhibits 1003 and 1077?

15 Everybody's shaking their heads no. Hearing no
16 objections, Exhibits 1003 three and Exhibit 1077 are
17 admitted into evidence.

18 Staff, do you have a motion?

19 MS. JENNIFER MARTIN-GALLARDO: Yes. I'd like to
20 move into evidence Exhibits 2000, 2002, and 2003.

21 HEARING ADVISOR CELLI: Any objections from any
22 party?

23 Hearing none, Exhibits 2000, 2002, and 2003 are
24 received under Alternatives.

25 We have no further evidence from Mr. Figueroa or

1 from BRW.

2 Center for Biological Diversity, do you have
3 some exhibits under Alternatives, please?

4 MS. LISA BELENKY: Yes, thank you. We would
5 have on Alternatives, Exhibits 3000, 3001, 3036, and 3051.

6 HEARING ADVISOR CELLI: The motion is for
7 Exhibits 3000, 3001, 3036, and 3051.

8 Any objection, Petitioner?

9 MR. SCOTT GALATI: No objection.

10 HEARING ADVISOR CELLI: Staff?

11 MS. JENNIFER MARTIN-GALLARDO: No objection.

12 HEARING ADVISOR CELLI: Mr. Figueroa?

13 MR. ALFREDO FIGUEROA: No objection.

14 HEARING ADVISOR CELLI: BRW?

15 MR. KEVIN EMMERICH: No.

16 HEARING ADVISOR CELLI: Thank you.

17 Exhibits 3000, 3001, 3036, and 3051 are
18 admitted.

19 And at this time, I think we can excuse the
20 Alternatives panel. Thank you all.

21 And shall we commence Bio? Wait. Let's not
22 excuse the panel, Commissioner Hochschild has some
23 questions for the panel.

24 Go ahead. I'm sorry.

25 COMMISSIONER HOCHSCHILD: Thank you. Just a few

1 quick questions.

2 First, just around storage, I understand that
3 it's not included in this project, but just help me
4 understand the feasibility if in the future the State or
5 other entities would want to include storage at a facility
6 like this, how feasible is that to do and what is the
7 capability once it's designed, you know, as it is today?

8 MR. CHARLES TURLINSKI: Well, once the project
9 is designed and constructed, it's -- it's a low
10 probability of that. It's quite unfeasible, specifically
11 from a pure finance perspective. Opening up that project
12 from an engineering perspective is not something that
13 could be done. Where it is feasible -- actually, what I
14 would -- should revise that statement a little -- beyond
15 the life of the project finance period, 20 years, 25
16 years, beyond the life of the PPA, which is specific to
17 technology, then there is a little more feasibility
18 insofar that this is a thermal project, and thermal
19 storage could be, from an engineering prospective,
20 interconnected to it. But from an economic and financial
21 perspective and legal perspective, as it pertains to our
22 PPAs, it's not something that could be done --

23 COMMISSIONER HOCHSCHILD: Yeah, I'm just asking
24 about the -- actually, not setting aside the financing of
25 it, just the technical feasibility to add with the

1 footprint that you have and the way that the storage
2 works, is there room on site to accommodate that easily
3 should the financing -- does that make sense?

4 MR. CHARLES TURLINSKI: Yeah, it makes sense.
5 Just to give you some rules of thumb when you're look- --
6 when you're looking at storage, depending on the weight or
7 the size of the storage, you're looking at, for example,
8 two hours, which is about the minimal amount of storage
9 you would look at, you would be adding about 20 percent of
10 your -- 20 percent additional solar field. So looking at
11 this project site and the area that is used, you would
12 need to go outside the current boundaries to allow for
13 storage to be integrated into the project and still have
14 the same production profile.

15 COMMISSIONER HOCHSCHILD: Okay. Thank you.

16 And just to follow up on that, ma'am, my
17 understanding is with parabolic trough technology, you
18 have kind of an encumbant storage capability of an hour or
19 something like that, looking at the fact that there's a
20 lot of area for the transfer fluid to retain heat, that's
21 different from a tower-based technology, right, where you
22 don't have as much piping -- in other words, when the sun
23 goes down, with the parabolic trough, there's a lot of
24 heat that's captured in that, too. Am I correct in
25 assuming that that's less true for this technology? In

1 other words --

2 MR. CHARLES TURLINSKI: You are correct in
3 assuming that, yeah, there's less energy captured so it
4 would fall off a little quicker than might a solar trough
5 project. I don't think -- in my experience, a solar
6 trough project doesn't carry -- depending on the size of
7 the project, it usually carries about 15 to 20 minutes
8 additional energy, depending on the size of project. But
9 that's just --

10 COMMISSIONER HOCHSCHILD: So just roughly
11 speaking, are the characteristics of the generation
12 profile roughly equivalent to PV, or is it --

13 MR. CHARLES TURLINSKI: No. I would actually
14 say it's much more equivalent, if you're comparing it to
15 another alternative, solar trough, because there is --
16 because the steam exists, and then the steam is being
17 metered out, if you will, its production profile is much
18 different from a minute-to-minute basis than is PV, and
19 from an integration basis, PV --

20 COMMISSIONER HOCHSCHILD: But the bell curve I
21 think is a little bit further in.

22 MR. CHARLES TURLINSKI: That's correct.

23 COMMISSIONER HOCHSCHILD: Okay. And then with
24 respect to PV, just help me understand, I'm interested in
25 the ratio of megawatts to acres, acres to megawatt, and

1 looks like if you have 300 acres here, what 7 and a half
2 acres per megawatt? Am I --

3 MR. CHARLES TURLINSKI: Yeah, I didn't do the
4 math, but that sounds about right.

5 COMMISSIONER HOCHSCHILD: Okay. That was --
6 does that include the lay down area, that 3800 -- that's
7 just the --

8 MR. CHARLES TURLINSKI: Yeah, the entire project
9 footprint, 3800, 3794, includes the lay down area. So
10 you're right, if you're actually calculating the
11 efficiency of the solar field, you would take out the lay
12 down area, 208 acres.

13 COMMISSIONER HOCHSCHILD: Okay. Thank you.

14 HEARING ADVISOR CELLI: If there's nothing
15 further, then I would excuse these witnesses.

16 Thank you all.

17 Ladies and gentleman, it's 12:08 p.m. I think
18 it's time for us to take a lunch break. The Applicant --
19 the Petitioner in this case, Palen Solar Holdings, has
20 once again provided Subway sandwiches in boxes for
21 participants and parties and members to -- for a quick
22 lunch, and that's a very good thing. What that means is
23 that you don't have to leave the premises in a car, and
24 you can stick around and we'll get started on time at
25 1:00 o'clock.

1 And we're going to commence Biology, Biological
2 Resources at 1:00 o'clock, so I'm going to ask that the
3 parties have your biology witnesses ready to go at the
4 witness table so we can, at 1:00 o'clock, hit the ground
5 running on Biology.

6 Have a nice lunch. We're off the record.

7 (Whereupon, at the hour of 12:09 p.m.,
8 a luncheon recess was taken, the
9 proceedings to be resumed at 1:00 p.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 PALM DESERT, CALIFORNIA; TUESDAY, OCTOBER 29, 2013

2 1:05 P.M.

3

4 AFTERNOON SESSION PROCEEDINGS

5

6 HEARING ADVISOR CELLI: Let's go on the record.

7 We're on the record.

8 So if I can get just the names of the witness

9 panel from your right to left.

10 Go ahead, sir.

11 DR. ALLAN MUTH: Dr. Al Muth, Allen Muth.

12 HEARING ADVISOR CELLI: Allen Muth.

13 MS. ILEENE ANDERSON: Ileene Anderson for Center

14 for Biological Diversity.

15 MS. PAT FLANAGAN: Pat Flanagan, Center for

16 Biological Diversity.

17 MR. FRED NIALS: Fred Nials, independent

18 consultant for Centerline.

19 MR. MATTHEW STUCKY: Matt Stucky for Palen Solar

20 Holdings.

21 HEARING ADVISOR CELLI: Wait a second.

22 Sitting behind Mr. Nials are -- can you just

23 state the names of these three people there.

24 MR. WALLY ERICKSON: Wally Erickson.

25 HEARING ADVISOR CELLI: Wally Erickson.

1 MR. CLAY JENSEN: Clay Jensen, Palen Solar
2 Holdings.

3 MR. MICHAEL KUEHN: Michael Kuehn, last name is
4 spelled K-u-e-h-n, for Bloom Biological.

5 HEARING ADVISOR CELLI: Thank you.

6 And then Ms. Karl?

7 DR. ALICE KARL: I'm Dr. Alice Karl. I'm an
8 independent consultant to Centerline.

9 MS. ANN CRISP: Ann Crisp, Energy Commission
10 Staff.

11 MR. CHRIS HUNTLEY: Chris Huntley, Biology
12 Energy Commission Staff.

13 MS. CAROL WATSON: Carol Watson, Biologist,
14 Energy Commission Staff. And seated behind me are
15 representatives from the Fish and Wildlife Service and the
16 Department of Fish and Wildlife.

17 HEARING ADVISOR CELLI: Are they going to be
18 testifying? If so, I probably -- you're shaking your
19 heads no. So okay. That's fine.

20 MS. CAROL WATSON: As necessary.

21 HEARING ADVISOR CELLI: So we have some
22 representatives for the U.S.F.W. here, California
23 Department of Fish and Wildlife. Good. Thank you for
24 that.

25 How are we doing? I think she's on the phone to

1 Matt. We're not on yet, so give her a minute, see if she
2 can -- it's always something with the electronics, ladies
3 and gentleman, always the electronics. I can tell you, I
4 had a full head of hair when I started working for the
5 Energy Commission until I started working with WebEx. And
6 WebEx is fine, but it just seems that something always
7 goes wrong when you take electronics. And you can do
8 everything right, and then you're going to have a power
9 outage. So, you know, she's on with Matt Miller. I would
10 be able to chat with Matt Miller, except we're not online.

11 Hilarie, are you on with Matt? No? Okay.

12 MS. HILARIE ANDERSON: Do you still have his
13 number?

14 HEARING ADVISOR CELLI: Do I have his number
15 for that --

16 MS. HILARIE ANDERSON: For Matt.

17 HEARING ADVISOR CELLI: Matt's number?

18 MS. HILARIE ANDERSON: Uh-huh. I want to make
19 sure I have the right number. It keeps doing that, where
20 it's trying to connect, but it won't connect with the
21 call.

22 HEARING ADVISOR CELLI: Well, can you do the use
23 phone thing?

24 MS. HILARIE ANDERSON: I did.

25 (A discussion was held off the record.)

1 HEARING ADVISOR CELLI: I'm going to go ahead
2 and swear the panel anyway. That part doesn't need to be
3 broadcast.

4 Wait a second. It just said I'm the presenter.
5 I'm not the presenter.

6 Hilarie, do you want me to be presenter? Okay.

7 So if I can have the panel please stand and
8 raise your right hand.

9 Do you solemnly swear to tell the truth, the
10 whole truth, and nothing but the truth under penalty of
11 perjury under the laws of the State of California?

12 (All answered in the affirmative.)

13 HEARING ADVISOR CELLI: Thank you. Please be
14 seated.

15 I'm going to just hold off on the questions at
16 this time until we can try to get the WebEx up and
17 running. But while we're waiting, do we have some sense
18 who -- should we lead with Applicant or Staff? Do you --
19 have you talked amongst yourself about how you envisioned
20 proceeding with Bio?

21 MR. SCOTT GALATI: Mr. Celli, we -- we did -- we
22 did speak, at least Staff and Applicant spoke. We thought
23 we would go first. As you know, we docketed on Friday a
24 summary of changes to conditions that I think it might be
25 fruitful if Applicant went first, because I think that

1 Staff may agree with some of those and we can take issues
2 off the table and be productive.

3 HEARING ADVISOR CELLI: Okay. So what I'm
4 basically -- I'm just going to work my way down the table
5 as we go today with the -- with the questioning, and I'm
6 hoping that we can get a resolution on the WebEx.

7 Do any parties have witnesses that are going to
8 be testifying by way of telephone? Nobody has a
9 telephonic witness?

10 MS. JENNIFER MARTIN-GALLARDO: There's --
11 there's a possibility, if it's necessary, for our sand
12 transport expert to answer questions. I shouldn't call
13 him sand transport expert, I should call him the
14 individual who did the sand transport study for this PSEGS
15 revision.

16 HEARING ADVISOR CELLI: Who was that?

17 MS. CAROL WATSON: That's Dr. Nick Lancaster.
18 He's on the phone.

19 MS. JENNIFER MARTIN-GALLARDO: He's -- he's
20 available only if there's particular questions that
21 anybody has.

22 HEARING ADVISOR CELLI: He will be there.

23 Nick Lancaster, can you -- oh, you can't hear
24 me. We can't copy because our WebEx is -- and he's
25 talking now, because I can see the icon and it shows him

1 talking.

2 MR. SCOTT GALATI: Mr. Celli, I think we're
3 going to handle the sand transport issue last in all of
4 the defensive issues, so we can still be productive while
5 we're going on that WebEx -- those other issues, if you'd
6 like us to go forward.

7 HEARING ADVISOR CELLI: Okay. Let me -- give me
8 a second here. Let's send a chat to everybody saying we
9 are working on the audio. Stand by.

10 They're restarting the computer. One, two
11 three, test. One, two, three, test.

12 Mr. Lancaster is testifying up a storm and we're
13 not getting anything.

14 MS. LISA BELENKY: Mr. Celli?

15 HEARING ADVISOR CELLI: Yes.

16 MS. LISA BELENKY: Can I ask -- I just -- and I
17 don't know how it would be best to do this, but there are
18 sort of -- the sand and the lizard issues are somewhat
19 separate or different than some of the other wildlife
20 issues, and if we go by party by party it may prove to be
21 more confusing than to be sort of subtopic by subtopic.

22 HEARING ADVISOR CELLI: How I would like to
23 proceed is this: The reason I was asking who -- who
24 should kick this off is, I guess we'll allow the
25 Petitioner to start it, and what we want the Petitioner's

1 experts to do is pretty much tell us in general what
2 the -- what the evidence is that we need to hear testimony
3 on today. And then the other parties as we --

4 (Interruption.)

5 -- other parties as we go will either expand on
6 that or contract if they're in agreement. And then I
7 don't mean to -- I don't want it to be that rigid,
8 Ms. Belenky, that we're calling the party's witnesses like
9 direct and cross. I really -- I just think it's nice to
10 have one Applicant or Staff to kind of kick it off,
11 especially Staff, since they sort of hold context usually,
12 and then let the parties say what their positions are, and
13 let the parties all state their positions. And if there's
14 any further discussion on it, I would love to hear that
15 between the experts themselves and sort of we'll kind of
16 leave it open as a freeform discussion until the committee
17 makes a determination that they've heard enough and
18 they've got a complete record on whatever the issues are.

19 So I really wanted to shy away from sort of
20 party, witness-by-witness type thing today. Let's see how
21 we do. I think we did okay in Hidden Hills on Bio on
22 this, and we'll find that out. If you want to keep sand
23 transportation separate from the Mojave fringe-toed
24 lizard --

25 MS. LISA BELENKY: They're mixed together.

1 HEARING ADVISOR CELLI: Okay. I kind of see
2 them as part and parcel.

3 MS. LISA BELENKY: I meant separating those from
4 the rest of the pack.

5 HEARING ADVISOR CELLI: Right. I see that as
6 its own topic.

7 MS. LISA BELENKY: Yes.

8 HEARING ADVISOR CELLI: So we'll have that,
9 there's going to be avian of some sort, and the lizard
10 discussion, and the sand discussion, and whatever else
11 we're informed needs to be talked about.

12 Okay. Looks like things are improving. I think
13 maybe we should just -- we can begin, because when feed
14 hooks in, then people will understand that there's a
15 hearing in progress. So let's then -- Mr. Galati, do you
16 want to kick it off?

17 MR. SCOTT GALATI: Yes, I'd like to mark for
18 identification what we docketed on Friday, with the
19 committee's permission, mark for identification as
20 Petitioner 1122. It is Transaction Number 201054, and it
21 is the Palen Solar Holdings Responses to Staff's changes
22 the to conditions of certification that was included in
23 their rebuttal testimony.

24 HEARING ADVISOR CELLI: Those will be so marked
25 for identification.

1 MR. SCOTT GALATI: So with that, Dr. Karl is
2 ready to explain that document. We think it will walk
3 through the issues.

4 HEARING ADVISOR CELLI: Okay. Dr. Karl, please.

5 DR. ALICE KARL: Thank you.

6 The first condition of certification that we'd
7 like to address is Bio 2, and we understand what Staff
8 is -- is asking for here, but -- but there are many minor
9 noncompliances that occur and we're pretty sure that CPM
10 doesn't want to be called within one working day for lots
11 of minor noncompliances. So what we're requesting is just
12 moving the terminology this way: Instead of "Notify the
13 project owner and the CPM within one working day of
14 discovery of any noncompliance." We're asking that it
15 say, "Notify the project owner and CPM of any
16 noncompliance with any biological resource condition of
17 certification and notify the CPM within one working day of
18 injury or mortality of a special-status species, or if
19 more than six injuries or dead birds or bats are located
20 on site at one time." It's just a matter of moving the
21 phrase to the more important compliance issue.

22 HEARING ADVISOR CELLI: Now, do you have a whole
23 list of conditions, or is this the only one?

24 DR. ALICE KARL: I -- I have a whole list, but
25 it's not very many.

1 HEARING ADVISOR CELLI: Okay. I'm just
2 wondering, rather than going point for point for point, if
3 you can just give us in general what all are in --

4 MS. JENNIFER MARTIN-GALLARDO: I -- I think
5 actually it would be very efficient and effective if staff
6 were able to say we agree or we disagree and here's why.
7 I think we can take through these things.

8 HEARING ADVISOR CELLI: You should know, so I'm
9 just going to back off. Go ahead.

10 MS. CAROL WATSON: This is Carol Watson with
11 Energy Commission, and Staff understands the nature of
12 that change and we accept that change.

13 HEARING ADVISOR CELLI: You accept that change?

14 MS. CAROL WATSON: Yes, we do.

15 HEARING ADVISOR CELLI: I've got a monitor right
16 here. Some of women speak a little softer, and I just
17 want everyone to be really good about speaking clearly
18 into the microphones today, please.

19 Go ahead. So Staff says that they accept the
20 changes proposed by Petitioner to condition of
21 certification Bio 2? Okay.

22 DR. ALICE KARL: The next condition that we
23 request a change for is Bio 4. And this condition is
24 Staff is interested in making sure that they can contact
25 any monitors and designated biologists independently, and

1 so that -- I think they want to make sure that the -- any
2 information they get from biological monitors and the DB
3 is not sanitized in some way. And so I, as having run
4 crews myself, however I -- I have had a number of fairly
5 naive people and very idealistic and wonderful young
6 biological monitors who perhaps shouldn't be opining
7 necessarily, but we want to get whatever information it is
8 that they have to Staff or to the CPM. So what -- the
9 only thing we're requesting is that Staff of course can
10 have direct contact with the DB, but for biological
11 monitors, that the designated biologists actually be
12 present. The designated biologists are responsible for
13 the monitors, and the DB is also responsible for
14 implementing all these compliance conditions, so it's
15 really important they also be a part of that conversation,
16 at least be present. We're just asking that they be
17 present.

18 HEARING ADVISOR CELLI: Staff, do you have a
19 retort.

20 MR. CHRIS HUNTLEY: Yes. This is Chris Huntley
21 of biological resources. Staff understands Project
22 Owner's concern with having multiple points of contact,
23 and the intent is not to mine information from naive or
24 entry-level biological monitors. What we wanted to have
25 is transparency, that if, for example, we were conducted a

1 site visit and we were walking along with a biological
2 monitor, if we implemented this in this fashion, we would
3 say, "Hi, what do you that is," the monitor couldn't
4 respond. And so we didn't -- we're not comfortable with
5 that language that provided the designated biological
6 monitor is present, we would like that stricken, and I
7 think it's incumbent on both parties to understand that
8 condition of certification Bio 2 demonstrates that the
9 primary point of contact and pool of information is from
10 the designated biologist, but we just wanted to have the
11 opportunity to talk to people when we're out in the field.
12 Again, the existing conditions require us to contact the
13 designated biologist for anything meaningful, so we just
14 felt this is somewhat burdensome.

15 DR. ALICE KARL: Is there a way we can write it
16 so that we can take what you said about the DB is
17 contacted for anything meaningful.

18 MR. CHRIS HUNTLEY: I think the language in the
19 Condition of Certification 2 already says that the
20 designated by biologist is the designated contact for
21 information. Even in Bio 4, it says the designated
22 biologist shall remain the contact for the project owner
23 and CPM. So then again, the point was, if we're
24 conducting a compliance inspection and the designated
25 biologist is not with us, we would want to be able to ask

1 questions. And again, I think it's incumbent upon our
2 compliance staff to understand the chain of command, as
3 well.

4 HEARING ADVISOR CELLI: I just want to say that
5 yesterday we heard some comments about -- from commenters
6 talking about problems with regard to enforcement and
7 enforceability, and I think in light of that, it does seem
8 that it seems overly burdensome probably to bind the hands
9 of Compliance Staff to that level of detail. And I would
10 also say that I think the Committee has heard enough about
11 this particular Bio 4. We get the idea what the issues
12 are. So unless there's anything urgent and pressing
13 that's shooting over your head, then --

14 (Interruption.)

15 MR. BLAKE ROBERTS: This might not be resolved
16 very quickly. It's a problem on WebEx's end.

17 HEARING ADVISOR CELLI: All right. Well, we're
18 just going to go forward, then. I have no choice. I have
19 to.

20 So just -- just so you know, folks, the public
21 advisor has told us that the problem appears to be on
22 WebEx's side. The biggest problem I'm faced with is that
23 our loquacious friend, Nick Lancaster, will have to
24 probably phone in on a cell phone or something if we need
25 his testimony, because unless we can get this to work --

1 and if it is on WebEx's end, I'm sure they've got plenty
2 of people working on it.

3 MS. JENNIFER MARTIN-GALLARDO: If we could ask
4 that Ann Ware (phonetic), the senior for biological
5 resources staff, get that contact information and get Nick
6 Lancaster on the cell phone.

7 HEARING ADVISOR CELLI: We can accept that
8 information coming secondhand into the record. It's
9 already in support of evidence that's already --

10 MS. JENNIFER MARTIN-GALLARDO: So to be clear,
11 your suggestion is that Nick Lancaster's voice itself
12 wouldn't be heard, but it would be put through -- his
13 words would be put through Ann, or whoever Staff would
14 like?

15 HEARING ADVISOR CELLI: I think that would be
16 expeditious.

17 MS. JENNIFER MARTIN-GALLARDO: Okay. Am I clear
18 that Dr. Lancaster can hear us, but he can't speak to us?

19 HEARING ADVISOR CELLI: No, it's -- what's
20 happening is we have no phone feed out or in. There's no
21 communication telephonically through WebEx. So for
22 whatever reason, we have computer connections sufficient
23 that I can see that the icon showing speaking was -- from
24 Nick Lancaster was working while he was speaking. I've
25 got Matt Miller on now, too. All existing connections

1 using PC are active and working.

2 All right. So he was testifying about sand
3 transport, you said? That's something we might want to
4 get to towards the end anyway, sand transport, so let's
5 move on. We were at Bio 4. What was next?

6 DR. ALICE KARL: Bio 5. And the Applicant
7 accepts Staff's change to Bio 5.

8 MR. SCOTT GALATI: Just to be clear, we withdraw
9 that testimony on that exhibit that requests a change for
10 Bio 5 and we'll live with Staff's change.

11 HEARING ADVISOR CELLI: Okay. Now, here is
12 where it gets confusing, when it comes to putting together
13 the PMPD. How -- some of these conditions -- in other
14 words, in this particular case, Bio 5 is -- are we going
15 with the language that's currently in the condition in the
16 FSA for Bio 5?

17 MR. SCOTT GALATI: No. What we're responding to
18 now are the changes that Staff proposed to Bio -- these
19 Bio conditions in their supplement. They were in
20 agreement with Bio 5 for the FSA, but they changed with
21 respect to -- sorry, rebuttal testimony. We wanted to
22 clarify the record, they've changed, do we agree, if not,
23 what are we proposing. And Mr. Celli, my experience is
24 that this happens a lot, and what we can do in our brief
25 is tell you what the current version of the condition is,

1 citing it to the record, so that you have it.

2 HEARING ADVISOR CELLI: That would be great.

3 I -- it would be most helpful to have all of the -- all of
4 the correct, most current agreed upon conditions in one
5 place so that we can rely on that. Because there's
6 nothing dumber, in my view, than having to revise a PMPD
7 because we used the wrong conditions because we pulled
8 them from someplace inadvertently.

9 MS. JENNIFER MARTIN-GALLARDO: And I think Staff
10 and Applicant will come together and provide a document
11 concurrently.

12 HEARING ADVISOR CELLI: Great. Thank you. So
13 that takes care of Bio 5.

14 Now, this is -- right now, we're -- it seems
15 this is just between Applicant and Staff. Did the
16 intervenors have any concerns with regard to these
17 language changes, talking about Bio 2, 4, 5? Anyone?

18 MS. ILEENE ANDERSON: We don't have any proposed
19 changes to those, because some of the issues that we'd
20 like to talk about are more comprehensive than just those
21 Bio COCs.

22 HEARING ADVISOR CELLI: Okay. That's great. I
23 appreciate that. I just want to make sure that everybody
24 was involved in the discussion. So this sounds mostly
25 like it's a Staff-Applicant thing with regard to the

1 language and conditions. Let's keep going the way we are,
2 then, Ms. Karl --

3 MR. MATTHEW STUCKY: Mr. Celli, this is Matt
4 Stucky with Petitioner with regard to Condition Bio 6.
5 This is for the worker environmental awareness program,
6 number nine of this condition, there's new language that
7 says, "The designated biologists or biological monitors
8 shall identify in photographs any injured or dead birds or
9 bats in full-framed dorsal, central and head view, using a
10 12-megapixel camera." And we have two general comments to
11 this. First, I'm imagining in the year 2040, for example,
12 trying to find a camera with 12 megapixels needs
13 resolution, and I think that speaks to the general comment
14 that it's a little over prescriptive and I think it would
15 be easier to comply with if it was less prescriptive.

16 HEARING ADVISOR CELLI: Could you say something
17 like, "or better"?

18 MR. MATTHEW STUCKY: That would -- that would
19 work with us.

20 The other comment is that we really feel this is
21 more -- and we have no problem doing this -- we think it's
22 more appropriate in Bio 16b, which describes the bird and
23 bat conservation strategy, which will be drafted by the
24 Petitioner. That condition also explains what Staff would
25 like to see if that plan, and we think this should be a

1 measure that Staff directs us to include in that plan in
2 that condition.

3 HEARING ADVISOR CELLI: Okay. So let me just be
4 clear, we started talking about Bio 6 and the --

5 MR. MATTHEW STUCKY: Right.

6 HEARING ADVISOR CELLI: -- and then you were
7 talking about Bio 16.

8 MR. MATTHEW STUCKY: That's where I would
9 suggest that this requirement to photograph dead birds is
10 placed rather than Bio 6.

11 HEARING ADVISOR CELLI: Staff?

12 MS. CAROL WATSON: Staff accepts that change.

13 HEARING ADVISOR CELLI: To 16; right?

14 MS. CAROL WATSON: Those -- the deletions plus
15 the insertion of Bio 16.

16 HEARING ADVISOR CELLI: Very good.

17 MR. SCOTT GALATI: Just to clarify, Mr. Celli,
18 when we get to Bio 16, we have included that change,
19 putting it in there.

20 HEARING ADVISOR CELLI: All right.

21 DR. ALICE KARL: Okay. For Bio 7, we request
22 two changes -- three changes in Bio 7. Bio 7 is about
23 submitting the BRMIMP, the Biological Resources Mitigation
24 and Implementation Monitoring Plan, and what it should
25 include. And in the list, it shows the Eagle Protection

1 Plan and the Bird and Bat Conservation Strategy, and what
2 we would like to do is change that language. We would
3 like to say, "The current version of the Bird and Bat
4 Conservation Strategy," because the timelines ARE
5 different for the BBCS than for the BRMIMP. The BRMIMP,
6 the draft BRMIMP, was due 45 days before site mobilization
7 construction. The BBCS is due no sooner than 60 days
8 after construction begins. So we're just saying, "the
9 current version of," whatever it is.

10 And so we're adding that phrase, "the current
11 version of," and we are striking -- we'd like to strike
12 "the Eagle Protection Plan," because it's part of the
13 BBCS, and we would like to insert after "and all other
14 individual biological mitigation and/or monitoring plans
15 associated with the project" or -- and insert here --
16 "permits," and the insertion "issued by the CDFW, Bureau
17 of Fish and Wildlife Service." And we understand that all
18 the conditions of the permit need to be in the BRMIMP, but
19 not necessarily new plans that the agencies come up with
20 at some point that may or may not work for our project in
21 BRMIMP.

22 HEARING ADVISOR CELLI: So those --

23 DR. ALICE KARL: Permit conditions.

24 HEARING ADVISOR CELLI: So those -- those are
25 the changes that you propose for Bio 7.

1 Is there a Staff's response?

2 MS. CAROL WATSON: Staff accepts the editorial
3 changes, with the exception of the Eagle Protection Plan.
4 And I was just trying to look back at 16b, and I thought
5 that we had said the Eagle Protection Plan could stand
6 alone or it could also be included in the BBS. If we had
7 said that it's automatically folded into the BBS, that's
8 fine, but let me just see if it can also be taken as a
9 standalone document.

10 Yes. Actually, Bio 16b, Number 8, the language
11 within that says that the EPP, the Eagle Protection Plan,
12 may be prepared as a standalone document or included as a
13 chapter in the BBS. So for that reason, I would not
14 accept their deletion of the Eagle Protection Plan from
15 Bio 7.

16 DR. ALICE KARL: That's fine.

17 HEARING ADVISOR CELLI: So then --

18 MS. CAROL WATSON: So we would accept the
19 addition of "the current version of the bird and bath
20 conservation strategy," with no Great Eagle Protection
21 Plan. We'll also accept their edit of the addition of the
22 word "permits."

23 HEARING ADVISOR CELLI: That's acceptable to
24 Petitioner? That solves the problem; right?

25 Okay. Let's go to the next.

1 DR. ALICE KARL: I think Bio 16a, it's your
2 understanding that Staff has accepted the requested
3 changes.

4 HEARING ADVISOR CELLI: And if you can just kind
5 of give us the big picture, what are some of the requested
6 changes so we know.

7 MS. CAROL WATSON: Actually, I don't mean to
8 cause issues, Dr. Karl. I think that we were -- these
9 changes are to the funding, basically 1.5 million towards
10 restoration and enhancement activity that would benefit
11 avian species. And so the addition that the Petitioner
12 has says, "At this time the CEC shall prepare and submit
13 an annual report to the CPM basically that provides and
14 accounts the type of action that was undertaken under this
15 mitigation."

16 We would like just a little clarification there,
17 because this language says, "The third party or CEC shall
18 prepare and submit," and so if it was the Energy
19 Commission preparing this document, we would just be
20 submitting it to ourselves. So the language that we would
21 like to see in there is "The third party or the CEC shall
22 prepare and make publicly available an annual report."

23 MR. MATTHEW STUCKY: That's fine with
24 Petitioner.

25 HEARING ADVISOR CELLI: Thank you,

1 Mr. Stucky.we're on a roll here.

2 MS. CAROL WATSON: We also accept the
3 verification change, which is a typo in the amount of
4 funding.

5 DR. ALICE KARL: The next point is Bio 16b, and
6 we understand that Staff accepts the modification, at
7 least to Point 2 -- is that correct -- which is the
8 formation of the technical advisory committee that the
9 Project Applicant would like to have a representative be
10 included in that.

11 MS. CAROL WATSON: We accept that addition, but
12 we request some further edits to this. This is kind of a
13 new concept for our agency, trying to work with a
14 technical advisory committee to handle -- basically, the
15 technical advisory committee would assist us during
16 construction and operation, and so instead of just having
17 like a CPM that's responsible to review reports, evaluate
18 and, say, propose mitigation or adaptive management, or no
19 actions, depending on what's necessary, what we've
20 proposed is that we now have a technical advisory team
21 made up of a member from CEC, the BLM, Fish and Game --
22 Fish and Wildlife, and the U.S. Fish and Wildlife Service.

23 HEARING ADVISOR CELLI: And the addition would
24 be and a representative from -- well, project owner
25 representative?

1 MS. CAROL WATSON: Exactly. So two -- two
2 representatives from the Petitioner, we're fine with that
3 change, but what my agency has suggested is that at the
4 end of that sentence it says, "When representative of the
5 project owner with environmental compliance
6 responsibilities," and then comma, "only an agency
7 representative would have the voting authority."

8 HEARING ADVISOR CELLI: Okay. And that's
9 acceptable to the Petitioner?

10 MR. MATTHEW STUCKY: Yes, it is.

11 HEARING ADVISOR CELLI: Okay. Great.

12 MR. MATTHEW STUCKY: I can go on.

13 The other changes proposed, one had to do with
14 the ability of the TAC to impose require independent third
15 party monitoring on the site, we asked to clarify that
16 that is only the case that the owner is notified that the
17 monitoring is insufficient and we have failed to cure that
18 situation.

19 HEARING ADVISOR CELLI: Is that in Bio 16b?

20 MR. MATTHEW STUCKY: Yes, sir.

21 HEARING ADVISOR CELLI: Thank you.

22 MS. CAROL WATSON: And staff accepts that edit.

23 MR. MATTHEW STUCKY: And then --

24 MS. JENNIFER MARTIN-GALLARDO: Excuse me for one
25 second. I want to make sure that that's one issue -- the

1 development of the decision framework for evaluating, I
2 wanted to clarify that Staff indeed did accept that
3 change.

4 MS. CAROL WATSON: Yes, we did.

5 MR. MATTHEW STUCKY: And there was also a
6 mention of the decision making framework, which we
7 introduced, and Staff apparently agrees with.

8 The remaining changes that we propose Bio 16b
9 were deletion of explicit references to additional public
10 meetings in Number 6, 8 and 9 of that condition. And
11 Staff has agreed with those changes.

12 MS. CAROL WATSON: 6, 8 and 9? Did you want to
13 go back to Number 7?

14 MR. MATTHEW STUCKY: Yes. This has to do with
15 funding wildlife rehabilitation facilities and clarifying
16 that we're going to fund those activities that are related
17 to actual rehabilitation of animals injured on the project
18 site as opposed to in generally -- in general funding of
19 these facilities.

20 MS. CAROL WATSON: And we -- we agree that
21 that's a good addition. We certainly don't expect or want
22 the Project Owner to get themselves into a position where
23 they're responsible for funding rehabilitation that wasn't
24 necessary. But we thought what might help to clarify the
25 language that you have added is if we said, "activities

1 necessary for injuries clearly attributed to the project
2 or and/or wildlife found on site."

3 MR. MATTHEW STUCKY: I think that's acceptable
4 to us.

5 HEARING ADVISOR CELLI: Okay.

6 MR. MATTHEW STUCKY: Also, in that Number 7,
7 we've already introduced this requirement to photograph
8 birds that we already discussed.

9 HEARING ADVISOR CELLI: So basically, you add
10 something that says, "X amount of pixels or better"?

11 MR. MATTHEW STUCKY: Actually, we left it "shall
12 identify in photograph."

13 HEARING ADVISOR CELLI: Okay. That works. Same
14 idea.

15 MS. CAROL WATSON: Yes, Staff accepts.

16 HEARING ADVISOR CELLI: Jeff, did you notice
17 that this mic is little light?

18 MS. CAROL WATSON: Come again?

19 HEARING ADVISOR CELLI: That's better.

20 MS. CAROL WATSON: Staff accepts that change.

21 HEARING ADVISOR CELLI: Very good.

22 MR. MATTHEW STUCKY: And that concludes
23 Petitioner's list of -- I'm sorry, that brings us Bio 20,
24 which is the sand transport condition.

25 MS. JENNIFER MARTIN-GALLARDO: I just want to

1 make sure that we hear from Staff as to the concurrence on
2 the remainder of the changes to 16b. I'd just like to
3 hear one of our Staff people confirm that on the record.

4 MS. CAROL WATSON: I'm sorry, could you repeat
5 that?

6 MS. JENNIFER MARTIN-GALLARDO: Please confirm on
7 the record Staff's concurrence to 16b. We didn't hear --
8 we didn't hear an affirmative response from Staff.

9 MS. CAROL WATSON: With respect to which --

10 MS. JENNIFER MARTIN-GALLARDO: 16b, 6, 8 and 9.

11 MS. CAROL WATSON: Yes, we concur with those
12 edits.

13 MS. JENNIFER MARTIN-GALLARDO: Thank you.

14 MR. SCOTT GALATI: So Mr. Celli, that concludes
15 all of our issues with Staff except for the limited
16 dispute on the quantity of the direct impact with regard
17 to sand transport.

18 HEARING ADVISOR CELLI: Okay. So are we going
19 to get into that now?

20 MR. SCOTT GALATI: I think Staff's witness isn't
21 available, but we're prepared to give our comment if you'd
22 like to hear it.

23 HEARING ADVISOR CELLI: Is that Mr. Lancaster?

24 MS. CAROL WATSON: Yes.

25 HEARING ADVISOR CELLI: Let me tell you where --

1 what the status is with regard to WebEx. It turns out
2 that the WebEx problem is on the WebEx side, and anybody
3 who works in government knows it's great that it's not our
4 fault. And they're working on it, but it may be that we
5 have to put one of those speaker phones down here in the
6 middle of all this next to the monitor to see if that --
7 to get Mr. Lancaster's testimony. I hope we don't have to
8 do that. I'm hoping WebEx works it out. That's a lot
9 more convenient and easier for everybody. We'll just --
10 we'll see. They are working it out now. Hopefully, in
11 the next few minutes we'll get an update on it.

12 But we're now talking about Bio 20, and what --
13 what are the issues that we're looking at here.

14 Go ahead, Ms. Martin.

15 MS. JENNIFER MARTIN-GALLARDO: I just want to
16 clarify that I do believe that's Staff present here in the
17 room can address the sand transport issues. Dr. Lancaster
18 could be available on the phone to answer any technical
19 areas, but I don't anticipate that happening. Just to --

20 HEARING ADVISOR CELLI: So who should we --
21 who -- who should initiate this? Should I start with
22 Petitioner's point of view, go with Staff, and then I'm
23 sure CBD and other people have --

24 MS. JENNIFER MARTIN-GALLARDO: Neither party has
25 any concern. I think Staff can probably lay it out very

1 quickly.

2 HEARING ADVISOR CELLI: Okay. Staff, go ahead.

3 MR. CHRIS HUNTLEY: Chris Huntley. And I will
4 stay focused right on questions related to sand transport
5 and condition Bio 20.

6 Fundamentally, we disagree with the conclusions
7 brought forth by the Applicant on the indirect impacts
8 associated with the sand shafts. For the proposed PSEGS
9 project, we understand that there's limitations to the
10 model that was presented. We know that Dr. Lancaster
11 acknowledges that there are certain areas with the model,
12 but we believe that the model at least provides us with a
13 scientifically based system that we can evaluate impacts
14 to sand transport. The Applicant has gone out and
15 conducted some field work, and I know you'll speak to
16 this, so I don't want to put words in your mouth, but we
17 felt that that was a very qualitative assessment of
18 impacts. And more importantly, we had a slight
19 disagreement with the Applicant about the characterization
20 of impacts to fringe-toed lizard habitat.

21 I believe in their testimony they suggested that
22 Staff's position is any degradation of habitat would
23 result in the fundamental loss of habitat from that
24 species. We don't believe that. What we believe is that
25 it's reasonably foreseeable that disruption of sand

1 transport to areas off the project site would result in
2 some degradation or potential degradation to habitat used
3 by this species.

4 So what we were looking at is, if there's some
5 loss of functional value of that habitat, we acknowledge
6 that this species uses a range of habitat, from very, very
7 sugary soft sands to even hardened areas for foraging and
8 dispersal, but it is on -- the burden on the Applicant to
9 demonstrate that the project wouldn't actually adversely
10 affect habitat. But we felt that the range that was used
11 for the adjudicated PSPP Project was reasonable, that 25
12 to 50 percent, so that's what we based our impact analysis
13 on.

14 And really, in summary, if the project is going
15 to disrupt sand, we believe that it increases potential
16 for those sand fields to either degrade or be of less
17 value to the Mojave Fringe-toed Lizard, and that was the
18 fundamental issue.

19 HEARING ADVISOR CELLI: Okay. Staff -- or
20 rather, Petitioner?

21 MR. FRED NIALS: Thank you. I'd like to make
22 three brief points in response.

23 First of all, they presented a model, which we
24 believe is flawed.

25 HEARING ADVISOR CELLI: And when you say "they,"

1 you mean Staff?

2 MR. FRED NIALS: I'm sorry?

3 HEARING ADVISOR CELLI: Staff presented you --

4 MR. FRED NIALS: Staff has presented a model,
5 which we believe is flawed. We have no quarrel with the
6 use of the model, although as they -- as he stated --
7 Staff has stated, they acknowledge the fact that it is
8 imperfect and it does have problems. Dr. Lancaster is
9 certainly one of the best aeolian geomorphologists in the
10 world, and I have no quibble with most of his conclusions.

11 Where we would disagree is in the degree of
12 specificity that the model states. The model breaks
13 impact on sand transport down into four categories, 0 to
14 25, 25 to 50, 50 to 75, et cetera. And because of the
15 fact that we have no good long-term wind record data for
16 that specific area, we have no good records for vegetation
17 for that specific area at the time that the model was
18 made, we have no good records of a wide range of variables
19 that influence the degree of accuracy of the model, we
20 that breaking it down into these -- this many categories,
21 this degree of accuracy is overinterpretation.

22 A good example might be if you had a string that
23 was about a foot long measured by your human foot, and
24 then you laid the string out over an object and said this
25 is 1.3672 inches long, or feet long, it's the same -- it's

1 the illusion of specificity that is inaccurate. Staff has
2 criticized the fact that we did not do modeling or put
3 quantitative data on our information, and this is a valid
4 criticism. If I were on the other side, I would probably
5 criticize in the same way. The point is, that because of
6 all the variables that we could not control for, we felt
7 that trying to -- to put some degree of specificity and
8 quantification on here is just as big a guess as we're
9 criticizing for.

10 So in that sense, yes, we did not do modeling
11 ourselves, we did not provide as much quantitative data as
12 we probably should. I did use standard methods of
13 assessing whether deflation had taken place, whether
14 accumulation was taking place, I examined a number of wind
15 barriers upstream from the site area and in the sand
16 transport corridor.

17 Finally, one last point that I would make about
18 this is that the model basically assumes a homogeneous
19 wind and sand availability transport around the project
20 area, and this is not the case. If you go to the east end
21 of the project, for example, there is a much, much
22 stronger northerly wind component than there is if you're
23 on the west side of it. This is shown by the presence of
24 dunes, it's shown by the activity of the dunes. In
25 addition, in terms of sand availability, the sand which

1 will be trapped by the heliostat field, much of that sand
2 will be transported out by the stream systems which have
3 been concentrated because of I-10 construction and the
4 underpasses which carry water underneath it. It
5 concentrates the water in very narrow area, so those
6 washes are much more effective in transporting water out
7 of -- I'm sorry, sand out of the system than if it were
8 left unmodified.

9 HEARING ADVISOR CELLI: Can I ask a question?

10 MR. FRED NIALS: Certainly.

11 HEARING ADVISOR CELLI: If the model basically
12 -- if the -- if I understand what you are saying, you are
13 concerned about the model as it is trying to -- it's
14 trying to create more specificity than is probably
15 possible?

16 MR. FRED NIALS: Yes.

17 HEARING ADVISOR CELLI: And they want to split
18 it into these four categories, 0 to 25, 25 to 50. But
19 generally, a range like this, 0 to 25, 25 to 50 is sort of
20 like low, medium, high, kind of thing, and that while it
21 may not be exactly perfect and precise, it at least gets
22 you into some sort of a range that you can kind of slot
23 and --

24 MR. FRED NIALS: This is true. This is true,
25 but it's --

1 HEARING ADVISOR CELLI: Is that not where the
2 model is going?

3 MR. FRED NIALS: -- it's putting too narrow a
4 range on things. We -- we also estimated -- and I
5 emphasize estimated because that's I feel as accurate as
6 anybody can get -- where two categories, 0 to 50 and 50 to
7 100. In other words, instead of four possibility or four
8 ranges of impact, we specified only two. Because both
9 Dr. Lancaster and myself say that we cannot predict
10 exactly what's going to happen, whenever we do put this
11 in, we know that deflation will occur to some extent, but
12 we don't know exactly where, and we don't know where
13 deposition will occur. And for these reasons, we felt
14 that it was more accurate and more honest to say only two
15 categories, and we were very generous with our -- our
16 estimation of how much this was, and we recommend
17 mitigation of 50 percent of 50 to 100 percent impact.

18 HEARING ADVISOR CELLI: That's very clear.
19 Let's hold this on the shelf for a moment. I got a note
20 passed to me, a request that we take five- to ten-minute
21 break to allow them to fix the audio right now, so we can
22 include Dr. Lancaster. So if that's okay with everybody,
23 according to my computer it's 1:56 right now, so let's
24 go -- let's say at 2:05 everybody -- oh, we have to go to
25 the phones? Okay. At 2:05 let's be back in our seats.

1 And if you don't need to get up, don't, but let's make
2 this a quick break so that we can get right back into
3 this. Because were in the -- we're midway with Dr. Nials.

4 (Recess.)

5 HEARING ADVISOR CELLI: Back on the record.

6 And Ms. Anderson is going to keep working on
7 this, even though we're still taking testimony.

8 We were talking just now about how Staff's model
9 seems to --

10 (Interruption in the proceedings.)

11 -- seemed to --

12 (Interruption in the proceedings.)

13 I'm going to say that again.

14 We have been talking about Staff's sand
15 transport model, and Petitioner was saying that the level
16 of detail was too detailed --

17 (Interruption in the proceedings.)

18 -- and was --

19 (Interruption in the proceedings.)

20 So Petitioner's concern was that it called --
21 the model calls for too much detail.

22 Did you have more to say on that or can I --

23 MR. FRED NIALS: Yes, I -- I just had a couple
24 of concluding statements to say.

25 HEARING ADVISOR CELLI: Mr. Nials.

1 MR. FRED NIALS: One is that we've -- we've
2 prepared maps showing our estimated areas of impact, and I
3 wanted to emphasize that those maps' impact does not equal
4 delation. And secondly, that if you take sand out of the
5 transport system, it does not directly imply that there
6 will be deflation at any particular location at a specific
7 point in time.

8 And with that, I would conclude what -- what
9 I've said. Thank you, sir.

10 HEARING ADVISOR CELLI: And Staff, did you have
11 a response?

12 MR. CHRIS HUNTLEY: Yes, we did. This is
13 Chris Huntley.

14 There's a couple points. I want to reemphasize
15 that the use and validity of this model was adjudicated at
16 the PSPP Project, as was the percentages we analyzed. So
17 I believe that was agreed upon at the time by Project
18 Owner. We haven't seen any new data to change the
19 assumptions of the model. The Applicant has not provided
20 any scientific data to support their conclusions, although
21 I respect, you know, the field work done, and I believe it
22 was done in good faith. We just believe while they
23 consider us to be overestimating, we believe they're
24 underestimating.

25 More importantly, we believe the model provides

1 a reasonable estimate. And I'll acknowledge that many
2 models are wrong, but this model is as effective as it can
3 be at the moment. You know, it certainly can be refined
4 in the future.

5 We don't think there's any argument, either with
6 the Applicant or us, that the placement of the heliostats
7 and the project will result in the disruption of sand.
8 The Applicant suggested that the disruption of sand
9 doesn't necessarily mean that the areas will deflate. We
10 believe the areas will either deflate or have the
11 potential to deflate, or have the potential to degrade or
12 become stabilized.

13 Vegetation in some of these areas of the dunes
14 is kept at bay in many areas because of moving sand. If
15 we minimize the flow to this area, the wind, we do believe
16 that the habitat will change. And again, we believe that
17 the body of evidence for species such as Mojave
18 fringe-toed lizards and Coachella Valley fringe-toed
19 lizards suggests that disruption, even modest disruption,
20 in the sand transport adversely affects those species. So
21 we feel that our mitigation approach is reasonable. We're
22 only asking for a half to one mitigation ratio for
23 indirect impact to off-site areas. And we acknowledge
24 there is still some functional value to that habitat, but
25 we're not certain for how long.

1 Thank you.

2 HEARING ADVISOR CELLI: So just for the record,
3 I'm not -- there's no change in our situation with regard
4 to WebEx it appears.

5 Okay. We've heard from Staff, we've heard from
6 Applicant. Any other witnesses care to speak on the model
7 and any of these issues raised so far?

8 DR. ALLAN MUTH: Yes.

9 HEARING ADVISOR CELLI: Please identify
10 yourself.

11 DR. ALLAN MUTH: Dr. Allan Muth.

12 There's been a whole -- whole number of issues
13 raised, and it's hard to know where to begin to put this
14 in logical order.

15 HEARING ADVISOR CELLI: Can I ask a -- one
16 question -- if you wouldn't mind beginning on the tails of
17 what they've been talking about now, so we have some
18 continuity on the idea.

19 DR. ALLAN MUTH: Well, I'm trying to.

20 HEARING ADVISOR CELLI: Okay. Go ahead.

21 DR. ALLAN MUTH: I think the first notion is --
22 well, in general, I concur with Staff's comments regarding
23 the habitat issues and the fringe-toed lizard. With
24 regard to the accuracy of the model and the four ranges, I
25 think Dr. Lancaster can speak to that. If we can get him

1 on the line, I'd like to hear his comments. But beyond
2 that, assignment of a 25 percent trigger as being
3 nonsignificant, that's totally arbitrary, as are -- as is
4 50 percent. Those percentages are not correlated in any
5 way with fringe-toed lizard habitat quality or the ability
6 of lizards to occupy that habitat over the long-term.

7 The other issue that has barely been mentioned
8 is time scale of the things that we are dealing with.
9 Staff provided up -- they said they don't know how long
10 the lizard will occupy that habitat. The time scale is
11 very relevant here. There will be deflation downwind from
12 an obstruction. The point in which a deflation occurs
13 depends on a number of variables. One rule of thumb for
14 small-scale walls, tree lines and such, is about ten times
15 the vertical height of that obstruction. Beyond that
16 point, working back upwind to the obstruction, there's no
17 deflation there, very little, but it does stabilize. It
18 stabilizes because the rain comes in, salt blows in, it's
19 a very well-documented phenomenon.

20 Over time, the plants that occur there, the
21 whole lizard fauna, does turn over there. That's very
22 well documented in the Coachella Valley, as is the
23 deflation downwind. Now, to say that blockage of sand
24 does not equate to deflation assumes that it's an
25 equilibrium. That would be that the sand blows in is

1 equivalent to the sand that blows off, but mass quantity
2 of sand in that one spot stays constant. But there is
3 sand moving in and out of that patch of habitat.

4 Now, as far as scaling the issues go, when you
5 get a project the size of the proposed Palen Project, I'm
6 not certain of how that scales. Does it scale with that
7 ten times the vertical height rule of thumb, or does this
8 thing actually approach a topographic scaling problem with
9 wind flows and sand flows? That's something for Lancaster
10 to address, because I don't know.

11 Now, going back to stream sediment transport
12 across the site, there's some issues there. The sand that
13 we're talking about that's important for fringe-toed
14 lizards occurs -- the -- the average grain size in the
15 sediment --

16 (Interruption in the proceedings.)

17 HEARING ADVISOR CELLI: Doctor, excuse me.

18 We're -- the monitor is now going into this and
19 we're getting a loop.

20 Excuse me. I'm sorry for the interruption,
21 Doctor. Okay. We're going turn that down.

22 MS. HILARIE ANDERSON: We're connected to the
23 Internet.

24 HEARING ADVISOR CELLI: We are connected to the
25 internet? Test one, two, three.

1 (Interruption in the proceedings.)

2 MS. HILARIE ANDERSON: Can you talk?

3 HEARING ADVISOR CELLI: I can talk.

4 (A discussion was held of the record.)

5 We're still on the record.

6 (A discussion was held off the record.)

7 HEARING ADVISOR CELLI: Okay. If WebEx was

8 working, I would have the little icon that shows the --

9 MS. HILARIE ANDERSON: We're good.

10 HEARING ADVISOR CELLI: On WebEx? We're using

11 the original WebEx?

12 MS. HILARIE ANDERSON: And it was requested by

13 Sara Clark that you recap what you've talked about just so

14 everybody knows where you're at.

15 HEARING ADVISOR CELLI: Okay. That's so easy.

16 Here is my situation, Hilarie, the icon -- do I

17 have presenter rights still?

18 MS. HILARIE ANDERSON: Yes.

19 HEARING ADVISOR CELLI: Okay. So I'm both host

20 and presenter, and I do not have evidence that the sound

21 is coming through.

22 MS. HILARIE ANDERSON: Matt could hear you. He

23 told me.

24 HEARING ADVISOR CELLI: Pass presenter to CEC.

25 Okay. Matt, I'm changing the presenter now to CEC, but I

1 do not have the evidence on my screen that shows that the
2 WebEx is coming through, so -- and then I have a request
3 from Sara Clark that I recap everything. Sure.

4 Okay. Sara Clark, I can see you are speaking,
5 but I --

6 MS. SARA CLARK: Can you hear me?

7 HEARING ADVISOR CELLI: Yeah, keep talking.

8 MS. SARA CLARK: I'm talking now. Can you hear
9 me?

10 HEARING ADVISOR CELLI: Yes. Very good. Okay.
11 So now we're back on the original WebEx settings; right,
12 Hilarie?

13 MS. HILARIE ANDERSON: Yes.

14 HEARING ADVISOR CELLI: Good work, Hilarie.
15 Thank you. And Matt Miller. You got a round of applause
16 here.

17 So Sara Clark, just to let you know, we took a
18 lunch break, and this is for the benefit of everyone. We
19 took a lunch break, came back, swore the witnesses for
20 Bio, the Staff and Applicant came to agreement on a number
21 of biological conditions and stated on the record what
22 those were. It was mostly language in the conditions that
23 they had previously had disagreement about, they came to
24 agreement on that. And finally, when it came to Bio 20,
25 there's a disagreement with regard to the -- the sand

1 transport indirect impacts, the sand shadows and
2 disruption, we were talking about Staff's model, which is
3 a -- I believe a 25 to 40 percent range shown in impact,
4 but the Petitioner's witnesses felt that the model was --
5 sought too much specificity, and they wanted to -- they
6 were advocating for a broader range. And we're now
7 hearing from Dr. Muth, who is CBD's witness, on his take
8 regarding the discussions that have preceded regarding
9 Bio 20 and sand transport.

10 Before we go back to you, Dr. Muth, let me just
11 ask, Nick Lancaster, are you there? Nick Lancaster?

12 DR. NICHOLAS LANCASTER: Me?

13 HEARING ADVISOR CELLI: Okay. Nick Lancaster,
14 can you -- can you speak up? All right. I'm going to
15 need you to call back in and I identify yourself.

16 DR. NICHOLAS LANCASTER: I'm sorry, can you
17 repeat that?

18 HEARING ADVISOR CELLI: Yes, please. It sounds
19 like as though -- it's weird. Every time you speak, it --
20 the system wants to mute you.

21 DR. NICHOLAS LANCASTER: Oh, thank you.

22 Can you hear me now?

23 HEARING ADVISOR CELLI: I can hear you now, but
24 I can't hear you very well. You are not very clear. If
25 you are on a speaker phone, you want to pick up the

1 handset and speak into the handset.

2 DR. NICHOLAS LANCASTER: I'm using a computer,
3 so I'm going to go back onto the phone and we'll reconnect
4 in just a second.

5 HEARING ADVISOR CELLI: Okay. That's great.
6 Phone lines make for a better connection.

7 DR. NICHOLAS LANCASTER: Okay.

8 HEARING ADVISOR CELLI: Can't wait to read this
9 transcript.

10 We're back. In the meanwhile, I want to get
11 back to the testimony.

12 (Interruption in the proceedings.)

13 Okay. In any event, Sara Clark, that's about
14 the best I can do at this moment --

15 MS. SARA CLARK: That's perfect. Thank you for
16 that.

17 HEARING ADVISOR CELLI: -- for a synopsis of
18 what's going on.

19 (Phone interruption.)

20 Mr. Lancaster, are you there?

21 DR. NICHOLAS LANCASTER: Yes. I'm trying to
22 connect right now. The phone is connecting. It appears
23 to be working.

24 HEARING ADVISOR CELLI: Very good.

25 Like I said, we can hear you, we just can't hear

1 you very well.

2 SOUND TECHNICIAN: When he's on the phone, have
3 him turn off the speaker on his computer.

4 HEARING ADVISOR CELLI: When he's on the phone,
5 turn off the speaker on his computer?

6 SOUND TECHNICIAN: Yeah.

7 HEARING ADVISOR CELLI: Okay. Nick Lancaster,
8 when you get on the phone, we're going to need you to turn
9 the speaker off on your computer so we don't get that
10 feedback.

11 DR. NICHOLAS LANCASTER: Okay. We'll do that.
12 Thank you.

13 HEARING ADVISOR CELLI: Thank you.

14 DR. NICHOLAS LANCASTER: We should be good now.

15 HEARING ADVISOR CELLI: Yeah, so much better.
16 Just stay -- speak directly in your phone when it's time
17 to speak; okay?

18 Why are we getting the loop?

19 (A discussion was held off the record.)

20 SOUND TECHNICIAN: We weren't getting that loop
21 with Sara.

22 HEARING ADVISOR CELLI: No, we didn't. The echo
23 is coming from Kim Marsden. I'm going to mute Kim
24 Marsden. Now, the echo seems to be gone -- or not.

25 All right. I'm hoping this thing can work

1 itself out, or at least Hilarie can work it out for us.

2 And we can keep going and take testimony.

3 So Dr. Muth, you were -- I'm sorry for all this.

4 Please continue.

5 DR. ALLAN MUTH: I was on a roll there.

6 Okay. Where I left off was the commentary about
7 the stream sediment transport across the site. It was
8 suggested that that would entrain sand back into the
9 system. There's an issue there in that if you see one
10 sand grain, you haven't seen them all, put it that way.
11 Fringe-toed lizards occur in a very specific range of sand
12 size, where the average sand grain size for fringe-toed
13 lizards is a tenth of a millimeter to a millimeter in
14 grain size. Below that or above that, they either don't
15 occur there or it alters their behavior.

16 So when you get a sediment transport across the
17 site, it's transporting particle sizes of all ranges from
18 silt, you know, less than half a millimeter on up to small
19 gravel, pebbles, whatever. That doesn't do anything any
20 good in an aeolian sand system. The wind has to come in
21 and sort those grains down wind. So if there's any impact
22 at all from the sand transported across the site by those
23 very small intermittent streams, it will be well downwind
24 from the direct impact for the site. So that's just how
25 it works. The other issue is, again, as Mr. Nials stated,

1 qualitative methods do have their problems. They're not
2 repeatable between observers.

3 And Lisa, can we show that one slide?

4 MS. LISA BELENKY: Oh, yes. We put another
5 photo. I don't know if she's back there.

6 HEARING ADVISOR CELLI: It doesn't look like
7 anyone is in that booth.

8 DR. ALLAN MUTH: Well, this gets to the issue of
9 porosity and penetration of aeolian sand through fences
10 and such onto a site.

11 And did you come down Country Club when you came
12 in today?

13 HEARING ADVISOR CELLI: Yes.

14 DR. ALLAN MUTH: Fifty percent porosity in those
15 sand fences.

16 Did you notice how it was piled up?

17 HEARING ADVISOR CELLI: No.

18 DR. ALLAN MUTH: It piled up behind it and also
19 in front of it. It does not go through. What I was
20 trying to show, if we can get the image up, is a
21 chain-link fence, so Indian Avenue near the turbine sites.
22 It's a six-foot fence that's topped with sand. What's the
23 porosity of that, greater than 95 percent? So the
24 qualitative estimates of impact if -- yeah, there it is.
25 If Mr. Nials wants to show a fence with one, I'll counter

1 with this. That's a six-foot fence. Down here in the
2 lower right, that's probably five feet or so, four to five
3 feet exposed, and you'll notice that sand ramps all the
4 way up to the top of the fence. That's a chain-link
5 fence. That's a high energy environment there, but that
6 just illustrates the porosity is not what it appears to be
7 where you say the sand will blow right through it.

8 HEARING ADVISOR CELLI: For the record, what
9 exhibit are we looking at, Ms. Belenky?

10 MS. LISA BELENKY: This is a photo that Dr. Muth
11 gave me af- -- the day after we submitted our exhibits.
12 So I can ask if we can put it up today and we would ask
13 you to move it into evidence.

14 HEARING ADVISOR CELLI: What's your next order,
15 exhibit number?

16 MS. LISA BELENKY: It is 3064.

17 HEARING ADVISOR CELLI: I'm just going to have a
18 small interruption here.

19 Do any of the parties wish to voir dire on this
20 particular exhibit in terms of the laying a foundation?
21 Petitioner?

22 MR. SCOTT GALATI: Yeah, I would just direct the
23 witness to say where he took the photo, how he took the
24 photo. That's fine with me. But I would like to ask some
25 questions about the photo later if we're entitled to

1 cross.

2 HEARING ADVISOR CELLI: Who took the photo?

3 Where was the photo taken?

4 DR. ALLAN MUTH: The photo taken by my research
5 partner, Mark Fisher, and I was with him on the day this
6 was taken.

7 HEARING ADVISOR CELLI: Where is it?

8 DR. ALLAN MUTH: Indian Ave to the east --
9 excuse me, to the west of Indian Avenue in Palm Springs.

10 HEARING ADVISOR CELLI: Okay. Any other parties
11 wish to inquire about this photograph?

12 Okay. Good. Then you may continue with your
13 narrative.

14 DR. ALLAN MUTH: I'll stop there for the time
15 being.

16 MS. EILEEN ALLEN: I have a question.

17 HEARING ADVISOR CELLI: Yes. What's your
18 question? I'll ask it.

19 MS. EILEEN ALLEN: What are the surrounding land
20 uses, you mentioned turbines, that would effect the flow
21 of the sand?

22 HEARING ADVISOR CELLI: The question is, what
23 are the surrounding land uses of the area in the
24 photograph marked for identification as Exhibit 3064? It
25 appears that there are wind turbines in the photograph.

1 Anything else?

2 MS. EILEEN ALLEN: No.

3 DR. ALLAN MUTH: To the -- the wind turbines
4 begin at Indian Avenue and they extend for, I'm guessing,
5 five miles to the west to the head of the pass, the
6 Banning pass, and the only other thing in the flight plane
7 would be the Coachella Valley Water District ponds, where
8 they allow Colorado River water to settle into the
9 aquifer. Those have been there since the early '80s.
10 They do interrupt some of the sand flow, but periodically
11 they're cleaned out and the sand undergoes aeolian sorting
12 as it comes down the flight plane.

13 HEARING ADVISOR CELLI: Is the photograph
14 looking -- what direction? North? South? East? West?

15 DR. ALLAN MUTH: You are looking due south, east
16 of the left, west to the right.

17 HEARING ADVISOR CELLI: Ms. Karl?

18 DR. ALICE KARL: Can I ask a question?

19 HEARING ADVISOR CELLI: Yes.

20 DR. ALICE KARL: So Al -- Dr. Muth, can you --
21 can you answer what -- two things, what happens when the
22 sand tops that, and that's number one, because I assume
23 that's taken some time to build up. I don't know how many
24 years. But what happens when now the sand can move over
25 the top of that because there's no longer an obstruction?

1 And secondly -- again, I'm not sure how many years this
2 is, but what's the quality of the sand sheets on the
3 downwind side of that fence?

4 DR. ALLAN MUTH: On the downwind side of the
5 fence and toward -- you know, up near the fence, that's
6 aeolian, that's light stuff, as it comes down. And
7 whether or not the particle size changes significantly as
8 you go out from that fence, I'm not sure. You do get sand
9 flow coming through there, so it may -- may have the
10 appropriate size aeolian sand on the top. I don't think
11 there's enough of a blockage there to cause stabilization
12 and inflation.

13 MS. CAROL WATSON: May I just ask a -- pardon
14 me -- just a clarifying question. Which direction is the
15 wind blowing?

16 DR. ALLAN MUTH: From right to left.

17 MS. CAROL WATSON: Thank you.

18 HEARING ADVISOR CELLI: Which would mean looking
19 south, it would be from west to east?

20 DR. ALLAN MUTH: Yes.

21 HEARING ADVISOR CELLI: Let me see if we have
22 Dr. Lancaster on the phone.

23 DR. NICHOLAS LANCASTER: I'm on the phone. I
24 hear you loud and clear.

25 HEARING ADVISOR CELLI: We can hear you pretty

1 good now.

2 DR. NICHOLAS LANCASTER: Good.

3 HEARING ADVISOR CELLI: So it sounds to me like
4 this would be a good time to hear from Dr. Lancaster.
5 Everybody nodding their heads "yes."

6 So Dr. Lancaster, do you have -- oh, he hasn't
7 been sworn in.

8 I need you to stand -- please stand and raise
9 your right hand.

10 DR. NICHOLAS LANCASTER: Okay.

11 HEARING ADVISOR CELLI: Do you solemnly swear to
12 tell the truth, the whole truth, and nothing but the
13 truth, so -- under penalty of perjury under the laws of
14 the State of California?

15 DR. NICHOLAS LANCASTER: Yes, I do.

16 HEARING ADVISOR CELLI: Thank you. You may be
17 seated.

18 And please just, if you wouldn't mind, address
19 your position on the information -- oh, it just donned on
20 me that you may not have heard this entire discussion.

21 How much of this discussion have you been able
22 to follow, Mr. Lancaster?

23 DR. NICHOLAS LANCASTER: I heard -- I heard -- I
24 heard part of it, and I have also had the opportunity to
25 read Dr. Muth's testimony and also the report and the

1 other information from Dr. Nials. So I am generally
2 familiar with it. I think at this particular time, I
3 would be -- I think it's more appropriate to respond to
4 some very specific questions as a matter of clarification
5 that the commissions and other people may have.

6 HEARING ADVISOR CELLI: Well, okay.

7 Do you have specific questions?

8 Okay. I'm going to open it up, then, to the
9 parties and let the parties start asking questions. We'll
10 start with Petitioner.

11 MR. SCOTT GALATI: Hello, Dr. Lancaster. This
12 is Scott Galati.

13 Do you remember we had a conversation at the
14 workshop about -- about your report?

15 DR. NICHOLAS LANCASTER: Yes, I do.

16 MR. SCOTT GALATI: And is it correct that you
17 had said that the blockage of sand that you show in
18 percentage on the downwind side does not equal deflation?
19 Is that correct still?

20 DR. NICHOLAS LANCASTER: That is -- that is
21 correct. The blockage of sand may lead, in my opinion, to
22 subsequent deflation because of what was originally in
23 this particular area, the input of sand was bound to the
24 output of sand. That is, if that situation had changed so
25 the input of sand is less than the output, then there

1 would obviously be a decrease in the amount of sand in
2 that area which will amount to deflation. I -- and I
3 think it's fair to say that deflation is generally defined
4 as a situation in which I believe the level of sand
5 decreases over time as a result of the export of sand
6 being graded and the input of sand.

7 HEARING ADVISOR CELLI: So if you have an area
8 that is, for example, receiving 50 percent less sand, did
9 the modeling work that you do, did it predict that same
10 level would have 50 percent or more leaving the downwind
11 portion of the site?

12 DR. NICHOLAS LANCASTER: The -- the model
13 predicts the reduction in sand transport in a given area.
14 It does not have a time dimension. So in other words, it
15 does not show over a period of years how that would occur.
16 It just simply predicts the level of production of sand
17 input to that area. So what we -- what we do see,
18 however, on the margins of the proposed project, based
19 upon the model, that technically a very high degree of
20 reduction immediately adjacent to the project boundary, as
21 modeled, and then as you go further away from that, the
22 degree of reduction decreases because the interferences of
23 the project area and the wind and the flux of sand
24 decreases.

25 So what we have around the margin of the

1 proposed project is that you have a situation in which
2 most likely the export of sand is greater than the input
3 of sand, so it would -- it wouldn't, based upon physical
4 principles of continuity, lead to some degree of
5 inflation. That is, of course, assuming that the wind
6 field as a whole is not significantly affected by the
7 whole area of the project. And we have no information on
8 that, so it's very -- it would be entirely speculation.

9 HEARING ADVISOR CELLI: So you did not model how
10 the wind would work once it leaves the facility and
11 whether it would in fact cause this greater deflation in
12 the zones you predicted loss of sand transport?

13 DR. NICHOLAS LANCASTER: That is -- that is
14 correct. This model does not account for variations in
15 the wind, the strength of the wind, the direction of the
16 wind as a result of any natural or artificial barrier. It
17 starts off with the uniform wind field over the whole
18 area.

19 MR. SCOTT GALATI: Thank you. I have one
20 question for Dr. Muth.

21 DR. NICHOLAS LANCASTER: I --

22 MR. SCOTT GALATI: Oh, I'm sorry, Dr. Lancaster.
23 There's a little bit of delay.

24 DR. NICHOLAS LANCASTER: Sure.

25 HEARING ADVISOR CELLI: Go ahead. The

1 questioning, I'm just going to go party by party. So if
2 you have a question, you can ask questions of any witness.

3 MR. SCOTT GALATI: Mr. Muth, am I saying that
4 right?

5 HEARING ADVISOR CELLI: Also, Mr. Galati, I just
6 want to add that if any of the witnesses hear something
7 from the other party that they want to speak up about or
8 speak to or have a disagreement or some information that
9 is useful to the Committee, please speak up.

10 Go ahead.

11 MR. SCOTT GALATI: Dr. Muth, you were saying,
12 and I'm looking at the exhibit -- I'm sorry, Lisa, what
13 number was this one?

14 MS. LISA BELENKY: 3064.

15 HEARING ADVISOR CELLI: 3064.

16 MR. SCOTT GALATI: 3064. And you are saying
17 that the winds blows from the right side of the screen to
18 the left side of screen?

19 DR. ALLAN MUTH: Yes.

20 MR. SCOTT GALATI: So the sand buildup that you
21 are talking about, are you talking about the sand on the
22 down -- on the downwind side of the fence?

23 DR. ALLAN MUTH: There's a sand ramp on both
24 sides of the fence.

25 MR. SCOTT GALATI: On the upwind side of the

1 fence, is that still active sand moving?

2 DR. ALLAN MUTH: Yes.

3 MR. SCOTT GALATI: Would that consider to be --
4 if this were Mojave fringe-toed lizard habitat, would
5 there still be habitat the on the upside -- upwind side of
6 this fence?

7 DR. ALLAN MUTH: Yes.

8 MR. SCOTT GALATI: If you put a fence in an area
9 where it wasn't Mojave fringe-toed lizard habitat and it
10 began to build up sand, would it create Mojave fringe-toed
11 lizard habitat on the upside of the fence?

12 DR. ALLAN MUTH: Not necessarily. You notice
13 that green stuff? That's part of the habitat. It
14 takes -- it takes more than just a patch of sand to create
15 a habitat for an animal to live in.

16 MR. SCOTT GALATI: Right. And it would also
17 take more than -- I think you testified over time, it
18 would take -- over time to degrade the habitat, deflation.

19 DR. ALLAN MUTH: Yeah. Deflation, as a rule,
20 would not occur literally over night unless you had an
21 extreme event. It takes time. And as Dr. Lancaster said,
22 his model did not incorporate that. But that -- we do
23 need to think about that dimension and all of these
24 discussions of sand transport.

25 MR. SCOTT GALATI: Okay. No further questions.

1 HEARING ADVISOR CELLI: Thank you. Staff?

2 MS. CAROL WATSON: Could I just respond back?

3 HEARING ADVISOR CELLI: Please. Respond. Go
4 ahead.

5 MS. CAROL WATSON: I just wanted to point out, I
6 think this photograph is really helpful. I appreciate you
7 bringing that today. This is a difficult concept for
8 people to visualize. But I do want to point out to
9 everybody again that this is an open chain-link fence, and
10 I think what our model has actually predicted is
11 93 percent blockage. So that's significantly higher than
12 what we're looking at here. So when we're looking at this
13 photo, the numbers that we're talking about a higher
14 percentage of blockage likely than what this is, if that's
15 accurate?

16 DR. ALLAN MUTH: Yeah, I think Nick better --
17 Dr. Lancaster better address that.

18 HEARING ADVISOR CELLI: Did you get -- did you
19 get the question?

20 DR. NICHOLAS LANCASTER: Blockage also
21 incorporates the effect of the project as a whole. And it
22 does not specifically -- you do not specifically examine
23 the effect that an individual boundary fence from the
24 project would have. And I think that Dr. Muth's
25 photograph is a very good example of the type of

1 deposition that could occur in the lee side or the
2 downward side of any project boundary map. But the 93
3 percent reduction refers to the total effect of the wind
4 along the -- sorry, the project and all of the heliostat
5 or other infrastructures within the project boundaries on
6 downward sand transport.

7 Now, it should also be remembered that on the
8 east of -- generally the eastern boundary of the project,
9 the one that is closest to sand transport from two, which
10 is where the most -- most of the effects occur, or are
11 modeled to occur, the wind is blowing obliquely or
12 parallel to the edge of the project, based upon what we
13 understand about the wind regime in that area. So the
14 effects are unlikely to be somewhat different to --
15 compared to the ones that are in this photograph.

16 HEARING ADVISOR CELLI: Okay. Staff? Questions
17 you want, Staff?

18 MS. JENNIFER MARTIN-GALLARDO: So we've been
19 hearing a good bit of information about how sand moves and
20 these technical issues, but I'd like to bring back for the
21 committee, I'd like to pose a couple of questions to Staff
22 to try and distill what the issue really is as far as the
23 dispute between the parties. And so to that end, could I
24 have Staff please define indirect impacts caused by this
25 project to the Mojave fringe-toed lizard habitat? What

1 are indirect impacts?

2 MR. CHRIS HUNTLEY: This is Chris Huntley.

3 There are a variety of impacts, some related to central
4 deflation of the structure of the aeolian sand transport,
5 others related to the potential spread of weeds, perch
6 locations for predators, among other things.

7 Focusing in on the sand transport issues,
8 Staff's position is the placement of the facility and
9 disruption of the sand transport will result in some level
10 of decay in habitat in downwind areas. We believe that
11 decay of habitat will not be beneficial to fringe-toed
12 lizards, and that while fringe-toed lizards may occupy
13 portions of those areas after development of the project,
14 we're uncertain if the habitat quality will shift to a
15 point where they no longer occupy it, if it becomes
16 ardent. Because of the uncertainty, we provided some
17 lower mitigation ratios of half to one, but ultimately, we
18 believe the indirect impacts are significant and warrant
19 mitigation.

20 MS. JENNIFER MARTIN-GALLARDO: And can you
21 please explain why 25 percent was used by Staff not only
22 in the PSPP and reasoning for keeping that as the -- and
23 when we're talking about these numbers, 25 to 50 percent,
24 is it true that we're -- am I correct in stating that that
25 25 percent is -- the percentages that we're using reflect

1 the loss of sand, the percentage of sand that's no longer
2 entering the system?

3 MR. CHRIS HUNTLEY: I'll take the first stab.
4 This is Chris Huntley. I'll take the first shot at this,
5 and then I think our colleagues will speak to it, as well.

6 I think it is fair to say that percentages are
7 not necessarily linked to a scientific paper that says
8 when habitat get to point x then it's appropriate. These
9 were the percentages that were adjudicated during the PSPP
10 Project. And I can't speak to why they elected to use
11 those percentages. From a biological perspective, what we
12 look at is we acknowledge that fringe-toed lizards use a
13 range of habitat. And while sugar sands and big dune
14 communities are central, they also forage in other areas
15 slightly more vegetative, they forage in areas of slightly
16 more stabilized soil, and so our position is that if we're
17 taking habitat in any condition down and degrading it,
18 it's probably going to result in an adverse effect to
19 those species. It may shift a sandy area to a less sandy
20 area, or it may shift a slightly stabilized area to a
21 potentially more stabilized area that excludes those
22 animals from at least having access to those sugary sands.

23 So unless Carol has some additional information,
24 again, we're not certain where the original percentages
25 came from.

1 MS. JENNIFER MARTIN-GALLARDO: And then, one
2 last thing, I just wanted to make sure that you guys -- if
3 there was any other questions that you have or points that
4 you want to make that you guys have that opportunity.

5 MR. CHRIS HUNTLEY: We do. I would like to, if
6 permitted, ask Dr. Lancaster a question.

7 HEARING ADVISOR CELLI: Go ahead.

8 MR. CHRIS HUNTLEY: Hi, Dr. Lancaster. In your
9 opinion, based on the model and your assessment of habitat
10 on the project site or the sand on the project site, is it
11 reasonable to conclude that sand has potential to deflate
12 in areas downstream of the project?

13 DR. NICHOLAS LANCASTER: Yes. Without question.

14 MR. CHRIS HUNTLEY: Why do you think that?

15 DR. NICHOLAS LANCASTER: For two reasons. One
16 is that the project physically interferes with the natural
17 preexisting movement of sand through that area, and the
18 second, to some degree, which is -- we modeled, but is not
19 -- it is a model, but not an actual legend. And of course
20 we don't have any physical measures of the volume of
21 material that might be effected.

22 The other aspect of it is that a project of this
23 size is likely to have some significant effect on the
24 whole region of local wind field downwind of the project
25 and adjacent to it. So there certainly will be effects on

1 sand transport. The magnitude of these are indicated as
2 by the model, which indicates various degrees of sand
3 transport reduction also along the project boundaries.

4 MR. CHRIS HUNTLEY: Thank you.

5 MS. JENNIFER MARTIN-GALLARDO: Staff has no
6 further questions.

7 HEARING ADVISOR CELLI: Californians for
8 Renewable Energy, do have questions of this panel?

9 MR. ALFREDO FIGUEROA: No.

10 HEARING ADVISOR CELLI: Basin and Range Watch,
11 any questions for this panel?

12 MS. LAURA CUNNINGHAM: No.

13 HEARING ADVISOR CELLI: Ms. Belenky?

14 MS. LISA BELENKY: I just have a couple of
15 questions, clarifying questions.

16 So Dr. Muth, I just wanted to understand, it's
17 an issue we haven't talked about so far, but were you here
18 for this morning's testimony?

19 DR. ALLAN MUTH: Yes.

20 MS. LISA BELENKY: We had talked about there's a
21 part of the project up in the top where it's a keyhole
22 cutout; is that correct?

23 DR. ALLAN MUTH: Yes.

24 MS. LISA BELENKY: And if you could -- in your
25 opinion, does avoiding that area in any way avoid impacts

1 to the sand or the habitat?

2 DR. ALLAN MUTH: No. Because the area is
3 completely surrounded by the project, and if that
4 little -- there's 40-acres or whatever will be deprived of
5 sand, no question about that, and it will change over
6 time.

7 MS. LISA BELENKY: Thank you. Then I just
8 wanted -- I had a quick question about there's the
9 deflation and then the stabilization, and I'm not a
10 hundred percent sure if they are different or linked.
11 Could you sort of maybe explain a little more about that?

12 DR. ALLAN MUTH: Deflation, in my way of
13 thinking, there's probably technical terms that
14 Dr. Lancaster can address, but deflation leads to
15 stabilization. Deflation means that you're changing the
16 particle size distribution by blowing the smaller
17 particles off or averting them off by water, wind or
18 whatever. Stabilization refers to that process whereby
19 the surface undergoes a change to coarser materials,
20 bigger particle size, and it tends to form a crust, which
21 you can essentially pick up small pieces of that stays
22 together, and biological crusts will eventually form in
23 some areas over the long period.

24 MS. LISA BELENKY: Thank you.

25 DR. ALLAN MUTH: Did you want to hear from Dr.

1 Lancaster on that?

2 MS. LISA BELENKY: Yeah. That would be great if
3 Dr. Lancaster can weigh in on that.

4 DR. NICHOLAS LANCASTER: I would -- I would
5 concur with both of those descriptions of deflation and
6 its effects, but it is also possible that stabilization
7 can occur as a result of vegetation growth after rain. We
8 do recognize that and we monitor -- there's a community of
9 experts in stabilization, which is a result of the growth
10 of vegetation. But Dr. Muth has described that the effect
11 of the -- his description of --

12 HEARING ADVISOR CELLI: Mr. Lancaster, I'm going
13 ask you if you could state that again a little closer to
14 the phone so that we get a good record of that.

15 DR. NICHOLAS LANCASTER: Yes. I can -- I concur
16 with Dr. Muth's very excellent description of the effects
17 of the deflation and of the process of stabilization. We
18 also can recognize stabilization for plane areas does
19 occur as a result of increased vegetation from the result
20 of, say, periods of heavy rain fall, which can obviously
21 occur on different time scales. But I would definitely
22 concur with his description.

23 HEARING ADVISOR CELLI: You concur?

24 DR. NICHOLAS LANCASTER: Yes.

25 HEARING ADVISOR CELLI: Thank you.

1 DR. NICHOLAS LANCASTER: Agree with.

2 HEARING ADVISOR CELLI: Yes.

3 MS. LISA BELENKY: I had -- Dr. Muth, I just had
4 a question. In your rebuttal testimony, you do talk a
5 little bit about the Bio 8, which is the speed at which
6 the traffic moves along the site and, you know, we could
7 discuss with this with all the parties, this suggestion
8 from Staff. This gets into specific wording, but Staff
9 changed the condition so that off of a road, not on a dirt
10 road and not on a paved road, the vehicle speed would be
11 ten miles an hour, but then on the paved and stabilized
12 roads, they would allow 25 miles an hour for the traffic.

13 Do you have any -- could you discuss that a
14 little bit from your testimony?

15 DR. ALLAN MUTH: Fringe-toed lizards are hard
16 for people to see until they get a search image. A search
17 image is sort of that magical thing that happens when your
18 brain recognizes something before you do.

19 Biologists spent a lifetime in the field, and
20 you could ask Dr. Karl if she has a search image for
21 juvenile tortoises. Most people don't, I'm sure she does.
22 So they're hard -- very hard to see. They don't move very
23 fast. A lot of times they'll just freeze in place. They
24 also bury in the sand. So it's a long-winded way of
25 saying the slower you go, the more focused you can be on

1 what's coming up in the road, the more likely you are to
2 see them to stop or avoid them. So the slower the better
3 is the way I would put it.

4 MS. LISA BELENKY: Thank you.

5 And then I have a couple of questions for Staff.
6 Just on this issue around the sand and Mojave fringe-toed
7 lizards, did you get any comments from the California
8 Department of Fish and Wildlife on the conditions related
9 to Mojave fringe-toed lizard?

10 MR. CHRIS HUNTLEY: This is Chris Huntley. I'd
11 like to check, talk to our Department of Fish and Game
12 partners, Fish and Wildlife partners, but I believe
13 they've had an opportunity to review them and I don't
14 recall receiving formal communication on the conditions.

15 Is that accurate?

16 HEARING ADVISOR CELLI: Let me ask, Jeff, do
17 we -- are the mics on this podium working? I think this
18 would be a good time for us to have the USFWS and the CDFW
19 people come on around and identify yourselves on the
20 record, please, so we know who's here. Thank you.

21 MS. LISA BELENKY: Then they would have to be --

22 HEARING ADVISOR CELLI: No, not if they're
23 witnesses or anyone is going to call them. I just want to
24 know who's here.

25 Please identify yourself.

1 MS. MAGDALENA RODRIGUEZ: Magdalena Rodriguez
2 from the California Department of Fish and Wildlife.

3 MR. THOMAS DIETSCH: My name is Tom Dietsch,
4 U.S. Fish and Wildlife Service. I'm their migratory bird
5 biologist for Southern California.

6 MS. JODY FRASER: I'm Jody Fraser with the U.S.
7 Fish and Wildlife Service in Palm Springs.

8 HEARING ADVISOR CELLI: Thank you.

9 Now, none of these people were listed on
10 anybody's witness list; correct? So we're not
11 anticipating any testimony from them. Or are we? Someone
12 set me straight on this.

13 MS. LISA BELENKY: Well, I believe in the avian
14 section we did -- we may ask questions of them. We did
15 put U.S. Fish and Wildlife and California Department of
16 Fish and Game on our witness list for Biology.

17 HEARING ADVISOR CELLI: Okay. Then let me have
18 you sworn. If you would all please stand.

19 MS. MAGDALENA RODRIGUEZ: They can't be sworn
20 in, but I can.

21 HEARING ADVISOR CELLI: Why not?

22 MS. MAGDALENA RODRIGUEZ: I don't know. Ask
23 them, they're Fish and Wildlife. They're the Feds.

24 MR. THOMAS DIETSCH: We're just -- there are
25 very special stipulations, as I understand it. I'm new to

1 the service, but as far as swearing in for testimony --

2 MS. JODY FRASER: We generally have to go
3 through a training procedure.

4 HEARING ADVISOR CELLI: So Ms. Rodriguez is the
5 only person qualified to testify on behalf of USFWS?

6 MS. MAGDALENA RODRIGUEZ: No, CDF.

7 HEARING ADVISOR CELLI: CDF.

8 MS. JODY FRASER: California.

9 MR. THOMAS DIETSCH: She's the State.

10 HEARING ADVISOR CELLI: CDFW.

11 MS. JODY FRASER: We -- we can answer question,
12 but --

13 HEARING ADVISOR CELLI: So you're not going to
14 get anything from the USFWS today it looks like.

15 MS. LISA BELENKY: Well, she said they could
16 answer questions. So it may be that it would be unsworn
17 testimony and more like comment, but if it comes up, I am
18 glad that they're here.

19 HEARING ADVISOR CELLI: Okay. So at this
20 moment, you don't have any specific questions for any of
21 them?

22 MS. LISA BELENKY: No, my question was for Staff
23 as to whether they received any communications and whether
24 there were any --

25 MR. CHRIS HUNTLEY: I would say we coordinated

1 with our fish and wildlife partners and regulatory
2 agencies throughout the process through our read groups.
3 I do not recall receiving specific comments on our
4 fringe-toed lizard conditions at this time.

5 MS. LISA BELENKY: Thank you. I think we're
6 done with fringe-toed lizard and the sand.

7 HEARING ADVISOR CELLI: Okay. Sounds like we
8 are. Let's move on.

9 Now, Parties, the issues -- I know we have the
10 avian issues and I know that we have the sand transport
11 issues. Do any other Bio issues that we have to tackle
12 today?

13 MS. LISA BELENKY: Avian.

14 HEARING ADVISOR CELLI: Avian goes next?

15 MS. ILEENE ANDERSON: I'd also like to speak to
16 the desert kit fox issues.

17 HEARING ADVISOR CELLI: Okay. So what's left is
18 avian, kit fox, anything else in terms of Bio?

19 MS. ILEENE ANDERSON: Land facets.

20 HEARING ADVISOR CELLI: Say again?

21 MS. ILEENE ANDERSON: Land facets.

22 HEARING ADVISOR CELLI: Land facets. Is that
23 that cryptobiotic soils?

24 MS. ILEENE ANDERSON: No, but add that on the
25 list.

1 HEARING ADVISOR CELLI: What are you talking,
2 please, in terms of land facets?

3 MS. PAT FLANAGAN: Land facets were added to the
4 Center -- excuse me, South Coast -- South Coast Wildlands'
5 California Desert Connectivity report to take into
6 consideration that we don't know what species may persist
7 as climate change continues, and so they've looked at
8 preserving topographic features across the landscape so
9 that whatever animals or plants are available to move
10 around, there's someplace for them to move on.

11 HEARING ADVISOR CELLI: Okay. Let's -- let's
12 take it in this order, then. We'll start with the avian
13 issues, we'll go to kit fox, cryptobiotic soils, and land
14 facets.

15 MS. ILEENE ANDERSON: Also, Mr. Celli, I also
16 wanted to talk about state waters --

17 HEARING ADVISOR CELLI: That's right. That came
18 up yesterday.

19 MS. ILEENE ANDERSON: -- in the discussion.

20 HEARING ADVISOR CELLI: State waters.

21 Now, do we have any new witnesses? All of the
22 witnesses have been sworn for avian, or is there anyone
23 new that we can just call down for avian?

24 Okay. I might as well -- Ms. Rodriguez, if you
25 wouldn't mind coming to the podium. Raise your right

1 hand.

2 Do you swear -- solemnly swear to tell the
3 truth, the whole truth, and nothing but the truth under
4 penalty of perjury?

5 MS. MAGDALENA RODRIGUEZ: I do.

6 HEARING ADVISOR CELLI: Thank you. You may be
7 seated. We'll see who needs to ask you questions.

8 With regard to avian, how did you want to
9 proceed? Have the parties had a chance to talk about it?

10 MR. SCOTT GALATI: As far as we're concerned,
11 we're in agreement with Staff, both the findings,
12 conclusions and the conditions of certification on avian,
13 and my witnesses are available for cross-examination.

14 HEARING ADVISOR CELLI: So according to my
15 records, the Bio was CBD and Basin and Range Watch asked
16 for some cross-examination on this. So let's start with
17 Basin and Range Watch.

18 MS. LAURA CUNNINGHAM: I have a question for
19 Staff. Are you planning to accept the petitioner's
20 adaptive management approach to bird and bat conservation
21 in rebuttal testimony? Is that something you are
22 considering, all or in part?

23 MS. CAROL WATSON: I need to look at those. I'm
24 not sure what specific language you are talking to, but,
25 yes, as to the extent that it's rather rudimentary as to

1 what's further developed by our staff and technical
2 advisory committee.

3 MS. LAURA CUNNINGHAM: All right. Then I have a
4 question for Pat Flanagan.

5 Have you had a chance to look at this plan, this
6 proposed plan, and what do you think about how this might
7 work to mitigate avian impacts in the solar power tower
8 project?

9 MS. PAT FLANAGAN: Well, it the seemed like
10 there was a lot of uncertainty as to what might work,
11 whether they used a lot of noise, or had dogs out there,
12 or off-road vehicles, or what would actually frighten
13 birds off for the next 30 years. And it didn't really
14 impress me that much. I'm thinking that one way to check
15 on the advocacy of some of that is you guys should talk to
16 farmers in the Salton Sea Valley and that area, because
17 they have to do that periodically, and how well do noises
18 work.

19 I know that my concern, when I heard about
20 firing -- I don't know how loud they're going to be, but
21 they have to be pretty loud because you have a
22 five-square-mile or six-square-mile facility and that --
23 there's some research that shows that that damages the
24 ears of the animals that live and evolve in the desert in
25 very quiet conditions such as kangaroo rats and French

1 today lizards and speckled toads.

2 Did that answer your question?

3 MS. LAURA CUNNINGHAM: Yeah. A couple more
4 questions to you.

5 Do we have a lot of bird data of which bird
6 species in abundance live in that part of the Chuckwalla
7 Valley?

8 MS. PAT FLANAGAN: I think there is actually
9 quite a lot of data, and there's -- what I submitted with
10 my testimony was a map that was done by the Redlands
11 Institute, which gave 30 years of banding data at the
12 Salton Sea. And these are birds that are -- they were all
13 banded at the Salton Sea, some were recovered at the
14 Salton Sea and some were encountered elsewhere dead. But
15 what I got back as reflection on this map is that, well,
16 yeah, you know, those dots are pretty vague, actually,
17 those dots represent numbers of birds and they reflect
18 back on real data.

19 So besides -- I think it's unfair to just say,
20 well, you know, it's too spread out and whatever, because
21 the birds are spread out. And the way to check on that is
22 to go to a website called eBird. And eBird is a Cornell
23 and Audubon website, and people report their birds to that
24 website and have been doing so for a long time. And those
25 checklists that are sent in are first refereed by someone

1 who has knowledge of the area.

2 And I noticed -- the reason I'm here is because
3 I was the biologist on site at Solar One, and that was 30
4 years ago. And so if I go back today and I look at the
5 eBird checklist for Solar One, right there, still
6 happening, I think there was something like 117 species
7 and a large number of lists that corroborate that. So
8 over time -- and those lists continue. They're -- I
9 checked them, at least casually, for about two hours, and
10 seeing that they follow a pattern. I do not believe that
11 that website, which is a valuable source of information
12 has been mined for what it can actually provide in terms
13 of data for these projects, all of the projects that are
14 out in the desert.

15 MS. LAURA CUNNINGHAM: So you think there's a
16 lot of bird data out there, but no one has analyzed, say,
17 migration routes or nesting or abundance when you put a
18 large power tower project in that area?

19 MS. PAT FLANAGAN: As far as I know, they did
20 not go to these sites to look and see what birds were
21 around there, and so most of the solar sites, there are
22 data points. And so I could be wrong, I just haven't
23 heard of them, of doing that, I've just heard a lot of
24 "Gee, we didn't know. There were all those birds out
25 there?" And the birds don't fly in straight lines,

1 they're busy, they're out there gathering food and doing
2 things, and the Salton Sea is their location, that whole
3 region. And a place to go for good peer-reviewed science
4 is the Point Reyes Bird Observatory, and now Point Blue
5 Conservation I think it's called. They've changed their
6 name. But you can go to PRBO, Point Reyes Bird
7 Observatory, and you can look at their technical reports.

8 MS. LAURA CUNNINGHAM: Just one more question.

9 What do you think is going to be the cumulative
10 biological impact of having all these panel arrays and
11 mirror rays in these areas?

12 MS. PAT FLANAGAN: Well, I have been spending a
13 bit of time in the past few years developing curriculum
14 for elementary school students in the Imperial Valley, and
15 my time line for these students goes back five and half
16 million years, because that's the date and time of when
17 the fossil record kicks in for them. So I spend a lot of
18 time looking at the place-to-see map of California
19 deserts, and we used to have a lot of water here. That
20 water in Death Valley used to be 600 feet deep, so during
21 the ice ages, there was a lot of water. And over hundreds
22 of thousands of years, birds have been migrating, using
23 this. They understand that water can come and go. There
24 used to be bodies of water, now for a long time, they've
25 been searching for little bodies.

1 The hundred-acre pond at Solar One was an
2 astonishing place to see shore birds. I saw one day --
3 and that's why I remembered it for 30 years -- 25 species
4 of shore and water birds and over 2500 birds. That was
5 just astonishing. And yet, it's a small body of water.

6 I think what we're doing with these very large
7 industrial solar plants is actually reintroducing the
8 plight of pristine landscape, except this one is a bit
9 deadly.

10 HEARING ADVISOR CELLI: Go ahead.

11 Mr. KEVIN EMMERICH: I'd like to ask a couple
12 questions of Staff, actually. And first question is are
13 you all following the compliance reports that are coming
14 in monthly I suppose now for the electric generating
15 system concerning avian mortality?

16 MS. CAROL WATSON: Yes. This is Carol Watson.
17 Actually, I'm a -- well, the tech division staff, with the
18 exception of Chris Huntley, who is contracted through
19 Aspen, but Ann and myself have those duties. So as
20 Commission employees, we work both on citing cases, plus
21 on compliance cases. I myself personally worked on the
22 Ivanpah and the Genesis case, and we maintained very close
23 contact with our Fish and Game and U.S. Fish and Wildlife
24 Services representatives. So I would say we're -- we're
25 certainly clear on that. But just to -- just to respond

1 back to Pat Flanagan --

2 HEARING ADVISOR CELLI: Ms. Watson, I notice
3 that the court reporter is craning to understand you.

4 MS. CAROL WATSON: Sorry.

5 HEARING ADVISOR CELLI: So I just want you to
6 really get right on that mic, please.

7 MS. CAROL WATSON: Do you need me to repeat
8 something or --

9 THE REPORTER: That's okay.

10 MS. CAROL WATSON: Okay. I just wanted to
11 respond back to Pat Flanagan and say that we are aware of
12 the eBird citations. We do look at those. We do take
13 those into consideration. And frankly, I think we're
14 putting out a document that's about 400 pages, and so we
15 certainly recognize there are many, many species in the
16 area. We recognize the plant itself, the facility itself
17 has the potential to attract birds. We're not able to
18 quantify the distances for which it might attract a bird
19 but we have certainly acknowledged in our document that
20 the lists that have been prepared are not comprehensive or
21 all inclusive by any means.

22 Mr. KEVIN EMMERICH: Okay. Well, my other
23 question is are you confident that -- maybe you don't have
24 an opinion on this, but are you confident that the
25 compliance monitors or biologists are getting accurate

1 numbers of the amount of birds that are actually
2 experiencing any kind of injury or mortality in a project
3 of that size? I'd just like to know what you all think of
4 that, just because we've got a very similar project right
5 on the pipe here and little information about it.

6 MS. CAROL WATSON: Well, it's a difficult
7 question to answer. It depends on the project and what
8 the impacts are. What I would say overall, though, is if
9 this is -- this is a rather -- well, it's not a new impact
10 at all, as Pat can tell us, these have been around for
11 years and years, but it's new to this agency, it's new to
12 us. And so that's kind of the Genesis of a lot of these
13 briefs and condition changes that we've made, it's really
14 just trying to learn from implementation, figure out how
15 to smooth the pathways of communication and data
16 generation and data receipt.

17 Mr. KEVIN EMMERICH: Do you think that it would
18 be beneficial from a standpoint of conservation to not
19 approve big power towers until we can get more numbers and
20 information about what a project of this size -- and it's
21 really unprecedented -- and so what do you think of that?
22 Do you think that would be beneficial just for
23 preservation of avian fauna?

24 MS. CAROL WATSON: That's again another hard
25 question. Personally, just as a lowly biologist, I really

1 just try to focus on the biology. Even with your strong
2 statements, we have had impacts that are unmitigable.
3 Whether or not that means the project should go forward
4 or not is fortunately in the hands of the decision-maker,
5 it's not in my hands.

6 Mr. KEVIN EMMERICH: Do you have any opinion on
7 mitigation? Have you come -- you've obviously been
8 talking about it with a lot of the agencies, but do you
9 have -- can you tell us anything about a mitigation that
10 you are hopeful about that could minimize the amount of
11 this kind of mortality, or are we just too early in that
12 stage?

13 MS. CAROL WATSON: I think what you are asking
14 me about is some sort of operational adaptation --

15 Mr. KEVIN EMMERICH: Yes.

16 MS. CAROL WATSON: -- to actually avoid the
17 impacts. I think that given the nature of the technology,
18 there is some opportunity, and frankly probably the
19 petitioner would be in a better position to answer this
20 question than me, given my limited understanding. But
21 I -- I think there's some things they could do. There's
22 the use of standby points. So if the mirrors aren't all
23 focused on the tower and concentrating flux into the
24 tower, they point them up into the sky for, I don't know,
25 a variety of different reasons, given the level of

1 polarity or some other such -- that's for the Petitioner
2 to answer. I think there's the potential that perhaps
3 altering these operational stances, like the use of
4 standby positioners or potentially even the amount of
5 mirrors that are focused on towers might be potential. We
6 have explored that with the Applicant at previous
7 workshops. I also understand those mirrors move
8 incredibly slowly, so it's not as if we can say, "Hey,
9 there's a bird over here," and instantly flip the mirrors
10 off quickly, but I especially think with engineering
11 advancements, I think there's something else out there. I
12 hope.

13 The adaptive measures that were filed, we think
14 that those are beneficial and appreciate that the
15 Applicant is looking into these kinds of measures. But
16 you know, again, at this point in time, there's really
17 nothing. We can't keep birds from entering.

18 Mr. KEVIN EMMERICH: The last question, I really
19 don't think you have an answer, but I mean is curtailment
20 ever an option? Have you come up with any -- discussed
21 any kind of monthly number of mortality where just enough
22 is enough? I know that it depends on what species
23 apparently get killed, but is a number even being
24 discussed here?

25 MR. CHRIS HUNTLEY: This is Chris Huntley. If I

1 may answer that question, then clarify a previous question
2 that I think warrants a better -- not a better, a more
3 thorough answer.

4 As part of our conditions of certification, we
5 have recommended and proposed the development of a very
6 comprehensive and rigorous monitoring so far, and so we'll
7 be working with Petitioner and the resource agencies to
8 develop a monitoring plan to help us get a handle on the
9 number and type of birds that may be subject to mortality
10 and morbidity from the solar flux. So that process is
11 starting right now and will be developed. So that's first
12 part.

13 The second part is we right now believe that,
14 you know, it's reasonably foreseeable that these kind of
15 impacts will occur with birds, but we don't know the exact
16 suite of species. So it's very preliminary for us right
17 now to come up with a number. I think part of the
18 Technical Advisory Committee will be to develop thresholds
19 and find -- and kind of find approaches for mitigation and
20 conservation that are appropriate based on what we're
21 finding with our studies. And we acknowledge that, you
22 know, this is very new technology and we are taking what
23 actions we deem are appropriate to offset the impact as
24 best we can.

25 Mr. KEVIN EMMERICH: Well, thanks. That -- that

1 will do it.

2 HEARING ADVISOR CELLI: I have a quick question.

3 Does that Technical Advisory Committee, would
4 they be empowered to curtail -- to come up with some
5 number to curtail operations if there was an exceeded --

6 MR. CHRIS HUNTLEY: I don't know the answer to
7 that right now, to be honest. I think the intent is to
8 develop a tactical resource agency or energy commission
9 staff, have the Applicant or the Petitioner involved, and
10 then, in the process, determine whether additional
11 mitigation is appropriate or other actions. I can't put
12 on the table curtailment at this point in time.

13 HEARING ADVISOR CELLI: Thank you.

14 We're with CBD now?

15 MS. EILEEN ALLEN: Mr. Celli, I have a follow-up
16 question.

17 HEARING ADVISOR CELLI: Go ahead. Eileen Allen.

18 MS. EILEEN ALLEN: This is for Mr. Huntley or
19 Ms. Watson.

20 Would you give us some background information on
21 the Technical Advisory Committee? Are you aware of it
22 having met already for the Ivanpah facility, for example?

23 MS. CAROL WATSON: No. So for the Ivanpah,
24 we've been working on the avian monitoring plan for some
25 time now. We do have a version approved. I believe that

1 they were actually starting avian surveys this week or in
2 the very near future, and so the way that that TAC is set
3 up, they're to meet quarterly. And so I -- depending on
4 when the first survey happens and when we get the data,
5 but I think we're probably planning on meeting in roughly
6 January, 2014.

7 MS. EILEEN ALLEN: And the members of the TAC
8 would be who?

9 MS. CAROL WATSON: I think that would probably
10 include Tom Dietsch, sitting behind me, from the Fish and
11 Wildlife Service; also, a member from the BLM, Dr. Larry
12 LePre; a unyet identified Department of Fish and Wildlife
13 member; and unyet, I guess as of yet, identified Ivanpah
14 members.

15 MS. EILEEN ALLEN: And the Energy Commission?

16 MS. CAROL WATSON: And, of course, us. I think
17 that'd be me.

18 MS. EILEEN ALLEN: Thank you.

19 HEARING ADVISOR CELLI: Okay. We're with CBD
20 now for any questions on the panel regarding avian?

21 MS. LISA BELENKY: Yes. And I think just to
22 wrap up this part of it on this TAC, have you -- have you
23 considered having public notice of the meetings and
24 public -- open public meetings for the TAC?

25 MS. CAROL WATSON: We have considered that. I

1 believe the staff has proposed that. Actually, I believe
2 we had discussed, if necessary, bringing in my
3 environmental office manager to -- to discuss this,
4 because I think what you are getting into here is a little
5 bit more of a policy call. I think it's out of the hands
6 of just the biologists and kinds of factors and things
7 we'd be looking at.

8 So if you -- if you like, this is Eric Knight,
9 the Commission's office manager.

10 HEARING ADVISOR CELLI: Mr. Knight, please raise
11 your right hand.

12 Do you solemnly swear to tell the truth, the
13 whole truth, and nothing but the truth under penalty of
14 perjury?

15 MR. ERIC KNIGHT: I do.

16 HEARING ADVISOR CELLI: Thank you.

17 Go ahead. Ms. Belenky, any questions for
18 Mr. Knight?

19 MS. LISA BELENKY: Well, my first question was
20 if they considered public notice and having open public
21 meetings of the TAC.

22 MR. ERIC KNIGHT: What we have proposed in
23 the -- in the FSA was that a public hearing conducted by
24 the Energy Commission. What we've agreed to do this
25 morning, I believe it was, was to have the decisions about

1 adaptive management or additional mitigation to be done by
2 the Technical Advisory Committee. How exactly -- how
3 exactly that process will work out, we have not completely
4 figured out the details of it. We know who will be on it,
5 which agencies will be represented, and the owner's
6 representatives. And I envision what we'll do is any
7 recommendations will be posted on a web page available to
8 the parties that were -- participated during this
9 proceeding. But whether or not we'll meet publicly, I
10 don't know. It's something we can consider.

11 MS. LISA BELENKY: Well, thank you. I think we
12 would hope you do consider it.

13 I'm -- I would just -- I would like Ms. Anderson
14 to be able to discuss some of these issues about avian,
15 and then we still have some other questions about general
16 avian.

17 HEARING ADVISOR CELLI: Certainly.

18 And Mr. Knight, if you wouldn't mind, if you
19 have a business card, bring it to the court reporter.
20 Everybody should be giving their business cards to the
21 court reporter so that she can properly spell your name.

22 Go ahead, Ms. Anderson.

23 MS. ILEENE ANDERSON: Thank you. This is
24 Ileene Anderson.

25 So I'm very concerned and surprised about the

1 amount of bird mortality, including endangered and fully
2 protected birds and species at the solar project sites.
3 And these sites are still, you know, just under
4 construction or in testing mode, they're not really in
5 full operation.

6 Two of these projects have been already
7 permitted by the CBD and, you know, we participated in
8 those proceedings. And I knew at the time that there
9 would be bird and insect mortalities, based primarily on
10 the scientific work that was done in Solar One, and Pat
11 was a party to that. I also knew that the much larger
12 size of these new projects would result in increasing bird
13 mortality, and I believe these mortalities are going to
14 continue. And I really find that the COCs that were --
15 that are proposed and modified in Bio 16a and b are really
16 inadequate and they don't provide for avoiding,
17 immunization or appropriate monitoring.

18 Much of what's going to actually be done is
19 defer to a variety of different plans, the Avian
20 Enhancement Conservation Plan, The Avian Bat Protection
21 Plan, The Bird and Bat Conservation Strategy, and The
22 Eagle Protection Plan. And I think these plans, based on
23 what we have seen docketed with regards to mitigation,
24 these plans may very well create additional impacts to
25 other species, you know, through their avoidance and

1 immunization efforts that could cause harm.

2 And I know you've heard me speak to this issue a
3 number of times in a number of proceedings, but really
4 without these plans being planned and identified, there is
5 no way to actually evaluate whether or not appropriate
6 immunization, avoidance, and if all else fails, mitigation
7 is provided, so it's just really frustrating to me.

8 As part of my testimony, I did include the most
9 recent cumulative bird list for the Lake Tamarisk, which
10 is nearby the proposed project. And in addition to the
11 rare and endangered birds that were mentioned in the FSA,
12 which included the state fully protected and federally
13 endangered Yuma Clapper Rail, Bald and Golden Eagles, the
14 Swainson's Hawk, Gilded Flickers, Gila Woodpeckers, and a
15 variety of state species of concern.

16 There were additional species there that were
17 noted from that list, and it's not -- you know, it's not
18 very far away from the project site. That also included
19 the state endangered Willow Flycatchers. The
20 state-threatened and fully protected Sandhill Cranes, and
21 additional state species of concern that we're addressing
22 to the FSA include the Vaux's Swift, Yellow Warblers,
23 Osprey, Yellow-Breasted Chat, Purple Martin, Prairie
24 Falcon and more.

25 I'm really concerned here that the FSA

1 significantly underestimates the different types and
2 species of birds that could be impacted by the proposed
3 project based on the diversity of sensitive birds that
4 occur in the area. And moreover, the attraction to the
5 project may propose the birds through the lake effect as
6 they're flying to move from the Salton Sea to and from the
7 Colorado River.

8 So right now, the bird mortalities include rare
9 and endangered and fully protected species on the existing
10 projects, like Desert Sunlight, which is west of the
11 project site from the Genesis project site, which is east
12 of the project site, as well as the ISEGS Project, which
13 is similar technology.

14 I wanted to make sure to address FSA Bio 16a.
15 As part of that condition of certification, it requires
16 retrofitting other projects' power poles to avoid avian
17 mortality from electrocution. I want to be clear that I
18 certainly support retrofitting power poles for avoiding
19 avian mortality from electrocution, but retrofits should
20 be done by the transmission company, not by the solar
21 project. It seems like we're having one project pay for
22 another project's problems.

23 And, as well, I'm supportive of measures to save
24 migratory birds, but I'm also very unclear about the,
25 quote, additional migratory bird conservation measures.

1 Where are those conservation measures going to occur?
2 Hopefully not near the proposed project site, because you
3 could be creating an attraction for the migratory birds
4 and putting them in harm's way. And it's very unclear
5 where that would take place.

6 Also, even if the conservation measures were
7 implemented away from the harmful projects, they wouldn't
8 necessarily mitigate from the impact that was occurring on
9 the proposed project site, so I really get concerned about
10 the actual mitigation from the impacts from the project.

11 Of the measure -- of the menu of the measures
12 that the Staff proposes, the benefit of each compared to
13 the impact actually remains unclear, so I'm not sure how
14 those are going to quantify, like, how much Tamarisk have
15 you removed permanently to equate for, you know, one or a
16 dozen migratory birds. I believe that each proposed
17 mitigation provides a different level of the potential for
18 mitigation, and some actually do more for others -- than
19 others do. So how the projects actually -- how the
20 project's actual impacts were mitigated is still very
21 unclear and mysterious to me.

22 I -- as per my testimony, because there have
23 been fully protected species that have been injured at
24 other -- mortalities at other project sites, it really
25 hurts me to see the CEC just sort of turning a blind eye

1 to that and saying, "Oh, well, they're fully protected so
2 we can't do a permit and, you know, we'll try some
3 mitigation and hopefully it will work." I mean, there are
4 ways now to actually address those fully protected species
5 through the implementation of an NCCP and I really think
6 that this is a great project to start having --
7 implementing those NCCPs so that there is some mechanism
8 for incorporating the fully protected species into a
9 better conservation scheme.

10 And I think that's all that I have to say about
11 avian species at this time. I'd be happy to answer any
12 questions.

13 HEARING ADVISOR CELLI: Ms. Belenky, any further
14 questions?

15 MS. LISA BELENKY: I don't have any questions
16 for Ms. Anderson. I think Ms. Anderson does have
17 testimony on other wildlife, but this was the avian.

18 HEARING ADVISOR CELLI: Okay. Let's -- but it
19 sounds like we're wrapping up on avian, and I just wanted
20 to throw it out first to the panelists to see if there was
21 any further comment from anyone on the panel about avian.

22 Ms. Flanagan?

23 MS. PAT FLANAGAN: I was wondering, as I was
24 looking last night at the visual impact simulations that
25 are in the FSA, if it wouldn't be beneficial to construct

1 visual impact for migratory and resident birds at various
2 heights, because you see through the simulations that are
3 there for humans that they are attractive. And we know
4 that birds fly at different levels, so they're going to
5 have a different area that's going to be attracting --
6 attract- -- be coming out from a wider area. And I think
7 it would expand the area of concern, and especially for
8 cumulative impacts, if there was such simulations, and
9 that the Salton Sea, which is so close, could become part
10 of the thinking about these projects. So -- and it was
11 also interesting that the front page of the FSA shows the
12 project with the Salton Sea to the south, visible.

13 Thank you. If there are any other questions,
14 I'd be happy to answer.

15 HEARING ADVISOR CELLI: Panelists? Response?

16 MR. CHRIS HUNTLEY: Thank you. Chris Huntley.

17 Staff would like to respond to CBD, and I
18 probably missed some of the points, so feel free if you
19 want to get further clarification from me.

20 Staff believes that we did a robust job of
21 analyzing the potential risk to the entire suite of
22 migratory birds that occur in the area. We did not list
23 every single migratory bird we think can fly in the
24 project area, and we did so because we tried to focus in
25 on what we thought were some of the more important

1 resident birds, and then acknowledge the birds, the Yuma
2 Clapper Rail, Bald Eagles, and other species who would
3 likely be subject to risk should they fly through the
4 field.

5 But there's some degree of speculation for what
6 species are going to be subject to risk and are not. So
7 in an attempt to offset impacts to these species, because
8 in the FSA, we're very clear, we believe the project
9 impacts are significant and unmitigable, but in an effort
10 to minimize in any way shape or form, we have provided
11 compensatory mitigation as it refers to land acquisition
12 will have some value.

13 We provided the bird and bat plans that provide
14 for the development of this committee, which we'll try to
15 analyze what birds are being impacted, and then provide
16 compensatory mitigation to see the species will mostly
17 benefit. We tried to keep that somewhat flexible because
18 monitoring may say that we shouldn't be -- or we should be
19 providing compensatory mitigation for areas, say, along
20 the Colorado River or an area a little more disparate from
21 our project site. So that was the rationale for what we
22 did on it.

23 We understand that utilities should be
24 retrofitting their own power poles, but we left the
25 language in the condition because we think if -- if we can

1 get this done, we think it's a benefit to these species.

2 I don't know what other -- if I missed something
3 in particular.

4 MS. ILEENE ANDERSON: I guess, could you address
5 the -- how you are planning to structure the actual
6 mitigation requirements as far as enhancements and that
7 whole menu of different options that you are proposing,
8 and how you intend to evaluate, then, the level of impact
9 and how those different pieces fit into actually
10 addressing those impacts as mitigation?

11 MR. CHRIS HUNTLEY: Well, first, I think it's
12 important to clarify that we do believe this is an
13 unmitigable project. So what we're trying to do is offset
14 in any way we can impacts to the species that we believe
15 are going to be impacted. The development of the bird and
16 bat plans, avian plans, that compensatory mitigation
17 approach, the TAC committee, will basically become
18 developed and be flushed out during those TAC meetings,
19 and will be based also on the data that we accumulate
20 through the long-term monitoring.

21 We don't want to rush out and say, "We should be
22 applying this mitigation than this," only to find out
23 eight months down the line, "Wow, we really impacting a
24 large number of these birds." So perhaps the mitigation
25 should focus on repairing and restoration in certain areas

1 or some other kinds of mitigation.

2 So we acknowledge we're going to have to develop
3 kind of a formula. And again, this is not intended to
4 fully mitigate these species. We're doing the best we can
5 to offset what we believe is going to be an unmitigable
6 impact.

7 MS. ILEENE ANDERSON: I really appreciate your
8 outlining of the strategy. I guess the frustration for me
9 is, you know, all future is going to be behind closed
10 doors, and it's just unclear exactly how this whole issue
11 is going to be addressed.

12 MR. CHRIS HUNTLEY: We understand your
13 frustration.

14 MS. ILEENE ANDERSON: One suggestion I'd like to
15 make with the TAC is that you actually include additional
16 bird experts. Not that I think that the agencies have
17 staff that aren't sophisticated in the issues, but it
18 seems like it would be good to have some of the experts in
19 certain species. Sort of like Mojave Ground Squirrels,
20 you know, that TAC not only has agency folks, but also
21 experts that come in and talk about how to solve problems.

22 MR. CHRIS HUNTLEY: That's a good suggestion.

23 MS. ILEENE ANDERSON: So I would asked that we
24 expand that to include others.

25 HEARING ADVISOR CELLI: Dr. Karl, you had a

1 comment?

2 DR. ALICE KARL: I did. It's kind of getting
3 lost, but the -- Mr. Huntley did a fantastic job of
4 explaining the entire program. And -- and it -- it is a
5 strategy, it's not -- it's not a plan that's in Bio 16,
6 it's a strategy, a very detailed strategy.

7 So I -- I think there were others earlier, I
8 think I heard Ms. Cunningham saying to Ms. Flanagan that,
9 "Do you agree with this plan?" It's not yet a plan, it's
10 an approach, a detailed approach, and the experts will
11 identify the plans and build the plans and develop the
12 plans.

13 And getting back to what you were just saying,
14 Ms. Anderson, it is experts that we would want to look at
15 the data and analyze whether the measures are working.
16 And if -- if more monitoring needs to be done, different
17 monitoring needs to be done, what kind of adaptive
18 management, not the general public. And certainly, the
19 public will be aware of the information because of -- of
20 reports that will be on the websites, but it's experts
21 that need to weigh in on this and not the general public.

22 One last really tiny little item. Certainly
23 retrofitting other people's, other company's poles is --
24 it's maybe -- it may not be so desirable, but that's
25 pretty much exactly what's going on with the I-10 fencing.

1 It's the designatory -- it's to mitigate the effects of
2 the freeway primarily. It's not to mitigate the project.
3 That's partly it, but mostly it's to mitigate the freeway.
4 So that should be a Caltrans thing, don't you think?

5 MS. ILEENE ANDERSON: Yes, but Caltrans is
6 another State agency, and most of the transmission is
7 privately owned.

8 DR. ALICE KARL: It doesn't make any difference.
9 They're still using mitigation dollars appropriately to
10 minimize effects on species.

11 MS. ILEENE ANDERSON: We can agree to disagree.

12 MS. LISA BELENKY: I have one more question on
13 the TAC before we leave it. In the earlier discussion
14 of -- at the beginning of this whole section, I believe
15 that Staff and Applicant agreed to have two
16 representatives from the Petitioner on the TAC, but there
17 was no -- I didn't hear any requirement that they be
18 experts, that they be biological experts. I heard that
19 they were just representatives of the Petitioner. So
20 that's -- to me, I -- I don't know if that's what you were
21 referring to, Ms. Karl, or not?

22 MR. MATTHEW STUCKY: I think the intention there
23 was to have the right people from the project owner who
24 can respond to the recommendations and the analysis of the
25 TAC. And so we envision one person who has direct

1 responsibility for environmental compliance on the project
2 site and a second person who has a very deep intimate
3 knowledge and understanding of project operations.
4 Because the person who is in charge of complying with the
5 permits may or may not have a deep understanding what
6 exactly is possible with positioning heliostats or
7 operating the receiver in a different way. So we -- we
8 described two knowledge bases that we think are the right
9 people to be a member, to participate.

10 MS. LISA BELENKY: Thank you. I guess I -- I'm
11 not sure I understand the TAC, because the person we spoke
12 about in public stated that they would make
13 recommendations that then he envisioned might be posted
14 for public comment, and I'm not sure who they're making
15 recommendations to and who would be the decision-maker
16 after the TAC for the TAC recommendation.

17 HEARING ADVISOR CELLI: That would be
18 Eric Knight.

19 Go ahead, Mr. Knight.

20 MR. ERIC KNIGHT: The -- the TAC -- the TAC
21 would make recommendations to the Energy Commission's
22 Compliance Project Manager, the CPM, and also the BLM's
23 authorized officer. So there are two agencies that hold
24 the permits that actually make the final decision.

25 So the recommendations would come from the

1 scientists, and the Applicant's representatives would not
2 have voting -- as we discussed this morning, would not
3 have voting rights on the -- on the TAC, but they would be
4 involved and, you know, if there's something that's just
5 not feasible, they would, you know, express that to the
6 team.

7 But it would be that TAC that is making a
8 recommendation to the Energy Commission's Compliance
9 Project Manager and the BLM authorized officer.

10 MS. LISA BELENKY: Thank you.

11 When you say, "we discussed this morning," was
12 that on the record that we discussed it?

13 MR. ERIC KNIGHT: It was here at the hearing,
14 yeah.

15 MS. LISA BELENKY: We -- I'm sorry, I must have
16 missed it if we discussed that --

17 MR. ERIC KNIGHT: It -- it was --

18 MS. LISA BELENKY: -- they would have to --

19 MR. ERIC KNIGHT: Yeah, it was during the
20 discussion with the changes to the conditions of
21 certification.

22 MS. LISA BELENKY: They said two. That's what
23 they said. They didn't say whether they would vote.

24 MR. ERIC KNIGHT: That was specifically
25 mentioned.

1 MS. CAROL WATSON: Yeah, it was part of the want
2 16b items that they had filed, and they had suggested
3 wording and then we had some -- essentially, that got
4 changed.

5 MS. LISA BELENKY: Thank you. I can find it. I
6 didn't hear the word "voting." I must have missed it.
7 Thank you.

8 And then I missed -- I believe, Ms. Anderson
9 might have another question on this or --

10 MS. ILEENE ANDERSON: No.

11 MS. LISA BELENKY: So I think for the Center,
12 Ms. Anderson has other testimony on other wildlife
13 species.

14 HEARING ADVISOR CELLI: All right. We are now
15 going to go to desert kit fox.

16 MS. EILEEN ALLEN: I have a question, though,
17 for Ms. Anderson.

18 Ms. Anderson, you noted a couple of minutes ago
19 that this project provided a good opportunity to implement
20 NCCP measures for fully protected avian species. Is this
21 the -- do you envision that CBD would provide more
22 specificity on this idea in briefs that would be
23 submitted?

24 MS. ILEENE ANDERSON: Well, I mentioned it
25 originally in my opening testimony, the NCCP, and it's not

1 just provisions, it's doing a whole Natural Communities
2 Conservation Plan, i.e. the NCCP. Apologies for the
3 acronym speak. But certainly, I'm sure that we'll bring
4 it up again in our briefing, although we haven't discussed
5 that yet.

6 MS. LISA BELENKY: We certainly could.

7 MS. ILEENE ANDERSON: We'd be happy to.

8 MS. LAURA CUNNINGHAM: I have one more question,
9 if I may? Laura Cunningham.

10 HEARING ADVISOR CELLI: Go ahead,
11 Ms. Cunningham.

12 MS. LAURA CUNNINGHAM: The Petitioner chose to
13 put this project next to a farmed -- farmed area with an
14 irrigation pond, something like a quarter or half acre on
15 the northwestern side. And then hearing Pat Flanagan's
16 testimony that she's seen ponds, even small ponds, be a
17 strong attraction to water birds, I was wondering if I
18 could ask the Staff if irrigation ponds adjacent and
19 outside the project are going to be offset in any way as
20 attractants?

21 Ms. Watson?

22 MS. CAROL WATSON: From Energy Commission's
23 perspective, I -- I think we've proposed measures such as
24 netting for the evaporation ponds, and we also discussed
25 that certainly -- they're certainly an attractive nuisance

1 to some degree. And it was also mentioned vaguely in our
2 FSA that the off-site agriculture at the operation, these
3 type of things such as a couple of small ponds associated
4 with the off-site agriculture, that these can all be an
5 attractant.

6 Q. But will those be netted because they are
7 private --

8 A. Those -- those are netted, and I also understand
9 that the U.S. Fish and Wildlife Service has had some
10 conversations recently with the evaporation pond. Perhaps
11 they want to chime in here or have anything to add?

12 MS. JODY FRASER: She's referring to the ag
13 pond.

14 MS. CAROL WATSON: No, the -- I'm sorry.

15 If you're asking about the off site ag ponds,
16 then no, that's on private property. That's part of our
17 jojoba farm. We will not be -- not be asking for any
18 actions for those.

19 MS. LAURA CUNNINGHAM: There's no way to stop
20 that from being an attractant, I guess is my question?

21 MS. CAROL WATSON: Not that's within our
22 jurisdiction.

23 MS. LAURA CUNNINGHAM: All right. Thank you.

24 MS. CAROL WATSON: That I'm aware of.

25 HEARING ADVISOR CELLI: So I'd like to turn this

1 now, because I think we've covered this pretty well, I
2 wanted to hear -- Ms. Anderson, you were going to address
3 the kit fox. So -- wait a minute. Before you do, let's
4 take a break.

5 I'm going to reiterate that the court reporter
6 needs business cards from all the witnesses.

7 How much of a break do you want?

8 THE REPORTER: Five minutes.

9 HEARING ADVISOR CELLI: This will be a
10 five-minute break. It is now 3:55. Let's get back in our
11 seats by 4:00 p.m. Thank you.

12 (Recess.)

13 HEARING ADVISOR CELLI: Back on the record.

14 So, Ileene Anderson, you had raised the issue
15 with respect to the kit fox. Why don't you --

16 MS. ILEENE ANDERSON: Yes. But before we do
17 that, I actually have one question that -- that I wanted
18 to ask the wildlife agencies on the avian issues before we
19 leave that. And I apologize in --

20 HEARING ADVISOR CELLI: No problem.

21 Ms. Rodriguez, you're under oath, right? So why
22 don't you come on up over to the podium and you can answer
23 this question.

24 That's who you wanted to talk to; right?

25 MS. ILEENE ANDERSON: Well, actually both

1 wildlife agencies, although I realize that only
2 Ms. Rodriguez's testimony would be under oath.

3 HEARING ADVISOR CELLI: We have substantial
4 evidence here, so let's get the evidence into the record.

5 Come on forward.

6 Go ahead, Ms. Anderson.

7 MS. ILEENE ANDERSON: So my question is this
8 whole strategy for avian avoidance minimization and
9 mitigation -- this is sort of a broad question -- but I
10 was just wondering what your agency's take was on the path
11 that the CEC staff is taking?

12 MS. MAGDALENA RODRIGUEZ: Wow. Are you talking
13 about the mitigation for migratory birds, like the amount
14 of 1.5 million, or are you talking about --

15 MS. ILEENE ANDERSON: I'm talking basically the
16 whole package, you know, as far as --

17 MS. MAGDALENA RODRIGUEZ: Well, I really -- I'm
18 not really sure how to answer that specifically, but I can
19 say that we've had a lot of discussions with REAT, with
20 all of our agencies during the process of the Palen
21 workshops, and -- and we've learned a lot through the
22 different projects, and so we're trying to, you know,
23 modify each new project and learn from the previous. And
24 so a lot of these different mitigation strategies, like
25 the mortality monitoring and the -- the adaptive

1 management approach of the 1.5 million to offset, are
2 things that we're trying to do to minimize those impacts.

3 And so, you know, CEC has the -- has the
4 permitting authority, so we're just -- as far as for the
5 Department, we are just there to provide guidance, and
6 we've done that throughout the process.

7 You know, can I say that -- that our mitigation
8 is perfect? No. And I won't say that. But I will say
9 it's a start, and hopefully through the TAC and through
10 some of the other projects and creating the mortality and
11 monitoring programs and through the survey data through
12 the other projects in my area, in the I-10 area, we'll
13 hopefully be able to learn from that, and then adaptively
14 manage some of the -- some of the impacts and some of the
15 mitigation and, you know, change that through time.

16 So that's -- that's --

17 MS. ILEENE ANDERSON: I'd also like to just hear
18 from Fish and Wildlife Services.

19 HEARING ADVISOR CELLI: If you wish to, we'll
20 allow you to comment rather than to testify if you wanted
21 to offer some comment here so we can have closure on
22 the end.

23 MR. THOMAS DIETSCH: Yeah, so --

24 HEARING ADVISOR CELLI: Please state your name
25 for the record.

1 MR. THOMAS DIETSCH: My name is Tom Dietsch.
2 I'm a migratory bird biologist with the U.S. Wildlife
3 Service here in Southern California, and I've been
4 participating through the -- the -- through the REAT in
5 discussing these mitigations and developing the mitigation
6 approaches. You know, with regard to U.S. Fish and
7 Wildlife Service Migratory Bird Treaty Act does not have a
8 mechanism for mitigation, so we cannot, as an agency,
9 accept mitigation at any take of migratory birds in
10 violation of the MBTA.

11 As far the -- the approach and effort to do
12 positive things for migratory birds, we appreciate that,
13 and we're looking forward to working with the -- the
14 project and the CEC and the other agencies to make that as
15 effective as possible.

16 As for whether the amount is adequate to
17 mitigate for those impacts is an extremely difficult
18 question to -- to answer, both in terms of understanding
19 the scale of the impacts, because at this -- at this
20 point, none of the -- the current projects are doing
21 operational monitoring, standardized monitoring, including
22 the ISEGS Project, so there's no way of quantifying what
23 that impact would be.

24 I think some of the data we're seeing gives us a
25 good indication of the composition of species that may be

1 at risk, and so that's something that's useful information
2 that we can build on. But as far as the scale of those
3 impacts, that will be determined as the -- the
4 standardized monitoring goes into place, and we'll be, you
5 know, working through the ISEGS TAC to, you know, make
6 sure that is as rigorous and robust an estimate as
7 possible. And we'll certainly work on this project,
8 should this go forward, to do the same thing.

9 And, you know, the -- I think -- yeah, I think
10 that's, you know -- for the most part, we're looking
11 forward to trying to build, you know, as effective a
12 monitoring program as possible, and we want to work with
13 the projects, once we understand those impacts, to try to
14 adaptively manage as -- as effectively as we can to
15 reduce, minimize, and eliminate those impacts. And I
16 think that goes across the board with all of these solar
17 projects that are currently coming up and nearing
18 completion.

19 And, you know, as to what exactly those adaptive
20 techniques might be, the -- the proponents have provided
21 kind of a menu, but I think there's a, you know, range of
22 those sorts of things that we'll have to learn as we go
23 what's effective, what's not, and what would not be
24 mitigable at all and what we cannot prevent. So I think
25 that's -- that's our approach as we move forward.

1 MS. ILEENE ANDERSON: Thank you.

2 HEARING ADVISOR CELLI: Thank you very much.

3 Okay. And I'd like to switch our attention to
4 the desert -- or rather to the kit fox.

5 MS. ILEENE ANDERSON: Yes. Thank you.

6 So I wanted to talk a bit about the kit fox,
7 because between the time that the PSPP permit was given
8 for that project and today, there's been quite a change
9 that's occurred in the kit fox, which is of course the
10 terrible canine distemper outbreak that was first
11 documented ever in the species adjacent to the Genesis
12 Project.

13 And I -- I wanted to comment on something that
14 was filed on October 22nd, after rebuttal testimony had
15 been -- my opportunity for rebuttal testimony had been
16 filed, specifically regarding the desert kit fox. And
17 this was a commission by California Department of Fish and
18 Wildlife veterinarians, and it certainly substantiates my
19 concerns that have been long-standing about this proposed
20 project, as well as other's, impacts to this iconic desert
21 animal.

22 We know that the kit foxes use and have made
23 dens on the proposed project site, and according to the
24 State, the passive relocation or hazing activities, which
25 are what's being proposed to get those animals off of this

1 site if this project moves forward.

2 Basically, those types of activities conducted
3 in an area experiencing or adjacent to distemper cases may
4 enhance the disease transmission and spread that through
5 the population by multiple methods.

6 That document also goes on to state everything
7 that we don't know, which is formidable. We don't know,
8 according to California Department of Fish and Wildlife,
9 and I echo this, we don't know, do the passive relocated
10 animals reestablish territories adjacent to the solar
11 site. So it would just depend on their density and
12 spacial distribution of foxes around the site. Do the
13 relocated foxes experience lower survival or different
14 causes of mortality that might need to be addressed
15 through mitigation efforts.

16 With regards to recursioning, how likely are the
17 relocated foxes going to try to get back onto the site and
18 return to former dens. We certainly know that happens,
19 but how likely is that and what sort of circumstances?

20 What's the demographic shift of neighbors?
21 What's the reproductive impact? Granted, the sample size
22 is very small, one pair, but a relocated pair this year
23 had a den failure when most of the other dens were
24 successful this year in producing pups. You know, are
25 artificial dens helpful? What are the longer term

1 translocation effects? All these questions, they called
2 out, and I echoed that, because this has been a
3 long-standing concern of mine about we don't know what
4 happens to these animals.

5 So in addition, the State also identified that
6 the current monitoring is limited in scope and inadequate
7 to address -- address the needs and methods and outcomes
8 for relo--- pardon me, they are limited in scope and
9 inadequate to address -- address the needs and methods,
10 and the outcomes for relocations are not evaluated --
11 evaluated systematically or reported.

12 I completely agree with this analysis, and I
13 think that the kit fox conditions of certification have to
14 start taking up these issues and answering them. And so I
15 strongly urge the Staff to relook at some of these
16 conditions of certification and really start looking at
17 the impacts to this species so that we don't have repeated
18 die offs as we've already experienced.

19 HEARING ADVISOR CELLI: Response by Staff? If
20 any.

21 MS. ANN CRISP: Ann Crisp, Staff.

22 Staff is aware of the kit fox distemper outbreak
23 in the region, and that is why we worked extensively with
24 BLM and Fish and Wildlife to expand on the existing
25 condition to allow for greater information gathering,

1 prepassive relocation to help reduce the potential spread
2 of the canine distemper virus.

3 In addition, we also met with Fish and Wildlife
4 and BLM to help establish the health mitigation and
5 monitoring program that Ms. Anderson cites. There are
6 questions that the program hopefully will help answer.

7 HEARING ADVISOR CELLI: Anyone else on the kit
8 fox?

9 MS. ILEENE ANDERSON: I guess just as a
10 follow-up, though, this project is not being proposed as
11 musing that, you know, in the future program that
12 hopefully will come into existence. You know, my concern,
13 I -- I don't think -- is that correct, the --

14 MS. ANN CRISP: The program currently is not
15 established, but it is hopeful that it will be established
16 by the end of the year. That is part of the condition
17 that they may opt into and that would require them to pay
18 into the program.

19 THE REPORTER: I'm sorry?

20 MS. ANN CRISP: Okay. Since the program does
21 not exist, we could not require them to pay into the
22 program, but we put in the opt-in option.

23 HEARING ADVISOR CELLI: You need to stay right
24 on top of that microphone.

25 MS. ILEENE ANDERSON: And I guess my point is,

1 since we already know some of questions that need to be
2 answered, particularly about those foxes that get
3 passively relocated, it just seems to me that in order to
4 start answering these, even in the absence of a program,
5 that it would be appropriate for the conditions of
6 certification to require that type of monitoring.

7 MS. ANN CRISP: This is Ann Crisp. Under
8 Title 14, only CDFW or its agents may capture kit foxes,
9 so we cannot require the project owner to capture foxes,
10 tag them, do any activities related to touching them.
11 Only the CDFW can do that.

12 MS. ILEENE ANDERSON: Okay. They all -- and you
13 have required them to pay into different funds to have
14 other people implement strategies for, you know, like
15 mif-wif (phonetic) and those sort of things, like there
16 can still be a requirement for CDFW to implement that type
17 of monitoring.

18 MS. ANN CRISP: And I believe that is the goal
19 of the program that we are currently working to establish.

20 MS. ILEENE ANDERSON: Right, but it's not
21 established yet.

22 MS. ANN CRISP: No, it's not.

23 MS. ILEENE ANDERSON: But you can still require
24 that they do that, that they fund that type of monitoring.
25 Wouldn't that be true? Why couldn't you, I guess would be

1 my question, because I see shaking heads?

2 MS. CAROL WATSON: Well, I think if I can just
3 step in here, and perhaps this questions needs to go back
4 to Fish and Wildlife, but this, under Title 14, we
5 can't -- we can't collar them, and so we can't require
6 anybody else to collar them. So not to put words in the
7 mouths of our agency representatives, but my understanding
8 is they have not requested that that action take place on
9 this site because, like you're saying, obviously if you
10 really thought there was an extraordinary need or
11 precaution or Fish and Wildlife had recommended we do
12 that, I think obviously, like you were saying, of course,
13 there's the option that this can happen, it happened in
14 Genesis. But the agencies have not requested us for this
15 project or recommended it as far as -- unless they want to
16 come --

17 Magdalena, do you have something to add?

18 MS. MAGDALENA RODRIGUEZ: Not really.

19 I guess to just kind of clarify or understand,
20 so you're saying to -- for them to require us to go out
21 and trap, CDFW or --

22 MS. ILEENE ANDERSON: Well, my goal is to get
23 the kit fox monitored. And it appears to me at this
24 point, your agency is the only one that can do kit fox
25 monitoring. So my goal would be to get monitoring by

1 Department of Fish and Wildlife happening. What
2 mechanism -- it seems to me like there might be a variety
3 of different mechanisms to get that to happen, and I'm
4 open to any of those. The point is to make it happen.

5 MS. MAGDALENA RODRIGUEZ: Well, okay. So --

6 MS. ILEENE ANDERSON: It sounds like there's a
7 program that's upcoming, but not here yet, but it's really
8 about to happen --

9 MS. MAGDALENA RODRIGUEZ: Right. So -- so to
10 address that, we have thought about that. Deana Clifford
11 is the veterinarian from the Department of Fish and
12 Wildlife that I've been dealing with on the kit fox issues
13 in the I-10 area with the canine distemper. And one of
14 reasons we talked about coming up with a program was just
15 for the reasons that you stated, which is we are the only
16 people who can trap, or agents of the Department can trap
17 and collar, unless it's a research project, but I mean, as
18 far as for project-related impacts.

19 So this program idea is to kind of deal with
20 that and -- because if -- if CEC came in and gave a
21 condition for us to do something like that for the project
22 proponent, it would be difficult because then we would
23 have to be paid. You know, they would have to give us
24 money and we'd have to hire someone, and there's just a
25 lot of -- there's just a lot of issues to deal with the

1 State and -- and all that.

2 So the program is hopefully set up to deal with
3 that. We are working on trying to get that program set up
4 as soon as possible. We are supposed to meet within the
5 next couple weeks with the other agencies, and, you know,
6 to try to figure out a way forward. I've given Ann the
7 outline of the project, without the specifics of the
8 monetary issues, so just an outline of what it would
9 entail, and she's docketed that. So that -- so that is
10 there, and there's always the option for Palen Solar
11 Holdings to opt into that. We want to get it done as soon
12 as possible. A lot of these projects starting up
13 construction within the next year, so it would make sense,
14 but we can't require them to do something that we haven't
15 figured out the mechanism.

16 So hopefully all of those things will be
17 answered. Otherwise, the project proponent will just have
18 to eventually do the same thing everybody else does, which
19 is passively relocate, coordinate, have a kit fox plan
20 which is detailed with all things we've learned from the
21 other projects and, you know, the only thing they won't be
22 able to do is actually trap and follow the animals.

23 So is there -- did I answer that?

24 MS. ILEENE ANDERSON: Well, I just don't --
25 yeah, I appreciate and I understand the constraints there.

1 It just seems like even though it's a hassle to have them
2 pay money to monitor, the sooner we get a handle on this,
3 the better, as far as I'm concerned, to make sure that we
4 don't have, you know -- we have more information and don't
5 have another canine distemper outbreak that affects the
6 population, particularly because this project is so close
7 to Genesis -- I mean, the nearest project to Genesis.

8 MS. MAGDALENA RODRIGUEZ: Yeah, I don't -- I
9 don't know about necessarily being a hassle, it's just
10 getting that mechanism in place. So we're hoping our
11 program is able to deal with all the projects in the area
12 and come up with a cohesive instead of just dealing with
13 one project. And it would -- I'm assuming that if we did
14 that just for this project, it would take a lot of time
15 and effort and -- I mean, I don't know how all that
16 entails, so I just was told it would be more difficult and
17 we should go the program route. But it -- the permittee
18 is CEC, so they're the ones who would require anything by
19 the Applicant, not our agencies. We can only regulate.

20 HEARING ADVISOR CELLI: Thank you.

21 Ms. Anderson, I'm wondering whether we can move
22 on to cryptobiotic soils yet?

23 MS. ILEENE ANDERSON: Yes. that would be fine.

24 Actually, Hearing Officer Celli, I had one other
25 issue that I also wanted to talk about today, and that's

1 with regards to mitigation ratio. So can I add that onto
2 the list?

3 HEARING ADVISOR CELLI: Mitigation ratio of
4 what?

5 MS. ILEENE ANDERSON: For the -- for the
6 proposed project.

7 MS. JENNIFER MARTIN-GALLARDO: Staff would just
8 like to lodge an objection that that's an issue that's
9 already been litigated. As far as the mitigation ratios,
10 those were decided in the original project, and I see no
11 reason for them to be revisited.

12 HEARING ADVISOR CELLI: Unless you have some
13 offer of proof of --

14 MS. ILEENE ANDERSON: Changed circumstances?
15 Yes.

16 HEARING ADVISOR CELLI: -- some new facts or
17 changed circumstances.

18 What is it that reopens this in your mind?

19 MS. ILEENE ANDERSON: Okay. What reopens it in
20 my mind is that that project was permitted three years ago
21 now. And in between that time -- I'm going to
22 specifically talk about Desert Tortoise, because during
23 that time there have been reports issued by the U.S. Fish
24 and Wildlife Service, who have done range-wide monitoring
25 for Desert Tortoise in that particular recovery unit, the

1 Colorado Recovery Unit, as it's now called.

2 And there have been significant declines of the
3 Desert Tortoise in that area, and so in my mind, that is a
4 changed circumstance for this project. And I wanted to
5 talk about the -- the issues having to deal with the
6 wildlife habitat management areas, the two of them that
7 are overlays of the project site, because those were
8 established to protect and enhance habitat so that
9 80 percent of the distribution of all species and all
10 natural community types in the northern and eastern
11 Colorado plan would be protected.

12 And it seems to me that this is a special
13 location, there's changed circumstances because of the
14 Desert Tortoise's continuing declines, and that I would
15 like to see the Staff revisit the one-to-one
16 mitigation meas- -- the one-to-one mitigation ratio which
17 is out there for the Desert Tortoise, but which all other
18 species mitigation would be nested in, because I think it
19 gives short shrift to the environment.

20 HEARING ADVISOR CELLI: Staff, anything? With
21 regard to your objection, Staff's objection?

22 MS. JENNIFER MARTIN-GALLARDO: No.

23 HEARING ADVISOR CELLI: Okay. Let me just say
24 this about that. We are preceding from the point of view
25 that this project -- we're really interested in the new

1 project, not the old project. There are -- conceivably
2 there's -- there's some pipeline and some new transmission
3 line.

4 MR. SCOTT GALATI: There's an 1125-foot shift to
5 the left in the existing transmission line for some
6 portion of it.

7 HEARING ADVISOR CELLI: All right. But as to
8 the footprint of the project, that would be irrelevant.
9 So I want -- so the only way I could open this up would be
10 to talk about these new parts of the project that weren't
11 analyzed before, and that would be the pipeline and the
12 transmission lines.

13 Did Staff do an analysis of those impacts to
14 Desert Tortoise from these new aspects of the project
15 outside the footprint?

16 MR. CHRIS HUNTLEY: Chris Huntley. Yes, we did.

17 HEARING ADVISOR CELLI: Okay. And what would --
18 was there a ratio or any sort of mitigation that was
19 recommended?

20 MR. CHRIS HUNTLEY: We applied the same
21 mitigation ratios that were adjudicated for the PSPP
22 Project, which was one to one for areas outside of
23 critical habitat for Desert Tortoise, and five to one for
24 areas that were located within the critical habitat for
25 Desert Tortoise.

1 MS. LISA BELENKY: Mr. Celli, I'm just trying to
2 clarify. Are you making a ruling about whether changed
3 circumstances are present or are you --

4 HEARING ADVISOR CELLI: I'm trying to ascertain
5 what the relevance would be at this moment.

6 MS. LISA BELENKY: Ms. Anderson has testified to
7 changed circumstances. Under CEQA generally changed
8 circumstances can be brought in, even if we've already
9 approved a project, to ask for reconsideration of various
10 issues. Whether you think it rises to that level or not
11 seems to be a legal question, and I didn't ask for a
12 ruling on that legal question. Perhaps Staff is asking
13 for legal ruling on that legal question, but
14 Ms. Anderson's testimony is that there are changed
15 circumstances because of the status of one of the species,
16 the key species, that is relevant to a lot of the
17 mitigation, and that she's testifying as to the fact that
18 she thinks it isn't adequate.

19 HEARING ADVISOR CELLI: Okay. But I think --
20 here's what I would like to know, Ms. Anderson.
21 Ultimately, your testimony is going to be that you don't
22 believe this is adequate, the ratios are adequate; right?

23 MS. ILEENE ANDERSON: I think that the ratios
24 could be improved.

25 HEARING ADVISOR CELLI: All right. And I'm

1 just -- I'm just wondering how much of this is a factual
2 question that we need to spend with these witnesses versus
3 something that you can put in your brief?

4 MS. ILEENE ANDERSON: I don't do briefs.

5 MS. LISA BELENKY: I think we can certainly put
6 the legal argument in our brief, but I thought that
7 Staff's objection was to her testifying as to the changed
8 circumstances for the tortoise.

9 HEARING ADVISOR CELLI: Well, I think she's made
10 her --

11 MS. LISA BELENKY: And mitigation.

12 HEARING ADVISOR CELLI: I think she's made the
13 point, that's in the record now, but I don't really know
14 how much more we have to dwell on that. Really. That's
15 what I'm trying to get to. What do you think? I think
16 that the point is that that evidence is now on the record.

17 MR. SCOTT GALATI: Yeah, that evidence is in the
18 record, but I'm not sure we agree that what she is citing
19 is actually changed circumstances. We may have an opinion
20 on the panel of whether that data was available earlier or
21 not. I'm not sure exactly what she's identifying. Maybe
22 she can identify which exhibit.

23 HEARING ADVISOR CELLI: Before I -- but it seems
24 to me like a real side show, I don't really -- I'm not
25 sure I want to spend a lot of time on it. We've got some

1 other issues that we've laid out. What happened to my
2 list of the -- we --

3 MS. ILEENE ANDERSON: Hearing Officer Celli,
4 I've basically said everything I have to say about that
5 issue, so if there's any questions or other things --

6 HEARING ADVISOR CELLI: I think we're done.
7 That's good. Thank you.

8 Let's get into Cryptobiotic Soils.

9 MS. ILEENE ANDERSON: Okay. So cryptobiotic
10 soils, the glue that holds the desert together, and they
11 provide safe sites for species I care about that foresee
12 germination, also provide increased soil stability,
13 porosity and water retention.

14 My concern is that the FSA does not evaluate the
15 extent of these types of soils on the proposed project
16 site, and therefore no analysis was done beyond the direct
17 impact to the species that make up this micro community,
18 and I won't bore you with the details of the fungi and
19 algae that make that up. The functioning stabilizing
20 probe is also a key component in minimizing PM-10s, which
21 I realize we haven't gotten all of the air quality
22 information yet. But, you know, from my perspective, that
23 dust component that these soils help to stabilize affect
24 the health not just of the wildlife and plants that I'm
25 concerned about, but also the residents and visitors to

1 the Chuckwalla Valley. And my concern is that, you know,
2 these are really important parts of the desert ecosystem
3 on many different levels, and the FSA has not to date
4 evaluated the extent of these important soil types on --
5 or soils on the project site and then evaluated the actual
6 impact to these.

7 HEARING ADVISOR CELLI: So I'm going to turn
8 this over to Staff. I just have some comment from my own
9 experience having read the FSA, I remember mention of
10 cryptobiotic soil.

11 MS. JENNIFER MARTIN-GALLARDO: And just for the
12 record, I -- I'd like to object because the issue was
13 litigated in the PSPP Project.

14 HEARING ADVISOR CELLI: Oh, okay. Let me hear
15 from your experts on this quickly.

16 MS. CAROL WATSON: This is Carol Watson. I was
17 actually just looking through our comments because I
18 believe we have addressed this, either in our response to
19 comments or in testimony. So if you'd just give me some
20 moments, I could look for that. I think Chris might have
21 something further to add.

22 HEARING ADVISOR CELLI: Here's what I'd like. I
23 mean, really, the assertion from Ms. Anderson is that
24 there are cryptobiotic soils, after the explanation, the
25 importance of that the FSA doesn't analyze the

1 cryptobiotic soils. And I know there's some mention, I
2 don't remember exactly where.

3 MR. CHRIS HUNTLEY: We do actually have some
4 discussion of biotic soil crusts. I think it's on
5 Page 4.2-189. However, I think it is fair to say that
6 Staff does not believe the site supports a large quantity
7 of cryptobiotic soil because of the dunes and it's -- the
8 sediment would swallow most of those communities up.
9 Generally, these plants, these types of soil crusts occur
10 on more stabilized areas and not generally in the dunes
11 and stabilized sand communities.

12 MS. ILEENE ANDERSON: Can I ask another
13 question, then?

14 HEARING ADVISOR CELLI: Yes.

15 MS. ILEENE ANDERSON: You know, I thought that
16 the project was mostly outside of the dune area, and so
17 that's why I am still concerned about the cryptobiotic
18 soils. Because, you know, there's -- I still have -- you
19 know, some of it is in that sand transport corridor, but
20 there is also a larger proportion of it that's off that
21 site in the alluvial fan area.

22 MR. CHRIS HUNTLEY: We don't disagree that soil
23 crusts occur on some portions of the project site;
24 however, most of the areas within the sand transport one,
25 two, and three probably do not support soil crusts just

1 because of the sand covering up those areas.

2 So again, we did not in the FSA provide a
3 detailed analysis of the amount of soil crust on the
4 project site. But this was adjudicated in the PSPP
5 Project and we carried that analysis forward.

6 We did talk about the uncertainty of their role
7 in accumulating carbon, and we put that in the FSA, and
8 it's there if you want to take a look at it.

9 MS. CAROL WATSON: Just to rejoin my comment --

10 HEARING ADVISOR CELLI: You know what,
11 Ms. Watson, if you talk sideways, it won't happen. You
12 have to talk right into the microphone.

13 MS. CAROL WATSON: Sorry. It's hard for me
14 to read and talk.

15 HEARING ADVISOR CELLI: Let it do the work for
16 you. Talk into it.

17 MS. CAROL WATSON: So there was a CBD letter
18 that was dated July 29th, 2013, containing Staff's
19 response. And Staff responded to that on Page 42-235 of
20 the FSA.

21 HEARING ADVISOR CELLI: Thank you.

22 Okay. Now, I have on my list the next thing was
23 Land Facets.

24 Was that your issue or was that somebody else's
25 issue?

1 Okay. Ms. Flanagan, go ahead.

2 MS. PAT FLANAGAN: So I guess if you haven't
3 heard about them, they are not well known. But it's
4 the --

5 HEARING ADVISOR CELLI: Don't make that
6 assumption because I'll have you know I am not the
7 smartest brain in this room.

8 MS. PAT FLANAGAN: It's -- the method based on
9 peer-reviewed research that South Coast Wildlands chose to
10 deal with climate change in that they couldn't forecast
11 what animals and plant communities would be going forward,
12 so the idea is to preserve connectively the topographical
13 features.

14 So in my comments that I presented beforehand, I
15 chose the Desert Tortoise, but really the Desert Tortoise
16 in terms of land facets is a stand-in. It's an umbrella
17 species for coachwhip, glossy snake, desert horned lizard,
18 western banded gecko, and leaf-nosed snake, and many other
19 desert habitats.

20 Oh, I was told to slow down.

21 HEARING ADVISOR CELLI: We can understand you
22 fine.

23 THE REPORTER: It's for me.

24 HEARING ADVISOR CELLI: Oh, better slow down.

25 MS. PAT FLANAGAN: Okay. I will slow down.

1 And that also the Desert Tortoise was found on
2 flats, valleys, alluvial fans, bajadas, sand dunes, rocky
3 outcrops, mountain slopes, and gently sloping hills in
4 creosote bush, scrub, saltbush scrub, Blackbush scrub,
5 cheesebush scrub, and scrub steppe communities.

6 So, when mitigating for land facets, you don't
7 mitigate the same way you would to find new habitat, for
8 instance, for Desert Tortoise. You need to look to see
9 how you can continue, for instance, the low elevation
10 gentle canyons, if they're in an area and they're going to
11 be compromised, how do you keep that going.

12 So land -- that's an example of a land facet, a
13 low elevation gentle canyon, a low elevation steep canyon,
14 steep canyon bottoms, high elevation gentle canyons. I
15 don't need to continue with that, I'm sure you get the
16 point.

17 So I would like to see that there is an analysis
18 of this in the land facets, which are presented in
19 Penrod's report for desert connectivity to see how these
20 land facets are compromised by this large project which
21 fits right across the connectivity. And it's not to have
22 them say, Well, it's Desert Tortoise, we're doing this and
23 this for Desert Tortoise, but in this case, the Desert
24 Tortoise is a stand-in for a number of other species and
25 for these land facets.

1 And this is new idea, but I think it's
2 definitely worth merit to follow through on it.

3 HEARING ADVISOR CELLI: I'm going to ask --
4 well, Ms. Karl, you can respond because you look like you
5 want to, and then I'm going to ask Staff basically to
6 explain why you analyze what you analyze.

7 But go ahead, Dr. Karl.

8 DR. ALICE KARL: Okay. So it's a really
9 interesting paper and very detailed, they did a lot of
10 work. There are few problems with it. The land facets
11 are based on GIS layers of coarse grain, and so they --
12 and there's nothing really to suggest that tortoises
13 follow any specific land facet. And so just because there
14 are features and you get them from year to year and
15 through climate change, that doesn't mean that tortoises
16 live there. And in fact, the authors state the very same
17 thing, they say our preliminary analysis doesn't mean that
18 the habitat's suitable just because we've done this
19 analysis.

20 And then in the end, they do a bunch -- they do
21 a number of different analyses, and in the end they use --
22 they fall back on the 2009 Nussear model for perpetual
23 presence called a habitat model, and which was used in the
24 PSPP project and for analysis. And it ends up that
25 there's a really huge area of connectivity which goes well

1 beyond the project east and west, and -- and -- but -- so
2 it's -- it's not that this particular location isn't a key
3 connectivity area, the project is not, it's based on these
4 land facets, but they actually don't use the land facets
5 in the end.

6 HEARING ADVISOR CELLI: Thank you.

7 Mr. Huntley, please.

8 MR. CHRIS HUNTLEY: Chris Huntley. Our analysis
9 for connectivity was based in a sense -- and forgive me --
10 land facets, in our language, is for providing
11 connectivity. We're basically allowing for or ensuring
12 that there's adequate space for animals to move, live, and
13 reproduce. For the Desert Tortoise, they're called a
14 corridor dweller. They don't typically move from point A
15 to Point B over great distances. They're capable of it,
16 but they generally don't. They breed with their
17 neighbors, they breed with their neighbors, breed with
18 their neighbors. And so maintaining connectivity for
19 species like that is important by preserving large areas
20 of land. And when we did our analysis, we considered
21 Desert Tortoise linkages.

22 We had a similar discussion, I believe it was
23 this morning, on, you know, wildlife corridors and
24 connectivity for Alternatives. We considered the existing
25 habitats available. We considered the project and the

1 cumulative project's effects on wildlife connectivity.
2 And we found that with the proposed mitigation, it would
3 be less than significant than we could mitigate for.

4 Thank you.

5 HEARING ADVISOR CELLI: Go ahead, Ms. Flanagan.

6 MS. PAT FLANAGAN: So it's unfortunate that I
7 chose to follow in this -- with the Desert Tortoise,
8 because the Desert Tortoise, as I said, is an umbrella
9 species for a number of other species. And so whether
10 they -- and so they look at the suite of communities that,
11 and topographic areas that the tortoise would inhabit, and
12 that is the important part. It's not necessarily the
13 tortoise, and that those other species have the
14 opportunity to go forward. So it's not just -- it's not
15 just one corridor, it works its way all way up the whole
16 desert. So I --

17 HEARING ADVISOR CELLI: I just want to point out
18 that just from reading tons of things about Palen right
19 now, but one of the things I remember reading in the FSA
20 was that the land connectivity was treated as a subject,
21 like it's a heading basically --

22 MS. PAT FLANAGAN: Right.

23 HEARING ADVISOR CELLI: -- and deal with the
24 land connectivity in terms of impacts, the usual direct,
25 indirect, and cumulative.

1 MS. PAT FLANAGAN: And this is in the South
2 Coast Wildlands report, there's Desert Tortoise
3 connectivity, and then there's the land facets
4 connectivity, and they're separate but combined. So it's
5 not just about the tortoise.

6 Thank you for listening.

7 HEARING ADVISOR CELLI: Thank you. That's why
8 we're here.

9 We're going to listen now about State Waters.

10 Ms. Anderson?

11 MS. ILEENE ANDERSON: This is my last issue. My
12 computer has now ran out of juice, so this is it.

13 So I'm concerned about this new proposed project
14 footprint that actually increases the impacts in the state
15 jurisdictional waters from 312 that was permitted in the
16 old project, if you will, to 374.7. That's about a
17 20 percent increase. I also wonder, these waters are
18 supposed to be mitigated at a three-to-one ratio, which I
19 don't have any complaint with, but I do wonder if there is
20 actually over 1100 acres of state waters that are actually
21 available for acquisition in the area, and then what is
22 the mechanism to actually conserve those in perpetuity. A
23 lot of times that goes to the adjacent land manager, and
24 the adjacent land manager in this area is often the BLM.
25 And, you know, clearly that mitigation, if it goes into

1 BLM jurisdiction, there is no actual guarantee that that
2 mitigation will then be conserved in perpetuity for the
3 purpose that is was acquired for.

4 And so I was just wondering about the -- I had
5 two questions. One, is there 1100 acres out there; and
6 two, where is it and how can it be conserved in
7 perpetuity?

8 HEARING ADVISOR CELLI: Is that to Staff that's
9 here? Mr. Huntley?

10 MR. CHRIS HUNTLEY: Chris Huntley. The impacts
11 for the mitigation lands for state waters, we would allow
12 to be nested within mitigation lands for Desert Tortoise,
13 which are required to be preserved in perpetuity. So if,
14 for example, we're acquiring had 4,800 acres of Desert
15 Tortoise habitat, and there's a suitable amount of
16 appropriate repairing habitat within that, we would allow
17 that first to be nested, so it would be protecting the
18 perpetuity.

19 We've spoken to the Department of Fish and Game
20 about the availability of these resources in the region,
21 and they've indicated that there is adequate land in the
22 region, whether or not it's available for sale at an
23 appropriate price is the question. But we believe that
24 the mitigation approach is reasonable, and we believe what
25 we proposed in the FSA.

1 MS. ILEENE ANDERSON: And can you remind me, in
2 the condition of certification, is there a requirement for
3 it being in the area?

4 MR. CHRIS HUNTLEY: I believe for the Desert
5 Tortoise mitigation, we requested that it provide linkages
6 and other things within the area. For state waters, I'll
7 have to look just to make sure so I don't misspeak.

8 On Bio 21, Section 1, is the mitigation impact
9 to state waters that would occur within the Chuckwalla,
10 East Salton Sea, Hayfield, Rice or portion of Whitewater
11 within the NECO, or the Palo Verde Watershed and be
12 prioritized within the Chuckwalla Hydrologic Units in the
13 Palen or adjacent watersheds. So the intent is to acquire
14 land in the region.

15 MS. ILEENE ANDERSON: I have no further
16 questions.

17 HEARING ADVISOR CELLI: Thank you.

18 So the way I'd like to conclude Bio is everybody
19 has been patiently listening, I'm going to run one last
20 time through the panel of -- of attorneys so you can ask
21 your questions, then I want to take everyone's evidence,
22 then we would conclude Bio.

23 It's 4:57 now. I note that we have a 6:00
24 o'clock public comment period. We have a very patient
25 Riverside County fire chief sitting here, and we're going

1 to get to you as soon as -- immediately following Bio.

2 So let's start with Mr. Galati. Do you have any
3 questions of this panel?

4 MR. SCOTT GALATI: No questions.

5 HEARING ADVISOR CELLI: Staff?

6 MS. JENNIFER MARTIN-GALLARDO: No questions.

7 HEARING ADVISOR CELLI: Californians for
8 Renewable Energy?

9 MR. ALFREDO FIGUEROA: No questions.

10 HEARING ADVISOR CELLI: Basin and Range Watch?

11 MS. LAURA CUNNINGHAM: No.

12 HEARING ADVISOR CELLI: Center for Biological
13 Diversity?

14 MS. LISA BELENKY: No questions at this time.

15 HEARING ADVISOR CELLI: Okay. Thank you, Panel.

16 That concludes the Biology -- Biological Resources Section
17 of these evidentiary hearings.

18 It's 5:00 o'clock now. Maybe we can finish this
19 before the 6:00 o'clock.

20 MS. LAURA CUNNINGHAM: Mr. Celli -- excuse me,
21 I'm sorry.

22 HEARING ADVISOR CELLI: Ms. Cunningham.

23 MS. LAURA CUNNINGHAM: Basin and Range Watch
24 needs to leave, and we thank you for allowing us to
25 participate.

1 HEARING ADVISOR CELLI: Thank you very much for
2 your participation. It was great to have you.

3 MS. LAURA CUNNINGHAM: Thanks.

4 HEARING ADVISOR CELLI: I'm going to ask
5 Mr. Galati if you have a motion regarding Biological
6 Resources?

7 MR. SCOTT GALATI: There are a lot of exhibits
8 for Biological Resources. I'll go very slowly. I'll try
9 to look at the court reporter to make sure that -- I'd
10 like 1003, 1004, 1005, 1006, 1010, 1012, 1013, 1014, 1019,
11 1021, 1022, 1026, 1027, 1032, 1035, 1036, 1037, 1038,
12 1040, 1041, 1047, 1048, 1049, 1050, 1057, 1058, 1059,
13 1060, 1061, 1062, 1068, 1070, 1071, 1072, 1075, 1077,
14 1078, 1080, 1082, 1083, 1084, 1085, 1086, 1087, 1088,
15 1089, 1090, 1091, 1093, 1094, 1095, 1096, 1097, 1098,
16 1099, 1100.

17 I'd like those moved into evidence, and a round
18 of applause for the Applicant who paid for every one of
19 those exhibits.

20 HEARING ADVISOR CELLI: Staff, any objection to
21 the admission of those exhibits?

22 MS. JENNIFER MARTIN-GALLARDO: No objection.

23 HEARING ADVISOR CELLI: Any objection from
24 Californians for Renewable Energy?

25 MR. ALFREDO FIGUEROA: I just wanted to say were

1 our exhibits included?

2 HEARING ADVISOR CELLI: Yes.

3 MR. ALFREDO FIGUEROA: Okay. That's it. We're
4 going to have to leave, so thank you very much for
5 allowing us this opportunity to be here.

6 Also, glad that we stayed today, too, because it
7 really made things -- a lot of difference, so thank you.

8 HEARING ADVISOR CELLI: Thank you, Mr. Figueroa.
9 And I take it you have no objection, then, to the
10 introduction of the Bio exhibits from --

11 MR. ALFREDO FIGUEROA: No objection.

12 HEARING ADVISOR CELLI: And CBD?

13 MS. LISA BELENKY: No objections.

14 MS. JODY FRASER: Can I ask a procedural
15 question?

16 HEARING ADVISOR CELLI: Let me just finish this
17 motion.

18 MS. JODY FRASER: Okay. Sorry. I apologize.

19 HEARING ADVISOR CELLI: Unless you want to --
20 were going to object to some exhibit.

21 MS. JODY FRASER: No.

22 HEARING ADVISOR CELLI: Okay. Hold the thought.

23 MS. JODY FRASER: Okay.

24 HEARING ADVISOR CELLI: The exhibits -- motion
25 to move into evidence Exhibits 1003, 1004, 1005, 1006,

1 1010, 1012, 1013, 1014, 1019 1021, 1022, 1026, 1027, 1032,
2 1035, 1036, 1037, 1038, 1040, 1041, 1047, 1048, 1049,
3 1050, 1057, 1058, 1059, 1060, 1061, 1062, 1068, 1070,
4 1071, 1072, 1075, 1077, 1078, 1080, 1082, 1083, 1084,
5 1085, 1086, 1087, 1088, 1089, 1090 1091, 1093, 1094, 1095,
6 1096, 1097, 1098, 1099, and 1100 are received into
7 evidence.

8 HEARING ADVISOR CELLI: Any motion by Staff on
9 Bio?

10 MS. JENNIFER MARTIN-GALLARDO: Yes. Staff moves
11 to enter into evidence Exhibits 2000, 2003, 2005, and
12 2008.

13 HEARING ADVISOR CELLI: Any objection, CBD?

14 MS. LISA BELENKY: No objection.

15 HEARING ADVISOR CELLI: Petitioner, any
16 objection?

17 MR. SCOTT GALATI: No objection.

18 HEARING ADVISOR CELLI: There being no
19 objection, Exhibits 2003, 2000- -- I'm sorry, 2000, 2003,
20 2005, and 2008 are received into evidence.

21 HEARING ADVISOR CELLI: CBD, you have a motion?

22 MS. LISA BELENKY: Yes. We have Exhibits -- I'm
23 wondering if I can say sets, 3000 through 3050, inclusive,
24 and 3052 through 3064, inclusive.

25 HEARING ADVISOR CELLI: Any objection,

1 Petitioner?

2 MR. SCOTT GALATI: No objection.

3 HEARING ADVISOR CELLI: Staff?

4 MS. JENNIFER MARTIN-GALLARDO: No objection.

5 HEARING ADVISOR CELLI: There being no
6 objection, Exhibits 3000 through 3050, inclusive, are
7 received into evidence and Exhibits 3052 through 3064 are
8 received into evidence.

9 Thank you, parties. That closes Bio.

10 Now, let's call the witnesses down on the Fire
11 Protection and Worker Safety section.

12 MS. EILEEN ALLEN: Don't forget Jody.

13 HEARING ADVISOR CELLI: Oh, I'm sorry, did you
14 want to -- I need you on a microphone so we can all hear
15 you.

16 MS. JODY FRASER: Sorry. Just a quick
17 procedural question. I'm Jody Fraser with the Fish and
18 Wildlife Service, U.S. Fish and Wildlife Service.

19 I didn't bring my violin, but as many of you
20 know, we were furloughed for a couple weeks and thereby
21 unable to digest the FSA, nor were we able to complete,
22 you know, the whole docket, read the whole docket.

23 So our hope is that we will have the opportunity
24 to provide comments on the FSA and the subsequently
25 submitted docketed materials.

1 HEARING ADVISOR CELLI: Of course.

2 MS. JODY FRASER: Prior to the decision.

3 HEARING ADVISOR CELLI: One of the great things
4 about the Energy Commission system is that comments are
5 always welcome.

6 MS. JODY FRASER: Okay.

7 HEARING ADVISOR CELLI: And now you can do it
8 electronically. You go to the website and you check
9 eComments. And you click on that and you upload it, and
10 there you have it.

11 The comments are obviously too late to fit into
12 the FSA, so your comments will have to be worked into the
13 PMPD at this point, but yes, certainly you can file the
14 comments anytime. You can file your comments after the
15 PMPD, in fact. You can file them even after the full
16 Commission makes a decision. We accept comments.

17 MS. JODY FRASER: Okay. Thank you for your
18 clarification.

19 HEARING ADVISOR CELLI: Thank you.

20 Okay, ladies and gentleman, for our grand
21 finale, Fire Safety and Worker -- Worker Safety and Fire
22 Protection.

23 Let's see if we have -- sir, your name?

24 MR. WES ALSTON: Wes Alston, consultant with
25 Centerline.

1 THE REPORTER: I'm sorry, consultant with what?

2 MR. WES ALSTON: Wes Alston, with Centerline.

3 HEARING ADVISOR CELLI: Consultant for

4 Centerline. Thank you.

5 And Dr. Greenberg.

6 DR. ALVIN GREENBERG: Dr. Alvin Greenberg,

7 Energy Commission Staff, author of the Worker Safety Fire

8 Protection section.

9 DEPUTY CHIEF DORIAN COOLEY: Dorian Cooley,

10 Deputy Chief, Riverside County Fire Department.

11 HEARING ADVISOR CELLI: I'm sorry, you want to

12 say that again. Deputy Chief --

13 DEPUTY CHIEF DORIAN COOLEY: Again,

14 Dorian Cooley, Deputy Chief, Riverside County Fire

15 Department.

16 HEARING ADVISOR CELLI: Thank you. If you'd all

17 please rise, raise your right hand.

18 Do you solemnly swear to tell the truth, the

19 whole truth, and nothing but the truth under penalty of

20 perjury under the laws of the state of California?

21 (All answered in the affirmative.)

22 HEARING ADVISOR CELLI: Thank you. Please be

23 seated.

24 Now, Staff and Applicant, this is -- oh, this

25 isn't the Staff's issue, really, isn't it Petitioner and

1 -- whose issue is this?

2 MR. SCOTT GALATI: It's our issue.

3 HEARING ADVISOR CELLI: Okay. So you want -- is
4 your witness prepared to kick us off?

5 MR. SCOTT GALATI: He is.

6 HEARING ADVISOR CELLI: Okay. And that would be
7 Mr. Alston. Please, go ahead.

8 MR. WES ALSTON: Good evening. We would like to
9 go to the conditions really quick that -- to make this
10 real easy and get down to our point here.

11 Worker Safety 1 through 6, we agree with.
12 Worker Safety 8 through 12, we agree with. And so we'd
13 like to contest Worker Safety 7, which is the mitigation
14 portion, the financial mitigation portion of the
15 conditions of --

16 MS. JENNIFER MARTIN-GALLARDO: If I can
17 interrupt just briefly for a procedural issue, there is a
18 Worker Safety Number 5 that has been provided late, that
19 is what -- what you've just agreed to, but I need to get
20 that as an exhibit into the record, and would like to move
21 into evidence that revised Worker Safety 5 as Exhibit
22 Number 2012.

23 HEARING ADVISOR CELLI: Let's mark it for
24 identification now, and then we'll bring motions at the
25 end.

1 Exhibit 2012 for identification is the PSEGS
2 Staff proposed revision to Condition Worker Safety 5.
3 It's Exhibit 2012.

4 Okay. So can Ms. Martin-Gallardo, can I have
5 Mr. Alston resume testimony?

6 MR. WES ALSTON: Yes. And on Worker Safety 5,
7 can I quickly object to something? That it's asking for
8 60 days prior to the start of mobilization on the site.
9 If there's no mobilization on the site, there's really
10 nowhere to put a first aid kit or AED, so we'd like to
11 have that probably at the start of mobilization.

12 DR. ALVIN GREENBERG: Mr. Celli, if I can
13 explain, that's not what it says. That particular change
14 did come from the Applicant. If you look at the
15 verification, it's within 14 days after the start of
16 mobilization that external -- that AEDs and trauma first
17 aid kits would be on the site.

18 What we're asking for, and again, this was
19 proposed by the Applicant, 60 days prior to the start of
20 site mobilization, it's a -- the plan for locating the
21 AEDs and the first aid kits would be provided. So it's
22 just the plan 60 days; the actual kits 14 days after site
23 mobilization.

24 MR. SCOTT GALATI: If I could clarify for the
25 record, I apologize. Mr. Alston flew in from Europe last

1 night about midnight. He was gone when this came up. And
2 I just want to clarify for the record, the current version
3 of Worker Safety 5 that you see in front of you is
4 acceptable to the Applicant. So that's why he has --

5 MR. WES ALSTON: My apologies.

6 HEARING ADVISOR CELLI: Just being vigilant.

7 Okay. Worker Safety 5 is acceptable.

8 Okay. So we're back down to Worker Safety 7
9 only.

10 MR. WES ALSTON: Worker Safety 7, which would be
11 the mitigation dollars.

12 We agree that the fire department needs some
13 resources out there. They're without the appropriate
14 resources for high-angle rescue and technical rescue
15 region wide, and I want to emphasize region wide for all
16 of the Coachella Valley.

17 This Applicant is willing to pay the
18 \$1.2 million for the equipment. We're willing to pay the
19 \$284,000 for three years for staffing. So for the first
20 three years of operation, they would be fully staffed.
21 And then we are willing to pay one-eighth of the cost of
22 the ongoing operation for that specific unit. And
23 one-eighth because we believe we're only one-eighth
24 portion of the total number of projects that are out there
25 in the Valley.

1 Eight of these projects are PV projects that
2 currently have current CEP numbers with the County that
3 would required to put full -- be provided with Board
4 Supervisor's Policy B-29 monies at \$150 an acre, which
5 amounts to about \$14.2 million. So we believe that from
6 those B-29 monies they are receiving and our contribution
7 of equipment and the originating cost for the first three
8 years of construction, that our ongoing operation costs
9 should be sufficient at \$85,000 a year.

10 HEARING ADVISOR CELLI: And that \$85,000 is
11 one-eighth of the cost?

12 MR. WES ALSTON: One-eighth of the cost.

13 HEARING ADVISOR CELLI: Okay. Staff?

14 DR. ALVIN GREENBERG: Staff does disagree with
15 that particular analysis for a couple of reasons. First
16 off, Deputy County Counsel Tiffany North had to leave, but
17 she did file a written analysis of this, and the County
18 takes issue with the analysis of the Applicant's witness.
19 Specifically, there seems to be a difference of opinion
20 between the County and the witness as to the number of
21 projects that are actually viable and paying B-29 money.
22 Some of the projects have duplicate numbers, and so while
23 we may have correctly listed the project numbers, they're
24 still referring to the same project.

25 But I think more importantly, Staff did not

1 consider those other projects. Because, quite frankly,
2 the Energy Commission has no control over those other
3 projects. And I think a fairer metric might be to ask the
4 Applicant what would they be paying if they were not on
5 Federal land, and what would they be paying, then, in B-29
6 monies or in property tax monies.

7 What we have here is a rare situation where the
8 Applicant, or more correctly the Petitioner, and the fire
9 department have not been able to reach an agreement.
10 That's very rare. I can only think of three instances in
11 the 20 years that I've been working with the Energy
12 Commission on Worker Safety and Fire Protection issues
13 that I have had to suggest or propose mitigation. And so
14 it's very rare that Staff should do this. But we have
15 done this in this case because of the lack of an agreement
16 between the parties.

17 The issue of the other projects would come into
18 play if I based my recommendation for mitigation on a
19 cumulative impact. My recommendation is based on a direct
20 incremental impact of the PSEGS project, not as a
21 cumulative project. So there's the two -- I just gave you
22 three reasons why I disagree with the Petitioner's expert.

23 Now, to summarize, one, there is a difference of
24 opinion as to whether or not there are eight separate
25 projects paying that amount of money; number two, this is

1 an individual impact; and Number three, the impact that I
2 determined was based mostly, as I've stated in my FSA
3 section, on a matrix of impacts that I developed for the
4 Energy Commission Projects, the ones that we have
5 licensing authority over.

6 The matrix of emergency response needs may be
7 imperfect, maybe that could be tweaked, but that is the
8 best available information that I had. And I did consider
9 the Fire and Emergency Services risk assessment that the
10 Petitioner's expert provided. I also considered the
11 statements and the written comments from Riverside County
12 Fire Department.

13 Staff has never written 25 pages on fire
14 mitigation before for a -- for a proposed energy project.
15 I went over everything as best I can, but I want to
16 emphasize that Staff cannot supplant the opinion of a
17 local fire authority in their strategic planning with our
18 own opinion. Certainly, if it doesn't pass a red phase
19 test, we've gone up against fire departments in the past.
20 It's rare, but we have differed with them, and we will if
21 it's not a reasonable approach that they're taking. But
22 when a fire department conducts its own strategic
23 planning, we cannot replace our opinion with the fire
24 department's opinion. We give great weight to a fire
25 department.

1 Towards that then, I would like to let Deputy
2 Chief Cooley respond also to the Petitioner's expert's
3 statement.

4 DEPUTY CHIEF DORIAN COOLEY: Thank you. I'm
5 going to address several things that were said, as well as
6 briefly discuss the FSA that was submitted for this
7 project.

8 As Dr. Greenberg mentioned, a lot of work has
9 gone month into this, a lot of testimony has been given,
10 as well as written documentation. We appreciate all the
11 time and effort that the Staff has spent working on this.

12 I want to talk briefly about what was previously
13 submitted, our rescue plan for Battalion 8 to serve these
14 major industrial solar projects.

15 Within the FSA, Dr. Greenberg talked about the
16 significant amount of manpower that it may take for these
17 specialized or what we call technical rescues that can
18 occur as a result of these projects. These projects
19 provide, unfortunately, the opportunity for workers'
20 accidents that we will have to respond to.

21 In looking at these and we talked about
22 technical rescues, we have great concerns about our
23 ability with the current resources that are in the area to
24 handle this. These rescues are more complex. In addition
25 to the training and equipment that we've talked about,

1 there is a significant need for increased manpower out
2 there.

3 Our standard response plan, which I have a copy
4 of here and will provide, advises us that for technical
5 rescues, including confined space, trench rescue, high
6 angle, our standard response plan in Riverside County
7 calls for the response of the battalion chief, three fire
8 engines, a squad, if available, an ambulance, a truck
9 company, Hazmat unit. That normal response is 21 persons.

10 Within the area of Blythe, there are nine
11 persons in our normal staffing, at the Desert Center
12 station was three persons. Part of their argument has
13 gone to the fact that these personnel are at slower
14 stations, and thus are considering them to be
15 underutilized. Unfortunately, in a great number of the
16 persons that it takes to conduct these rescues,
17 underutilized staff does not mean that we have sufficient
18 staff out there to handle this.

19 Our normal response for technical rescues
20 includes the truck company, as we spelled out before. The
21 truck company will respond with four persons that are
22 highly trained in these rescues, supported by multiple
23 engine companies. We could have taken the normal response
24 and suggested to the CEC and for this Applicant that we
25 put a ladder truck out there fully staffed with four

1 persons. However, we took a more calculated assessment of
2 this and said how can we best serve the needs out there.
3 Understanding that these projects are spread all over, how
4 can we best serve this. And our response is actually less
5 than that and more measured. So this is not gold plating
6 on what we've done with our department.

7 In Dr. Greenberg's report, he talks about the
8 significant number of personnel that will be required. He
9 also talks about the weather impacts that affect us as we
10 work out there. As you're all aware, this is a desert
11 environment, and a significant portion of year, we're
12 dealing with very high temperatures. Our experience is
13 that we have to rotate personnel out frequently, and rehab
14 takes an extended length of time to get them hydrated,
15 their blood pressures and pulses down, and their bodies
16 physically cooled down. Again, very labor-intensive to
17 do.

18 I wanted to read a quote from the FSA that was
19 written by Dr. Greenberg.

20 "Staff believes the probability of hazard
21 resulting in worker injuries at solar power plants on
22 construction is actually very likely, almost a certainty,
23 and not remote or improbable. Staff believes that an
24 argument made in the report that there is little if any
25 chance that an event would occur at the proposed PSEGS and

1 that fire and emergency services would rarely, if ever, be
2 needed, even if accurate, is not an acceptable approach to
3 fire protection and emergency response. Fire departments
4 must plan for the possible, not the probable, and Staff
5 believes that unless chances of an event are so remote as
6 to be beyond the scope of reality, fire departments must
7 plan for those events.

8 "Determining mitigation payments based on an
9 estimated future use -- use, excuse me, is not appropriate
10 fire protection. Even if the need for high-angle rescue
11 occurred only once in 30 years, Staff is confident that
12 the life of worker is worth the investment in
13 rescuability.

14 "Most homeowners and business owners never have
15 the need for fire emergency services in their lifetime,
16 and yet all pay for those services regardless of use. The
17 fact that a solar tower environment is inherently risky
18 and that smoke events have already occurred in the towers
19 at Ivanpah with staff, which is probably listed in Table
20 6.5 or an asterisk.

21 "The core statement in that paragraph, however,
22 regarding fire service and what we call an investment that
23 we make in public safety, and I think that that's a
24 critical point. We have made it public policy that we
25 will protect our workers and we will provide that safety

1 net. While it's expensive, even more so is the loss of a
2 life."

3 We support Worker Safety 7. We feel that our
4 response to the impacts of this project are measured. We
5 feel that they're accurate and reflect what we need to do
6 to provide services out there.

7 And again, in looking at our standard response
8 plan, this is not something that was just developed. This
9 is a standard response plan that has been in existence for
10 many, many years. The response plan that I'm providing
11 you was last edited in 2008, prior to these even coming on
12 the table.

13 Our response to these emergencies are
14 labor-intensive. Our desire is to do everything that we
15 can to protect and save the lives of the worker. Our
16 proposal for this reflects that, and again, we would ask
17 the Commission to accept Staff's recommendation of Worker
18 Safety 7 as written.

19 As Dr. Greenberg mentioned, Ms. North had to
20 leave. There is dispute or -- we're not in concurrence
21 with the statements of -- of the witness in regards to the
22 number of projects that he believed that would be
23 contributing to this. There is also disagreement over the
24 actual proper use of those B-29 funds, and she has
25 articulated that fully in that document, what we docketed,

1 and I believe it's been left here for your folks to
2 review, as well.

3 That's all I have for now. Thank you.

4 HEARING ADVISOR CELLI: Thank you.

5 Petitioner, questions? Mr. Galati?

6 MR. SCOTT GALATI: I guess I would just object
7 to the fact that there would be a document coming in that
8 refutes our arguments that I haven't had an opportunity to
9 respond to.

10 HEARING ADVISOR CELLI: Well, let's be clear,
11 there is no -- we don't have it and it's not in evidence.
12 It's just been submitted as comment.

13 MR. SCOTT GALATI: Thank you.

14 Chief Cooley, did you work on the Rice project?

15 DEPUTY CHIEF DORIAN COOLEY: I did not.

16 MR. SCOTT GALATI: Are you familiar with the
17 mitigation that was recommended for the Rice Project by
18 the Commission?

19 DEPUTY CHIEF DORIAN COOLEY: Yes, I am.

20 MR. SCOTT GALATI: And that project also
21 involves a tower; correct?

22 DEPUTY CHIEF DORIAN COOLEY: Yes.

23 MR. SCOTT GALATI: It was actually farther away
24 from any of your services than the Palen project; correct?
25 Any of your fire stations, excuse me.

1 DEPUTY CHIEF DORIAN COOLEY: That is correct.

2 MR. SCOTT GALATI: Okay. And that project
3 involved molten salt stored in tanks; correct?

4 DEPUTY CHIEF DORIAN COOLEY: I'm not that
5 familiar with the project to attest to that.

6 MR. SCOTT GALATI: Okay. Did you do any
7 analysis, not of the risk, but exactly of what the costs
8 are necessary to mitigate for the Palen project?

9 DEPUTY CHIEF DORIAN COOLEY: The direct answer
10 to that is no. Our analysis is based on the projects
11 coming to that desert area, what will it take for us to
12 appropriately handle the rescues of those projects.

13 MR. SCOTT GALATI: Is that outlined in
14 Attachment A to your comments on the Preliminary Staff
15 Assessment, which is sort of a memo that came in to the
16 Board of Supervisors?

17 DEPUTY CHIEF DORIAN COOLEY: I believe we're
18 referring to the same thing. It is listed as an
19 Attachment A.

20 MR. SCOTT GALATI: And when you prepared that
21 cost estimate, was that just for the four energy
22 commission projects that Dr. Greenberg has mentioned?

23 DEPUTY CHIEF DORIAN COOLEY: It was based on --
24 I'm sorry, please rephrase your question.

25 MR. SCOTT GALATI: I'll rephrase it.

1 Wasn't that document prepared for what you
2 needed to serve the region with all of the proposed solar
3 projects?

4 DEPUTY CHIEF DORIAN COOLEY: I would have to
5 look at it again quickly, but it wasn't based on the
6 number of projects, it was based on what are the impacts
7 of these type projects to our operation and what would it
8 take for us to be able to handle or mitigate emergencies
9 at major solar projects like this, ones involving the
10 large towers or large machinery areas, turbines, all these
11 sort of things that are involved with the heat transfer
12 type of technologies.

13 MR. SCOTT GALATI: But not for PV projects?

14 DEPUTY CHIEF DORIAN COOLEY: We did not
15 specifically compare all PV projects. We did look at
16 them. There are some risk with PV projects, but compared
17 to these heat transfer, these large solar projects, it's a
18 completely different level of risk and hazard that we
19 would have to deal with.

20 MR. SCOTT GALATI: Okay. I'd like to explore
21 that and break up the construction versus operation.

22 During construction of a solar project such as
23 the PSEGS versus a PV project, there clearly is a
24 difference in the high-angle rescue, correct, because of
25 the tower?

1 DEPUTY CHIEF DORIAN COOLEY: During
2 construction, yes, there -- there can be high-angle.

3 MR. SCOTT GALATI: Absent the high-angle risk,
4 during the rest of the grading and trenching, is the risk
5 different or the same as the PV project?

6 DEPUTY CHIEF DORIAN COOLEY: During
7 construction, a PV project -- and, again, it depends on
8 the specific construction method, so I would have to be
9 somewhat general. Any project like that, during
10 construction, we would be concerned about trench rescue if
11 there are large trenches that are involved. And depending
12 on what level of -- or what stage of construction as they
13 move heavier equipment in, for example, in the power
14 blocks, there's tanks and other machinery that they become
15 confined spaces, and those become concern on, for example,
16 the PSEGS.

17 To my knowledge the PV projects don't have those
18 sort -- those sort of hazards as the heat-transfer-type
19 projects do. You're dealing with trenching, you're
20 dealing with conduit, you're dealing with transformers and
21 energy transmission. What we're not dealing with
22 significant heat transfer equipment, such as tanks and --
23 and the towers, all the other things that -- that we
24 talked about. So if you look back, for example, to the
25 matrix that CEC staff has done, we looked at that and

1 referenced that in our discussions on the varying levels
2 of hazards and -- and what some of these hazards could be.

3 MR. SCOTT GALATI: But what we're talking about
4 is staffing; correct? So we're talking about the number
5 of -- of staff that we would have to pay as an ongoing
6 basis; correct? That's what the dispute is between the
7 parties.

8 DEPUTY CHIEF DORIAN COOLEY: Correct. We're
9 looking at -- well, I guess this -- you are asking me to
10 tell you what your dispute is, and I don't know if
11 that's -- that's for me to say.

12 MR. SCOTT GALATI: I apologize for that
13 question. What -- what I would like to ask you is: You
14 are collecting B29 funds for photovoltaic projects on
15 private property; correct?

16 DEPUTY CHIEF DORIAN COOLEY: I'm really not
17 prepared to speak to the B29 part of the issue.

18 MR. SCOTT GALATI: Okay.

19 MR. WES ALSTON: Yeah, Desert Sunlight they are
20 requesting \$600,000 a year.

21 MR. SCOTT GALATI: Is that going to the fire
22 department for Desert Sunlight?

23 DEPUTY CHIEF DORIAN COOLEY: Again, I -- I -- I
24 can't speak to the revenue stream or anything related to
25 the B29. I'm not familiar with that.

1 MR. SCOTT GALATI: Okay. Are you familiar with
2 the McCoy project?

3 DEPUTY CHIEF DORIAN COOLEY: Not enough to speak
4 to it.

5 MR. SCOTT GALATI: Are you -- are you -- are you
6 aware that the Desert Sunlight and Desert Harvest projects
7 has been approved?

8 DEPUTY CHIEF DORIAN COOLEY: I'm aware that
9 there are other PV projects out there that are in -- in
10 various stages of approval.

11 MR. SCOTT GALATI: I have no further questions
12 for Mr. Cooley, but I -- I would like to ask my witness a
13 question.

14 HEARING ADVISOR CELLI: Go ahead.

15 MR. WES ALSTON: Wes, could you please describe
16 what your role was in planning your -- your opinion of
17 what Chief Cooley just said about the allocation of funds?

18 MR. WES ALSTON: Well, I -- I think I need to
19 start with I agree with Chief Cooley regarding the
20 resources needed for these power plants. Again, I don't
21 agree with the allocation of funds from the Palen project.
22 I'd also disagree that of the 13 projects I have listed,
23 we only really discussed eight projects that we know are
24 moving forward.

25 What was the question again? Sorry.

1 MR. SCOTT GALATI: Could you give a background
2 on your understanding of fire planning?

3 MR. WES ALSTON: Yeah, I -- I spent 32 years
4 with the Riverside County Fire Department.

5 HEARING ADVISOR CELLI: Before we get into this,
6 let me say, Mr. Galati, that we can read his resume. It's
7 getting late?

8 MR. WES ALSTON: That's fine.

9 MR. SCOTT GALATI: Do you agree with the
10 planning for responses that Chief Cooley just discussed?

11 MR. WES ALSTON: Yeah, I agree with the
12 planning. I -- I don't agree with the proportional cost.
13 And I don't agree that industrial projects are bearing or
14 are a total cause or the total cause of all the responses,
15 only a percentage of the total response. And this
16 county -- or that county fire department has always looked
17 at that -- that commercial projects are a percentage,
18 residential projects are a percentage, rescue is another
19 percentage of their total -- total responses that they do
20 annually.

21 MR. SCOTT GALATI: Last question.

22 HEARING ADVISOR CELLI: Go ahead.

23 MR. SCOTT GALATI: Could you please summarize
24 your research for the last couple of years on how many
25 times the -- or -- or the capacity of the existing system

1 at Riverside County?

2 MR. WES ALSTON: The capacity of Battalion 8
3 has -- has actually -- there -- there's more capacity
4 there. They're only running about 14 percent capacity.
5 Calls have been reduced, primarily because Blythe Fire
6 Department took over the Blythe's station's
7 responsibility. So really, Blythe station is
8 underutilized to the point of where the County considered
9 closing that station and Counsel got them -- for the City
10 of Blythe. So, you know, I -- I agree from one standpoint
11 with the Chief that they need the staffing, but I disagree
12 with the point that those stations are being grossly
13 underutilized and that there's plenty of capacity for
14 additional responses to not only our project, but to other
15 projects with an augmentation of staffing.

16 MR. SCOTT GALATI: I have no further questions.

17 HEARING ADVISOR CELLI: Staff, do you have
18 questions?

19 MS. JENNIFER MARTIN-GALLARDO: I would just like
20 to invite Alvin to provide any responses he feels
21 necessary.

22 HEARING ADVISOR CELLI: Okay. Before we give
23 carte blanche to Dr. Greenberg, I have a couple of
24 questions.

25 I don't understand the difference in numbers

1 that we're talking about. I understand that Staff or
2 rather Applicant -- or Petitioner stated early on,
3 Mr. Alston stated that there was a \$1.2 million equipment
4 fee, or charge. They didn't have a problem with that.
5 They didn't have a problem with the \$284,000 for staffing.
6 Tell me if I'm getting this wrong. But the issue was the
7 unique cost of operations units which comes out -- which
8 was \$85,000. I don't remember if that's per year or one
9 time only or whatever.

10 MR. WES ALSTON: Just to quickly recap, yeah,
11 we're offering or we'd like to offer the \$1.2 million for
12 equipment, \$684,000 for three years for staffing, and then
13 ongoing staffing for the life of project contribution of
14 800- -- 85,500 per year.

15 HEARING ADVISOR CELLI: Eighty-five, five per
16 year?

17 MR. WES ALSTON: Right.

18 HEARING ADVISOR CELLI: What is the deficiencies
19 in the eyes of Staff and County of Riverside? What's the
20 difference?

21 DR. ALVIN GREENBERG: Hearing Officer Celli, let
22 me try and explain what the agreements are and what the
23 differences are. There is agreement on a one-time payment
24 for capital improvements, and I'm suggesting one million,
25 Applicant is suggesting 1.2 million. That -- that's

1 pretty close.

2 The difference is after the first three years
3 for a annual payment, and it's not just for staffing.
4 Staffing is included in that, but it's for O&M, operations
5 and maintenance. That does include equipment. We're
6 talking here a 20- to 30-year life span of a project.
7 Equipment wears down, has to be replenished, has to be
8 replaced. And of course staffing labor costs will go up
9 in the next couple years, so -- next 20 to 30 years for
10 sure. The -- so the difference is in the annual payment
11 for O&M after the first three years.

12 The other difference is that I am proposing for
13 the first time in -- for fire mitigation, an annual
14 escalator clause equal to the consumer price index, less
15 food and energy. This is not a unique for Energy
16 Commission Staff to recommend an escalator clause on an
17 annual mitigation payment. We've done it before in a
18 different subject area. This is the first time we're
19 suggesting it for fire mitigation. We are also suggesting
20 it for the Blythe Solar Project.

21 So it -- it -- it -- it is going to be
22 consistent from this point forward. We're only suggesting
23 it where we are left to propose mitigation. Again, if the
24 applicants and the fire departments in any jurisdiction
25 get together and propose a settlement that is reasonable,

1 we're going to butt out. We will stay out of it. But
2 when -- when we are in a position where we have to come up
3 with proposed mitigation on fire mitigation, now, we will
4 propose a annual escalator.

5 And I think you can understand why. No matter
6 what we agree on or what you agree on -- or what you
7 decide, rather, to in your decision for an annual payment,
8 it will be cut by 50 percent in approximately 20 years
9 just due to inflation, if inflation stays at the current
10 level in the past decade. So that you can see how I'm
11 proposing essentially a \$313,000 a year. That's going be
12 cut to \$170,000 after just 20 years.

13 So in order for mitigation to be real and to be
14 effective, this escalator is being proposed. So those are
15 the difference, that after the first three years of
16 construction, the Applicant -- sorry, the Petitioner is
17 proposing a lower rate for annual O&M. And you've heard
18 the reasons why, while I'm proposing a different rate that
19 it stay the same with a escalator for 30 years. That's
20 the difference of opinion. The amounts, then, over a
21 30-year period can be seen on Worker Safety Fire
22 Protection Table 6, that's on Page 4.14-38, that if you
23 took the decision for the Palen project as it sits now, no
24 escalator -- excuse me -- no change in one time capital
25 improvement, no change in annual payments, it would amount

1 to about \$12.1 million over the 30-year period. I'm
2 proposing that with an escalator, that would amount to
3 \$13.7 million over a 30-year period.

4 The Petitioner, without escalator, is suggesting
5 6.33 million over a 30-year period. And the Riverside
6 County Fire Department liked the amount that is previously
7 set in the decision, but with an escalator thrown in, is
8 what they requested. So they would have been very happy
9 with that decision with an escalator, and that would
10 amount to \$16 million over a 30-year period.

11 So we are talking here, with the escalator and
12 annual payments, a difference of roughly \$7 million, from
13 what Staff is proposing, from what the Petitioner is
14 proposing, over a 30-year period.

15 HEARING ADVISOR CELLI: Thank you.

16 DR. ALVIN GREENBERG: Your welcome.

17 HEARING ADVISOR CELLI: Anything from Staff?

18 Go ahead.

19 MS. JENNIFER MARTIN-GALLARDO: I -- I'm just a
20 little bit confused. As far as the table goes, I -- for
21 that -- for the row that says annual years 4-30, under
22 Petitioner it says, "114 -- 114,000 per year." I -- I --
23 I'm just recalling -- I thought I heard him say something
24 80,000ish. I can't really remember.

25 MR. WES ALSTON: Yeah, we did. We said, 85,500.

1 MS. JENNIFER MARTIN-GALLARDO: So this was --

2 MR. WES ALSTON: Because that number was based
3 on the CEC projects, and we've added in all the PV projects
4 that are getting B29 money.

5 MS. JENNIFER MARTIN-GALLARDO: So -- so these
6 don't necessarily reflect what your actual --

7 MR. WES ALSTON: They don't reflect what we were
8 asking for.

9 MS. JENNIFER MARTIN-GALLARDO: Your position?

10 MR. WES ALSTON: Right.

11 MS. JENNIFER MARTIN-GALLARDO: Okay. Thanks.

12 DR. ALVIN GREENBERG: Oh. Oh. So this -- this
13 number is -- is bound to change 114,000 a year for years
14 4 to 30 to 85?

15 MR. WES ALSTON: Eighty-five, five. And that
16 was based on everybody making a contribution.

17 DR. ALVIN GREENBERG: I can't do the numbers
18 right off the top of my head. I needed a calculator to do
19 those before. So that makes it a greater difference.

20 MR. WES ALSTON: But that number was based on
21 all the projects in the region.

22 HEARING ADVISOR CELLI: Understood.

23 The O&M numbers, does that -- that includes
24 high-angle rescue; is that correct?

25 DR. ALVIN GREENBERG: That would include -- yes.

1 That would include equipment, replenishing equipment over
2 the years, training, additional training as new
3 firefighters come online and, of course, staffing.

4 HEARING ADVISOR CELLI: All for high-angle
5 rescue?

6 DR. ALVIN GREENBERG: No. I -- I know the
7 emphasis has been on high-angle rescue, but there are
8 other responsibilities of the fire department to a solar
9 tower power plant. There have been fires, unfortunately,
10 at Ivanpah. I have visited Ivanpah.

11 One of the concerns I have is that even though
12 the fires that have existed in the towers at Ivanpah have
13 been small and they have been put out by fire
14 extinguishers, the fire department has had to respond.
15 But the Ivanpah towers are vastly different than that
16 which is proposed here for Palen. The Ivanpah towers are
17 open after 500 feet high. These will be enclosed. The
18 Palen towers will be enclosed and 750 feet high. I'm very
19 concerned about a -- even a small fire in an enclosed
20 space creating a smoke hazard.

21 Now, at Ivanpah, even in the open space in the
22 small fire, they evacuated the tower. I'm concerned about
23 an evacuation being necessary from an enclosed tower where
24 the smoke could build up. So there -- there is fire
25 response, there is rescue, there's emergency medical

1 services response. Again, we all hope that there doesn't
2 have to be an EMS response, but the fire department must
3 be prepared to respond.

4 There's also going to be a minor need for HAZMAT
5 spill response. There still will be some hazardous
6 materials at the site. It will, admittedly, be far less
7 than if it were the originally proposed facility that
8 contained heat transfer fuel, propane tanks, et cetera.
9 So it's greatly reduced, but nevertheless, it still
10 remains. And then, of course, the fire department does do
11 inspections. That's the fifth reason that the fire
12 department would be coming up.

13 MR. WES ALSTON: The inspections would be
14 covered by the inspection fees per the County ordinance.

15 HEARING ADVISOR CELLI: Just the record should
16 reflect that that was Mr. Alston. He made that point
17 regarding the fees just now.

18 Anything further from any of the parties on
19 this?

20 MR. SCOTT GALATI: Just one.

21 HEARING ADVISOR CELLI: Go ahead, Mr. Galati.

22 MR. SCOTT GALATI: So looking at the table
23 above, for this project, you're proposing more mitigation
24 in terms of dollars, Dr. Greenberg, than the original
25 project?

1 DR. ALVIN GREENBERG: Yeah. The net result,
2 Mr. Galati, is yes. I think you know that I am proposing
3 a lowered amount, but with the escalator, it turns out to
4 be overall net higher amount after 30 years.

5 MR. SCOTT GALATI: And have you had -- to your
6 knowledge, has the Energy Commission ever included such an
7 escalator in one of their decisions?

8 DR. ALVIN GREENBERG: As I've stated before, it
9 has in other areas, not in fire mitigation. I think there
10 was a -- in fact, I know there was an escalator clause put
11 in air quality mitigation Otay Mesa. At least that's what
12 I have been informed. And so it's -- it's rare, but it
13 has been done, and we do plan on going forward any time in
14 the future, on future projects, where Staff has to propose
15 mitigation in fire protection.

16 HEARING ADVISOR CELLI: Thank you. Is there a
17 motion from the Petitioner?

18 MR. SCOTT GALATI: We'd like to move in
19 Exhibits 1003, 1012, 1019, 1030, 1041, 1051, 1057, 1059,
20 1060, 1077.

21 HEARING ADVISOR CELLI: Any objections, Staff?

22 MS. JENNIFER MARTIN-GALLARDO: No objection.

23 HEARING ADVISOR CELLI: CBD?

24 MS. LISA BELENKY: No objection.

25 HEARING ADVISOR CELLI: Exhibits 1003, 1012,

1 1019, 1030, 1041, 1051, 1057, 1059, 1060, 1077 are
2 received into evidence.

3 Staff, your motion?

4 MS. JENNIFER MARTIN-GALLARDO: Staff move to
5 enter into evidence Exhibits 2000, 2002, 2003, 2008 and
6 2012.

7 HEARING ADVISOR CELLI: Any objection,
8 Petitioner?

9 MR. SCOTT GALATI: No objection.

10 HEARING ADVISOR CELLI: CBD, any objection?

11 MS. LISA BELENKY: No objection.

12 MR. SCOTT GALATI: I have a further motion.

13 HEARING ADVISOR CELLI: All right. First let me
14 handle this.

15 Staff Exhibits 2000, 2002, 2003, 2008, and 2012
16 regarding Worker Safety and Fire Protection are received
17 into evidence.

18 Mr. Galati?

19 MR. SCOTT GALATI: I'd like the Committee to
20 take administrative notice of the Rice evidentiary
21 records.

22 HEARING ADVISOR CELLI: We can take official
23 notice of all of the decisions. I have a problem with
24 people saying we would like to you take official notice of
25 the official -- of the -- it's like Encyclopedia

1 Britannica. I need a little guidance here. I need to
2 know what exactly -- where we going?

3 MR. SCOTT GALATI: I would like to you take
4 official notice of the decision in Rice, the presiding
5 members' proposed decision in Rice, and the Worker Safety
6 and Fire Protection testimony, both opening and rebuttal,
7 and the portion of the Final Staff Assessment in Rice on
8 Worker Safety, Fire Protection.

9 HEARING ADVISOR CELLI: Let me just confer
10 with --

11 Any objections?

12 MS. JENNIFER MARTIN-GALLARDO: No, no
13 objections.

14 HEARING ADVISOR CELLI: From CBD?

15 MS. LISA BELENKY: No objection. It seems like
16 an unusual request, and we had to docket exhibits that
17 were other FSAs from other matters before the Commission,
18 so I'm not exactly sure what the process is right now.

19 HEARING ADVISOR CELLI: Basically, the
20 Commission can take official notice of any documents and
21 any evidence that would be judicially noticed by the
22 courts. As you know, there's mandatory and permissive
23 official and judicial notice.

24 Generally, we would take -- I would say we have
25 discretion to take judicial notice of our prior decisions.

1 I think we could have saved you some time and trouble if
2 you made a motion at this point for official notice if you
3 did have to supply a lot of earlier FSA or whatever. We
4 can take official notice of that. But I think in this
5 case, there being no objection, we would take official
6 notice. I'm just asking, Mr. Galati, that when you raise
7 this, this all sounds to me like of stuff of which briefs
8 are made.

9 MR. SCOTT GALATI: It is. I just need to be
10 able to cite to it.

11 HEARING ADVISOR CELLI: Right. So there's no
12 problem taking official notice, but I would certainly like
13 to be directed to the relevant portions.

14 MR. SCOTT GALATI: I promise you I will do that.

15 HEARING ADVISOR CELLI: Now then, having
16 received -- is there any other evidence that I failed to
17 take? As long as I have you three parties here, did I
18 leave -- is there anything left that I failed to receive
19 into evidence?

20 Go ahead, please.

21 MS. LISA BELENKY: Yes. We had made a -- a
22 request for official notice of several documents in our
23 opening testimony, and in our prehearing conference
24 statement, we did indeed file many of those documents
25 separately, having no procedural way to get a response and

1 not wanting to be told that we couldn't rely on them. I
2 think there are several that we still were asking for
3 official notice of, which are -- I think maybe we actually
4 wound up putting them all in. I just want to say that we
5 asked for official notice before, and the way the
6 procedures were set up, we're not getting an answer before
7 all of our exhibits are due. So that doesn't really help
8 anybody.

9 HEARING ADVISOR CELLI: I understand. For the
10 most part, I would say that prior decisions by the Energy
11 Commission are a pretty safe bet for official notice.

12 MS. LISA BELENKY: Well, some of these are
13 exhibits from earlier matters.

14 HEARING ADVISOR CELLI: Now, that's a
15 different -- that's a different category of evidence.

16 MS. LISA BELENKY: He just asked you to take
17 official notice -- the Petitioner asked you to take
18 official notice of the Staff Assessment and evidence of
19 the exhibit. It's not -- it is something normally you
20 would have to put in during the --

21 HEARING ADVISOR CELLI: No, I was asked to take
22 official notice of a decision.

23 MS. LISA BELENKY: Well, he said the decision,
24 the presiding members' proposed decision and the staff
25 report on the -- I don't remember -- the staff FSA as to

1 the -- this fire and worker safety. And that last one I
2 believe is in the same category as the things that I was
3 required to put in.

4 HEARING ADVISOR CELLI: I missed that
5 Mr. Galati. I thought you were asking for a decision --
6 for official notice of decision.

7 MR. SCOTT GALATI: I asked for official notice
8 of the decision, the presiding members' proposed decision,
9 the Applicant's opening and rebuttal testimony on Worker
10 Safety, Fire Protection, and the as Staff's portion of the
11 Final Staff Assessment on Worker Safety and Fire
12 Protection in Rice.

13 HEARING ADVISOR CELLI: One moment.

14 MR. SCOTT GALATI: And the purpose is so that in
15 my brief, I can cite to them.

16 HEARING ADVISOR CELLI: So the Committee would
17 be willing to take official notice of the PMP or any
18 decisional documents from the Energy Commission. We are
19 not inclined to take official notice of briefs or any
20 party's opening statements, testimonies, and that sort of
21 thing, unless it was for the sole purpose to establish the
22 existence of those documents.

23 MR. SCOTT GALATI: I'll make -- I'll make due
24 with the decision in the PMP. So I modify my request for
25 the -- to take official notice of the decision and the PMP

1 in the Rice project.

2 HEARING ADVISOR CELLI: And that is granted.

3 I mean, that -- I'm -- I'm sorry for my
4 misunderstanding, Ms. Belenky. That was what I thought he
5 sought, was strictly the decisional document. And
6 that's -- there's no problem taking official notice of
7 our -- our prior decisions.

8 So with that, any further motions from any
9 party?

10 MR. SCOTT GALATI: One -- one further, and I
11 just wanted to make sure, because I cannot remember. We
12 marked for identification a -- the -- at the beginning of
13 Biology, we marked what we had docketed last Friday, which
14 was a summary of our position on Staff's conditions of
15 certification that we then read pieces of into the record.
16 We marked it as Exhibit 1122 and I don't remember if I
17 actually moved that exhibit, but I'd like to move that
18 exhibit into the record now.

19 HEARING ADVISOR CELLI: Any objection --

20 MR. SCOTT GALATI: If I haven't. If I forgot.

21 HEARING ADVISOR CELLI: Any objection to
22 Exhibit 1122 from Staff?

23 MS. JENNIFER MARTIN-GALLARDO: No.

24 HEARING ADVISOR CELLI: CBD?

25 MS. LISA BELENKY: No.

1 HEARING ADVISOR CELLI: 1122 will be received
2 into evidence.

3 Okay. Then I would excuse the witnesses. Thank
4 you.

5 It's now, according to my watch, 5:59 p.m.

6 Do we have anybody here in the room who would
7 like to make a comment?

8 We have one. Are you Joan Taylor?

9 MS. JOAN TAYLOR: Yes.

10 HEARING ADVISOR CELLI: Come on Joan Taylor. I
11 have this -- a note here that you wanted to make -- I see
12 you've been very patient.

13 MS. JOAN TAYLOR: Yes. And thank you, Mr. Celli
14 and Commissioners. And I'll be as quick as I can, but
15 there are several issues I would like to talk to you
16 about.

17 My name is Joan Taylor. I am a resident of
18 Coachella Valley and the chairman of the California-Nevada
19 Desert Energy Committee for Sierra Club. Sierra Club
20 strongly supports the ramping up of renewable energy, and
21 I won't go through whole litany, but obviously we are very
22 concerned about climate change. Optimally, all the major
23 environmental locations have been sited on disturbed lands
24 or fragmented or brown fields. However, we do support the
25 BLM solar program and the investigation of solar zoning,

1 including east Riverside. However, that being said, I can
2 fully support the Colorado to Denver transmission line
3 that's necessary to run some of these large scale solar
4 energy typically to market. However, that being said, not
5 every square mile of the east Riverside zone is
6 appropriate for development. And not every technology is
7 appropriate in every part of the -- the zone.

8 Riverside needs to permit, pretty much, ground
9 zero, or large scale solar, so far in California. Each
10 project, as you know, is the size of small city and
11 they're converted to a sterile industrial zones for the
12 remaining wildlife. And they were coming out to be likely
13 attractive and deadly nuisances to the remaining wildlife.
14 The desert sun -- the biological opinion of the Fish and
15 Wildlife Service has indicated that already tortoise
16 connectivity between Chuckwalla, AEC and other protected
17 tortoise areas is compromised between that and the Joshua
18 Tree National Park.

19 Now, they are faces with the precedent-setting
20 power towers of about 80 stories high. And they entrust
21 the agency, independent reputable biologists and CEC Staff
22 to point out that this poses a whole set of new threats to
23 aerial species. Many of these species are protected under
24 the law and already subject to multiple threats.

25 HEARING ADVISOR CELLI: Excuse me one moment. I

1 just want to make sure that we -- we -- I don't want to
2 turn off WebEx or anything until we're adjourned.

3 MS. JOAN TAYLOR: You can turn off the brain,
4 but keep -- keep the thing running.

5 But the problem that we see here is that while
6 we recognize that there are threats to these species, not
7 only incineration but, you know, melting of the wing
8 fibers and so forth, we don't have any way of quantifying
9 them. And Staff said significant but unmitigable, but how
10 bad is that? And Fish and Wildlife Service has requested
11 that there be some minimum studies and data gathering
12 prior to experimenting further with power towers. And, of
13 course, at Ivanpah, you had the perfect opportunity to do
14 so.

15 Now, CEC is the responsible agency under CEQA
16 and the task -- and also the chief proponent and the
17 permittee for the DRECP. It's relying on speculation that
18 the impacts will not either violate the law or propose
19 further conservation strategies under the DRECP. So in
20 view of the adjacency to the Park and eagles and the other
21 species that are turning up dead at solar arrays and
22 the -- the threats, the particularly threatening aspect of
23 solar flux, we would suggest that we should -- these
24 should be deferred decisions and allow these studies to
25 take place so as not to preclude strategies under the

1 DRECP. And I think the circumstance applies to
2 terrestrial species such as the Mojave fringe-toed lizard,
3 not just because this particular, you know, group of them
4 near the project is impacted, but because this is the
5 southernmost population of Mojave fringe-toes lizards.
6 And DRECP is obligated to provide for climate change
7 adaptation. If you knock out the southernmost population
8 or severely injure it, these are the ones that are most
9 probably well-adapted to handle the hotter and dryer
10 situation under climate change.

11 Finally, it's laudable the Commission is looking
12 at ways to solve the intermittency problem in solar, and
13 certainly the Sierra Club believes that until battery --
14 you know, bridge scale and battery storage is available,
15 that solar thermal with storage would be part of the mix;
16 however, there's no storage here. And solar thermal uses
17 a ton of water, it's expensive to build, expensive to
18 maintain it and to operate, it burns natural gas, it has a
19 lot of negatives. The main positive it has is storage,
20 and yet we're not -- it's not being promised here. Or
21 even we're not even sure it's feasible the way the project
22 is designed. Therefore, you know, again, we suggest that,
23 of course, the proponent wants to retain, it's relatively
24 guarded, it's old PPA, which is probably quite lucrative
25 but, you know, from a ratepayer standpoint and

1 environmental standpoint, this project really should have
2 storage to be worth the cost.

3 And then finally, a couple things. One is, I
4 think I heard Whitewater River mentioned as one of the
5 places to mitigate for riparian impacts to this project.
6 I would suggest that -- if I heard right, and I'm not sure
7 I did -- that -- that Staff check with the CVAG and the
8 commission that handles the Coachella Valley and NCCP,
9 because the Whitewater River, if that's what you're
10 talking using, is in the Coachella Valley, and there's a
11 problem with mitigating projects outside it's local MSHGP.

12 And then finally, question Staff's contention
13 that one cannot locate power towers in Central Valley
14 because there are residences there. And there's
15 BrightSource's Coalinga project, and it's right next to
16 the town of Coalinga. In Lancaster, the power tower is
17 right in town. So why -- why couldn't the project be
18 built in the Westlands? There's less residences there
19 than in Lancaster by far.

20 By the way, the Coalinga tower at 30 megawatts
21 is quite visible, for ten miles it's very visible. Thank
22 you.

23 HEARING ADVISOR CELLI: Thank you very much,
24 Ms. Taylor, for coming and for being here all day.

25 MS. JOAN TAYLOR: Well, thank you.

1 HEARING ADVISOR CELLI: I appreciate your
2 participation.

3 Is there anyone else here in the room who would
4 like to make a comment?

5 L Ogata.

6 MR. JEFF OGATA: Good evening. Dr. Roberts, the
7 public advisor had to leave. And as you may know, Staff
8 Counsel becomes public advisor in public advisor's
9 absence; therefore, here I am.

10 I am presenting, just for your information, as a
11 Chief -- Fire Chief Cooley pointed out earlier that
12 supervising Deputy Counsel Tiffany North was intending to
13 present these comments. And since she had to leave, she
14 left a copy of it. She indicated that she would be
15 docketing these comments, but I just wanted to bring it to
16 your attention.

17 It's a 9-page letter accompanied with several
18 attachments of the County of Riverside commenting on
19 biological resources, cultural resources, hazardous
20 materials management, socioeconomics, traffic and
21 transportation, visual resources, waste management, worker
22 safety and fire protection, and a detailed facility
23 closure plan. So they have nine pages of comments. As
24 indicated, she said she was going to docket them today to
25 be available to all the parties.

1 HEARING ADVISOR CELLI: Thank you very much,
2 Mr. Ogata.

3 Now, I'm going to unmute everybody on the
4 telephone and ask if there was anybody on the telephone
5 who would like to make a comment at this time? I see I've
6 got Greg Wheatland (phonetic), I've got Debra Barwith
7 (phonetic), who appears to be on headphones, and the rest
8 of people on the telephone are just call-in people,
9 unidentified call-in user 66, et cetera. So those of you
10 who are on the telephone, I need you to just speak up and
11 make your comments at this time. And we'll take the most
12 aggressive person.

13 MS. DEBRA BARWITH: Commissioner, this is Debra
14 Barwith (phonetic). I have no comments. I thank you all
15 for time and comments.

16 HEARING ADVISOR CELLI: Thank you, Ms. Barwith.

17 Anyone else? Anyone who wishes to make a
18 comment on the phone please speak up now.

19 Okay. Hearing none, then, at this time we will
20 adjourn. The next evidentiary hearing will be in
21 Sacramento. Tentatively we're scheduling for the 22nd,
22 but again, that's tentative based on the publication of
23 the FSA section by the Staff. Once that's published, we
24 will put out a notice of the day and serve all the
25 parties.

1 Thank you all very much for your participation.

2 We're adjourned.

3 (The proceedings were concluded at 6:10 p.m.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, Kimberly Novak, CSR No. 13135, a Certified Shorthand Reporter in and for the State of California, do hereby certify that the foregoing proceedings were taken down by me in shorthand at the time and place named therein and were thereafter transcribed under my supervision; that this transcript contains a full, true and correct record of the proceedings which took place at the time and place set forth in the caption hereto; that this transcript was prepared in accordance with the minimum transcript format standards as set forth by the California Certified Shorthand Reporters Board.

I further certify that I have no interest in the event of this action.

KIMBERLY NOVAK, CSR
Certificate No. 13135