

## DOCKETED

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EVIDENTIARY HEARING FOR THE AMENDMENT TO THE  
PALEN SOLAR ENERGY GENERATING SYSTEMS

BEFORE THE CALIFORNIA ENERGY COMMISSION

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

MONDAY, OCTOBER 28, 2013

## APPEARANCES

## HEARING OFFICER:

Kenneth D. Celli, California Energy Commission

## PANEL:

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

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Matthew Stucky, Abengoa Solar, Inc.

## CEC STAFF:

Jennifer Martin-Gallardo, Attorney  
Jeff Ogata, Attorney  
Christine Stora, Compliance Project Manager  
Alana Matthews, Public Advisor  
Blake Roberts, Assistant Public Advisor  
Ms. Anderson, Audio/Visual Technician

## INTERVENOR:

Center for Biological Diversity:

Lisa Belenky, Attorney; Ileene Anderson

Basin and Range Watch:

Kevin Emmerich, Laura Cunningham  
Colorado River Indian Tribes  
Winter King, Attorney; Sara Clark, Attorney  
Alredo Acosta Figueroa, Californians for Renewable Energy

WITNESSES:

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Casey Weaver  
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Tim Zack  
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Greg Irvin  
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Mary Barger  
Frank McMenimen, Bureau of Land Management  
Fred Nials, Archeologist  
Andrea Grenier  
Rafael Cobain  
Dan Franck  
David Flores

Wilene Fisher-Holt

Douglas Bonamici

Manfred Scott

Arlene Kingary

Linda Otero, Fort Mojave Indian Tribe

Seth Shteir, National Parks Conservation Association

Tiffany North, Deputy County Counsel, Riverside County

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1 PALM DESERT, CALIFORNIA  
2 MONDAY, OCTOBER 28, 2013

3 -o0o-

4 HEARING OFFICER CELLI: Good morning, ladies and  
5 gentlemen. Good morning everyone in the room. Good morning  
6 to all of you who are on the telephone. This is Hearing  
7 Advisor Kenneth Celli, C-e-l-l-i.

8 This is the evidentiary hearing on Palen Solar  
9 Electric Generating System, Case Number 09-AFC-07C. Today is  
10 October 28, 2013. We're at the University of California  
11 Riverside, Palm Desert campus, Building B, in Palm Desert.

12 Normally Commissioner Douglas, who is our presiding  
13 member sitting on my right, would give the introductions, but  
14 she has a bit of a cold today.

15 We want to welcome you here again. Before we  
16 begin, we'd like to introduce the Committee and then ask the  
17 parties to identify themselves. My name is Kenneth Celli.  
18 I'm the hearing officer or hearing advisor. I'll be  
19 presiding over this hearing.

20 On my right is the presiding member of the  
21 Committee, Commissioner Karen Douglas. On my left is the  
22 associate member Commissioner David Hochschild. On  
23 Commissioner Hochschild's left is Gabe Taylor, his advisor.  
24 On Commission Douglas' right is Eli Harland, her advisor;  
25 Jennifer Nelson, her advisor; and Eileen Allen, who is the

1 advisor at large at the California Energy Commission. This  
2 group here represents the Committee today who will be taking  
3 evidence.

4 We also have Public Advisor Alana and Blake. Would  
5 you raise your hand. They're sitting at the back of the  
6 table today and they'll be managing the public participation.  
7 And we'll talk a little more about that later, but I just  
8 want you to know who the players are at this time.

9 First, I'm going to ask the Petitioner BrightSource  
10 Energy, Palen Solar Holding, LLC, to introduce their people.

11 So Mr. Galati, go ahead.

12 MR. GALATI: Scott Galati representing Palen Solar  
13 Holding.

14 MR. STUCKY: I'm Matt Stucky with Abengoa Solar.  
15 We're a member of Palen Solar.

16 HEARING OFFICER CELLI: Thank you. And now  
17 representing the California Energy staff.

18 MS. MARTIN-GALLARDO: Jennifer Martin-Gallardo,  
19 staff.

20 MR. OGATA: Jeff Ogata.

21 HEARING OFFICER CELLI: And then sitting with you,  
22 you have a project manager.

23 MS. STORA: Christine Stora, compliance project  
24 manager for the Energy Commission.

25 HEARING OFFICER CELLI: Now, in order of

1 intervention, the Center for Biological Diversity, please.

2 MS. BELENKY: Good morning. Lisa Belenky with the  
3 Center for Biological Diversity, and Eileen Anderson with me  
4 as well.

5 HEARING OFFICER CELLI: Thank you. Basin and Range  
6 Watch.

7 MR. EMMERICH: Hello. I'm Kevin Emmerich, Basin  
8 and Range Watch, and Laura Cunningham is also here.

9 HEARING OFFICER CELLI: Thank you. Californians for  
10 Renewal Energy.

11 MR. FIGUEROA: I'm Mr. Figueroa.

12 HEARING OFFICER CELLI: Thank you, Mr. Figueroa.

13 Is there anyone here from California Unions for  
14 Reliable Energy or CURE?

15 No one here for LIUNA, the Laborers International  
16 Union of North America? Okay. They're intervenors. They  
17 seem to not participate anymore.

18 The Colorado River Indian Tribe.

19 MS. KING: Good morning. My name is Winter King.  
20 I'm an attorney for the Colorado River Indian Tribes. With  
21 me is Nancy Jасulca, deputy attorney general for CRIT.

22 HEARING OFFICER CELLI: And you also have?

23 MS. KING: We also have Sara Clark, Wilene Fisher-  
24 Holt, and Douglas Bonamici who will be providing testimony.

25 HEARING OFFICER CELLI: Okay. Do we have any

1 members of any federal government agencies that are here  
2 today in the room? Looking around the room to see if there  
3 is anyone here who is representing any governmental agency,  
4 BLM, or anything like that.

5           Seeing none, I'll go to the telephone and ask if  
6 there is anyone from the federal government on the telephone.  
7 Okay. There are none.

8           MR. GALATI: Mr. Celli, a member of the BLM has  
9 just walked in.

10           HEARING OFFICER CELLI: Okay. Who was that? Would  
11 you please come down to the podium? I'm sorry. It appears  
12 that there is a microphone at the base of those stairs that  
13 you're coming down. If you would please introduce yourself  
14 for the record.

15           Everything has to be through the microphone, ladies  
16 and gentlemen. Otherwise, it won't make the transcript.

17           So if you would go ahead and introduce yourself,  
18 sir.

19           MR. McMENIMEN: Good morning. My name is Frank  
20 McMenimen. I'm the project manager for BLM for the Palen  
21 project.

22           HEARING OFFICER CELLI: Thank you. Welcome, Mr.  
23 McMenimen.

24           MR. McMENIMEN: Thank you.

25           HEARING OFFICER CELLI: Any other members of the --

1 any federal agencies here? How about officials that are  
2 representing Native American tribes or nations besides the  
3 Colorado River Indian Tribes? So the other, if any, Colorado  
4 nations or tribes that are Indian tribes, Native American  
5 tribes that are here today.

6 Okay. If you're a member of the tribe, please come  
7 on down and introduce yourself.

8 MS. OTERO: Linda Otero, Fort Mojave Indian Tribe.

9 HEARING OFFICER CELLI: I'm sorry. Say that again.

10 MS. OTERO: Linda Otero, Fort Mojave Indian Tribe.

11 HEARING OFFICER CELLI: Mojave. Thank you. Linda  
12 Otero.

13 MS. OTERO: Fort Mojave.

14 MR. SCOTT: Manfred Scott for the Quechan Tribe.

15 HEARING OFFICER CELLI: "Matthew" Scott from which  
16 tribe?

17 MR. SCOTT: That's Manfred, M-a-n-f-r-e-d, S-c-o-t-  
18 t; Quechan, Q-u-e-c-h-a-n, Tribe.

19 HEARING OFFICER CELLI: Thank you.

20 MR. SCOTT: You're welcome.

21 HEARING OFFICER CELLI: Go ahead, Ma'am.

22 MS. SCOTT: Lois Scott from the Quechan Tribe.

23 HEARING OFFICER CELLI: Lois Scott. Good morning.

24 MS. KINGERY: Arlene Kingary, Quechan tribe  
25 historic preservation officer.

1 HEARING OFFICER CELLI: Anyone else? How about any  
2 state agencies, California state agencies or local agencies,  
3 the County of Riverside, City of Palmdale, Town and Desert  
4 Center? Any officials from any of these areas? Okay.

5 Is there anyone on the telephone who is  
6 representing an agency? South Coast Air Quality Management?  
7 I guess we're not doing that today, so I guess not.

8 Okay then. Anyone from Riverside County on the  
9 telephone, please speak up.

10 Okay. This evidentiary hearing is an  
11 administrative adjudicatory proceeding to receive evidence  
12 into the formal evidentiary record from the parties. Only  
13 the parties may present evidence for introduction into the  
14 formal evidentiary record, which is the only evidence upon  
15 which the commission may base its decision under the law.  
16 The parties are the Petitioner, staff, and the intervenors.

17 Technical rules of evidence may be relied upon as  
18 guidance. However, any relevant noncumulative evidence may  
19 be admitted if it's the sort of evidence upon which  
20 responsible persons are --

21 Testimony offered by parties shall be under oath.  
22 Each party has the right to present witnesses, introduce  
23 exhibits, and rebut evidence of another party subject to  
24 limitation by the presiding member.

25 Questions of relevance will be decided by the

1 Committee. Hearsay may be used to supplement or explain  
2 other evidence that shall not be sufficient in itself to  
3 support a finding.

4 The Committee will rule on motions and objections.  
5 The Committee may take official notice as matters within the  
6 Energy Commission's field of competence and of any fact that  
7 may be judicially noticed by the California Courts.

8 The official record of this proceeding includes  
9 sworn testimony of the parties' witnesses, the reporter's  
10 transcript of the evidentiary hearing, the exhibits received  
11 into evidence, the parties' briefs, pleadings, orders and  
12 notices from the Committee, and comments submitted by members  
13 of the public.

14 The Committee's decision will be based solely on  
15 the record, which is competent evidence, in order to  
16 determine whether the project complies with applicable law.

17 Members of the public who are not parties are  
18 welcome and invited to observe the proceedings today. There  
19 will be an opportunity for the public to provide comment  
20 today at about 6:00 p.m. And depending on how many people  
21 are here and how much interest there is in providing comment,  
22 if we take a lunch break today at some time in the afternoon,  
23 we might even take public comments then as well.

24 Depending on the number of persons who wish to  
25 speak, the Committee may have to limit the time allowed for

1 each speaker.

2           This public comment period is intended to provide  
3 an opportunity for persons who attend the hearing to address  
4 the Committee. It's not an opportunity to present written or  
5 documentary materials other than your comments themselves.  
6 However, such materials may be documented and submitted to  
7 the Energy Commission for inclusion in the administrative  
8 record.

9           Members of the public may permit written comments  
10 if they would prefer to speak -- if they would prefer to  
11 submit written comments rather than speaking directly to the  
12 Committee, you may do so. You would talk to the public  
13 advisor about that.

14           Members of the public who wish to speak should fill  
15 out a blue card provided by the public advisor. If you could  
16 hold up, Alana, and then kind of come out from that alcove  
17 because there are people who can't see you. Step down, if  
18 you would a little bit. This is Alana Matthews. She is the  
19 public advisor for the California Energy Commission. She is  
20 holding up some blue cards.

21           If you're a member of the public and you want to  
22 speak, fill out one of those cards and give it back to Alana  
23 or Blake Roberts, who is not here right now. He's her  
24 assistant. That's how we know that there are people here who  
25 want to make comments. There is Blake coming down the stairs



1 now.

2           Fill out your card, give it to Blake or Alana, and  
3 then we'll know that you want to make a comment. We will  
4 call your name off the blue cards.

5           About exhibits and witnesses. The witness list --  
6 Blake, were you able to put out exhibit lists?

7           MR. ROBERTS: They're up there.

8           HEARING OFFICER CELLI: Can you do me a favor and  
9 run an exhibit list down here for our review. Thank you.

10           The witness list and exhibit list have been posted  
11 to the -- I'm going to call it PSEGS. That's P-S-E-G-S,  
12 which stands for the Palen Solar Energy Generating Systems.  
13 PSEGS website, you can post comments, et cetera, using the  
14 system which is automatically distributed, the exhibit list  
15 and witness list to the parties. We will use these lists to  
16 organize receipt of evidence into the record.

17           Thank you, Blake.

18           Okay. As explained at the prehearing conference on  
19 Thursday, October 24, 2013, rather than taking the time of  
20 the usual formal and direct cross-examination of individual  
21 witnesses, we'll proceed by way of an informal hearing format  
22 today.

23           The Committee will call all witnesses to testify as  
24 a panel on the topic at hand. They will be sitting at these  
25 tables in front of us here. Witnesses may only testify on

1 topics or issues within their expertise.

2           The testimony may include discussion among the  
3 panel without the lawyers asking questions. The Committee  
4 will ask the questions of the panel. And if time permits,  
5 the Committee will allow limited questioning of the panel by  
6 the parties.

7           The informal hearing format will begin with the  
8 parties moving their pre-filed testimony into the record.  
9 Then either staff or applicant's experts will briefly  
10 summarize the factual issues that are in dispute.

11           Then staff or applicant's experts will have an  
12 opportunity to comment or articulate their opinion and the  
13 basis for their opinion on the disputed factual issues, after  
14 which we'll follow in turn each of intervenor's expert  
15 witnesses explaining their opinion on the subject of the  
16 discussion.

17           Dialog between the panel members will be permitted  
18 to the extent that it is efficiently providing useful  
19 information to the Committee. Each parties' expert will be  
20 allowed to state their position without interruption before  
21 any dialog ensues.

22           The Committee will guide the discussion and may ask  
23 questions of any witness at any time. Parties may offer  
24 questions for the Committee to ask of any witness after their  
25 experts' positions have been established.

1           The Committee may allow limited questions of the  
2 panel by the parties at its discretion, may establish limits,  
3 as needed, on the number of questions the party may ask and  
4 the amount of time the line of questioning may consume.

5           The party with the burden of proof may provide  
6 final rebuttal testimony if the Committee deems it's  
7 necessary.

8           The Committee, in the interest of efficiently  
9 completing all topics of the evidentiary hearing, may curtail  
10 testimony or examination of a witness if it becomes  
11 cumulative, argumentative, or in any way unproductive.

12           Now, I would like to talk about the evidentiary  
13 hearing schedule. Today, as per our discussions at the  
14 prehearing conference on Thursday last week, we set --  
15 cultural is the first topic we're going to tackle this  
16 morning, which will include the environmental justice issued  
17 ways, followed by alternatives, followed by visual resources,  
18 followed by geological and paleontological resources,  
19 followed by project description, then soil and water and  
20 traffic and transportation. So that's what we're going to  
21 try to get done today.

22           Tomorrow we'll begin with biological resources and  
23 worker safety and fire protection. And if need be, if we  
24 can't finish everything today, anything that spills over into  
25 tomorrow, we'll tackle after we finish bio and fire

1 protection and worker safety.

2 Now, staff, I just want to ask if there is any  
3 newly uncontested topics subject to submittal by declaration  
4 since the prehearing conference. In other words, have we  
5 taken anything from the disputed column and put it in the  
6 undisputed column since Thursday?

7 MS. MARTIN-GALLARDO: I don't believe so.

8 HEARING OFFICER CELLI: Okay. Then we'll proceed  
9 with receiving evidence on the uncontested topics at this  
10 time. The uncontested topics are as follows: Compliance,  
11 facility design, power plant efficiency, power plant  
12 reliability, transmission systems engineering, transmission  
13 line safety and nuance, public health, hazardous materials,  
14 waste management, land use, socioeconomic, and noise and  
15 vibration.

16 So with that, go ahead, Ms. Belenky.

17 MS. BELENKY: I just want to clarify --

18 HEARING OFFICER CELLI: That's fine. Just make  
19 sure you speak into the microphone.

20 MS. BELENKY: Thank you. I just want to clarify on  
21 land use, we obviously do have disputes. They may -- to some  
22 extent, they're legal disputes for the most part, but to some  
23 extent, this may come up in the bio section tomorrow. I just  
24 want to clarify that because we disagree with how staff has  
25 characterized the land use here as a legal matter.

1 HEARING OFFICER CELLI: Right. I recall --

2 MS. BELENKY: I just want to be really clear  
3 because I don't want to get cut off tomorrow about that'ssue.

4 HEARING OFFICER CELLI: So just to be clear -- and  
5 that's a good point Ms. Belenky raises. We're really when we  
6 say the topics are not disputed, what I'm really saying is,  
7 these are topics that the parties at the prehearing  
8 conference said that they did not need to cross-examine or  
9 have any witness come to testify.

10 But parties may certainly raise the issue in briefs  
11 later, especially like land use, which is mostly a legal  
12 question, not a (inaudible) one.

13 So with that, the topics that are in dispute then  
14 are cultural resources including EJ, environmental justice,  
15 alternatives, visual, geo and paleo, project description,  
16 soil and water, traffic and transportation, biological  
17 resources, worker safety, and fire protection, and then, of  
18 course, ancillary to all of the issues with any override  
19 evidence that we need to take.

20 And then just to be clear, ladies and gentlemen,  
21 air quality is going to be heard at a subsequent evidentiary  
22 hearing. After the staff publishes its final staff  
23 assessment on air quality, we'll have an air quality hearing  
24 at some time to be noticed in the future.

25 MS. BELENKY: Excuse me. Sorry to bother you

1 again. But I just want to clarify again, I'm not sure what  
2 override evidence means exactly. We have not done that in  
3 earlier proceedings as a separate section. And I'm not sure  
4 what that means of what you expect us to present.

5 HEARING OFFICER CELLI: Here is really what I think  
6 will happen is, because the burden is on the Petitioner in  
7 this case, the Petitioner brings any section, would put on  
8 any evidence that they felt went to an override on that  
9 section, if they deem it necessary.

10 I don't really see it as a separate topic at all,  
11 so I'm just putting it out there. So I'm basically telling  
12 the parties that it's all coming in today. I want to get all  
13 of the evidence in today.

14 MR. GALATI: Mr. Celli, just a clarification. Our  
15 override testimony is included in our project description.  
16 We stand on our written testimony and don't need to provide  
17 any additional testimony from the applicant's perspective.

18 HEARING OFFICER CELLI: Very good. So with that,  
19 what I'm going to do next is, I'm going to ask the parties in  
20 order to make a motion, and this is on these topics that we  
21 have deemed do not need to be -- do not require live  
22 testimony today.

23 Starting with compliance, Mr. Galati, do you have a  
24 motion with regard to evidence for compliance?

25 MR. GALATI: I would like the compliance testimony

1 and all exhibits referred in compliance testimony entered  
2 into evidence, please.

3 HEARING OFFICER CELLI: Here is what I'm going to  
4 need. Ladies and gentlemen, just so you understand what I  
5 need. I need you to say for compliance, we're moving into  
6 evidence Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, whatever  
7 they're, I need to know what the exhibits are in the record  
8 per topic.

9 So that's the way I need you to proceed, if you  
10 would, Mr. Galati. I don't mean to be overly burdensome.  
11 This is the only place I can have a clear record of exactly  
12 what evidence relates to what topic here. So if you need a  
13 moment, go ahead.

14 MR. GALATI: I'm going to need a minute to get that  
15 document up. I thought that the informal process was that  
16 everything that was agreed was noncontested, that all of the  
17 evidence would come in at one time. I didn't think I would  
18 have to go through each one.

19 HEARING OFFICER CELLI: I appreciate that. I  
20 actually need a record that says these are the exhibits that  
21 support compliance. These are the exhibits I'm presenting  
22 for facility design. Some of these may be the same exhibits,  
23 like Exhibit 1 is the AFC, you may have to say Exhibit 1 over  
24 and over again or something.

25 MS. BELENKY: Can we do it at the end of the day so

1 we can keep moving now?

2 HEARING OFFICER CELLI: Yes, I suppose I could, as  
3 long as we remember to do that, because at this time I have  
4 no evidence in the record on any of the uncontested topics.  
5 That's why I want to get it in.

6 Mr. Galati, would it be more efficient if you had  
7 someone pulling up those numbers for you while moving on --

8 MR. GALATI: Yes.

9 HEARING OFFICER CELLI: All right. So just to be  
10 clear, Ms. Grenier (phonetic) is going to be the person doing  
11 that.

12 I need to know what exhibits pertain to compliance,  
13 what exhibits facility design, et cetera, if you could sort  
14 that out. And if someone could please remind me to do that  
15 after we take the testimony, I would appreciate it.

16 Now then, let's move on to cultural. We have a  
17 panel of witnesses already seated. If you're not already  
18 seated, but you're an expert witness called by any of the  
19 parties to testify, come on down, and have a seat in this  
20 table right here.

21 MR. OGATA: Jeff Ogata. Staff filed late Friday a  
22 motion for reconsideration to make a decision regarding Mr.  
23 Lorey Cachora, and I'm wondering if you're going to take that  
24 up at this moment.

25 HEARING OFFICER CELLI: I would be happy to take



1 that up. There was a motion brought at the prehearing  
2 conference, ladies and gentlemen, where staff attempted to  
3 put in some late filed evidence that was the testimony of  
4 Lorey Cachora. Am I pronouncing that right? Lorey Cachora.

5 After conversation, the Committee heard and found  
6 that there was no good cause for the late filing and excluded  
7 the evidence or excluded that witness. Then a petition to  
8 reconsider -- a motion to reconsider was filed on Friday by  
9 staff.

10 And the way I would like to resolve this is, there  
11 was only one was a sole objector to the late evidence coming  
12 in, which was the Petitioner. So the Committee really  
13 doesn't have a position one way or the other on whether this  
14 witness is going to testify or not.

15 We have already excluded the witness. On the  
16 motion of reconsider we'd like to hear from Petitioner and  
17 get their position on it. If they don't care, we'd have Mr.  
18 Cachora come up. If Petitioner doesn't want him to come up,  
19 what is your position?

20 MR. GALATI: I apologize. I thought that the  
21 Committee took us up on our offer to have Mr. Cachora  
22 testify, just not on the panel. And that because I'm not  
23 sure what Mr. Cachora might say, if I could have a ten-minute  
24 break to confer with my experts so that I can conduct a  
25 meaningful cross-examination, if it's required. So I thought

1 that was the compromise from the Petitioner's perspective  
2 because his issue is very -- as I understand it, staff is  
3 offering Mr. Cachora to corroborate and to testify to what  
4 quotes he gave them in their staff assessment. And if that's  
5 the case, to me, as long as I get an opportunity to cross-  
6 examine him if he goes outside of that scope.

7 HEARING OFFICER CELLI: Certainly.

8 So, Mr. Cachora, where are you? Do you want to  
9 come on up and have a seat at the table next to the first  
10 staff witness?

11 FEMALE VOICE: We're all back here.

12 HEARING OFFICER CELLI: Well, you all have got to  
13 come on up. Have a seat. If I can have everybody get up and  
14 scoot over one chair. Then staff to come in here and then  
15 have your staff witnesses -- I would like to have your main  
16 witnesses up at the table and then your secondary and  
17 supportive witnesses sit in the row right behind you.

18 So the rule on your motion, Mr. Ogata, the  
19 Committee will allow Mr. Cachora to sit at the table and to  
20 testify within the scope of the testimony that was relied  
21 upon by staff within the FSA. And we would ask that he  
22 remain within that scope. And in any event, Mr. Galati will  
23 have the chance to provide the questions to this witness.  
24 And we appreciate Petitioner's indulgence in this case.

25 I want to keep staff all together.

1 I'm sorry, I forget your name. Well, scoot on  
2 down.

3 The reason I'm doing this -- this isn't like I'm a  
4 stickler for where people sit. It's because we need to have  
5 people speak on microphone so that the testimony will make  
6 its way into the court reporter's computer and into the  
7 transcript ultimately. So where you sit is very important.  
8 We want you to have access to the microphone.

9 When you talk in the microphone, you want to speak  
10 directly into the microphone. See how I've got my pen  
11 basically between my mouth and my microphone. That's  
12 basically how you want to speak into the microphone when it's  
13 time.

14 Do we have everyone? Excellent. Now I'm going to  
15 start at the -- you are Matthew Stucky at the end?

16 MR. STUCKY: Yes, sir.

17 HEARING OFFICER CELLI: And sitting next to Matthew  
18 Stucky?

19 MR. NIALS: Fred Nials.

20 HEARING OFFICER CELLI: Fred Nials. And next to  
21 Mr. Nials?

22 MS. BARGER: Mary Barger.

23 HEARING OFFICER CELLI: Mary Barger. Next to Ms.  
24 Barger?

25 MS. FISHER-HOLT: Wilene Fisher-Holt.

1 HEARING OFFICER CELLI: Wilene Fisher-Holt. Next  
2 to Ms. Fisher-Holt, sir?

3 MR. BONAMICI: Douglas Bonamici.

4 HEARING OFFICER CELLI: Douglas Bonamici.

5 MS. MARCUS: Melissa Marcus.

6 HEARING OFFICER CELLI: Melissa Marcus. Next to  
7 Ms. Marcus?

8 MR. CACHORA: Lorey Cachora.

9 HEARING OFFICER CELLI: Lorey Cachora. And next to  
10 Mr. Cachora?

11 MR. GATES: Thomas Gates.

12 HEARING OFFICER CELLI: Tom Gates. Next to Mr.  
13 Gates and behind Mr. Gates?

14 MR. MCGUIRT: Mike McGuirt.

15 HEARING OFFICER CELLI: Next to Mike McGuirt?

16 MR. BRAUN: Matthew Braun.

17 HEARING OFFICER CELLI: Matthew Braun. And I  
18 believe --

19 MS. CLARK: Sara Clark.

20 HEARING OFFICER CELLI: Ms. Clark, I'm concerned  
21 about this because we talked at the prehearing conference  
22 about attorneys testifying, and I'm just trying to understand  
23 what you're doing in the witness chair.

24 MS. CLARK: The objection was whether or not we  
25 were going to testify on legal issues, and I explained that I

1 would be discussing issues that were -- that arose at the  
2 Genesis project and the litigation. I believe Mr. Galati did  
3 not object at that time to those issues.

4 HEARING OFFICER CELLI: We're going to keep that  
5 strictly to the factual issues. We don't want to get into  
6 any legal argument.

7 MS. CLARK: That's fine.

8 HEARING OFFICER CELLI: Okay. Thank you. And  
9 welcome. That's Sara Clark behind Ms. Fisher-Holt. Okay.  
10 Now I'm going to ask you all to please stand.

11 Raise your right hand.

12 Do you solemnly swear to tell the truth, the whole  
13 truth, and nothing but the truth under penalty of perjury?

14 IN UNISON: Yes, I do.

15 HEARING OFFICER CELLI: Thank you. You may be  
16 seated.

17 Now, beginning with -- so this is staff's witness  
18 over here. Applicant's witnesses are down over here. I'm  
19 going to -- I think I'm going to have staff's people kick  
20 this off.

21 I want you to please tell us, Mr. Gates, if you're  
22 the right person, what the issues are with regard to  
23 cultural, please.

24 MR. GATES: We have a PowerPoint, which embedded in  
25 that PowerPoint are two tables that line out the areas that

1 we think are in disagreement. That PowerPoint is 11 slides.  
2 Those slides are, I think as I last saw it, somewhere around  
3 seven or eight or eight or nine.

4 We would prefer to walk through our PowerPoint to  
5 get to that place. Unless you prefer we go right there.

6 HEARING OFFICER CELLI: Well, let me ask, Ms.  
7 Anderson, do you have that PowerPoint up and ready to go?  
8 Okay. She is putting it up now.

9 Has the applicant seen this PowerPoint?

10 MR. GALATI: No, we have not. Also, Mr. Celli, I  
11 thought we were going to go first, so we prepared a slide  
12 show as well to try to put the issues into perspective, but  
13 glad to wait. But is it okay if I move down there and scream  
14 out an objection, if I need to?

15 HEARING OFFICER CELLI: You're supposed to be able  
16 to see it on that screen over there.

17 Rather than open a new can of worms because this  
18 was not easy to get the audio up and running, it's fine with  
19 me if you want to turn your chair around or scoot down. Just  
20 be by a microphone. You might want to watch from the podium  
21 in case you want to speak up.

22 MR. GATES: At the moment, it appears that only  
23 half of the slide appears on the screen.

24 HEARING OFFICER CELLI: She's still working on it.

25 I should tell you that on WebEx we have nothing but

1 the WebEx background page.

2 This would be a lot easier, ladies and gentlemen,  
3 if we were not in the electronic age, because we'd just  
4 launch into this and go, but we've had to work out technical  
5 issues, and hopefully everybody is going to get the benefit  
6 whether they're here or watching from a remote location.

7 There you go. There you go. You hit F5 and there  
8 you go.

9 Now, the people on WebEx and the people in the room  
10 should see the PowerPoint.

11 Where is Mr. Galati? There you are.

12 Okay. Go ahead, Mr. Gates.

13 MR. GATES: It's still only half of the slide, but  
14 if that continues to plague us, I can plow through. It's  
15 only half of the image of that full slide.

16 HEARING OFFICER CELLI: Okay. Well, let's just do  
17 our best with what we've got.

18 MR. GATES: Okay. I would like to make some  
19 opening remarks. I would like to then spend a couple of  
20 slides describing the cultural landscape that staff has  
21 identified in and about the Chuckwalla Valley.

22 HEARING OFFICER CELLI: Before you do, let me just  
23 ask one thing.

24 Ms. Martin-Gallardo, what are your next in order  
25 exhibit numbers so we can assign an exhibit number to this

1 PowerPoint?

2 MS. MARTIN GALLARDO: 2009.

3 HEARING OFFICER CELLI: Exhibit 2009 is staff's  
4 PowerPoint.

5 Go ahead.

6 MR. GATES: So in some general opening statements,  
7 we would want to start by saying that the primary scope of  
8 staff's cultural resources analysis for the amended project  
9 is a consideration of the extreme intensification of the  
10 visual effect that the amended project would have on cultural  
11 resources beyond the physical footprint of the project.

12 The original analysis for the original project only  
13 took into account the physical and visual effects that the  
14 original project would have had on and immediately adjacent  
15 to the original project's footprint due to the relatively low  
16 intensity of the original project's visual intrusion on the  
17 broader landscape.

18 The visual profile of the amended project, the  
19 height of the facility, and the intensity of the concentrated  
20 light that it would produce is radically different from the  
21 visual profile of the original project and would greatly  
22 increase the visual effect of the project on Chuckwalla  
23 Valley. Staff's cultural resources analysis, therefore,  
24 discusses the amended project's direct visual effects outside  
25 of the project footprint and largely does not revisit any of



1 the project's effects on or adjacent to that footprint.

2           There is one major cultural resource that's the  
3 primary focus of staff's analysis. That's what staff has  
4 labeled the Chuckwalla Valley portion of the Pacific to Rio  
5 Grande Trails landscape. Now, that's a mouthful. The  
6 acronym is not pretty. It's something like PRGTL. I'm not  
7 sure how to say that, but we're talking about a portion of a  
8 broader landscape.

9           If I can have the next slide, please. We're going  
10 to spend three slides to describe the importance of the  
11 landscape staff has identified.

12           This first slide shows and tries to represent  
13 archaeological theory of new world migrations. There is a  
14 theory called the Bering Land Bridge. I won't bore you with  
15 a lot of the details of how that's, but it enabled thousands  
16 and thousands of years ago for people to cross -- this is all  
17 archaeological theory -- to cross from what we now call Asia  
18 and into what we now call Alaska and down into an ice-free  
19 corridor into the southern parts of North America.

20           In recent decades, other archaeological theorists  
21 have come up with a coastal migration theory that relies on  
22 understandings of oceangoing technology, and there are some  
23 theories that relate to glaciation. The main point that's  
24 illustrated in this slide is that staff finds that both  
25 theories might be viable and there is connectivity between

1 these two different ways of migrating into North America.

2 Those connectivities, because of glaciation, would  
3 be primarily along the Columbia River corridor, the Klamath  
4 River corridor, and here where we sit today right in the pass  
5 and the corridor that runs through this area and connects the  
6 Los Angeles Basin with the Chuckwalla Valley and beyond.

7 Next slide.

8 So the landscape -- the Pacific to Rio Grande  
9 Trails landscape, it tries to hone in on this connectivity  
10 between these two different theories of migration. There are  
11 roughly three routes, east to west, west to east. We're  
12 particularly concerned with the middle route, and the project  
13 area is smack in the middle of that middle route.

14 Next slide.

15 Really focusing in on what we have identified as  
16 the Chuckwalla Valley portion of the Pacific to Rio Grande  
17 Trails landscape, we have devised this image as a  
18 representation of that portion. So let me talk through a few  
19 things of how we came up with that.

20 First, staff looked at what was the general  
21 viewshed that would be imposed upon this valley by the  
22 proposed technology. That's everything in yellow.

23 Now, the viewshed goes beyond the circle there  
24 that's dashed. Staff has decided that beyond 15 miles, the  
25 view really diminishes in relationship to this proposed

1 technology. So what staff has done is an overlap between the  
2 15-mile radius and the viewshed gives us that broadly defined  
3 area, which we're now labeling the Chuckwalla Valley portion  
4 of the larger landscape. This is our focus.

5           The larger landscape is only to give context to  
6 what we're talking about here in this particular portion of  
7 that landscape. That landscape, once defined and bounded, we  
8 begin to look at what are the things that contribute to  
9 prehistoric preservation. You can have landscape may have  
10 contributing elements, and I'd like to call out a few of  
11 those before moving on away from this slide.

12           The components of this landscape are numbered.  
13 This is a combination of archaeological resources and  
14 ethnographic resources.

15           So in terms of the archaeological resources, those  
16 are depicted in several areas that are outlined in purple.  
17 So there is the Coxcomb area, the Palen Dunes area, the  
18 Mesquite -- the Raceway Mesquite area, the Palen Mountains  
19 area, the Chuckwalla Mountains area, the Eagle Mountains  
20 area, the McCoy Mountains area. Those are all outlined  
21 there. I won't get into too much more detail on that just to  
22 simply say that's a major component. Each of these  
23 components that (inaudible) here directly relates to how we  
24 think about condition 1 of -- Cultural Condition 1 and our  
25 proposed mitigations.

1           In addition to those archaeological areas, there  
2 are some what we call traditional cultural places or  
3 traditional cultural properties that are areas that have  
4 Native American values. So does the archaeological areas  
5 have Native American values, but these traditional cultural  
6 places have particular values. A lot of these traditional  
7 cultural places are around springs, areas that are sacred to  
8 the tribes, petroglyphs abound in all of these traditional  
9 cultural areas.

10           In addition to that, another overlay is the trail  
11 system. This is the corridor that we on the previous slide  
12 showed as a broad line, yellow line. When you actually blow  
13 that up and look at the details of it, you get an immense  
14 braiding of trails that go through this area. These trails  
15 are data that was provided to us through the data request  
16 process from the owner.

17           Next slide. What we're also trying to do in  
18 consultation with tribes in trying to come to understand  
19 their views of the world, and knowing that often their views  
20 are radically different than the theoretical archaeological  
21 views, I put these two slides -- these two images on this one  
22 slide to illustrate that difference.

23           On the left, you have a perspective of how the new  
24 world became populated through migration. It's a linear  
25 perspective. People were not in North America. Bering Land

1 Bridge happened, allowed people to cross. There was a linear  
2 from Point A to Point B type population. That's our theory.  
3 That's what we go out and look at the archaeology for the  
4 evidence to substantiate or falsify that theory. That's the  
5 way we're thinking about it.

6 But in discussing with Native Americans affiliated  
7 with this area around the project, we come to understand that  
8 there is a different way of migrating. You can't quite see  
9 it, but on the right is a different concept. It comes from a  
10 place of origin, a sacred mountain, and people disperse from  
11 that and cluster around that area.

12 Those are two radically different ways of thinking  
13 about human origins and populations and life ways that ensue.

14 HEARING OFFICER CELLI: Just so you know, even  
15 though it's not a full slide here in the room, it's on the  
16 WebEx. So what I have on the far right is Chemehuevi circle.

17 Is that the end of the slide?

18 MR. GATES: Yes. The concept, I think, prevails  
19 despite not being able to see some of that there, that one is  
20 the linear thing, the other is the clustering around  
21 oftentimes a sacred mountain or a sacred place that's  
22 considered a place of origin. So those are two different  
23 things. And what we're trying to do with this landscape is  
24 accommodate both perspectives in one broad landscape.

25 What I would like to do now in the next slide is

1 switch over to our expert witness, Mr. Cachora, who will then  
2 try to move beyond what we've provided here to talk a little  
3 bit more about that Native American perspective.

4 MR. CACHORA: Thank you.

5 First of all, Mr. Celli, commissioners, those that  
6 are present, this morning I mainly came here after sitting  
7 back all of these years, I think there is a dire need for  
8 further understanding of the Quechan religious practice, why  
9 these things exist. And this morning what I have here, I  
10 have with me a pointer. Hopefully, I don't hit anybody in  
11 the eye with it.

12 But the circles that you see there, although it  
13 doesn't show very well in some of them, but you have for  
14 instance this, you've got this, you have this.

15 HEARING OFFICER CELLI: Mr. Cachora, I just want to  
16 say because we have people on the telephone and they can't  
17 see the laser pointer, I'm going to ask that you say that you  
18 -- for the record, the laser pointer is pointing to the  
19 picture of the three pictures on the bottom left-hand corner  
20 of the PowerPoint slide just above where it says, "Dragon  
21 Wash petroglyphs." So if you can just talk about -- just  
22 speak as though there are people who are only on the  
23 telephone so they can understand what you're pointing to.

24 MR. CACHORA: Right.

25 HEARING OFFICER CELLI: Thanks.

1           MR. CACHORA: Okay. Using my laser pointer, I'm  
2 pointing to the left lower, which is in the Dragon Wash area.  
3 I'm pointing at a circle. Mainly only a few within this  
4 structure here.

5           And the other that I'm pointing on the right is  
6 from Arizona, the circles. That circles to us and the  
7 Quechan, to the Quechan people, it represents songs. Because  
8 in our area there is a mountain we call Muggins Peak. In  
9 Quechan words, it's (untranslatable). It's very difficult to  
10 spell, but that means lighting against the mountain. That's  
11 where our first cremation, which we practice today, we still  
12 cremate our people. The song came from there for us. So any  
13 time you see a circle such as this, it represents songs.

14           And I mainly brought this to show you that science  
15 has a way of separating these petroglyphs. At beginning of  
16 time from the 1900s to present day, their thinking is still  
17 the same, it hasn't changed, but we sat back and watched it  
18 too long that we now have no choice but to start identifying  
19 why these areas are so important to us.

20           And the one further up is two circles with lines.  
21 Okay. There is a wavy line on the lower left. That, I  
22 brought that from Yuma area also. And the one that I needed  
23 to show was that the very first page that was blacked out.  
24 That has that same marking in there.

25           So I have two evidence to show, but I can only show

1 this today because of that other being blacked out for some  
2 reason.

3 HEARING OFFICER CELLI: So one is in Yuma, Arizona.  
4 And where was the one that was blacked out located?

5 MR. CACHORA: The one that was blacked out is on  
6 our reservation called the Potholes.

7 HEARING OFFICER CELLI: Okay.

8 MR. CACHORA: It's very simple, these petroglyphs.  
9 When we look at petroglyphs, we don't eye them like you do as  
10 something picturesque or something to enjoy. We don't do  
11 that. This is something that comes to us in the way of  
12 religion. I don't like to talk about religion here, but in  
13 the Quechan ways, everything that we do is based on how we  
14 arrive through the religion. Everything that we talk about,  
15 whether it's verbal history, songs, it always includes the  
16 religious practice.

17 Unlike the American system today, we know what goes  
18 on in the day. Some of us do, some of us don't, but to us,  
19 it's constant, a reminder of who got us here. That's why you  
20 hear us say, "Our creator, our father in the sky," but we  
21 call him "Kawan." (phonetic) That's who he is for us. He  
22 is one in the same. But this is an example of what we have.

23 There are many more petroglyphs that match that I  
24 can easily go back and say this is how this fits this part,  
25 this part. But we're losing that now because of others



1 cutting into it, taking them away, damaging them through  
2 graffiti and whatnot. So it's something that we ourselves  
3 have to come up and start making an aggressive move to  
4 protect these things that are happening to what we believe is  
5 precious to us. It's our way of life.

6 I live two worlds. I live your world and I live my  
7 own world, and it's very hard to try to balance when one is  
8 missing. Yes, I dress like you. I have a car like you,  
9 everything else. But when I leave here, I go back to where I  
10 came from and I go back to that desert.

11 So the area that we're talking about, as he pointed  
12 out -- it was pointed out to you this morning, the  
13 PowerPoint, that -- everything that we looked, I don't have  
14 the map. Can we go back to the first maybe perhaps the  
15 little circle. I'll give you an example.

16 This is only a small section that we're looking at  
17 the area, but let's say, for instance, I'm down here  
18 somewhere.

19 HEARING OFFICER CELLI: He is pointing to the  
20 extreme southern part.

21 MR. CACHORA: It's the lower right hand of the map.  
22 That's a cultural resource. I can't see very well. Figure  
23 2, I think it is.

24 HEARING OFFICER CELLI: It says, "Figure 11" at the  
25 top of the PowerPoint.

1 MR. CACHORA: Okay.

2 HEARING OFFICER CELLI: And where you're pointing  
3 it says "Palo Verde Monument" towards the middle right-hand  
4 side of Figure 11.

5 MR. CACHORA: Okay. Let's just say, for instance,  
6 I'm in here and I make that one circle within this area here  
7 (indicating). That's the beginning of my teaching. I take  
8 another circle to the left here. That's my second teaching.  
9 If I take another one here, that's my third, fourth. Each  
10 time I'm leading into something more than what I started off.  
11 It just goes in circles after circles. I keep expanding on  
12 my ground.

13 And this is how we have managed to know all of the  
14 areas that exist today within this area all the way up to  
15 (inaudible). This is how we do that. So when you start  
16 learning them in phases, this is what happens.

17 In my area, there is only four steps again that you  
18 go back in your own location. It starts with us with the  
19 cremation. Then it goes into these songs. Then it goes into  
20 dance pattern. Then the fourth, you eventually lead into  
21 where you need to be, because you now have three knowledges,  
22 you're ready for the fourth. So when you complete all of  
23 those, you have full knowledge.

24 What is knowledge? Knowledge is everything that we  
25 talk about today. We go back into that animal world. How do

1 we connect with animals? There are ways that we can explain  
2 how we connect with those.

3           So any animal that disappears, it's precious to us.  
4 That link is gone. Just like humans. You have relations  
5 that are gone. Some of us don't even care if our relation is  
6 missing. We go on, we say life continues. We continue to  
7 move in that way.

8           To the Quechan person, there is always remembrance,  
9 recall this person, what they've done. That person was a  
10 very powerful man that gave me that knowledge. Then you have  
11 that's where that person when we say respect comes in to that  
12 deceased person. That's how we arrive at that word how a  
13 person receives the respect.

14           At this point, I wouldn't be qualified to have a  
15 respect, because I'm just moving into these things also. But  
16 maybe when I'm dead and gone one day, somebody will recall  
17 that. Then I'll earn that respect finally.

18           This is how we see our world. So when something  
19 like this comes in, referring back to this map in a circle  
20 again, and I'm looking at a project, a Palen project, that's  
21 fine and dandy. One little speck in the middle of a desert  
22 is great. But what I look at is I look at a broader range in  
23 this area, and it scares me because what is already being  
24 proposed in this area.

25           If you take this area here, kind of like what I

1 went over earlier of learning my knowledge of circles here  
2 and here, you're doing the same thing with this project. As  
3 you continue to expand, before you know it, the entire area  
4 is taken. Whatever is in between at that point is lost.

5           It doesn't matter whether that pipe, that standpipe  
6 that you're proposed can be 6 inches, 8 inches, but by -- you  
7 put it by the 10,000, 15-, 20,000, in that area, whether you  
8 know it or not, you're still accumulating acres. That's --  
9 in time, that's what you arrive.

10           So when everybody follows a pattern after pattern,  
11 you're still destroying that land. This is how we look at  
12 it. We don't look at a single project and say this is what  
13 it is. We look at a broader range of things that can affect  
14 us in the long run. That's what my worry and my people worry  
15 back home.

16           So when I come in, I appreciate you listening to me  
17 today, because this is a message that I'll carry back with me  
18 and tell them that this is what is going on. Because this is  
19 my first time. I don't blame you for getting confused in  
20 this with my paperwork. It doesn't matter.

21           But what matters today to me now is that you have  
22 given me this opportunity. And I'm mainly here to educate  
23 you on how we are as human people down here in the Yuma  
24 Valley as Quechan people. There is so much knowledge that we  
25 still have to practice within each district. So this is what

1 we have.

2 HEARING OFFICER CELLI: Thank you, sir.

3 MR. CACHORA: If you have any more questions, I'll  
4 be glad to answer them later. Thank you.

5 HEARING OFFICER CELLI: We will, so stay there. I  
6 want to ask Mr. Gates or Mr. McGuirt.

7 MR. GATES: We're now switching over to more  
8 towards the first question you asked as to get to the areas  
9 of disagreements, so Mike McGuirt will take over from here.

10 HEARING OFFICER CELLI: Okay.

11 MR. GATES: And then after he is done, Lorey will  
12 close one last time for us.

13 HEARING OFFICER CELLI: And then what I'm thinking  
14 of doing after that is that I would like applicant put on  
15 their -- or Petitioner put on their PowerPoint and make their  
16 presentation where they think the issues are.

17 Do any -- where is CRIT sitting? Does CRIT have a  
18 PowerPoint or anything like that?

19 MS. JASCULCA: We don't have a PowerPoint, but we  
20 do have some prepared remarks.

21 HEARING OFFICER CELLI: Basically, the way we  
22 usually will proceed if it's going to be either applicant or  
23 staff, whoever seems to be carrying the torch on that one,  
24 followed by applicant or staff who wasn't, and then we'll  
25 take each of the intervenors in turn and you can present.

1 And then after that, if there is further discussion, we'd let  
2 staff and the panel have their complete discussion.

3 So, Mr. McGuirt, go ahead.

4 MR. MCGUIRT: Thank you. With the Committee's  
5 indulgence, I would like to briefly go over the regulatory  
6 context of the structure of what we hope will inform the  
7 discussion of the actual disputes that we have between us.

8 I would like to briefly go over the regulatory  
9 underpinnings and staff's consideration of the historical  
10 significance of the Chuckwalla Valley cultural landscape and  
11 of our assessment of the amended project's potential effects  
12 to it.

13 On this slide here, this is the basic regulatory  
14 setup for what historical resources under both CEQA and the  
15 California register regulations. The regulations define  
16 several types of resources between both statute and the  
17 regulations. You have buildings, structures, objects, sites,  
18 places, and areas.

19 Now, in order for a resource to be eligible for  
20 listing on California Register it's necessary that the  
21 resource embody certain types of specifically defined values.  
22 The associated values, design, construction, or artistic  
23 values or information values.

24 So having made a determination that a resource has  
25 one or several of these values, the resource in order to be

1 eligible to be listed and be considered a historical resource  
2 must also retain enough integrity to convey the significance  
3 that it has.

4           So in the statute and regulations the resource  
5 integrity is split out into several different aspects. These  
6 are formally defined aspects that one goes through and  
7 considers as one evaluates the historical significance of the  
8 resource. Those are location, design, setting, materials,  
9 workmanship, feeling and association.

10           Now, as we go forward what's very important to our  
11 discussion today is that these aspects of integrity are not  
12 equally weighted. Depending on what the significance of the  
13 resource is, what value it is significant for, certain of  
14 these aspects would be more or less important. We'll discuss  
15 that as we go on.

16           Okay. In the case of the cultural landscape that  
17 is the focus of our analysis, staff recommends that  
18 Chuckwalla Valley portion of PRGTL, as messy as that is, is  
19 eligible for listing in the California Register under  
20 Criterion 1 for its association with events significant in  
21 the prehistory and history of Native American groups in the  
22 region and for its association with traditional uses and  
23 beliefs important to the continuity of regional Native  
24 American groups.

25           It's also eligible in Criterion 3 for the artistic

1 values of the petroglyph panels found in a number of places  
2 throughout the valley. And further, it's eligible under 4  
3 for the information that the landscape contains. It is  
4 important for the articulation of the prehistory and history  
5 of Native American life in the valley.

6 Now, the assessment of a project's effects on a  
7 cultural resource is a relatively straightforward exercise.  
8 This next slide goes through briefly what the thresholds of  
9 significance are as they're defined for historical resources.

10 So under the CEQA guidelines, a significant effect  
11 on the environment is when a project will have a substantial  
12 and adverse change in the significance of a historical  
13 resource.

14 So what's a substantial adverse change? Among  
15 other things, it's an alteration of the resource or its  
16 immediate surroundings such that the significance of the  
17 historical resource would be materially impaired. Which in  
18 turn begs the question what is material impairment?

19 Material impairment is defined as an effect that  
20 (inaudible) that materially alters the physical  
21 characteristics of the historic resource that convey its  
22 historical significance.

23 Now, the physical characteristics that are referred  
24 to here that convey historical significance refer to, again,  
25 the resource integrity, which is sparsed out into the



1 regulations into the seven different aspects: location,  
2 design, setting, materials, workmanship, feeling and  
3 association. Okay.

4           In the case of the effects that the Palen SEGS  
5 would have on the cultural landscape that staff discusses,  
6 please remember that in the FSA staff only concerns itself  
7 with the direct visual effects that the amended project would  
8 have on cultural resources away from the physical footprint  
9 of the facility. This is outside of the facility footprint  
10 that was considered in the original case. The three most  
11 important aspects of integrity for the consideration of these  
12 visual effects are setting, feeling, and association.

13           Can you click those for me now? Hold on. We've  
14 got a little animation on here (inaudible). Can we click on  
15 it?

16           What we had set up was I wanted to demonstrate that  
17 in the case of the cultural landscape that we're looking at,  
18 the material aspects and integrity that we're concerned with  
19 are setting, feeling and association, because we're primarily  
20 dealing with the cultural landscape in terms of the  
21 associative values that I described earlier in terms of life  
22 ways and tradition in use. And to convey its associative  
23 values, the resource, which in this case is the entire  
24 landscape, needs to retain enough of its setting and feeling  
25 and association as those are formally defined in order to

1 continue to convey those associative values.

2           So what we're saying is that it doesn't. So on  
3 regulatory framework, you come up here and you take out  
4 setting, feeling and association, you have material  
5 impairment, which means that you've had a substantial  
6 adverse change on the environment, which under CEQA  
7 (inaudible). That's how we get to that.

8           Okay. As a consequence of Palen SEGS visual  
9 degradation to the landscape's integrity, staff has  
10 ultimately come to the conclusion that the construction and  
11 operation of the amended project would have a significant and  
12 unmitigable effect on the Chuckwalla Valley portion of PRGTL.

13           Please remember that absent more robust field data  
14 on the cultural resources that make up this cultural  
15 landscape, staff has had to recommend determinations for  
16 regulatory purposes that, one, archaeological deposits and  
17 ethnographic places are present in as yet unsurveyed areas of  
18 the valley. And two, every subcultural resource is  
19 historically significant.

20           As a consequence of this, subsequent discussion  
21 about the cultural resources in these areas must from a  
22 regulatory perspective begin solely with the character of  
23 appropriate mitigation. If staff were to attempt to pick and  
24 choose which of the few cultural resources that are known  
25 from staff's statistically unrepresentative sample of these

1 areas, rather than to assume the presence and historical  
2 significance of a broader inventory, the legal sufficiency of  
3 staff's CEQA analysis would necessarily collapse.

4 So that having been said, we're going to roll over  
5 and see we have two tables of the actual disputes as we see  
6 them and staff sees them so far, and I would like to go over  
7 those.

8 Okay. This table, which is difficult to see on the  
9 screen, in the left-hand column we have what the point of  
10 disagreement is as staff frames it. Then we have the project  
11 owner's position as staff frames it, and what our position  
12 is.

13 So the first one of these is the project area  
14 analysis and what the scope of our analysis is, as we  
15 understand the project owner's position. The project  
16 visibility was analyzed during the original citing case, and  
17 basically their analysis between the original project and  
18 between this project.

19 Staff believes that's incorrect, that the whole  
20 area in which the lights of the project will be visible was  
21 never analyzed. So in staff's opinion, the original analysis  
22 dealt with the direct/indirect effects and the cumulative  
23 effects of what happened on the project footprint. Our  
24 analysis for this purpose is restricted solely to what's  
25 outside of the project and away from it and has never been

1 analyzed.

2           Okay. The second issue, the second point of  
3 disagreement would be that the analysis of visual effects to  
4 cultural resources is solely about project visibility. Okay,  
5 that's how we framed that up.

6           The amended project visibility is largely  
7 equivalent to the licensed project's visibility. We've seen  
8 arguments and rebuttal testimony from the project owner that  
9 basically you can see the new project, the amended project,  
10 from just about as many places as you can see the old  
11 project. And what we're saying is that's an incomplete  
12 argument, that's not the whole story. The more important  
13 part of the story is that the analysis, the visual effects,  
14 the cultural resources is about visibility and it's about  
15 visual intensity. And the visual intensity aspect of this  
16 argument is key. The intensity of the amended project's  
17 visibility greatly exceeds that of the licensed project and  
18 further analysis is therefore warranted. So that's a very  
19 important point, obviously.

20           Okay. The relationship of the visual resources  
21 analysis to the analysis of the visual effects to cultural  
22 resources. The project owner believed that the analysis in  
23 the FSA sections are roughly comparable. So they're saying  
24 basically that the kind of analysis and what the goals and  
25 focus of the analysis are in visual resource section is

1 similar to what's going on in cultural.

2 Staff does not agree with that at all. The  
3 different analyses are almost unrelated. We're looking at  
4 different things. We have different objectives and different  
5 methods that we used to get to our conclusions, so we'd like  
6 to make that point.

7 With regard to that particular conditions of  
8 certification, Palen SEGS effects on the Chuckwalla Valley  
9 portion of PRGTL CUL-1. The project owner's position, as we  
10 understand it, is the Palen SEGS would only result in similar  
11 cumulative effects to the licensed project, and they believe  
12 that the original CUL-1 should be retained.

13 We disagree. We believe that Palen SEGS would  
14 result in a dramatic intensification of the direct visual  
15 effects and we'd recommend the adoptions that we proposed in  
16 CUL-1 in our analysis. That's going to be the bulk of our  
17 discussions, I believe, this afternoon about that. There is  
18 also several other ones I would like to go over briefly.

19 One point of disagreement is the revision of the  
20 mitigation for known archaeological resources in the project  
21 footprint (inaudible) conditions -- cultural conditions in  
22 certification 11 through 14. They come to us from the  
23 original citing case. This dealt with archaeological sites  
24 that were on the project footprint that were found during the  
25 original citing case on which the Committee has already

1 deliberated and come to its decision about how to handle it.

2           The project owner is requesting to delineate  
3 construction area boundaries around known archaeological  
4 resources for which the original license requires mitigation.

5           If you all will please recall the original case,  
6 given the way that the analysis was conducted, we had to  
7 assume a historical significance of everything that was on  
8 the project unless there was substantive evidence that said  
9 that we could discount that idea. And so we went straight to  
10 mitigation for these.

11           So these are archaeological sites that remain in  
12 the amended project boundary and are going to have to be  
13 dealt with under the original license conditions. And the  
14 way that the original condition was set up was that they  
15 needed to complete that mitigation prior to the initiation of  
16 construction.

17           Project owners come in and said, "Well, during  
18 construction monitoring is good enough that we draw a  
19 boundary, I think 30 meters out from the site, and then we  
20 can go on with construction while we deal with discovery. So  
21 we want to do the same thing with these known archaeological  
22 resources."

23           What we've set up to do in the construction  
24 monitoring condition is teamwork. It's compromised. It's  
25 trying to make the best of a bad situation. We have a lot of

1 money, a lot of people on the ground, a lot of equipment  
2 going trying to as quickly as possible deal with discoveries  
3 that we find.

4 In the case of these known resources, it's very  
5 difficult until you start digging to figure out whether or  
6 not a 30-meter buffer is sufficient or not. There may be  
7 parts of the archaeological site that are underground you  
8 don't see at the surface, and you need to account for that.

9 Staff recommends the denial of these requests  
10 because the project owner to date, as far as we know, has  
11 proposed no criteria or protocol relative to which  
12 construction around known archeological resources would be  
13 ensured. We're open to those discussions, but we haven't  
14 seen those points yet.

15 Okay. Energy Commission deferral of compliance  
16 authority to BLM, CUL-16. The project owner seeks regulatory  
17 certainty or clear direction between the Energy Commission  
18 and the BLM.

19 Staff is sympathetic with the project owner's  
20 desire to have certainty in the situation. Unfortunately,  
21 staff must disagree with their seeking to do that. We want  
22 to uphold the Energy Commission's singular jurisdiction to  
23 comply with CEQA.

24 As we explained in some detail in the document, we  
25 were involved in a joint process early on in the licensing

1 case for the original project. Since that time, we have not  
2 been involved in a joint process, we're in a parallel process  
3 and we consult with one another. We've done very well over  
4 the last five or six years to iron out whatever differences  
5 we've had.

6 The project owner cites frequently that section 106  
7 programmatic agreement for this project is a vehicle to do a  
8 lot of things that work under CEQA. The problem for us is,  
9 is we were not a party that document, we're not a signatory  
10 to it, and for this project the document has been reopened,  
11 amended, and executed again. And to our knowledge, we were  
12 not even apprised that that was going on. We have been no  
13 part of that PA.

14 So we need to have the ability, we think, to ensure  
15 that we have adequate compliance under CEQA and that there is  
16 not a federal or state conflict. Whatever conflicts there  
17 are, like I said, we do feel confident based on our history  
18 with BLM that we can work it out.

19 Finally, there is a character of the effects to  
20 what has been recognized as part of this amendment process of  
21 the Ironwood Historic Mining District. The project owner's  
22 position is there is no degradation to potential California  
23 Registry eligibility due to visual intrusion.

24 We disagree with this position because we feel that  
25 there is not enough data to support the project owner's



1 contention. Staff's effects assessment is necessary to  
2 regulatory structure of the analysis.

3           We became aware of this district with our work on  
4 the ground. We saw that it's there. And due to the  
5 regulatory necessity of our having to assume presence and  
6 assume significance and go to mitigation, we don't have  
7 enough data to support what we think is a legally defensible  
8 argument that that district is or is not eligible. Because  
9 of where we're in the process and the amount of information  
10 that we had to use to conduct our analysis, we're good with  
11 CUL-17 and the requirements that it has.

12           HEARING OFFICER CELLI: Let me ask you a quick  
13 question, if I may. Maybe I'm not remembering it correctly,  
14 but I thought that while staff found that there was this  
15 cultural district, this cultural landscape (inaudible) mining  
16 district, that the district itself would -- I thought there  
17 was a finding or a recommendation that it was not -- that the  
18 project itself did not degrade this cultural district. Do I  
19 have that wrong?

20           MR. MCGUIRT: Yes, sir, I believe so. Because of  
21 the necessity of not having the data that we would have, the  
22 robust enough data to be able to really substantively make an  
23 argument one way or the other, what we're saying is, is that  
24 -- and, again, I want to -- for the Committee's sake, I want  
25 to differentiate this consideration from the cultural

1 landscape that we're dealing with, it's a big issue here.  
2 This is a sidebar, historical archeological district on the  
3 side.

4           We were able to identify one component, one series  
5 of mines within this historic mining district that probably  
6 date somewhere from about 1870 to 1910. It made us aware  
7 that this district was there, so we're looking at one  
8 component or subarea of a much larger district. So,  
9 technically, we have to look at the eligibility not only of  
10 the overall landscape but different components individually  
11 within it. And we're saying in CUL-17 that we don't have  
12 enough information to do that; therefore, we have to assume  
13 it's significant under CEQA and that we can mitigate for it.

14           HEARING OFFICER CELLI: Okay.

15           MR. McGUIRT: Okay. Thank you.

16           The last slide we have. We're trying to get there.  
17 Can someone help us back in the booth?

18           HEARING OFFICER CELLI: About how much time do you  
19 think you're going to need?

20           MR. McGUIRT: We're almost done. This is the last  
21 slide, actually.

22           HEARING OFFICER CELLI: Okay. (Inaudible)

23           MR. McGUIRT: To conclude, we would like to present  
24 this panorama of the valley looking out towards the project  
25 area. And Mr. Cachora would like to have the last few words.

1 HEARING OFFICER CELLI: Go ahead, sir.

2 MR. CACHORA: Thank you. First of all, I think  
3 what we're trying to -- mainly what we're trying to do here  
4 is that right now we're trying to, in our own way trying to  
5 resolve some of this what's called current quality  
6 expression. But those things, like I said earlier, span way  
7 beyond. Right now we're dealing with artifacts in this area.

8 The only problem that I have there is what you're  
9 looking at is remnants of what has already been partially  
10 destroyed. Beginning again in 1900s, there were  
11 anthropologists, archaeologists, that worked out in this  
12 area, I believe surveyed the area, and a lot of those  
13 materials have since been collected. There were hobbyists  
14 that came through and collected most of the pottery, so what  
15 we're dealing with is the remnants of what you see now. It's  
16 very difficult to explain from that what used to look like a  
17 long time ago and it sort of wiped away the original  
18 evidence. In our own way, we call that traditional  
19 evidence. Means that any culture that is a true fact that we  
20 express, that's what it means to us.

21 This area -- and, again, we're back to the map.  
22 It's a scenery that a mountain of covecumb in the far  
23 distance, and Palen is in here somewhere. McCoy. And  
24 further right bottom is Chuckwalla. And there are sites that  
25 exist here. There are sites that exist here (indicating).

1 There is some here, and there is some way back on Dragon  
2 Wash. Those are special places once used by our ancestors.

3           When I say, "By our ancestors," we have been in  
4 this area as well. Quechan people occupied area in Palo  
5 Verde. That was our well-known traditional area. So those  
6 circles that you see, they cross into each other.

7           And what it is, this word came out recently. We  
8 didn't have a word for it in our language, and the best  
9 described this, as we call it, natural setting. And what  
10 that means is natural settings is similar to the circle that  
11 I explained earlier, but in this case I'm talking about an  
12 energy that flows through these areas that go back and forth,  
13 if one knows how to generate that energy. That is not  
14 constant motion just like you say that anything that moves is  
15 in motion. It's the same thing in a circular pattern.

16           So if you have one here, you want one here, one  
17 here. Again, I'm pointing now to the areas that I pointed to  
18 earlier with circles. It creates that circle. Natural  
19 setting is usually that it's an open space, nothing can  
20 obstruct that.

21           We have had this problem before. That this is a  
22 large area, I realize, but that's something that we utilized  
23 a long time ago.

24           And what I'm looking at here is there are two  
25 structures going up in this area 740 feet. I'm looking at

1 what I call a lighthouse in the middle of the desert, because  
2 that's going to have constant light just like you're looking  
3 at my laser right now. You can't help but to look at it.  
4 That's the way it's going to look. And at the same time,  
5 it's going to destroy that visual that we're talking about.

6 I think that's why we're saying that it's very  
7 important that some of these areas cannot be traded for  
8 anything because we're still -- like yourselves, you're  
9 caught in the middle of trying to understand what is in the  
10 desert today by archaeologists who are still trying to bring  
11 facts together, but we already brought those facts together.

12 We have gone farther than that to be able to  
13 explain to you how the system really works. That's something  
14 that we've never talked in the past before. But the way  
15 things have changed in our time and our people are not afraid  
16 to talk about that. There are some things that we're willing  
17 to share with you so that you will understand, and it's no  
18 different than what you're doing today.

19 So, in reality, if you have projects going in this  
20 entire area, you're looking at a city of solar project versus  
21 metropolitan buildings, housings and all of that, so you have  
22 two things going at the same time.

23 Now, if you have balance of that with the smaller  
24 version of energy, that's far enough to generate, let's say,  
25 a metropolitan with a small amount, I think that's the

1 solution. But right now, this is the Model T, everything  
2 that you're doing, so you have to have a vast amount of  
3 solars laying all over the place in order to get the energy  
4 that you need.

5 That's something we need to balance in the future.  
6 That's what our life is about. As Quechan people, we balance  
7 what we can do to our lives so that we can merge into any  
8 society that we want to, and we do that.

9 I'm here today before you, and things that I do now  
10 takes me before the Congress. I have been before the  
11 Congress before on these issues, so it's not this is the  
12 beginning of your education. It's going to be much larger  
13 now. More assertive, not aggressive, but assertive in trying  
14 to introduce something that's new to you just as renewable  
15 energy is new to us.

16 So I think we're at an equal basis here. This is  
17 new to you. Renewable energy is new to us. So we're trying  
18 to balance this up so that you would understand what we have.  
19 So that's mainly why I'm here again. Thank you.

20 HEARING OFFICER CELLI: Thank you. I think that's  
21 all that staff has.

22 Let's hear from applicant.

23 MR. GALATI: Mr. Celli, could I -- I wanted to be  
24 respectful during staff's testimony. I wanted to let them  
25 continue unbroken. I wanted to be respectful to Mr. Cachora.

1 I would like the record to reflect that he went significantly  
2 outside his written testimony.

3 The presentation that you see -- when you see our  
4 presentation, every slide will have been docketed prior and  
5 we'll let you know what that exhibit is.

6 The Commission staff believes, and this has been a  
7 problem for quite some time, that they can create new  
8 documentary presentations, bring them to an evidentiary  
9 hearing rather than file them as prewritten testimony. So my  
10 expert and I are trying to take notes over what staff wrote  
11 on the board for you and whether or not we have any problem  
12 with what they said.

13 I would like the Committee to tell staff once and  
14 for all for projects that they need to file prewritten  
15 testimony. It can encompass anything they would like it to  
16 say, but it's fundamentally unfair to have anybody sit here  
17 through a presentation like that and be prepared. I don't  
18 even have a moment to talk to my experts the way the informal  
19 hearing goes.

20 So my problem in trying to be cooperative and  
21 allowing Mr. Cachora to testify is compounded by the fact  
22 that staff is believing that they can file -- they can just  
23 bring evidence without prefiling it, and it has got to stop.

24 HEARING OFFICER CELLI: I understand that. Now,  
25 Mr. Galati, this is a problem we always deal with. You filed

1 something with the Committee's permission.

2 MR. GALATI: That's right, I asked the Committee's  
3 permission subject to everybody objecting.

4 HEARING OFFICER CELLI: Right.

5 MR. GALATI: And everybody said okay. If staff  
6 would have done that and given it to me, I would have it  
7 before now.

8 HEARING OFFICER CELLI: Understood. So you've  
9 preserved the objection. At this point, what I would ask,  
10 because we're eating up a lot of the clock on this, and what  
11 I would like to do is have your witnesses present their  
12 testimony right now that you would already anticipate and  
13 that you expect to put on, and in the meantime, you can  
14 formulate any questions that you have for Mr. Cachora while  
15 they're speaking, because presumably you have been through  
16 this before. Then we can move on.

17 So with that, let's hear from Petitioner's  
18 witnesses. Who takes the lead on this, Mr. Galati?

19 MR. GALATI: Ms. Barger.

20 HEARING OFFICER CELLI: Ms. Barger, please.

21 MS. BARGER: Good morning. I'm an archaeologist  
22 and I have 37 years of experience with three federal agencies  
23 and two state agencies in 18 states. I've had extensive  
24 experience working on electrical generation projects,  
25 including solar and -- I'm almost done.



1 HEARING OFFICER CELLI: I'm just going to ask  
2 because I'm glad you raised this. We said at the prehearing  
3 conference that we didn't want to hear people's CVs or  
4 resumes if they're being presented and put into evidence,  
5 which I presume everybody's got their resumes and  
6 declarations ready to go. So we can save some time by not  
7 getting into people's backgrounds. We assume all of the  
8 experts are qualified unless somebody raises an objection, so  
9 we're sure you're highly qualified. Let's hear the facts.

10 MS. BARGER: Okay. I disagree with staff in  
11 defining the impacts from the construction of the two solar  
12 towers. Staff feels that the addition of the two towers to  
13 the visual setting of the already approved project is enough  
14 to destroy the integrity of the now defined Pacific to Rio  
15 Grande prehistoric trail landscape, the Chuckwalla component  
16 as they described. This destruction of integrity would make  
17 the Chuckwalla component not eligible for an inclusion in the  
18 California Registry of Historic Properties or the National  
19 Register of Historic (inaudible).

20 Staff has defined the trails landscape as the three  
21 trail corridors that they showed on the map that covers six  
22 western states. And the landscape itself is the Chuckwalla  
23 Valley. So as you saw, it's surrounded by the McCoy  
24 Mountains, the Granite Mountains, the Palens, the McCoys, the  
25 Eagle Mountains, and the Chuckwallas to the south.

1           It also includes 11 ethnographic contributing  
2 elements, and I'm going to show these and discuss them. So  
3 that's why I'm going to go ahead and list them.

4           The Palen Dunes area of critical environmental  
5 concern, which is a BLM property. Ford Dry Lake, McCoy  
6 Springs, Chuckwalla Springs, Corn Springs, North Chuckwalla  
7 Petroglyph District, North Chuckwalla Prehistoric Quarry  
8 District, Long Tank, Alligator Rock, Dragon Wash, and San  
9 Pasqual Well.

10           Staff also includes some natural resource locales,  
11 which includes basically the foothills of all of the  
12 mountains I just described, which is the entire surrounding  
13 area of the Chuckwalla Valley, the Palen ACEC, and an area  
14 called the Coxcomb Fringe and (inaudible) Mesquite area, an  
15 area where there is a dense thicket of mesquite that's a  
16 resource that might have been used by prehistoric and  
17 prehistoric tribes.

18           I have a slide I would like to show. I think it's  
19 slide 1.

20           HEARING OFFICER CELLI: Are you working on that,  
21 Ms. Anderson, getting that slide? Okay.

22           MR. GALATI: For the record, Mr. Celli, this is  
23 attached to Exhibit 1076, cultural resource testimony of Mary  
24 Barger and Fred Nials, it's an attached figure.

25           HEARING OFFICER CELLI: That's what is now up on

1 the screen is part of Exhibit 1076?

2 MR. GALATI: Right. That's correct.

3 HEARING OFFICER CELLI: Please proceed.

4 MS. BARGER: So this slide shows a number of  
5 things. It shows the project area of effect, which is the  
6 circle. It shows the representation of the difference  
7 between the visual effects by adding the towers to the  
8 existing permitted project, and those are the pink or purple  
9 areas. That's the difference was by adding the tower.

10 So as I said, adding the solar towers to the  
11 existing approved project would destroy the integrity of this  
12 ethnographic landscape, which includes the contributing  
13 elements. And many of those contributing elements that I  
14 just described are up there in blue. I know they're  
15 incredibly difficult to see, but mainly those are the  
16 resource areas and some areas that are identified in  
17 condition CUL-1 that I will discuss. So I did want to put  
18 this up, and if we need to, we can bring this back up.

19 HEARING OFFICER CELLI: So can I just ask, these  
20 purple or the fuchsia --

21 MS. BARGER: The fuchsia difference is by adding  
22 the towers. So if you didn't have the towers, the difference  
23 by adding the towers is the purple and the pink. So by  
24 adding the 750-foot towers, it adds to the pink areas to the  
25 existing fuchsia.

1 HEARING OFFICER CELLI: So otherwise, so if it were  
2 just the cost and not the towers, the project would be  
3 invisible to those areas that are fuchsia. But by adding the  
4 towers, those areas that are fuchsia are -- the project is  
5 now visible to those areas.

6 MS. BARGER: That's correct.

7 HEARING OFFICER CELLI: Okay. Go ahead.

8 MS. BARGER: So the staff has talked about  
9 integrity and the destruction of integrity of this  
10 ethnographic landscape, and including the destruction of the  
11 integrity of these contributing elements. So what is  
12 integrity anyway? In order to understand the significance,  
13 you need to understand some level of integrity. So you can't  
14 have a significant cultural resource unless it has some level  
15 of integrity. So we all need to understand what is meant by  
16 integrity.

17 Integrity for cultural resources is usually defined  
18 by the National Park Service guideline set forth in Bulletin  
19 15. There are seven aspects of integrity that staff has  
20 discussed. Staff has stated, and today they did too, that  
21 three of these factors, the integrity of setting, feeling,  
22 and association will be lost by adding these two towers.

23 Much of the interpretation of setting, feeling, and  
24 association is subjective. In fact, the Park Service  
25 actually states, quote, "Because feeling and association

1 depend on individual perceptions, their retentional loan is  
2 never sufficient for its eligibility of a property for the  
3 National Register," unquote. I do feel that evaluating these  
4 factors is subjective in nature and can vary from person to  
5 person.

6 I do agree that the setting will be impacted by the  
7 addition of the two towers. However, I believe that this is  
8 not enough to destroy the integrity of the cultural  
9 landscape.

10 Staff says that due to the size of the Chuckwalla  
11 Valley, it is an impact. I think the very size of the valley  
12 negates staff's argument. I feel because of the vastness,  
13 the visual impacts are significantly reduced.

14 As an illustration, we did visual simulations and  
15 added the two towers to the landscape. The visual  
16 simulations were done from a number of locations, including  
17 some of the non-ethnographic resources that have been  
18 described. These locations were selected with input from  
19 staff and BLM. Some of these locations are the same as the  
20 contributing elements to the landscape that were identified  
21 by staff. These key observation points (inaudible) are  
22 located in scattered locations around the valley perimeter.

23 So we're going to put up the visual simulations,  
24 just a couple of them. We did five of them. And we're going  
25 to show what it looks like with and without the towers.

1 HEARING OFFICER CELLI: Okay. So this is without.

2 MS. BARGER: So this is without. This is a picture  
3 taken from the base of the Coxcombs, which is located ten  
4 miles to the north/northeast of the project area. This point  
5 is the closest point to Joshua Tree National Park. It's also  
6 next to the coxcomb resource area, which was one of the areas  
7 that staff identified to do surveys under CUL-1.

8 Let's see what it looks like with the towers.

9 HEARING OFFICER CELLI: We're actually able to see  
10 on the WebEx that the cursor was circling the two towers.

11 MS. BARGER: So here is one of the towers.

12 HEARING OFFICER CELLI: Are you saying that this  
13 simulation was agreed to by staff?

14 MS. BARGER: The location for the photograph when  
15 we discussed it with staff as possible locations to do the  
16 visual simulations, these were discussed with staff. I don't  
17 think we did all of the ones that we discussed because some  
18 of them were too far and too difficult to access.

19 HEARING OFFICER CELLI: I just wanted to know that  
20 whether staff felt that this accurately depicts the  
21 luminosity of the reflection of these towers.

22 MS. BARGER: I'm not sure if that's --

23 MR. GALATI: According to the visual resources that  
24 was not in dispute, these are the same visual simulations  
25 that were used for visual resources.

1 HEARING OFFICER CELLI: These are staff's?

2 MR. GALATI: No, these are ours that we submitted.  
3 We never got a request to change them, and staff used them in  
4 the final staff assessment. They're in the final staff  
5 assessment as well.

6 HEARING OFFICER CELLI: Go ahead, Ms. Barger.

7 MS. BARGER: So you can see how vast the landscape  
8 is, as we've seen from the other photographs. You can see  
9 the Chuckwalla Mountains in the background. You can see all  
10 the way across the valley floor. Where the power tower  
11 locations are is, you know, out on the valley floor. I don't  
12 feel that the towers is a huge impact on visual intrusion on  
13 this viewshed.

14 Next slide. This is Big Wash. This is looking  
15 from Big Wash to the east. Big Wash is located 15 and a half  
16 miles west of the project at the base of the Eagle Mountains.  
17 The Eagle Mountains also has a resource area that's been  
18 proposed for survey under Condition 1. This was an area that  
19 was identified by BLM and some of the tribes recommended  
20 taking a look at Big Wash, so we went ahead and did the  
21 simulation.

22 Could I have the next slide. I'm going to -- I  
23 should be remembering them. I'm (inaudible). I can't get  
24 the -- Somebody is doing a really good job with the pointer,  
25 though.

1           So the towers are -- there we go. You can see the  
2 tower on the horizon there. You can see the Chuckwalla  
3 Mountains, the little Chuckwallas to the right. That might  
4 be the Mule Mountains there where the pointer is pointing on  
5 the far horizon.

6           HEARING OFFICER CELLI: Is there only one tower  
7 showing on this KOP?

8           MS. BARGER: No, you can see two.

9           HEARING OFFICER CELLI: Oh, I see. Okay.

10          MS. BARGER: So then the next one, KOP-8. This is  
11 from Dragon Wash. Dragon Wash is located near Big Wash.  
12 It's 16 miles from the project area also at the base of the  
13 Eagle Mountains. Again, this is part of one of those  
14 resource locales that's being proposed for survey as  
15 mitigation measure. You can see the Chuckwallas. You can  
16 see the Palen Mountains. You can see the McCoy Mountains all  
17 the way in the distance. You can see some haze in there  
18 probably from dust, although we have had days out there from  
19 pollution from the basin.

20          Could I have the next slide to show the towers? So  
21 Dragon Wash does have -- is the locale, petroglyph and  
22 archeological source. And it's one of the contributing  
23 elements to the landscape.

24          Next slide. This is from Alligator Rock. So  
25 Alligator Rock is an ACEC and designated BLM. There is a



1 number of archeological sites there, petroglyphs. You can  
2 see the Palen Mountains. The project is ten miles away. The  
3 distance of ten miles is the same distance as to Long Tank.  
4 Another contributing element is Ford Dry Lake, which would be  
5 located east, but it sort of gives you a distance.

6           Could I have the next slide to show you what the  
7 towers look like. So I don't feel like the towers are  
8 overwhelming and have a lot of visible intensity. They are  
9 visible, you can see them. They sort of wash out on the  
10 slide, but you have a photograph in front of you, they're  
11 more visible. But they aren't overwhelming. You can still  
12 see the landscape.

13           The last one, the last slide, please. This is from  
14 in the Palen Mountains, six miles north of the project area  
15 above the Palen ACEC. So the ACEC is -- you sort of see the  
16 dune area down there, the dunes next to where Dry Lake is  
17 identified on the map. This is also the same distance to  
18 Corn Springs, another contributing element, and the North  
19 Chuckwalla Quarry District, another contributing element.  
20 You can see the Chuckwalla Mountains in the back. You can  
21 see the Eagle Mountains to the right.

22           Could I see what the towers look like, please. so  
23 in this case, especially since we're up a little bit higher,  
24 we can see what the other project might have looked like in  
25 terms of the mirrors, the permitted project, and then what it

1 looks like now in addition of the two towers. So yes, they  
2 are visible, but I don't feel it's a total intrusion into the  
3 landscape that you can't appreciate the physical aspects of  
4 this landscape.

5 We can leave this slide up for now.

6 So I want to ask you a question. Can you still see  
7 the components of the landscape of the Chuckwalla Valley even  
8 with the towers located there? Can you still see what makes  
9 the Chuckwalla Valley unique and that there's still presence?  
10 Can you still see the individual peaks, the washes, different  
11 formations?

12 So after I look at these simulations, I think the  
13 physical aspects that make this landscape identifiable and  
14 recognizable. I believe the expanses of the valley show the  
15 addition of the power towers to be a minor disruption to  
16 experiencing this area.

17 Staff has stated that the landscape and the  
18 contributing elements are eligible for the California  
19 Register of Historic Places under criterion 1, 3 and 4. So 1  
20 is associated with tribal use. I'll summarize that. Rock  
21 art for criterion 3. Criterion 4 is for archaeological sites  
22 for information potential.

23 I agree with these evaluations. In my work with  
24 the federal government, I have had a lot of experience  
25 applying National Register's (inaudible) state criteria.

1           In looking at the Park Services guidance on  
2 evaluating integrity, it asks the question, does the property  
3 retain the identity for which it is significant? Much of the  
4 traditional landscape is based on physical features, the  
5 mountains, the drainages, the valleys. And Alligator Rock is  
6 an example.

7           The Park Service provides guidance on understanding  
8 natural features as part of the landscape. They ask, are  
9 they unobscured by modern construction or landfill? So I  
10 would argue that the physical features of the landscape are  
11 unobscured. So can we still see these features and can we  
12 still recognize them and appreciate them?

13           Another important question the guidance offers is,  
14 would a historical contemporary recognize the property as it  
15 exists today? I believe someone from a time period prior to  
16 any modern construction could still recognize the mountains,  
17 the Chuckwalla Valley, the locations of the springs, Palen  
18 Dunes, and Alligator Rock, just as examples. They might  
19 wonder what on earth have you people been doing out here and  
20 what are these things out here?

21           At one end of the continuum, think of the island of  
22 Manhattan. Would a person from the past recognize that  
23 island as it looks today? I think that's unlikely. However,  
24 here due to those large vistas and multiple mountain ranges,  
25 the towers are visible, but the landscape is easily

1 recognizable. I believe that a person can still find and  
2 follow the trails to different locations in this landscape.

3           It seems that the staff has set a really high  
4 threshold of significance for the landscape. So as a result,  
5 staff stated that the towers would profoundly and irreparably  
6 degrade the ability of the landscape to convey its historic  
7 significance.

8           I believe, as I described, that the landscape is  
9 still intact. The physical features and all of the  
10 contributing elements listed in the final staff assessment  
11 are all present. These include the petroglyph sites, the  
12 springs, mountains, foothills, Palen Dry Lake ACEC. They're  
13 all physically unaffected by the addition of the two towers.

14           I believe this landscape, the Chuckwalla portion of  
15 Pacific to Rio Grande Trail landscape is still eligible, and  
16 it's still eligible under all of those three criterion.

17           I believe the list of actions in condition CUL-1 is  
18 burdensome except for two, the reconnaissance survey proposed  
19 for the Palen and Coxcomb surveys and the \$35 an acre for  
20 cumulative effects to the landscape.

21           The reconnaissance survey was originally described in  
22 Data Request 26 where staff also said that to request survey  
23 data outside of the southern Palen and Coxcomb Mountains  
24 would constitute an unreasonable burden on the project owner.

25           Although these field surveys were not completed by

1 the applicant due to issues scheduling the work because of  
2 BLM's requirement to amend that existing programmatic  
3 agreement, which required extensive consultation, and  
4 consultation requirements related to trying to issue the  
5 survey permit, the applicant fully intends to complete those  
6 surveys, since not only are they requested by staff, but it  
7 is part of BLM's amended PA work plan.

8           Could I go back to the first slide?

9           The other actions of CUL-1, condition 1, include a  
10 revision of the prehistoric trails network cultural landscape  
11 contact and field manual. This trails network is a trails  
12 network that covers six states, so we feel that this is to  
13 asking too much.

14           A public outreach video to understand this area  
15 better, a paleoenvironmental study that would be evaluating  
16 packrat middens that have been seen in some of the mountains,  
17 a petroglyph study of other petroglyphs throughout the  
18 valley, support a steering committee to develop compensatory  
19 initiatives to Native American communities, and surveys in  
20 all of those surrounding areas that are outlined in blue at  
21 the base of these mountains, including those central areas,  
22 the (inaudible) mesquite area and Coxcomb fringe area.

23           So staff is saying that these would -- are proposed  
24 as conditions, but that they would still not mitigate the  
25 effects of the project, so we believe that this is

1 burdensome.

2           Related to all of the work outlined in CUL-1 is a  
3 condition of CUL-16. This condition removes references to  
4 the BLM PA.

5           HEARING OFFICER CELLI: Excuse me, Ms. Barger. I'm  
6 just going to ask everyone would please turn off your phones  
7 altogether so we don't have to listen to your ring tones.  
8 Whoever. Thank you. Please take that out, kill it, step on  
9 it, throw it in the fountain.

10           I'm sorry, Ms. Barger.

11           MS. BARGER: May I say I'm relieved it's not mine.

12           HEARING OFFICER CELLI: Go ahead.

13           MS. BARGER: So related to this is condition CUL-  
14 16. This condition removes the reference to the BLM  
15 programmatic agreement. All field work related to any of the  
16 conditions in CUL-1 will be permitted by the BLM because it's  
17 on BLM land. If they don't agree with the requirements or  
18 the conditions as outlined, they're not required to approve  
19 the field work that would need to be done. As a result of  
20 this, they're the final arbiter.

21           In addition, any reports related to the field work  
22 that's conducted on BLM land would have to be reviewed and  
23 approved by the BLM. If the reports don't meet their  
24 requirements, the archeological consultant could lose their  
25 BLM permit, which could impact their ability to do work.

1 This approval process also places BLM in a position as a  
2 final arbiter.

3 For monitoring, since the project is located on BLM  
4 land, they also have the final say in how monitoring is to be  
5 conducted and reported on.

6 The programmatic agreement also requires a historic  
7 property treatment plan and monitoring and discovery plan.  
8 These are similar to the CEC document the cultural resources  
9 mitigation and monitoring plan.

10 So the CEC is the lead state agency for this  
11 project, but BLM is the lead federal agency and the land  
12 owner. And as a result, they do have the final say.

13 Thank you.

14 HEARING OFFICER CELLI: Thank you. Are there any  
15 members of --

16 MS. BARGER: We have more people that are going to  
17 speak too.

18 HEARING OFFICER CELLI: Okay. Let's hear from Matt  
19 Stucky.

MR. STUCKY: This is Matt Stucky from Palen Solar  
Holding. I just have a couple of brief comments to make.

20 One is related to the condition of certification,  
21 Cultural 1. I'll reiterate a point that Ms. Barger made that  
22 the condition is currently written to be extremely  
23 burdensome. I'll go further and say the condition is written

1 having extremely detrimental effects and impose a past fatal  
2 burden to the project based on, you know, uncapped and  
3 potentially limitless financial obligations the condition  
4 imposes.

5 To elaborate on that, I think it would behoove  
6 everyone if I gave just a brief overview of how projects like  
7 this are financed and constructed.

8 Palen PSEGS will cost in excess of \$1.5 billion,  
9 closer to \$2 billion to construct, and solar developers don't  
10 typically have that capital on hand to build these projects,  
11 so we will need to go to financial markets to seek project  
12 financing. We'll look for debt financing --

13 MS. BELENKY: Objection. Is this cultural  
14 testimony or is this project description? I'm just confused  
15 what we're talking about now.

16 HEARING OFFICER CELLI: What's the -- can I have an  
17 offer of proof?

18 MR. GALATI: Yes, the offer of proof is CUL-1 could  
19 render the project unsubmitable as written, and Mr. Stucky  
20 wants to explain to you why that is.

21 HEARING OFFICER CELLI: Overruled. Go ahead.

22 MR. STUCKY: Okay, so we will seek debt financing  
23 and equity financing. The debt financing is simply loans.  
24 The equity financing involves finding investors who are  
25 willing to put in hundreds of millions of dollars into the



1 project in return for a return on their investment.

2 And so to show those investors what their potential  
3 return might be, Palen Solar Holdings has financial models in  
4 which we predict cash flows, revenue streams from the  
5 project, and they also must predict the costs associated with  
6 the project.

7 We go through all that and you can come up with an  
8 expected rate of return, and then we send this to investors  
9 who must take a look and see if they agree and decide whether  
10 or not to invest in the project.

11 In doing so, they will hire number crunchers and  
12 crack legal teams to dig into this project in great detail,  
13 sift through all the project documents and try to find those  
14 pieces of uncertainty that cannot be quantified.

15 And Cultural 1 is a huge piece. It injects a great  
16 amount of uncertainty and risk into the project, and I think  
17 would greatly harm the ability of the project (inaudible).

18 HEARING OFFICER CELLI: Are you in agreement with  
19 Ms. Barger, then, that the \$35 per acre she mentioned and the  
20 survey she mentioned are acceptable, and just so we know what  
21 you're talking about, everything outside of that is over-  
22 burdensome?

23 MR. STUCKY: Correct.

24 HEARING OFFICER CELLI: Okay.

25 MR. STUCKY: One benefit of the \$35 per acre is

1 that it is, in fact, quantified (inaudible).

2 So, that's my only point on Cultural 1.

3 I would like to quickly turn to Cultural Condition  
4 for Certification, Cultural 11 through Cultural 15. All of  
5 these are related to data recovery for sites that exist on  
6 the site, and we have no objection to that data recovery and  
7 the report will be a requirement to come up with plans and to  
8 conduct that data recovery.

9 What I'd like to point out is that in both Cultural  
10 11 and Cultural 12 there's a statement in the condition that  
11 says "If allowed by the BLM prior to the start of  
12 construction, within 30 meters of the site boundaries of each  
13 of the sites, the project owner shall ensure that certain  
14 members of the geological team implement the plan.

15 And then, so what we object to is in the  
16 verification it states that at least 45 days prior to ground  
17 disturbance without any qualification of that ground  
18 disturbance the project owner shall notify the (inaudible)  
19 that the data recovery has ensued.

20 So, this is not consistent. The conditions seem to  
21 imply that you could disturb the ground elsewhere on the  
22 site, not in the vicinity of the cultural resource prior to  
23 instituting or instigating data recovery at that site.

24 So, we would just like verification to be  
25 consistent with the condition itself, and to allow

1 construction on the site prior to data recovery efforts for  
2 specific cultural resources.

3           There's a similar comment on Cultural 11, Cultural  
4 12, Cultural 13, Cultural 14, and Cultural 15.

5           And that concludes my comments and now I'd like to  
6 introduce Mr. Nials to address Cultural 17.

7           MS. BARGER: I'll introduce that. so Cul-17,  
8 Condition 17 is the treatment of the Ironwood Mining  
9 District. And staff requested a reconnaissance survey of the  
10 southwestern Palen Mountain mining area to document historic  
11 archeological deposits, document both plaster and the load  
12 deposits that show prospecting and deposits for prospecting  
13 is not apparent. And that would also include assays of those  
14 deposits.

15           Dr. Nials.

16           MR. NIALS: Thank you. My name is Fred Nials.  
17 Staff has determined that construction of the towers will  
18 constitute a visual intrusion that might influence the  
19 eligibility and intrusion of the mining area. Let me give  
20 you just a little bit of background on that particular mining  
21 area.

22           This is a tiny portion of the Ironwood Mining  
23 District, which is more than 40 miles long and 20 to 30 miles  
24 wide. It's the area that they've specified is located at the  
25 extreme southwestern margin of the Palen Mountains.

1           This is an area of metamorphic rocks, meta-  
2 sedimentary, meta-volcanic rocks, as well as other igneous  
3 rocks.

4           There are two basic types of deposits in the area,  
5 pyrophyllite and talc. Talc you all are familiar with.  
6 Pyrophyllite looks very much like talc. It's used in  
7 ceramics and different types of heat treatment of materials.  
8 In addition, there is iron in the area.

9           And part of the history of this area, iron was  
10 discovered not quite within in the area that they specified,  
11 but not too far away, around the turn of the century and  
12 there was some production prior to World War I, but there has  
13 been no production since that time. The pyrophyllite and  
14 talc deposits were identified prior to the 1940s and there  
15 has never been any significant production.

16           These mining operations are not the picturesque, if  
17 you will, type of operations such as Cripple Creek or  
18 Virginia City, places of this sort. We don't have big head  
19 cranes. We don't have steep shafts and elevators and things  
20 of this sort.

21           They went in with a bulldozer, basically, and  
22 bladed an area out, flattened it down. Hauled a little bit  
23 of bore out of some addits, but the main characteristics of  
24 these mining deposits is ground disturbance in itself.

25           Now, as far as visual intrusion, if one looks at

1 the distribution of the mining claims, and the main ones that  
2 fall within the area that they specified are the so-called  
3 White Magic, sometimes White Mountain claims. If you look at  
4 the location of these, they're on the opposite side of the  
5 hill from the towers. They're west of -- in other words, I'm  
6 sorry, east -- they're on the east side of the hill, and  
7 there's the hill and west of that you have the towers. And  
8 they're not visible within the area that would be within the  
9 sight range of the towers.

10 Another thing that they requested was that,  
11 basically, the archeologist collect samples and conduct  
12 assays or have assays conducted for the ore deposits. And I  
13 would point out that the job of an archeologist is not to  
14 prove up a claim, but rather to record the historical  
15 characteristics of it.

16 And because sampling is an extremely sophisticated  
17 procedure, and probably you've heard stories of hydrating and  
18 so on, that it's easy to get an inaccurate figure for  
19 samples. This is something that should be, if an assay is  
20 ever done, not in the course of an archeological survey, but  
21 something that should be done by a mining geologist or a  
22 mining engineer, not an archeologist.

23 One other point that I might make is that all of  
24 the records of the mining are in the hands of the BLM, and  
25 for this particular area there's a U.S. Geological Survey

1 Bulletin which was produced in 1985 which describes all of  
2 the claims, describes some of the earlier work that was done,  
3 describes the extent of the ore bodies.

4           And as a result, I think that in the work that I've  
5 done in the State of Nevada where we did do assessment of  
6 mining claims, mining properties, none of these would have  
7 been -- none of the claims that staff has made would have  
8 been accepted as a factor in determining the eligibility of  
9 those properties.

10           Thank you.

11           HEARING OFFICER CELLI: Anything further from  
12 Petitioner's witnesses?

13           MS. BARGER: I was just going to summarize very  
14 quickly.

15           HEARING OFFICER CELLI: Go ahead.

16           MS. BARGER: One, I disagree on the staff on the  
17 (inaudible) the addition of the two solar towers, the trails  
18 landscape's integrity, although affected by the addition of  
19 the two towers, does not cause a complete loss of integrity,  
20 and enough of the landscape is retained to still be eligible.  
21 The landscape and contributing elements are all still  
22 eligible under the three criteria.

23           Number two, I agree with the eligibility  
24 recommendations of staff.

25           Three, I recommend to restore Cul-16 for the

1 programmatic agreement.

2           And lastly, four, since what makes the Ironwood  
3 Mining District eligible is unrelated to this setting and  
4 visual effects are not a concern, no mitigation would be  
5 necessary.

6           Thank you.

7           HEARING OFFICER CELLI: Thank you very much.

8           Ladies and gentlemen, it's ten after twelve, and  
9 which is usually about lunch time. We have not heard from --  
10 let me sort of poll the intervenors.

11           Who has witnesses here today? I know that CBD does  
12 not. We need to hear from CRIT. We don't have witnesses  
13 from Caltrans for renewable energy. There's no witnesses  
14 from Basin and Range Watch.

15           So how we would proceed if we weren't breaking for  
16 lunch is we would then hear now from CRIT's witnesses, hear  
17 their presentations from yet, and staff. After that,  
18 questions, discussion, getting into clearing up any areas of  
19 confusion that we might have.

20           But I think that there's a need to break.

21           I'm not clear, what are we doing for lunch today?  
22 Are there places nearby?

23           Oh, Ms. Grenier, go ahead.

24           MS. GRENIER: (Inaudible)

25           HEARING OFFICER CELLI: Okay, thank you. So are

1 those from Subway or something like that? Okay.

2 Ladies and gentlemen, there are lunches provided by  
3 the Petitioner, Palen Solar Holding has provided lunches for  
4 everybody here, all members of the public, all parties, in  
5 the form of box lunches from Subway Sandwiches. And we  
6 appreciate that because that actually speeds things up. That  
7 means that not everybody has to vacate the building, hop in a  
8 car, go driving, come back, park and come back. It would be  
9 efficient if we could stay in here.

10 It's 12:00 now.

11 (Off the record.)

12 HEARING OFFICER CELLI: We have -- okay, so what  
13 we're going to do is finish everybody's basically direct  
14 testimony now, then break for lunch, so let's do that.

15 I'm sorry, your name again, ma'am?

16 MS. KING: Winter King.

17 HEARING OFFICER CELLI: Winter King. So how much  
18 time do you think your testimony will take?

19 MS. KING: I'm thinking it'll probably only be  
20 about 20 minutes altogether.

21 HEARING OFFICER CELLI: Okay. Then let's do that.  
22 Let's just finish up, and then when we come back all parties  
23 will have a discussion and ask questions and hopefully finish  
24 up Cultural.

25 One moment. We're just going to take a brief



1 moment off the record, folks, and then we'll be back on  
2 record in about five minutes. So we're off at this moment.  
3 We'll be back on in five minutes to take -- finish the direct  
4 testimony, and then we'll break for lunch.

5 (Off the record.)

6 HEARING OFFICER CELLI: Ms. Fisher-Holt, please.

7 MS. FISHER-HOLT: Good morning. I ask that you  
8 bear with me. I have a cold right now so my voice is a  
9 little scratchy.

10 HEARING OFFICER CELLI: Put that microphone right  
11 up to you so you won't have to work too hard.

12 MS. FISHER-HOLT: How's that?

13 HEARING OFFICER CELLI: Much better. Go ahead.

14 MS. FISHER-HOLT: So I'm not going to give you a  
15 CV, but I just wanted to address myself in the customary way  
16 by identifying my name is Wilene Fisher-Holt and I'm half  
17 Chemehuevi and half Mojave. I come from Parker. My mom is  
18 from the (inaudible) Clan, which means Fox, from Needles,  
19 California. And my father is from Ynemei Valley which is by  
20 Lake Havasu City.

21 But I'm actually an involved member of the Colorado  
22 River Indian Tribes and I'm the Director of the museum in  
23 Parker for the Colorado River Indian Tribes. And we also  
24 cover the cultural resources for CRIT.

25 And so when you hear me talk, I'll make reference

1 to my sometimes. I'm probably talking about Mojave belief  
2 systems and other times it might be Chemehuevi, so I'll try  
3 to remember to identify that. But that's mainly what I'll be  
4 talking about is the belief systems or the -- what I know of  
5 my people and the spiritual systems that I know of and are  
6 still practiced today in relation to this area.

7 HEARING OFFICER CELLI: Thanks.

8 MS. FISHER-HOLT: Uh-huh. First off, I wanted to  
9 just thank everyone here for already identifying the fact  
10 that my ancestors and our people did live in the area. That  
11 was going to be a part of my presentation here today was to  
12 make witness and testify that our people lived in this area,  
13 but it sounds like everyone here has already done that so  
14 that saves a big portion of what I wanted to talk about.

15 But mainly, I just wanted to start with explaining  
16 how and why this area is so significant to the Mojave and  
17 Chemehuevi people. And they come from two different belief  
18 systems but they kind of parallel each other.

19 So from the beginning of time our creator gave us  
20 this land and asked us to be stewards of the land, and that's  
21 what we as Mojave and Chemehuevi people do.

22 And what -- on the Mojave side there is -- our  
23 belief is that from the time, from the beginning of time we --  
24 - I'm nervous. We came from an area up by -- in Southern  
25 Nevada called Avi Kwame, which is Spirit Mountain, and our

1 story began from that time taking us all the way down into  
2 Mexico. And there are songs that are sung about the whole  
3 area we come from. Our traditional lands cover that area of  
4 the Mojave Desert up towards Tehachapi Mountains, toward the  
5 Grand Canyon down into Mexico.

6 There's evidence all over the desert, along the  
7 Colorado River, as you all know, that our people were here.  
8 And from the beginning of time they created, gave us names.  
9 All the mountains have names, all of the rivers.

10 The petroglyphs, they talk about the frames that  
11 are mentioned. They all have Indian names, both Chemehuevi  
12 and Mojave. And so those names tell of a history of our  
13 people. It's all history through songs. And those songs are  
14 taught and carried on since the beginning of time to the  
15 current day.

16 Unfortunately, with the coming of the government  
17 and putting some of my people in boarding schools, like my  
18 grandmother and my grandfather, my parents, a lot of that was  
19 taken away. And what's left now is very special to us. It's  
20 very sacred because it tells of our people. And if we don't  
21 have that to hand down to our children, they're going to be  
22 lost and we're seeing the results of that now and it's very  
23 unfortunate. It's affecting our community. We deal with it  
24 on a daily basis.

25 I know, you know, the company says they're going to

1 make energy and it's green energy, yeah, and we're all for  
2 that, but our tribe isn't going to see any revenue from that  
3 and we're not going to receive any of that energy that's  
4 being replaced by that.

5 I don't know about all that, but I do know there  
6 are repercussions. We're feeling it in our community. All  
7 the solar projects that are out there in the desert,  
8 especially Genesis and that's a fine example, which is right  
9 next to where our clan is going to -- are proposing to exist.  
10 And I see my elders come to the DRECP meetings and cry that  
11 these projects don't go into that area because it's impacting  
12 our people. And it's hard to see -- you know, you all don't  
13 see the effects of it but we all do in our community, and  
14 we're losing a part of our history.

15 The Chemehuevi have the Salt Song Trail Systems  
16 that go through that area. It was mentioned earlier about  
17 the (inaudible) -- non-natives and the connection that our  
18 people have, which isn't linear. It's more of a spiritual  
19 and mental faith that we understand. We're raised with it as  
20 native people. But I think that's my focus today is to try  
21 to help you understand how this works for our people and how  
22 it's affecting us.

23 Like the Salt Song Trail that goes from Mount  
24 Charleston in Nevada down through and makes a circle which  
25 comes back around through that area down by Blythe. It has a

1 history of being -- the people sing a song and it's about the  
2 landscape, their storyscapes and their songscapes that tell  
3 about this area, and those songs sing and help to send our  
4 people on the path to the happy hunting ground.

5           And if those projects go in, they're going to be  
6 affected by that because there is a connection that our  
7 people understand through the cosmos, and it's in our belief  
8 system. It's understood that our people have to get there in  
9 a good way and these songs are sung that send our people on  
10 to this way or to this place. And I believe if these  
11 projects go into this area, the visual impacts are going to  
12 interrupt and disrupt that cycle that comes through there.

13           And also, the Mojave have songs, it's called  
14 Gumantah (phonetic). Those songs, there's a 300 cycle song.  
15 I think it takes like three or four days to even sing the  
16 song. And like the Quechan, the Mojave cremate and those  
17 songs that are sung make reference to some of the people in  
18 that area.

19           And so it's all very significant to us. It's  
20 nothing tangible that you can see, but we know it's there.  
21 We understand it. We feel it. We live it. It's our life.  
22 It's who we are as a people.

23           The clan names of the Mojave people, they're all  
24 clan names that relate to the desert, from the mountains, the  
25 plants, the animals, the insects, the cosmos up above, here

1 on earth. All of our people are named after these areas and  
2 it's in us. And I don't have any other way to explain this  
3 to you, but to let you know it's who we are as a people and  
4 it does affect us.

5 I had an elder, when I was interviewing for the  
6 written statement, tell us that the Mojave elders believe  
7 that the Genesis project is affecting our community. And I  
8 explained that, yes, I've seen that when the people went out  
9 and did a ceremony there were a lot of tears shed about it,  
10 you know, because we're losing our history.

11 And she says, well, the effects aren't that. She  
12 wasn't talking about that. To her, she's seeing it in the  
13 community because we're already losing our history, as it is,  
14 and now to see that taken away from us it's going to be  
15 another loss. And our children are losing their history and  
16 not knowing who they are, you know, because the land's being  
17 taken from us.

18 And it all encompasses the stuff like I said  
19 earlier, the songs, the stories, the mountains, the desert,  
20 the river. We lived off of that and our people survived.  
21 It's been there since the very beginning of time and we're  
22 still here today because of the history of our people. We  
23 are trying to carry on what's left and those songs that I  
24 talked about earlier, with the Chemehuevi Salt Songs, they're  
25 going to be disrupted. And it's not only affecting us here

1 and now, it's going to affect the afterlife.

2           And so it's a very special area to us. I know non-  
3 natives come here and they see it and they think it's just a  
4 desolate desert, you know, but it's not that at all. Our  
5 people live there and survive there, and the creator gave  
6 these things to us for us to exist and we still use it today.

7           The creosote there is medicine for our people and  
8 it's know that the higher up in the elevation, where the  
9 plants grow, the more healing power it has for you, so it's a  
10 big medicine for our people.

11           And the animals there, you know, our people were  
12 named after those and it really hurts to see when the foxes  
13 were taken out of the Genesis area, you know, and knowing  
14 that that's my family, my mom's clan name. It was pretty  
15 profound to know that they're being pushed out of their own  
16 territory, where the creator planted them.

17           And there's so much more I have, but those are some  
18 of the -- just to give you an idea of where we're coming from  
19 as native people, as Indian people indigenous to this area.

20           I had an elder tell me about -- he gave me eight  
21 names of Mojave -- or Chemehuevi families that lived in that  
22 area from the Palo Verde, Blythe, Chuckwalla area and there  
23 were identified Mojave that lived in that area, and they all  
24 have memories of that area that have been passed on from  
25 generation to generation. And that goes back pre-reservation

1 and there's evidence, as you all know, that our people were  
2 there. And he did then talk about the stories and share  
3 their histories and memories of the places. And it's a very  
4 profound thing to hear because you know that we now have all  
5 these solar projects there and it's like what are we going to  
6 share with our children? What are we going to tell them what  
7 used to be here?

8           And so you know, there's (inaudible) that come from  
9 that area that are special to our people that are used for  
10 ceremonial. I think one called the talc, but we call it  
11 Klitse (phonetic) clay, which is white clay. It's still used  
12 today. Not as much, but it's still being used.

13           Another thing I wanted to address was the process  
14 for mitigation. There is no dollar amount that you can put  
15 on what we're losing. This is a part of our history. This  
16 is a part of our people, of who we are. And we can't, there  
17 is no dollar amount that can pay for what -- if this project  
18 goes in, what we're going to lose. And we're all, like 100  
19 percent Chemehuevi, and we want to stress that and voice that  
20 here today.

21           The biological part of it, like I said, our people  
22 are named after the animals that come from the desert. And I  
23 was told by an elder, who was testifying about it, and he  
24 talked about the thousands of birds that have already been  
25 reported and killed out there from the towers. And I heard



1 just recently about the birds that are being killed out at  
2 Genesis already. And they say there's no impact, you know.  
3 It's hard to believe that.

4           The eagles and the redtail hawks that come from  
5 that area -- I lived in that area, just like my elders have,  
6 and I've been out to the mountains there in the desert, some  
7 of the sites and I counted eight redtail hawks, which are  
8 held in high reverence to our people. The Mojave people use  
9 those, our family uses it with each other, and we use them  
10 for a spiritual day and that we won't find. The redtail hawk  
11 feathers are used for ceremonial purposes, for cremation and  
12 it's something we practice today.

13           The Chemehuevi's use the eagle in ceremonial  
14 practices and when we -- I don't see it too much today, but  
15 it is something that's known in our history.

16           To know that the foxes, the turtles, you know, are  
17 going to be disrupted it's just -- it hurts to know that this  
18 is going to happen to our land, our desert. It's already  
19 happening. And but now we're looking at part of it and  
20 knowing that those towers are going to be there that affect  
21 our afterlife that's, you know, it's time to draw the line  
22 somewhere.

23           And it's really sad to see. It hurts. Our people  
24 are suffering from it. You all don't know it, you don't see  
25 it, but we're there. We feel like this today. That is a

1 part of our history, our people. We don't have books that  
2 tell you. Everything is shared or handed down, and always  
3 through songs, through stories, through the mountains, the  
4 names of the song of the mountain.

5           The petroglyph sites, as you call them, they all  
6 have Indian names and have spiritual significance to them.  
7 So all of this is disrupting that, that cycle that we know of  
8 that makes us who we are as a people. And I don't know how to  
9 explain it to you but we are -- like I said, we believe there  
10 is no way to mitigate that. That's a great loss to us  
11 through what we've already lost through the other projects.

12           And I just want to thank you for your time today,  
13 which allows me to share this with you.

14           HEARING OFFICER CELLI: Thank you. Now, we have  
15 witnesses. Who's next? Mr. Bonamici.

16           MR. BONAMICI: Thank you, Commissioners. I  
17 appreciate the opportunity to speak to you today. My  
18 employer, Colorado River Indian Tribes, has assigned me  
19 primarily to track projects and keep tribal council posted on  
20 how these developments are moving along.

21           When the Palen project was initially proposed,  
22 considered and approved in its original form, the Colorado  
23 Indian Tribes were contacted three times. Once by e-mail,  
24 twice by phone, all within a month and there were -- there's  
25 no record of a response from the tribes to that process.

1 That was standard operating procedure at the time and  
2 subsequent events on the Genesis issues, that I'm sure you're  
3 aware of, and the mass of solar projects or renewable energy  
4 project proposals that are coming down the pipeline have  
5 raised a concern level with the tribes exponentially to it.

6 I, being a non-native, won't speak to the cultural  
7 impacts in the kind of personal way that you've just been  
8 hearing, but I will remark that there is a measure of courage  
9 to doing that, that history has not rewarded. And the need  
10 is not so pressing in the community, the tribal community,  
11 that they are starting to break that issue again, and sharing  
12 their more private details.

13 As far as my direct contact with the Palen project,  
14 I began in February when I got a first notice about a site  
15 visit and public scoping meeting.

16 And then in March, on March 22nd, I met with sort  
17 of a compilation of all the interested agents and parties who  
18 could be there at Palm Springs. That's where I first  
19 discussed with Tom Gates, Dr. Gates, the requirement by the  
20 tribes, under Colorado River Indian Tribes' law that  
21 ethnographic research falls under our code, the Indian  
22 Cultural Research Code, which is established to prevent  
23 either unnecessarily intrusive or poorly conceived research  
24 on tribal peoples.

25 There are four tribes at Colorado Indian Tribes.

1 If you're not familiar, history put all four Indian groups on  
2 the same reservation. And like many tribal cultures, they're  
3 starting to really work at protecting their biological,  
4 cultural, social, spiritual, religious resources from  
5 unnecessary and/or poorly thought out intrusion. So that's  
6 why our code exists.

7 I provided Dr. Gates with our application two days  
8 later, or three days later and we had some back and forth  
9 discussion about what it required of researchers wanting to  
10 do work on the reservation. And for the next couple of  
11 months we traded e-mails, phone calls and tried to get the  
12 application in a suitable format for the CEC's process and  
13 for CEC's legal staff to accept as something they could  
14 commit to and participate with.

15 That effort failed. And by July, after the last  
16 exchange about a couple of points that CEC's legal department  
17 couldn't expect in our application, the communication ceased.  
18 The ethnographic window was closed. And the statements  
19 about, in particular, the Chemehuevi and Mojave people that  
20 became part of the SSA ethnographic report were from members  
21 of both tribes, but not from the Colorado River Indian Tribes  
22 as a sovereign government. So that's a problem for us. And  
23 that's a problem, I think, for the CEC's process I would  
24 address now.

25 And it would be more helpful and I think the CEC

1 would be better informed if the ethnographic process had  
2 unfolded more thoroughly with CRIT. The issue of integrity  
3 of the information, integrity of the resource, it goes also  
4 to the integrity of your information. And if that feeling of  
5 an association aren't thoroughly discussed with the members  
6 of the tribe and the tribal government, itself, I don't think  
7 that -- where this issue may be as well-informed as it really  
8 should be.

9           So that's been my experience. With so many of  
10 these projects coming down the pipe, it's up to -- I've seen  
11 up to about a million acres of California desert being  
12 proposed for these projects. That's a lot of resource.  
13 That's a lot of disruption. That's a lot of cumulative  
14 impact that a single project review, I think, usually falls  
15 short of fully considering.

16           And I would like to encourage the Commission to  
17 keep that in mind in its deliberations. It is perhaps a  
18 little unfortunate, as Ms. Berger mentioned, Manhattan had  
19 one of the comparisons. You know, Manhattan was not a good  
20 deal for the tribal people of that day. And another  
21 Manhattan project is not something that we're hoping to see  
22 here along the corridor, the I-10 corridor and along the  
23 ancestral homelands of the Colorado River Indian Tribes.

24           I think that's all I have to say. Thank you.

25           HEARING OFFICER CELLI: Thank you, Mr. Bonamici.

1           Next speaker want to join him at the podium and  
2 perhaps -- perfect.

3           MS. CLARK: Can you hear me?

4           HEARING OFFICER CELLI: Speak into it, Ms. Clark.  
5 Actually, I need you to get -- make sure that you're getting  
6 picked up in the WebEx. Here comes another mic for you.

7           MS. CLARK: Hello?

8           HEARING OFFICER CELLI: That will work.

9           MS. CLARK: My name is Sara Clark and I am an  
10 attorney at Shute, Mihaly & Weinberger, which is attorney  
11 counsel to the Colorado River Indian Tribes on a number of  
12 solar projects and renewable energy-related issues.

13           I do want to acknowledge that it is somewhat  
14 unusual for an attorney to be providing testimony and I've  
15 raised questions on this. I just want to clarify that what I  
16 will be speaking about today is specifically on actual  
17 information related to the Genesis Solar Energy Project.

18           I was going to ask to see the map. Can you put the  
19 map back up that shows where Genesis is. I don't know who's  
20 controlling that.

21           HEARING OFFICER CELLI: They're working on it in  
22 the booth back behind you there.

23           MS. CLARK: I just want to make sure that everyone  
24 is aware of sort of where Genesis is. I know you've heard  
25 reference to it in our testimony and I think it's important

1 to see how close the Palen Project is to the Genesis Project.

2 The reason that we're talking about Genesis is  
3 because, as everyone has alluded to, (inaudible) -- and these  
4 others could have a significant cultural resource impact and  
5 particularly related to cultural material.

6 We've heard a lot of discussion about the visual  
7 impact and other cultural resource harm. But my testimony is  
8 specifically focused on a narrower issue, which is buried  
9 cultural material.

10 So the Genesis Project, I don't have a pointer, but  
11 if you look at where the Palen Project is, it's further --  
12 there we go. So right north of (inaudible) Lake is where the  
13 Genesis Solar Energy Project is located. And in November of  
14 2011, the owner began discovering some buried cultural  
15 material in the construction of that project. CRIT was  
16 eventually notified, and I'll get to that in a moment, in our  
17 petition process, about these discoveries. And because of  
18 their nature, in particular the possibility of a cremation  
19 site at the location, CRIT became very concerned about that.

20 And you've got to understand what -- now, these  
21 measures were in place to assure that the further disruption  
22 and destruction of these resources would be prevented. And  
23 so we looked at both the BLM measures, as well as the CEC's  
24 conditions. Similar to this project, BLM and CEC worked  
25 together to provide mitigation measures. They were almost

1 identical across the BLM and the CEC.

2           So in the CEC we have a cultural resources  
3 mitigation and monitoring plan and at the BLM we have a  
4 historic property treatment plan, as well as a programmatic  
5 warrant to (inaudible) -- And so CRIT reviewed those and we  
6 sought to enforce the mitigation measures which we had, which  
7 they would have required us to go to the project site to  
8 receive the bones, and it would have required other  
9 procedural protections for the tribes.

10           Unfortunately, through the (inaudible) and into the  
11 spring of 2012 BLM was (inaudible) -- and CEC was actually  
12 absent. We approached CEC, the CEC staff to enforce these  
13 measures and that didn't happen. As actually everyone here  
14 is aware of, that CEC has not (inaudible) -- so we ended  
15 turning to BLM to address these mitigation measures and were,  
16 unfortunately, unable to do so.

17           The court ultimately decided that a TRO, a  
18 temporary restraining order for intervention, was not  
19 warranted and, consequently, construction continued at the  
20 Genesis Project, resulting in the excavation of scores of  
21 cultural resource artifacts. These include (inaudible) -- of  
22 particular importance to tribal members. They involved other  
23 archeological resources attendant, the fossil cremation and,  
24 as I said, ultimately, other resources were uncovered.

25           I do recognize that the Project became the Palen



1 Project and the Genesis Project that the Applicant or  
2 Petitioner has brought up. The Palen Project has operated  
3 (inaudible) -- and then the Genesis Project which is  
4 (inaudible) -- of the entire site.

5 I am not a geo-archeological expert by any means,  
6 but it states here that the (inaudible) was provided about  
7 the potential differences between the likelihood of  
8 encountering various cultural materials at the project site,  
9 but I do just want to note that no one has said that there  
10 was zero percent change of encountering cultural material  
11 here.

12 I think the testimony has shown that the ancestors  
13 --

14 MS. GALATI: I'd like to object that this is legal  
15 argument. She's not providing any new facts. She's telling  
16 what I've seen in briefs.

17 HEARING OFFICER CELLI: Well, no, she was just  
18 saying that there was zero -- how did you put it? There was  
19 zero -- no one can guarantee that there won't be a disruption  
20 of artifacts.

21 Yeah, it is argumentative, but keep --

22 MS. CLARK: (Inaudible)

23 HEARING OFFICER CELLI: Overruled for now.

24 MS. GALATI: You're not an expert to respond to  
25 this, she can and the testimony is going to be limited to

1 what happened at Genesis.

2 HEARING OFFICER CELLI: And, actually, I want you -  
3 - so I'm going to sustain that objection because your  
4 testimony is limited to the fact that were --

5 MS. CLARK: I will continue.

6 HEARING OFFICER CELLI: Not just at Genesis because  
7 Genesis is a done deal. We really need to hear about it as  
8 it relates to this project. So please go forward on that  
9 basis.

10 MS. CLARK: I was attempting to explain why what  
11 happened at the Genesis Project is relevant to here. And so  
12 I will just say that there is a likelihood of encountering  
13 various cultural material at this project. There might be a  
14 different likelihood but there is, nonetheless the  
15 likelihood. And, therefore, our experience in coordinating  
16 the cultural conditions for certification are very adjunct  
17 and relevant.

18 So there are three main issues that we ran into at  
19 Genesis. The first is issues of enforceability. And so at  
20 the Genesis Project, so the conditions similar to the ones  
21 proposed here, identical in fact, the provided that the owner  
22 provide notification to Native American groups in the event  
23 of a discovery within 48 hours. I know that CRIT was not  
24 notified until two weeks after the discovery and after a  
25 mitigation plan that involved the recovery was already

1 formulated. The court found that the condition was violated  
2 in our -- but found that there was no remedy available for  
3 that violation.

4 Similarly, again, we had entered a (inaudible) --  
5 and an HTTP that was supposed to be developed after the fact,  
6 after the approvals. And because of that activity the  
7 project owner and the agencies found that these plans weren't  
8 enforceable by CRIT or anyone other than the agencies.

9 And then, finally, I just want to say that  
10 (inaudible) -- because there's a lot of talking that's going  
11 on between the agencies. And so we would like to ensure the  
12 enforceability of the proposed changes to the (inaudible) --  
13 for verification, in AB 20 and --

14 HEARING OFFICER CELLI: I'm sorry, can you say that  
15 -- AB 20 are --

16 MS. CLARK: AB 20 --

17 HEARING OFFICER CELLI: -- are new conditions or  
18 modifications to the --

19 MS. CLARK: Modifications, correct. And these will  
20 provide for a greater involvement of the CEC as project  
21 manager and make it clear that these subsequent plans are  
22 required and enforceable. And it provides the financial  
23 incentives to ensure that the notification is practiced  
24 professionally and (inaudible) --

25 Second, I want to point out (inaudible) -- in

1 determining what to do with cultural resources once they were  
2 encountered. CRIT is extremely -- (inaudible) -- the other  
3 Area 5 that the preference was to avoid the site and the  
4 project couldn't be done. And the second factor was a few  
5 grave areas and material are in (inaudible) --

6 The project plans (inaudible) -- for dealing with  
7 cultural resources. And if the newly recent discovered  
8 resources are significant (inaudible) -- from the beginning,  
9 the agencies determined that they were going to perform  
10 (inaudible) recovery on the project site and that the  
11 materials would not be (inaudible) --

12 On the question of whether or not it is incapable  
13 of doing that, ultimately, it's going to create a land use  
14 (inaudible) -- that says that BLM has determined that the  
15 avoidance of the project, of these cultural resources are  
16 (inaudible) -- and no information was given about why this  
17 determination was made. There was no evidence given in  
18 support.

19 And so we eventually (inaudible) -- saying that  
20 avoidance was required under these plans and the court  
21 determined that the language was sufficiently clear to  
22 require avoidance.

23 And so then we provided changes in the  
24 certification that would make that clear that avoidance is  
25 the preferred method for dealing with any discoveries that

1 might happen later, while the project was being constructed,  
2 and that if there's (inaudible) --

3           Finally, and this is a little bit related to the  
4 other two, Genesis would demonstrate to CRIT the failure of  
5 the Commission to adequately involve the tribes in the past  
6 (inaudible) -- and without any involvement, there was a  
7 failure to (inaudible) -- to CRIT (inaudible) -- and there  
8 was no involvement

9           (inaudible) -- at the time the discovery was made.

10           And so again we (inaudible) -- recommendations and  
11 changes to certification that would include additional  
12 involvement of a new tribe and require that the agency and  
13 the project owner continue to do adequate consultation  
14 (inaudible) --

15           So if you have any questions, I'd be happy to  
16 answer them.

17           HEARING OFFICER CELLI: Thank you, Ms. Clark.

18           Then as I understand it, CRIT, that's the sum total  
19 of your direct testimony, correct?

20           MS. KING: That's correct, in addition to the  
21 written testimony that (inaudible).

22           HEARING OFFICER CELLI: Okay, thank you.

23           Ladies and gentlemen, at this time we anticipate  
24 taking a break.

25           I want to acknowledge that we've received four

1 requests to speak to the Commissioners, Frank McMenimen,  
2 Linda Otero, Arlene Kingary it appears -- I'm sorry if I  
3 mispronounce the name -- and Manfred Scott.

4           And my question is, because we're going to break  
5 now for lunch, and the thought would be to hold the -- hold  
6 off on comments until we take in and we finish the evidence  
7 on Cultural, unless any of the four of you have to leave like  
8 now or soon and won't be able to stay for another, hopefully  
9 not more than an hour or so after lunch. So if that's the  
10 case, could you come forward to one of the mics and say so,  
11 so that we know. Otherwise, if I don't hear from you I'm  
12 going to assume that it's okay for you to make your comment  
13 at the close of the Cultural testimony.

14           Do I see -- I see Ms. Otero is nodding her heard,  
15 that's okay. Okay. And that's okay. Is that okay with you  
16 (inaudible) Mr. McMenimen. Thank you.

17           So we will do that, let's break now. It's 1:00  
18 o'clock, 1:02 according to my computer. Can we be back by  
19 1:30? 1:30 to resume Cultural.

20           We're off the record.

21   (Off the record.)

22           HEARING OFFICER CELLI: Let's go ahead, everybody.  
23 All parties, take your seats. Witnesses that are still under  
24 oath, please have a seat at the witness table. (Inaudible)

25           Would you please resume your seats. Witnesses are

1 still under oath, sitting at the witness table. And parties,  
2 please resume your seats.

3 We should be back on the record now, right? We're  
4 recording? Okay.

5 I just wanted to ask a general question to staff.  
6 I just wanted to confirm my understanding that in the  
7 analysis of the PSEGS that there were no new prehistoric  
8 archeological resources under consideration in the new -- in  
9 this amended analysis. Archeological resources, the kind  
10 that are under the ground.

11 MR. BRAUM: I can give you a definitive answer on  
12 that. There may be some that were subject to discoveries in  
13 the newer surveys where there tweaks to the site of the  
14 project area; and if so, in taking care of them, we're okay  
15 with, so (inaudible).

16 HEARING OFFICER CELLI: Okay. Because I mean, the  
17 thrust of the efforts in the ethnographic cultural landscapes  
18 and that which makes up those landscapes offsite, and I just  
19 wanted to make sure I wasn't missing something.

20 MR. BRAUM: We haven't had any issues (inaudible)  
21 with the archeologists.

22 HEARING OFFICER CELLI: Let me see if there was any  
23 other questions. Okay.

24 MR. GALATI: Mr. Celli, if I could clarify.

25 In our opening testimony on Cultural we added a

1 couple of site names that were identified, so we have like,  
2 for example, a data recovery condition and it would list 16  
3 sites. Six of them came off and one new one got put on.  
4 We're in agreement with staff that those changes are  
5 appropriate.

6 I didn't want you to think that there was no new  
7 sites, because you will see that in the Cultural work there  
8 were a couple more sites.

9 HEARING OFFICER CELLI: I saw the new sites. What  
10 I didn't see was the new sites were mentioned but it never  
11 got to an analysis of impacts and so forth, and I see now  
12 that that's because of (inaudible).

13 MR. GALATI: Can I speak to that?

14 HEARING OFFICER CELLI: Yeah, please.

15 MR. GALATI: I think the reason you saw that was  
16 because the staff felt like that the method of handling  
17 (inaudible) during the original citing case, we still  
18 petitioned for the new ones that have been found in the  
19 project (inaudible) project.

20 HEARING OFFICER CELLI: Okay, thank you.

21 I may ask some other questions as we proceed, but  
22 at this time I'm going to ask Mr. Galati whether he has any  
23 questions of staff?

24 MR. GALATI: Yes, I do.

25 HEARING OFFICER CELLI: And if you could give the



1 Committee what those questions would be.

2 MR. GALATI: You want me to say the question to you  
3 or --

4 HEARING OFFICER CELLI: Right.

5 MR. GALATI: I wanted to ask Mr. McGuirt, he made a  
6 comment about not being part of the programmatic agreement,  
7 and I wanted to ask him, because my understanding was that  
8 staff had input into the amendment to the programmatic  
9 agreement, specifically about the surveys in the Palen  
10 (inaudible) that we are now going to do because they are in  
11 the amendment for the programmatic agreement and the work  
12 plan.

13 HEARING OFFICER CELLI: Can you speak to that, Mr.  
14 McGuirt?

15 MR. MCGUIRT: (Inaudible) staff, based on several  
16 field visits and some early reconnaissance work out and around  
17 the project area, felt that, given the scope of what our  
18 analysis (inaudible) either our (inaudible) is going to be of  
19 much greater intensity of visual effect. We took a look at  
20 the mountain areas that fringe the project site, the Palen  
21 Mountains, The Coxcombs, the Eagles, the Chuckwalla and so  
22 forth, and we said no, we don't have any info, you know,  
23 about what may or may not be up in those valleys and those  
24 foothills or those narrows. It's not something, it's not  
25 information that the project owner felt it was necessary to

1 provide.

2           So we write a data request to get some clarity on  
3 this. Let's have some work up there, let's just see what's  
4 up there and do reconnaissance level, which is a very breezy  
5 sample survey just to get some idea of what may or may not be  
6 there. And so we made that data request and asked them to do  
7 it. I'm not going to get down and weep about why it didn't  
8 happen in the timeframe that we had hoped.

9           Ultimately, in mid July we decided that, because we  
10 were in the middle of writing this document, we needed some  
11 information somehow about these areas to get some idea of  
12 whether or not there was anything up there to consider.

13           So the project owner had caused to be developed a  
14 series of transects that was meant to comply with the request  
15 that we had, and the request itself got locked up in other  
16 things, but the job that they did about laying out the  
17 transects and being responsive to that particular data  
18 request were good, and we took them and we conferred with the  
19 consultant that they had about why they had laid out the  
20 particular transects that they did and what they thought  
21 would be more sensitive areas, less sensitive areas.

22           And given the fact, mind you, these are mountain  
23 ranges, they're very big and very remote, we sort of took a  
24 sample of the sample, if you will. We picked areas that  
25 looked like they were going to be sensitive that we could get

1 to. It was 110, 115 degrees out there and we had a limited  
2 amount of time to go look.

3           So we consulted with them and we went out there and  
4 looked, and ultimately, if I had a pie chart for you to show,  
5 you know, what would a hundred percent sample be and what  
6 would the sample be that we asked for and what's the sample  
7 that we actually ended up with, it was infinitesimally small.  
8 But even in that sample we found the trails and the  
9 (inaudible) and archeological sites, which tells us that we  
10 can't do a straight extrapolation, but if you extrapolate it  
11 up, there's quite a lot of stuff out there that we didn't  
12 know about.

13           So it was enough for us that we turned to CEQA and  
14 said, hey, we've done our due diligence. We've gone out  
15 there, we tried the best that we could with the available  
16 information we've got, here's what we've got to say.

17           Had we been able to -- one of the other (inaudible)  
18 was is having spent more and more time out there  
19 progressively, the nature of that valley and the character of  
20 it and the way that the viewscape works out there became more  
21 and more apparent. It's (inaudible) broad shallow valley,  
22 and you can be five, ten miles from something and really, it  
23 feels like you're right on top of it. I mean, it's amazing  
24 how it works.

25           And then you take in -- and then there's also a

1 different set of perceptions you have as you move up in  
2 elevation.

3           So the more we were out there, the more we  
4 appreciate, you know, we (inaudible) need some information  
5 about some of the resources that are out here, because we  
6 were going to have, this project would have this visual  
7 impact, and we're required as we understand it under CEQA to  
8 take that impact into account in some meaningful way.

9           So we did what we could. Had we gotten the  
10 original survey, the result of that probably would have been  
11 we would have turned around and had a (inaudible) data  
12 request and said, you know what, we understand that, we  
13 really need more information, we need to go look so we can  
14 say something more substantive about what input resources are  
15 out there and what the impacts are going to look like.

16           HEARING OFFICER CELLI: So, let me ask you this  
17 question. You have, I think, are eleven cultural  
18 ethnographic resources that identified that are within the  
19 Chuckwalla Valley portion of the Pacific to Rio Grande trail,  
20 right?

21           MR. MCGUIRT: Right.

22           HEARING OFFICER CELLI: And was the object of PR27  
23 to really get more of those to further substantiate that  
24 portions -- where that was going?

25           MR. MCGUIRT: From an archeological perspective,

1 the idea was to tell us something about the archeology there  
2 that we had no information on. Ethnographically, (inaudible)  
3 that one.

4 Because we didn't get the robust survey that we  
5 desired to further our analysis, in addition to looking for  
6 the archeological value, when we did our own staff, we called  
7 in our walk-about, we were looking for both archeological,  
8 petrographic or something that overlaps.

9 And had we done some more robust work and we had a  
10 lot more Native American involvement, should we encounter  
11 something or should we have Native Americans with us in the  
12 field, they would have been able to help us identify things.

13 HEARING OFFICER CELLI: Yes.

14 MR. MCGUIRT: However, really where our  
15 relationship with Mr. Cachora took off was he agreed to  
16 participate, despite it being 115 degrees, and a bit hot out  
17 there, he agreed to participate with us on these walk-about.

18 And not only did we find things of significance,  
19 not only did Mr. Cachora help us to understand what we were  
20 looking at, that could be both archeological and  
21 ethnographic, Mr. Cachora, based upon some of the things he  
22 talked about earlier about predicting in circles of movement,  
23 he started to project where we would find other things that  
24 were outside of the transect that Mr. Nials has talked to,  
25 and that we felt pretty good about.

1           And with some of his predictions, without him ever  
2 being in some of those areas, we began to find more. And  
3 actually to some extent, even two weeks ago, we felt we  
4 needed to take one more look on those added evidence. We  
5 went out and looked at a few more of these transections and  
6 began to find even more.

7           So, basically, these activities confirmed that what  
8 we think is we're on right track with the breadth of  
9 resources in this valley, and that there's a profound Native  
10 American knowledge base that echoes with what we're finding  
11 on the ground.

12           HEARING OFFICER CELLI: Okay. So we have what we  
13 have, and there may be more (inaudible).

14           I'm sorry, this is your question. Go ahead.

15           MS. CLARK: Okay. The (inaudible) the (inaudible)  
16 also talks about the trail study that was completed by the  
17 Petitioner, and in that (inaudible) that it was (inaudible)  
18 August, and I believe the language in the FSA was that the  
19 results of the study were, because it kind of came in late,  
20 they were not fully utilized, and I wondered if you could  
21 talk a little bit about what that trail study entailed. Was  
22 that field work, was that looking at maps, and what you meant  
23 when you in the report said that you weren't able to fully  
24 utilize it (inaudible).

25           MR. MCGUIRT: The results of that data request as

1 it was provided to us were pretty much the brown lines, which  
2 were the indication on our one slide of the trails throughout  
3 that corridor area.

4           What we did not have time for was the owner's  
5 consultants to put together a final report. It's just simply  
6 we didn't have time to even -- we wouldn't have had time to  
7 read it or receive it or digest it.

8           Where specifically the data that was provided to us  
9 was shortcoming was, they had gathered up trail documentation  
10 from various archives, there was no ground truthing of that  
11 data. They simply looked at what was in the information  
12 centers and what were also located in archives, and they  
13 pulled those together and put those lines on a map.

14           Two things probably could have happened after that.  
15 One would have been to rectify what that map showed us based  
16 upon what the actual topographical map showed. So if you  
17 have a trail and it runs across the top of a peak right next  
18 to where there's a valley where it's more logical a trail  
19 would go, rectification would say that's just an artifact or  
20 vestige of how the data came in, and you start to move that  
21 to logical places so that the trails actually make sense when  
22 you look at them with topography. That rectification didn't  
23 occur because of when we received that data.

24           The next thing you would do after that would be to  
25 go out on the ground and verify is there any evidence --

1 there's an archival source of information that says there's a  
2 trail here. We've rectified it and now think it is in this  
3 place. You would go to that place to verify it is indeed,  
4 can you see that. So that ground truthing also did not  
5 happen.

6 So we got the very beginnings of a dataset, which  
7 we then ran to put into our analysis.

8 MS. CLARK: I have a couple more questions.

9 So one thing we noticed in the final staff  
10 assessment was that the impact area for cultural resources  
11 was limited to a 15 mile radius around the project site, even  
12 though, as you know, with the changes to the project, the  
13 viewshed will extend upwards of 30 miles from the towers.  
14 And today you testified that the reason that you limited the  
15 sort of visual cultural impacts to a 15 mile radius was that  
16 the visual impacts dropped off after 15 miles, and I was  
17 wondering if you could point us to how you reached that  
18 conclusion (inaudible) something in the staff assessment that  
19 talks about that.

20 MR. MCGUIRT: Again, on the basis of the experience  
21 we had from being out on the ground quite a bit out there, we  
22 recognized that if and when this project were built, you  
23 would be able to see it when it was lit up from further away  
24 than 15 miles. You can see it quite a long ways away,  
25 probably. You can see the middle mountains that are, I



1 believe, somewhere between 20 and 30 miles away from the  
2 project site.

3 We were faced with what's an appropriate scope for  
4 CEQA analysis for this project? How do we limit the study in  
5 some sort of reasonable way for what we're going to analyze  
6 and what we're not going to analyze, so what information  
7 we're going to gather and what not.

8 And so on the basis of our experience of flagging  
9 and hiking back and forth across that area, it felt like at  
10 least for the purposes of an analysis like this that it was  
11 reasonable to draw a line at 15 miles and say that we were  
12 going to limit our consideration for that area.

13 And then as Tom explained, we cut off the rest of  
14 region, it's kind of a funny looking (inaudible) the crest of  
15 the mountains that surround and are within that 15 mile  
16 radius cut off a view of it.

17 And so that's what we came up with and that's why  
18 we did it.

19 MS. CLARK: In the staff rebuttal testimony there  
20 was a section on geology and paleontology that talked about  
21 the change like the proposed project from the original  
22 project where now they're going to be using migratory  
23 techniques to auger (inaudible) in place. And in that  
24 section there was a discussion about how there would be  
25 significant impacts to (inaudible) paleontological resources

1 caused by drilling, and I was wondering, and in fact the  
2 language was pretty strong that there were fossils under  
3 there that this technique would destroy them. I was  
4 wondering if the same couldn't be said of any cultural  
5 artifacts that happened to be underground in the location of  
6 where the (inaudible) are going in?

7 MR. GATES: Seems we discussed that. And I suppose  
8 at the end of the day you can chalk that up to a difference  
9 in professional opinion.

10 For cultural resources we were mindful of the State  
11 Office of Historic Preservation's take on that historically,  
12 which has been that if you have a construction technique that  
13 involves something such as pile driving or pedestal driving  
14 or something of this nature, where there is no dirt that's  
15 coming up, nothing to look at, and although there may be an  
16 impact, reasonably what is it that you're going to do about  
17 that?

18 For drilling, for predrilling to the pedestals,  
19 you're sort of in the same category. It's like the State  
20 Office of Historic Preservation doesn't want to look like  
21 they're being unreasonable or unduly burdensome, and so in a  
22 situation like that we're talking about a relatively small  
23 (inaudible) over a great area. (inaudible) see that as a  
24 wash, and we took it as such. And the paleontologist has a  
25 different take on it.

1 MS. CLARK: Okay.

2 HEARING OFFICER CELLI: I thought we'd be hearing  
3 about (inaudible) the paleontologist later that --

4 MR. GATES: He won't be happy with me.

5 MS. CLARK: I have a question about, again focusing  
6 on potential buried cultural resources on the site. I  
7 understand that there will be a large number of internal  
8 maintenance roads that will be going sort of in circles  
9 around the heliostats and trucks will come across them and  
10 wash the (inaudible) infrastructure. And I think I  
11 understand that they're not going to be graded, there's going  
12 to be a different technique for making those roads, but  
13 grubbing, grading and smoothing.

14 I don't exactly know what those terms mean  
15 separately from grading, but I'm wondering if you consider  
16 the potential for unearthing buried cultural resources; and  
17 if so, what protections are in place or mitigation measures  
18 for when those roads are actually being installed?

19 MR. MCGUIRT: I've had an opportunity to work  
20 fairly closely with the project owner's (inaudible)  
21 archeologist, and then staff was very favorably impressed by  
22 the work that was done out there in support of characterizing  
23 the (inaudible) and geomythology of the project area. And it  
24 was his belief that the likelihood was quite low out there.  
25 And given the service archeology that we were aware of on the

1 project site and (inaudible) assessment of the potential for  
2 getting buried resources, staff was comfortable with the  
3 assessment that there was a very low likelihood.

4 And so staff did not go back and redo what was  
5 decided upon for the original project (inaudible) the  
6 original general construction monitoring conditions will be  
7 in place for those areas where they're warranted under those  
8 conditions.

9 MS. CLARK: That's all the questions I have.

10 HEARING OFFICER CELLI: Thank you. Basin and Range  
11 Watch -- no, I'm sorry, Mr. Figueroa, any questions of these  
12 witnesses? Thank you.

13 Mr. Emmerich. Why don't you pull that a little  
14 closer up to you. Thank you.

15 MR. EMMERICH: Thank you. I actually do, before I  
16 ask a question, we had a couple questions for the Petitioner  
17 witness concerning photos that were shown of the KOP  
18 simulation of the project, and we did submit an exhibit under  
19 Visual, but since this was very great more related, I wonder  
20 if we could have some of the photos put up on the PowerPoint  
21 from our exhibit 4000, would that be possible?

22 HEARING OFFICER CELLI: Do you have Exhibit 4000,  
23 Ms. Anderson?

24 MR. EMMERICH: I have it on one of these little --

25 HEARING OFFICER CELLI: HE has a drive here

1 (inaudible) come down and get that.

2 Just to hold off on your question, if you would,  
3 until we put that up.

4 MR. EMMERICH: Okay.

5 HEARING OFFICER CELLI: So we're just going to go  
6 off the record just for a quick moment.

7 (Off the record.)

8 HEARING OFFICER CELLI: We're back on the record.  
9 From time to time, ladies and gentlemen, the Committee needs  
10 to confer about certain things, and so we'll go off the  
11 record to talk (inaudible) some resolution, then we go back  
12 on the record.

13 MR. EMMERICH: I want to go down to the last five  
14 photos of the (inaudible) project.

15 HEARING OFFICER CELLI: Okay, the last five photos.

16 By the way, these are showing here in the room but  
17 they do not seem to be showing on WebEx, these Exhibit 4000.  
18 Oh, there we go. Yeah, there's a ten second delay,  
19 apparently. So this is Exhibit 4000.

20 MR. EMMERICH: (Inaudible)

21 HEARING OFFICER CELLI: Okay.

22 MR. EMMERICH: So anyway, this is relating to the  
23 Petitioner's first, the slide showing the KOP simulations.  
24 Have you been to the (inaudible) project, have you actually  
25 seen that?

1 COMMISSIONER DOUGLAS: I have not.

2 MR. EMMERICH: Okay. I guess then what I would do  
3 is I would want to ask the CEC staff this question. And that  
4 is, do you agree with the Petitioner's photo simulations in  
5 terms of being bright enough to actually capture --

6 MR. GALATI: I'm going to object that that's beyond  
7 the expertise of these witnesses. We have visual resource  
8 experts.

9 I also would object that, once again, I've got a  
10 document here with no witness so that I can even ask a  
11 question. Where is the telephoto lens? Was this taken  
12 according to (inaudible) to take the photograph?

13 HEARING OFFICER CELLI: Objection sustained.

14 MR. GALATI: Thank you.

15 MALE VOICE: We'll try to keep those (inaudible)  
16 objections to a minimum.

17 HEARING OFFICER CELLI: Sustained. That means that  
18 there's no -- these are -- that's beyond the expertise of  
19 these witnesses. We are going to talk about Visual later and  
20 you can ask the Visual witnesses about that.

21 MR. EMMERICH: How would I relate that to what was  
22 just put up here from this witness?

23 HEARING OFFICER CELLI: We'd be able to put that  
24 up. They have that in the computer, so...

25 MR. EMMERICH: That's fine, I will do that.

1 HEARING OFFICER CELLI: The visual simulation  
2 questions would go to a visual expert, and these are  
3 archeologists and the like.

4 MR. EMMERICH: Okay. And then Laura had another  
5 question that's not related to this.

6 HEARING OFFICER CELLI: Sure, go ahead.

7 MS. CUNNINGHAM: Laura Cunningham, Basin and Range  
8 Watch. And my question was directed at Mr. Cachora and the  
9 CRIT witnesses about in your traditional knowledge, and thank  
10 you for explaining that more to us. Is it simply the visual  
11 nature of power towers that would disrupt your -- the natural  
12 settings and the traditional knowledge? Or I heard mentioned  
13 ancestral connections, songs, energies. So is it more than  
14 just visual of the towers? That's my question.

15 HEARING OFFICER CELLI: That was to Mr. Cachora?

16 MS. CUNNINGHAM: Mr. Cachora and the CRIT  
17 witnesses.

18 HEARING OFFICER CELLI: Okay. Mr. Cachora, why  
19 don't you speak to that, please.

20 MR. CACHORA: Thank you. It's difficult, but I'll  
21 try. You're new at it, you never heard that, but as I said  
22 earlier, it is a energy. I call it conduit of energy,  
23 because it's like a form of electricity but yet there's water  
24 that flows. But this you cannot see, it's an energy.  
25 There's energy in the area, but you can't see it.

1           But in this case it's a constant movement of a  
2 circle from one place to another, and you can divert that as  
3 long as it's free almost in this case a 90 degree angle, I  
4 guess, that would go across a certain place and area. And  
5 these are like anywhere from, like I said, ten miles, or it  
6 could be two miles, five miles, ten miles, fifteen miles,  
7 depending on where it's aimed at.

8           A particular area, it has to have certain type of  
9 peak, certain type of mound that is used for that, and the  
10 desert terrain has that and it takes place right after  
11 sometimes a fog. Sometimes a mirage can create that also.

12           So we use this sort of tapping into that energy.  
13 It's a very difficult thing for one to follow, but that's  
14 kind of (inaudible), and it cannot be obstructed.

15           Because like I've heard earlier, you know, yeah,  
16 it's just something that's invisible you can see, no, it  
17 isn't. it's something that is developed with certain people.  
18 Even I couldn't do that unless I know the individual  
19 personally and how that is done and that's the only way that  
20 I can tap into it.

21           And those circles do represent that. Either they  
22 come in clear circle, they're in the form of a rock circle.  
23 Those things do provide that assistance, so in looking at  
24 that rock you have to determine which one it is to identify  
25 what it is, but one thing you can't do is tap into it without



1 that special person does that.

2 I can only tell you what it looks like, and it does  
3 radiate. That's the main thing that what we look for in an  
4 energy. Does that (inaudible) question?

5 MS. CUNNINGHAM: Yeah, thank you. So is there a  
6 way to mitigate the loss of that in your opinion? Like how  
7 would that be made up for if that was blocked or obstructed?  
8 Is there any way?

9 MR. CACHORA: I wish there was. If there was a way  
10 to mitigate that, we would have done that a long time ago.

11 MS. CUNNINGHAM: Thank you.

12 HEARING OFFICER CELLI: I have a question on the  
13 heels of that, on the end. This is to Mr. Cachora, also Ms.  
14 Holt-Fisher or any of CRIT's witnesses.

15 In this case, and I want everybody to understand  
16 that, the Petitioner is petitioning to amend an already  
17 licensed power plant that was to go into this site that was  
18 (inaudible) style solar just like Genesis it's supposed to  
19 be. And what they're trying to do is change from their  
20 already approved power plant, which is the (inaudible) power  
21 plant, to the tower style power plant, it's all towers.

22 So what the Committee is really interested in  
23 knowing isn't so much, like we're not -- there will be a  
24 power plant there. One of them, it's either going to be  
25 troughs or it's going to be this new amended tower.

1 MS. BELENKY: Objection. Mr. Celli, you seem to be  
2 testifying, and I happened to find out that the BLM never  
3 approved the earlier project, and so your statement that  
4 there will absolutely be a power plant there either way is  
5 not accurate, not based (inaudible).

6 HEARING OFFICER CELLI: Yes, that is a fine point  
7 and let me correct that.

8 There is a licensed power plant already at this  
9 site. What we're interested in is the difference between the  
10 licensed power plant and the proposed modified power plant  
11 with the towers. So we're interested in the difference  
12 between those two, and so you've all sort of testified about  
13 kind of the gross impacts of these project as they affect the  
14 experience of being in the (inaudible) Valley landscape,  
15 let's say. But what we're interested in knowing is what's  
16 the difference from the Native American point of view from  
17 the one, which is the solar, to the one with the towers, if  
18 there is, if you could tell us that, that would be helpful to  
19 the Committee.

20 MR. GALATI: Seven hundred and twenty feet. The  
21 taller project, it becomes a visual cue. It grabs your eye.  
22 It does something to the whole of the landscape that a  
23 project with thirty foot tall mirrors and maybe two  
24 supporting structures of a couple of stories doesn't do.  
25 It's a very different thing. And (inaudible) like crazy.

1 They're huge candles in the middle of a big flat beautifully  
2 sculptured valley that are going to stand there and attract  
3 the attention of every passerby for the next 35 to 50 years.

4 HEARING OFFICER CELLI: I understand what you're  
5 saying. Now, there are visual impacts and there are  
6 ethnographic cultural visual impacts, and that's really what  
7 we're interested in there.

8 MR. GALATI: The ethno difference I personally  
9 can't speak to except by being exposed to the tribal members  
10 with whom I've had the pleasure of working for the last six  
11 years. So I'll defer to them on that particular thing.

12 HEARING OFFICER CELLI: Ms. Fisher-Holt, I'm sorry.

13 MS. FISHER-HOLT: Fisher-Holt.

14 HEARING OFFICER CELLI: I'm sorry. Did you have  
15 any point you wanted to make on that?

16 MS. FISHER-HOLT: Yeah, and my earlier statement I  
17 had talked about the salt contrails (inaudible) and talked  
18 about the journey that's taken which goes right through that  
19 area, and there is a connection there that the people seeing  
20 it connect it's mental and physical. (inaudible) the songs  
21 they're mentally journeying through that area, and so we  
22 believe that it will be disrupted by the towers that are  
23 being proposed to be placed out in that desert in that same  
24 area that the trail systems go through.

25 HEARING OFFICER CELLI: Thank you.

1           Mr. Cachora, did you have something further?

2     Please.

3           MR. CACHORA: Yes. (Inaudible). I don't want to  
4 talk outside of anything, but the first project that we've  
5 encountered, that's in place already, as you say, that has  
6 showed us that there is negligence to begin with. So,  
7 anything that grows in that area, it's going to be even a  
8 negative. (Inaudible) that all along, like I said earlier, I  
9 don't like going back with that group, but I tend to talk in  
10 a broad description.

11           But per our discussion there was (inaudible) for  
12 representation in our knowing, when it comes to signs it's  
13 always been that way.

14           And (inaudible) -- I just wanted to point out  
15 another problem which really caused this and goes back to the  
16 1900's. When an individual, an anthrop at that time and he  
17 didn't publish a report and from a tribal person. And he  
18 interviewed them and in there I believe was a long interview,  
19 but at the end he asked him how he knew all of this and he  
20 says our "grand history".

21           So that the writer at that time chalked the whole  
22 thing off that there is no magic or supernatural ingredients.  
23 They -- sometimes he was talking about the people, the  
24 strength and size of a leader was sometimes exaggerated and  
25 also any great extravagance the story, therefore, is

1 (inaudible).

2 And he goes on to describe the person that he's  
3 interviewing. And after that we started to notice that every  
4 anthropologist that comes through our area tries to interview  
5 us, but it's the same pattern that would result from this  
6 person long ago.

7 That is something we are trying to correct now with  
8 these anthropologists.

9 Then three years ago we had an anthropologist that  
10 came and swore he was going to do a good a job on the report  
11 and today we're still going back and reviewing his report and  
12 trying to correct that.

13 So, when you come to interview a concerned person,  
14 it's very very difficult. Our creation, as it was spoken  
15 earlier would (inaudible) certain things. That entire, I  
16 call it history because it's who we are, and that is also  
17 written in what I call a winding passage. Somebody living  
18 has to sit there and unravel that for you, so that you  
19 understand.

20 And I don't blame him for saying this and asking  
21 this question why is it better than the other. I think not.

22 HEARING OFFICER CELLI: Thank you very much.

23 Anything further?

24 MS. CUNNINGHAM: No, thank you.

25 HEARING OFFICER CELLI: CBD, did you have any

1 questions for the panel?

2 MS. BELENKY: No, thank you.

3 HEARING OFFICER CELLI: Thank you.

4 Anything further from Petitioner, any further  
5 questions?

6 MR. GALATI: No, thank you.

7 HEARING OFFICER CELLI: Thank you.

8 At this time, then, is there a motion from the  
9 Petitioner to introduce into evidence any exhibits marked for  
10 identification?

11 MR. GALATI: Yes. At this time I'd like to ask for  
12 Exhibit No. 1003, the cultural resource section; the cultural  
13 resource section of Exhibit 4.

14 HEARING OFFICER CELLI: That's 1004?

15 MR. GALATI: 1004, 1005, 1019, 1026, 1040, 1041,  
16 1057, 1059, 1064, 1065, 1066, 1067.

17 And I apologize. Some of these were broken up on  
18 the exhibit list, so I'm having to go back to the original  
19 exhibit list.

20 HEARING OFFICER CELLI: Okay.

21 MR. GALATI: Also 1077, the cultural resources  
22 opening testimony. 1081, our rebuttal testimony.

23 These are several parts of a data request 57, it's  
24 1102 to 1115.

25 We ask all those to be entered into evidence.

1 HEARING OFFICER CELLI: Thank you. The motion is  
2 to move exhibits marked for identification 1003, 1004, 1005,  
3 1019, 1026, 1040, 1041, 1057, 1059, 1064, 1065, 1066, 1067,  
4 1077, 1081, 1102 to 1115 into evidence, is the motion.

5 Any objection from staff?

6 MS. MARTIN-GALLARDO: Staff has no objection.

7 HEARING OFFICER CELLI: Any objection from CRIT?

8 MS. KING: No objection.

9 HEARING OFFICER CELLI: Any objection from  
10 Californians for Renewable Energy? Mr. Figueroa, you need  
11 the microphone.

12 MR. FIGUEROA: No.

13 HEARING OFFICER CELLI: Thank you.

14 Basin and Range Watch, any objection to those  
15 exhibits being admitted into evidence?

16 MR. EMMERICH: No.

17 HEARING OFFICER CELLI: And CBD, any objection?

18 MS. BELENKY: No. Thank you.

19 HEARING OFFICER CELLI: Did I get everybody? I'm  
20 having a hard time.

21 Then that motion is granted; those exhibits are  
22 received into evidence.

23 I want to thank this panel of experts for  
24 testifying. You're excused at this time.

25 One moment.

1 FEMALE VOICE: (Inaudible)

2 HEARING OFFICER CELLI: Yes, you do, I'm sorry. I  
3 was just letting them go. I don't really need them here for  
4 this part of it. We're done with our witnesses, right?

5 They're free to go.

6 Staff, motion?

7 MS. MARTIN-GALLARDO: Yes, we make a motion to  
8 enter the following exhibits.

9 HEARING OFFICER CELLI: Please.

10 MS. MARTIN-GALLARDO: 2001, 2003, 2004, 2007, 2008,  
11 and we would like to move the declaration, CV and bio of  
12 Lorey Cachora into the record as 2010.

13 HEARING OFFICER CELLI: The motion is to move into  
14 evidence exhibits marked for identification 2001, 2003, 2004,  
15 2007, 2008, and 2010.

16 Is there any objection, CRIT?

17 MS. KING: No.

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

20 MR. FIGUEROA: No.

21 HEARING OFFICER CELLI: Any objection from Basin  
22 and Range Watch?

23 MR. EMMERICH: No.

24 HEARING OFFICER CELLI: Center for Biological  
25 Diversity?



1 MS. BELENKY: No.

2 HEARING OFFICER CELLI: Any objection, Petitioner?

3 MR. GALATI: No.

4 HEARING OFFICER CELLI: Exhibits marked for  
5 identification 2001, 2003, 2004, 2007, 2008, and 2010 are  
6 received.

7 Colorado River Indian Tribes, do you have a motion?

8 MS. CLARK: Yes, we would like to move for the  
9 introduction of Exhibits 8000 through 8020 into the record.

10 HEARING OFFICER CELLI: Is there any objection from  
11 Californians for Renewable Energy? Mr. Figueroa, do you  
12 object to the receipt of Exhibits 8000 through 8020 into  
13 evidence?

14 MR. FIGUEROA: No.

15 HEARING OFFICER CELLI: Thank you.

16 Mr. Emmerich?

17 MR. EMMERICH: No.

18 HEARING OFFICER CELLI: Ms. Belenky?

19 MS. BELENKY: No.

20 HEARING OFFICER CELLI: Mr. Galati?

21 MR. GALATI: No objection.

22 HEARING OFFICER CELLI: Ms. Martin-Gallardo?

23 MS. MARTIN-GALLARDO: No objection.

24 HEARING OFFICER CELLI: Exhibits 8000 through 8020  
25 will be received.

1 MS. CLARK: And I just have one question. Do we  
2 need to move to have any of our testimony entered in  
3 (inaudible), right?

4 HEARING OFFICER CELLI: Well, presumably that's  
5 what you just moved in.

6 MS. CLARK: And I will just say that I didn't  
7 realize that our testimony had to be separately marked as an  
8 exhibit, so it's not marked as exhibits (inaudible).

9 HEARING OFFICER CELLI: Did you have a chance to  
10 see the exhibit list that was -- that's on the website for  
11 the PSEGS website?

12 You filed your exhibits. They have transaction  
13 numbers, the TN number.

14 MS. CLARK: Yes.

15 HEARING OFFICER CELLI: Okay. Then someone in our  
16 office, Maggie Reed (phonetic), assigned exhibit numbers to  
17 your evidence and then sent the exhibit list out to all the  
18 parties. I think this was a day or two before the prehearing  
19 conference, so that the parties could look at the exhibit  
20 list and see whether they were --

21 MS. CLARK: I don't believe our testimony is  
22 included on that exhibit list. (Inaudible) mark our  
23 testimony separately as exhibits (inaudible).

24 HEARING OFFICER CELLI: Maybe we're not talking  
25 about the same thing. That certain declarations.

1 MS. CLARK: Yes.

2 HEARING OFFICER CELLI: That's what this --

3 MS. CLARK: No, that does not include our  
4 declarations. Our declaration from Ms. Fisher-Holt and Mr.  
5 Bonamici I thought they're not marked as exhibits, they're  
6 marked as testimony.

7 MS. KING: The opening and rebuttal. The written  
8 testimony that we supplied, they have the TN numbers but I  
9 don't think that they have exhibit numbers. But if there's a  
10 new document that just came out that can be separately cross  
11 referenced and then we can come back to make a motion. It's  
12 all the things that we've already filed. I think it's a  
13 matter of making sure and seeing if they have exhibit numbers  
14 (inaudible).

15 HEARING OFFICER CELLI: Okay. Dr. Roberts, I  
16 wonder if you could be so kind as to bring an exhibit list  
17 down to Ms. Clark to review the exhibit list, the exhibits in  
18 the 8000 series.

19 MS. CLARK: Yes. I apologize.

20 HEARING OFFICER CELLI: Take a look at those, make  
21 sure that those cover them all. If there's something --

22 MS. CLARK: This is the list that was handed out on  
23 Thursday at the prehearing conference and does not include  
24 our testimony. Yeah, this is just our exhibits. And we did  
25 not realize that testimony has to be an exhibit as opposed to

1 just testimony.

2 HEARING OFFICER CELLI: Well, I'm not sure I --  
3 typically, everybody's prefiled testimony is what their  
4 exhibits are for the most part. The FSA, that's testimony.

5 MS. CLARK: The FSA (inaudible) so we have been  
6 surveying some other proceedings and seen that most exhibits  
7 are (inaudible) or whatever, and then the testimony, the  
8 written testimony is different.

9 HEARING OFFICER CELLI: Okay. So you have more  
10 exhibits than what you've given us here.

11 MS. CLARK: Yes.

12 HEARING OFFICER CELLI: Is that clear to all the  
13 parties?

14 MS. KING: If it would make sense, I was just  
15 suggested that I could make a motion based on the title of  
16 the documents and ask them just to be tacked on at the end of  
17 8020, so it would be 8021, and then hopefully the parties  
18 would be able to register an objection if they have one,  
19 but...

20 HEARING OFFICER CELLI: And what is exactly 8021?

21 MS. KING: So 8021 would be the opening testimony,  
22 exhibit list in exhibits the TN numbers 200927.

23 MR. GALATI: And maybe just for the ease of  
24 numbering, the only one that I object to is that, the opening  
25 testimony. This is the one that I brought the motion with

1 that ended up with the lawyers not testifying, because it was  
2 very brief-like.

3 HEARING OFFICER CELLI: Right.

4 MR. GALATI: And for opening testimony (inaudible).

5 HEARING OFFICER CELLI: Right.

6 MR. GALATI: As opposed to testimony of experts.  
7 But I did agree that the testimony of Sara Clark pertaining  
8 to Genesis could come in, because she had factual basis about  
9 that. But I do object to Exhibit what would be 8021 coming  
10 into evidence because that is not qualified.

11 MS. KING: (Inaudible)

12 MR. GALATI: There is two?

13 MS. KING: I'll tell you when we get to the one  
14 that you object to.

15 MR. GALATI: Okay.

16 HEARING OFFICER CELLI: I just want to clear any  
17 confusion. At the prehearing conference we said -- you said  
18 that you were going to -- there were confidential documents  
19 that were put in.

20 MS. CLARK: Yes.

21 HEARING OFFICER CELLI: Those were withdrawn,  
22 correct?

23 MS. CLARK: Yes.

24 HEARING OFFICER CELLI: You are not reintroducing  
25 that.

1 MS. CLARK: No.

2 HEARING OFFICER CELLI: Okay. So this is just --

3 MS. CLARK: Our testimony.

4 HEARING OFFICER CELLI: It's from your testimony.

5 It's the declaration of who?

6 MS. CLARK: There's multiple parties (inaudible).

7 MS. KING: The document that I just asked to be  
8 introduced as 8021 is called Opening Testimony Exhibit List  
9 and Exhibits. It's a cover letter type document that we  
10 filed.

11 And then as 80 -- better keep track of these -- 22,  
12 Testimony of Chairman Patch regarding Impact of Renewable  
13 Energy Project from CRIT. The TN number is 200908.

14 And as 8023, and this is the one that I believe  
15 Petitioner's counsel objects to, Opening Testimony of Rebecca  
16 Wildbear (phonetic) et al, Comments on Cultural resources,  
17 Visual Resources, Environmental Justice, Biological Resources  
18 and Alternatives, and that document is TN number 200906.

19 HEARING OFFICER CELLI: But that's not a single  
20 declaration, that's multiple declarations, 8023?

21 MS. KING: It's a single declaration. It's a  
22 single written declaration signed by -- this is the one he  
23 objects to so I'm (inaudible).

24 MR. GALATI: Okay. All right. So this is the one  
25 that's sort of in the manner of a brief.

1 MS. KING: It's more of a comment letter, yeah.

2 MR. GALATI: Which I have no objection to it being  
3 put in a brief, but as being sworn testimony, since we don't  
4 allow lawyers to testify as to whether something (inaudible)  
5 or not (inaudible) brief, that's mostly what this document  
6 (inaudible).

7 HEARING OFFICER CELLI: Okay. But it does contain  
8 Ms. Clark's testimony with regard to the facts.

9 MS. CLARK: No, that's (inaudible).

10 MR. GALATI: No, that's another one.

11 MS. KING: That's a separate document.

12 HEARING OFFICER CELLI: Okay. So is there anything  
13 of a factual nature in 8023?

14 MS. CLARK: We would argue that, yes, there is some  
15 factual information contained in that testimony.

16 HEARING OFFICER CELLI: As testified by a lawyer?

17 MS. CLARK: Right. It relates to the (inaudible)  
18 issue to their factual nature. I could separate it out but I  
19 haven't done so.

20 HEARING OFFICER CELLI: All right. Let me just ask  
21 you this. In terms of the consultation, it contains the fact  
22 that on dates and times phone calls were made or not made,  
23 that kind of thing?

24 MS. CLARK: (Inaudible)

25 HEARING OFFICER CELLI: What I will do, Mr. Galati,

1 is I'm inclined to admit the document and review it and give  
2 it the weight that it would normally receive if it were just  
3 testimony of lawyers, but there may be some mutual factual  
4 information (inaudible) in it, such as that sort of  
5 information, dates, times, so we would admit it under those  
6 circumstances, and so that objection would be overruled.

7 But I didn't give all of the parties now a chance  
8 to tell me whether they objected or not to the full list.

9 MS. KING: We're not quite done.

10 HEARING OFFICER CELLI: Okay.

11 MS. KING: We're going to go through the list and  
12 then...

13 HEARING OFFICER CELLI: Keep going.

14 MS. KING: Okay. So 8024 is the separate  
15 declaration, opening testimony regarding lessons learned from  
16 the unanticipated discovery of Genesis, and the TN number is  
17 200901.

18 HEARING OFFICER CELLI: Is that -- who's the author  
19 of that?

20 MS. KING: That has three authors including Ms.  
21 Clark and it's largely includes what Ms. Clark testified to,  
22 but also was written by myself and the attorney general, all  
23 of whom worked on that.

24 HEARING OFFICER CELLI: It's the lessons learned  
25 from Genesis.



1 MS. KING: Yeah.

2 HEARING OFFICER CELLI: Okay.

3 MS. KING: And then 8025, testimony of Douglas  
4 Bonamici regarding consultation and ethnographic study for  
5 Palen Project. The TN number is 200907.

6 MS. CLARK: I'll do the last one, sorry you don't  
7 have it. It's the testimony of Wilene Fisher-Holt regarding  
8 impacts of the Palen Project on (inaudible) and that's 8026,  
9 and the TN number on that is 201047.

10 MS. KING: And then I have one last document, which  
11 is rebuttal testimony of Rebecca Wildbear, Winter King and  
12 Sara Clark regarding cultural resources, and that would be  
13 8027.

14 HEARING OFFICER CELLI: Did all of the parties  
15 receive copies of these documents beforehand?

16 MS. KING: Yes.

17 HEARING OFFICER CELLI: So there's no surprises in  
18 here?

19 MS. CLARK: No, they're all documented. We just  
20 didn't realize we had to submit them as separate exhibits.

21 HEARING OFFICER CELLI: Okay. Good enough. And  
22 you knew our system, so...

23 MS. CLARK: It's in your regs.

24 HEARING OFFICER CELLI: So there is a motion to  
25 move into evidence Exhibits 8000 through 8027 from the

1 Colorado River Indian Tribes.

2 Is there any objection from Basin and Range Watch  
3 to these exhibits, including up to 8027 inclusive?

4 MR. EMMERICH: We have no objection, no.

5 HEARING OFFICER CELLI: Okay. CBD?

6 MS. BELENKY: No.

7 HEARING OFFICER CELLI: Petitioner?

8 MR. GALATI: Just the objection that was overruled.

9 HEARING OFFICER CELLI: Okay. And it's still  
10 overruled.

11 Staff?

12 MS. MARTIN-GALLARDO: No.

13 MR. GALATI: It was granted at the prehearing  
14 conference statement, so I guess I'm batting one for three.

15 HEARING OFFICER CELLI: Staff?

16 MS. MARTIN-GALLARDO: No objection.

17 HEARING OFFICER CELLI: Okay. Then Exhibits 8000  
18 through 8027 will be received into evidence.

19 The last claim of evidence was, I believe, for Mr.  
20 Emmerich for Exhibit 4000. You have a motion, Basin and  
21 Range Watch?

22 MR. EMMERICH: Yeah, we'll move it.

23 HEARING OFFICER CELLI: Move Exhibit 4000 in?

24 MR. EMMERICH: Yeah.

25 HEARING OFFICER CELLI: And any objection from CBD?

1 MS. BELENKY: No.

2 HEARING OFFICER CELLI: Any objection from the  
3 Petitioner?

4 MR. GALATI: Yes, objection as to lack of  
5 foundation.

6 HEARING OFFICER CELLI: These are -- let me ask  
7 you, Mr. Emmerich, these are (inaudible) that came in last  
8 week. This is just some photographs, correct?

9 MR. EMMERICH: It's photographs, it's a visual  
10 exhibit to compare the what's on the site now compared to the  
11 impact, what they look like from the (inaudible) project, how  
12 it would look.

13 HEARING OFFICER CELLI: And so the objection is  
14 lack of foundation because we have a witness here who's going  
15 to be able to lay a foundation, Mr. Galati?

16 MR. GALATI: Correct.

17 HEARING OFFICER CELLI: One moment.

18 Mr. Emmerich, who took those photographs?

19 MR. EMMERICH: Both myself and Laura Cunningham.

20 HEARING OFFICER CELLI: Okay. And Mr. Galati, did  
21 you want to ask questions of either Ms. Cunningham or Mr.  
22 Emmerich about the photographs?

23 MR. GALATI: I'd have to consult with my visual  
24 expert, but I will when it comes to Visual.

25 HEARING OFFICER CELLI: Okay, let's do this. Mr.

1 Emmerich, I'm going to ask you to hold it back and when we  
2 get to Visual I want you to bring that motion again after  
3 Visual.

4 MR. EMMERICH: Okay.

5 HEARING OFFICER CELLI: Thank you.

6 So then we have now completed all the evidence for  
7 cultural resources, and the next topic we're going to cover  
8 -- oh, did we want to take public comment at this time?  
9 Let's hear from --

10 Folks, if you want to make a public comment, come  
11 on down to these microphones that are there. I have Mr.  
12 Frank McMenimen of the BLM here. I've got Arlene, I believe  
13 it's Kungary or Kingary, I can't -- I'm sorry if I  
14 mispronounce your name. Linda Otero, and Manfred Scott.

15 So Mr. McMenimen, please.

16 MR. MCMENIMEN: Call me Frank (inaudible).

17 HEARING OFFICER CELLI: Okay. Go ahead.

18 MR. MCMENIMEN: Thank you very much. My name is  
19 Frank McMenimen. I am a project manager with the Bureau of  
20 Land Management. I am responsible for the Palen Project,  
21 with seeing it through the application process.

22 As you know, the Palen site falls within the  
23 boundaries and borders of federally managed land (inaudible)  
24 the Bureau of Land Management. And as such, the federal  
25 laws, and rules and regulations apply, and override, and

1 supersede other regulations and rules within the boundaries  
2 of the property.

3           Section 106 is the government-to-government  
4 process to review actions, activities, plans and developments  
5 on federal land. Specifically, it was designed for other  
6 federal agencies for communications for government-type  
7 consultations, including Native Sovereign Nations in our  
8 communications with them.

9           The CEC was, as they indicated earlier, not a  
10 signatory to the original solar (inaudible) project, and as  
11 such, the PA was signed without them and not executed by the  
12 CEC. Therefore, the CEC was not included in the update of  
13 the programmatic agreement since they were not a signature to  
14 it.

15           And as you stated, which is the critical part, we  
16 are looking at only the differences between an already  
17 licensed project and the title.

18           Agencies and governments don't always have to  
19 agree. BLM and CEC are working on parallel paths in the  
20 determination of actions for the project. As you know, we've  
21 had some different timeframes on this. To that end and on  
22 the issue of 1216, BLM believes and actually stands firm that  
23 BLM, that the 1216 should be included in the program. We've  
24 got the necessary staff working (inaudible) overstaffing  
25 (inaudible).

1 HEARING OFFICER CELLI: Can you give us a little  
2 more of the timeframe that the BLM process is going in?

3 MR. MCMENIMEN: From our point of view at this  
4 moment, we're looking in the beginning of February, prior to  
5 a resolution.

6 HEARING OFFICER CELLI: Thank you. Thank you for  
7 your comments, Mr. McMenimen.

8 MR. MCMENIMEN: Okay, thank you.

9 HEARING OFFICER CELLI: Could you spell your name  
10 for me, please?

11 MR. MCMENIMEN: Sure, it's M-c-M-e-n-i-m-e-n.

12 HEARING OFFICER CELLI: Thank you.

13 Next, we have Irene Kingary is it, or Kengery  
14 (phonetic)?

15 MS. KINGARY: Kingary.

16 HEARING OFFICER CELLI: Kingary. Please go ahead.

17 MS. KINGARY: I'm a member of the Quechan tribe,  
18 and I'm also a site preservation officer. And I believe it  
19 was Mr. Galati that was talking a little bit about the  
20 consultation process, about the tribes not responding.

21 One of the first meetings we had with BLM, they had  
22 a PowerPoint on this project and they were meeting with us  
23 and tribal council. And when the presentation was over, I  
24 asked them what CEC had to do with this process because we  
25 have never even heard of you. So we -- they just said, oh,

1 they just do the permits, don't worry about it.

2           So Tom Gates had contacted us about doing the ethno  
3 study, so we were like why is he even calling us, you know,  
4 because he's from CEC, and we don't know who he is. So he  
5 did come and talk to us about the ethno study and we arranged  
6 for Roger -- I'm sorry, I don't remember your last name --  
7 but he came and gave a presentation to tribal council to  
8 explain the process, because we had no idea. This was really  
9 our first hearing that we've ever been to.

10           When Roger met with council, which was quite some  
11 time ago, he explained that we could come as an intervener,  
12 and Mr. Cachora said, "Well, that doesn't seem right because  
13 we're a sovereign nation. We should be able to come in and  
14 sit at the table and communicate with you directly." We were  
15 told that wasn't possible. So the compromise was to have him  
16 be an expert witness because we did not feel it was right to  
17 be denied to be able to come in and talk to you as we're  
18 supposed to be. So that just gives you a little background  
19 about why we didn't participate and why we didn't know a lot  
20 about this project. And this happened quite frequently. And  
21 we have a lot of projects that we have to address.

22           Further, the cultural component, when I first  
23 started working on the reservation, I went to meet with the  
24 elders and I was just really appalled when they're sitting  
25 there talking after eating, and one of the ladies said that

1 the only thing she had to look forward to was her death  
2 because that's when the world would make sense again.

3           That was like everything that's gone, everything  
4 that's been taken that the actual funeral ceremony and the  
5 death, it kind of put everything back in place again. That's  
6 why it's so important for these places and this should be  
7 protected because when (inaudible) was talking about the  
8 (inaudible) they're actually -- these sites are actually  
9 named from the -- during the funeral ceremony, the places  
10 that people pass through. And it gives the people great  
11 comfort to know that they're there and they're not  
12 obstructed, and they'll always be there.

13           And they were in trust with BLM and the tribe  
14 always thought they would be safe. The songs, themselves --  
15 I mean if you think of something that you could relate to it,  
16 it would be the Twenty-Third Psalm, or something like that.  
17 It would give you comfort as you're dying. That's how  
18 important these areas are to the tribal people.

19           The tribes have lost so much. They went through  
20 either being forced to assimilate or being destroyed. They  
21 went through almost five different holocaust periods. They  
22 went through the Spanish, they went through the government  
23 military action, they went through the reservation system,  
24 they went through the boarding schools, and then later they  
25 were relocated during the World War II in cities, and they



1 still managed to keep their oral tradition and history. I  
2 mean it's not written down. It's been passed from singer to  
3 singer, families to families and it's all tied in to this  
4 landscape.

5           The cultural studies that a lot of times are picked  
6 for mitigation, the ethno studies, it seems like you're  
7 taking the last fragment of the culture from the tribe.  
8 You've taken the land, you've taken the artifacts, and now  
9 you take the only thing they have that's left inside, their  
10 intellectual property. So when you -- you've taken  
11 everything and they've given you everything, and they've be  
12 lost everything that they have.

13           When I went to visit the Genesis Project on  
14 Thursday because I just wanted to get an idea about what's  
15 happened there and how they protected the cultural resources.  
16 Well, it's really not working very well because they have  
17 built their facility in a large wash and so they're having  
18 all kinds of problems with water going through. So they've  
19 had to build all these flood diversion channels.

20           And also (inaudible) washed out. They're being  
21 washed out outside the perimeter. So I don't know if the  
22 site is just going to keep getting expanded and expanded  
23 because the actual drain channels are still are not working  
24 well. There's a lot of erosion all around the fence line.  
25 They've put additional channels inside the area.

1           And there's one site that was very, very critical.  
2    It was one site that the tribal members identified as a  
3    possible cremation burial site.  It's sitting between a row  
4    of two lines of (inaudible) and it has sand bags around it  
5    and some concrete culverts, and a giant like 4,000-pound  
6    piece of sheet metal.                   And I don't know what  
7    they're going to do because they -- I'm sure they don't want  
8    to excavate and find a burial site and it's just like a  
9    sacrilege to see that, that that's a potential burial site  
10   and it's got sandbags around it and a steel plate on top.  
11   That's how the communication was handled.

12           It seems like the technology for these projects is  
13   not handling the problems that occur naturally from nature.  
14   And the Palen project, itself, is built on a lot of washes, a  
15   lot of sand washes.  As you head toward the east, the washes  
16   get more and more frequent.  And some are just like ten or  
17   twenty feet apart and there's just wash after wash after  
18   wash.

19           So if they build the site like they plan to and  
20   then they have to add more erosion control and more erosion  
21   control, they're going to keep adding to the site.  They're  
22   going to be excavating, they're going to be finding things,  
23   or things are going to be washing out from the change of the  
24   water and it's really not being handled.  I mean it's -- the  
25   litigation isn't working.

1           And you do the PA's and you do the MOU's for the  
2 tribe, at least the BLM does, but we're pretty -- they're  
3 pretty much forced down our throat, and our tribe never  
4 signed them because we never agreed to them, and as well as  
5 most of the mitigation plans.

6           It's just another example where you go into a third  
7 world country or a reservation and you decide what's best for  
8 us with very little input from us. We get the Power Point  
9 presentations, we get the documents, and either we sign off  
10 on them or we don't. We can make our comments, but nothing  
11 ever happens.

12           And it's not just this project. It's a lot of  
13 projects. I mean we'll be trying to get them to move  
14 something just so they won't be on top of the burial site and  
15 they'll move over a couple of feet. That's what we're  
16 dealing with and it's just very frustrating for the tribes  
17 because we really need to deal with you and we need to work  
18 with you because every promise this group -- every plan  
19 doesn't work and it's like if you were a businessman, would  
20 you continue to make a deal with someone that gives you a bad  
21 deal all the time, or damages your property, and doesn't  
22 listen to you? You would just walk away. But we have no  
23 choice. We have to be here. We have to make a statement.  
24 We really don't ever expect much to happen from this because  
25 it's like we're in a whole different world.

1 I appreciate you letting me make my comments, thank  
2 you.

3 HEARING OFFICER CELLI: Thank you very much. And  
4 you spell name, Kingary, K-i-n-g-a-r-y.

5 Linda Otero? Hi.

6 MS. OTERO: Good morning, or good afternoon. Linda  
7 Otero for the Mohave Indian tribe. I'm a public council  
8 member. I'm also the director of (inaudible) cultural society  
9 and as of one month ago I'm also the acting health services  
10 director. So this area has a lot of hats. This is perfectly  
11 my role in providing the services to the tribe in this  
12 capacity. So I'm limited on some of the background  
13 information that came out recently. But nonetheless, I know  
14 there has been a pathway with trying to reach as representing  
15 the tribe and the agencies, both the federal, the state, and  
16 how to deal with the corporate level as well.

17 I think from over a year ago we had the opportunity  
18 to try to figure out how to best build a relationship with  
19 the state as well and I had the opportunity to meet with  
20 Commissioner Douglas and I appreciate that. But I  
21 (inaudible) -- some of the tribes, the tribe providing me an  
22 example of an MOU, or some development of how to build a  
23 relationship because in this process there is none that  
24 exists truly that allows, as you heard earlier, and allows us  
25 to have that level of sovereign relation.

1           We have to be an intervener, or an expert witness,  
2 or the public, but that diminishes our role in that capacity  
3 which I think the governor has an executive order out that  
4 recognizes tribes on this level. And the CEC has taken that  
5 charge to try to work on some type of consultation policy.

6           I also sit on the advisory -- Native American  
7 Advisory Committee for the Cal EPA. That came about over six  
8 years ago because of the struggles the tribe, the Mohave as  
9 well as the (inaudible) project under the Department of Toxic  
10 Substance Control where, again, we entered into a role where  
11 there was no relationship.

12           Relationships are a big piece of not only how we  
13 interact, but what you have been hearing today.  
14 Relationships are important no matter what we interact with.  
15 Human beings, as we interact with our surroundings, as we  
16 interact with the natural world and that's where I come from,  
17 the stuff of my learning.

18           I'm going to switch now to a little bit of  
19 background, but I want to come back to address some of the  
20 particulars that are being talked about today.

21           I've learned -- I've been in this role of this  
22 capacity for over 14 years. But, nonetheless, I'm a child of  
23 the Creator Mastamho, to learn and be, to walk the path  
24 that's been given to me as my birth right. To be for the  
25 highest calling that I could respond to, which is the

1 stewardship.

2           The stewardship role is to protect those resources,  
3 protect the things that we care about and that's the beyond  
4 what you could even put in a document, beyond what you could  
5 even express what is and who we are. And that has been a  
6 learning step throughout about my life. I've grown to  
7 understand far more than I would have thought as a young  
8 girl, a young woman listening to my grandmother, listening to  
9 others as well in my teachers of today.

10           They shared with me that we understand this  
11 relationship of the natural world, the natural study with the  
12 universe. And it's hard to describe. The group was trying  
13 to articulate that earlier and what many of the tribal people  
14 were trying to do, as well. And I find that a difficulty as  
15 well for myself because I try to find examples of what the  
16 rest of the world has and try and (inaudible).

17           Strangely enough, I went through the academics in  
18 science, but then here I am working in a realm of the natural  
19 sciences. But that doesn't have a break. There is a  
20 connection. As my grandmother used to say, we're related to  
21 all things. I found out the atom has a way of relating. And  
22 here we have millions and millions and millions of money  
23 spent to find some particle and they've done that. But  
24 that's the relationship, that's that hard science that  
25 they're seeking. And yet, we're trying to put a hard science

1 this, as well, and it doesn't always fit.

2           So this is the struggle we have in trying to  
3 express what is in us and how we interact into a level that  
4 is multi-dimensional dimensional. So when you try and draw  
5 a circle around the perimeter of the mountain range, that's  
6 not enough. You've heard that explanation of how one circle  
7 builds upon another, that's my teacher also telling me that.  
8 I've learned that process of how to build upon one and  
9 further out. And in the description of this, and these are  
10 new words and expressions (inaudible) -- and so forth, and I  
11 sometimes struggle with how to really build that in the  
12 English way.

13           But, nonetheless, they are there based on what has  
14 been spiritually connected with physically and mentally. We  
15 do that. And as part of my learning path I became part of  
16 what is a water ceremony. And that water -- that water is  
17 important because it's who I am and who we are as Mohave, the  
18 people of the water. So that water is -- water is the whole  
19 element of all of this.

20           Water hasn't been talked too much today about this  
21 project, but it is very important. I think the very first  
22 time we met with -- and he was very open about the gate, the  
23 upper gate, about the river. We talked about one of the  
24 projects that were located, trying to interact with that. We  
25 still have water elements there as well. People think that

1 the lake is dry. That lake really is here. That body of  
2 water is natural, and it still is known a way of what is out  
3 there.

4 We think that the project is on desolate land.  
5 It's not really because that's what connecting everything  
6 around us as well, and when you talk about the perimeter of  
7 the mountain range, and the petroglyph panels and that  
8 interconnection. That's elements that ties us together with  
9 that. Which explains you can go a distance and find these  
10 other locations. That's the connection, a part of who we  
11 are.

12 That relationship is beyond the physical sense, as  
13 well. It's in the cosmos. It's in the places below ground.  
14 That's why even the natural world and the natural things that  
15 we come from, we're all equal. That's why we have the clans  
16 in our relationship. My grandmother was (inaudible), my  
17 grandfather was (inaudible) -- the ground squirrel, or  
18 however you interpret it, is the one that goes under ground.

19 And in one of the documents that the CEC produced,  
20 they had experts in the Mohave ground squirrel, and I said  
21 wow, is this my grandmother you're going to try to talk to?  
22 Is that the plan? She comes of a particular lineage, as  
23 well, that's important but, yet, no one ever came to us to  
24 talk about that, no one ever talked about the parents, about  
25 the animals, about how all of them have a relation.



1           I remember the Genesis Project. I don't want to  
2 talk on that one too much because that was a horrific burden  
3 and it took a long time to get over that. And it took me a  
4 long time for me to get over it, as well. I couldn't come  
5 back to that for a while, until recently, trying to figure  
6 out how do we address that.

7           But when the (inaudible) were crying, when they  
8 were trying to use the coyote urine to withdraw them, those  
9 (inaudible) were sending the message, it's all the way up to  
10 where I live, and I heard those cries through the night.  
11 That's that connection, that's that telling us do something,  
12 do something, do something. Don't just sit back.

13           This is why now we're coming out more and more. It  
14 was something that I learned early on that, you know, you  
15 learn to keep it to yourself but you also find out one day  
16 you'll be a teacher. I'm not there yet. But I know that I'm  
17 having to teach nontribal people in these types of settings  
18 because this is what this relationship is about now.

19           I'd like to be a part of that. It's this part in  
20 this time frame. I always used to think I wish I was born  
21 back then in my grandmother's time, but there's a reason why  
22 I'm here today. Well, she's here, the people from our past  
23 are here, the ancestors, all of them are here. We're not  
24 alone ever. And for us to be silent would only be that we  
25 agree to what's going on, the changes.

1           The changes are not to be as of yet, maybe when the  
2 last Mohave, the last Quechan, the last of those who are  
3 still to be here, maybe then. I don't know. It's like what  
4 people say back home, don't change it now because we're still  
5 part of that, we're still learning it. I'm still learning  
6 that. I still connect. When there's a calling from a  
7 mountain I know that I've got to go. When there's a calling  
8 from another area, I've got to go. You feel it, you  
9 understand that.

10           And yet, if I see those changes, they may not just  
11 be directly, as a visual, it's in here. And so I think are  
12 some description of how visitors come to these panels, and  
13 they just look at it and just write it back to the others.  
14 No, that's not how it is for us -- (inaudible) -- we're  
15 connected deeply. But that feeling that you have that makes  
16 those changes already hits you, you can tell the difference  
17 already.

18           So something like massive of what's going on in  
19 this whole valley, and then in all places on the lake bed,  
20 the place that it -- (inaudible) -- years ago when they did a  
21 project for that, the same, typical types of information that  
22 was being revealed, which is found in Genesis and for which  
23 you're going to see here (inaudible) --

24           I don't know why that pattern repeats itself and no  
25 one wants to take part, especially the agencies who oversee

1 and protect these areas, they (inaudible) -- Genesis could  
2 have been stopped, an environmental stress test had  
3 identified that (inaudible) --

4           So this is why I feel now comfortable working with  
5 the California Energy Commission. They're listening. We  
6 have people here listening to what we're saying. If you do  
7 take that next step to develop this, the land of  
8 understanding, you can cause them to develop it specifically  
9 so it's addressed properly. That's the step in the right  
10 direction to try to find out we're getting out of  
11 (inaudible). We're worn out at the (inaudible) -- of even a  
12 (inaudible).

13           So I've experienced this, living it day in and day  
14 out and I don't want to be frustrated anymore. I want to  
15 work to resolve it. But understand the stakes are high, the  
16 significance of these places are high. And nothing can  
17 address, and I say nothing, nothing that we can -- we work  
18 with right now can address those in any way to mitigate  
19 because how do you mitigate a life?

20           And I don't mean those others who are coming, from  
21 others who are curious, others who are opening their  
22 awareness to learn. I hear that from (inaudible), I believe  
23 they're listening. They've got to be taught. They've got to  
24 be shared. Just like that it is for me. Just like those  
25 teachers are here for me. It's beyond what we can define in

1 a circle, define in the number of artifacts found. We find  
2 it in the (inaudible) -- the significance and the integrity  
3 of (inaudible) -- it's about a people. It's about a people.

4           With that being said, I just have reference to  
5 a couple of these cultural -- call it 16 and call it 1. And  
6 I'll call 1, identifies some mitigation pieces in there.  
7 Again, I refer back to what I said earlier. You may not be  
8 able to mitigate for how do we -- how do we address the  
9 context. With the power gone back and forth, with the  
10 technology that was addressed in 2010, we didn't have that  
11 opportunity to address it at that time. I didn't know about  
12 how this process worked until we were explained it very  
13 thoroughly with the Rio Mesa Project.           We missed it  
14 completely, even with Genesis, to try to work it through the  
15 federal bureaucrat, which is way behind for us. We even  
16 tried to be proactive on how to approach it, as well. So  
17 there hasn't been a point where we just sat back and did  
18 nothing. So there we are today with changes in how we're  
19 willing to address how that impacts us. But in the pictures  
20 shown through simulation, and they're even shown at night  
21 (inaudible) -- as well. Nonetheless, it will have far more  
22 impact than you can imagine based on what was -- I said and  
23 shared. This is called 16.

24           As I said earlier, a relationship with the state  
25 needs to move forward. If the state's not involved, we'll

1 (inaudible) -- as well. Make sure that the state's involved.

2 With that being said, I thank you for your time.

3 HEARING OFFICER CELLI: Thank you very much, Ms.

4 Otero.

5 Manfred Scott.

6 MR. SCOTT: Good afternoon, my name is Manfred  
7 Scott. I'm from the Quechan tribe. It's very interesting to  
8 see how (inaudible) here, you know. I was just kind of  
9 wondering because there was an incident that happened years  
10 ago and by their credentials, does she have any or does she?  
11 I would like to have her present them if she does.

12 There was an incident (inaudible) -- there was some  
13 stuff that destroyed some Quechan material. And so she was  
14 relieved of that position. And again, she appeared, and  
15 she's a witness and talked about the visual. It's kind of  
16 interesting.

17 But anyhow, the contract is also known as the  
18 Riverside. The Riverside has been (inaudible) live along the  
19 river, but they also lived and traveled north, south, east,  
20 and west of the river. They occupied the areas out here.  
21 I've been to a lot of these areas, we're talking about the  
22 (inaudible) lived in, and sites, and so forth, and  
23 continuity, and the spirituality, and the religion and  
24 everything. I've been to all these areas. I've been to the  
25 (inaudible) mountains, I've been to (inaudible), I've been to

1 Palen, I've been to Chuckwalla, I've been to Oro Corpio  
2 (phonetic), I've been to Dragon Watch (phonetic), I've been  
3 to New Mountain, all these areas.

4           And when you're up in these mountains, you can  
5 visualize, yourself, as how it was back in those days with  
6 our ancestors, what they were like, what it was. How these  
7 tell what they were going through, I feel all that. I have  
8 that connection.

9           And to me, I'm in the learning process, I've been  
10 learning since the early age. But the elders taught me a lot  
11 of things which I didn't absorb at first, but then now  
12 everything's coming clear to me. And I'm sure all these  
13 things that are out there are actually being destroyed. And  
14 what's going to be left for our future people, for the next  
15 10, 20, 30 years?

16           We try to hold on to as much as we can today and  
17 it's still getting destroyed today. And we're (inaudible)  
18 power. And renewable energy is great, yes, but it depends on  
19 where you put it at. And where you put this renewable energy  
20 has a lot of concern, not only for the people but for all the  
21 animals, the plants, the environment, the wind, everything  
22 that's out there. It destroys a lot of things but, again, it  
23 benefits the people in some ways in certain areas that really  
24 need the energy. We've been needing that energy for a long  
25 time but in a good way. Our ancestors had the knowledge and

1 power of these areas, the wind, water, animals, insects,  
2 soil, bees, plants, et cetera. It is told to us in our  
3 creation stories, histories I should say.

4 Indian Tribes have, by nature, the right to possess  
5 the property as his own. The land is the law, the law is the  
6 land, even have knowledge, and to believe the tribe is  
7 steward of our ancestral lands.

8 And in closing I'd like to say first let's make  
9 men wise, the whole community, the mathematics subtle, the  
10 natural philosophies deep. Faith, logic and (inaudible) able  
11 to contend (inaudible) -- then we can circle man among us  
12 that has an interest equal to the powers, noblemen, and the  
13 laws and constitution of the country and is equally called  
14 upon to make the right decision, whether it be the part to  
15 conceive, the understandings to direct, or the hand to  
16 physically landscape of the native tribe ancestral land that  
17 is also part of our duties, parts of it.

18 Thank you very much for letting me speak.

19 HEARING OFFICER CELLI: Thank you very much Mr.  
20 Scott. Thank you for being here.

21 Now, ladies and gentlemen, we've closed the record  
22 on the Cultural part. We can take more comment on Cultural  
23 later, but in terms of the taking of evidence, Cultural is  
24 now closed.

25 We were going to take up Alternatives next, but at

1 the request of Center for Biological Diversity, who is really  
2 the main party interested in Alternatives, we're going to put  
3 that over for later and we're going to get to Visual next.  
4 So I'm just going to ask the parties to call their Visual  
5 experts on down to the witness table.

6 Did you have something to say, Mr. (inaudible)?

7 MALE VOICE: I think, I'm not sure of some of the  
8 questions. We brought our visual expert and one on the phone  
9 for one purpose, and that was to answer Mr. Emmerich's  
10 questions. Reading back through the prehearing conference  
11 statement, if those have anything to do with traffic, we  
12 would like our traffic people, we have them here as well, and  
13 we can do those combined, however you'd like to do it. I'm  
14 not sure (inaudible) Visual now.

15 HEARING OFFICER CELLI: Well, Mr. Emmerich, you  
16 wanted -- first of all, you're going to have to lay your  
17 foundation for Exhibit 4000 now when we do Visual. And you  
18 had questions on Visual for staff to ask its witnesses?

19 MR. EMMERICH: Well, I'm just going to tell you  
20 what's on our mind here. We did want to respond to one of  
21 the witnesses that was here that put up the slide show, and I  
22 am confused about whether I can use this exhibit. Now, the  
23 Energy Commission did accept this exhibit (inaudible). But  
24 again, I don't know if you're going to accept that or not.

25 We did have questions, but as I pointed out on that



1 prehearing conference, I confused it (inaudible). We  
2 haven't seen one of these hearings where you haven't had a  
3 Visual panel yet. And I realize that the Petitioner and the  
4 Energy Commission all agree that these are not mitigable  
5 impacts and everything, but at the same time, we felt that  
6 there are some questions that we have relating to the FSA.  
7 Not that the Energy Commission did a bad job on it; they did  
8 a good job on it, but there are a couple things in there  
9 relating to mitigation that we did want to ask about.

10 HEARING OFFICER CELLI: Okay, then. Well, so why  
11 are you saying that this is related to traffic and  
12 transportation, Mr. (inaudible)?

13 MALE VOICE: I didn't know, I thought I saw a  
14 reference to glare on (inaudible)

15 MR. EMMERICH: (Inaudible) traffic as well. There  
16 are a couple of references to glare --

17 MS. MARTIN-GALLARDO: I think staff could shed a  
18 little bit of light on this, as well, if you don't indicate.

19 In our prehearing conference statement we did  
20 notify everyone that there is this link between Visual and  
21 Traffic for the glint and glare overlap into traffic  
22 considerations.

23 Now, while as has been acknowledged, these issues  
24 between Traffic and Visual are quite narrow. We -- staff was  
25 hoping to combine these things so that both sets of experts

1 who have an understanding are available.

2 But in addition to that, we have Caltrans available  
3 to discuss the issue, and given the time of day, we were  
4 hoping that perhaps the Committee would hear Traffic first,  
5 then jump right into Visual.

6 HEARING OFFICER CELLI: Well, we have Traffic and  
7 Transportation was an issue strictly between Petitioner and  
8 staff. Visual was between Petitioner, staff, Basin and Range  
9 Watch and the California River Indian Tribes.

10 MS. MARTIN-GALLARDO: Inasmuch as there's glint and  
11 glare on the highway, that would also be traffic. And  
12 (inaudible).

13 HEARING OFFICER CELLI: That's fine, I'm happy to  
14 combine the two, but I want -- but I need, just for my own  
15 sanity in keeping the record clean, that I need to separate  
16 these out so that we understand what evidence is going to  
17 Visual, what evidence is going to Traffic and Transportation.

18 So I don't mind the panel coming all down together,  
19 it seems efficient. In fact, if you're here on Visual or  
20 Traffic.

21 Mr. Galati.

22 MR. GALATI: Yes, Mr. Celli. I really think that  
23 if we handle Traffic in issue with Caltrans, given the  
24 lateness of the day, I think we can handle it in about ten,  
25 fifteen minutes.

1 HEARING OFFICER CELLI: You're asking to call  
2 Traffic and Transportation before Visual.

3 MR. GALATI: That's correct. And then, while the  
4 Traffic people are still here, if they're needed to answer a  
5 Visual, having already been sworn, you can ask them to come  
6 up if they have anything to add.

7 HEARING OFFICER CELLI: Well, who's going to be  
8 able to tell me that we're done with Traffic and  
9 Transportation when we're done with Traffic and  
10 Transportation?

11 MR. GALATI: I will.

12 HEARING OFFICER CELLI: Okay. Then let's call the  
13 Traffic and Transportation people. We're going to -- the  
14 court reporter needs a break. We'll give you four minutes  
15 and get a glass of water or whatever you need, and we will  
16 resume with Traffic and Transportation.

17 MR. GALATI: And Mr. Celli, one of our witnesses  
18 for Visual is on the telephone when it's time to do Visual,  
19 he's just on the phone.

20 HEARING OFFICER CELLI: Tim Zack, are you on the  
21 telephone? Tim Zack.

22 HEARING OFFICER CELLI: Now who?

23 MR. FLORES: Bill Kanemoto.

24 HEARING OFFICER CELLI: Bill Kanemoto, are you on  
25 the phone?

1 MR. KANEMOTO: Yes, I am.

2 HEARING OFFICER CELLI: Please speak up a little  
3 louder.

4 HEARING OFFICER CELLI: That's good. So I'm  
5 talking to Bill Kanemoto. How do you spell that, Bill?

6 MR. KANEMOTO: K-a-n-e-m-o-t-o.

7 HEARING OFFICER CELLI: Thank you. And then there  
8 was Tim Zack.

9 Tim Zack, are you on the phone?

10 MR. ZACK: Yes, I am.

11 HEARING OFFICER CELLI: Oh, good. Please speak  
12 into the handset rather than a speakerphone, if you have one.

13 MR. ZACK: Yeah, I am talking into the handset.

14 HEARING OFFICER CELLI: And how do you spell your  
15 last name, sir?

16 MR. ZACK: Z-a-c-k. And who else?

17 MR. FLORES: VOICE: There should be a Daniel  
18 Kopuski, and he's the chief for Caltrans.

19 HEARING OFFICER CELLI: Daniel Kopuski, are you on  
20 the phone? Mr. Kopuski.

21 HEARING OFFICER CELLI: Mavis Scanlon is not who we  
22 want, right? She was (inaudible).

23 MR. FLORES: That's right.

24 HEARING OFFICER CELLI: Ms. Scanlon, I'm going to  
25 mute you, if you don't mind.

1 MS. SCANLON: All right, go ahead, thank you.

2 HEARING OFFICER CELLI: Thank you. I was just  
3 picking up noise from Ms. Scanlon.

4 Okay. So I'm still trying to get a hold of Mr.  
5 Kopuski.

6 Okay. Greg Irvin? Yeah, I saw Greg.

7 MR. IRVIN: I am here present.

8 HEARING OFFICER CELLI: I'm going to have to first  
9 swear in the people on the phone before I can swear in the  
10 people here, in order to -- somebody just (inaudible).

11 Okay. Now, on the phone the witnesses for Traffic  
12 and Transportation from applicant and staff -- oh, okay, so I  
13 don't have any Traffic and Transportation people on the phone  
14 other than Mr. Kopuski.

15 Is Mr. Kopuski on the phone, Daniel Kopuski or  
16 anyone from Caltrans?

17 MR. KOPOSKI: This is Mr. Kopuski. Can you hear  
18 me?

19 HEARING OFFICER CELLI: Yes, I can. Daniel  
20 Kopolski. I'm sorry for the mispronunciation.

21 MR. KOPOLSKI: Yes.

22 HEARING OFFICER CELLI: Okay. Is he a witness for  
23 staff?

24 MR. FLORES: Yes, he is.

25 HEARING OFFICER CELLI: Okay. And Mr. Kopolski,

1 I'm going to ask you to please rise and raise your right and.

2 MR. KOPOLSKI: Okay, sure.

3 HEARING OFFICER CELLI: Do you solemnly swear to  
4 tell the truth, the whole truth and nothing but the truth  
5 under penalty of perjury under the laws of the State of  
6 California?

7 MR. KOPOLSKI: Yes, I do.

8 HEARING OFFICER CELLI: Thank you.

9 And I'm going to ask the people who are present in  
10 the room to please stand, raise your right hand.

11 Do you solemnly swear to tell the truth, the whole  
12 truth and nothing but the truth under penalty of perjury?

13 IN UNISON: I do.

14 HEARING OFFICER CELLI: Thank you, you may be  
15 seated. I'm going to start with the witnesses on your right,  
16 my far left. Just tell me what your name is and speak into  
17 the microphone, and spell it.

18 MR. TURLINSKI: Charles Turlinski with Palen Solar  
19 Holdings. Charles Turlinski, T-u-r-l-i-n-s-k-i.

20 HEARING OFFICER CELLI: Thank you, Mr. Turlinski.

21 MR. STUCKY: Matt Stucky, Palen Solar Holdings, S-  
22 t-u-c-k-y.

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

24 MR. FRANCK: Dan Franck (inaudible). Dan F-r-a-n-  
25 c-k.

1 HEARING OFFICER CELLI: Dan Franck, F-r-a-n-c-k.  
2 Israeli and French, (inaudible).

3 Ms. Grenier.

4 MS. GRENIER: Andrea Grenier, A-n-d-r-e-a G-r-e-n-  
5 i-e-r, (inaudible) consultant to (inaudible) on the Palen  
6 Project.

7 HEARING OFFICER CELLI: Thank you. Sir?

8 MR. COBIAN: Rafael Cobian, R-a-f-a-e-l C-o-b-i-a-  
9 n. (Inaudible)

10 HEARING OFFICER CELLI: Thank you.

11 Mr. Flores.

12 MR. FLORES: David Flores, supervisor for the  
13 traffic and transportation and visual units for the  
14 California Energy Commission. Flores, F-l-o-r-e-s.

15 HEARING OFFICER CELLI: Thank you.

16 Now the witnesses have been sworn and should the  
17 issue start with staff in this case or -- okay, let's hear  
18 from Petitioner's witness.

19 MR. TURLINSKI: Okay, Mr. Cobian. Would you please  
20 explain the position on the level of servicing and the  
21 condition on Trans one?

22 MR. COBIAN: Absolutely, and I'll give you a little  
23 bit of background as well.

24 Staff modified the condition of certification  
25 adopted by the Commission in the final decision by adding a

1 new requirement to the traffic control plan. Specifically,  
2 staff added the requirement that the traffic control plan be  
3 required to ensure that the intersections of Point Springs  
4 Road and Interstate 10 only operated at a level of service  
5 either better when no such requirement existed in the  
6 original condition. The peak and ebb of construction traffic  
7 of the project did increase, but the original condition is  
8 still going through defining this project.

9           And that condition is one of more of the following  
10 measures designed to prevent stacking on I-10 which includes  
11 staggered work shifts, off-peak work schedules, and/or  
12 restricting travel to and departures from each project site  
13 to ten or fewer vehicles every three minutes. So that ten or  
14 fewer vehicles every three minutes is still going to apply to  
15 this project regardless of the increased number of  
16 construction traffic. So the same amounts of vehicles are  
17 going to be going through that intersection as the previous  
18 project.

19           Now, we disagree with replacement of the vehicle-  
20 based performance standards, with that being the level of  
21 service (inaudible) standards. While the project vehicle  
22 treads are a part of how the level of service is calculated,  
23 it is only one component. Ambient traffic, other traffic  
24 that is not associated with this project does also go into  
25 the level of service calculation which is beyond the control



1 of this project. So, hypothetically speaking, there  
2 is a possibility of the level of service of that intersection  
3 to cause the level service even with no project traffic being  
4 added to the intersection. So, it would be impossible for  
5 this project to comply even when the project is adding no  
6 vehicles to that intersection.

7 The performance standards contain the condition of  
8 certification for the approved project. It's based on  
9 limiting the actual project vehicle trips. This is a  
10 requirement which is quantifiable even to monitor it. It  
11 could be done via camera, it can be done with a security  
12 guard at the intersection, it can be done via a number of  
13 different ways. And, more importantly, it's  
14 directly under the control of the actual project. The  
15 (inaudible) requirement will not -- is not instantaneously  
16 quantifiable, it requires traffic counts to be taken at those  
17 intersections. It requires those traffic counts to be  
18 submitted to a traffic engineer. We have had to analyze this  
19 in-house and it can take between five to seven days in order  
20 to be -- to produce a level of service results, and those  
21 level-of-service results, as you know traffic changes from  
22 day to day, can vary. So it can be very hard to quantify and  
23 provide instantaneous results as compared to an actual  
24 vehicle-based metric where you can immediately tell when  
25 there's ten vehicles in those three minutes have been

1 exceeded or not.

2           Therefore, we propose that the modification be made  
3 on the first (inaudible) condition of certification, Trans  
4 one, which includes the removal of the level of service C or  
5 better standard.

6           HEARING OFFICER CELLI: Thank you, very clear.  
7 Whose idea was it to add that language?

8           MR. FLORES: This was a requirement that CalTrans  
9 had requested per their letter that was submitted as part of  
10 their review in their staff assessment. It was dated August  
11 12<sup>th</sup> of this year.

12           HEARING OFFICER CELLI: And so it sounds to me, Mr.  
13 Flores, like the person we want to talk to would be Mr.  
14 Kapolsky?

15           MR. FLORES: That's correct.

16           HEARING OFFICER CELLI: Mr. Kapolsky, can you hear  
17 me? Mr. Kapolsky, are you still on?

18           MR. KAPOLSKY: Yes, can you hear me?

19           HEARING OFFICER CELLI: Do you -- thank you. Mr.  
20 Kapolsky, if you are using a speaker phone, it would be  
21 easier for us to hear you if you turned off the speaker and  
22 used the hand set.

23           MR. KAPOLSKY: Yes, I am now. I turned off the  
24 speaker, that's what took time.

25           HEARING OFFICER CELLI: Very good. I hope that you

1 were able to just hear the testimony from Mr. Cobian and Mr.  
2 Flores. And so, we'd like you to explain to us why, give  
3 though it sounds from the petitioner's point of view that a  
4 reduction below the level of service C is, or may be  
5 something outside of the control of the petitioner.

6 Did you hear that testimony?

7 MR. KAPOLSKY: Yeah, I heard that. Our concern, we  
8 don't think it will occur unless -- because of the -- some of  
9 the mitigation that's been to stagger the hours. But we just  
10 don't want stacking that backs up the interchange. So, they  
11 have (inaudible) from that point. They'd have more  
12 (inaudible) if they come on so the traffic won't back up onto  
13 the freeway, then that's acceptable to us.

14 We usually use level of service as a way of  
15 measuring that. If they have a better method, then we're  
16 okay.

17 The main point we want to make is we don't want the  
18 construction traffic to back up onto the freeway. And I'm  
19 not sure if there's other traffic out there that would really  
20 add to that interchange because of what they're doing with  
21 the Palen project.

22 HEARING OFFICER CELLI: So, Mr. Kapolsky, I just  
23 want to be clear because you sound okay. It's just a little  
24 muffled and I wanted to be clear that I made sure I  
25 understood you. Did you say that you were satisfied with the

1 (inaudible) viewer every three minutes language of condition  
2 one?

3 MR. KAPOLSKY: Right, ten or fewer is better than  
4 level service C, it's much better. (Inaudible) ten or fewer  
5 is fine.

6 HEARING OFFICER CELLI: Then if I understand  
7 correctly, it sounds like you'd be willing to withdraw your  
8 request to staff that they have the language regarding the  
9 level of service C.

10 MR. KAPOLSKY: If it's replaced with the ten or  
11 fewer during the three minutes.

12 HEARING OFFICER CELLI: Very good.

13 MR. KAPOLSKY: Yeah.

14 HEARING OFFICER CELLI: Any questions from the  
15 petitioner of your witness?

16 MR. GALATI: No, no questions.

17 HEARING OFFICER CELLI: Staff?

18 MS. MARTIN-GALLARDO: No questions.

19 HEARING OFFICER CELLI: Are there any other parties  
20 regarding traffic?

21 MS. KING: No questions.

22 HEARING OFFICER CELLI: So Mr. Kopoliski, I just  
23 want to be clear, because you sound okay, it's just a little  
24 muffled, and I wanted to be clear that I made sure I  
25 understood you. Did you say that you were satisfied with the

1 ten or fewer every three minutes language of Condition 1?

2 MR. KOPOLSKI: Right. Ten or fewer is better than  
3 level of service P, it's much better. So yeah, ten or fewer  
4 is fine.

5 HEARING OFFICER CELLI: Then if I understand  
6 correctly, it sounds like you'd be willing to withdraw your  
7 request to staff that they add the language regarding the  
8 level of service P.

9 MR. KOPOLSKI: If it's replaced with the ten or  
10 fewer during the three minutes.

11 HEARING OFFICER CELLI: Very good.

12 MR. KOPOLSKI: Yeah, um-hmm.

13 HEARING OFFICER CELLI: Questions from Petitioner  
14 of your witness?

15 MR. GALATI: No, no questions.

16 HEARING OFFICER CELLI: Staff?

17 MS. MARTIN-GALLARDO: No questions.

18 HEARING OFFICER CELLI: Of any other parties  
19 regarding traffic?

20 MR. KOPOLSKI: No questions.

21 HEARING OFFICER CELLI: That was CRIT.

22 Let's hear from Basin and Range Watch.

23 MS. CUNNINGHAM: Laura Cunningham, Basin and Range  
24 Watch. And I apologize about how confusing this is for us,  
25 but I did have a question on some of the transmittigation

1 measures. It seems to me that they should be visual too, and  
2 so I'm not sure who to ask this question, maybe Mr. Flores.

3 HEARING OFFICER CELLI: Is this about glint and  
4 glare?

5 MS. CUNNINGHAM: Yes.

6 HEARING OFFICER CELLI: Okay. I want you to hold  
7 that thought for a minute because I think we're going to get  
8 into that. We're going to leave this same panel up, bring  
9 down Visual people and handle the glint and glare next.

10 So really with regard to the condition, the LOSC  
11 Condition 1, any questions from Basin and Range Watch?

12 MS. CUNNINGHAM: No. Thank you.

13 HEARING OFFICER CELLI: Ms. Belenky, any questions?  
14 She's shaking her head no.

15 Ms. Ileene Anderson, do you want to make a record  
16 on that? Go ahead.

17 MS. ANDERSON: No.

18 HEARING OFFICER CELLI: Thank you very much.

19 The record should reflect that Alfredo Figueroa  
20 representing the Californians for Renewable Energy left for  
21 the day. He'll be back tomorrow.

22 So with that, then who do we have? I don't think I  
23 need any evidence for this Traffic. So should we call down  
24 your Visual people?

25 MR. GALATI: Yes, you have one already sworn, and

1 we can swear Tim Zack on the telephone and then the  
2 Applicant's panel will be complete.

3 HEARING OFFICER CELLI: So there's Tim Zack on the  
4 phone. Do I need anyone else on the phone?

5 MS. MARTIN-GALLARDO: We have Bill Kanemoto and  
6 Greg Irvin on the phone for staff.

7 HEARING OFFICER CELLI: So I'm going to ask Greg  
8 Irvin, Bill Kanemoto and --

9 MS. MARTIN-GALLARDO: I should probably also ask if  
10 Alvin Greenberg is on the phone?

11 HEARING OFFICER CELLI: I'm not seeing him. I  
12 would have imagined if he was we would have heard from him by  
13 now. I'm just kidding. (Inaudible)

14 Okay, Tim Zack, Mr. Irvin, Greg Irvin, and -- who  
15 was the other on the phone?

16 MR. FLORES: Bill Kanemoto.

17 HEARING OFFICER CELLI: Bill Kanemoto, Greg Irvin  
18 and Tim Zack, please stand, raise your right hand.

19 Do you swear to tell the truth, the whole truth,  
20 and nothing but the truth under penalty of perjury under the  
21 laws of the State of California?

22 Mr. Kanemoto?

23 MR. KANEMOTO: I do.

24 HEARING OFFICER CELLI: Mr. Irvin?

25 MR. IRVIN: Yes, I do.

1 HEARING OFFICER CELLI: Mr. Zack?

2 MR. ZACK: I do.

3 HEARING OFFICER CELLI: Thank you. Be seated.

4 And the rest of the panel is still sworn. We have  
5 for the record just for the benefit of the people on the  
6 phone, we have Charles Turlinski, Matt Stucky, Dan Franck,  
7 Andrea Grenier, Rafael Cobian, and David Flores is here in  
8 person.

9 So this is on the Visual, the overlap of glint and  
10 glare with Traffic. Should we begin with applicant or staff?  
11 Whose issue is this?

12 MR. GALATI: Well, they're available for cross-  
13 examination. We don't have any direct testimony.

14 HEARING OFFICER CELLI: Okay. Staff, do you have  
15 direct?

16 MS. MARTIN-GALLARDO: We do not. The only  
17 questioner I think staff is prepared to address is the issue  
18 that did come up in Cultural, which was the question as to  
19 whether staff agreed with the KOP -- it was a question that  
20 was posed --

21 HEARING OFFICER CELLI: Oh, the quality of the  
22 photograph. Okay, so we need to bring that photograph back  
23 up, and while we're doing that I'm going to have to have Mr.  
24 Emmerich lay a foundation for his Exhibit 4000, and Ms.  
25 Cunningham.



1           So the photograph in question was -- or the  
2 photographs plural, there were several photographs during  
3 Cultural that showed the KOPs, the before and after of the  
4 KOPs.

5           MR. GALATI: And just for the Committee's record,  
6 those are in Exhibit 1034, the full Visual Analysis Report,  
7 which was prepared by Tim Zack, who is now sworn.

8           HEARING OFFICER CELLI: 1034?

9           MR. GALATI: 1034.

10          HEARING OFFICER CELLI: I think the easiest way for  
11 me to do this is I'm just going to ask you, Mr. Emmerich and  
12 Ms. Cunningham, with regard to Exhibit 4000, how many  
13 photographs are in Exhibit 4000?

14          MR. EMMERICH: There's 11.

15          HEARING OFFICER CELLI: Okay. And who took the  
16 photographs in Exhibit 4000?

17          MR. EMMERICH: I took the last five and first six  
18 were taken by Laura Cunningham.

19          HEARING OFFICER CELLI: And did you Photoshop or  
20 edit or in any way alter the photographs from the time you  
21 took the photograph?

22          MR. EMMERICH: No.

23          HEARING OFFICER CELLI: Okay. Anything further or  
24 any objection (inaudible)?

25          MR. GALATI: Just what kind of camera did you use?

1 What kind of camera did you use?

2 MR. EMMERICH: The first five is a Nikon Coolpix  
3 36X optical lens, and the second was a Canon 50X optical  
4 lens. The next one was a (inaudible).

5 MR. GALATI: That's okay, I remove my objection.

6 HEARING OFFICER CELLI: Thank you. Then at this  
7 time I'm going to let him move Exhibit 4000.

8 Do you have a motion with regard to Exhibit 4000,  
9 Mr. Emmerich?

10 MS. CUNNINGHAM: We make a motion to move in  
11 Exhibit 4000.

12 HEARING OFFICER CELLI: Any objection from CBD?

13 MS. BELENKY: No.

14 HEARING OFFICER CELLI: Any objection from  
15 Petitioner?

16 MR. GALATI: No.

17 HEARING OFFICER CELLI: Staff, any objection?

18 MS. MARTIN-GALLARDO: No objection.

19 HEARING OFFICER CELLI: Colorado River Indian  
20 Tribes, any objection?

21 MS. KING: No objection.

22 HEARING OFFICER CELLI: Thank you. 4000 is  
23 received as Exhibit 4000.

24 Now, these people are here to answer questions as  
25 requested by the Basin and Range Watch and Colorado River

1 Indian Tribes, so I'm going to start with Basin and Range  
2 Watch.

3 Go ahead.

4 MR. EMMERICH: Okay. Well, I'll start by asking  
5 the first question again that I asked during Cultural, and it  
6 was basically regarding the photos that are up there right  
7 now.

8 And does the staff agree with the Petitioner's  
9 opinion that these are actually good representations of what  
10 this would actually look like, or do you think they're a  
11 little too dim or not bright or contrast enough?

12 MR. FLORES: I'd like Bill Kanemoto or Greg Irvin  
13 to respond to that.

14 HEARING OFFICER CELLI: And I want to say for the  
15 record, Mr. Irvin and Mr. Kanemoto, can you see that we have  
16 KOP 3 Coxcomb Mountains, up on the screen, can you see that?

17 MR. IRVIN: This is Greg Irvin, and yes, I see it.

18 MR. KANEMOTO: I don't see it. I can refer to my  
19 own copy.

20 HEARING OFFICER CELLI: That was Mr. Kanemoto? You  
21 said you could not see it on your screen?

22 MR. KANEMOTO: Yes, that's right. This is the  
23 image of Coxcomb Mountain?

24 HEARING OFFICER CELLI: The Coxcomb Mountain KOP3.  
25 What this is is a simulation of that KOP.

1 KOP, for everybody, is Key Observation Point.

2 MR. KANEMOTO: I have that in front of me now.

3 HEARING OFFICER CELLI: Very good. And that was  
4 Mr. Kanemoto.

5 So Mr. Irvin and Mr. Kanemoto and Mr. Zack, before  
6 you speak, since we have three of you on the phone, I want  
7 you to say this is who you are, state your name and then  
8 speak, okay?

9 MR. IRVIN: Okay.

10 HEARING OFFICER CELLI: Who was that?

11 MR. IRVIN: This is Greg Irvin. If I may address  
12 this issue?

13 HEARING OFFICER CELLI: Please.

14 MR. IRVIN: I'm going to speak rather globally, not  
15 only to a photo of the simulation but to any actual photo of  
16 a site or a tower or a heliostat, either in operation or  
17 reflecting the sun.

18 As you know, a computer monitor can only display  
19 brightness levels that are within its limits of its intensity  
20 profile, and a print of a photograph can only display the  
21 range of contrast that the inks are available to display. So  
22 any photograph of a bright light source will most certainly  
23 be subject to an underrepresentation of the perceived  
24 brightness.

25 For example, if you look at the sun, it's very

1 bright and you have to look away or put on sunglasses. If  
2 you look at a picture of the sun, you will never have to look  
3 away from it because it'll never as bright as the sun. The  
4 same is true for a picture of fire. You will never burn your  
5 hand by placing it on a picture or a photograph of fire.

6           So with the power towers and with the heliostats,  
7 given their extremely high levels of luminance, there is no  
8 way to photograph what the brightness will look like and  
9 there is no way to simulate in a photograph what the  
10 brightness will look like.

11           HEARING OFFICER CELLI: Thank you.

12           Were you satisfied with that?

13           MR. EMMERICH: Well, would it be possible to take a  
14 look at our Exhibit 4000 at photograph, it would be the  
15 seventh photo. It's actually a photo of the (inaudible)  
16 project now and it's seen during a test of Unit 1. It's  
17 actually seen from about the same distance as that last photo  
18 was taken, although there's a little more vertical relief,  
19 but this is taken with an optical lens not really using a  
20 zoom.

21           And what I would like to ask is do you think that  
22 that contrast captured by the optical lens really shows a  
23 better contrast than the photo simulations that we were just  
24 looking at? This is a question, I guess, for the staff.

25           MR. KANEMOTO: This is Bill Kanemoto. I think Greg

1 Irvin can expand on this a little bit, but I think part of  
2 the reason why this photo of the (inaudible) tower shows  
3 better contrast is because it's being viewed against the  
4 background of the mountains, and so the darker color of the  
5 mountains makes the photograph of the receiver look brighter  
6 in relation.

7 But I think Greg's larger point is very important,  
8 which is that neither of them capture the brightness that  
9 constitutes the impact we're talking about. It's not a  
10 direct illuminated light source, it's just a piece of paper.

11 But yes, the picture looks brighter, the contrast  
12 looks better because of the darker background, I think.

13 MR. ZACK: This is Tim Zack.

14 HEARING OFFICER CELLI: Tim, you're not coming  
15 through very clearly. We need you to speak up. If you're on  
16 a speakerphone pick up your handset, please.

17 MR. ZACK: Yeah, can you hear me now?

18 HEARING OFFICER CELLI: Much better. Stay like  
19 that.

20 MR. ZACK: Yeah. I would tend to agree with what  
21 Bill said. And if you look at another KOP, and I would draw  
22 your attention to KOP 12, that's a more identical set of  
23 circumstances where you're looking at the glow of the  
24 simulation at the top of the tower against the land backdrop.  
25 Because anything that has a diffuse low will appear brighter

1 on a darker background than if it's against the sky with a  
2 white or blue background.

3 So KOP 3 is not really one that we would be talking  
4 apples to oranges. KOP 12 would be more like what Mr.  
5 Emmerich is referring to.

6 HEARING OFFICER CELLI: Thank you.

7 Mr. Emmerich?

8 MR. EMMERICH: Well, the Petitioner made a comment  
9 that they felt that the landscape was going to retain a very  
10 large (inaudible) in spite of the fact that it would still be  
11 a very large project built there, but do you think if these  
12 contrasts are brighter, do you believe that that large look  
13 would diminish in the perspective and the focus on this big  
14 focal point in the Chuckwalla Valley is not quite as large,  
15 if you could actually capture the full effect of that glint  
16 and glare that's coming out.

17 That was my main concern about these photographs.  
18 I think they do undermine the full intensity of this project.

19 I mean, I'm assuming that staff had actually been  
20 to the (inaudible) project and even the optical lens photos  
21 do not compare to what that is, but what's your opinion or  
22 response to their opinion that the area still retains a large  
23 look? I mean, would a brighter contrast reduce that?

24 I know that's an opinion but I'd be interested to  
25 hear it.

1 HEARING OFFICER CELLI: Staff, go ahead. On the  
2 phone. Which witness?

3 MR. IRVIN: This is Greg Irvin. If I understand  
4 your question correctly, you're asking if in this photograph  
5 that we're looking at now, if the tower was significantly  
6 brighter, would that affect the contrast in the surrounding  
7 areas.

8 MR. EMMERICH: Yeah. I just think that if you look  
9 at some of the KOP photos that were shown in this earlier  
10 presentation, there's a fairly non-contrasting appearance to  
11 them. And then the Petitioner made the argument that that  
12 would not take away from the vastness of the large look of  
13 the area.

14 Do you think if it were brighter, in your opinion,  
15 would that kind of reduce that vast effect?

16 MR. IRVIN: All right. Well, I think that the  
17 contrast in the photograph is representative of the contrast  
18 in the real world with the exception of anything that's in  
19 the picture that actually saturates the pixels in the camera,  
20 so that could be the tower and part of the heliostat field in  
21 the picture that I'm looking at.

22 Now, if the tower brightness is significantly  
23 brighter than it is in the picture, which is the nature of  
24 reality, to the extent that that would wash out the contrast  
25 of the vista of the surrounding area, that's only true to the



1 extent that that luminous scatters in the eye. The reduction  
2 in contrast is an innerocular effect that's due to  
3 scattering within the eye, and that is a function of the  
4 luminous intensity as well as what the background luminance  
5 is.

6 So based on personal observations of (inaudible)  
7 and a tower operating in a partial mode, the brightness or  
8 the glare of the tower was limited to the region of the tower  
9 itself and did not appear to extend a vast distance where it  
10 would compromise the contrast of the environment remote from  
11 the tower.

12 MR. EMMERICH: Okay, that's all I have on these  
13 photos here.

14 HEARING OFFICER CELLI: Thank you.

15 Then let's hear from Colorado River Indian Tribes.  
16 Do you have any questions for this?

17 MS. CUNNINGHAM: I have one more question,  
18 actually.

19 HEARING OFFICER CELLI: Ms. Cunningham, go ahead.

20 MS. CUNNINGHAM: Laura Cunningham, Basin and Range  
21 Watch. I just have a general question about Trans 7, 8 and  
22 9, yeah. You say the visual resources can't be mitigated,  
23 but we feel those are actually something that should be in  
24 visual resources.

25 HEARING OFFICER CELLI: Can you tell us exactly

1 what it is about those conditions that you feel is the  
2 mitigation you're speaking to.

3 MS. CUNNINGHAM: In the FSA the Visual Resources  
4 chapter has no mitigation whatsoever for glint and glare, but  
5 if you're a hiker on wilderness areas, a recreationist, and  
6 you don't necessarily drive in a car, you will be affected, I  
7 think, by glint and glare, especially if you're on a  
8 wilderness mountain area nearby, McCully Wilderness, the  
9 Joshua Tree National Park. So we just feel that those are  
10 mitigation measures that could be in the visual resources  
11 section.

12

13 HEARING OFFICER CELLI: Mr. Flores, do you want to  
14 speak to that?

15 MR. FLORES: Bill, do you want to address that, the  
16 visual resources?

17 MR. KANEMOTO: Well, I'm not quite sure what the  
18 mitigation measures that you're referring to.

19 HEARING OFFICER CELLI: Under Trans 6, 7, 8 and 9.

20 MR. EMMERICH: They deal with the tower receiver  
21 luminance monitoring plan, and also they have secured permits  
22 (inaudible). Actually, that was 9. But actually, 7 deals  
23 with the heliostat positioning plan and monitoring.

24 MR. KANEMOTO: Right. And in actuality, not only  
25 did the visual section identify those impacts the intervener

1 just referred to as (inaudible) impacts, but I believe the  
2 section also refers to the mitigation measures in the  
3 transportation section.

4 So yes, we agree with that point of view and we  
5 believe they're applicable. And I believe the sections refer  
6 to those measures, particularly the monitoring plan as well.

7 MS. CUNNINGHAM: And then Trans 6 strikes out that  
8 it's not going to be a visual resource mitigation?

9 MR. KANEMOTO: I'm sorry, which one is Trans 6?

10 MS. CUNNINGHAM: To reduce glint and glare from the  
11 project, the project owner shall implement the following  
12 measures, and there's several measures, one to four,  
13 including -- which I think is a good idea, get a toll free  
14 number for the public to report a glint and glare issue,  
15 example, in a wilderness area next to the Palen project.

16 MR. KANEMOTO: You're right, and that isn't  
17 specifically cited in the visual resource section. It's a  
18 good idea.

19 MR. GALATI: I want to go on the record on the  
20 relevance of this. There are conditions in traffic that  
21 addresses, I think, what you want. I mean, ultimately, it'll  
22 be in the license, right? So whether it's in visual or  
23 traffic, we still have to comply with it.

24 HEARING OFFICER CELLI: Actually, Mr. Galati, I  
25 thought she was saying that her concern was that while

1 traffic dealt with the impacts to drivers on Interstate 10,  
2 that she was concerned about the impacts of glint and glare  
3 to people hiking in mountains up above and not on  
4 Interstate 10; other areas.

5 If I understood what you said.

6 MS. CUNNINGHAM: Yes, correct.

7 MR. KANEMOTO: Well, yeah, the visual analysis  
8 acknowledges that those impacts are going to take place, and  
9 that mitigation measures would presumably mitigate them to  
10 some degree, but are you saying there would be something  
11 gained by referencing within the visual section?

12 MR. GALATI: Number 1 specifically refers to  
13 pedestrian hikers in nearby wilderness areas. That's why I'm  
14 trying to understand is it an issue of that it's missing  
15 something or is it an issue it's in the wrong section?

16 MS. CUNNINGHAM: I don't think if you're a hiker in  
17 a wilderness or park you'd even know. There may not be a way  
18 for the public to know that there's a way they could report  
19 to the Energy Commission about a glint and glare incident.  
20 This is something we just don't know about at all, so it's  
21 better to include more than less.

22 MR. EMMERICH: You might want to consider working  
23 with federal agencies to put things on websites. I mean,  
24 this wouldn't be foolproof mitigation, but to tell people,  
25 you know, if you're up there on Clark Martin or Palen or

1 McCully Wilderness, you might not want to look at that area  
2 or you might want to be careful about the level of intensity  
3 and brightness.

4 Another mitigation that you could think of is  
5 curtailing it on very busy weekends during spring break --

6 HEARING OFFICER CELLI: Excuse me, Mr. Emmerich.  
7 I'm sorry to interrupt. Hold the thought.

8 MR. EMMERICH: Okay.

9 HEARING OFFICER CELLI: We're going to have to hold  
10 this thought.

11 I have to take care of a problem right now. If  
12 you'll just hang in for one minute, I just want to have about  
13 a two-minute conversation with the court reporter. So we're  
14 going to be off the record for just a second.

15 (Off the record.)

16 HEARING OFFICER CELLI: Ladies and gentlemen, I  
17 think you're entitled to an explanation of what's going on in  
18 the middle of testimony.

19 It turns out that the court reporter can't continue  
20 at this pace. So we were supposed to have a backup, and the  
21 backup isn't coming.

22 What we can do, and I'm going to need a stipulation  
23 from the parties, I think, is we can proceed right now. We  
24 are recording a WebEx, so we have that. And the Energy  
25 Commission has a recording taking place right now using

1 WebEx, and I spoke with the technical person, Matt Miller,  
2 whether said that he would do a second backup just to make  
3 absolutely sure that I have a second audio recording  
4 (inaudible). Then we will send that for transcription.

5 So with that, let me ask Mr. Galati, do you have a  
6 problem if we just proceed by way of a WebEx audio recording?

7 MR. GALATI: No, just as long as we can make sure  
8 that we're actually recorded.

9 HEARING OFFICER CELLI: Yes.

10 MR. GALATI: I don't want to go through the hearing  
11 if nobody can get the recording.

12 HEARING OFFICER CELLI: Right. Staff, any  
13 objection?

14 MS. MARTIN-GALLARDO: No objection.

15 HEARING OFFICER CELLI: Okay. CRIT, any objection?

16 MS. KING: None.

17 HEARING OFFICER CELLI: Okay. Basin and Range  
18 Watch, any objection?

19 MR. EMMERICH: No objection.

20 HEARING OFFICER CELLI: And then Ms. Belenky from  
21 Center for Biological Diversity?

22 MS. BELENKY: We don't have an objection but I am  
23 wondering if this is going to change the timing of the  
24 transcripts, et cetera, and that we will get a chance to look  
25 at them for accuracy, which we had been less concerned with

1 when there's an official court reporter.

2 HEARING OFFICER CELLI: That's a good question.

3 What would happen is that the recording would go to  
4 the transcription company, I think it's California Reporting,  
5 and they would actually produce the transcript. We're  
6 supposed to get an expedited transcript of these proceedings  
7 in three days, so that just -- boy, yeah, they will need some  
8 help with that, but I think we're just going to have to  
9 proceed with the recording.

10 But thank you, Lisa, appreciate your help. Sorry  
11 for going long. Do you have all the business cards for all  
12 of the parties? Yes, you can. Here's a card.

13 HEARING OFFICER CELLI: Okay, where were we? We  
14 were talking about -- I was hoping that perhaps are our  
15 witnesses still here?

16 MR. GALATI: Yes.

17 HEARING OFFICER CELLI: Oh, good.

18 We were talking about Trans 7, 8 and 9 and  
19 conditions having to do with glint and glare to drivers  
20 versus hikers. I was hoping that that's where we were when  
21 we were interrupted. And the question was with Laura  
22 Cunningham. There was an objection as to relevance from the  
23 Petitioner, as I recall.

24 MR. GALATI: I withdraw the objection.

25 HEARING OFFICER CELLI: Okay. So we moved -- so is

1 your question still pending, do you need to hear from  
2 somebody from staff, Ms. Cunningham?

3 MS. CUNNINGHAM: This is Laura Cunningham, Basin  
4 and Range Watch. To reformulate the question to ask staff,  
5 is the final version of light and glare, like in the FSA I  
6 know there's been some changes. I don't see it referring to  
7 transits which would include a phone number, but does it now?

8 MR. KANEMOTO: No, it doesn't.

9 MS. MARTIN-GALLARDO: Perhaps we should clarify  
10 Trans 7.

11 MR. IRVIN: Under Trans 7, item 7, there is a new  
12 wording that's been added which indicates that the HPMP shall  
13 include a communication protocol for Riverside County with  
14 specific contact information for Riverside County, that they  
15 can speak to a representative.

16 And then as part of 8 there's also provide  
17 requirements and procedures to document and investigate and  
18 resolve legitimate complaints regarding glint and glare.

19 So it's pretty open ended as to whether it's visual  
20 or traffic, and I think that would satisfy your concerns from  
21 that standpoint.

22 MS. CUNNINGHAM: Okay, yeah, just clarifying.  
23 Thank you.

24 MR. IRVIN: Okay.

25 HEARING OFFICER CELLI: Anything -- so that's all



1 from Basin and Range Watch?

2 MR. EMMERICH: I'm just making one final comment  
3 about mitigation. I'm just telling this for the staff --

4 HEARING OFFICER CELLI: I actually need you to ask  
5 a question rather than --

6 MR. EMMERICH: Go ahead. I have one final question  
7 about mitigation.

8 HEARING OFFICER CELLI: All right.

9 MR. EMMERICH: I'm sorry about that.

10 Then that would be, has anyone ever considered a  
11 mitigation for visual resources, which is inconsistent with  
12 what's after every KOP, but that would be if you're looking  
13 at an area like this, the Chuckwalla Valley south of Joshua  
14 Tree National Park, not far from the Corn Springs turnoff,  
15 you're going to have busy weekends, you're going to have busy  
16 times during the winter, you're going to have holiday  
17 weekends. And has anyone ever looked at a curtailment option  
18 during those times?

19 Of course, you would get glare -- you would not get  
20 glare, you would still have the towers, you would have night  
21 lighting, that sort of thing, but you would eliminate the  
22 glare during those times. You wouldn't solve a lot of the  
23 cultural issues; I'm not going to be insulting in that  
24 respect, but couldn't it be a way to reduce the impacts of  
25 visual -- the impacts to visual resources?

1 Thank you.

2 MR. KANEMOTO: So you're asking if the operation  
3 could be suspended for certain periods of time, if that would  
4 reduce the impacts.

5 MR. EMMERICH: Yes.

6 MR. KANEMOTO: Yes, undoubtedly it would reduce the  
7 impacts. That wasn't included in the FSA analysis, but it's  
8 true that it would reduce impacts because it would reduce the  
9 impacts in times of higher exposure, I suppose.

10 MR. EMMERICH: Thank you.

11 HEARING OFFICER CELLI: Thank you, Mr. Emmerich.  
12 Any other questions with regard to Visual?

13 MR. EMMERICH: No.

14 HEARING OFFICER CELLI: Okay. Colorado River  
15 Indian Tribe.

16 MS. KING: Thank you. I just have one question.  
17 In the earlier Cultural Resources testimony, Petitioner's  
18 witness showed a map with the fuchsia coloring for new  
19 locations, geographic locations where the project could be  
20 seen as proposed to be revised. And I'm wondering, and I  
21 guess this is a question for staff, is there a document, some  
22 sort of graphic, a map like that one that shows increased  
23 intensity of visual impacts, not just new locations where the  
24 project site can be seen from? And if so, where?

25 MR. FLORES: Bill, can you address that?

1           MR. KANEMOTO: I'm sorry, could you repeat the  
2 question? I'm having a little bit of drop-out so I don't  
3 think I heard the entire question.

4           MS. KING: Yeah, I just said that in the earlier  
5 Cultural Resources testimony, the map is actually now up on  
6 the screen, I don't know if you can see it. We saw this map,  
7 which was represented to us as the pink showing new  
8 geographic locations where the project would be visible from  
9 compared with the earlier permitted version of the project.  
10 And I'm wondering if there is a similar map or depiction to  
11 this that shows the revised project's increased intensity of  
12 visual impacts, not just new locations where the project can  
13 be seen from.

14           MR. KANEMOTO: I see. No, there's actually no  
15 mapping that indicates levels of intensity because those  
16 aren't really, you know, clearly understood.

17           You know, I think that the best figure for  
18 referring to the viewshed is the one that appears in the  
19 Visual section. Visual Resource Figure 3, which has a kind  
20 of an overall mapping of the viewshed in totality of this  
21 project.

22           As far as levels of brightness, maybe Greg could  
23 speak to this a little bit, but I don't think that such a map  
24 exists or could be created right now.

25           MR. IRVIN: This is Greg Irvin. I don't think we

1 could create such a map. Such a map is purely subjective.

2 HEARING OFFICER CELLI: Nothing further from CRIT?

3 MS. KING: Nothing further.

4 HEARING OFFICER CELLI: Staff?

5 MR. FLORES: No.

6 MS. MARTIN-GALLARDO: No, staff has no questions.

7 HEARING OFFICER CELLI: Petitioner?

8 MR. GALATI: Yeah, I have two questions, Mr.

9 Flores.

10 MR. FLORES: Yes.

11 MR. GALATI: Just to make it clear for the record.

12 At the prehearing conference you made reference that you  
13 agreed with Petitioner's changes to Trans 6 and Trans 7 in  
14 their entirety, that they are correct?

15 MS. MARTIN-GALLARDO: Actually, I think you mean  
16 just Trans 7.

17 MR. GALATI: Oh, I apologize, just Trans 7?

18 MR. FLORES: Trans 7, yes, that's correct.

19 MR. GALATI: And then I also have one follow-up  
20 question with Mr. Zack.

21 Tim, are you on?

22 MR. ZACK: Yes, I'm here.

23 MR. GALATI: You prepared the visual simulations,  
24 right?

25 MR. ZACK: Yes.

1           MR. GALATI: And did you use acceptable scientific  
2 methods to do so?

3           MR. ZACK: Absolutely, yes.

4           MR. GALATI: No further questions.

5           HEARING OFFICER CELLI: Any further questions from  
6 anybody as follow-up? Noting all the parties shook their  
7 heads in the negative.

8           Then that means we are finished with both Visual  
9 and Transportation at this time, except for receiving  
10 evidence on it?

11          MR. GALATI: Yes.

12          HEARING OFFICER CELLI: Okay. In terms of  
13 witnesses. Okay.

14          Then at this time, first I'm going to take Traffic  
15 and Transportation, and then I'm going to take Visual.

16          So Petitioner, do you have a motion with regard to  
17 Traffic and Transportation?

18          MR. GALATI: Yes, I'd like to move into evidence  
19 Exhibits 1003, 1010, 1040, 1041, 1042, 1044, 1057, 1059,  
20 1063, 1069, 1073, 1074, and 1076. I'd like to move those  
21 into evidence at this time.

22          HEARING OFFICER CELLI: Thank you.

23          The motion is to move into evidence 1003, 1010,  
24 1040, 1041, 1042, 1044, 1057, 1059, 1063, 1069, 1073, 1074,  
25 and 1076 marked for identification.

1 Any objection from staff?

2 MS. MARTIN-GALLARDO: No objection.

3 HEARING OFFICER CELLI: Any objection from the  
4 Colorado River Indian Tribes?

5 MS. KING: No objection.

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

8 MS. CUNNINGHAM: No.

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

11 MS. BELENKY: None.

12 HEARING OFFICER CELLI: Those exhibits will be  
13 received into evidence as identified.

14 Staff, do you have a motion?

15 MS. MARTIN-GALLARDO: We do. We move for numbers  
16 2000, 2002, 2003, 2008.

17 HEARING OFFICER CELLI: That's traffic.

18 Motion is to move into evidence Exhibits 2000,  
19 2002, 2003, 2008.

20 Is there any objection from the Colorado River  
21 Indian Tribes?

22 MS. KING: No.

23 HEARING OFFICER CELLI: Basin and Range Watch?

24 MR. EMMERICH: No.

25 HEARING OFFICER CELLI: CBD?

1 MS. BELENKY: No.

2 HEARING OFFICER CELLI: Petitioner?

3 MR. GALATI: No.

4 HEARING OFFICER CELLI: Those exhibits marked 2000,  
5 2002, 2003, 2008 for identification are received into  
6 evidence as those exhibits.

7 Next let's hear from the Colorado River Indian  
8 Tribes. Did you have any evidence on traffic and  
9 transportation?

10 MS. KING: No.

11 HEARING OFFICER CELLI: And Basin and Range Watch.  
12 We've already received your only exhibit, which is 4000.

13 MR. EMMERICH: (Inaudible)

14 HEARING OFFICER CELLI: Let's talk about Visual.

15 MR. GALATI: I'd like to move into evidence Exhibit  
16 1003, 1005, 1012, 1015, 16 -- excuse me, 1016, 1019, 1020,  
17 1021, 1025, 1026, 1033, 1034, 1076.

18 HEARING OFFICER CELLI: Any objection from staff to  
19 the admission of exhibits 1003, 1005, 1012, 1015, 1016, 1019,  
20 1020, 1021, 1025, 1026, 1033, 1034, 1076?

21 MS. MARTIN-GALLARDO: Staff has no objection.

22 HEARING OFFICER CELLI: Any objection from Colorado  
23 River Indian Tribes?

24 MS. KING: No.

25 HEARING OFFICER CELLI: Basin and Range Watch?

1 MR. EMMERICH: No.

2 HEARING OFFICER CELLI: Center for Biological  
3 Diversity?

4 MS. BELENKY: No.

5 HEARING OFFICER CELLI: The exhibits will be  
6 received.

7 Staff, do you have any Visual evidence you wish to  
8 move in?

9 MS. MARTIN-GALLARDO: Staff would like to move into  
10 evidence 2000, 2002, 2003 and 2008.

11 HEARING OFFICER CELLI: The motion is to move into  
12 evidence exhibits marked for identification 2000, 2002, 2003  
13 and 2008.

14 Any objection from the Colorado River Indian  
15 Tribes?

16 MS. KING: No.

17 HEARING OFFICER CELLI: Basin and Range Watch?

18 MR. EMMERICH: No.

19 HEARING OFFICER CELLI: Center for Biological  
20 Diversity?

21 MS. BELENKY: No.

22 HEARING OFFICER CELLI: Petitioner?

23 MR. GALATI: No.

24 HEARING OFFICER CELLI: Okay.

25 Now, we've already received Exhibit 4000, and no



1 other parties had any exhibits to put in on Visual; is that  
2 correct?

3 MS. MARTIN-GALLARDO: That's correct.

4 MR. GALATI: Mr. Celli, I made an error on Traffic  
5 and forgot about the additional exhibits that got put up.

6 HEARING OFFICER CELLI: Okay, what are those?

7 MR. GALATI: I apologize. 1116 through 1121, I'd  
8 like to move into evidence as Traffic.

9 HEARING OFFICER CELLI: Any objection to the  
10 admission of 1116 through 1121, staff?

11 MS. MARTIN-GALLARDO: No objection.

12 HEARING OFFICER CELLI: CRIT?

13 MS. KING: No.

14 HEARING OFFICER CELLI: Basin and Range Watch?

15 MR. EMMERICH: No.

16 HEARING OFFICER CELLI: CBD?

17 MS. BELENKY: No.

18 HEARING OFFICER CELLI: So 1116 through 1121 will  
19 be received into evidence.

20 And with that, I can excuse this panel, everyone?

21 Thank you all for coming and testifying today.

22 MS. BELENKY: Hearing Officer Celli?

23 HEARING OFFICER CELLI: Yes.

24 MS. BELENKY: Ms. Anderson has to leave to catch a  
25 flight, but (inaudible).

1 HEARING OFFICER CELLI: Thank you very much.

2 We have an individual Keith Cooley, are you here?

3 Where is Keith Cooley? You wanted to make a comment on

4 Trans 7. Well, we'll let him comment (inaudible).

5 MS. NORTH: Hearing Officer Celli?

6 HEARING OFFICER CELLI: Yes. Who is speaking?

7 MS. NORTH: This is Tiffany North, Deputy County

8 Counsel (inaudible) Keith Cooley.

9 HEARING OFFICER CELLI: Hello.

10 MS. NORTH: I was the one that wanted to make a

11 comment on Trans 7.

12 HEARING OFFICER CELLI: Well, then go ahead, why

13 don't you make your comment right now.

14 MS. NORTH: Okay. Thank you.

15 I just wanted to clarify the County and Palen Solar

16 Holdings has reached an agreement on the language for

17 Trans 7, and on number 7 of Trans 7, I just want (inaudible)

18 regarding the communication protocol. I wanted to make sure

19 that the condition is expanded to include that the specific

20 contact information for the representatives (inaudible) will

21 be knowledgeable about the (inaudible) operations and have

22 the authority to take immediate steps to stop the

23 interference of the operation of the County's (inaudible)

24 communications system, if necessary.

25 HEARING OFFICER CELLI: Very good. That comment is

1 now in the record.

2 MS. NORTH: All right, thank you.

3 HEARING OFFICER CELLI: Thank you.

4 Is there a Keith Cooley here from County of  
5 Riverside?

6 MS. NORTH: Keith Cooley will be there tomorrow to  
7 talk about the worker safety and fire protection.

8 HEARING OFFICER CELLI: Oh, okay. Thank you.  
9 Somebody passed me a note that said that he was here and  
10 wanted to comment, but I guess that isn't -- Okay.

11 MS. NORTH: All right.

12 HEARING OFFICER CELLI: Okay. We're not going to  
13 assume it was an imposter.

14 MS. NORTH: Thank you.

15 HEARING OFFICER CELLI: Thank you very much for  
16 your comments, Ms. North.

17 With that, then we've completed Cultural,  
18 Transportation and Traffic, Visual. According to today's  
19 agenda, we were going to do geology and paleontology.

20 MS. MARTIN-GALLARDO: Alternatives?

21 HEARING OFFICER CELLI: No, Alternatives we were  
22 going to do last after CBD. So I was going to take  
23 geo/paleo. I also have Project Description and Soil and  
24 Water that have to take care of.

25 Geo/Paleo is strictly between Petitioner and staff,

1 according to my notes.

2 MR. GALATI: That's correct.

3 HEARING OFFICER CELLI: And what is the issue here?

4 MR. GALATI: The issue is we don't agree with the  
5 addition of, I think it's Paleo 9.

6 HEARING OFFICER CELLI: Okay. So who is your  
7 witness for geo and paleo?

8 MS. BELENKY: I'm sorry, Mr. Celli. The CRIT  
9 people already left, but I thought one of the issues that  
10 they raised during the Cultural about the augers going in,  
11 then you said we're going to talk about that in paleo, so now  
12 I'm a little more confused than ever.

13 HEARING OFFICER CELLI: Well, but we still have --  
14 I thought Ms. King was still here for CRIT. Where did she  
15 go? All the other people were leaving except Ms. King.

16 MR. GALATI: Yeah, I also thought they got their  
17 question answered, too, but might as well let the record.

18 HEARING OFFICER CELLI: There you go.

19 Ms. King, we're going to need you here. Your  
20 services are needed.

21 Are any parties going to have somebody on the phone  
22 for geo and paleo?

23 MR. GALATI: No.

24 HEARING OFFICER CELLI: Okay. Thank you.

25 Now, Mr. Stucky and Mr. Nials, you're still under

1 oath.

2 Mr. Weaver, I need to swear you in, I guess.

3 Who else besides Mr. Weaver do you have? Okay.

4 Mr. Weaver, please stand, raise your right hand.

5 Do you solemnly swear to tell the truth, the whole  
6 truth, and nothing but the truth under penalty of perjury  
7 under the laws of the State of California?

8 MR. WEAVER: Yes, I do.

9 HEARING OFFICER CELLI: Thank you, please be  
10 seated.

11 Now, this is geo and paleo. How should we kick  
12 this off, staff or applicant?

13 MR. GALATI: We'd be happy to go first and tell you  
14 what we -- why we disagree with Paleo 9.

15 HEARING OFFICER CELLI: Okay. Is that Mr. Nials or  
16 Mr. Stucky?

17 Mr. Nials, please go ahead.

18 HEARING OFFICER CELLI: Okay, is that Mr. Nials or  
19 Mr. Stuckey? Mr. Nials please go ahead.

20 MR. NIALS: Fred Nials, thank you.

21 Our problem with the Paleontology presentation is  
22 that it begins with definition. We have a problem with some  
23 of the definitions that are used. Staff have accepted a  
24 standard but a very restricted definition of high  
25 paleontology potential. And if I can read from this, I think

1 you'll understand why we disagreed or why we have problems  
2 with it.

3 Documents which (inaudible) are significant.  
4 Invertebrate plants or tree trunks which have been recovered  
5 are considered to have a high potential for containing  
6 additional significant paleontology resources. Documents in  
7 this class for having a high potential include but are not  
8 limited to sedimentary formation, some volcanic (inaudible)  
9 formations, some low grade metamorphic rocks with contain  
10 significant paleontological resources anywhere within their  
11 geographic (inaudible), and sedimentary rock units  
12 temporarily or temporally, or (inaudible) suitable for the  
13 preservation of rock, in other words, if there's anything  
14 older than about five thousand years, roughly.

15 Fine grain sandstones, pluvial (phonetic)  
16 sandstones, are gelatinous (phonetic), and carbonate-rich  
17 paleosols, cross (inaudible) sandstones, fine grain marine  
18 sandstones, these are the examples they give.

19 We have paleontology in our area, but we don't have  
20 marine sediments. We don't have pluvial deposits of the type  
21 that they're talking about. And their definition is  
22 basically so restrictive that it includes virtually anything  
23 that's younger -- that's older than about five thousand years  
24 old, if it's not volcanic or (inaudible).

25 We do have a soil, a paleosol which is older than

1 five thousand years. It's ice age, of age. It is carbonate-  
2 rich. It does have clay in it. But in every other way the  
3 area is basically unfavorable for the preservation of  
4 fossils.

5           If you look at any geology text book and I taught  
6 geology, I taught paleontology, excuse me, for a number of  
7 years at the university level, if you look at any beginning  
8 paleontology text book it will tell you a set of conditions  
9 that are favorable for the preservation of fossils. These  
10 include, basically, rapid (inaudible), in other words they  
11 organisms vary rapidly, vary deeply, it is encased in some  
12 sort of preserving mechanism or sediment, preferably fine  
13 grain and, ideally, it's kept either wet over time or dry  
14 over time.

15           We don't have any of those conditions here. These  
16 are alluvial sand deposits. The sediments for deposit by  
17 high energy streams coming out of the mountain were not in  
18 light deposits, were not in any kinds of situation where  
19 water is standing. So, and definition is relatively slower  
20 so that any organism that dies on the surface is going to  
21 remain on the surface for a while.

22           One of the reasons that it bothers me to consider  
23 this as an area having high potential, I grew up on a ranch  
24 in eastern New Mexico, west Texas, and during the 50's there  
25 was a terrible drought. Everybody lost most of their cattle,

1 they couldn't afford to buy feed, and my grandmother drove  
2 around and picked up cow bones to take to a phosphate plant  
3 so that she took fertilizer in order to buy feed for her  
4 cattle.

5           So I spent a lot of time up bones. And if you look  
6 at what happens to an animal, the taxonomy of an animal  
7 that's left on the surface for a long period of time, you see  
8 that it goes through a set of events.

9           First of all the animal dies, the scavengers go to  
10 it, they pull it apart, they scatter it around, they destroy  
11 some of the bones, particularly the finer ones, and it rains,  
12 the wind blows, this scatters the bones still further.

13           After the bones lay there or lie there for a period  
14 of three or four years, they start getting much much lighter  
15 and they get a sort of (inaudible) on the surface. Pretty  
16 soon you can take one of those bones and break it apart in  
17 your hands.           This is what happens to the vast,  
18 vast, vast majority of all bones from animals that die on the  
19 surface that are not very rapid.

20           So, first of all, the potential for preservation is  
21 very, very, very low in this kind of area. Now, staff has  
22 stated that this is essentially varied because we've got a  
23 lot of fossils in the area. Previous projects have recovered  
24 vertebrate fossils and these are significant fossils.

25           I would have to look at the record of what has been



1 found in desert sunlight and a total of -- well, prior to the  
2 start of the solar facilities, if you went through the museum  
3 records, there have been a pocket mouse, a tortoise, a horse,  
4 and a cow. Not complete sets, these are bones that could be  
5 identified to some level, but we're not we're not talking  
6 museum quality, such as where you see a mammoth preservation  
7 (inaudible) in the museum.

8 In addition, additional works at these previous  
9 facilities got an additional eight or ten sediments. We're  
10 looking at quartz, camel, mice, birds, rodents, and that is  
11 their identification. We've not been able look at the genus  
12 of some of these and a possible large mammal killed it.  
13 We're obviously not talking about (inaudible) organisms.

14 If we look at what is considered significant, the  
15 Bureau of Land Management and US Forest Service has defined  
16 fossils of scientific value using the following criteria:  
17 preservation of soft body parts, doesn't have it,  
18 preservation of uncommon invertebrate fossils, we know that  
19 we have horse, camel, saber tooth tiger, rodents, birds,  
20 tortoise. We've known this for decades. We're not finding  
21 anything new in the area. (Inaudible) are infinite  
22 association of plants with animals. At the present time the  
23 preservation potential for plants within the footprint area  
24 is virtually zero.

25 Preservation of the skull, whole, isolated bones or

1 other diagnostic materials, it's not going to happen. It's  
2 the wrong environment. The bones, the organisms that -- the  
3 pieces of fossils that have been found are just that, pieces.

4           You have a saber tooth cat in one of the other  
5 areas. This sounds really exciting, a saber tooth cat, but  
6 it's basically a toe bone of a saber tooth cat. We're  
7 talking pieces and small pieces. We have very few whole  
8 organisms. Most of these are fragments of a larger bone.

9           Concentration on diversity of plants and animals  
10 are restricted to a geological or geographic range. So far  
11 we haven't seen anything of that sort. Restricted  
12 stratigraphic range --

13           HEARING OFFICER CELLI: I need you to move your  
14 mic a little closer, especially now that we're relying  
15 entirely on audio. I need to make sure that everybody's  
16 speaking very clearly.

17           I just wanted to kind of bring us back, Mr. Nials,  
18 you started off by saying that you objected to the over broad  
19 definition to a condition, called --

20           MR. NIALS: Well, why I'm saying this definition is  
21 over broad is that first of all the fossils that we're  
22 finding are very, very few, they're not significant using the  
23 criteria of the Forest Service, and Bureau of Land  
24 Management, although it does fit the Society of Paleontology  
25 classification of high potential.

1 HEARING OFFICER CELLI: Did you provide, or did  
2 petitioner provide alternative language or an alternative  
3 definition to that --

4 MR. NIALS: I have not provided an alternative  
5 definition, although using the standard Bureau of Land  
6 Management classification this would fall into either low or  
7 unknown characteristics according to my interpretation.

8 Those categories would require, basically, little  
9 or no management decisions once they know what is there.

10 HEARING OFFICER CELLI: Okay.

11 MR. GALATI: If the Committee would indulge, I  
12 probably could ask a couple of quick direct questions that  
13 would get right to the point.

14 HEARING OFFICER CELLI: Please.

15 MR. GALATI: Okay. Mr. Nials, could you please  
16 describe whether you believe that the impacts from this  
17 amendment for paleontology are the same, less or greater than  
18 the impacts for paleontology from the original project.

19 MR. NIALS: I believe significantly less. If you  
20 look at the numbers, the original project had four and a half  
21 million cubic yards of material to be moved. The present  
22 project, two hundred thousand.

23 The present project, they're vibrating in pylons to  
24 a depth of eight feet. The total volume of earth that would  
25 be displaced by the pylons is something like 21,930 yards,

1 which comes out to about thirty-five thousandths of one  
2 percent of the total volume of the footprint area to a depth  
3 of eight feet.

4 MR. GALATI: And Mr. Nials, is it your  
5 understanding that this disagreement with Paleo 9 is then  
6 added because of staff believes the impact is greater than  
7 the approved project?

8 MR. NIALS: I'm not sure why it's in there,  
9 frankly. I believe it's because they feel that they can't  
10 mitigate for pylons which are (inaudible). They can't see  
11 the dirt.

12 HEARING OFFICER CELLI: Well, let's ask them  
13 directly, because we have staff here, that's their job.

14 MR. GALATI: That's fine.

15 HEARING OFFICER CELLI: Okay. Mr. Weaver, please,  
16 can you respond?

17 HEARING OFFICER CELLI: Well, let's ask them  
18 directly since we have staff here, that's their job. Okay,  
19 let's (inaudible). Can you respond?

20 MR. WEAVER: To the Paleo 9?

21 HEARING OFFICER CELLI: The staff's objections that  
22 were raised.

23 MR. WEAVER: I can tell there's lots of issues that  
24 I can discuss. One in particular is the classification  
25 (inaudible) for resource title, the FSA. The AFC final

1 decision all indicated soil upon sight are highly likely to  
2 be fossil, considered a highly sensitive (inaudible). All  
3 the documents that have been presented indicate that.

4           There's a lot of stuff that Mr. Nials said, they're  
5 right there, there are pieces. They're not looking at museum  
6 quality (inaudible) found in that area other than, oh, like  
7 the tortoise, and with the eggs in place. You know, because  
8 in Rio Mesa there were 834 fossils down there. There were  
9 particles found in Kern, some fossils found in Riverside  
10 County and some, actually, first that were found in Alta  
11 California.

12           So, that's an important aspect. A lot of them are  
13 actually early (inaudible) at the site. And there's a lot of  
14 indication that these things do exist.

15           HEARING OFFICER CELLI: Well, let's stick to the  
16 Palen site, why don't you talk about that.

17           MR. WEAVER: Well, the reason I bring that up is  
18 that (inaudible) has been identified on the Palen site. So,  
19 I foresee paleontology (inaudible)--

20           And there's been no subsurface exploration  
21 conducted on the Palen site, so you can't really rule  
22 anything in or out. There's no mention for (inaudible) for  
23 resource other than all the documents that indicate that it  
24 is (inaudible) likely to exist.

25           Let's see, it's true most of the pieces that have

1 been discovered (inaudible) --

2 (Music Interruption)

3 HEARING OFFICER CELLI: There you go. Sorry about  
4 that.

5 MR. WEAVER: These other projects have discovered,  
6 just articulated (inaudible) -- we're mostly interested in  
7 vertebrate fossils. The reason that they are important is  
8 that it establishes the paleontology of the region. So even  
9 though it's a fragment that you can identify, you know that  
10 species lived there at that point, you can look at the  
11 variety of different animals living in the area and you can  
12 (inaudible) for the people who study that. The significance  
13 then, again, is that the pieces you can classify to determine  
14 what was there.

15 HEARING OFFICER CELLI: So, let me ask you this.  
16 The original project was going to basically bulldoze, you  
17 know, to take four and a half cubic feet of material or  
18 whatever. Now, they're going to drive pylons to a depth of  
19 eight to twelve feet as I understand. And so what we're  
20 trying to get to is what's the difference here in terms of  
21 paleontology?

22 MR. WEAVER: Let me read from this. I think it  
23 will help clarify.

24 HEARING OFFICER CELLI: Okay.

25 MR. WEAVER: While staff appreciates the

1 advantages in search and methodology regarding project costs  
2 and the impact of other disciplines, the pylons would be  
3 inserted into soil likely to contain fossils, disturbing  
4 those fossils in which the pylons come in contact with,  
5 without recover, identification or curation of the fossils.  
6 Without identification, collection and curation fossils would  
7 (inaudible) -- with the larger draining operation coming  
8 through the project.

9           So, with that recovery, the mitigation of the  
10 impact would be understanding the paleontology in the area.  
11 So, it's the link that's -- it's not recovering any museum  
12 quality fossils, it's identifying what was there so you can  
13 look at paleontology.

14           In order to mitigate the potential significant  
15 impacts from the proposed pylon construction technique, staff  
16 is proposing to discover recovering the type and variety of  
17 fossils in the solar field before the area is affected by  
18 pylon insertion. The staff is proposing mitigation to that  
19 impact and modified condition of certification in  
20 (inaudible).

21           HEARING OFFICER CELLI: Okay. So Mr. Nials says  
22 that the definition is overbroad and contains materials or  
23 geological conditions that just aren't to be found at the  
24 site that we're talking about now, so how do you respond to  
25 that?

1 MR. WEAVER: The paleontological investigation was  
2 conducted onsite as a pedestrian survey walking onsite. The  
3 site is now about a foot and half, based on the geotechnical  
4 investigation report, a foot and a half of loose (inaudible)  
5 (inaudible) sand. Underneath that are older, 13,000 year old  
6 (inaudible) older sediment (inaudible).

7 There hasn't been a subsurface investigation  
8 conducted onsite that indicates that it's not there. And in  
9 fact, all the documentation previous shows that there's a  
10 concern that it's a highly (inaudible).

11 HEARING OFFICER CELLI: I just don't want to lose  
12 sight of what we're dealing with here in terms of the issue.  
13 The question -- the only issue that we're talking about here  
14 between staff and applicant, and this is in geo/paleo, is the  
15 overbreadth of that definition (inaudible). Do I have that  
16 wrong?

17 MR. GALATI: Yeah. Mr. Nials was talking about the  
18 definition that staff used to determine something was  
19 significant, not the definition in Paleo 9.

20 We're saying that the definition is overbroad.  
21 They found significant impacts, which they then put in  
22 Paleo 9 which we believe that are not required.

23 MS. MARTIN-GALLARDO: And I can clarify. This is  
24 Jennifer Martin-Gallardo. I can clarify.

25 In the same vein, staff's argument is that these,



1 the pylon insertion method is not using the traditional  
2 technique that we would be able to mitigate for.

3           So what staff has done is use this same  
4 determination of how sensitive the soil resource is, how  
5 likely it is to contain paleontological resources  
6 (inaudible), and is saying, because we're not going to be  
7 digging things out like we used to, what we want to do is, by  
8 Paleo 9 -- which staff, by the way, has revised -- and wants  
9 to have some subsurface excavation on the sand through Paleo  
10 9 to determine what is there.

11           So it's staff's effort at getting the same type of  
12 information that we would get from traditional subsurface  
13 excavation.

14           HEARING OFFICER CELLI: And how intensive is the  
15 survey that they would be doing?

16           MS. MARTIN-GALLARDO: First, I would like to  
17 provide everyone with a copy of what staff has revised on  
18 Paleo 9 to make more clear that the intention here is not to  
19 require -- we don't want -- staff's intention is not to  
20 require (inaudible) or some new pedestals to be done. We  
21 wanted to clarify for everyone what the intent of Paleo 9 is.

22           And I would want this as Exhibit 2011.

23           HEARING OFFICER CELLI: 2011?

24           MS. MARTIN-GALLARDO: Correct.

25           HEARING OFFICER CELLI: For identification, Exhibit

1 2011 is Geology and Paleontology Revisions to Conditions  
2 Paleo 9 and Paleo 5.

3 MS. MARTIN-GALLARDO: Can you explain?

4 MR. WEAVER: Which part?

5 MS. MARTIN-GALLARDO: Paleo 9.

6 MR. WEAVER: Sure. Initially Paleo 9 was  
7 protective of the resources by suggesting alternatives,  
8 alternative foundation design, and avoidance issues,  
9 different methods, again, for protecting the resource.

10 We realized that these aren't museum quality  
11 resources. You know, we're not going to dig up a full  
12 skeleton (inaudible), but the individual pieces again are  
13 important to identify what they are. So what we did was  
14 revised Paleo 9 to reflect a recovery duration deflection  
15 effort in order to characterize the paleontology (inaudible)  
16 which would be similar to the mitigation provided in the  
17 final decision of 1 through 7 where the excavation of the  
18 project was going to be tough to identify (inaudible)  
19 fossils. So it's actually a similar mitigation as the  
20 initial final decision, just in a different manner.

21 HEARING OFFICER CELLI: There's two pages.

22 MR. WEAVER: There's two pages. Don't ever trust a  
23 lawyer to do something like walk around.

24 HEARING OFFICER CELLI: Okay.

25 Mr. Galati, while everyone is figuring out what's

1 on the paper, I've got a question here and maybe you can help  
2 clear this up for me.

3 MR. GALATI: Yes.

4 HEARING OFFICER CELLI: You start off talking about  
5 a definition which is not even contained in what we just  
6 received. Then Mr. Weaver is talking about a  
7 characterization study, basically. So they seem to be two  
8 unrelated issues.

9 MR. GALATI: If I might make an offer of proof.  
10 Mr. Nials was making the point that, using the definitely  
11 staff did (inaudible) was overbroad, and that there weren't  
12 going to be a lot of options there that were of any  
13 significance.

14 HEARING OFFICER CELLI: Okay.

15 MR. GALATI: Staff says that's what we need to do  
16 in the original project. And we assume high significance,  
17 but staff said the way we mitigated it during the original  
18 project was to have a paleontological monitor during all the  
19 grading be watching the soil and curating what they find.

20 And has also said that the vibration now could  
21 destroy fossils. And since we don't bring any dirt up, we  
22 can't curate those. So staff says we can't -- we're not  
23 mitigating that and has proposed Paleo 9, which has holes in  
24 the ground to try to find fossils and dig them out of the  
25 ground. And we object.

1 HEARING OFFICER CELLI: You'll get your chance.

2 MR. GALATI: That it is an exercise in (inaudible)  
3 a site for an impact that we do not believe -- we believe  
4 that the impact is less than staff has identified, worse than  
5 modifying the project. And I wanted to ask a few cross-  
6 examination questions to show that.

7 HEARING OFFICER CELLI: Well, we'll allow a just  
8 really broad. Please try to be broad in your questions,  
9 because we're dealing with Mr. Weaver, not the lawyers.

10 MS. BELENKY: (Inaudible) because I'm getting  
11 confused. This project amendment still has grading, so would  
12 the old conditions be on the grading parts and then the new  
13 condition on the (inaudible) parts?

14 MR. GALATI: That's correct.

15 MS. BELENKY: Okay. I just --

16 MR. GALATI: We didn't ask for a change for any of  
17 the normal conditions of monitoring grading. This is a new  
18 one for the areas where we're only bi-grading it (inaudible).

19 Mr. Weaver, if you're moving 4.5 million cubic  
20 yards of dirt like the old project, how much of that dirt  
21 would you actually see and be able to recover a fossil from  
22 during construction if you were monitoring with the old  
23 conditions?

24 MR. WEAVER: How much soil would you recover?

25 MR. GALATI: (Inaudible)

1           MR. WEAVER: (Inaudible) a hundred percent of the  
2   fossils they could lose around any non-grading activity? I  
3   think you're asking how many fossils would be found in that  
4   much soil?

5           MR. GALATI: No. I'm asking what percentage of the  
6   amount of dirt that you move, do you think a paleontological  
7   monitor would be able to actually see or sieve or observe to  
8   see if there was a fossil in it, of the 4.5 million cubic  
9   yards?

10          MR. WEAVER: All of it?

11          MR. GALATI: No, the upper foot and a half at least  
12   that we assume is non-fossil bearing because it's younger  
13   than the (inaudible) sediments that are deeper.

14          MR. WEAVER: If the slope that we have not looked  
15   at, not done a subsurface investigation for, we don't know.

16          MR. GALATI: Okay, Let's say you got down to the  
17   subsurface soil. So the soils that don't have fossils are  
18   not there, and you're digging with a scraper. Do you see a  
19   hundred percent of that soil to see if it has fossil in it as  
20   a paleontological monitor?

21          MR. WEAVER: I'm not a paleontological monitor, so,  
22   you know, I'd just as soon not answer. I don't know.

23          HEARING OFFICER CELLI: That's a fair answer.

24          MR. GALATI: Yeah. No further questions.

25          HEARING OFFICER CELLI: Staff, any questions of

1 either of any of these witnesses? I'm just going to allow  
2 you to ask staff or applicant (inaudible).

3 MS. MARTIN-GALLARDO: I think it's important to ask  
4 Mr. Weaver, could you please explain one more time why you  
5 believe the site is (inaudible) as highly sensitive?

6 MR. WEAVER: Yes. It's primarily based on the  
7 discoveries that have occurred in the surrounding area that  
8 were previously unrecognized and not considered to have high  
9 paleontological sensitivity. Since these large construction  
10 projects have started, numerous fossils have been discovered,  
11 some that have never been discovered in California before,  
12 many never before in Riverside.

13 MS. MARTIN-GALLARDO: What about this project site,  
14 why this particular site has it been classified this way?

15 MR. WEAVER: Why I think it's classified that way  
16 or why is it (inaudible) in all the documents?

17 MS. MARTIN-GALLARDO: Correct, the documents.

18 MR. WEAVER: Because it's believed that (inaudible)  
19 in soils under a lot, a mantle of (inaudible) will be  
20 (inaudible).

21 MS. MARTIN-GALLARDO: All of the previous documents  
22 in this case had defined the soil as having high  
23 paleontological sensitivity, correct?

24 MR. WEAVER: Yes, the ASC, the FSA, the PDIF and  
25 (inaudible), and the final decision all indicate that it's

1 high sensitive.

2 MS. MARTIN-GALLARDO: And using a vibratory  
3 insertion method for construction will not result in any  
4 recovery that can be mitigated according to the existing  
5 conditions of certification, correct?

6 MR. WEAVER: Yes, there would be no mitigation for  
7 destruction from the insertion of pylons in the soil.

8 MS. MARTIN-GALLARDO: And you would say Paleo 9,  
9 the purpose is to provide some kind of mitigation that is  
10 similar to that as what exists for traditional excavation  
11 methods.

12 MR. WEAVER: That's the intent of the development  
13 of Paleo 9, yes.

14 MS. MARTIN-GALLARDO: That's all I have.

15 HEARING OFFICER CELLI: Questions from Colorado  
16 River Indian Tribes, please?

17 MS. KING: Thank you. I'm Winter King from CRIT,  
18 and I asked a question of the staff Cultural Resource  
19 witnesses earlier, because we noticed in the rebuttal  
20 testimony for staff, paleontological resources, there was a  
21 pretty strong statement that the change in technology to the  
22 vibratory technique of inserting the heliostats would likely  
23 destroy any buried paleontological resources that were under  
24 the ground. And my question earlier and to you as well is,  
25 wouldn't the same logic apply to any buried cultural

1 resources should they be in the way of the auger with this  
2 new technology, wouldn't they also likely be destroyed by the  
3 insertion technique?

4 MR. WEAVER: You're asking me a cultural question?

5 MS. KING: I asked the cultural people and they  
6 said ask you, so...

7 MR. WEAVER: Okay. The upper foot and a half  
8 about, you know, to an average (inaudible) soil, so those  
9 would likely, if there were cultural resources in the area,  
10 that's where it would be contained. We're looking at the  
11 (inaudible) that are in subsurface below that area.

12 Also, again, I'm not a cultural resources person,  
13 but if you can see a lot more on the surface with cultural  
14 investigations than paleo in the buried soil. If you walk  
15 along the surface and could find artifacts of native  
16 Americans. You're not going to see buried fossils because  
17 the mantle with that, you know, your sediment.

18 MS. KING: Nothing else, thanks.

19 HEARING OFFICER CELLI: Thank you.

20 Ms. Belenky, any questions of these witnesses?

21 MS. BELENKY: No, thank you.

22 HEARING OFFICER CELLI: Thanks.

23 Anything further, Mr. Galati?

24 MR. GALATI: Yeah, just one redirect.

25 HEARING OFFICER CELLI: Oh, I'm sorry, I didn't see



1 Mr. Emmerich.

2 MR. EMMERICH: Thank you.

3 HEARING OFFICER CELLI: Okay, go ahead, Mr. Galati.

4 MR. GALATI: Mr. Nials, when you monitor mass  
5 grading and scrapers, do you see all of the soil as a  
6 paleontological monitor?

7 MR. NIALS: I have not done paleontological  
8 monitoring but I have done cultural resource monitoring,  
9 which is very similar. We're probably lucky if we get, this  
10 is a guess, 20 percent, 25 percent. And in dealing with a  
11 relatively small fossil remains such as rodents or things of  
12 this sort, fragments of teeth, the monitor would see it if it  
13 happened to fall in the right direction so that it would slip  
14 into his line of sight.

15 I would point out also, if I may, that there has  
16 been some subsurface work done in the area. I put in over  
17 300 feet of backhoe trenches into the (inaudible) soil, and  
18 while my purpose was not looking for fossils, I was  
19 describing the soil in detail and I would have seen any  
20 fossils that were there.

21 MR. GALATI: And Mr. Nials, again, how many cubic  
22 yards would be disturbed by vibrating all 170,000 heliostats  
23 into the ground?

24 MR. NIALS: The entire 170,000, I think it was  
25 21,000 and something -- there we go, 21,930 cubic yards,

1 which is about, as I said, thirty-five thousandths of a  
2 percent.

3 MR. GALATI: NO further questions.

4 HEARING OFFICER CELLI: Are we done with geo/paleo,  
5 parties?

6 MS. MARTIN-GALLARDO: I have two follow-up  
7 questions.

8 HEARING OFFICER CELLI: Go ahead.

9 MS. MARTIN-GALLARDO: For Mr. Nials.

10 On that calculation, how deep, what was --

11 MR. NIALS: That's based on a ten-foot depth, which  
12 is a very conservative figure because the vast majority of  
13 the pylons will be driven to a depth of eight feet. Twelve  
14 feet only in the areas where there are washes and things of  
15 that sort.

16 MS. MARTIN-GALLARDO: Thank you. And with the  
17 trenching work that you did, was there a paleontologist on  
18 hand monitoring for paleontological resources, by chance?

19 MR. NIALS: There was not a paleontologist, no.

20 MS. MARTIN-GALLARDO: Thank you.

21 MR. NIALS: I was just doing it for cultural  
22 purposes.

23 MS. MARTIN-GALLARDO: Thank you.

24 HEARING OFFICER CELLI: Anything further from CRIT?

25 MS. KING: No.

1 HEARING OFFICER CELLI: Basin and Range Watch?

2 MR. EMMERICH: No.

3 HEARING OFFICER CELLI: CBD?

4 MS. BELENKY: No.

5 HEARING OFFICER CELLI: Petitioner?

6 MR. GALATI: Just to make a motion to move in my  
7 exhibits.

8 HEARING OFFICER CELLI: Okay. We are talking about  
9 Geo and Paleo. Do you have a motion, Petitioner?

10 MR. GALATI: Exhibit 1003, 1060, and Exhibit 1077.  
11 I'd ask those moved into evidence.

12 HEARING OFFICER CELLI: That's the motion to move  
13 in 1003, 1060, 1077. Any objection, staff?

14 MS. MARTIN-GALLARDO: No objection.

15 HEARING OFFICER CELLI: Any objection, CRIT?

16 MS. KING: No.

17 HEARING OFFICER CELLI: Any objection Basin and  
18 Range Watch? I need to hear you speak into the microphone.

19 MS. CUNNINGHAM: No objection.

20 HEARING OFFICER CELLI: Thank you.

21 MR. EMMERICH: No objection.

22 HEARING OFFICER CELLI: And CBD?

23 MS. BELENKY: No objection.

24 HEARING OFFICER CELLI: Exhibit 1003, 1060 and 1077  
25 are received into evidence.

1 Staff, you have a motion?

2 MS. MARTIN-GALLARDO: Yes, I'd like to move into  
3 evidence Exhibit 2000, 2003, 2008 and 2011.

4 HEARING OFFICER CELLI: Any objection to the  
5 admission of Exhibits 2000, 2003, 2008 and 2011, Colorado  
6 River Indian Tribes?

7 MS. KING: No.

8 HEARING OFFICER CELLI: Basin and Range Watch, any  
9 objection to those exhibits being admitted into evidence?

10 MR. EMMERICH: No.

11 HEARING OFFICER CELLI: CBD, any objection?

12 MS. BELENKY: No.

13 HEARING OFFICER CELLI: Petitioner, any objection?

14 MR. GALATI: No.

15 HEARING OFFICER CELLI: Okay. Exhibits 2000, 2003,  
16 2008 and 2011 are admitted.

17 CRIT, did you have any geo or paleo evidence to  
18 offer?

19 MS. KING: No.

20 HEARING OFFICER CELLI: Or Basin and Range Watch?

21 MR. EMMERICH: No.

22 HEARING OFFICER CELLI: Or Center for Biological  
23 Diversity?

24 MS. BELENKY: No.

25 HEARING OFFICER CELLI: Okay. Then I think that

1 covers it. Can I excuse these witnesses?

2 MR. GALATI: Yes.

3 HEARING OFFICER CELLI: There you go. Thank you  
4 all very much for your testimony here. You're excused.

5 Let's get our witnesses down for project  
6 description next. And this is an issue that is brought to us  
7 by the Center for Biological Diversity. They don't seem to  
8 have any dispute between staff or applicant on this or any  
9 other witness.

10 Now, am I losing CRIT for the night?

11 MS. KING: I don't plan on offering any questions,  
12 but I can be available, though.

13 HEARING OFFICER CELLI: We have project  
14 description, soil and water and alternatives left. So does  
15 CRIT not have a position on any of those three topics?

16 MS. CLARK: We don't have a position on any of  
17 those topics.

18 HEARING OFFICER CELLI: Okay. Thank you very much.

19 MS. CLARK: You're welcome.

20 HEARING OFFICER CELLI: Have a good night. Oh,  
21 good. Where is our court reporter?

22 Oh, good. Hi, welcome. Come on down.

23 We can keep going because we're still being  
24 recorded with the audio and I hope we won't have a gap.  
25 That's great.

1 Are you Ms. Novak? Good.

2 MS. CUNNINGHAM: Excuse me, Mr. Celli.

3 HEARING OFFICER CELLI: Yes.

4 MS. CUNNINGHAM: Basin and Range Watch has to leave  
5 tonight, too, but we'll be back tomorrow morning.

6 HEARING OFFICER CELLI: Okay. We're covering  
7 project description and soil and water and alternatives. And  
8 all your evidence is in at this point.

9 MS. CUNNINGHAM: Yes.

10 HEARING OFFICER CELLI: Okay. Well, thank you for  
11 being here.

12 MS. CUNNINGHAM: Okay. Thank you.

13 HEARING OFFICER CELLI: If you could have a seat,  
14 Ms. Novak, right there and get yourself set up and  
15 comfortable. You're the third court reporter we've had here.  
16 We're just killing them off. Thanks for being here.

17 We are still on the record. What we have is we're  
18 taping this, we have an audio tape, so I'm going to keep  
19 rolling, and then when Ms. Novak is ready, just catch up.

20 Now, Project Description, who are your witnesses  
21 for project description, Mr. Galati?

22 MR. GALATI: Matt Stucky and Charles Turlinski,  
23 they've both been sworn.

24 HEARING OFFICER CELLI: And staff, for project  
25 description who do we have?

1 MS. MARTIN-GALLARDO: We have Christine Stora, our  
2 project manager.

3 HEARING OFFICER CELLI: Ms. Stora.

4 MS. MARTIN-GALLARDO: And she does need to be sworn  
5 in.

6 HEARING OFFICER CELLI: And no other witnesses,  
7 this is our full complement of witnesses, nobody on the  
8 telephone?

9 MR. GALATI: None for applicant.

10 HEARING OFFICER CELLI: Okay. Ms. Stora, would you  
11 please stand and raise your right hand.

12 Do you solemnly swear to tell the truth, the whole  
13 truth and nothing but the truth under penalty of perjury  
14 under the laws of the State of California?

15 MS. STORA: I do.

16 HEARING OFFICER CELLI: Thank you. You may be  
17 seated.

18 Now, this is really Center for Biological  
19 Diversity. I'm going to ask you to sort of kick this off  
20 because this is your concern, Ms. Belenky.

21 MS. BELENKY: Yes, thank you. We'd like to ask  
22 some questions to clarify there's a couple of things that are  
23 not clear as far as we could tell from the documents.

24 The footprint of, I guess the proposed amendment,  
25 includes those parts of Alternative 2 and Alternative 3; is

1 that correct, from the original approval?

2 MR. STUCKY: That's correct.

3 MR. TURLINSKI: And I would add that it's also been  
4 revised so that (inaudible).

5 MS. BELENKY: Well, that was not my question, so...

6 HEARING OFFICER CELLI: Are you Mr. Turlinski?

7 MR. TURLINSKI: Yeah.

8 HEARING OFFICER CELLI: That's who's speaking. I  
9 just wanted to say that on the record so people understood.  
10 Go ahead, Ms. Belenky.

11 MS. BELENKY: Okay. So it includes portions --  
12 what happened before, just for the record, is that the  
13 Commission approved either the use of Project Alternative 2  
14 (inaudible) or the use of Alternative 3 (inaudible). And  
15 this actually takes parts of each of those and makes another  
16 footprint that was never approved by itself. So I didn't  
17 clarify, because there's been a lot of confusion and looking  
18 at the documents and the mapping, it actually is very  
19 confusing.

20 My second question is, my understanding of the  
21 original approval was that there would be an access road but  
22 on the inside of the fence to access the entire all the way,  
23 to be able to go all the way around the project site. Are  
24 you still intending to put access roads inside the fence or  
25 are you intending to also put access roads outside the fence?



1 HEARING OFFICER CELLI: So there's two questions  
2 pending, right?

3 MS. BELENKY: No.

4 HEARING OFFICER CELLI: And if you would, Mr.  
5 Turlinski, pull that mic right up to you closely.

6 MR. TURLINSKI: Right. My understanding of the  
7 project description in the FSA, what I would refer back to,  
8 is that there is an access road that goes along inside the  
9 fence.

10 MS. BELENKY: In the new proposal.

11 MR. TURLINSKI: Right.

12 MS. BELENKY: Inside the fence.

13 MR. TURLINSKI: Correct.

14 MS. BELENKY: And do you have any plans to access  
15 the outside of the fence?

16 MR. TURLINSKI: Not -- I'm not sure what you mean  
17 by access.

18 MS. BELENKY: To be able to access with a motorized  
19 vehicle on the outside of the fence.

20 MR. TURLINSKI: From a project operations  
21 standpoint.

22 HEARING OFFICER CELLI: Ladies and gentlemen,  
23 everybody, listen to me.

24 First, I need everybody to speak directly into  
25 their mic.

1           Secondly, I can't have two people speaking at once  
2 or it's completely garbled and I have no record. So  
3 witnesses, I'm going to ask you to let the questioner ask the  
4 question, then wait until the question is finished, then  
5 answer the question.

6           So the question pending right now from Ms. Belenky  
7 is whether there is going to be, as I understand it, a road  
8 around the firm perimeter of the fence; is that correct?

9           MS. BELENKY: Yes.

10          HEARING OFFICER CELLI: That's the question.

11          Go ahead, Mr. Turlinski.

12          MR. TURLINSKI: No.

13          HEARING OFFICER CELLI: By the way, Ms. Belenky,  
14 did you ever get an answer to the question of whether the  
15 footprint of the PSEGS amended project covered Alternative A  
16 or B and Alternative A and B, or whatever you --

17          MS. BELENKY: I think I got an answer that it  
18 covers parts of each of the earlier alternatives.

19          HEARING OFFICER CELLI: Okay, great. Thanks. Then  
20 we're current.

21          MS. BELENKY: Seems to be correct. It's very  
22 unclear from the mapping that has been provided.

23          Okay. So and then my last question was, do you  
24 have any plan, is there any plan for accessing with a  
25 motorized vehicle the outside of the fence?

1 MR. TURLINSKI: From an operational standpoint, no.

2 MS. BELENKY: I don't know what that means, but  
3 from an operational standpoint.

4 MR. TURLINSKI: I guess from a construction  
5 standpoint, to construct the fence, I would presume  
6 (inaudible) the project description you would need to be on  
7 both sides of the fence to construct the fence with vehicles.

8 From an operational standpoint, there's no intent  
9 to access the outside, the external side of the fence, with  
10 vehicles, in the project description.

11 MS. STORA: This is Christine Stora. I'd like to  
12 add something to that.

13 Although we are talking about worker safety and  
14 fire protection tomorrow, there is a plan to let four wheel  
15 drive fire trucks access the project site through two access  
16 gates from the perimeter of the fence, and technical staff  
17 tomorrow can certainly answer any of your specific questions  
18 about that.

19 MS. BELENKY: All right. That's good to know.

20 (Hearing continues behind certificate  
21 on following page)

**TRANSCRIBER'S CERTIFICATE**

I do hereby certify that the testimony in the foregoing proceedings were taken at the time and place therein stated; that the text contained herein was transcribed by me, a Federally Certified Transcriber, to the best of my ability.

I further certify that I am not counsel for any of the parties to said proceedings, nor in any way interested in the outcome of the cause named.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of November, 2013.



Terri Harper  
Certified Transcriber No. CET\*\*D-709  
American Association of Certified Electronic  
Reporters and Transcribers (AAERT)

1 PALM DESERT, CALIFORNIA

2 MONDAY, OCTOBER 28, 2013

3 5:28 P.M.

4 -o0o-

5 The meeting was in already in session and the reporter  
6 began with the following:

7

8 MS. BELENKY: So just to clarify, I'm  
9 really just trying to really understand exactly what's  
10 going to happen with motorized vehicles.

11 If you would need to access an area in the east  
12 side of the project, you would go through the project  
13 footprint, you would not be going around and coming in a  
14 different way, you would only come into the project site,  
15 once it's built, from the one side?

16 MR. TURLINSKI: Correct. Motorized  
17 vehicle use would only be used on existing ac- -- roads  
18 and access roads that are built into the project site.

19 MS. BELENKY: Inside the project site?

20 MR. TURLINSKI: Right.

21 MS. BELENKY: Because other projects,  
22 that's not the case. So I'm trying to understand -- and  
23 obviously, these all relate to our biology concerns  
24 eventually, which we're not talking about tonight.

25 The -- I just, again, for the Project

6

1 Description part of it, and this will relate to things we  
2 talk about maybe in Alternatives, I believe that -- and  
3 this may be more to the -- I don't know which of you were  
4 supposed to answer the applicant or the staff, but in some  
5 places, the tower design has been termed to be more  
6 flexible than the original proposal, which of course was  
7 square and flat and which we actually did discuss quite a  
8 bit. Because there were areas, for example, where during  
9 the alternative discussion we might say, "Well, wouldn't  
10 it be great if we could bring this back a little," and the  
11 answer was always, "It absolutely has to be square and  
12 flat and an exact size."

13 So would you say, compared to the solar trough,  
14 the solar tower power design is more flexible?

15 MR. TURLINSKI: Yes, I think that's a  
16 reasonable generalization.

17 MS. BELENKY: The footprint is more  
18 flexible?

19 MR. TURLINSKI: Yes.

20 MS. BELENKY: And does staff agree?

21 MR. GALATI: Can you -- can I just get a  
22 definition so we're sure what we're talking about  
23 flexible.

24 Are you talking about flexible strength-wise or  
25 are you talking about flexible they could move it for us

7

1 for a reason?

2 MS. BELENKY: Flexible, like you could move  
3 it for us for a reason.

4 MR. GALATI: I just wanted to make sure  
5 that that's what you --

6 MS. BELENKY: I -- yeah, I think we all  
7 want to. And these are kind of set up questions for  
8 later, but I won't be able to ask them later, so I have to  
9 ask them now.

10 Then I have a specific question on the -- so the  
11 figure I'm looking at right now is this one. It was sort  
12 of the initial figure that you provided, Figure 4 under  
13 Project Description. And I don't know if we can have it  
14 up there, but it is in the FSA, the first section at PDF  
15 90, which is how I find things.

16 HEARING OFFICER CELLI: Project Description,  
17 Figure 4. Ms. Anderson seems to be looking for it right  
18 now. WE seem to have lost our --

19 MS. BELENKY: Well, do you know the project  
20 that we both -- the two witnesses or three witnesses, you  
21 all know that figure?

22 MS. STORA: Yes, I have it in front of  
23 me.

24 MS. BELENKY: Okay. And then I'm also  
25 going to refer to another figure from the Staff Supplement

8

1 A, which was actually late filed, and we discussed this at  
2 the prehearing conference. And it's the section that  
3 staff put together with the different information.

4 HEARING OFFICER CELLI: The tortoise fencing  
5 along the --

6 MS. BELENKY: About the tortoise fencing,  
7 but it also deals with the underpasses along the highway.  
8 So I will be referring to that also, so we're all on the  
9 same page.

10 So Figure 4 --

11 HEARING OFFICER CELLI: Let me ask this: Staff,  
12 did you put that in as Project Description or did you put  
13 that in as Bio, that -- that --

14 MS. BELENKY: Project Description.

15 HEARING OFFICER CELLI: Okay. I didn't know.

16 MS. BELENKY: It says on it "Project  
17 Description." And we will be discussing it in Bio as  
18 well, but I kind of need to know what it means first so I  
19 can discuss it later.

20 Okay. For this figure, in the what would be the  
21 southwest corner, there is a section that is in gray and  
22 then has different smaller pieces in it. And under the --  
23 I'm trying to find out what really goes on in that section  
24 according to your -- both during construction and then  
25 during operations and whether it's going to be fully

9



1 fenced and remain fully fenced during operation.

2 Do you see the area I mean? It's sort of a  
3 triangle, and it has both the -- it has the concrete batch  
4 plant in it. It appears to have a water retention basin,  
5 and then I believe it has something else in there, a  
6 quote, unquote, common area, and a unused common area,  
7 which -- so I don't no what that means, and then the CLA,  
8 which I forgot what it means, but I once knew. The lay  
9 down. That's what we call a lay down.

10 MR. GALATI: You are referring to Figure  
11 4? Is that what you're saying?

12 MS. BELENKY: Yeah. Uh-huh.

13 MR. GALATI: If you go to Figure 7 of the  
14 FSA, it actually says what's happening in there.

15 HEARING OFFICER CELLI: What are we looking at  
16 right now? Is this Figure 4 that's on the projector?

17 MS. BELENKY: Do you know which --

18 HEARING OFFICER CELLI: Yes, it is. Project  
19 Description, Figure 4 is what we're looking at.

20 MS. BELENKY: Well, Mr. Galati apparently  
21 thinks I'm looking at the wrong figure.

22 But I would like to know what is happening in  
23 this area, what is happening during construction versus  
24 what is happening during operations. Because the  
25 placement of these things is very sensitive, and I'm

10

1 trying to understand it. It won't be sensitive for the  
2 biological section, but I'm trying to understand what you  
3 intend with what you are calling the unused area?

4 HEARING OFFICER CELLI: And you're talking about  
5 that gray area where it says, "unused"?

6 MS. BELENKY: Yes. It says "unused."

7 HEARING OFFICER CELLI: Do you understand the  
8 question, Mr. Turlinski?

9 MR. TURLINSKI: Yeah. I can just walk  
10 you through the map currently being exhibited. The  
11 overall common area is 208 acres that's made up of --

12 MS. BELENKY: You have how many acres?

13 MR. TURLINSKI: 208 acres.

14 MS. BELENKY: Okay.

15 MR. TURLINSKI: It's made up of  
16 components, there's -- at a common facility. There's a  
17 main access route -- road, if I'm reading off of the  
18 exhibit. The evaporation pond, the batch plant, and the  
19 temporary laid down yard. And you were asking I think for  
20 an idea of what's used during construction versus what's  
21 used during operations.

22 So the evaporation pond, that's an operational  
23 component. That will be there through the lifetime of the  
24 project. The batch plant is a temporary item. That would  
25 not be there through -- the basis for it would be there,

11

1 but the batch plant basically would not be there. That's  
2 a construction item. The temporary lay down yard, that's  
3 essentially there during construction. It would be  
4 preserved probably as, I believe, it's --

5 MS. BELENKY: Is the temporary lay down  
6 area the whole -- just the cross-section in -- in red, or  
7 is it that whole gray area?

8 MR. TURLINSKI: Just the cross-section  
9 referred to as the CLM.

10 MS. BELENKY: Okay. So what is the unused  
11 common --

12 MR. TURLINSKI: That area, going back to  
13 the site it was originally approved, was an area that was  
14 inside. I think -- I think the main component that  
15 delineates this is there's a 161 KBY existing transmission  
16 line. You can see it in yellow. That's the existing  
17 SoCal Edison 161 line, and I believe the previously  
18 approved project was intending to move that line to  
19 include this area in the operational project, basically as  
20 part of the solar field. We have -- we've looked at that.  
21 We've been able to site the project so that we don't have  
22 to move that line with SCE. That allows a fairly large  
23 area that remains part of the project area. We then sited  
24 the specific components, as you said, to be optimized for  
25 operation or for construction within that area.

12

1 MS. BELENKY: Well, what I'm looking at,  
2 just to be clear, is several hundred acres, maybe a large  
3 portion of the 200 acres is unused, and on the other side  
4 of the project, there is pushing into sand habitat. For  
5 example, and I know we're not talking about biology, but  
6 there may be -- I'm just not understanding why you would  
7 have a big basically empty area within your project  
8 footprint that's unused. But it is fenced, fully fenced.  
9 It's not habitat that's available in any way. Yeah, so  
10 that's -- that will come up again in biology, but I don't  
11 understand why it may be in Alternatives.

12 MR. TURLINSKI: Well, I --

13 MS. BELENKY: Why do you have an unused  
14 area of several hundred acres or perhaps --

15 MR. TURLINSKI: Maybe I can't answer  
16 your question, maybe I can. But I think maybe the one  
17 thing you might be referring to is the existing  
18 transmission line. The existing transmission line cannot  
19 have solar field on one side or another side of it, so  
20 that's what's driving the project area and the way the  
21 project is laid out. So that kind of might get to what  
22 you are referring to.

23 MS. BELENKY: It may, but if the original  
24 project was going to move the line, then this is another  
25 change that you are not going move the line; is that

1 correct?

2 MR. TURLINSKI: That's correct. It was  
3 defined in the Project Description. We think it's --

4 MS. BELENKY: But that means that this area  
5 is quote, unquote, unusable by your actual operations.  
6 The mirrors, for example, cannot be in this area. You  
7 just said they can't be on both sides of the line. I'm  
8 assuming it would burn it or something like that, or  
9 interfere in some way either with the line or with your  
10 mirrors?

11 MR. TURLINSKI: That's correct.

12 MS. BELENKY: Okay. And did you --  
13 although this might be an Alternatives question, did you  
14 consider still moving the line and being able to use that  
15 area if you're going to fence it, therefore making it  
16 completely unavailable habitat?

17 MR. TURLINSKI: We absolutely did.

18 MS. BELENKY: But you decided not to?

19 MR. TURLINSKI: This was a preferential  
20 layout.

21 MS. BELENKY: Okay. And we can get to this  
22 later in Alternatives, as well. Okay. That's very  
23 helpful.

24 I have a couple more questions. And this may  
25 be -- I think this goes to my -- just trying to stem the

14

1 -- between Alternatives and Project description here.

2           So if we go to the Supplement A that the Staff  
3 provided on I believe it was Tuesday night or something,  
4 there is a figure in there that is called -- oh, I don't  
5 remember what it's called. Well, actually, there's a  
6 figure in -- it's actually main FSA called Bio 1, which I  
7 think showed the underpasses, but it's also in your  
8 supplemental. Let me find it in the supplemental.

9           Okay. In the supplemental, it's on PDF 35, and  
10 it's called Figure 1 in the Supplemental A, which staff  
11 filed. And then has a TN number of 201006.

12           HEARING OFFICER CELLI: I don't know if  
13 Ms. Anderson is -- did Ms. Anderson get a copy of that  
14 figure?

15           MS. STORA: This is Christine. I  
16 think Hilarie has all of the documents from the FSA.

17           MS. ANDERSON: What was that again?

18           MS. STORA: We are looking for Figure  
19 1 of Supplement A, very back of the document. Not the  
20 very back, but towards the end.

21           MS. BELENKY: Oh, and I do have another  
22 question I can ask while we're waiting for the figure.

23           HEARING OFFICER CELLI: Go ahead.

24           MS. BELENKY: And again, this is going to  
25 go to Alternatives. As we know from the Alternative 2 and

15

1 3 that were -- I think two or three that were permitted by  
2 this commission earlier, the -- there was always this  
3 question of these private lands that are within the  
4 footprint or just next to it that have been driving the  
5 design to some extent, and I just -- I didn't see anything  
6 in there. I might have missed it. It's a lot of  
7 documents.

8 Have you made any efforts -- has the company  
9 made any effort to acquire those lands? Because that was  
10 part of the -- why we had the one, the two or three  
11 before, because if those lands had been acquired, then I  
12 believe two, which was the more environmentally -- or the  
13 less environmentally damaging alternative would have been  
14 required. So has there been any progress on the acquiring  
15 of any of the either inholdings or the ones that are right  
16 next to the project?

17 MR. TURLINSKI: Yes, there has been  
18 efforts made. There's three land parcels. One of them in  
19 the northeast is owned by the project.

20 MS. BELENKY: Northeast?

21 MR. TURLINSKI: Yes, that's where --

22 MS. BELENKY: The one where there's a  
23 little hole?

24 MR. TURLINSKI: The little hole.

25 MS. BELENKY: You own it?

1 MR. TURLINSKI: That's owned by the  
2 project.

3 MS. BELENKY: Then why is it a hole?

4 MR. TURLINSKI: Because the layout  
5 doesn't -- we're not proposing to use it. We're using it  
6 for mitigation purposes.

7 MS. BELENKY: For mitigating what? You own  
8 the little parcel? The company owns the little parcel  
9 that's the circle in the middle here? Is that what you  
10 are saying?

11 MR. TURLINSKI: Yes, I am.

12 MS. BELENKY: And you have proposed it as  
13 mitigation?

14 MR. TURLINSKI: Yes. We have -- the  
15 current layout is what it is. I think it's  
16 self-explanatory, but I can finish answering your  
17 question.

18 MS. BELENKY: Well, this is actually very  
19 important in alternative analysis to know that you  
20 actually control that parcel. It is an important factor.

21 And you can finish answering my question as to  
22 any other private parcels in the area.

23 MR. TURLINSKI: All right.

24 There's then two other parcels that I think you  
25 are referring to in the southeast.

17



1 MS. BELENKY: Yes.

2 MR. TURLINSKI: We've made efforts. We  
3 have one that we currently have under a -- an option to  
4 lease, and one of those parcels, we made efforts and never  
5 made any progress.

6 To shed some light on it, the way our -- our  
7 technology works and the reason that the layout looks the  
8 way it looks is because, one, we were not comfortable with  
9 the concept of beaming over a piece of land that we do not  
10 have control over. So what you'll notice, on the far  
11 eastern flank of the project, that is essentially designed  
12 that way because the inside, the far western private piece  
13 of land, was not able to be obtained, and we continuously  
14 made efforts.

15 MS. BELENKY: So you're -- you are saying  
16 you own a parcel that's under that tail, but not the one  
17 in between? Is that what you are trying to say?

18 MR. TURLINSKI: I believe that's what  
19 I'm saying. There are two more --

20 MS. BELENKY: Are you willing to submit as  
21 to which parcels they are to the record so that we all  
22 have it in front of us --

23 MR. TURLINSKI: Yeah, we can --

24 MS. BELENKY: -- that you have this as the  
25 option and the one that you own.

18

1 MR. TURLINSKI: Yes.

2 MS. BELENKY: I think that would be very  
3 helpful.

4 Okay. So -- and then, I don't know -- oh, we  
5 did get this up here. So -- and this may be more of an  
6 alternative. It's very hard to separate the two. But  
7 the -- what's called 11 and 12, which are two of the  
8 underpasses under the I-10, these are existing  
9 underpasses.

10 HEARING OFFICER CELLI: Let the record reflect  
11 you are response- -- you are referring to FSA Supplement  
12 A, Figure 1.

13 MS. BELENKY: Yes.

14 In your redesign, did you consider pulling your  
15 project back from those underpasses?

16 MR. TURLINSKI: I'm just looking at  
17 which underpasses you are referring to?

18 MS. BELENKY: Eleven and 12. They both go  
19 right up to your project fence.

20 MR. TURLINSKI: The consideration was  
21 primarily an engineering consideration, whether or not the  
22 hydrological aspects would create a solar field that would  
23 not prove viable, so I guess to answer your question, no.  
24 Yes, we did consider it, and no, we did not do it.

25 MS. BELENKY: Okay. Let me just make sure

1 I don't have more questions that then would be considered  
2 to be project -- oh, I do have a question for Staff.

3 On the -- in the FSA, I believe it's Page -- PDF  
4 26, which is only way I can find anything. And this --  
5 this goes to the cumulative scenario that I believe was  
6 used for all the different sections; is that right?

7 MS. STORA: Yes, it was. I'm just  
8 going to assume you're talking about the FSA --

9 MS. BELENKY: Yes, the FSA. And it's --

10 MS. STORA: Which part, please?

11 MS. BELENKY: I can tell you which -- it's  
12 Page 1-22, which is in your executive summary, which is  
13 where the cumulative -- there's a short discussion there  
14 about the cumulative. And at the end of the sentence, it  
15 says that, "The cumulative project list was developed by  
16 Staff in the Fall of 2012 during the Rio Mesa Solar  
17 Electric Generating Facility AFC process and will be  
18 updated in the FSA." But this is, of course, the FSA.

19 So was it updated?

20 MS. STORA: Yes, it was. And that is  
21 an error in the document.

22 MS. BELENKY: And are there -- can you -- I  
23 don't remember seeing something that compared the FSA list  
24 to the earlier PSA list for the cumulative.

25 Do you have -- can you tell us what -- what, if

20

1 any, additional projects were included?

2 MS. STORA: Without both of those  
3 documents in front of me, I could not tell you off the top  
4 of my head. I can tell you that several projects were  
5 added, many were updated because their status had changed,  
6 and several of them, I believe, were deleted because they  
7 were being -- no longer being considered. But I couldn't  
8 tell you exactly what those projects were without those  
9 documents in front of me.

10 MS. BELENKY: Yeah. And these are lists  
11 of -- some of them have many projects on them, so it is a  
12 little bit hard to read the two documents together.

13 Would Staff be willing to provide a -- something  
14 that cross-checks between the two, because it is very hard  
15 for us to figure this out?

16 HEARING OFFICER CELLI: Do you not have Word? I  
17 mean, Word does a compare documents.

18 MS. BELENKY: This is not a Word document.  
19 These are both PDF documents.

20 HEARING OFFICER CELLI: All right.

21 MS. BELENKY: What you get -- what you get  
22 is garbage, and then it takes hours.

23 HEARING OFFICER CELLI: Okay.

24 MS. STORA: Staff can do a document.

25 MS. BELENKY: That would be very, very

21

1 helpful. Thank you so much.

2 I think that might be all I have on Project  
3 Description.

4 HEARING OFFICER CELLI: Okay. Thank you,  
5 Ms. Belenky.

6 Petitioner, anything else on Project  
7 Description?

8 MR. GALATI: Mr. Turlinski, when you were  
9 laying out the project, did you make every effort to stay  
10 within the original footprint?

11 MR. TURLINSKI: Yes.

12 MR. GALATI: Did you go outside the  
13 original footprint except for the natural gas line and the  
14 shift of the transmission line?

15 MR. TURLINSKI: No.

16 MR. GALATI: Is the final Project  
17 Description less acreage than the --

18 MS. BELENKY: I'm sorry, I'm not sure what  
19 you mean by the original, because there's Alternative 2  
20 and Alternative 3, and he's already testified that they  
21 used both -- parts of both. So what is the original in  
22 that --

23 MR. GALATI: I'll -- I'll rephrase.

24 MS. BELENKY: Okay. Thank you.

25 MR. GALATI: You testified earlier that

1 the outside boundary of which you considered laying out  
2 the project was a combination of Alternative 2 and  
3 Alternative 3; correct?

4 MR. TURLINSKI: Yes, I did.

5 MR. GALATI: Did you, when you laid out  
6 the project, go outside that combined boundary of  
7 Alternative 2 and Alternative 3?

8 MR. TURLINSKI: No.

9 MR. GALATI: Except for the natural gas  
10 line and the transmission line?

11 MR. TURLINSKI: That's correct.

12 MR. GALATI: And did you also not develop  
13 and not lay out solar field on pieces of land that were  
14 inside that combined boundary of Alternative 2 and  
15 Alternative 3?

16 MR. TURLINSKI: When you state that --

17 MR. GALATI: Yeah, let me --

18 MR. TURLINSKI: We did not --

19 MR. GALATI: Yeah, let me rephrase. Let  
20 me rephrase.

21 Did you -- does your solar plant encompass all  
22 of the land that is encircled by the outside boundary of  
23 Alternative 2 and 3?

24 MR. TURLINSKI: No, it does not.

25 MR. GALATI: So you removed land from

1 development; correct?

2 MR. TURLINSKI: Correct.

3 Approximately -- approximately 400 acres.

4 MR. GALATI: And the common area, how long  
5 is the common area that's shown, like it is on the map  
6 that Ms. Belenky showed you?

7 MR. TURLINSKI: How long has it been  
8 shown?

9 MR. GALATI: Yes.

10 MR. TURLINSKI: It's -- that's the way  
11 we proposed it, so that's -- I think that's what you're  
12 asking?

13 MR. GALATI: Yes.

14 MR. TURLINSKI: We proposed it as if  
15 that has always been there, as far as I'm concerned, from  
16 a Project Description standpoint.

17 MR. GALATI: And are -- can we call the  
18 FSA up to Figure -- I think it was Figure 7 in the Project  
19 Description, Page 93 of the PDF.

20 Do you have that in front of you, Mr. Turlinski?

21 MR. TURLINSKI: Yeah. Yes.

22 MR. GALATI: Do you see the common area?

23 MR. TURLINSKI: Yes, I do.

24 MR. GALATI: Okay. All the items that you  
25 described in that testimony are shown on that -- that

1 drawing; correct?

2 MR. TURLINSKI: That's correct.

3 MR. GALATI: No further questions.

4 HEARING OFFICER CELLI: Staff?

5 MS. JENNIFER MARTIN-GALLARDO: No questions.

6 HEARING OFFICER CELLI: Anything further,  
7 Ms. Belenky, on Project Description only?

8 MS. BELENKY: Yes. I was just looking at  
9 this figure. It might take me a second.

10 On this figure, Figure 7, does it explain the --  
11 does it list the unused area?

12 HEARING OFFICER CELLI: Ms. Belenky, is this --  
13 is this one of those questions that lawyers ask and they  
14 know it's not listed there?

15 MS. BELENKY: Yes, it is. Because I asked  
16 him about the unused area, it's not listed on here, all it  
17 says is that it's unused.

18 HEARING OFFICER CELLI: And that was on the  
19 other exhibit?

20 MS. BELENKY: Yes. But there's no  
21 explanation provided in the FSA for not using over a  
22 hundred acres, what might be close to 200.

23 HEARING OFFICER CELLI: And, Mr. Turlinski, does  
24 it say unused or not?

25 MR. TURLINSKI: Am I referring

25



1 specifically to Figure 7? Let me take a quick look.

2 HEARING OFFICER CELLI: I should note for the  
3 record that the section that was referred to as an unused  
4 section can be clearly seen on Figure 7.

5 MR. TURLINSKI: Yeah, I guess my answer  
6 is to that is I'm not seeing the word "unused," but it  
7 is -- I did want to clarify, what I'm looking at is --  
8 it's fully fenced in, so it is part of the project  
9 description and part of the project boundary.

10 HEARING OFFICER CELLI: But they didn't use the  
11 word "unused"?

12 MS. BELENKY: Well, there is no information  
13 about what that section is used for.

14 HEARING OFFICER CELLI: Okay.

15 MS. BELENKY: Or why it's within the  
16 project boundary.

17 Thank you. I think those were all of my  
18 questions. Thank you.

19 HEARING OFFICER CELLI: Staff? Anything further  
20 on Project Description?

21 MS. JENNIFER MARTIN-GALLARDO: No.

22 HEARING OFFICER CELLI: Petitioner?

23 MR. GALATI: I'd like to move my exhibits  
24 in.

25 HEARING OFFICER CELLI: Please.

1                   Petitioner's motion?

2                   MR. GALATI: I'd like to move in Exhibit 3  
3 and Exhibit 1000- -- excuse me, 1003 and 1076.

4                   HEARING OFFICER CELLI: Is that all?

5                   MR. GALATI: That's it for Project  
6 Description.

7                   HEARING OFFICER CELLI: The motion is to move  
8 exhibits marked for identification as 1003 and 1076 into  
9 evidence.

10                  Any objection to the receipt of that entered by  
11 Staff?

12                  MS. JENNIFER MARTIN-GALLARDO: No objection.

13                  HEARING OFFICER CELLI: Any objection by CBD?

14                  MS. BELENKY: No objection.

15                  HEARING OFFICER CELLI: Okay. And the record  
16 should reflect all the other parties have left for the  
17 evening.

18                  Those exhibits, 1003 and 1076 are moved into  
19 evidence.

20                  Staff, do you have a motion to enter exhibits?

21                  MS. JENNIFER MARTIN-GALLARDO: I do. I'd like  
22 to move into evidence Exhibit 2000, 2001, 2003, 2008.

23                  HEARING OFFICER CELLI: Does that include -- or  
24 did -- did Staff move -- or is Staff going to move that  
25 desert tortoise fencing supplemental --

27

1 MS. JENNIFER MARTIN-GALLARDO: That's 2008.

2 HEARING OFFICER CELLI: Okay. So that's all of  
3 them, then.

4 So the motion is to move Exhibits 2000, 2001,  
5 2003, and 2008 into evidence.

6 Any objection by Center for Biological  
7 Diversity?

8 MS. BELENKY: We are only concerned that it  
9 was late filed, that 2008 was late filed, and that other  
10 parties be given latitude if we want to repackage other  
11 testimony and late file it, as well.

12 HEARING OFFICER CELLI: So I'm -- the objection  
13 is untimeliness, I guess?

14 MS. BELENKY: Yes.

15 HEARING OFFICER CELLI: Refined down.

16 Any offer of proof from the Staff with regard to  
17 the objection that -- to Exhibit 2008 for untimeliness?

18 MS. JENNIFER MARTIN-GALLARDO: I would just  
19 restate what we stated at the prehearing conference that  
20 this was an issue that was raised by Caltrans and the  
21 Staff's effort to accommodate a sister agency. We -- we  
22 acknowledge the timing is what it is.

23 HEARING OFFICER CELLI: Any objection from  
24 Petitioner for 2000, 2001, 2003, and 2008?

25 MR. GALATI: None.

28

1 HEARING OFFICER CELLI: Okay. Exhibits 2000,  
2 2001, 2003 are admitted. The objection to Exhibit 2008 is  
3 overruled. We're going to allow 2008 to come in. With  
4 that --

5 MR. GALATI: Mr. Celli, I apologize. I  
6 don't normally do this, but I missed some of my exhibits  
7 again for the Project Description. I need to make another  
8 motion.

9 HEARING OFFICER CELLI: And what numbers are  
10 those?

11 MR. GALATI: 1008, 1023, 1028, 1039, 1077  
12 and 1078. Apparently, if you push this little button, it  
13 pages down to the next page.

14 HEARING OFFICER CELLI: Okay. The motion is to  
15 move Exhibits 1008, 1023, 1028, 1039, 1077, and 1078 into  
16 evidence.

17 Any objections, Staff?

18 MS. JENNIFER MARTIN-GALLARDO: No objection.

19 HEARING OFFICER CELLI: Any objection, CBD?

20 MS. BELENKY: No objection.

21 HEARING OFFICER CELLI: Those Exhibits, 1008,  
22 1023, 1028, 1038, 1077, and 1078 are received into  
23 evidence.

24 MR. GALATI: Thank you, Mr. Celli.

25 HEARING OFFICER CELLI: Okay. The Project

1 Description witnesses may be excused and -- and we are  
2 now -- it's 5:58. In two minutes we are going to have  
3 public comment. The record should reflect that a lot of  
4 the people who were here are no longer here, including the  
5 parties.

6 I have Seth Shteir. Here is Seth Shteir.

7 Come on up to that microphone right there,  
8 please, sir, and go ahead and address the committee.

9 MR. SETH SHTEIR: Commissioners and Staff, thank  
10 you for the opportunity to make this public comment. My  
11 name is Seth Shteir, and I work for the National Parks  
12 Conservation Association, and we'd like to go on the  
13 record as saying we're concerned about this project's  
14 impact to both visual resources and avian resources in  
15 Joshua Tree National Park.

16 So Joshua Tree National Park was created on  
17 August 10th, 1936, actually, it's a national monument, by  
18 Franklin Delano Roosevelt. And in 1994, it gained  
19 national park status. And the park is really the  
20 conversions of three distinct desert ecosystems; the lower  
21 Colorado Desert where it meets with the Mojave Desert and  
22 the Little San Bernardino Mountains.

23 And so this meeting of the three desert  
24 ecosystems is really a special environment, and it's also  
25 the place where people come from around the world to rock

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1 climb, hike, and stargaze. And, in fact, in 2010, we had  
2 1.4 million recreational visits, and those recreational  
3 visitors infused local economies with \$38 million and  
4 supported over 500 jobs.

5           So the point being is that to protect our  
6 national parks like Joshua Tree, it is not only an  
7 environmental imperative, but economic imperative. And  
8 we're very concerned that the current project threatens  
9 both of avian resources and visual resources.

10           So I'd like to start by talking a little bit  
11 about how the project impacts the Park's visual resources,  
12 and in your Final Staff Assessment, it indicates that it  
13 will have a substantial adverse impact to the existing  
14 scenic resource values as seen from several viewing areas  
15 and key observation points in the project's vicinity and  
16 Chuckwalla Valley area, including Joshua Tree National  
17 Park's federally designated wilderness back country to the  
18 west and northwest of the project plan.

19           You've got two key observation points that are  
20 listed in the Final Staff Assessment, KOP 1 and 2, that  
21 are supposed to be representative of impacts to Joshua  
22 Tree National Park, and yet I'd like to first point out  
23 that according to your maps, the impact to the park is  
24 actually a lot greater in terms of visual resources. And  
25 really, that is a concern for those of us who love the

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1 park, because in 2010 -- maybe the commissioners are  
2 familiar with the Idaho -- University of Idaho Visitor Use  
3 Survey, and that was where we surveyed -- interviewed  
4 visitors at Joshua Tree, and they found that 91 percent of  
5 those groups rated as high or extremely high views without  
6 developments as reasons why they were coming to the park.  
7 And, in fact, 81 percent of those groups graded wildlife  
8 as significant. Both things that this project jeopardizes  
9 in terms of Joshua Tree National Park.

10           So to turn a minute to avian resources, you  
11 know, Joshua Tree National Park has about 250 reported  
12 species of birds, and lies in an inland portion of the  
13 Pacific Flyway. The proposed Palen Solar Power Project  
14 would adversely impact Joshua Tree National Park's  
15 migrating foraging eagles, as well as special status avian  
16 species.

17           The California Energy Commission Final Staff  
18 Assessment of the Palen Project states that construction  
19 and operation of the proposed project or its alternatives  
20 could result in death or injury of these birds, meaning  
21 migrating or resident birds. Death or injury will result  
22 from solar flux in the project's solar panels that with a  
23 water-like mirage impact that results in avian collisions  
24 and mortality. Additionally, the project's evaporation  
25 pond will likely attract bird and bat species, increasing

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1 collisions with the project infrastructure.

2           The species which will be adversely affected by  
3 this project include fully-protected species like Bald  
4 Eagles, Gold Eagles, Peregrine Falcons and Yuma Clapper  
5 Rail, and special-status avian species including Gilded  
6 Flicker, Elf Owl, Osprey, Ferruginous Hawk, Burrowing Owl,  
7 Sharp-Shinned Hawk, Northern Harrier, Prairie Falcon,  
8 Swainson's Hawk, Harris Hawk and Short-Eared Owl.

9           The Final Staff Assessment concluded that  
10 mortality or other takes, such as sublethal injury caused  
11 by burning or blinding through exposure to flux, would be  
12 significant under the California Environmental Quality  
13 Act, and goes on to say that Staff cannot quantify the  
14 potential risk of these effects.

15           And I'd just like to raise a question that if we  
16 can't quantify the impacts, or the probable impacts, you  
17 know, what -- what guides good decision-making related to  
18 this project right now? I'm really concerned about these  
19 impacts.

20           And finally, you know, it lists that the  
21 cumulative impacts to avian species would be cumulatively  
22 considerable.

23           So my comments tonight are mainly directed at  
24 impacts directly related to Joshua Tree National Park,  
25 both avian and also visual. And these comments are shared

33



1 by the Wildlands Conservancy, as well. And I thank you  
2 for the opportunity to make them.

3 HEARING OFFICER CELLI: Thank you, Mr. Shteir.  
4 It's good to see you in person. Thank you for coming down  
5 here and giving your comments today.

6 Dr. Roberts or Alana Matthews -- I'm getting a  
7 no -- shaking his head no from Dr. Roberts that there are  
8 no further commenters here today.

9 I'm going to go to the phone. I'm going to  
10 unmute all the participants and ask if there's anybody on  
11 the telephone at this time that would like to make a  
12 public comment, please speak up.

13 Anyone? There's several people on the phone.  
14 Anyone want to make a public comment at this time?

15 Okay. It's 6:05 p.m., and hearing none, then  
16 I'm just going to take a moment and confer with the  
17 commissioners for a second.

18 (A discussion was held off the record.)

19 So at this time, let's call the witnesses for  
20 Soil and Water. We have two issues left, Soil and Water  
21 and Alternatives.

22 So the witnesses for Soil and Water, if you  
23 would please come forward and take a seat at the witness  
24 table. See if we can squish together there. I guess  
25 that's okay.

1 Ms. Anderson, go ahead and have a seat right  
2 there.

3 Do we have any witnesses that are going to be on  
4 the phone for Soil and Water from any parties?

5 MR. GALATI: Not from petitioner.

6 HEARING OFFICER CELLI: Staff?

7 MS. JENNIFER MARTIN-GALLARDO: No.

8 HEARING OFFICER CELLI: CBD, are you calling any  
9 witnesses on the phone?

10 MS. BELENKY: We have a live witness.

11 HEARING OFFICER CELLI: Okay. For Soil and  
12 Water and Alternatives, we're all here. Very good.

13 Now, I have Mr. Stucky and Mr. Turlinski, you're  
14 both already under oath.

15 I need Ms. Anderson, please stand.

16 And your name is?

17 MS. MARYLOU TAYLOR: Marylou Taylor, Energy  
18 Commission Staff.

19 HEARING OFFICER CELLI: Marylou Taylor.

20 Please stand, raise your right hand.

21 Do you solemnly swear to tell the truth, the  
22 whole truth, and nothing but the truth under penalty of  
23 perjury under the laws of the State of California?

24 (All answered affirmatively.)

25 HEARING OFFICER CELLI: Thank you. Please be

35

1 seated. Again, I'm going to let CBD start, but I would  
2 ask, Ms. Belenky, that perhaps if you can just let  
3 Ms. Anderson sort of run with the ball as much as  
4 possible, so rather than start this off with an inquiry of  
5 all the witnesses, let's just go to the issues regarding  
6 Soil and Water.

7 MS. BELENKY: I'm not -- first of all, I  
8 feel like you are chastising me for the last section, but  
9 that's not appropriate because we didn't have a witness.

10 HEARING OFFICER CELLI: I -- that is not --

11 MS. BELENKY: Ms. Anderson is perfectly  
12 capable of providing her own testimony.

13 HEARING OFFICER CELLI: Okay. Thank you. Good.

14 Ms. Anderson, what is the Center for Biological  
15 Diversity's position with regard to Soil and Water?

16 MS. ILEENE ANDERSON: Okay. Some of my  
17 outstanding issues are the following: I'm concerned that  
18 this new proposed project footprint actually increases the  
19 impact to take jurisdictional waters from 312 to 374.7,  
20 which is about a 20 percent increase. And I'm actually  
21 wondering if there is 1100 acres plus of state waters  
22 that's available for acquisition, and then what the  
23 mechanism is for conserving them in perpetuity? That's a  
24 condition of certification at three to one mitigation, but  
25 there's no real guarantees that that is actually an

1 actionable condition of certification.

2 And certainly, then, the question, since this is  
3 mitigation for impacts, the question then becomes, well,  
4 how do you preserve that in perpetuity? And that also has  
5 remained an unanswered question.

6 Do you want me to go through these? I have two  
7 other points that I need -- that I'd like to make. Do you  
8 want me to go through those in completion, and then talk  
9 about each one of them separately, or do you want to have  
10 the discussion, or whatever is appropriate?

11 HEARING OFFICER CELLI: What I'd like to do is  
12 be able to know what are the issues that we need to tackle  
13 first.

14 MS. ILEENE ANDERSON: Okay.

15 HEARING OFFICER CELLI: And then you can have  
16 the floor and describe your position on those issues, and  
17 then we'll let the other parties speak to that. But I  
18 really want to be able to say, issue one is this, issue  
19 two is this.

20 MS. ILEENE ANDERSON: Okay. I have two more.

21 HEARING OFFICER CELLI: The first point being  
22 the increased footprint of jurisdictional water.

23 MS. ILEENE ANDERSON: Yes. And the efficacy of  
24 mitigation.

25 HEARING OFFICER CELLI: Okay.

1                   MR. GALATI: I apologize. Those two  
2 issues can properly be addressed by our biology witnesses.  
3 It's just how we normally -- we map jurisdictional -- I  
4 apologize. I don't -- I know you are going to be here  
5 tomorrow, but Alice will be here and she actually mapped  
6 it, and then, when we get to mitigation and what kind of  
7 work has been done to try to locate lands -- I don't think  
8 this is the right section.

9                   HEARING OFFICER CELLI: That's true. Actually,  
10 jurisdictional waters is handled in biology.

11                   MS. ILEENE ANDERSON: And then I apologize for  
12 that. And a lot of times I see these issues as very  
13 overlapping.

14                   HEARING OFFICER CELLI: So is that acceptable to  
15 you, Ms. Anderson?

16                   MS. ILEENE ANDERSON: Yes, I'm going to be here  
17 tomorrow. I'll be happy to state the same thing and have  
18 the same questions answered.

19                   Then my other question, and this is specific to  
20 water -- or another question, and we can -- we can talk  
21 about cryptobiotic soil and whether or not this is the  
22 place.

23                   But the question that I have relating to water  
24 is -- and this is one that we also discussed in the  
25 workshop, but I didn't get a clear answer on -- is -- this

1 project is requiring a 201-acre feet per year for  
2 operations, and the Hidden Hills SEGS Project, which is,  
3 to me, a very remarkably similar project with two towers,  
4 etc., only was going to require a 140-acre feet per year.

5 And because the technology and the projects seem  
6 so very close, if not identical, I'm concerned about the  
7 water resources and that extra water that's being required  
8 for this project, where it wasn't being asked for in the  
9 Hidden Hills Project. And, you know, of course my concern  
10 always comes back to biology, because I'm a biologist, but  
11 you know, desert water is a really precious resource.

12 So --

13 HEARING OFFICER CELLI: So that's Issue Number

14 1.

15 MS. ILEENE ANDERSON: That is now Issue Number

16 1.

17 HEARING OFFICER CELLI: Okay. Why the increase?

18 And you also mentioned cryptobiotic soil --

19 MS. ILEENE ANDERSON: Yeah.

20 HEARING OFFICER CELLI: -- which is also

21 biology.

22 MS. ILEENE ANDERSON: Okay. Because, you know,  
23 they're actually -- you know -- okay, they're living, but  
24 they're on the soil, so I'll save that one for, then,  
25 tomorrow.

1 HEARING OFFICER CELLI: Biology.

2 So anything else on soils and water?

3 MS. ILEENE ANDERSON: No, that's it. Then I  
4 guess I just have one.

5 HEARING OFFICER CELLI: Okay. So the question  
6 was the observation was made that there were 201 acre-feet  
7 of water estimated to be used by the PSEGS Project, the  
8 Hidden Hills Project estimated a 140-acre foot per year  
9 use of the water. Why the increase?

10 Should we turn this over to the Applicant's or  
11 Staff's witnesses?

12 MR. GALATI: We'll hear from the Applicant  
13 first.

14 MR. TURLINSKI: Yeah, I'm happy to try  
15 to answer that.

16 The difference between the Hidden Hills  
17 application and the Palen application, that pertains to  
18 water, primarily is location. Just when you go through  
19 the meteorological regime from mirror washing, so zooming  
20 in on mirror washing, mirror washing amounts expected for  
21 this size solar field in this particular area require a  
22 little more water.

23 And just for the record, the previously approved  
24 project was a 300-acre feet. We tried as much as possible  
25 to minimize that number, and then asked for a revised

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1 number, which is 201 feet, and then we find out Hidden  
2 Hills was asking for 140 feet. It is a vastly different  
3 wind regime and primarily a totally different  
4 meteorological regime.

5 So that's my attempt at an answer.

6 HEARING OFFICER CELLI: Did Staff, did you want  
7 to weigh in on that?

8 And I need you to step right -- get right up on  
9 that microphone and answer it.

10 MS. MARYLOU TAYLOR: I don't have an answer to  
11 specifically why Hidden Hills is using less water than  
12 Palen, but from my analysis and my FSA, because the  
13 project uses smaller volumes of water compared to the  
14 approved project that -- excuse me, then I didn't see the  
15 need to make the conditions more strict or to add any  
16 additional conditions compared to the approved project.

17 HEARING OFFICER CELLI: Ms. Anderson?

18 MS. ILEENE ANDERSON: I guess I have a question  
19 with regards to the hydrological regime, because the  
20 Hidden Hills Project was -- was much farther north in the  
21 northern part of the Mojave where granted we get some  
22 monsoonal moisture during the summer, it's nothing like  
23 what is experienced in the Chuckwalla Valley where the  
24 project is proposed.

25 And so I'm not really understanding why -- I



1 mean, generally speaking, the Colorado Desert is a little  
2 bit, you know, wetter, and so I'm not understanding, you  
3 know, is it the existing dust conditions there that would  
4 require more washing, as well as, you know, natural  
5 washing by the rainfall?

6 MR. TURLINSKI: I'm not a hydrologist  
7 and I'm not a meteorologist, but when -- when our team,  
8 our engineering team put this together, yes, the answer is  
9 primarily yes, wind, which creates dust and dust  
10 conditions.

11 MS. BELENKY: I just want to say I think  
12 this is the water resource, and then we did have some  
13 water surface hydrology discussions -- questions about the  
14 conditions.

15 HEARING OFFICER CELLI: Okay. What are your  
16 questions, Ms. Belenky?

17 MS. BELENKY: Well, and Ms. Anderson can  
18 probably explain this better, but the original project  
19 proposal required that as water moved across the site at  
20 the back end, so to speak, it would mimic as close as  
21 possible, I think, the natural flow. I don't --

22 MS. ILEENE ANDERSON: Thank you. I forgot that.

23 So I think this is a question for Staff. So on  
24 the original project, the -- they had engineered channels  
25 that moved the water through the site, and as part of one

1 of the conditions and certifications, there was a  
2 requirement to have the waters, as they left the site,  
3 mimic the off site existing hydrology so that there  
4 weren't any downstream impacts. And they were going to  
5 use diffusers to do that.

6 And, I'm sorry, Lisa, can you tell me what  
7 condition of certification that was?

8 MS. BELENKY: Oh, I don't remember. Oh,  
9 wait. Maybe I have it.

10 MS. ILEENE ANDERSON: I think it's --

11 MS. BELENKY: Oh, yeah. I think it was --  
12 was it in the RSA, I guess, Condition 17?

13 MS. ILEENE ANDERSON: Yes, 17. And so that was  
14 deleted from the --

15 MS. BELENKY: No, no, maybe it was 14,  
16 sorry.

17 HEARING OFFICER CELLI: Okay. So I want to --  
18 we're -- I don't -- I'm not really interested in getting  
19 into the old project except for, perhaps, comparison,  
20 comparing it to the --

21 MS. ILEENE ANDERSON: Well, it isn't a  
22 comparison, it's that that condition of certification was  
23 deleted.

24 HEARING OFFICER CELLI: Okay.

25 MS. ILEENE ANDERSON: And so I am concerned

1 that -- that -- you know, that the project -- and I  
2 recognize that the project is trying to maintain the  
3 hydrology across the site, but still to have the condition  
4 that effectively assures downstream impacts won't occur if  
5 there is ever a change in the hydrology because of  
6 something that happens 20 years from now and something  
7 gets changed, I'm -- just was wondering why that condition  
8 was deleted, if it was an oversight, because that whole  
9 condition was deleted, or what?

10 HEARING OFFICER CELLI: Ms. Taylor, go ahead.

11 MS. MARYLOU TAYLOR: This is Marylou Taylor.

12 There were several conditions that were deleted  
13 because they were in relation to the engineered channels.  
14 And I looked through them to see if anything in them would  
15 also relate to the new proposed project. I didn't see  
16 anything.

17 So to answer your last question, that portion of  
18 the condition that you are speaking of, that since the  
19 whole condition was deleted, that part was also deleted.

20 But to your comments that the original approved  
21 project would mimic the downstream of water patterns from  
22 a project not being there at all -- is that -- is that  
23 what you're -- is that the part that you wanted also  
24 reflected, hopefully, in this project?

25 MS. ILEENE ANDERSON: Yes.

1           MS. MARYLOU TAYLOR: Okay. Let me see how I can  
2 answer that.

3           As you mentioned with the flow through, that in  
4 itself would be much closer of a flow pattern in the  
5 existing -- existing no project condition. And when you  
6 put those three large engineered channels that concentrate  
7 the flow, and even though you -- or even though the  
8 project -- or proposed project -- sorry, the approved  
9 project, even though the approved project said that they  
10 would put diffusers at the end of those channels, that is  
11 the best that they can do to disperse the water as close  
12 as they could to original ground.

13           With this new proposed project with the solar  
14 towers, because water is allowed to flow through it, that  
15 actually mimics much closer than what diffusers at the end  
16 of engineered channels would do.

17           So your question is whether -- why I didn't put  
18 that, putting of the diffuser at the end of the downstream  
19 of the project, because I saw -- I felt that the new  
20 proposed project closely mimicked what is out there  
21 existing, so I didn't see the need to do that.

22           MS. ILEENE ANDERSON: Okay. I guess my point  
23 was, when I was looking at the old project, it wasn't so  
24 much the diffusers, it was the language in the condition  
25 of certification that said that the off site hydrology

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1 would be maintained. And I really liked that because I  
2 thought that that made assurances and something that could  
3 be pointed to with regards to the off site impacts. And  
4 so, you know, I just think that by losing that condition  
5 of certification, we lost a very important thing, really  
6 not having as much to do with the mechanism, like  
7 diffusers, but the off site impacts.

8 MS. MARYLOU TAYLOR: Okay. Marylou Taylor.

9 I understand that. What might -- what might  
10 address your concern, I did include a condition specific  
11 to this new technology, and I called it, I want to say,  
12 Soil and Water 20, Soil and Water 20, which is the storm  
13 water damage monitoring and response plan. There is a  
14 section in here, and it's kind of long, but there's a  
15 section in here saying that the petitioner shall monitor  
16 and make sure that the area downstream of the project was  
17 not -- was not significantly impacted through sediment or  
18 erosion. And I think that language is in here somewhere.  
19 So --

20 MS. JENNIFER MARTIN-GALLARDO: If you'd like to  
21 take some time to find that, you're welcome to.

22 MS. MARYLOU TAYLOR: Thank you. Hold on. I  
23 found it.

24 Soil and Water 20. It is on PDF Page 4.9-129.  
25 Although this covers more of the response to any potential

1 damage as a result of a very large flood event, there is a  
2 bullet here that says, "A plan to monitor and inspect  
3 periodically before our first seasonal and after each  
4 storm event," one of the bullets says, "adjacent off site  
5 downstream property inspect for changes in the surface  
6 texture and quality from sediment buildup, erosion or  
7 broken glass."

8           That even though it doesn't specifically say try  
9 to match the existing hydrology as much possible, I think  
10 this probably is much easier to -- to -- so there's --  
11 you've got something that you can check to inspect,  
12 something that you can report and you can track and  
13 document. I'm hoping that this is what could hopefully  
14 address your concern on that.

15           MS. ILEENE ANDERSON: Well, I don't think that  
16 it gets to the issue of -- I mean, you know, erosion  
17 happens, and a lot of times it's not a bad thing from  
18 someone like my viewpoint. And so I don't think that that  
19 is as comprehensive as what was in the original condition  
20 of certification that was deleted, and I'm hoping that  
21 there might be an opportunity to insert that somewhere,  
22 really is what I'm asking.

23           HEARING OFFICER CELLI: Okay. I just -- I'm  
24 going to ask whether -- Ms. Belenky or Ms. Anderson,  
25 whether CBD -- did we receive any proposed language or

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1 modification letter with a particular -- anything to Soil  
2 and Water conditions at all?

3 MS. BELENKY: I don't think we did. We  
4 reserved the right to provide modifications to conditions  
5 after the hearing, because we found in the past it's a  
6 moving target and it's a lot of work to go through all the  
7 conditions and do our edits.

8 HEARING OFFICER CELLI: So that's a "no"?

9 MS. BELENKY: That's a "no." We did  
10 provide for a couple of them, but not for this one.

11 HEARING OFFICER CELLI: Okay. Good. Thank you.

12 So where are we at with regard to Soil and  
13 Water? Are you -- you are satisfied that Staff's  
14 condition doesn't contain the information that you are  
15 looking for, Ms. Anderson, so we've taken that as far as  
16 we can at the moment.

17 You got your answer regarding the AF- -- the  
18 difference between Hidden Hills and this one.

19 Is there anything else, any other issues on soil  
20 and water?

21 MS. BELENKY: Well, I have two questions  
22 for Staff that are not testimony questions for Staff.

23 HEARING OFFICER CELLI: Go ahead.

24 MS. BELENKY: Okay. So the first one is --  
25 and this relates to the earlier discussion about the

1 cumulatives that we were having a little bit of trouble  
2 tracking. We went back -- I went back to the RSA, and  
3 there is a very short, like less than a sentence,  
4 discussion about groundwater cumulative impacts there, and  
5 I didn't see any new groundwater impacts cumulative  
6 discussion. And although the -- the Eagle Mountain Pump  
7 Storage Project is listed as cumulative, it's really hard  
8 to tell whether it was actually considered.

9 MS. MARYLOU TAYLOR: The Eagle Mountain Pump  
10 Storage Project was considered on Page 4.9-73. I have  
11 that on the top of my table of foreseeable projects and  
12 anticipated water use.

13 MS. BELENKY: So it's considered in the  
14 total of your cumulative impacts.

15 And then was there any -- I can just say, the  
16 only analysis we could find was in the old RSA, Page 9-2,  
17 and it was literally less than a sentence. And I'm just  
18 wondering if you did any new cumulative groundwater  
19 analysis in the new FSA?

20 MS. MARYLOU TAYLOR: Yes, when I -- when I  
21 looked at the updated list of projects, and some of them  
22 at the -- my -- the time that our project was being  
23 analyzed, those other projects had completed final EIS  
24 documents, and one project was actually approved by the  
25 commission, which is the Genesis Project, so I had more



1 refined numbers for several of those. And some projects  
2 were deleted and a couple projects were added. And the  
3 list of projects on Page 4.9-73 is the projects that I  
4 considered for groundwater cumulative.

5 MS. BELENKY: Yeah, I'm just trying to  
6 understand, did you make a new -- was there new text  
7 related to cumulatives? Because I couldn't find it, as I  
8 looked through the FSA.

9 MS. MARYLOU TAYLOR: Yes. Any text?

10 MS. BELENKY: I think you said it's just  
11 that the water used by this project is less, but there  
12 wasn't anything saying what the cumulative impacts in the  
13 area are.

14 So you are saying you looked at additional  
15 projects, took some off the list, things changed, but what  
16 I didn't see was a new analysis of that.

17 MS. MARYLOU TAYLOR: The -- the table on --

18 MS. BELENKY: Just the table, but no  
19 discussion --

20 MS. MARYLOU TAYLOR: Yeah.

21 MS. BELENKY: -- summarized your findings?

22 MS. MARYLOU TAYLOR: Well, the table has a row  
23 on the bottom that totaled the cumulative impacts of all  
24 those projects. I didn't repeat those numbers in the  
25 narrative under groundwater, but I did refer to Table 21.

1 MS. BELENKY: Okay. So you would say that  
2 your statements in the RSA remain, that you didn't change  
3 your conclusions as to cumulative impact?

4 MS. MARYLOU TAYLOR: Well, the conclusions  
5 didn't change after I reanalyzed a new list of foreseeable  
6 projects, and they just happen to be the same conclusions  
7 that the RSA had.

8 MS. BELENKY: Well, that's what I'm trying  
9 to -- so the conclusions back in the RSA, and that's what  
10 we can look at as your conclusions as to cumulative  
11 impacts?

12 MS. MARYLOU TAYLOR: Well, my numbers have  
13 updated. The water usage and the timing for -- of the  
14 foreseeable projects have been updated from the RSA, and  
15 the projects listed have all been updated. So although  
16 both conclusions ended up being the same, which was it was  
17 not -- it was not a significant cumulative impact, my  
18 analysis was updated for information after the RSA.

19 MS. BELENKY: Okay. Thank you. I think  
20 that's explains it.

21 And then I did have one question, and this  
22 relates to the letter from the Colorado River Board. I'm  
23 not an expert on the Colorado River Board jurisdiction or  
24 this issue of the -- I'll get it wrong -- well, the issues  
25 that they raised, but it just doesn't seem to me that

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1 there was any response to that in the FSA, and I think  
2 they had raised the same issue about the water previously.

3 My understanding is that the FSA, again,  
4 suggests mitigation measures like taking out tamarisks,  
5 but does not go back to this Colorado River Board letter  
6 or the issue they've raised before about the need to  
7 actually secure water rights. And I would imagine this is  
8 laborious, but again, it's not my -- necessarily my area  
9 of expertise, and I found it very confusing.

10 MS. MARYLOU TAYLOR: On Page 4.9-96 of my FSA, I  
11 did have a response to the Colorado River Board's comment  
12 that they dated on July 29th of 2013. I described that  
13 because their rule for the accounting surface, which is I  
14 think the term you were looking for, they were -- they  
15 were in the process of developing a rule to determine  
16 whether or not a water user would be consuming water with  
17 direct impact to the Colorado River.

18 When the approved project went through at that  
19 time, the rule from the Bureau of Land Management did not  
20 have a rule in place. And when I analyzed it this time  
21 around for the proposed project, a rule still had not been  
22 put into place and there was no schedule of when it would  
23 be anticipated.

24 So in my response, I explained why I did not  
25 require that, because there's no standard or no

1 requirement specifically spelled out the way that they  
2 would do that. But I did also add --

3 MS. BELENKY: I'm confused. I just want to  
4 make sure I understand. The board is saying --

5 HEARING OFFICER CELLI: One moment, Ms. Belenky.  
6 I want her to finish her answer.

7 Go ahead.

8 MS. MARYLOU TAYLOR: I do want to add that  
9 should this project be approved and they are required to  
10 submit a water offset plan, that we will coordinate with  
11 the Colorado River Board for them to review and comment on  
12 this. And we intend to work with them to see if this is a  
13 plan that they could -- they could be happy with.

14 MS. BELENKY: Okay. Sorry, I didn't mean  
15 to interrupt. I'm just confused because the board is  
16 saying you need to secure these rights, and your position  
17 is that they don't. And but I don't understand that.

18 MR. GALATI: I'm going to object. It's  
19 asked and answered.

20 HEARING OFFICER CELLI: Sustained.

21 And it's also -- we were going to ask -- we're  
22 like four or five questions after the two questions you  
23 were going to ask several question ago. So how many more  
24 questions do you have?

25 MS. BELENKY: Actually, I've only asked two

1 questions, two issues. I -- I really am exactly going by  
2 what I had written here, I'm exactly going by what I said  
3 I would ask about.

4 HEARING OFFICER CELLI: How many more do you  
5 have?

6 MS. BELENKY: In fact, I have no more  
7 questions.

8 HEARING OFFICER CELLI: Okay. Petitioner?

9 MR. GALATI: No questions.

10 HEARING OFFICER CELLI: Staff?

11 MS. JENNIFER MARTIN-GALLARDO: No questions.

12 HEARING OFFICER CELLI: Okay. And at this time,  
13 is there a motion by Petitioner for Soil and Water?

14 MR. GALATI: Yes, I'd like to move in --  
15 and I'll make sure I don't page down this time -- Exhibit  
16 1003, 1004, 1005, 1009, 1010, 1011, 1021, 1039, 1041,  
17 1053, 1057, and 1076. I'd like to move those exhibits  
18 into evidence, please.

19 HEARING OFFICER CELLI: Are you sure you got  
20 them all, including --

21 MR. GALATI: I am absolutely positive this  
22 time.

23 HEARING OFFICER CELLI: Okay. The motion is to  
24 move into evidence Exhibit 1003, Exhibit 1004, 1005, 1009,  
25 1010, 1011, 1021, 1039, 1041, 1053, 1057, and 1076.

1           Any objection to the admission of that evidence  
2 from Staff?

3           MS. JENNIFER MARTIN-GALLARDO: No.

4           HEARING OFFICER CELLI: Any objection from CBD?

5           MS. BELENKY: No.

6           HEARING OFFICER CELLI: Those exhibits are  
7 received.

8           Staff, do you have a motion?

9           MS. JENNIFER MARTIN-GALLARDO: I'd like to move  
10 into evidence Exhibit 2000, 2002, and 2008.

11          HEARING OFFICER CELLI: Any objections, CBD?

12          MS. BELENKY: No.

13          HEARING OFFICER CELLI: Any objection,  
14 Petitioner?

15          MR. GALATI: No.

16          HEARING OFFICER CELLI: Exhibits 2000, 2002, and  
17 2008 are received.

18          Center for Biological Diversity, do you have a  
19 motion with respect to evidence on Soil and Water?

20          MS. BELENKY: Well, we would move into --  
21 Exhibit 3000 and Exhibit 3001. I believe those are the  
22 two.

23          Thank you.

24          HEARING OFFICER CELLI: Any objection to the  
25 admission of 3000 and 3001, Petitioner?

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1 MR. GALATI: No.

2 HEARING OFFICER CELLI: Any objection, Staff?

3 MS. JENNIFER MARTIN-GALLARDO: No.

4 HEARING OFFICER CELLI: Exhibits 3000 and 3001  
5 are received.

6 That finishes Soil and Water for these  
7 evidentiary hearings.

8 The last topic we have left is Alternatives.  
9 According to my notes from the Prehearing Conference  
10 Statement, Alternatives was the issue that Petitioner had,  
11 Staff had, Center for Biological Diversity, I also had  
12 Basin and Range Watch and the Colorado River Indian Tribes  
13 as having issues. But I guess they didn't have evidence,  
14 so they took off.

15 So but Alternatives, Staff now can -- I'm sorry,  
16 Staff and Petitioner, is there a dispute between Staff and  
17 Petitioner at this time on Alternatives?

18 MR. GALATI: No. We stood on our  
19 declaration.

20 HEARING OFFICER CELLI: Then, I'm going to --  
21 first of all, are these the same witnesses we have?

22 I'll excuse the Soil and Water witness. Thank  
23 you.

24 Ms. Anderson, you're here on Alternatives?

25 MS. ILEENE ANDERSON: Yes.

1 HEARING OFFICER CELLI: Are there other any --  
2 any other Alternatives witnesses for Petitioner?

3 MR. GALATI: No. Just Charles Turlinski.

4 HEARING OFFICER CELLI: Okay. Staff?

5 MS. JENNIFER MARTIN-GALLARDO: Jeanine Hinde is  
6 here and supportive staff from Biological Resources  
7 Commission. Mark Hesters is on the phone, if he's still  
8 on the phone.

9 HEARING OFFICER CELLI: I -- he was here. Oh,  
10 there he is. I have -- Mark Hesters, are you there still?  
11 Please speak up.

12 I see him. I see his name. And the icon says  
13 he's there.

14 MR. FRED NIALS: He left his computer on.

15 HEARING OFFICER CELLI: Mark Hesters?

16 Well, it's a telephone icon, it's not a  
17 computer, so his phone -- he may have gotten up and left  
18 his speaker phone on.

19 UNIDENTIFIED SPEAKER: Baseball game is on.

20 HEARING OFFICER CELLI: Yeah.

21 MS. JENNIFER MARTIN-GALLARDO: We're not  
22 entirely sure where -- what staff we would need for  
23 support to Jeanine, but we -- we have the highlights, I  
24 think.

25 HEARING OFFICER CELLI: Okay. This is



1 Alternatives.

2 Please state your name, ma'am.

3 MS. JEANINE HINDE: Jeanine Hinde.

4 HEARING OFFICER CELLI: Hinde. I am so sorry, I  
5 was thinking Jeanine Hinde was somebody completely  
6 different.

7 MS. JEANINE HINDE: No, me.

8 MS. BELENKY: Mr. Celli, I think that a lot  
9 of the issues that the Center has around Alternatives have  
10 to do with Biology. And it may be very awkward to try and  
11 have a full discussion on Alternatives when we haven't yet  
12 had our discussion on Biology. We did raise some concerns  
13 that are compound.

14 HEARING OFFICER CELLI: Did you want to put  
15 Alternatives over to tomorrow?

16 MS. BELENKY: I think it would probably be  
17 better served, and then the other parties who have raised  
18 issues with it would be in a position to ask questions, as  
19 well.

20 HEARING OFFICER CELLI: Well, let's look at  
21 that. Tomorrow the agenda is -- we're down to Biological  
22 Resources, Worker Safety and Fire Protection, and  
23 Alternatives. Those are the only -- am I missing  
24 something? Those are the only three we have left; right?

25 MS. JENNIFER MARTIN-GALLARDO: I don't know if

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1 we have any Staff availability issues. I'd like to confer  
2 with them first, I suppose.

3 HEARING OFFICER CELLI: Okay. Can we take a  
4 moment. We're going to take a little break here. We're  
5 going to go off the record for about five minutes so that  
6 the parties can determine whether it would make sense to  
7 have Alternatives go over to tomorrow. That requires that  
8 their witnesses be available tomorrow instead of today.  
9 People are here expecting to testify today. And if it  
10 poses a problem, then we would go forward with  
11 Alternatives tonight, but let's see what the parties can  
12 do. Let's go ahead and take a break.

13 (Recess.)

14 HEARING OFFICER CELLI: Back on the record.  
15 Housekeeping conversation.

16 The Staff witness -- looks like we have more  
17 than one Staff witness. The Staff's witnesses are  
18 growing. We used to only have one for Alternatives.  
19 Apparently, the witnesses for Alternatives need to leave  
20 tonight.

21 Is that the plan?

22 MS. JENNIFER MARTIN-GALLARDO: It was originally  
23 going to be the plan, but because of the hour and  
24 availability, our flight moved to tomorrow morning. But I  
25 -- if the argument is that we need to hear Biology first,

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1 that's not going to accommodate schedules, so given that  
2 all of our biologists are here and ready and prepared to  
3 talk on Alternatives, and Jeanine and the bio- -- at least  
4 one of our biologists have been waiting patiently all day  
5 today and has been prepared to go forward, the Staff's you  
6 know, selfish request to be to go tonight. But I  
7 understand that there's other considerations and we could  
8 accommodate.

9 HEARING OFFICER CELLI: Okay. Because  
10 Ms. Belenky's concern is that most of her Alternatives  
11 questions are really under the umbrella of Biology, and it  
12 might make some sense to hear the Biology first, and then  
13 we can do Alternatives. And that -- what that would mean,  
14 then, is you would have one witness who is supposed to do  
15 Alternatives tonight coming in tomorrow and testifying?

16 MS. JENNIFER MARTIN-GALLARDO: Correct.

17 HEARING OFFICER CELLI: Okay. But she's  
18 available?

19 MS. JEANINE HINDE: Who are you talking about?

20 MS. JENNIFER MARTIN-GALLARDO: We're talking  
21 about you, Jeanine.

22 MS. JEANINE HINDE: I rescheduled my flight for  
23 12:30 tomorrow. I was supposed to go back to Sacramento.

24 HEARING OFFICER CELLI: Let me tell you what  
25 our -- what tomorrow really looks like. We're going to be

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1 doing Bio. All of the parties have issues with Bio.

2 I don't know if you were here during cultural?

3 MS. JEANINE HINDE: Yes. I've been here all  
4 day.

5 HEARING OFFICER CELLI: So it's going be like  
6 that for Bio tomorrow. I suspect that if we start at  
7 10:00 and we go past noon --

8 MS. JEANINE HINDE: I'm not sure why Bio has to  
9 go before Alternatives. Bio is addressed in Alternatives.

10 HEARING OFFICER CELLI: Right. So the request  
11 is that Bio -- well, this -- Bio doesn't have to precede  
12 Alternatives, Ms. Belenky. We can do Alternatives first  
13 thing.

14 MS. BELENKY: It doesn't have to. I just  
15 think it will make more sense. Doing it first thing in  
16 the morning would also be good. I think there's also the  
17 issue that several of the other intervenors have left  
18 today and we have lost all of our public audience, as  
19 well. But I think it would be preferable to do it  
20 tomorrow morning rather than to try to do it now.

21 HEARING OFFICER CELLI: So are all the parties  
22 willing to do Alternatives first thing, then followed by  
23 Bio, then we'll do the Work Safety and Fire Protection?

24 MS. BELENKY: The only thing I would, then,  
25 unintended consequence want to avoid is, I do not know the

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1 schedule of the County of Riverside's witnesses on Worker  
2 Safety, Fire Protection, and should the evening go late, I  
3 don't know if they're available on Wednesday or whether --

4 HEARING OFFICER CELLI: Well, they were -- they  
5 were the ones that asked for an afternoon.

6 MS. JENNIFER MARTIN-GALLARDO: They wanted  
7 Tuesday afternoon after noon, but my concern is if we push  
8 Worker Safety off, are we going into the 5:00 o'clock hour  
9 or are we going to be talking about pushing something off  
10 until Wednesday, and therefore, I do not know what the  
11 County of Riverside folks' availability would be for  
12 Wednesday. I just want to highlight that.

13 HEARING OFFICER CELLI: I don't see -- what we  
14 knocked out today were seven -- well, six of the seven we  
15 intended to take care of today. I don't see why we can't  
16 get three topics done tomorrow, when this is all that  
17 would be left.

18 MR. GALATI: I'd -- I'd prefer to go  
19 today, and here's why. Even if there's a Biology  
20 crossover, there really isn't, shouldn't be. I mean, what  
21 we're talking about is what level of Alternatives were  
22 reviewed, and nothing stops someone from getting a brief  
23 together for what is said in Biology and what is said in  
24 Alternatives and say, "You should have looked at this  
25 other alternative" or "You should select this other

1 alternative." So I don't think that the hearings have to  
2 follow in particular order, and let's get the evidence on  
3 the record as to what the issue is with the Alternatives  
4 section.

5 HEARING OFFICER CELLI: Yeah, my concern is that  
6 I have a commissioner who is really, really ailing over  
7 here.

8 MR. GALATI: Well, then, in that case, for  
9 the complete sychophantic way that I am telling you, I  
10 think we should adjourn right now and hope she feels  
11 better.

12 HEARING OFFICER CELLI: Let's just say -- we're  
13 going to -- let's -- let me just say that tomorrow  
14 Petitioner has Alice Karl, Fred Nials and Matthew Stucky.  
15 Staff has -- I don't know, because I never got any future  
16 prehearing conference taken, but I'd like to know who is  
17 going to be testifying as to what topics.

18 CBD has Ileene Anderson, Allan Muth, and  
19 Pat Flanagan. I have William Kanemoto, Greg Ervin, and  
20 that was a guess based upon the request of other parties  
21 who wanted to cross William Kanemoto and Greg Ervin.

22 MS. JENNIFER MARTIN-GALLARDO: I'm -- I'm sorry,  
23 what issue?

24 HEARING OFFICER CELLI: Bio.

25 Craig was the one wanted to cross William

1 Kanemoto and Greg Ervin on Bio.

2 MS. JENNIFER MARTIN-GALLARDO: On Bio. They're  
3 not Bio experts. We have --

4 HEARING OFFICER CELLI: Kanemoto and --

5 MS. JENNIFER MARTIN-GALLARDO: I can -- I can do  
6 whatever you'd like me to do as far as witnesses.

7 HEARING OFFICER CELLI: I'll tell you what I'd  
8 like to do tomorrow. I'd like to have Alternatives last  
9 an hour or less, Ms. Belenky, if we can do that.

10 MS. BELENKY: I mean, I don't -- I can't  
11 say now that it will last an hour or less. I don't have a  
12 lot of specific questions. We did have some new  
13 information tonight about the ownership of some of the  
14 parcels next to the project, which makes me -- you know,  
15 there may be things that will come up because of this new  
16 information, as well. But I don't see it lasting more  
17 than an hour. Certainly, my questions and Ms. Anderson's  
18 testimony are nowhere near an hour, probably -- yeah, I  
19 don't know, 20 minutes together or something like that.

20 HEARING OFFICER CELLI: All right. So tomorrow  
21 the plan would be to start with Alternatives, do Bio  
22 second, and then finish up with the Worker Safety and Fire  
23 Protection.

24 Did I receive everybody's -- yes, I did --  
25 everybody's Soil and Water testimony and evidence into the

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1 record?

2           Okay. At this time, ladies and gentleman, we  
3 appreciate everybody's patience in dealing the very lax  
4 schedule. We will adjourn for the night, and we will  
5 start again tomorrow morning at 10:00 o'clock here.

6           And Ms. Anderson, may I ask that you set that  
7 system up tomorrow so we don't have to go through any  
8 setup problems on that. I'm about to shut down.

9           Are there any members of the public that are  
10 here right now that need to make a comment?

11           Seeing none, are there any members on the  
12 telephone who wish to make a comment at this time?

13           Hearing none, then we are adjourned until  
14 tomorrow.

15           See you tomorrow.

16           (The proceedings were adjourned at 7:00 p.m.)

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I, Kimberly Novak, CSR No. 131355, 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.

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KIMBERLY NOVAK, CSR  
Certificate No. 13135