

DOCKETED

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STAFF'S CORRECTIONS TO THE 10/28/13 EVIDENTIARY HEARING REPORTER'S TRANSCRIPT

1. SOIL AND WATER RESOURCES

Page 290
Line 19

19 time, the rule from the Bureau of ~~Land Management~~ Reclamation did not

2. CULTURAL RESOURCES

These transcript corrections cover all of cultural staff's corrections.

Pg 3: Change 'Melissa Marcus' to 'Melissa Mourkas'

Pg 3: Delete 'Archaeologist' after 'Fred Nials'

Pg 110 Ln 11: Change 'Mr. BRAUM' to 'Mr. MCGUIRT'

Pg 110 Ln 20: Change 'Mr. BRAUM' to 'Mr. MCGUIRT'

Pg 116 Ln 2: replace '(inaudible)' with 'Mr. Gates can answer'

Pg 116 Ln 4: add 'MR. GATES:' before 'Because...'

Pg 116 Ln 8: Change 'petrographical' to 'petroglyphic'

Pg 116 Ln 14: Change 'MR. MCGUIRT' to 'MR. GATES'

Pg 116 Ln 25: Change 'MR. MCGUIRT' to 'MR. GATES'

Pg 119 Ln 25: Change 'middle' to 'Mule'

Pg 121 Ln 7: Change 'MR. GATES' to 'MR. MCGUIRT'

Pg 122 Ln 4: Change 'MR. GATES' to 'MR. MCGUIRT'

Pg 129 Ln 20 Change 'MR. GALATI' to 'MR. BONAMICI'

Pg 130 Ln 8 Change 'MR. GALATI' to 'MR. BONAMICI'

Pg 130 Ln 17 Change 'salt contrails' to 'salt song trail'

Pg 160 Ln 7 change '(inaudible)' to 'Kit fox'

Pg 160 Ln 9 change '(inaudible)' to 'Kit fox'

3. GEOLOGY AND PALEONTOLOGY

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 you there's lots of issues
24 that I can discuss. One in particular is the classification
25 ~~(inaudible) for resource title~~ of the site's paleontological

1 resources. ~~the~~ The FSA, ~~t~~ The AFC, the final decision all
 2 indicated soil ~~upon site~~ ght are highly likely to be
 3 fossiliferous, considered a highly sensitive
 4 ~~(inaudible)~~ paleontologically. All the documents that have
 5 been presented indicate that.

6 There's a lot of stuff that Mr. Nials said, ~~they're~~
 7 that is right, ~~therethey,~~ ~~there~~ are pieces. They're not
 8 ~~looking at~~ museum quality skeletons being ~~(inaudible)~~ found
 9 in that area other than, oh, like the tortoise, and with the
 10 eggs in place. You know, because in Rio Mesa there were 834
 11 fossils found down there. There were ~~partieles~~ particularly
 12 rare fossils found ~~in Kern~~ there, some were the very first
 13 types of fossils ever found in Riverside County and some,
 14 actually, first that were ever found in ~~Alta~~ all of
 15 California.

16 So, that's an important aspect. A lot of them are
 17 actually ~~early~~ ~~(inaudible)~~ highly significant at the site.
 18 And there's a lot of indication that these things do exist at
 19 the Palen site too.

20 HEARING OFFICER CELLI: Well, let's stick to the
 21 Palen site, why don't you talk about that.

22 MR. WEAVER: Well, the reason I bring that up is
 23 that similar soil ~~(inaudible)~~ has been identified on the
 24 Palen site. So, I ~~foresee~~ expect to see similar
 25 paleontology there. ~~(inaudible)~~—

1 And there's been no subsurface exploration
2 conducted on the Palen site, so you can't really rule
3 anything in or out. There's no mention for (inaudible) for
4 resource other than all the documents that indicate that it
5 is ~~(inaudible)~~highly likely to exist.

6 Let's see, it's true most of the pieces that have
7 been discovered (inaudible) --

8 (Music Interruption)

9 HEARING OFFICER CELLI: There you go. Sorry about
10 that.

11 MR. WEAVER: These other projects have discovered,
12 ~~just~~disarticulated ~~(inaudible)~~bones -- we're mostly
13 interested in vertebrate fossils. The reason that they are
14 important is that it establishes the paleontology
15 paleoecology of the region. So even though it's a fragment
16 that you can identify, you know ~~t~~what species lived there at
17 that point, you can look at the variety of different animals
18 living in the area and you can ~~(inaudible)~~provide the
19 information for the people who study that. The significance
20 then, again, is that the pieces you can classify can be used
21 to determine what was there.

22 HEARING OFFICER CELLI: So, let me ask you this.
23 The original project was going to basically bulldoze, you
24 know, to take four and a half cubic feet of material or
25 whatever. Now, they're going to drive pylons to a depth of

1 eight to twelve feet as I understand. And so what we're
2 trying to get to is what's the difference here in terms of
3 paleontology?

4 MR. WEAVER: Let me read from this. I think it
5 will help clarify.

6 HEARING OFFICER CELLI: Okay.

7 MR. WEAVER: While staff appreciates the
8 advantages in ~~search and~~pylon insertion methodology regarding
9 project costs and the impact of other disciplines, the pylons
10 would be inserted into soil likely to contain fossils,
11 disturbing those fossils in which the pylons come in contact
12 with, without recovery, identification or curation of the
13 fossils. Without identification, collection and curation
14 fossils would (inaudible) -- with the larger ~~draining~~grading
15 operation coming through the project.

16 So, with that recovery, the mitigation of the
17 impact would be the understanding the paleontology
18 paleoecology in the area. So, it's the link that's -- it's
19 not recovering any museum quality fossils, it's identifying
20 what was there so you can look at the
21 paleontologypaleoecology.

22 In order to mitigate the potential significant
23 impacts from the proposed pylon construction technique, staff
24 is proposing to discover and ~~recovering~~ the type and variety
25 of fossils in the solar field before the area is affected by

1 | pylon insertion. ~~The Staff~~ is proposing mitigation to that
2 | impact ~~and in~~ modified condition of certification ~~in PAL-9~~
3 | (inaudible).

4 | HEARING OFFICER CELLI: Okay. So Mr. Nials says
5 | that the definition is overbroad and contains materials or
6 | geological conditions that just aren't to be found at the
7 | site that we're talking about now, so how do you respond to
8 | that?

9 | MR. WEAVER: The paleontological investigation was
10 | conducted onsite as a pedestrian survey walking onsite. The
11 | site is now about a foot and half, based on the geotechnical
12 | investigation report, a foot and a half of loose
13 | ~~(inaudible)~~ Aeolian and alluvial ~~(inaudible)~~ sand.
14 | Underneath that are older, 13,000 year old ~~(inaudible)~~ or
15 | older sediment ~~(inaudible)~~ of Pleistocene age.

16 | There hasn't been a subsurface investigation
17 | conducted onsite that indicates that it's not there. And in
18 | fact, all the documentation previous shows that there's a
19 | concern that it's a highly ~~(inaudible)~~ fossiliferous soil.

20 | HEARING OFFICER CELLI: I just don't want to lose
21 | sight of what we're dealing with here in terms of the issue.
22 | The question -- the only issue that we're talking about here
23 | between staff and applicant, and this is in geo/paleo, is the
24 | overbreadth of that definition (inaudible). Do I have that
25 | wrong?

1 MR. GALATI: Yeah. Mr. Nials was talking about the
2 definition that staff used to determine something was
3 significant, not the definition in Paleo 9.

4 We're saying that the definition is overbroad.
5 They found significant impacts, which they then put in
6 Paleo 9 which we believe that are not required.

7 MS. MARTIN-GALLARDO: And I can clarify. This is
8 Jennifer Martin-Gallardo. I can clarify.

9 In the same vein, staff's argument is that these,
10 the pylon insertion method is not using the traditional
11 technique that we would be able to mitigate for.

12 So what staff has done is use this same
13 determination of how sensitive the soil resource is, how
14 likely it is to contain paleontological resources
15 (inaudible), and is saying, because we're not going to be
16 digging things out like we used to, what we want to do is, by
17 Paleo 9 -- which staff, by the way, has revised -- and wants
18 to have some subsurface excavation on the sand through Paleo
19 9 to determine what is there.

20 So it's staff's effort at getting the same type of
21 information that we would get from traditional subsurface
22 excavation.

23 HEARING OFFICER CELLI: And how intensive is the
24 survey that they would be doing?

25 MS. MARTIN-GALLARDO: First, I would like to

1 provide everyone with a copy of what staff has revised on
 2 Paleo 9 to make more clear that the intention here is not to
 3 require -- we don't want -- staff's intention is not to
 4 require (inaudible) or some new pedestals to be done. We
 5 wanted to clarify for everyone what the intent of Paleo 9 is.

6 And I would want this as Exhibit 2011.

7 HEARING OFFICER CELLI: 2011?

8 MS. MARTIN-GALLARDO: Correct.

9 HEARING OFFICER CELLI: For identification, Exhibit
 10 2011 is Geology and Paleontology Revisions to Conditions
 11 Paleo 9 and Paleo 5.

12 MS. MARTIN-GALLARDO: Can you explain?

13 MR. WEAVER: Which part?

14 MS. MARTIN-GALLARDO: Paleo 9.

15 MR. WEAVER: Sure. Initially Paleo 9 was
 16 protective of the resources by suggesting alternatives,
 17 alternative foundation design, and avoidance issues,
 18 different methods, again, for protecting the resource.

19 We realized that these aren't museum quality
 20 resources. You know, we're not going to dig up a full
 21 skeleton of a (inaudiblemammoth), but the individual pieces
 22 again are important to identify what they are. So what we
 23 did was revised Paleo 9 to reflect a recovery, duration
 24 deflectionidentification, and curation effort in order to
 25 characterize the paleontology (inaudible)ecology of the area

1 which would be similar to the mitigation provided in the
2 final decision of 1 through 7 where the excavation of the
3 project was going to be monitored ~~tough~~ to identify
4 ~~(inaudible)~~ uncovered fossils. So it's actually a similar
5 mitigation as the initial final decision, just in a different
6 manner.

7 HEARING OFFICER CELLI: There's two pages.

8 MR. WEAVERGALATI: There's two pages. Don't ever
9 trust a lawyer to do something like walk around.

10 HEARING OFFICER CELLI: Okay.

11 Mr. Galati, while everyone is figuring out what's
12 on the paper, I've got a question here and maybe you can help
13 clear this up for me.

14 MR. GALATI: Yes.

15 HEARING OFFICER CELLI: You start off talking about
16 a definition which is not even contained in what we just
17 received. Then Mr. Weaver is talking about a
18 characterization study, basically. So they seem to be two
19 unrelated issues.

20 MR. GALATI: If I might make an offer of proof.
21 Mr. Nials was making the point that, using the definitely
22 staff did (inaudible) was overbroad, and that there weren't
23 going to be a lot of options there that were of any
24 significance.

25 HEARING OFFICER CELLI: Okay.

1 MR. GALATI: Staff says that's what we need to do
2 in the original project. And we assume high significance,
3 but staff said the way we mitigated it during the original
4 project was to have a paleontological monitor during all the
5 grading be watching the soil and curating what they find.

6 And has also said that the vibration now could
7 destroy fossils. And since we don't bring any dirt up, we
8 can't curate those. So staff says we can't -- we're not
9 mitigating that and has proposed Paleo 9, which has holes in
10 the ground to try to find fossils and dig them out of the
11 ground. And we object.

12 HEARING OFFICER CELLI: You'll get your chance.

13 MR. GALATI: That it is an exercise in (inaudible)
14 a site for an impact that we do not believe -- we believe
15 that the impact is less than staff has identified, worse than
16 modifying the project. And I wanted to ask a few cross-
17 examination questions to show that.

18 HEARING OFFICER CELLI: Well, we'll allow a just
19 really broad. Please try to be broad in your questions,
20 because we're dealing with Mr. Weaver, not the lawyers.

21 MS. BELENKY: (Inaudible) because I'm getting
22 confused. This project amendment still has grading, so would
23 the old conditions be on the grading parts and then the new
24 condition on the (inaudible) parts?

25 MR. GALATI: That's correct.

1 MS. BELENKY: Okay. I just --

2 MR. GALATI: We didn't ask for a change for any of
3 the normal conditions of monitoring grading. This is a new
4 one for the areas where we're only bi-grading it (inaudible).

5 Mr. Weaver, if you're moving 4.5 million cubic
6 yards of dirt like the old project, how much of that dirt
7 would you actually see and be able to recover a fossil from
8 during construction if you were monitoring with the old
9 conditions?

10 MR. WEAVER: How much soil would you recover?

11 MR. GALATI: (Inaudible)

12 ~~MR. WEAVER:~~ (Inaudible) a hundred percent of the
13 fossils they could lose around any non-grading activity?

14

15 MR. WEAVER: I think you're asking how many fossils
16 would be found in that much soil?

17 MR. GALATI: No. I'm asking what percentage of the
18 amount of dirt that you move, do you think a paleontological
19 monitor would be able to actually see or sieve or observe to
20 see if there was a fossil in it, of the 4.5 million cubic
21 yards?

22 ~~MR. WEAVER:~~ All of it?

23 MR. WEAVER: ~~MR. GALATI:~~ No, the upper foot and a
24 half at least that we assume is non-fossil bearing because
25 it's younger than the ~~(inaudible)~~ Pleistocene sediments that

1 are deeper.

2 | MR. WEAVER: ~~If the slope~~For the buried soil that
3 we have not looked at, not done a subsurface investigation
4 for, we don't know.

5 MR. GALATI: Okay, Let's say you got down to the
6 subsurface soil. So the soils that don't have fossils are
7 not there, and you're digging with a scraper. Do you see a
8 hundred percent of that soil to see if it has fossil in it as
9 a paleontological monitor?

10 MR. WEAVER: I'm not a paleontological monitor, so,
11 you know, I'd just as soon not answer. I don't know.

12 HEARING OFFICER CELLI: That's a fair answer.

13 MR. GALATI: Yeah. No further questions.

14 HEARING OFFICER CELLI: Staff, any questions of
15 either of any of these witnesses? I'm just going to allow
16 you to ask staff or applicant (inaudible).

17 MS. MARTIN-GALLARDO: I think it's important to ask
18 Mr. Weaver, could you please explain one more time why you
19 believe the site is (inaudible) as highly sensitive?

20 MR. WEAVER: Yes. It's primarily based on the
21 discoveries that have occurred in the surrounding area that
22 were previously unrecognized and not considered to have high
23 paleontological sensitivity. Since these large construction
24 projects have started, numerous fossils have been discovered,
25 some that have never been discovered in California before,

1 many never before in Riverside.

2 MS. MARTIN-GALLARDO: What about this project site,
3 why this particular site has it been classified this way?

4 MR. WEAVER: Why I think it's classified that way
5 or why is it ~~(inaudible)~~classified that way in all the
6 documents?

7 MS. MARTIN-GALLARDO: Correct, the documents.

8 MR. WEAVER: Because it's believed that
9 ~~(inaudible)~~the paleontological resources in soils under a
10 lot, a mantle of ~~(inaudible)~~young soil will be
11 ~~(inaudible)~~found.

12 MS. MARTIN-GALLARDO: All of the previous documents
13 in this case had defined the soil as having high
14 paleontological sensitivity, correct?

15 MR. WEAVER: Yes, the ASCAFC, the FSA, the PDIF
16 DEIS and ~~(inaudible)~~the petition to amend, and the final
17 decision all indicate that it's high sensitive sensitivity.

18 MS. MARTIN-GALLARDO: And using a vibratory
19 insertion method for construction will not result in any
20 recovery that can be mitigated according to the existing
21 conditions of certification, correct?

22 MR. WEAVER: Yes, there would be no mitigation for
23 destruction from the insertion of pylons in the soil.

24 MS. MARTIN-GALLARDO: And you would say Paleo 9,
25 the purpose is to provide some kind of mitigation that is

1 similar to that as what exists for traditional excavation
2 methods.

3 MR. WEAVER: That's the intent of the development
4 of Paleo 9, yes.

5 MS. MARTIN-GALLARDO: That's all I have.

6 HEARING OFFICER CELLI: Questions from Colorado
7 River Indian Tribes, please?

8 MS. KING: Thank you. I'm Winter King from CRIT,
9 and I asked a question of the staff Cultural Resource
10 witnesses earlier, because we noticed in the rebuttal
11 testimony for staff, paleontological resources, there was a
12 pretty strong statement that the change in technology to the
13 vibratory technique of inserting the heliostats would likely
14 destroy any buried paleontological resources that were under
15 the ground. And my question earlier and to you as well is,
16 wouldn't the same logic apply to any buried cultural
17 resources should they be in the way of the auger with this
18 new technology, wouldn't they also likely be destroyed by the
19 insertion technique?

20 MR. WEAVER: You're asking me a cultural question?

21 MS. KING: I asked the cultural people and they
22 said ask you, so...

23 MR. WEAVER: Okay. The upper foot and a half
24 about, you know, ~~to its~~ an average ~~(inaudible)~~ depth of
25 Holocene-soil, so those soils would likely, if there were

1 | cultural resources in the area, that's where it-they would be
2 | contained. We're looking at the ~~(inaudible)~~soils that are in
3 | subsurface below that area.

4 | Also, again, I'm not a cultural resources person,
5 | but ~~if~~ you can see a lot more on the surface with cultural
6 | investigations than paleo in the buried soil. If you walk
7 | along the surface and could find artifacts of native
8 | Americans. You're not going to see buried fossils because
9 | they are mantledd with that, you know, ~~your~~the younger
10 | sediment.

11 | MS. KING: Nothing else, thanks.

12 | HEARING OFFICER CELLI: Thank you.

13 | Ms. Belenky, any questions of these witnesses?

14 | MS. BELENKY: No, thank you.

15 | HEARING OFFICER CELLI: Thanks.

16 | Anything further, Mr. Galati?

17 | MR. GALATI: Yeah, just one redirect.

18 | HEARING OFFICER CELLI: Oh, I'm sorry, I didn't see
19 | Mr. Emmerich.

20 | MR. EMMERICH: Thank you.

21 | HEARING OFFICER CELLI: Okay, go ahead, Mr. Galati.

22 | MR. GALATI: Mr. Nials, when you monitor mass
23 | grading and scrapers, do you see all of the soil as a
24 | paleontological monitor?

25 | MR. NIALS: I have not done paleontological