

## 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

**FINAL REVISED DOCUMENT**

**JANUARY 26, 2014**

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Gabriel Taylor, Advisor to Commissioner Hochschild  
Jennifer Nelson, Advisor to Commissioner Douglas  
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Basin and Range Watch:

Kevin Emmerich, Laura Cunningham

Colorado River Indian Tribes

Winter King, Attorney; Sara Clark, Attorney

Californians for Renewable Energy

Alredo Acosta Figueroa

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Lorey Cachora

Mike McGuirt

Mary Barger

Matt Stucky

Fred Nials

Wilene Fisher-Holt

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Linda Otero, Fort Mojave Indian Tribe

Manfred Scott, Quechan Indian Tribe

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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 Holdings, LLC, to introduce their people.

11 So Mr. Galati, go ahead.

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

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,  
23 Mr. 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, socioeconomics, 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  
4 issue.

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

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

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

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

1 MS. BELENKY: Excuse me. Sorry to bother you  
2 again. But I just want to clarify again, I'm not sure what  
3 override evidence means exactly. We have not done that in  
4 earlier proceedings as a separate issue. And I'm not sure  
5 what that means of what you expect us to present.

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

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

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

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

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

1           MR. GALATI: I would like the compliance testimony  
2 and all exhibits referred in compliance testimony entered  
3 into evidence, please.

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

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

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

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

1 MS. BELENKY: Can we do it at the end of the day so  
2 we can keep moving now?

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

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

9 MR. GALATI: Yes.

10 HEARING OFFICER CELLI: All right. So just to be  
11 clear, Ms. Grenier is going to be the person doing 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  
23 Mr. Lorey Cachora, and I'm wondering if you're going to take  
24 that 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 to 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 that's their position, and --

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 is required. So I

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

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, and then I need staff to come in here  
15 and then have your staff witnesses -- I'd like to have your  
16 main witnesses up at the table and then your secondary and  
17 supportive witnesses can sit in the row right behind you.

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

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

8 MR. CACHORA: Lorey Cachora.

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

11 DR. GATES: Thomas Gates.

12 HEARING OFFICER CELLI: Tom Gates. Next to  
13 Mr. 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. And I believe Mr. Galati  
3 did not object at that time (inaudible).

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 DR. 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 DR. 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 with a mic.

12 Okay. Go ahead, Mr. Gates.

13 DR. 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 DR. 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 DR. 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 is 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 is, 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.

8 That landscape, once defined and bounded, we began  
9 to look at what are the things that contribute to prehistoric  
10 preservation. You can have landscape that may have  
11 contributing elements, and I'd like to call out a few of  
12 those before moving on away from this slide.

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

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

1 proposed mitigations.

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

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

18           Next slide.

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

25           On the left, you have a perspective of how the new

1 world became populated through migration. It's a linear  
2 perspective. People were not in North America. Bering Land  
3 Bridge happened, allowed people to cross. There was a linear  
4 from Point A to Point B type population. That's our theory.  
5 That's what we go out and look at the archaeology for the  
6 evidence to substantiate or falsify that theory. That's the  
7 way we're thinking about it.

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

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

16           HEARING OFFICER CELLI: Just so you know, even  
17 though it's not a full slide here in the room, it's on the  
18 WebEx. So what I have on the far right is the Chemehuevi  
19 circle. Is that the end of the slide?

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

1 accommodate both perspectives in one broad landscape.

2           What I would like to do now in the next slide is  
3 switch over to our expert witness, Mr. Cachora, who will then  
4 try to move beyond what we've provided here to talk a little  
5 bit more about that Native American perspective.

6           MR. CACHORA: Thank you.

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

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

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

1 MR. CACHORA: Right.

2 HEARING OFFICER CELLI: Thanks.

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

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

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

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

1 That has that same marking in there.

2 So I have two evidence to show, but I can only show  
3 this today because of that other being blacked out for some  
4 reason.

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

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

9 HEARING OFFICER CELLI: Okay.

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

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

25 There are many more petroglyphs that match that I



1 can easily go back and say this is how this fits this part,  
2 this part. But we're losing that now because of others  
3 cutting into it, taking them away, damaging them through  
4 graffiti and whatnot. So it's something that we ourselves  
5 have to come up and start making an aggressive move to  
6 protect these things that are happening to what we believe is  
7 precious to us. It's our way of life.

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

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

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

21 HEARING OFFICER CELLI: He is pointing to the  
22 extreme southern part.

23 MR. CACHORA: It's the lower right hand of the map.  
24 That's a cultural resource. I can't see very well. Figure  
25 2, I think it is.

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

3 MR. CACHORA: Okay.

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

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

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

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

1           What is knowledge? Knowledge is everything that we  
2 talk about today. We go back into that animal world. How do  
3 we connect with animals? There are ways that we can explain  
4 how we connect with those.

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

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

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

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

1 proposed in this area.

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

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

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

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

23           But what matters today to me now is that you have  
24 given me this opportunity. And I'm mainly here to educate  
25 you on how we are as human people down here in the Yuma

1 Valley as Quechan people. There is so much knowledge that we  
2 still have to practice within each district. So this is what  
3 we have.

4 HEARING OFFICER CELLI: Thank you, sir.

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

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

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

12 HEARING OFFICER CELLI: Okay.

13 DR. GATES: And then after he is done, Lorey will  
14 close one last time for us.

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

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

21 MS. KING: We don't have a PowerPoint, but we do  
22 have some prepared remarks.

23 HEARING OFFICER CELLI: Basically, the way we  
24 usually will proceed is it's going to be either applicant or  
25 staff, whoever seems to be carrying the torch on that one,

1 followed by applicant or staff who wasn't, and then we'll  
2 take each of the intervenors in turn and you can present.  
3 And then after that, if there is further discussion, we'd let  
4 staff and the panel have their complete discussion.

5 So, Mr. McGuirt, go ahead.

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

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

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

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

1           So having made a determination that a resource has  
2 one or several of these values, the resource in order to be  
3 eligible to be listed and be considered a historical resource  
4 must also retain enough integrity to convey the significance  
5 that it has.

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

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

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

1 American groups.

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

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

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

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

21           Material impairment is defined as an effect that  
22 materially alters the physical characteristics of the  
23 historic resource that convey its historical significance.

24           Now, the physical characteristics that are referred  
25 to here that convey historical significance refer to, again,



1 the resource integrity, which is sparsed out into the  
2 regulations into the seven different aspects: location,  
3 design, setting, materials, workmanship, feeling and  
4 association. Okay.

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

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

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

1 and association as those are formally defined in order to  
2 continue to convey those associative values.

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

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

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

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

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

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

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

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

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

1 project and away from it and has never been 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.

12 And what we're saying is that's an incomplete  
13 argument, that's not the whole story. The more important  
14 part of the story is that the analysis of the visual effects  
15 to cultural resources is about visibility and it's about  
16 visual intensity. And the visual intensity aspect of this  
17 argument is key. The intensity of the amended project's  
18 visibility greatly exceeds that of the licensed project and  
19 further analysis is therefore warranted. So that's a very  
20 important point, obviously.

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

1 focus of the analysis are in visual resource section is  
2 similar to what's going on in cultural.

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

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

14 We disagree. We believe that Palen SEGS would  
15 result in a dramatic intensification of the direct visual  
16 effects and we'd recommend the adoptions that we proposed in  
17 CUL-1 in our analysis.

18 That's going to be the bulk of our discussions, I  
19 believe, this afternoon about that. There is also several  
20 other ones I would like to go over briefly.

21 One point of disagreement is the revision of the  
22 mitigation for known archaeological resources in the project  
23 footprint. These are Conditions -- Cultural Conditions for  
24 Certification 11 through 14. They come to us from the  
25 original citing case. This dealt with archaeological sites

1 that were on the project footprint that were found during the  
2 original citing case on which the Committee has already  
3 deliberated and come to its decision about how to handle it.

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

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

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

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

25 What we've set up to do in the construction

1 monitoring condition is teamwork. It's compromise. It's  
2 trying to make the best of a bad situation. We have a lot of  
3 money, a lot of people on the ground, a lot of equipment, and  
4 going to be trying to as quickly as possible deal with  
5 discoveries that we find.

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

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

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

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

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

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

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

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



1           We disagree with this position because we feel that  
2 there is not enough data to support the project owner's  
3 contention. Staff's effects assessment is necessary to  
4 regulatory structure of the analysis.

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

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

22           MR. McGUIRT: Yes, sir, I believe so. Because of  
23 the necessity of not having the data that we would have, the  
24 robust enough data to be able to really substantively make an  
25 argument one way or the other, what we're saying is, is that

1 -- and, again, I want to -- for the Committee's sake, I want  
2 to differentiate this consideration from the cultural  
3 landscape that we're dealing with as the big issue here.  
4 This is a sidebar, historical archeological district on the  
5 side.

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

17           HEARING OFFICER CELLI: Okay.

18           MR. McGUIRT: Okay. Thank you.

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

21           HEARING OFFICER CELLI: About how much more time do  
22 you think you're going to need?

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

25           HEARING OFFICER CELLI: Okay. We've got a lot to

1 cover today so we want to keep it rolling.

2 MR. MCGUIRT: To conclude, we would like to present  
3 this panorama of the valley looking out towards the project  
4 area, and then Mr. Cachora would like to have the last few  
5 words.

6 HEARING OFFICER CELLI: Go ahead, sir.

7 MR. CACHORA: Thank you. Hello again.

8 First of all, I think what we're trying to --  
9 mainly what we're trying to do here is that right now we're  
10 trying to, in our own way, trying to resolve some of this  
11 what's called current quality expression. But those things,  
12 like I said earlier, span way beyond. Right now we're  
13 dealing with artifacts in this area.

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

1 express, that's what it means to us.

2           This area -- and, again, we're back to the map.  
3 It's a scenery that a mountain of coxcomb in the far  
4 distance, and Palen is in here somewhere. McCoy. And  
5 further right bottom is Chuckwalla. And there are sites that  
6 exist here. There are sites that exist here. There is some  
7 here, and there is some way back on Dragon Wash. Those are  
8 special places once used by our ancestors.

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

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

22           So if you have one here, you want one here, one  
23 here. Again, I'm pointing now to the areas that I pointed to  
24 earlier with circles. It creates that circle. Natural  
25 setting is usually that it's an open space, nothing can

1 obstruct that.

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

5           And what I'm looking at here is there are two  
6 structures going up in this area 740 feet. I'm looking at  
7 what I call a lighthouse in the middle of the desert, because  
8 that's going to have constant light just like you're looking  
9 at my laser right now. You can't help but to look at it.  
10 That's the way it's going to look. And at the same time,  
11 it's going to destroy that visual that we're talking about.

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

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

25           So, in reality, if you have projects going in this

1 entire area, you're looking at a city of solar project versus  
2 metropolitan buildings, housings and all of that, so you have  
3 two things going at the same time.

4           Now, if you have balance of that with the smaller  
5 version of energy, that's far enough to generate, let's say,  
6 a metropolitan with a small amount, I think that's the  
7 solution. But right now, this is the Model T, everything  
8 that you're doing, so you have to have a vast amount of  
9 solars laying all over the place in order to get the energy  
10 that you need.

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

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

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

1           HEARING OFFICER CELLI: Thank you. I think that's  
2 all that staff has.

3           Let's hear from applicant.

4           MR. GALATI: Mr. Celli, could I -- I wanted to be  
5 respectful during staff's testimony. I wanted to let them  
6 continue unbroken. I wanted to be respectful to Mr. Cachora.  
7 I would like the record to reflect that he went significantly  
8 outside his written testimony.

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

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

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

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

5           HEARING OFFICER CELLI: I understand that. Now,  
6 Mr. Galati, this is a problem we always deal with. You filed  
7 something with the Committee's permission.

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

10          HEARING OFFICER CELLI: Right.

11          MR. GALATI: And everybody said okay. If staff  
12 would have done that and given it to me, I would have it  
13 before now.

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

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

25          MR. GALATI: Ms. Barger.



1 HEARING OFFICER CELLI: Ms. Barger, please.

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

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

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

1           Staff has defined the trails landscape as the three  
2 trail corridors that they showed on the map that covers six  
3 western states. And the landscape itself is the Chuckwalla  
4 Valley. So as you saw, it's surrounded by the McCoy  
5 Mountains, the Granite Mountains, the Palens, the McCoy, the  
6 Eagle Mountains, and the Chuckwallas to the south.

7           It also includes 11 ethnographic contributing  
8 elements, and I'm going to show these and discuss them, so  
9 that's why I'm going to go ahead and list them.

10           The Palen Dunes area of critical environmental  
11 concern, which is a BLM property. Ford Dry Lake, McCoy  
12 Springs, Chuckwalla Springs, Corn Springs, North Chuckwalla  
13 Petroglyph District, North Chuckwalla Prehistoric Quarry  
14 District, Long Tank, Alligator Rock, Dragon Wash, and San  
15 Pasqual Well.

16           Staff also includes some natural resource locales,  
17 which includes basically the foothills of all of the  
18 mountains I just described, which is the entire surrounding  
19 area of the Chuckwalla Valley, the Palen ACEC, and an area  
20 called the Coxcomb Fringe and Raceway Mesquite area, an area  
21 where there is a dense thicket of mesquite that's a resource  
22 that might have been used by prehistoric and prohistoric  
23 tribes.

24           I have a slide I would like to show. I think it's  
25 slide 1.

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

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

6 HEARING OFFICER CELLI: That's what is now up on  
7 the screen is part of Exhibit 1076, just for clarification?

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

9 HEARING OFFICER CELLI: Please proceed.

10 MS. BARGER: So this slide shows a number of  
11 things. It shows the project area of effect, which is the  
12 circle. It shows the representation of the difference  
13 between the visual effects by adding the towers to the  
14 existing permitted project, and those are the pink or purple  
15 areas. That's the difference was by adding the tower.

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

25 HEARING OFFICER CELLI: So can I just ask, these

1 purple or the fuchsia --

2 MS. BARGER: The fuchsia difference is by adding  
3 the towers. So if you didn't have the towers, the difference  
4 by adding the towers is the purple and the pink. So by  
5 adding the 750-foot towers, it adds those pink areas to the  
6 existing fuchsia.

7 HEARING OFFICER CELLI: So otherwise, so if it were  
8 just the cost and not the towers, the project would be  
9 invisible to those areas that are fuchsia. But by adding the  
10 towers, those areas that are fuchsia are -- the project is  
11 now visible to those areas.

12 MS. BARGER: That's correct.

13 HEARING OFFICER CELLI: Okay. Go ahead.

14 MS. BARGER: So the staff has talked about  
15 integrity and the destruction of integrity of this  
16 ethnographic landscape, and including the destruction of the  
17 integrity of these contributing elements.

18 So what is integrity anyway? In order to  
19 understand significance, you need to understand some level of  
20 integrity. So you can't have a significant cultural resource  
21 unless it has some level of integrity. So we all need to  
22 understand what is meant by integrity.

23 Integrity for cultural resources is usually defined  
24 by the National Park Service guideline set forth in Bulletin  
25 15. There are seven aspects of integrity, as staff

1 discussed. Staff has stated, and today we did too, that  
2 three of these factors, the integrity of setting, feeling,  
3 and association will be lost by adding these two towers.

4           Much of the interpretation of setting, feeling, and  
5 association is subjective. In fact, the Park Service  
6 actually states, quote, "Because feeling and association  
7 depend on individual perceptions, their retention alone is  
8 never sufficient for eligibility of a property for the  
9 National Register," unquote. I do feel that evaluating these  
10 factors is subjective in nature and can vary from person to  
11 person.

12           I do agree that the setting will be impacted by the  
13 addition of the two towers. However, I believe that this is  
14 not enough to destroy the integrity of the cultural  
15 landscape.

16           The staff says that due to the size of the  
17 Chuckwalla Valley, it is an impact. I think the very size of  
18 the valley negates staff's argument. I feel because of the  
19 vastness, the visual impacts are significantly reduced.

20           As an illustration, we did visual simulations and  
21 added the two towers to the landscape. The visual  
22 simulations were done from a number of locations, including  
23 some of the non-ethnographic resources that have been  
24 described. These locations were selected with input from  
25 staff and BLM. Some of these locations are the same as the

1 contributing elements to the landscape that were identified  
2 by staff. These key observation points, or KOPs, are located  
3 in scattered locations around the valley perimeter.

4 So we're going to put up the visual simulations,  
5 just a couple, we'll put up five of them, and we're going to  
6 show what it looks like with and without the towers.

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

8 MS. BARGER: So this is without. This is a picture  
9 taken from the base of the Coxcombs, which is located ten  
10 miles to the north/northeast of the project area. This point  
11 is the closest point to Joshua Tree National Park. It's also  
12 next to the Coxcomb resource area, which was one of the areas  
13 that staff identified to do surveys under CUL-1.

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

15 HEARING OFFICER CELLI: You have a pointer? We're  
16 actually able to see on the WebEx that the cursor was  
17 circling the two towers.

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

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

21 MS. BARGER: The location for the photograph was  
22 when we discussed it with staff as possible locations to do  
23 the visual simulations, these were discussed with staff. I  
24 don't think we did all of the ones that we discussed because  
25 some of them were too far and too difficult to access.

1 HEARING OFFICER CELLI: I just wanted to know that  
2 whether staff felt that this accurately depicts the  
3 luminosity of the reflection of these towers.

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

5 MR. GALATI: According to the visual resources that  
6 which is not in dispute, these are the same visual  
7 simulations that were used for visual resources.

8 HEARING OFFICER CELLI: These are staff's?

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

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

14 MS. BARGER: So you can see how vast the landscape  
15 is, as we've seen from the other photographs. You can see  
16 the Chuckwalla Mountains in the background. You can see all  
17 the way across the valley floor. Where the power tower  
18 locations are is, you know, out on the valley floor. I don't  
19 feel that the towers is a huge impact on visual intrusion on  
20 this viewshed.

21 Next slide. This is Big Wash. This is looking  
22 from Big Wash to the east. Big Wash is located 15 and a half  
23 miles west of the project at the base of the Eagle Mountains.  
24 The Eagle Mountains also has a resource area that's been  
25 proposed for survey under Condition 1. This was an area that

1 was identified by BLM and some of the tribes recommended  
2 taking a look at Big Wash, so we went ahead and did the  
3 simulation.

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

8           So the towers are -- there we go. You can see the  
9 tower on the horizon there. You can see the Chuckwalla  
10 Mountains, the little Chuckwallas to the right. That might  
11 be the Mule Mountains there where the pointer is pointing on  
12 the far horizon.

13           HEARING OFFICER CELLI: Is there only one tower  
14 showing on this KOP?

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

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

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



1 pollution from the basin.

2           Could I have the next slide to show the towers? So  
3 Dragon Wash does have -- is the locale of petroglyphs and  
4 archeological sites, and it's one of the contributing  
5 elements to the landscape.

6           Next slide. This is from Alligator Rock. So  
7 Alligator Rock is an ACEC as designated BLM. There is a  
8 number of archeological sites there, petroglyphs. You can  
9 see the Palen Mountains. The project is ten miles away. The  
10 distance of ten miles is the same distance as to Long Tank.  
11 Another contributing element is Ford Dry Lake, which would be  
12 located east, but it sort of gives you a distance.

13           Could I have the next slide to show what the towers  
14 look like. So I don't feel like the towers are overwhelming  
15 and have a lot of visible intensity. They are visible, you  
16 can see them. They sort of wash out on the slide, but if you  
17 have a photograph in front of you, they're more visible. But  
18 they aren't overwhelming. You can still see the landscape.

19           The last one, the last slide, please. This is from  
20 in the Palen Mountains, six miles north of the project area  
21 above the Palen ACEC. So the ACEC is -- you can sort of see  
22 the dune area down there, the dunes next to where Palen Dry  
23 Lake is identified on the map. This is also the same  
24 distance to Corn Springs, another contributing element, and  
25 the North Chuckwalla Prehistoric Quarry District, another

1 contributing element. You can see the Chuckwalla Mountains  
2 in the back. You can see the Eagle Mountains to the right.

3           Could I see what the towers look like, please. So  
4 in this case, especially since we're up a little bit higher,  
5 we can see what the other project might have looked like in  
6 terms of the mirrors, the permitted project, and then what it  
7 looks like now with the addition of the two towers. So yes,  
8 they are visible, but I don't feel it's a total intrusion  
9 into the landscape that you can't appreciate the physical  
10 aspects of this landscape.

11           We can leave this slide up for now.

12           So I want to ask you a question. Can you still see  
13 the components of the landscape of the Chuckwalla Valley even  
14 with the towers located there? Can you still see what makes  
15 the Chuckwalla Valley unique and that there's still presence?  
16 Can you still see the individual peaks, the washes, different  
17 formations?

18           So after I look at these simulations, I see the  
19 physical aspects that make this landscape identifiable and  
20 recognizable. I believe the expanses of the valley show the  
21 addition of the power towers to be a minor disruption to  
22 experiencing this area.

23           Staff has stated that the landscape and the  
24 contributing elements are eligible for the California  
25 Register of Historic Places under criterion 1, 3 and 4. So 1

1 is associated with tribal use. I'll summarize that. Rock  
2 art for criterion 3. Criterion 4 is for archaeological sites  
3 for information potential.

4 I agree with these evaluations. In my work with  
5 the federal government, I have had a lot of experience  
6 applying National Register's landscape criteria.

7 In looking at the Park Service's guidance on  
8 evaluating integrity, it asks the question, does the property  
9 retain the identity for which it is significant? Much of the  
10 traditional landscape is based on physical features, the  
11 mountains, the drainages, the valleys. And Alligator Rock is  
12 an example.

13 The Park Service provides guidance on understanding  
14 natural features as part of the landscape. They ask, are  
15 they unobscured by modern construction or landfill? So I  
16 would argue that the physical features of the landscape are  
17 unobscured. So can we still see these features and can we  
18 still recognize them and appreciate them?

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

1 what are these things out here?

2           At one end of the continuum, think of the island of  
3 Manhattan. Would a person from the past recognize that  
4 island as it looks today? I think that's unlikely. However,  
5 here due to those large vistas and multiple mountain ranges,  
6 the towers are visible, but the landscape is easily  
7 recognizable. I believe that a person could still find and  
8 follow the trails to different locations in this landscape.

9           It seems that the staff has set a really high  
10 threshold of significance for the landscape. So as a result,  
11 staff stated that the towers would profoundly and irreparably  
12 degrade the ability of the landscape to convey its historic  
13 significance.

14           I believe, as I described, that the landscape is  
15 still intact. The physical features and all of the  
16 contributing elements listed in the final staff assessment  
17 are all present. These include the petroglyph sites, the  
18 springs, mountains, foothills, Palen Dry Lake ACEC. They're  
19 all physically unaffected by the addition of the two towers.

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

23           I believe the list of actions in Condition CUL-1 is  
24 burdensome except for two, the reconnaissance survey proposed  
25 for the Palen and Coxcomb surveys and the \$35 an acre for

1 cumulative effects to the landscape.

2           The reconnaissance survey was originally described  
3 in Data Request 26 where staff also said that to request  
4 survey data outside of the southern Palen and Coxcomb  
5 Mountains would constitute an unreasonable burden on the  
6 project owner.

7           Although these field surveys were not completed by  
8 the applicant due to issues scheduling the work because of  
9 BLM's requirement to amend that existing Programmatic  
10 Agreement, which required extensive consultation, and  
11 consultation requirements related to trying to issue the  
12 survey permit, the applicant fully intends to complete those  
13 surveys, since not only are they requested by staff, but it  
14 is part of BLM's amended PA work plan.

15           Could I go back to the first slide?

16           The other actions of CUL-1, Condition 1, include a  
17 revision of the prehistoric trails network cultural landscape  
18 contact and field manual. This trails network is a trails  
19 network that covers six states, so we feel that this is  
20 asking too much.

21           A public outreach video to understand this area  
22 better, a paleoenvironmental study that would be evaluating  
23 packrat middens that have been seen in some of the mountains,  
24 a petroglyph study of other petroglyphs throughout the  
25 valley, support a steering committee to develop compensatory

1 initiatives for Native American communities, and surveys in  
2 all of those surrounding areas that are outlined in blue at  
3 the base of these mountains, including those central areas,  
4 the Raceway Mesquite area and Coxcomb Fringe area.

5 So staff is saying that these would -- are proposed  
6 as conditions, but that they would still not mitigate the  
7 effects of the project, so we believe that this is  
8 burdensome.

9 Related to all of the work outlined in CUL-1 is  
10 Condition CUL-16. This condition removes references to the  
11 BLM PA.

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

17 I'm sorry, Ms. Barger.

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

19 HEARING OFFICER CELLI: Go ahead.

20 MS. BARGER: So related to this is Condition  
21 CUL-16. This condition removes the reference to the BLM  
22 Programmatic Agreement. All field work related to any of the  
23 conditions in CUL-1 will be permitted by the BLM because it's  
24 on BLM land. If they don't agree with the requirements or  
25 the conditions as outlined, they're not required to approve

1 the field work that would need to be done. As a result of  
2 this, they're the final arbiter.

3 In addition, any reports related to the field work  
4 that's conducted on BLM land would have to be reviewed and  
5 approved by the BLM. If the reports don't meet their  
6 requirements, the archeological consultant could lose their  
7 BLM permit, which could impact their ability to do work.  
8 This approval process also places BLM in a position as the  
9 final arbiter.

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

13 The Programmatic Agreement also requires a historic  
14 property treatment plan and monitoring and discovery plan.  
15 These are similar to the CEC document the Cultural Resources  
16 Mitigation and Monitoring Plan.

17 So the CEC is the lead state agency for this  
18 project, but BLM is the lead federal agency and the land  
19 owner, and as a result, they do have the final say.

20 Thank you.

21 HEARING OFFICER CELLI: Thank you. Are there any  
22 members of --

23 MS. BARGER: We have more people that are going to  
24 speak too.

25 HEARING OFFICER CELLI: Okay. Let's hear from Matt

1 Stucky.

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

2 One is related to the Condition of Certification,  
3 Cultural 1. I'll reiterate a point that Ms. Barger made that  
4 the condition as currently written to be extremely  
5 burdensome. I'll go further and say the condition as written  
6 having extremely detrimental effects and impose a past fatal  
7 burden to the project based on the uncapped and potentially  
8 limitless financial obligations the condition imposes.

9 To elaborate on that, I think it would behoove  
10 everyone if I gave just a very quick and brief overview of  
11 how projects like this are financed and constructed.

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

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

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

22 MR. GALATI: Yes, the offer of proof is CUL-1 could  
23 render the project unfinanceable as written, and Mr. Stucky



1 wants to explain to you why that is.

2 HEARING OFFICER CELLI: Overruled. Go ahead.

3 MR. STUCKY: Okay, so we will seek debt financing  
4 and equity financing. The debt financing is simply loans.

5 The equity financing involves finding investors who  
6 are willing to put in hundreds of millions of dollars into  
7 the project in return for a return on their investment. And  
8 so to show those investors what their potential return might  
9 be, Palen Solar Holdings has financial models in which we  
10 predict cash flows, revenue streams from the project, and  
11 also must predict the costs associated with the project.

12 You go through all that and you can come up with an  
13 expected rate of return, and then we send this to investors  
14 who must take a look and see if they agree and decide whether  
15 or not to invest in the project. In doing so, they will hire  
16 number crunchers and crack legal teams to dig into this  
17 project in great detail, sift through all the project  
18 documents and try to find those pieces of uncertainty that  
19 cannot be quantified.

20 And Cultural 1 is a huge piece. It injects a great  
21 amount of uncertainty and risk into the project, and I think  
22 would greatly harm the ability of the project to be financed.

23 HEARING OFFICER CELLI: Are you in agreement with  
24 Ms. Barger, then, that the \$35 per acre she mentioned and the  
25 surveys she mentioned are acceptable, and just so we know

1 what you're talking about, everything outside of that is  
2 over-burdensome?

3 MR. STUCKY: Correct.

4 HEARING OFFICER CELLI: Okay.

5 MR. STUCKY: One benefit of the \$35 per acre is  
6 that it is, in fact, quantified, which is very important.

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

8 I would like to quickly turn to Cultural Condition  
9 for Certification, Cultural 11 through Cultural 15. All of  
10 these are related to data recovery for sites that exist on  
11 the site, and we have no objection to that data recovery and  
12 the result will be a requirement to come up with plans and to  
13 conduct that data recovery.

14 What I'd like to point out is that in both Cultural  
15 11 and Cultural 12 there's a statement in the condition that  
16 says "If allowed by the BLM prior to the start of  
17 construction, within 30 meters of the site boundaries of each  
18 of the sites, the project owner shall ensure that certain  
19 members of the archeological team implement the plan."

20 And then, so what we object to is in the  
21 verification it states that "At least 45 days prior to ground  
22 disturbance," without any qualifications of that ground  
23 disturbance, "the project owner shall notify the CPM that the  
24 data recovery has ensued."

25 So, this is not consistent. The conditions seem to

1 imply that you could disturb the ground elsewhere on the site  
2 not in the vicinity of the cultural resource prior to  
3 instituting or instigating data recovery at that site. So we  
4 would just like verification to be consistent with the  
5 condition itself, and to allow construction on the site prior  
6 to data recovery efforts for specific cultural resources.

7 There's a similar comment on Cultural 11, Cultural  
8 12, Cultural 13, Cultural 14, and Cultural 15.

9 And that concludes my comments and now I'd like to  
10 ask Mr. Nials to address Cultural 17.

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

19 Dr. Nials.

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

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

5           This is an area of metamorphic rocks, meta-  
6 sedimentary, meta-volcanic rocks, as well as other igneous  
7 rocks.

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

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

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

25           They went in with a bulldozer, basically, and

1 bladed an area out, flattened it down, hauled a little bit of  
2 bore out of some addits, but the main characteristic of these  
3 mining deposits is ground disturbance in itself.

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

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

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

1 mining engineer, not an archeologist.

2 One other point that I might make is that all of  
3 the records of the mining are in the hands of the BLM, and  
4 for this particular area there's a U.S. Geological Survey  
5 Bulletin which was produced in 1985 which describes all of  
6 the claims, describes some of the earlier work that was done,  
7 describes the extent of the ore bodies.

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

14 Thank you.

15 HEARING OFFICER CELLI: Anything further from  
16 Petitioner's witnesses?

17 MS. BARGER: I was just going to summarize very  
18 quickly.

19 HEARING OFFICER CELLI: Go ahead.

20 MS. BARGER: One, I disagree with staff on the  
21 effect of the addition of the two solar towers. The trails  
22 landscape's integrity, although affected by the addition of  
23 the two towers, does not cause a complete loss of integrity,  
24 and enough of the landscape is retained to still be eligible.  
25 The landscape and contributing elements are all still

1 eligible under the three criteria.

2           Number two, I agree with the eligibility  
3 recommendations of staff.

4           Three, I recommend to restore Cul-16 for the  
5 Programmatic Agreement.

6           And lastly, four, since what makes the Ironwood  
7 Mining District eligible is unrelated to this setting and  
8 visual effects are not a concern, no mitigation would be  
9 necessary.

10           Thank you.

11           HEARING OFFICER CELLI: Thank you very much.

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

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

19           So how we would proceed if we weren't breaking for  
20 lunch is we would then hear now from CRIT's witnesses, hear  
21 their presentations that could be heard from the ethnic  
22 staff. After that, questions, discussion, getting into  
23 clearing up any areas of confusion that we might have.

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

25           I'm not clear, what are we doing for lunch today?

1 Are there places nearby?

2 Oh, Ms. Grenier, go ahead.

3 MS. GRENIER: (inaudible)

4 HEARING OFFICER CELLI: Okay, thank you. So are  
5 those from Subway or something like that? Okay.

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

14 It's 12:00 now.

15 (Committee discussion)

16 We have -- okay, so actually what the Committee  
17 would rather do is finish everybody's basically direct  
18 testimony now, then break for lunch, so let's do that.

19 For CRIT, I'm sorry, your name again, ma'am?

20 MS. KING: Winter King.

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

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

25 HEARING OFFICER CELLI: Okay. Then let's do that.



1 Let's just finish up, and then when we come back all parties  
2 will have a discussion and ask questions and hopefully finish  
3 up cultural.

4 One moment.

5 (Committee discussion)

6 We're just going to take a brief moment off the  
7 record, folks, and then we'll be back on record in about five  
8 minutes. So we're off at this moment. We'll be back on in  
9 five minutes to take -- finish the direct testimony, and then  
10 we'll break for lunch.

11 (Off the record.)

12 HEARING OFFICER CELLI: So just to reiterate.  
13 Let's get back in the room and get moving on cultural here,  
14 ladies and gentlemen. If everybody can come back and take  
15 your seats we will resume the testimony on cultural  
16 resources.

17 There was a request from the public advisor that  
18 reiterate the order in which we're going to be taking  
19 evidence today. Right now we're on our first topic, which is  
20 cultural evidence, including environmental justice.

21 We're going to talk about alternatives immediately  
22 afterwards.

23 Following alternatives, we will talk about visual  
24 impacts, visual resources.

25 Following visual we will have a geological and

1 paleoecological resources.

2           After that is project description.

3           Following project description we will cover soil  
4 and water.

5           And after soil and water we will cover traffic and  
6 transportation.

7           And not all parties have requested that we take  
8 testimony on all subject areas, and there are some areas  
9 where some parties are not interested and so that will  
10 presumably move faster. At this point cultural is certainly  
11 a highly contested area, everybody's interested in it and  
12 pretty much (inaudible).

13           Okay. So what we're going to do, then, is we're  
14 going to finish off CRIT basically opening their direct  
15 testimony. And before we break for lunch, or when we break  
16 for lunch unless complete the public comment. Then we'll  
17 probably take about a half-hour lunch break, get refreshed  
18 and come back. Then we have two people who have requested to  
19 make a public comment, and -- okay, so at the close of CRIT's  
20 testimony we'll just take these two comments and then we'll  
21 break for lunch and then we will come back.

22           So with that, Ms. King, who is your lead witness?

23           MS. KING: So we have three witnesses, and first it  
24 will be Wilene Fisher-Holt, and then Douglas Bonamici, and  
25 then finally Ms. Clark.

1 HEARING OFFICER CELLI: Thank you.

2 Ms. Fisher-Holt, please.

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

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

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

9 HEARING OFFICER CELLI: Much better. Go ahead.

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

17 But I'm actually an enrolled member of the Colorado  
18 River Indian Tribes and I'm the Director of the museum in  
19 Parker for the Colorado River Indian Tribes. And we also  
20 cover the cultural resources for CRIT.

21 And so when you hear me talk, I'll make reference  
22 to my, sometimes I'll probably talk about Mojave belief  
23 systems and other times it might be Chemehuevi, so I'll try  
24 to remember to identify that. But that's mainly what I'll be  
25 talking about is the belief systems or the -- what I know of

1 my people and the spiritual systems that I know of and are  
2 still practiced today in relation to this area.

3 HEARING OFFICER CELLI: Thanks.

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

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

15 So from the beginning of time our Creator gave us  
16 this land and asked us to be stewards of the land, and that's  
17 what we as Mojave and Chemehuevi people do.

18 My mouth is really dry, excuse me.

19 And on the Mojave side there is -- thank you. Our  
20 belief is that from the time, from the beginning of time we  
21 -- I'm nervous. We came from an area up by -- in Southern  
22 Nevada called Avi Kwame, which is Spirit Mountain, and our  
23 story began from that time taking us all the way down into  
24 Mexico. And there are songs that are sung about the whole  
25 area we come from. Our traditional lands cover that area of

1 the Mojave Desert up towards Tehachapi Mountains, toward the  
2 Grand Canyon, like I said, down into Mexico.

3           There's evidence all over the desert, along the  
4 Colorado River, as you all know, that our people were here.  
5 And from the beginning of time the Creator gave us names.  
6 All the mountains have names, all of the rivers. The  
7 petroglyph sites they talk about, the springs that are  
8 mentioned, they all have Indian names, both Chemehuevi and  
9 Mojave. And so those names tell of a history of our people,  
10 its oral history through songs. And those songs are taught  
11 and carried on since the beginning of time to the current  
12 day.

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

22           I know, you know, the company says they're going to  
23 make energy and it's green energy, yeah, and we're all for  
24 that, but our tribe isn't going to see any revenue from that  
25 and we're not going to receive any of that energy. It's all

1 going to a bigger place, I guess.

2 I don't know about all that, but I do know there  
3 are repercussions. We're feeling it in our community from  
4 all the solar projects that are out there in that desert,  
5 especially Genesis. That's a fine example, which is right  
6 next-door to where Palen is going to -- are proposing to  
7 exist.

8 And I see my elders come to the DRECP meetings and  
9 cry and plead that these projects don't go into that area  
10 because it's impacting our people, and it's hard to see. You  
11 know, you all don't see the effects of it but we do in our  
12 community, and we're losing a part of our history.

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

21 The Salt Song Trail that goes from Mount Charleston  
22 in Nevada down through and makes a circle which comes back  
23 around through that area down by Blythe, it has a history  
24 that sings, or the people sing a song and it's about the  
25 landscapes, their storyscapes and their songscapes that tell

1 about this area, and those songs sing and help to send our  
2 people on when they pass on to the happy hunting ground.

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

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

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

21           The clan names of the Mojave people, they're all  
22 clan names that relate to the desert, from the mountains, the  
23 plants, the animals, the insects, the cosmos up above, what's  
24 here on earth. All of our people are named after these areas  
25 and it's in us. And I don't have any other way to explain

1 this to you, but to let you know that it's who we are as a  
2 people and it does affect us.

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

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

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

25 And so it's a very special area to us. I know when



1 non-natives come there and they see it they think it's just a  
2 desolate desert, you know, but it's not that at all. Our  
3 people live there and survive there, and the Creator gave  
4 these things to us for us to exist and we still use it today.

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

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

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

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

25           And there's evidence, as you all know, that our

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

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

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

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

1 killed out at Genesis already. And they say there's no  
2 impact, you know. It's hard to believe that.

3           The eagles and the red-tail hawks that come from  
4 that area. I visited that area, just like my elders have,  
5 and I've been out to the mountains there and visited some of  
6 the sites, and I counted eight red-tail hawks, which are held  
7 in high reverence to our people. The Mojave people use those  
8 for ceremonial uses, the feathers, and we use them for  
9 spiritual growth current day. Back in the old times the red-  
10 tail hawk feathers were used for acts for ceremonial  
11 purposes, cremation rites, religious rites, and which is  
12 still practiced today.

13           The Chemehuevi use the eagle in ceremonial  
14 practices and religious acts. I don't see it too much today,  
15 but 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  
18 this is going to happen to our land, to our desert. It's  
19 already happening. And but now we're looking at the visual  
20 part of it and knowing that those towers are going to be  
21 there that affect our afterlife, that's where, you know, it's  
22 time to draw the line somewhere.

23           And it's really sad to see. It hurts. Our people  
24 are suffering from it. You all don't hear it, you don't know  
25 and you don't see it, but we're there. We still exist today.

1 That is a part of our history, our people. We don't have  
2 books that tell you. Everything is shared and handed down  
3 orally through songs, through stories, through the mountains,  
4 the names of the songs of the mountains. The petroglyph  
5 sites, as you call them, they all have Indian names and have  
6 spiritual significance to them.

7 So all of this is disrupting that, that cycle that  
8 we know of that makes us who we are as a people. And I don't  
9 know how to explain it to you but we, like I said, we believe  
10 there 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 are  
15 with CRIT's 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 email,  
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  
2 and subsequent events, the Genesis issues that I'm sure  
3 you're aware of, and the mass of solar projects or renewable  
4 energy project proposals that are coming down the pipeline  
5 have raised a concern level with the tribes exponentially to  
6 it.

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

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

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

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

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

16           That effort failed. And by July, after the last  
17  exchange about a couple of points that CEC's legal department  
18  couldn't accept in our application, the communication ceased.  
19  The ethnographic window was closed. And the statements  
20  about, in particular, the Chemehuevi and Mojave people that  
21  became part of the SSA ethnographic report were from members  
22  of those tribes but not from the Colorado River Indian Tribes  
23  as a tribal sovereign government.

24           So that's a problem for us, and that's a problem, I  
25  think, for the CEC's process as it exists now. And it would

1 be more helpful and I think the CEC would be better informed  
2 if the ethnographic process had unfolded more thoroughly with  
3 CRIT.

4           The issue of integrity of the information,  
5 integrity of the resource, it goes also to the integrity of  
6 your information. And if setting, feeling and association  
7 aren't thoroughly discussed with the members of the tribes  
8 and the tribal government itself, then I don't think that  
9 your decision making is as well-informed as it really should  
10 be.

11           So that's been my experience. With so many of  
12 these projects coming down the pipe, up to, I've seen  
13 estimates of up to a million acres of California desert being  
14 proposed for these projects. That's a lot of resource.  
15 That's a lot of disruption. That's a lot of cumulative  
16 impact that a single project review, I think, usually falls  
17 short of fully considering, and I would like to encourage the  
18 Commission to keep that in mind in its deliberations.

19           It was perhaps a little unfortunate that Ms. Barger  
20 mentioned Manhattan as one of the comparisons. You know,  
21 Manhattan was not a good deal for the tribal people of that  
22 day. And another Manhattan project is not something that  
23 we're hoping to see here along the corridor, the I-10  
24 corridor and around that ancestral homelands of the Colorado  
25 River Indian Tribes.

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

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

3 Ms. Clark, if you want to go to the podium and --  
4 that's perfect.

5 MS. CLARK: Can you hear me?

6 HEARING OFFICER CELLI: Jeff is bringing you a  
7 microphone. Apparently (inaudible). Is that on? That seems  
8 to work. Jeff, are you getting a signal through that?

9 Speak into it, Ms. Clark.

10 MS. CLARK: (Inaudible)

11 HEARING OFFICER CELLI: Actually, I need you to get  
12 -- make sure that you're getting picked up in the WebEx.  
13 Here comes another mic for you.

14 MS. CLARK: Hello?

15 HEARING OFFICER CELLI: There you go. That one  
16 works.

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

21 I do want to acknowledge that it is somewhat  
22 unusual for an attorney to be providing testimony, I know  
23 we've had questions on this. I just want to clarify that  
24 what I will be speaking about today is specifically from  
25 factual information related to the Genesis Solar Energy



1 Project.

2 I was going to ask to see the map. Is it easy to  
3 put the map back up that will show where Genesis is? I don't  
4 know who's controlling that.

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

7 MS. CLARK: I just want to make sure that everyone  
8 is aware of sort of where Genesis is. I know you've heard  
9 reference to it in our testimony and I think it's important  
10 to see how close the Palen Project is to the Genesis Project.

11 The reason that we're talking about Genesis is  
12 because, as Mr. Bonamici had alluded to, it was sort of a  
13 wake-up call for the tribes and the realization that these  
14 projects could have significant cultural resource impacts and  
15 particularly related to buried cultural material.

16 We've heard a lot of discussion about visual impact  
17 and other cultural resource harm, but my testimony is  
18 specifically focused on sort of a narrower issue, which is  
19 buried cultural material.

20 So the Genesis Project, I don't have a pointer, but  
21 if you look at where the Palen Project is on this map, it's  
22 further -- there we go. So right to the north of Ford Dry  
23 Lake is where the Genesis Solar Energy Project is located.

24 And in November of 2011, the project owner began  
25 discovering significant buried cultural material in the

1 construction of that project. CRIT was eventually notified,  
2 and I'll get to that in a moment, the notification process,  
3 about these discoveries. And because of their nature, in  
4 particular the possibility of a cremation site at the  
5 location, CRIT became very concerned about this and sought to  
6 understand what mitigation measures were in place to assure  
7 that the further disruption and destruction of these  
8 resources could be prevented.

9           And so we looked at both the BLM conditions, the  
10 mitigation measures, as well as the CEC's conditions.  
11 Similar to this project, BLM and CEC worked together to  
12 provide mitigation measures. They were almost identical  
13 across the BLM and the CEC.

14           So in the CEC we have the Cultural Resources  
15 Mitigation and Monitoring Plan and at the BLM we have the  
16 Historic Properties Treatment Plan as well as a Programmatic  
17 Agreement. Here we also have conditions of certification.  
18 And so CRIT reviewed those and sought to enforce the  
19 mitigation measures as we saw them, which would have required  
20 avoidance of the project site as long as that was determined  
21 to be feasible, and it would have required other procedural  
22 protections for the tribes.

23           Unfortunately, through the subsequent months and  
24 into the spring of 2012 BLM largely refused to comply with  
25 those conditions and CEC was largely absent. We approached

1 CEC, the CEC staff, to enforce these measures and that didn't  
2 happen.

3           As I'm sure everyone here is aware, the CEC is  
4 rather difficult to sue, so we ended up suing BLM in federal  
5 court to address these mitigation measures and were,  
6 unfortunately, unable to do so. The court ultimately decided  
7 that a TRO, a temporary restraining order or preliminary  
8 injunction was not warranted and, consequently, construction  
9 continued at the Genesis Project, resulting in the excavation  
10 of scores of cultural resource artifacts. These include  
11 manos and matates which are of particular importance to CRIT  
12 members, as well as other archeological resources attendant  
13 for fossil cremation sites, and ultimately, as I said,  
14 thousands of resources were uncovered.

15           I do recognize that there are some differences  
16 between the Palen Project and the Genesis Project that the  
17 Applicant or Petitioner has brought up. The Palen Project  
18 has less grading, particularly now with the amendment, than  
19 the Genesis Project which requires grading of the entire  
20 site.

21           I am not a geo-archeological expert by any means,  
22 so I can't speak to the testimony that was provided about the  
23 potential differences between the likelihood of encountering  
24 various cultural materials at the project site, but I do just  
25 want to note that no one has said that there was zero percent

1 change of encountering buried cultural material here.

2 As the testimony has shown, the ancestors --

3 MR. GALATI: I'd like to object at this time, this  
4 is legal argument. She's not providing any new facts, she's  
5 telling what I'm going to see in her brief.

6 HEARING OFFICER CELLI: Well, no, she was just  
7 saying that there was zero -- how did you put it? There was  
8 zero -- no one can guarantee that there won't be a disruption  
9 of artifacts essentially.

10 Yeah, it is argumentative, but keep --

11 MS. CLARK: I'm responding directly to their actual  
12 testimony.

13 HEARING OFFICER CELLI: Overruled for now.

14 MR. GALATI: That's my problem; you're not an  
15 expert to be able to respond to this. You can and I thought  
16 the testimony was going to be limited to what happened at  
17 Genesis.

18 HEARING OFFICER CELLI: And, actually, I want you  
19 -- so I'm going to sustain that objection because really your  
20 testimony is limited to the facts as they relate --

21 MS. CLARK: I will continue.

22 HEARING OFFICER CELLI: -- not just to Genesis  
23 because Genesis is a done deal. We really need to hear about  
24 it as it relates to this project. So please go forward on  
25 that basis.

1 MS. CLARK: I was attempting to explain why what  
2 happened at the Genesis Project is relevant to here, and so I  
3 will just say that there is a likelihood of encountering  
4 buried cultural material at this project site. There might  
5 be a different likelihood but there is nonetheless the  
6 likelihood. And, therefore, our experience enforcing the  
7 Cultural conditions of certification and mitigation measures  
8 at Genesis is relevant.

9 So there are three main issues that we ran into at  
10 Genesis. The first is issues of enforceability. And so at  
11 the Genesis Project there was a condition similar to the one  
12 proposed here, exactly identical in fact, that required the  
13 owner to provide notice to interested Native American groups  
14 in the event of a discovery within 48 hours.

15 I know that CRIT was not notified until two weeks  
16 after the discovery and after a mitigation plan that involved  
17 data recovery was already formulated. The court found that  
18 this condition was violated in our lawsuit, but found that  
19 there was no remedy available for that violation.

20 Similarly, again, we had in Genesis a CRMMP and an  
21 HTTP that were proposed to be developed after the fact, after  
22 the project approval, and direct because of that activity the  
23 project owner and the agencies claimed that these plans  
24 weren't enforceable by CRIT or anyone other than the  
25 agencies.

1           And then, finally, at Genesis we found it was very  
2 difficult to tell who was running the show, so to speak, and  
3 so when CRIT had concerns about these resources, there was a  
4 lot of passing the buck that went on between the agencies.  
5 And so to address this issue of enforceability we've proposed  
6 some changes to the conditions of certification that are in  
7 Exhibit 8020 and --

8           HEARING OFFICER CELLI: I'm sorry, you said that  
9 Exhibit 8020 --

10           MS. CLARK: 8020 --

11           HEARING OFFICER CELLI: -- are new conditions or  
12 modifications to the condition?

13           MS. CLARK: Modifications to the condition,  
14 exactly. And these will provide for a greater involvement of  
15 the CEC's compliance project manager. It makes it clear that  
16 these subsequent plans are required and enforceable, and it  
17 provides a direct financial incentive to ensure that the  
18 notification practices actually are complied with.

19           Second, I want to point out difficulties that we  
20 ran into in determining what to do with buried cultural  
21 resources once they were encountered. CRIT was extremely  
22 vocal, as were other area tribes, that the preference was to  
23 avoid the site, and if that couldn't be done, then the second  
24 preference was to rebury the material in situ or in close  
25 proximity to ensure that these resources really stayed where

1 their ancestors had left them.

2           The project plans, so the CRMMMP and the HTTP  
3 appeared to require avoidance and said site avoidance will be  
4 the preferred method of dealing with cultural resources, and  
5 if the newly discovered resources are significant, then  
6 avoidance must proceed. But from the beginning, the agencies  
7 determined that they were going to perform data recovery on  
8 the project site and that the materials would not be avoided.

9           On the question of whether or not it is infeasible,  
10 BLM ultimately sent to CRIT a one-sentence email that says  
11 that BLM has determined that the avoidance of the project, of  
12 these particular resources, was infeasible and no information  
13 was given about why this determination was made. There was  
14 no evidence given in support.

15           And so we eventually sued on this point as well,  
16 saying that avoidance was required under these plans and the  
17 court determined that the language was sufficiently clear to  
18 require avoidance.

19           And so then we provided changes in the conditions  
20 of certification that would make that clear that avoidance is  
21 the preferred method for dealing with any discoveries that  
22 might happen later while the project was being constructed,  
23 and that if there's a determination of infeasibility, that it  
24 must be made in writing and must be made with substantial  
25 evidence supporting it.

1           Finally, and this is a little bit related to the  
2 other two, Genesis did demonstrate to CRIT the failure of  
3 these conditions to adequately involve Indian tribes in the  
4 process. The CRMMP was developed after the fact and without  
5 any tribal involvement. There was again a failure to  
6 complete the ethnographic studies with CRIT, as Mr. Bonamici  
7 has testified to with this project, and there was no  
8 involvement of Native American monitors at the time the  
9 discovery was made.

10           And so again we provided recommendations and  
11 changes to the conditions of certification that would include  
12 additional involvement of Indian tribes and require that the  
13 agencies and the project owner continue to do adequate  
14 consultation throughout the process.

15           That's the end of my testimony. I hope it was  
16 sufficiently factual. So if you have any questions, I'd be  
17 happy to answer them.

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

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

21           MS. KING: That's correct, in addition to the  
22 obviously written testimony that was submitted.

23           HEARING OFFICER CELLI: Okay, thank you.

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





1 AFTERNOON SESSION

2 HEARING OFFICER CELLI: Let's go ahead, everybody.  
3 All parties, take your seats. Witnesses that are still under  
4 oath, please have a seat at the witness table. Would you  
5 please resume your seats. Witnesses are still under oath,  
6 sitting at the witness table. And parties, please resume  
7 your seats.

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

10 I just wanted to ask a general question to staff.  
11 I just wanted to confirm my understanding that in the  
12 analysis of the PSEGS that there were no new prehistoric  
13 archeological resources under consideration in this amended  
14 analysis. I'm talking about archeological resources, the  
15 kind that are under the ground.

16 MR. McGUIRT: I can't give you a definitive answer  
17 on that. There may be some that were subject to discoveries  
18 in the newer surveys where there were tweaks to the site of  
19 the project area; and if so, they've been taken care of in a  
20 manner that we're okay with, so the focus of our analysis is  
21 offsite.

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

1 MR. McGUIRT: Staff didn't have any issues with  
2 what's going on onsite with the archeology.

3 HEARING OFFICER CELLI: Let me see if there was any  
4 other questions. Okay.

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

6 In our opening testimony on cultural we added a  
7 couple of site names that were identified, so we have like,  
8 for example, a data recovery condition and it would list 16  
9 sites. Six of them came off and one new one got put on.  
10 We're in agreement with staff that those changes are  
11 appropriate.

12 MR. McGUIRT: That's correct.

13 MR. GALATI: I didn't want you to think that there  
14 was no new sites, because you will see that in the cultural  
15 work there were a couple more sites.

16 HEARING OFFICER CELLI: I saw the new sites. What  
17 I didn't see was the new sites were mentioned but it never  
18 got to an analysis of impacts and so forth, and I see now  
19 that that's because it's all the same in the eyes of staff.

20 MR. McGUIRT: Can I speak to that?

21 HEARING OFFICER CELLI: Yeah, please.

22 MR. McGUIRT: I think the reason you saw that was  
23 because the staff felt like that the method of handling the  
24 sites that was come to during the original citing case was  
25 still sufficient for the new ones that have been found in the

1 project footprint for this amended project.

2 HEARING OFFICER CELLI: Okay, thank you.

3 The Committee may have some other questions as we  
4 proceed, but at this time I'm going to ask Mr. Galati whether  
5 you have any questions of staff?

6 MR. GALATI: Yes, I do.

7 HEARING OFFICER CELLI: And if you could give the  
8 Committee what those questions would be.

9 MR. GALATI: You want me to say the question to you  
10 or --

11 HEARING OFFICER CELLI: Right.

12 MR. GALATI: I wanted to ask Mr. McGuirt, he made a  
13 comment about not being part of the Programmatic Agreement,  
14 and I wanted to ask him, because my understanding was that  
15 staff had input into the amendment to the Programmatic  
16 Agreement, specifically about the surveys in the Palen and  
17 Coxcombs that we are now going to do because they are in the  
18 amendment for the Programmatic Agreement and the work plan.

19 HEARING OFFICER CELLI: Can you speak to that,  
20 Mr. McGuirt?

21 MR. MCGUIRT: Yes, I can. For the development and  
22 the execution of the Section 1 and 6 Programmatic Agreement  
23 from the original citing case, early on staff had some input.  
24 We were in consultation with the BLM at that point about the  
25 development of the original PA.

1           There was a period during which we ceased to  
2 develop joint documents for these projects and went back to  
3 developing separate documents and at that point our  
4 involvement in the development of the programmatic agreements  
5 for Section 1 and 6 was lessened eventually to the point that  
6 we didn't participate anymore because we were busy trying to  
7 get our own documents out. As a result of that we never, the  
8 Energy Commission never signed and was not part of the  
9 execution of, was not a signatory to the original document.

10           And we found over the course of time after we  
11 ceased doing joint documents and started doing parallel  
12 documents, that it was effective for both the BLM and the CEC  
13 to meet our own respective obligations under state and  
14 federal laws and regulations, to just consult a lot; to get  
15 in a room and talk about "well this is what we need, what do  
16 you need" and to work out our differences and to come to  
17 compromises that worked, and so that's what we've been doing  
18 for the last three or four years to some great effect.

19           With regards to the amended project and the  
20 amendment to the Programmatic Agreement here, to my  
21 knowledge, the Energy Commission staff was not notified that  
22 that document was being opened up, that it was in  
23 consultation for amendment, or that it had been executed  
24 until after the fact, so we had, to my knowledge, no  
25 involvement whatsoever on the document.

1           So we weren't a party to it to begin with and we  
2 weren't even part of the input in the amended document that's  
3 now in place, and so we can't tell the Commissioners with any  
4 certainty that our compliance with that document would meet  
5 our obligations under CEQA.

6           HEARING OFFICER CELLI: Thank you.

7           Go ahead Mr. Galati, if you have more questions.  
8 I'm going to ask that if you can keep your questions more  
9 sort of like more open so the parties can actually flesh them  
10 out.

11           MR. GALATI: Is it okay if I give some background  
12 to remind the witness what they said, though, so they know  
13 the context?

14           HEARING OFFICER CELLI: I suppose, but if it's  
15 starting to sound like "you said this on such-and-such a  
16 date..."

17           MR. GALATI: But just a minute ago you talked about  
18 the 30 meters. When you put up the slide show at the  
19 beginning and you were describing the disagreements, when you  
20 were discussing the 30 meters away from a particular  
21 resource, I thought you said that the applicant was proposing  
22 a new approach adding the 30 meters, and I just wanted you to  
23 confirm that that is the existing conditions that allow  
24 construction to occur as long as you stay 30 meters away from  
25 an existing resource.

1           MR. MCGUIRT: My understanding of the original  
2 intent of that condition, and I can't speak to the letter of  
3 it right at this moment, is that for all the resources that  
4 were known as a result of all the work that we did to get us  
5 to the license and the conditions, that data recovery was  
6 going to be done and it was going to be done before  
7 construction started so that basically you clear the  
8 construction site of all the cultural resources concerns  
9 before you begin. So for that reason there was no need to  
10 draw any kind of boundary around the site. You went out and  
11 did whatever you needed to do in archaeological terms to  
12 properly investigate the site.

13           When it came to the discovery issues when we got to  
14 construction, when we were in the middle of construction, and  
15 the condition that covers the protocols for discoveries, I do  
16 recall that typically there is a buffer that is put in there  
17 that says, okay, you've discovered something. We're going to  
18 throw up a 30 meter buffer around it just to make sure that  
19 we're not going to do any further damage to what we just  
20 discovered, and we're going to get people in there quickly to  
21 assess what's there and whether it's significant and whether  
22 it warrants any further consideration.

23           And so you're in an emergency situation there  
24 basically. You've got, you know, tens to hundreds of  
25 thousands of dollars of machines and men running around and

1 it's taking into account the business end of that. It's  
2 like, okay, let's try to be reasonable with this thing.

3           So it's an exceptional situation, and staff doesn't  
4 want to take what is an exceptional set of -- an exceptional  
5 protocol for a discovery situation and turn around and apply  
6 it back in a situation where there's no hurry. You know,  
7 we're going into construction, we need to get these things  
8 done, but you still have the time to do it and do it in a  
9 proper fashion, because in reality, when you go to  
10 construction and you have a discovery, it is very difficult  
11 to say without some testing whether or not even the 30 meter  
12 buffer is adequate or not. It's a compromise, and staff  
13 didn't see any reason to compromise from the original  
14 licensing condition to do a proper data recovery  
15 investigation of the sites that we already know about, not  
16 ones that we've just found out about.

17           MR. GALATI: Mr. Celli, not being involved in the  
18 informal hearing process, I know what I would do if I'm  
19 allowed to cross.

20           HEARING OFFICER CELLI: All right. We don't -- the  
21 Committee is going to ask you then to construct it and then  
22 (inaudible) where are you going with this?

23           MR. GALATI: I'll tell you exactly where I'm going  
24 ahead of time. What Mr. McGuirt just described is not what  
25 the conditions require. Not what the conditions say, and



1 he's completely wrong.

2           The original conditions require data recovery for  
3 specific sites, not for sites we discover later, to have a 30  
4 meter buffer, but specifically identified sites under CUL-11,  
5 12, 13, 14 and 15. And it says "for these sites we know  
6 about, you can begin construction as long as you don't stay  
7 -- you stay 30 meters away."

8           All we've asked for was the verification to  
9 actually reflect what the condition says, and he made a  
10 comment that what we're asking is a new approach. And my  
11 offer of proof is, it's not a old approach and it's not a new  
12 approach, it's the same approach that was approved for the  
13 first project and I'm trying to understand why it's not  
14 appropriate for this project.

15           So I guess I can ask my witness read the  
16 conditions.

17           HEARING OFFICER CELLI: Well, no, we don't want to  
18 get into that. I mean, the conditions speak for themselves,  
19 and if there was an assertion that Petitioner was taking a  
20 new approach and you disagree with that, that's fine.

21           I'm kind of -- my question is how is this material?  
22 What difference does this make? In terms of our being able  
23 to say whether there is an impact and whether something is a  
24 resource and whether something is mitigable, what difference  
25 does this make?

1 MR. GALATI: If you believe as the Committee that  
2 it was a new approach the applicant was asking for a project  
3 that's grading a lot less, you may not give it to us, and  
4 then we would delay construction because we would have to do  
5 data recovery over the entire site before we could mobilize.  
6 That's the difference.

7 As opposed to being able to construct in an area  
8 where there's no sites while you're doing data recovery in an  
9 area where there are sites. And that's how the old  
10 conditions were written and I wanted to make sure that you  
11 weren't under the impression that we asked you to change  
12 that. I'm asking for verification to clarify.

13 HEARING OFFICER CELLI: All right, I don't need a  
14 witness, I got that.

15 Do you have any other further questions of the  
16 witnesses?

17 MR. GALATI: No, I have no further questions.

18 HEARING OFFICER CELLI: Staff?

19 MR. McGUIRT: Does staff get to respond?

20 HEARING OFFICER CELLI: No, I'm satisfied with  
21 that, we're good with it.

22 MS. MARTIN-GALLARDO: We have no questions.

23 HEARING OFFICER CELLI: Thank you.

24 Let's go next to Colorado River Indian Tribes.

25 MS. KING: Yes, I do have a couple of topics that

1 I'd to ask some questions on of the Commission staff.

2           The first -- and I appreciate the open ended  
3 question and discussion and so I can just relay the first one  
4 is about the Data Request 27, which was submitted to the  
5 owner to perform a reconnaissance archeological ethnographic  
6 survey, that according to the FSA wasn't complete, and so I  
7 wanted to just ask staff sort of why they made that request,  
8 what information they thought that would provide that would  
9 be helpful.

10           And I believe that in the FSA they said that they  
11 did some sort of less formal reconnaissance in the same area,  
12 discovered some resources that kind of confirms that the  
13 study was still warranted. And so I just wanted a little bit  
14 more explanation what the study was, that it didn't happen,  
15 and what you thought was going to be helpful about that  
16 study. And if it further goes to are we missing some  
17 important information about the significance of the impacts  
18 of cultural resources.

19           HEARING OFFICER CELLI: So what I'd like to hear is  
20 tell us what was asked in DR-27 and what was missing.

21           MR. MCGUIRT: In Data Request 27, staff, based on  
22 several field visits and some early reconnaissance work out  
23 and around the project area, felt that, given the scope of  
24 what our analysis was going to be, that we expand the scope  
25 being that our perception was that it was going to be a much

1 greater intensity of the visual effect. We took a look at  
2 the mountain areas that fringe the project site, the Palen  
3 Mountains, The Coxcombs, the Eagles, the Chuckwalla and so  
4 forth, and we said, you know, we don't have any information,  
5 you know, about what may or may not be up in those valleys  
6 and those foothills or those narrows. It's not something,  
7 it's not information that the project owner felt it was  
8 necessary to provide.

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

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

20           So the project owner had caused to be developed a  
21 series of transects that was meant to comply with the request  
22 that we had, and the request itself got locked up in other  
23 things, but the job that they did about laying out the  
24 transects and being responsive to that particular data  
25 request were good, and we took them and we conferred with the

1 consultant that they had about why they had laid out the  
2 particular transects that they did and what they thought  
3 would be more sensitive areas and less sensitive areas.

4           And given the fact, mind you, these are mountain  
5 ranges, they're very big and very remote, we sort of took a  
6 sample of the sample, if you will. We picked areas that  
7 looked like they were going to be sensitive that we could get  
8 to. It was 110, 115 degrees out there and we had a limited  
9 amount of time to go look.

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

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

24           Had we been able to -- one of the other side-  
25 effects was is having spent more and more time out there

1 progressively, the nature of that valley and the character of  
2 it and the way that the viewscape works out there became more  
3 and more apparent. It's, in visual graphics it's a broad  
4 shallow valley and you can be five, ten miles from something  
5 and really, it feels like you're right on top of it. I mean,  
6 it's amazing the way it works. And then you take in -- and  
7 then there's also a different set of perceptions you have as  
8 you move up in elevation.

9           So the more we were out there, the more we  
10 appreciate, you know, we're going to need some information  
11 about some of the resources that are out here, because we  
12 were going to have, this project would have this visual  
13 impact, and we're required as we understand it under CEQA to  
14 take that impact into account in some meaningful way.

15           So we did what we could. Had we gotten the  
16 original survey, the result of that probably would have been  
17 we would have turned around and had a tier data request and  
18 said, you know what, we understand that, we really need more  
19 information, we need to go look so we can say something more  
20 substantive about what resources are out there and what the  
21 impacts are going to look like.

22           So we've done what we could with the resources that  
23 we had, and we would be able to better refine our conditions  
24 and our conclusions, although our conclusions are fine as  
25 they are, had we had more information.

1 HEARING OFFICER CELLI: So, let me ask you this  
2 question. You have, I think, are eleven cultural  
3 ethnographic resources that identified that are within the  
4 Chuckwalla Valley portion of the Pacific to Rio Grande trail,  
5 right?

6 MR. MCGUIRT: Right.

7 HEARING OFFICER CELLI: And was the object of  
8 DR-27 to really get more of those to further substantiate  
9 that portion; was that where that was going?

10 MR. MCGUIRT: From an archeological perspective,  
11 the idea was to tell us something about the archeology there  
12 that we had no information on. Ethnographically, I'm going  
13 to let Mr. Gates field that one.

14 DR. GATES: Because we didn't get the robust survey  
15 that we desired to further our analysis, in addition to  
16 looking for the archeological values, when we did our own  
17 staff, we called in our walk-about, we were looking for both  
18 archeological, ethnographic or something that overlapped.

19 And had we done something more robust we would have had a lot  
20 more Native American involvement. Should we encounter  
21 something or should we have Native Americans with us in the  
22 field, they would have been able to help us identify things.

23 HEARING OFFICER CELLI: Um-hmm.

24 DR. GATES: However, really where our relationship  
25 with Mr. Cachora took off was he agreed to participate,

1 despite it being 115 degrees and a bit hot out there, he  
2 agreed to participate with us on these walk-about. And not  
3 only did we find things of significance, not only did  
4 Mr. Cachora help us to understand what we were looking at  
5 that could be both archeological and ethnographic,  
6 Mr. Cachora, based upon some of the things he talked about  
7 earlier about predicting in circles of movement, he started  
8 to predict where we would find other things that were outside  
9 of the transects that Mr. Nials has talked to, and that we  
10 felt pretty good about. And with some of his predictions,  
11 without him ever being in some of those areas, we began to  
12 find more.

13 And actually to some extent, even two weeks ago we  
14 felt we needed to just take one more look. Now none of that  
15 is evidence. We went out and looked at a few more of these  
16 transects and began to find even more.

17 So, basically, these activities confirmed that what  
18 we think is we're on right track with the breadth of  
19 resources in this valley, and that there's a profound Native  
20 American knowledge base that goes with what we're finding on  
21 the ground.

22 HEARING OFFICER CELLI: Okay. So we have what we  
23 have, and there may be more, is the net.

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

25 MS. KING: Okay. The FSA also -- the final staff



1 assessment also talks about the trail study that was  
2 completed by the Petitioner, and in the FSA that it was kind  
3 of down to the wire, you got it in August, and I believe the  
4 language in the FSA was that the results of the study were,  
5 because it kind of came in late, they were not fully  
6 utilized, and I wondered if you could talk a little bit about  
7 what that trail study entailed -- was that field work, was  
8 that looking at maps -- and what you meant when you in the  
9 report said that you weren't able to fully utilize it in the  
10 final staff assessment.

11 DR. GATES: The results of that data request as it  
12 was provided to us were pretty much the brown lines, which  
13 were the indication on our one slide of the trails throughout  
14 that corridor area.

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

19 Where specifically the data that was provided to us  
20 was shortcoming was, they had gathered up trail documentation  
21 from various archives, there was no ground truthing of that  
22 data. They simply looked at what was in the information  
23 centers and what were also located in archives, and they  
24 pulled those together and put those lines on a map.

25 Two things probably could have happened after that.

1 One would have been to rectify what that map showed us based  
2 upon what the actual topographical map showed. So if you  
3 have a trail and it runs across the top of a peak right next  
4 to where there's a valley where it's more logical a trail  
5 would go, rectification would say that's just an artifact or  
6 vestige of how the data came in, and you start to move that  
7 to logical places so that the trails actually make sense when  
8 you look at them with topography. That rectification didn't  
9 occur because of when we received that data.

10 The next thing you would do after that would be to  
11 go out on the ground and verify is there any evidence --  
12 there's an archival source of information that says there's a  
13 trail here. We've rectified it and now think it is in this  
14 place. You would go to that place to verify it is indeed,  
15 can you see that. So that ground truthing also did not  
16 happen.

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

19 MS. KING: I have a couple more questions.

20 So one thing we noticed in the final staff  
21 assessment was that the impact area for cultural resources  
22 was limited to a 15 mile radius around the project site, even  
23 though, as you know, with the changes to the project, the  
24 viewshed will extend upwards of 30 miles from the towers.  
25 And I believe today you testified that the reason that you

1 limited the sort of visual cultural impacts to a 15 mile  
2 radius was that the visual impacts dropped off after 15  
3 miles, and I was wondering if you could point us to how you  
4 reached that conclusion and if there was something in the  
5 staff assessment that talks about that.

6 MR. MCGUIRT: Again, on the basis of the experience  
7 we had from being out on the ground quite a bit out there, we  
8 recognized that if and when this project were built, you  
9 would be able to see it when it was lit up from further away  
10 than 15 miles. You can see it quite a long ways away,  
11 probably. You can see the Mule Mountains that are, I  
12 believe, somewhere between 20 and 30 miles away from the  
13 project site.

14 We were faced with what's an appropriate scope for  
15 CEQA analysis for this project? How do we limit the study in  
16 some sort of reasonable way for what we're going to analyze  
17 and what we're not going to analyze, so what information  
18 we're going to gather and what not.

19 And so on the basis of our experience of flagging  
20 and hiking back and forth across that area, we felt like at  
21 least for the purposes of an analysis like this that it was  
22 reasonable to draw a line at 15 miles and say that we were  
23 going to limit our consideration to that area. And then as  
24 Tom explained, we cut off the rest of region, it's kind of a  
25 funny looking line, it's the crest of the mountains that

1 surround and are within that 15 mile radius to cut off a view  
2 of it.

3           And so that's what we came up with and that's why  
4 we did it.

5           MS. KING: In the staff rebuttal testimony there  
6 was a section on geology and paleontology that talked about  
7 the change with the proposed project from the original  
8 project where now they're going to be using vibratory  
9 techniques to auger the heliostats in place. And in that  
10 section there was a discussion about how there would be  
11 significant impacts to buried paleontological resources  
12 caused by drilling, and I was wondering, and in fact the  
13 language was pretty strong that if there were fossils under  
14 there that this technique would destroy them. I was  
15 wondering if the same couldn't be said of any buried cultural  
16 artifacts that happened to be underground in the location of  
17 where the heliostats are going in?

18           MR. McGUIRT: Seems we discussed that, and I  
19 suppose at the end of the day you can chalk that up to a  
20 difference in professional opinion.

21           For cultural resources we were mindful of the State  
22 Office of Historic Preservation's take on that historically,  
23 which has been that if you have a construction technique that  
24 involves something such as pile driving or pedestal driving  
25 or something of this nature, where there is no dirt that's

1 coming up, nothing to look at, and although there may be an  
2 impact, reasonably what is it that you're going to do about  
3 that?

4 For drilling, for predrilling to the pedestals,  
5 you're sort of in the same category. It's like the State  
6 Office of Historic Preservation doesn't want to look like  
7 they're being unreasonable or unduly burdensome, and so in a  
8 situation like that we're talking about a relatively small  
9 hole over a great area. They would see that as a wash, and  
10 we took it as such. And the paleontologist has a different  
11 take on it.

12 MS. KING: Okay.

13 HEARING OFFICER CELLI: I thought we'd be hearing  
14 about helios from the paleontologists later today.

15 MR. McGUIRT: He won't be happy with me.

16 MS. KING: I have a question about, again focusing  
17 on potential buried cultural resources on the site. I  
18 understand that there will be a large number of internal  
19 maintenance roads that will be going sort of in circles  
20 around the heliostats and trucks will come across them and  
21 wash the mirrors and infrastructure. And I think I  
22 understand that they're not going to be graded, there's going  
23 to be a different technique for making those roads that's  
24 grubbing, blading and smoothing.

25 I don't exactly know what those terms mean

1 separately from grading, but I'm wondering if you considered  
2 the potential for unearthing buried cultural resources; and  
3 if so, what protections are in place or mitigation measures  
4 for when those roads are actually being installed?

5 MR. McGUIRT: Staff had an opportunity to work  
6 fairly closely with the project owner's archeologist, and  
7 then staff was very favorably impressed by the work that was  
8 done out there in support of characterizing the stratigraphy  
9 and geomythology of the project area. And it was his belief  
10 that the likelihood was quite low out there. And given the  
11 surface archeology that we were aware of on the project site  
12 and with Dr. Nials' assessment of the potential for getting  
13 buried resources, staff was comfortable with the assessment  
14 that there was a very low likelihood.

15 And so staff did not go back and revisit what was  
16 decided upon for the original project footprint. The  
17 original general construction monitoring conditions will be  
18 in place for those areas where they're warranted under those  
19 conditions.

20 MS. KING: That's all the questions I have.

21 HEARING OFFICER CELLI: Thank you.

22 Basin and Range Watch -- no, I'm sorry,  
23 Mr. Figueroa, any questions of these witnesses? Thank you.

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

1                   MR. EMMERICH: Thank you. I actually do, before I  
2 ask a question, we had a couple questions for the Petitioner  
3 witness concerning the photos that were shown of the KOP  
4 simulation of the project, and we did submit an exhibit  
5 actually under visual, but since this was very great more  
6 related, I wonder if we could have some of the photos put up  
7 on the PowerPoint from our exhibit 4000, would that be  
8 possible?

9                   HEARING OFFICER CELLI: Do you have Exhibit 4000,  
10 Ms. Anderson?

11                   MR. EMMERICH: I have it on a drive here, one of  
12 these little...

13                   HEARING OFFICER CELLI: He has a drive here if  
14 someone is willing to come down and get that.

15                   Just hold off on your question, if you would, until  
16 they put that up.

17                   MR. EMMERICH: Okay.

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

20   (Committee discussion.)

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

22                   From time to time, ladies and gentlemen, the  
23 Committee needs to confer about certain things, and so we'll  
24 go off the record to talk and reach agreement or not or some  
25 resolution, and then we go back on the record.

1 MR. EMMERICH: We have eleven photos. I wanted to  
2 go down to the last five photos of the Ivanpah project.

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

4 By the way, these are showing here in the room but  
5 they do not seem to be showing on WebEx, these Exhibit 4000.  
6 Oh, there we go. Yeah, there's a ten second delay,  
7 apparently. So this is we're looking at Exhibit 4000.

8 MR. EMMERICH: (inaudible)

9 HEARING OFFICER CELLI: Okay.

10 MR. EMMERICH: So anyway, this is relating to the  
11 Petitioner's first, the slide showing the KOP simulations.  
12 Have you been to the Ivanpah project, have you actually seen  
13 that?

14 MS. BARGER: I have not.

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

19 MR. GALATI: I'm going to object that that's beyond  
20 the expertise of these witnesses. We have visual resource  
21 experts.

22 I also would object that, once again, I've got a  
23 document here with no witness so that I can even ask a  
24 question. Where is the telephoto lens? Was this taken  
25 according to any specific ability to take the photograph?



1 HEARING OFFICER CELLI: Objection sustained.

2 MR. GALATI: Thank you.

3 HEARING OFFICER CELLI: We'll try to keep those  
4 talking objections to a minimum.

5 Sustained. That means that there's no -- these are  
6 -- that's beyond the expertise of these witnesses. We are  
7 going to talk about visual later and you can ask the visual  
8 witnesses about that.

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

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

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

14 HEARING OFFICER CELLI: The visual simulation  
15 questions would go to a visual expert, and these are  
16 archeologists and the like.

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

19 HEARING OFFICER CELLI: Sure, go ahead.  
20 Ms. Cunningham.

21 MS. CUNNINGHAM: Laura Cunningham, Basin and Range  
22 Watch. And my question is directed at Mr. Cachora and the  
23 CRIT witnesses about in your traditional knowledge, and thank  
24 you for explaining that more to us, is it simply the visual  
25 nature of power towers that would disrupt your -- the natural

1 settings and the traditional knowledge? Or I heard mentioned  
2 ancestral connections, songs, energies. So is it more than  
3 just visual of the towers? That's my question.

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

5 MS. CUNNINGHAM: Mr. Cachora and the CRIT  
6 witnesses.

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

9 MR. CACHORA: Thank you. It's rather difficult,  
10 but I'll try. You're new at it, you never heard that, but as  
11 I said earlier, there is a energy. I call it a conduit of  
12 energy, because it's like a form of electricity but yet  
13 there's water that flows. But this you cannot see, it's an  
14 energy. There's energy in the area, but you can't see it,  
15 but in this case it's a constant movement of a circle from  
16 one place to another, and you can divert that as long as it's  
17 free almost in this case a 90 degree angle, I guess, that  
18 would go across a certain place and area. And these are like  
19 anywhere from, like I said, ten miles, or it could be two  
20 miles, five miles, ten miles, fifteen miles, depending on  
21 where it's aimed at.

22 A particular area, it has to have certain type of  
23 peak, certain type of mound that is used for that, and the  
24 desert terrain has that. And it takes place right after  
25 sometimes a fog. Sometimes a mirage can create that also.

1           So we use this sort of tapping into that energy.  
2   It's a very difficult thing for one to follow, but that's a  
3   kind of energy and it cannot be obstructed.

4           Because like I've heard earlier, you know, yeah,  
5   this is something that is visible, you can see. No, it  
6   isn't. It's something that is developed by certain people.  
7   Even I couldn't do that unless I know the individual  
8   personally and how that is done and that's the only way that  
9   I can tap into it.

10           And those circles do represent that. Either they  
11   come in clear circle, they're in the form of a rock circle.  
12   Those things do provide that assistance, so in looking at  
13   that rock you have to determine which one it is to identify  
14   what it is, but one thing you can't do is tap into it because  
15   that special person does that.

16           I can only tell you what it looks like, and it does  
17   radiate. That's the main thing that what we look for in an  
18   energy. Does that explain your question?

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

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

25           MS. CUNNINGHAM: Thank you.

1 HEARING OFFICER CELLI: I have a question on the  
2 heels of that, if I may. This is to Mr. Cachora, also  
3 Ms. Holt-Fisher or any of CRIT's witnesses.

4 In this case, and I want everybody to understand  
5 that, the Petitioner is petitioning to amend an already  
6 licensed power plant that was to go into this site that was  
7 the trough style solar just like Genesis is supposed to be.  
8 And what they're trying to do is change from their already  
9 approved power plant, which is the trough power plant, to the  
10 tower style power plant, it's all towers.

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

15 MS. BELENKY: Objection. Mr. Celli, you seem to be  
16 testifying, and I'd also point out that the BLM never  
17 approved the earlier project, and so your statement that  
18 there will absolutely be a power plant there either way is  
19 not accurate, not based --

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

22 There is a licensed power plant already at this  
23 site. What we're interested in is the difference between the  
24 licensed power plant and the proposed modified power plant  
25 with the towers. So we're interested in the difference

1 between those two, and so you've all sort of testified about  
2 kind of the, if I may, the gross impacts of these projects as  
3 they affect the experience of being in the Coachella Valley  
4 landscape, let's say. But what we're interested in knowing  
5 is what's the difference from the Native American point of  
6 view from the one, which is the solar, to the one with the  
7 towers, if there is, if you could tell us that, that would be  
8 helpful to the Committee.

9 MR. BONAMICI: Seven hundred and twenty feet. The  
10 taller project just reaches out and it becomes a visual cue.  
11 It grabs your eye. It does something to the whole of the  
12 landscape that a project with 30 foot tall mirrors and maybe  
13 two supporting structures of a couple of stories doesn't do.  
14 It's a very different thing.

15 And they glow like crazy. They're huge candles in  
16 the middle of a big flat beautifully sculptured valley that  
17 are going to stand there and attract the attention of every  
18 passerby for the next 35 to 50 years.

19 HEARING OFFICER CELLI: I understand what you're  
20 saying. Now, there are visual impacts and there are  
21 ethnographic cultural visual impacts, and that's really what  
22 we're interested in there.

23 MR. BONAMICI: The ethno difference I personally  
24 can't speak to except by being exposed to the tribal members  
25 with whom I've had the pleasure of working for the last six

1 years, so I'll defer to them on that particular thing.

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

3 MS. FISHER-HOLT: Fisher-Holt.

4 HEARING OFFICER CELLI: Fisher-Holt. Did you have  
5 any point you wanted to make on that?

6 MS. FISHER-HOLT: Yeah. In my earlier statement I  
7 had talked about the salt song trails that the Chemehuevi  
8 sing, and talked about the journey that's taken which goes  
9 right through that area, and there is a connection there that  
10 the people seeing it connect mental and physical. When  
11 they're physically singing these songs they're mentally  
12 journeying through that area, and so we believe that it will  
13 be disrupted by the towers that are being proposed to be  
14 placed out in that desert in that same area that the trail  
15 systems go through.

16 HEARING OFFICER CELLI: Thank you.

17 Mr. Cachora, did you have something further?  
18 Please.

19 MR. CACHORA: Yes. If it wasn't a problem, I  
20 wouldn't be here. I don't want to talk outside of anything,  
21 but the first project that we've encountered that's in place  
22 already, as you say, that has showed us that there is  
23 negative to begin with. So anything that goes in that area,  
24 it's going to be even a negative.

25 Another reason too that all along, like I said

1 earlier, I don't like going back like I do, but I tend to  
2 talk in a broad perspective, but areas such as this there's  
3 always need for representation in our knowing, when it comes  
4 to sites, it's always been that way.

5           And if you don't mind, I'd like to point out  
6 another problem which really caused this and goes back to  
7 1900 when an individual, an anthropologist at that time, and  
8 he did publish a report from a tribal person, and he  
9 interviewed them, and in there I believe was a long  
10 interview, but at the end he asked him how he knew all of  
11 this and he said "Our grand history."

12           So that the writer at that time chalked the whole  
13 thing off that there is no magic or supernatural ingredients.  
14 Sometimes he was talking about people, the strength and size  
15 of a leader is sometimes exaggerated almost with any great  
16 extravagance, the story, therefore, is factually sober. And  
17 he goes on to discredit the person that he's interviewing.  
18 And after that we started to notice that every anthropologist  
19 that comes through our area tries to interview us, it's the  
20 same pattern that was developed from this person long ago.  
21 That is something we are trying to correct now with  
22 anthropologists. Then two years ago we had an anthropologist  
23 that came and swore he was going to do a good a job on the  
24 report, and today we're still going back and reviewing his  
25 report and trying to correct that.

1           So, when you come to interview a concerned person,  
2 it's very, very difficult. Our creation, as it was spoken  
3 earlier, who came from a certain place, yes, that entire, I  
4 call it history because it's who we are, and that is also  
5 written in what I call a winding passage. Somebody literally  
6 has to sit there and unravel that for you so that you  
7 understand.

8           And I don't blame you for saying this and asking  
9 this question why if one is it better than the other, but I  
10 say no.

11           HEARING OFFICER CELLI: Thank you very much.  
12 Anything further?

13           MS. CUNNINGHAM: No, thank you.

14           HEARING OFFICER CELLI: CBD, did you have any  
15 questions for the panel?

16           MS. BELENKY: No, thank you.

17           HEARING OFFICER CELLI: Thank you.

18           Anything further from Petitioner, any further  
19 questions?

20           MR. GALATI: No, thank you.

21           HEARING OFFICER CELLI: Thank you.

22           At this time, then, is there a motion from the  
23 Petitioner to introduce into evidence any exhibits marked for  
24 identification?

25           MR. GALATI: Yes. At this time I'd like to ask for



1 Exhibit No. 1003, the cultural resource section; the cultural  
2 resource section of Exhibit 4.

3 HEARING OFFICER CELLI: That's 1004?

4 MR. GALATI: 1004, 1005, 1019, 1026, 1040, 1041,  
5 1057, 1059, 1064, 1065, 1066, 1067.

6 And I apologize. Some of these were broken up on  
7 the exhibit list, so I'm having to go back to the original  
8 exhibit list.

9 HEARING OFFICER CELLI: Okay.

10 MR. GALATI: Also 1077, the cultural resources  
11 opening testimony. 1081, our rebuttal testimony.

12 These are several parts of a data request 57, it's  
13 1102 to 1115.

14 We ask all those to be entered into evidence.

15 HEARING OFFICER CELLI: Thank you. The motion is  
16 to move exhibits marked for identification 1003, 1004, 1005,  
17 1019, 1026, 1040, 1041, 1057, 1059, 1064, 1065, 1066, 1067,  
18 1077, 1081, 1102 to 1115 into evidence, is the motion.

19 Any objection from staff?

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

21 HEARING OFFICER CELLI: Any objection from CRIT?

22 MS. KING: No objection.

23 HEARING OFFICER CELLI: Any objection from  
24 Californians for Renewable Energy? Mr. Figueroa, you need  
25 the microphone.

1 MR. FIGUEROA: No.

2 HEARING OFFICER CELLI: Thank you.

3 Basin and Range Watch, any objection to those  
4 exhibits being admitted into evidence?

5 MR. EMMERICH: No.

6 HEARING OFFICER CELLI: And CBD, any objection?

7 MS. BELENKY: No. Thank you.

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

10 Then that motion is granted; those exhibits are  
11 received into evidence.

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

14 One moment.

15 FEMALE VOICE: (inaudible)

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

19 They're free to go.

20 Staff, motion?

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

23 HEARING OFFICER CELLI: Please.

24 MS. MARTIN-GALLARDO: 2001, 2003, 2004, 2007, 2008,  
25 and we would like to move the declaration, CV and bio of

1 Lorey Cachora into the record as 2010.

2 HEARING OFFICER CELLI: The motion is to move into  
3 evidence exhibits marked for identification 2001, 2003, 2004,  
4 2007, 2008, and 2010.

5 Is there any objection, CRIT?

6 MS. KING: No.

7 HEARING OFFICER CELLI: Any objection, Californians  
8 for Renewable Energy?

9 MR. FIGUEROA: No.

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

12 MR. EMMERICH: No.

13 HEARING OFFICER CELLI: Center for Biological  
14 Diversity?

15 MS. BELENKY: No.

16 HEARING OFFICER CELLI: Any objection, Petitioner?

17 MR. GALATI: No.

18 HEARING OFFICER CELLI: Exhibits marked for  
19 identification 2001, 2003, 2004, 2007, 2008, and 2010 are  
20 received.

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

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

24 HEARING OFFICER CELLI: Is there any objection from  
25 Californians for Renewable Energy? Mr. Figueroa, do you

1 object to the receipt of Exhibits 8000 through 8020 into  
2 evidence?

3 MR. FIGUEROA: No.

4 HEARING OFFICER CELLI: Thank you.

5 Mr. Emmerich?

6 MR. EMMERICH: No.

7 HEARING OFFICER CELLI: Ms. Belenky?

8 MS. BELENKY: No.

9 HEARING OFFICER CELLI: Mr. Galati?

10 MR. GALATI: No objection.

11 HEARING OFFICER CELLI: Ms. Martin-Gallardo?

12 MS. MARTIN-GALLARDO: No objection.

13 HEARING OFFICER CELLI: Exhibits 8000 through 8020  
14 will be received.

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

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

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

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

1           You filed your exhibits. They have transaction  
2 numbers, the TN number.

3           MS. CLARK: Yes.

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

10          MS. CLARK: I don't believe our testimony is  
11 included on that exhibit list. I did not realize that  
12 testimony, that we need to mark our testimony separately as  
13 exhibits (inaudible).

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

16          MS. CLARK: Yes.

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

18          MS. CLARK: No, that does not include our  
19 declarations. Our declaration from Ms. Fisher-Holt and  
20 Mr. Bonamici I thought they're not marked as exhibits,  
21 they're marked as testimony.

22          MS. KING: The opening and rebuttal. The written  
23 testimony that we supplied, they have the TN numbers but I  
24 don't think that they have exhibit numbers. But if there's a  
25 new document that just came out that can be separately cross

1 referenced and then we can come back to make a motion. It's  
2 all the things that we've already filed. I think it's a  
3 matter of making sure and seeing if they have exhibit numbers  
4 (inaudible).

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

9 MS. CLARK: Yes. I apologize.

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

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

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

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

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

1 MS. CLARK: Yes.

2 HEARING OFFICER CELLI: Is that clear to all the  
3 parties?

4 MS. KING: If it would make sense, it was just  
5 suggested that I could make a motion based on the title of  
6 the documents and ask them just to be tacked on at the end of  
7 8020, so it would be 8021, and then hopefully the parties  
8 would be able to register an objection if they have one,  
9 but...

10 HEARING OFFICER CELLI: And what is exactly 8021?

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

13 MR. GALATI: And maybe just for the ease of  
14 numbering, the only one that I object to is that, the opening  
15 testimony. This is the one that I brought the motion with  
16 that ended up with the lawyers not testifying, because it was  
17 very brief-like.

18 HEARING OFFICER CELLI: Right.

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

20 HEARING OFFICER CELLI: Right.

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

1 MS. KING: (inaudible)

2 MR. GALATI: There is two?

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

5 MR. GALATI: Okay.

6 HEARING OFFICER CELLI: I just want to clear any  
7 confusion. At the prehearing conference we said -- you said  
8 that you were going to -- there were confidential documents  
9 that were put in.

10 MS. CLARK: Yes.

11 HEARING OFFICER CELLI: Those were withdrawn,  
12 correct?

13 MS. CLARK: Yes.

14 HEARING OFFICER CELLI: You are not reintroducing  
15 that.

16 MS. CLARK: No.

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

18 MS. CLARK: Our testimony.

19 HEARING OFFICER CELLI: It's from your testimony.  
20 It's the declaration of who?

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

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



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

4           And as 8023, and this is the one that I believe  
5    Petitioner's counsel objects to, Opening Testimony of Rebecca  
6    Wildbear et al, comments on cultural resources, visual  
7    resources, environmental justice, biological resources and  
8    alternatives, and that document is TN number 200906.

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

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

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

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

17          MR. GALATI: Which I have no objection to it being  
18   put in a brief, but as being sworn testimony, since we don't  
19   allow lawyers to testify as to whether something complies  
20   with CEQA or not (inaudible) brief, that's mostly what this  
21   document (inaudible).

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

24          MS. CLARK: No, that's not true.

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

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

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

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

6 HEARING OFFICER CELLI: As testified by a lawyer?

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

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

14 MS. CLARK: That is correct.

15 HEARING OFFICER CELLI: What I will do, Mr. Galati,  
16 is I'm inclined to admit the document and review it and give  
17 it the weight that it would normally receive if it were just  
18 testimony of lawyers, but there may be some mutual factual  
19 information (inaudible) in it, such as that sort of  
20 information, dates, times, so we would admit it under those  
21 circumstances, and so that objection would be overruled.

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

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

25 HEARING OFFICER CELLI: Okay.

1 MS. KING: We're going to go through the list and  
2 then...

3 HEARING OFFICER CELLI: Keep going.

4 MS. KING: Okay. So 8024 is the separate  
5 declaration, opening testimony regarding lessons learned from  
6 the unanticipated discovery of Genesis, and the TN number is  
7 200901.

8 HEARING OFFICER CELLI: Is that -- who's the author  
9 of that?

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

14 HEARING OFFICER CELLI: It's the lessons learned  
15 from Genesis.

16 MS. KING: Yeah.

17 HEARING OFFICER CELLI: Okay.

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

21 MS. CLARK: I'll do the last one, sorry you don't  
22 have it. It's the testimony of Wilene Fisher-Holt regarding  
23 impacts of the Palen Project on cultural resources and that's  
24 8026, and the TN number on that is 201047.

25 MS. KING: And then I have one last document, which

1 is rebuttal testimony of Rebecca Wildbear, Winter King and  
2 Sara Clark regarding cultural resources, and that would be  
3 8027.

4 HEARING OFFICER CELLI: Did all of the parties  
5 receive copies of these documents beforehand?

6 MS. KING: Yes.

7 HEARING OFFICER CELLI: So there's no surprises in  
8 here?

9 MS. KING: No, they're all documented. We just  
10 didn't realize we had to submit them as separate exhibits.

11 HEARING OFFICER CELLI: Okay. Good enough. And  
12 you knew our system, so...

13 MS. KING: It's not in your regs.

14 HEARING OFFICER CELLI: So there is a motion to  
15 move into evidence Exhibits 8000 through 8027 from the  
16 Colorado River Indian Tribes.

17 Is there any objection from Basin and Range Watch  
18 to these exhibits, including up to 8027 inclusive?

19 MR. EMMERICH: We have no objection, no.

20 HEARING OFFICER CELLI: Okay. CBD?

21 MS. BELENKY: No.

22 HEARING OFFICER CELLI: Petitioner?

23 MR. GALATI: Just the objection that was overruled.

24 HEARING OFFICER CELLI: Okay. And it's still  
25 overruled.

1 Staff?

2 MS. MARTIN-GALLARDO: No.

3 MR. GALATI: It was granted at the prehearing  
4 conference table, so I guess I'm batting one for three.

5 HEARING OFFICER CELLI: Staff?

6 MS. MARTIN-GALLARDO: No objection.

7 HEARING OFFICER CELLI: Okay. Then Exhibits 8000  
8 through 8027 will be received into evidence.

9 The last claim of evidence was, I believe, for  
10 Mr. Emmerich for Exhibit 4000. You have a motion, Basin and  
11 Range Watch?

12 MR. EMMERICH: Yeah, we'll move it.

13 HEARING OFFICER CELLI: Move Exhibit 4000 in?

14 MR. EMMERICH: Yeah.

15 HEARING OFFICER CELLI: And any objection from CBD?

16 MS. BELENKY: No.

17 HEARING OFFICER CELLI: Any objection from the  
18 Petitioner?

19 MR. GALATI: Yes, objection as to lack of  
20 foundation.

21 HEARING OFFICER CELLI: These are -- let me ask  
22 you, Mr. Emmerich, these are (inaudible) that came in last  
23 week. This is just some photographs, correct?

24 MR. EMMERICH: It's photographs, it's a visual  
25 exhibit to compare the what's on the site now compared to the

1 impact, what they look like from the Ivanpah project, how it  
2 would look.

3 HEARING OFFICER CELLI: And so the objection is  
4 lack of foundation because we have a witness here who's going  
5 to be able to lay a foundation, Mr. Galati?

6 MR. GALATI: Correct.

7 HEARING OFFICER CELLI: One moment.

8 Mr. Emmerich, who took those photographs?

9 MR. EMMERICH: Both myself and Laura Cunningham.

10 HEARING OFFICER CELLI: Okay. And Mr. Galati,  
11 did you want to ask questions of either Ms. Cunningham or  
12 Mr. Emmerich about the photographs?

13 MR. GALATI: I'd have to consult with my visual  
14 expert, but I will when it comes to visual.

15 HEARING OFFICER CELLI: Okay, let's do this.  
16 Mr. Emmerich, I'm going to ask you to hold it back and when  
17 we get to visual I want you to bring that motion again after  
18 visual.

19 MR. EMMERICH: Okay.

20 HEARING OFFICER CELLI: Thank you.

21 So then we have now completed all the evidence for  
22 cultural resources, and the next topic we're going to cover  
23 -- oh, did we want to take public comment at this time?  
24 Let's hear from --

25 Folks, if you want to make a public comment, come

1 on down to these microphones that are there. I have Mr.  
2 Frank McMenimen of the BLM here. I've got Arlene, I believe  
3 it's Kungary or Kingary, I can't -- I'm sorry if I  
4 mispronounce your name. Linda Otero, and Manfred Scott.

5 So Mr. McMenimen, please.

6 MR. MCMENIMEN: Call me Frank (inaudible).

7 HEARING OFFICER CELLI: Okay. Go ahead.

8 MR. MCMENIMEN: Thank you very much. My name is  
9 Frank McMenimen. I am a project manager with the Bureau of  
10 Land Management. I am responsible for the Palen Project as  
11 we see it today processing through the application process.

12 As you know, the PSEGS site falls within the  
13 boundaries and borders of federally managed land and that  
14 land is managed through the Bureau of Land Management. And  
15 as such, federal laws, and rules and regulations apply and  
16 override and supersede other regulations and rules within the  
17 boundaries of the property.

18 Section 106 is the government-to-government  
19 process to review actions, activities, plans and developments  
20 on federal land. Specifically, it was designed for other  
21 federal agencies for communications for government-to-  
22 government type consultations, including Native Sovereign  
23 Nations and our communications therewith.

24 The CEC was, as they indicated earlier, not a  
25 signatory to the original solar trough project, and as such,

1 the PA was signed without them and not executed by the CEC.  
2 Therefore, the CEC was not included in the update of the  
3 Programmatic Agreement since they were not a signature to it.

4 And as you stated, which is the critical part, we  
5 are looking at only the differences between an already  
6 licensed project and the towers.

7 Agencies and governments don't always have to  
8 agree. BLM and CEC are working on parallel paths in the  
9 determination of actions for the PSEGS project. As you know,  
10 we have some different timeframes on this. To that end and  
11 on the issue of CUL-16, BLM believes and actually stands firm  
12 that BLM, that the CUL-16 should be included in the program.  
13 That is absolutely a necessary step for us and we look  
14 forward to that being brought back into the document.

15 HEARING OFFICER CELLI: Can you give us a little  
16 more of a sense of the timeframe that the BLM process is  
17 going in?

18 MR. MCMENIMEN: From our point of view at this  
19 moment, we're looking in the beginning of February, prior to  
20 a resolution.

21 HEARING OFFICER CELLI: Thank you. Thank you for  
22 your comments, Mr. McMenimen.

23 MR. MCMENIMEN: Okay, thank you.

24 HEARING OFFICER CELLI: Could you spell your name  
25 for me, please?



1 MR. MCMENIMEN: Sure, it's M-c-M-e-n-i-m-e-n.

2 HEARING OFFICER CELLI: Thank you.

3 Next, we have Arlene Kungary is it, or Kingary?

4 MS. KINGARY: Kingary.

5 HEARING OFFICER CELLI: Kingary. Please go ahead.

6 MS. KINGARY: I'm mentioned earlier I'm with the  
7 Quechan tribe, historic preservation officer. And I believe  
8 it was Mr. Galati that was talking a little bit about the  
9 consultation process, about the tribes not responding.

10 One of the first meetings we had with BLM, they had  
11 a PowerPoint on this project and they were meeting with us  
12 and tribal council. And as the presentation was over, I  
13 asked them what CEC had to do with this process because we  
14 had never even heard of you. So they just said, "Oh, they  
15 just do the permit, don't worry about it."

16 So Tom Gates had contacted us about doing the ethno  
17 study, so we were like why is he even calling us, you know,  
18 because he's from CEC and we don't know who he is. So he did  
19 come and talk to us about the ethno study and we arranged for  
20 Roger -- I'm sorry, I don't remember your last name -- but he  
21 came and gave a presentation to tribal council to explain the  
22 process, because we had no idea and this was really our first  
23 hearing that we've ever been to.

24 When Roger met with council, which was quite some  
25 time ago, he explained that we could come as an intervener,

1 and Mr. Cachora said, "Well, that doesn't seem right because  
2 we're a sovereign nation. We should be able to come in and  
3 sit at the table and communicate with you directly." We were  
4 told that wasn't possible. So the compromise was to have him  
5 be an expert witness because we did not feel it was right to  
6 be denied to be able to come in and talk to you as we're  
7 supposed to be.

8           So that just gives you a little background about  
9 why we didn't participate and why we didn't know a lot about  
10 this project. And this happened quite frequently and we have  
11 a lot of projects that we have to address.

12           For the cultural component, when I first started  
13 working on the reservation, I went to meet with the elders  
14 and I was just really appalled when they're sitting there  
15 talking after eating and one of the ladies said that the only  
16 thing she had to look forward to was her death because that's  
17 when the world would make sense again. That was like  
18 everything is gone, everything's been taken but the actual  
19 funeral ceremony and the death. Kind of put everything back  
20 in place again.

21           That's why it's so important for these places and  
22 this viewshed to be protected, because when Wilene was  
23 talking about the songs, they're actually -- these sites are  
24 actually named during the funeral ceremonies, these places  
25 that people pass through. And it gives the people great

1 comfort to know that they're there and they're not  
2 obstructed, and they'll always be there. And they were in  
3 trust with BLM and the tribe always thought they would be  
4 safe.

5           The songs, themselves, I mean, if you think of  
6 something that you could relate to it, it would be the  
7 Twenty-Third Psalm or something like that. It would give you  
8 comfort as you're dying. That's how important these areas  
9 are to the tribal people.

10           The tribes have lost so much. They went through  
11 either being forced to assimilate or being destroyed. They  
12 went through almost five different holocaust periods. They  
13 went through the Spanish, they went through the government  
14 military action, they went through the reservation system,  
15 they went through the boarding schools, and then later they  
16 were relocated during the World War II in cities, and they  
17 still managed to keep their oral traditions and history. I  
18 mean it's not written down. It's been passed from singer to  
19 singer, family to family and it's all tied into this  
20 landscape.

21           The cultural studies that a lot of times are picked  
22 for mitigation, the ethno studies, it seems like you're  
23 taking the last fragment of the culture from the tribe.  
24 You've taken the land, you've taken the artifacts, and now  
25 you take the only thing they have that's left inside, their

1 intellectual property. So when you take that, you've taken  
2 everything and they've given you everything, and they've be  
3 lost everything that they have.

4           When I went to visit the Genesis Project on  
5 Thursday because I just wanted to get an idea about what's  
6 happened there and how they protected the cultural resources.  
7 Well, it's really not working very well because they have  
8 built their facility in a large wash and so they're having  
9 all kinds of problems with water going through so they've had  
10 to build all these flood diversion channels.

11           And also artifacts are being washed out, they're  
12 being washed out outside the perimeter. So I don't know if  
13 the site is just going to keep getting expanded and expanded  
14 because the actual drain channels are still are not working  
15 well. There's a lot of erosion all around the fence line.  
16 They've put additional channels inside the area.

17           And there was one site that was very, very  
18 critical. It was a site that the tribal members identified  
19 as a possible cremation burial site. It's sitting between a  
20 row of two lines of mirrors and it has sand bangs around it  
21 and some concrete culverts, and a giant like 4,000-pound  
22 piece of sheet metal, well, thick metal. And I don't know  
23 what they're going to do because they -- I'm sure they don't  
24 want to excavate and find a burial site and it's just like a  
25 sacrilege to see that, that that's a potential burial site

1 and it's got sandbags around it and a steel plate on top.  
2 That's how the mitigation was handled.

3 It seems like the technology for these projects is  
4 not handling the problems that occur naturally from nature.

5 And the Palen project itself is built on a lot of  
6 washes, a lot of sand washes. As you head toward the east,  
7 the washes get more and more frequent and some are just like  
8 ten or twenty feet apart and there's just wash after wash  
9 after wash.

10 So if they build the site like they plan to and  
11 then they have to add more erosion control and more erosion  
12 control, they're going to keep adding to the site footprint.  
13 They're going to be excavating, they're going to be finding  
14 things, or things are going to be washing out from the change  
15 of the water, and it's really not being handled. I mean,  
16 it's the mitigation isn't working.

17 And you do the PA's and you do the MOU's for the  
18 tribes, at least the BLM does, but we're pretty much --  
19 they're pretty much forced down our throat, and our tribe  
20 never signs them because we never agreed to them, and as well  
21 as most of the mitigation plans.

22 It's just another example where you go into a third  
23 world country or a reservation and you decide what's best for  
24 us with very little input from us. We get the Power Point  
25 presentations, we get the documents, and either we sign off

1 on them or we don't. We can write comments, but nothing ever  
2 happens.

3 And it's not just this project, it's a lot of the  
4 projects. I mean, we'll be at sites trying to get them to  
5 move something just so they won't be on top of a burial site,  
6 and they'll move over a couple of feet. That's what we're  
7 dealing with and it's just very frustrating for the tribes  
8 because it's like we really hate to deal with you and we hate  
9 to work with you because every promise is broken, every plan  
10 doesn't work.

11 And it's like if you were a businessman, would you  
12 continue to make a deal with someone that gives you a bad  
13 deal all the time or damages your property and doesn't listen  
14 to you? You would just walk away. But we have no choice.  
15 We have to be here. We have to make a statement. We really  
16 don't ever expect much to happen from this because it's like  
17 we're in a whole different world.

18 I appreciate you letting me make my comments, thank  
19 you.

20 HEARING OFFICER CELLI: Thank you very much. She's  
21 Arlene Kingary, K-i-n-g-a-r-y.

22 Linda Otero? Hi.

23 MS. OTERO: Good morning, or good afternoon. Linda  
24 Otero for the Mojave Indian tribe. I'm a tribal council  
25 member. I'm also the director of Aha Makav Cultural Society,

1 and as of one month ago I'm also the acting health services  
2 director. So I've been carrying a lot of hats, but this is  
3 perfectly in my role in providing the services to the tribe  
4 in this capacity, so I'm limited on some of the background  
5 information that came out recently. But nonetheless, I know  
6 there has been a pathway with trying to reach as representing  
7 the tribe and the agencies, both the federal, the state, and  
8 how to deal with the corporate level as well.

9 I think over a year ago we had the opportunity to  
10 try to figure out how to best build a relationship with the  
11 state as well and I had the opportunity to meet with  
12 Commissioner Douglas and I appreciate that. That also took  
13 the step with some of the tribe, the tribe providing me an  
14 example of an MOU or some development of how to build a  
15 relationship, because in this process there is none that  
16 exists truly that allows, as you heard earlier, and allows us  
17 to have that level of sovereign relation. We have to enter  
18 as an intervener or an expert witness or the public, so that  
19 diminishes our role in that capacity, which I think the  
20 governor has an executive order out that recognizes tribes on  
21 those levels, and the CEC has taken that charge to try to  
22 work on some type of consultation policy.

23 I also sit on the advisory -- Native American  
24 Advisory Committee for the Cal EPA. That came about over six  
25 years ago because of the struggles the tribe, Fort Mojave as

1 well as the (inaudible) project under the Department of Toxic  
2 Substance Control where, again, we entered into a role where  
3 there was no relationship.

4 Relationships are a big piece of not only how we  
5 interact, but what you have been hearing today.  
6 Relationships are important no matter what we interact with.  
7 as human beings, as we interact with our surroundings, as we  
8 interact with the natural world, and that's where I come  
9 from, the stuff of my learning.

10 I'm going to switch now to a little bit of that  
11 background, but I want to come back to address some of the  
12 particulars that are being talked about today.

13 I've learned -- I've been in this role of this  
14 capacity for over 14 years. But, nonetheless, I'm a child of  
15 Creator Mutavilya to learn and be -- walk the path that has  
16 been given to me as my birth right. To be for the highest  
17 calling that I could respond to, which is the stewardship.

18 The stewardship role is to protect those resources,  
19 protect the things that He has given us, and that's massive.  
20 That's beyond what you could even put in a document, beyond  
21 what you could even express what is and who we are. And that  
22 has been a learning step throughout about my life. I've  
23 grown to understand far more than I would have thought as a  
24 young girl, a young woman listening to my grandmother,  
25 listening to others as well and my teachers of today that



1 shared with me and helped me understand this relationship of  
2 the natural world, the natural setting with the universe.

3           And it's hard to describe. It's hard trying to  
4 articulate that earlier as many of the tribal people were  
5 trying to do, as well. And I find that difficulty as well  
6 for myself because I try to find examples of what the western  
7 world has in science.

8           Strangely enough, I went through the academics in  
9 science, but then here I am working in a realm of the natural  
10 sciences. But that doesn't have a break. There is a  
11 connection. As my grandmother used to say, we're related to  
12 all things. I found out the atom has a way of relating.

13           And here we have millions and millions and millions  
14 of money spent to find some God particle and they've done  
15 that. But that's the relationship, that's that hard science  
16 that they're seeking. And yet, we're trying to put a hard  
17 science on this, as well, and it doesn't always fit.

18           So this is the struggle we have in trying to  
19 express what is within us and how we interact into a level  
20 that is multi-dimensional. So when you try and draw a circle  
21 around the perimeter of the mountain range, that's not  
22 enough. You've heard that explanation of how one circle  
23 builds upon another, that's my teacher also telling me that.  
24 I've learned that process of how to build upon one and  
25 further out.

1           And in the description of this, and these are new  
2 words and expressions, landscapes, trail networks, so forth,  
3 and I sometimes struggle with how to really build that in the  
4 English way. But nonetheless, they are there based on what  
5 has been spiritually connected with physically and mentally.  
6 We do that.

7           And as part of my learning path I became part of  
8 what is a water ceremony. And that water -- that water is  
9 important because it's who I am and who we are as Mojave, Aha  
10 Makav, people of the water. So that water is who we are.  
11 Water is the whole element of all of this.

12           Water hasn't been talked too much today about this  
13 project, but it is very important. I think the very first  
14 time we met with him, and he was very open, I'll say,  
15 Mr. Gates, Dr. Gates, about the river. We talked about one  
16 of the projects that were located, how it interacts with  
17 that. It still has water elements here as well. People  
18 think that the lake is dry. That lake still exists, it's  
19 here. That body of water is massive, and it still is known a  
20 way of what is out there.

21           We think that the project is on desolate land.  
22 It's not really because that's what connecting everything  
23 around us as well, and when you talk about the perimeter of  
24 the mountain ranges and the petroglyph panels and that  
25 interconnection. That's the elements that ties us together

1 with that. Which explains you can go a distance and find  
2 these other locations. That's the connectivity of what is a  
3 part of who we are.

4 That relationship is beyond the physical sense, as  
5 well. It's in the cosmos. It's in the places below ground.  
6 That's why in the natural world and the natural settings that  
7 we come from, we're all equal. That's why we have the clans  
8 in our relationship. My grandmother was (inaudible), my  
9 grandfather was (inaudible) -- the ground squirrel, or  
10 however you interpret it, is the one that goes underground.

11 And in one of the documents that the CEC produced,  
12 they had experts in the Mojave ground squirrel, and I said  
13 wow, is this my grandmother you're going to try to talk to?  
14 Is that the plan? She comes of a particular lineage as well  
15 that's important, but yet, no one ever came to us to talk  
16 about that, no one ever talked about the paths, about the  
17 animals, about how all of them have a relation.

18 I remember the Genesis Project. I don't want to  
19 hound on that one too much because that was a horrific burden  
20 and it took us a long time to get over that. And it took me  
21 a long time to get over it, as well. I couldn't come back to  
22 that for a while until recently, trying to figure out how do  
23 we address that.

24 But when the Kit foxes were crying when they were  
25 trying to use the coyote urine to withdraw them, those Kit

1 fox were sending the message all the way up to where I live,  
2 and we heard those cries through the night. That's that  
3 connection, that's that telling us do something, do  
4 something, do something. Don't just sit back.

5           This is why now we're coming out more and more. It  
6 was something that I learned early on that, you know, you  
7 learn to keep it to yourself but you also find out one day  
8 you'll be a teacher. I'm not there yet, but I know that I'm  
9 having to teach nontribal people in these types of settings  
10 because this is what this relationship is about.

11           I have to be a part of that. It's this part in  
12 this timeframe. I always used to think I wish I was born  
13 back then in my grandmother's time, but there's a reason why  
14 I'm here today. Well, she's here, the people from our past  
15 are here, the ancestors, all of them are here. We're not  
16 alone ever. And for us to be silent would only be that we  
17 agree to what's going on, the changes.

18           The changes are not to be as of yet. Maybe when  
19 the last Mojave, the last Quechan, the last of those who are  
20 still to be here, maybe then. I don't know. But some of the  
21 people say back home, don't change it now because we're still  
22 part of that, we're still learning it. I'm still learning  
23 that. I still connect.

24           When there's a calling from a mountain, I know that  
25 I've got to go. When there's a calling from another area,

1 I've got to go. You feel it, you understand that. And yet,  
2 if I see those changes, it may not just be directly as a  
3 visual, it's in here.

4           And so I think there was some description of how  
5 visitors come to these panels, and they just look at it and  
6 just write it back to the others. No, that's not for us as  
7 practitioners. We're connected deeply. And that feeling  
8 that you have that makes those changes already hits you, you  
9 can tell the difference already.

10           So something as massive of what's going on in this  
11 whole valley, and of all places on a lake bed, the experience  
12 (inaudible) years ago when they did a project for that, the  
13 same typical types of information that was being revealed,  
14 which you found in Genesis and for which you're going to be  
15 finding here in the lake.

16           I don't know why that pattern repeats itself and no  
17 one wants to take charge, especially the agencies who oversee  
18 and protect these areas, they don't stop that. Genesis could  
19 have been stopped. An environmental stress test had  
20 identified that, and yet they didn't do that. Didn't happen.

21           So this is why I feel now comfortable working with  
22 the California Energy Commission. They're listening. We  
23 have people here listening to what we're saying. If you do  
24 take that next step to develop this memorandum of  
25 understanding, you can cause them to develop it specifically

1 so it's addressed properly. That's the step in the right  
2 direction to try to rectify what we're missing out of here  
3 (inaudible) even apply to us. The CEQA like piece that's  
4 over to this process, that limits us.

5 So I've experienced this, living it day in and day  
6 out and I don't want to be frustrated anymore. I want to  
7 work to resolve. But you've got to understand the stakes are  
8 high, the significance of these places are high. And nothing  
9 can address, and I say nothing, nothing that we work with  
10 right now can address those in any way to mitigate because  
11 how do you mitigate a life?

12 And I don't mean those others who are coming, those  
13 others who are curious, those others who are opening their  
14 awareness to learn. I hear that from young ones. I believe  
15 they're listening. They've got to be taught. They've got to  
16 be shared. Just like that path was for me. Just like those  
17 teachers are here for me.

18 It's beyond what we can define in a circle, define  
19 within the number of artifacts found. Defined in the  
20 significance and the integrity of a site. It's about a  
21 people. It's about a people.

22 With that being said, I just have reference to  
23 a couple of these cultural, CUL-16 and CUL-1.

24 CUL-1 identifies some mitigation pieces in there.  
25 Again, I refer back to what I said earlier. You may not be

1 able to mitigate, but how do we -- how do we address those  
2 impacts? With the power and has gone back and forth, with  
3 the technology that was addressed in 2010, we didn't have  
4 that opportunity to address it at that time. I didn't know  
5 about how this process worked until we were explained it very  
6 thoroughly with the Rio Mesa Project. We missed it  
7 completely even with Genesis. We tried to work it through  
8 the federal side, but that was way behind for us. We even  
9 tried to be proactive on how to approach it, as well. So  
10 there hasn't been a point where we just sat back and did  
11 nothing.

12           So there we are today with changes in technology,  
13 and we're willing to address how that impacts us. One of the  
14 pictures shown through simulation didn't even show it at  
15 night. Missing pieces to this as well. Nonetheless, this  
16 will have far more impact than you can imagine based on what  
17 I said and shared.

18           This is CUL-16. As I said earlier, a relationship  
19 with the state needs to move forward. If the state's not  
20 involved, who will assist us as well. Make sure that the  
21 state's involved.

22           With that being said, I thank you for your time.

23           HEARING OFFICER CELLI: Thank you very much,

24 Ms. Otero.

25           Manfred Scott.

1           MR. SCOTT: Good afternoon, my name is Manfred  
2 Scott from the Quechan tribe. It's very interesting to see  
3 how Mary Barger here, you know. I was just kind of wondering  
4 because there was an incident that happened years ago and  
5 about her credentials. Does she have any or does she? I  
6 would like to have her present them if she does.

7           There was an incident in a (inaudible) case and  
8 there was some stuff that destroyed some Quechan material.  
9 And so she was relieved from that position. And again, I see  
10 her here and she's a witness and talked about the visual.  
11 It's kind of interesting.

12           But anyhow, the Quechan is also known as the River  
13 Tribes. The River Tribes not only live along the rivers, but  
14 they also lived and traveled north, south, east, west of the  
15 river. They occupied a lot of these areas out here. I've  
16 been to a lot of these areas, we're talking about the  
17 petroglyphs and the sites and so forth, and the continuity  
18 and the spirituality and the religion and everything.

19           I've been to all these areas. I've been to the  
20 Mule Mountains, I've been to Coxcomb, I've been to Palen,  
21 I've been to Chuckwalla, I've been to Oro Corpio, I've been  
22 to Dragon Wash, Eagle Mountain, all these areas. And when  
23 you're up in these mountains you can visualize yourself as  
24 how it was back in those days with our ancestors, what they  
25 were like, what it was. How they felt, what they were going



1 through, I feel all that. I have that connection.

2           And to me, I'm in the learning process, I've been  
3 learning since the early eighties. A lot of elders taught me  
4 a lot of things which I didn't absorb at first, but then now  
5 everything's coming clear to me. And all this taught me that  
6 all these things that are out there are actually being  
7 destroyed. And what's going to be left for our future people  
8 for the next 10, 20, 30 years? We try to hold on to as much  
9 as we can today and it's still getting destroyed today.

10           Now we're talking about the Palen power. And  
11 renewable energy is great, yes, but it depends on where you  
12 put it at. And where you put this renewable energy has a lot  
13 of concern, not only for the people but for all the animals,  
14 the plants, the environment, the wind, everything that's out  
15 there. It destroys a lot of things. Then again, it benefits  
16 the people in some ways in certain areas that really need the  
17 energy.

18           We've been using that energy for a long time but in  
19 a good way. Our ancestors had the knowledge and power of  
20 these areas, the wind, water, animals, insects, soil, trees,  
21 plants, et cetera. It is told to us in our creation stories,  
22 histories I should say.

23           Native tribes have by nature the right to possess  
24 property as his own. The land is the law, the law is the  
25 land, given of knowledge and to believe the tribe is steward

1 of our ancestral lands.

2           And in closing I'd like to say histories make men  
3 wise, the whole community, the mathematics subtle, natural  
4 philosophy is deep. No brave, logic and literally able to  
5 contend. That's quoted from Frances Drake.

6           The least encircled man among us has an interest  
7 equal to the proudest noblemen and the laws and constitution  
8 of the country and is equally called upon to make the right  
9 decision, whether it be the heart to conceive, the  
10 understandings to direct, or the hand to desiccate the  
11 landscape of the native tribe ancestral land. That is also  
12 quoted by (inaudible), parts of it.

13           Thank you very much for letting me speak.

14           HEARING OFFICER CELLI: Thank you very much  
15 Mr. Scott. Thank you for being here.

16           Now, ladies and gentlemen, we've closed the record  
17 on the cultural part. We can take more comment on cultural  
18 later, but in terms of the taking of evidence, cultural is  
19 now closed.

20           We were going to take up alternatives next, but at  
21 the request of Center for Biological Diversity, who is really  
22 the main party interested in alternatives, we're going to put  
23 that over for later and we're going to get to visual next.  
24 So I'm just going to ask the parties to call their visual  
25 experts on down to the witness table.

1 Did you have something to say, Mr. Turlinski?

2 MR. TURLINSKI: I think -- I'm not sure of some of  
3 the questions. We brought our visual expert and one on the  
4 phone for one purpose, and that was to answer Mr. Emmerich's  
5 questions. Reading back through the prehearing conference  
6 statement, if those have anything to do with traffic, we  
7 would like our traffic people, we have them here as well, and  
8 we can do those combined, however you'd like to do it. I'm  
9 not sure (inaudible) visual now.

10 HEARING OFFICER CELLI: Well, Mr. Emmerich, you  
11 wanted -- first of all, you're going to have to lay your  
12 foundation for Exhibit 4000 now when we do visual. And you  
13 had questions on visual for staff to ask of its witnesses?

14 MR. EMMERICH: Well, I'm just going to tell you  
15 what's on our mind here. We did want to respond to one of  
16 the witnesses that was here that put up the slide show, and I  
17 am confused about whether I can use this exhibit. Now, the  
18 Energy Commission did accept this exhibit. I called and I  
19 asked and they said send it in. But again, I don't know if  
20 you're going to accept that or not.

21 We did have questions, but as I pointed out on that  
22 prehearing conference, I confused what you wanted. We  
23 haven't seen one of these hearings where you haven't had a  
24 visual panel yet. And I realize that the Petitioner and the  
25 Energy Commission all agree that these are not mitigable

1 impacts and everything, but at the same time, we felt that  
2 there are some questions that we have relating to the FSA.  
3 Not that the Energy Commission did a bad job on it; they did  
4 a good job on it, but there are a couple things in there  
5 relating to mitigation that we did want to ask about.

6 HEARING OFFICER CELLI: Okay, then. Well, so why  
7 are you saying that this is related to traffic and  
8 transportation, Mr. Galati?

9 MR. TURLINSKI: I didn't know, I thought I saw a  
10 reference to glare on I-10.

11 MR. EMMERICH: There is.

12 MR. TURLINSKI: And so I thought it was traffic as  
13 well.

14 MR. EMMERICH: There are a couple of references to  
15 glare.

16 MS. MARTIN-GALLARDO: I think staff could shed a  
17 little bit of light on this, as well, if you don't mind.

18 In our prehearing conference statement we did  
19 notify everyone that there is this link between visual and  
20 traffic for the glint and glare overlap into traffic  
21 considerations.

22 Now, while, as has been acknowledged, these issues  
23 between traffic and visual are quite narrow. We, staff was  
24 hoping to, yes, combine these things so that both sets of  
25 experts who have an understanding are available. But in

1 addition to that, we have Caltrans available to discuss the  
2 issue, and given the time of day, we were hoping that perhaps  
3 the Committee would hear traffic first, then jump right into  
4 visual.

5 HEARING OFFICER CELLI: Well, we have traffic and  
6 transportation was an issue strictly between Petitioner and  
7 staff. Visual was between Petitioner, staff, Basin and Range  
8 Watch and the California River Indian Tribes.

9 MS. MARTIN-GALLARDO: Inasmuch as there's glint and  
10 glare on the highway, that would also be traffic, and so  
11 they're well suited to go together.

12 HEARING OFFICER CELLI: That's fine, I'm happy to  
13 combine the two, but I want -- but I need, just for my own  
14 sanity in keeping the record clean, that I need to separate  
15 these out so that we understand what evidence is going to  
16 visual, what evidence is going to traffic and transportation.  
17 So I don't mind the panel coming all down together, it seems  
18 efficient, in fact, if you're here on visual or traffic.

19 Mr. Galati.

20 MR. GALATI: Yes, Mr. Celli. I really think that  
21 if we handle traffic in issue with Caltrans, given the  
22 lateness of the day, I think we can handle it in about ten,  
23 fifteen minutes.

24 HEARING OFFICER CELLI: You're asking to call  
25 traffic and transportation before visual.

1 MR. GALATI: That's correct. And then, while the  
2 traffic people are still here, if they're needed to answer a  
3 visual, having already been sworn, you can ask them to come  
4 up if they have anything to add.

5 HEARING OFFICER CELLI: Well, who's going to be  
6 able to tell me that we're done with traffic and  
7 transportation when we're done with traffic and  
8 transportation?

9 MR. GALATI: I will.

10 HEARING OFFICER CELLI: Okay. Then let's call the  
11 traffic and transportation people. We're going to -- the  
12 court reporter needs a break. We'll give you four minutes  
13 and get a glass of water or whatever you need, and we will  
14 resume with traffic and transportation.

15 MR. TURLINSKI: And Mr. Celli, one of our witnesses  
16 for visual is on the telephone when it's time to do visual,  
17 he's just on the phone.

18 HEARING OFFICER CELLI: Okay. Tim Zack, are you on  
19 the telephone?

20 MR. ZACK: Yes.

21 HEARING OFFICER CELLI: Tim Zack.

22 MR. ZACK: Yeah, I'm here.

23 HEARING OFFICER CELLI: Did you mute all the  
24 participants?

25 Okay, let me just -- hang in there, folks, I'm

1 going to unmute all (inaudible).

2 Okay. I believe the caller using 51 is Tom Zack,  
3 but I'm not sure.

4 Tom Zack, are you on the phone? Tim Zack.

5 MR. ZACK: Yeah. Yeah, I'm here.

6 HEARING OFFICER CELLI: It's not coming through.

7 FEMALE VOICE: (Inaudible)

8 HEARING OFFICER CELLI: Okay, I have audio out but  
9 not audio in.

10 Now who? Bill Kanemoto. Bill Kanemoto, are you on  
11 the phone?

12 MR. KANEMOTO: Yes, I am.

13 HEARING OFFICER CELLI: Please speak up a little  
14 louder.

15 MR. KANEMOTO: Yeah, can you hear that?

16 HEARING OFFICER CELLI: I do not (inaudible). If  
17 you are on a speakerphone I'm going to ask that you use the  
18 handset instead of the speaker, because that would make a big  
19 difference. You sound a little muffled over here.

20 MR. KANEMOTO: Okay.

21 HEARING OFFICER CELLI: That's good. So, again,  
22 I'm talking to Bill Kanemoto now.

23 How do you spell that, Bill?

24 MR. KANEMOTO: K-a-n-e-m-o-t-o.

25 HEARING OFFICER CELLI: Thank you. And then there

1 was Tim Zack.

2 Tim Zack, are you on the phone?

3 MR. ZACK: Yes, I am.

4 HEARING OFFICER CELLI: Oh, good. You are calling  
5 as 51.

6 MR. ZACK: Yes.

7 HEARING OFFICER CELLI: Again, I don't know if you  
8 heard my conversation with Mr. Kanemoto, but I'm going to  
9 need you to please speak into your handset instead of a  
10 speakerphone, if you have one.

11 MR. ZACK: Yeah, I am talking into the handset.

12 HEARING OFFICER CELLI: And how do you spell your  
13 last name, sir?

14 MR. ZACK: Z-a-c-k.

15 HEARING OFFICER CELLI: Tim Zack, okay.

16 And so I have Tim Zack, I have Bill Kanemoto, and  
17 who else?

18 MR. FLORES: There should be a Daniel Kopesky,  
19 (sic) and he's the chief for Caltrans.

20 HEARING OFFICER CELLI: Daniel who?

21 MR. FLORES: Kopesky, K-o-p-e-s-k-y.

22 HEARING OFFICER CELLI: Daniel Kopesky, are you on  
23 the phone? Mr. Kopesky.

24 I have, let's see, Mavis Scanlon. I don't know who  
25 she is. Not who we want, right? Is she staff?



1 MALE VOICE: (Inaudible)

2 HEARING OFFICER CELLI: That's right.

3 Ms. Scanlon, I'm going to mute you, if you don't  
4 mind.

5 MS. SCANLON: All right, go ahead, thank you.

6 HEARING OFFICER CELLI: Thank you. I was just  
7 picking up noise from Ms. Scanlon.

8 Okay. So I'm still trying to get a hold of  
9 Mr. Kopesky.

10 Okay. Greg Irvin? Yeah, I saw Greg.

11 MR. IRVIN: I am here present.

12 HEARING OFFICER CELLI: I'm going to have to first  
13 swear the people on the phone before I can swear in the  
14 people here, in order to -- somebody just got in.

15 Okay. Now, on the phone the witnesses for traffic  
16 and transportation from applicant and staff --

17 MALE VOICE: Mr. Kopesky's on the phone.

18 HEARING OFFICER CELLI: Oh, okay. So I don't have  
19 any traffic and transportation people on the phone other than  
20 Mr. Kopesky.

21 Is Mr. Kopesky on the phone, Daniel Kopesky or  
22 anyone from Caltrans?

23 MR. KOPOLSKI: This is Dan Kopolski that's  
24 speaking. Can you hear me?

25 HEARING OFFICER CELLI: Yes, I can. Daniel

1 Kopolski. I'm sorry for the mispronunciation.

2 MR. KOPOLSKI: Yes.

3 HEARING OFFICER CELLI: Okay. Is he a witness for  
4 staff?

5 MR. FLORES: Yes, he is.

6 HEARING OFFICER CELLI: Okay. And Mr. Kopolski,  
7 I'm going to ask you to please rise and raise your right  
8 hand.

9 MR. KOPOLSKI: Okay, sure.

10 HEARING OFFICER CELLI: Do you solemnly swear to  
11 tell the truth, the whole truth and nothing but the truth  
12 under penalty of perjury under the laws of the State of  
13 California?

14 MR. KOPOLSKI: Yes, I do.

15 HEARING OFFICER CELLI: Thank you.

16 And I'm going to ask the people who are present in  
17 the room to please stand, raise your right hand.

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

20 IN UNISON: I do.

21 HEARING OFFICER CELLI: Thank you, you may be  
22 seated. I'm going to start with the witnesses on your right,  
23 my far left. Just tell me what your name is and speak into  
24 the microphone, and spell it.

25 MR. TURLINSKI: Charles Turlinski with Palen Solar

1 Holdings. Charles Turlinski, T-u-r-l-i-n-s-k-i.

2 HEARING OFFICER CELLI: Thank you, Mr. Turlinski.

3 MR. STUCKY: Matt Stucky, Palen Solar Holdings,  
4 S-t-u-c-k-y.

5 HEARING OFFICER CELLI: Thank you, Mr. Stucky.

6 MR. FRANCK: Dan Franck from BrightSource. Dan  
7 F-r-a-n-c-k.

8 HEARING OFFICER CELLI: Dan Franck, F-r-a-n-c-k.  
9 Israeli and French, that'll help.

10 Ms. Grenier.

11 MS. GRENIER: Andrea Grenier, A-n-d-r-e-a G-r-e-n-  
12 i-e-r, permitting consultant to Centerline on the Palen  
13 Project.

14 HEARING OFFICER CELLI: Thank you. Sir?

15 MR. COBIAN: Rafael Cobian, R-a-f-a-e-l C-o-b-i-a-  
16 n. Fehr and Peers, Transportation Consultants.

17 HEARING OFFICER CELLI: Thank you.

18 Mr. Flores.

19 MR. FLORES: David Flores, supervisor for the  
20 traffic and transportation and visual units for the  
21 California Energy Commission. Flores, F-l-o-r-e-s.

22 HEARING OFFICER CELLI: Thank you.

23 Now the witnesses have been sworn and should the  
24 issue start with staff in this case or -- okay, let's hear  
25 from Petitioner's witness.

1           MR. TURLINSKI: Okay, Mr. Cobian. Would you please  
2 explain our position on the level of service C and the  
3 condition on TRANS-1.

4           MR. COBIAN: Absolutely, and I'll give you a little  
5 bit of background as well.

6           Staff modified the condition of certification  
7 adopted by the Commission in the final decision by adding a  
8 new requirement to the traffic control plan. Specifically,  
9 staff added the requirement that the traffic control plan be  
10 required to ensure that the intersections of Point Springs  
11 Road and Interstate 10 only operate at Level of Service C or  
12 better when no such requirement existed in the original  
13 condition. The peak and ebb of construction traffic of the  
14 project did increase, but the original condition is still  
15 going to apply in this project.

16           And that condition is one of more of the following  
17 measures designed to prevent stacking on I-10 which includes  
18 staggered work shifts, off-peak work schedules, and/or  
19 restricting travel to and departures from each project site  
20 to ten or fewer vehicles every three minutes. So that ten or  
21 fewer vehicles every three minutes is still going to apply to  
22 this project regardless of the increased number of  
23 construction traffic. So the same amounts of vehicles are  
24 going to be going through that intersection as the previous  
25 project.

1           Now, we disagree with replacement of the vehicle-  
2 based performance standards with staff's new Level of  
3 Service C standard. While the project vehicle trips are a  
4 part of how level of service is calculated, it is only one  
5 component. Ambient traffic, other traffic that is not  
6 associated with this project, does also go into the level of  
7 service calculation which is beyond the control of this  
8 project.

9           So, hypothetically speaking, there is a possibility  
10 of the level of service of that intersection to fall below  
11 Level of Service C even with no project traffic being added  
12 to the intersection, so it could be impossible for this  
13 project to comply even when the project is adding no vehicles  
14 to that intersection.

15           The performance standard contained in the condition  
16 of certification for the approved project is based on  
17 limiting the actual project vehicle trips. This is a  
18 requirement which is quantifiable, easy to monitor it. It  
19 could be done via camera, it could be done with a security  
20 guard at the intersection, it could be done via a number of  
21 different ways. And, more importantly, it's directly under  
22 the control of the actual project.

23           The LOS based requirement will not -- is not  
24 instantaneously quantifiable, it requires traffic counts to  
25 be taken at those intersections. It requires those traffic

1 counts to be submitted to a traffic engineer. We then have  
2 to analyze it in-house and it can take between five to seven  
3 days in order to produce level of service results, and those  
4 level of service results, as we know, traffic changes from  
5 day to day can vary. So it could be very hard to quantify  
6 and provide instantaneous results as compared to an actual  
7 vehicle-based metric where you can immediately tell when  
8 those ten vehicles in those three minutes have been exceeded  
9 or not.

10 Therefore, we propose that the modification be made  
11 on the first Condition of Certification Trans-1, which  
12 includes the removal of the Level of Service C or better  
13 standard.

14 HEARING OFFICER CELLI: Thank you, very clear.  
15 Whose idea was it to add that language?

16 MR. FLORES: This was a requirement that Caltrans  
17 had requested per their letter that was submitted as part of  
18 their review in the preliminary staff assessment. It was  
19 dated August 12<sup>th</sup> of this year.

20 HEARING OFFICER CELLI: And so it sounds to me, Mr.  
21 Flores, like the person we want to talk to would be  
22 Mr. Kopolsky?

23 MR. FLORES: That's correct.

24 HEARING OFFICER CELLI: Mr. Kopolsky, can you hear  
25 me? Mr. Kopolsky, are you still on?

1 MR. KOPOLSKI: Yes, can you hear me?

2 HEARING OFFICER CELLI: Yes, thank you.

3 Mr. Kopolsky, if you are using a speakerphone, it would be  
4 easier for us to hear you if you turned off the speaker and  
5 used the handset.

6 MR. KOPOLSKI: Yes, I am now. I turned off the  
7 speaker, that's what took time.

8 HEARING OFFICER CELLI: Very good. I hope that you  
9 were able to just hear the testimony from Mr. Cobian and  
10 Mr. Flores. And so we'd like you to explain to us why, given  
11 that it sounds from the Petitioner's point of view that a  
12 reduction below Level of Service C is or may be something  
13 outside of the control of the Petitioner.

14 Did you hear that testimony?

15 MR. KOPOLSKI: Yeah, I heard that. Our concern, we  
16 don't think it will occur unless -- because of some of the  
17 mitigation that's put in to stagger the hours, but we just  
18 don't want stacking that backs up the interchange. So if  
19 they have a different method that works that they feel  
20 (inaudible) so traffic won't back up onto the freeway, then  
21 that's acceptable to us. We usually use level of service as  
22 a way of measuring that. If they have a better method, then  
23 we're okay. The main point we want to make is we don't want  
24 the construction traffic to back up onto the freeway.

25 And I'm not sure if there's other traffic out there

1 that would really add to that interchange besides what  
2 they're doing with the Palen project.

3 HEARING OFFICER CELLI: So Mr. Kopolski, I just  
4 want to be clear, because you sound okay, it's just a little  
5 muffled, and I wanted to be clear that I made sure I  
6 understood you. Did you say that you were satisfied with the  
7 ten or fewer every three minutes language of Condition 1?

8 MR. KOPOLSKI: Right. Ten or fewer is better than  
9 Level of Service C, it's much better. So yeah, ten or fewer  
10 is fine.

11 HEARING OFFICER CELLI: Then if I understand  
12 correctly, it sounds like you'd be willing to withdraw your  
13 request to staff that they add the language regarding the  
14 Level of Service C.

15 MR. KOPOLSKI: If it's replaced with the ten or  
16 fewer during the three minutes.

17 HEARING OFFICER CELLI: Very good.

18 MR. KOPOLSKI: Yeah, um-hmm.

19 HEARING OFFICER CELLI: Questions from Petitioner  
20 of your witness?

21 MR. GALATI: No, no questions.

22 HEARING OFFICER CELLI: Staff?

23 MS. MARTIN-GALLARDO: No questions.

24 HEARING OFFICER CELLI: Any other parties regarding  
25 traffic?



1 MS. KING: No questions.

2 HEARING OFFICER CELLI: That was CRIT.

3 Let's hear from Basin and Range Watch.

4 MS. CUNNINGHAM: Laura Cunningham, Basin and Range  
5 Watch. And I apologize about how confusing this is for us,  
6 but I did have a question on some of the trans mitigation  
7 measures. It seems to me that they should be visual too, and  
8 so I'm not sure who to ask this question, maybe Mr. Flores.

9 HEARING OFFICER CELLI: Is this about glint and  
10 glare?

11 MS. CUNNINGHAM: Yes.

12 HEARING OFFICER CELLI: Okay. I want you to hold  
13 that thought for a minute because I think we're going to get  
14 into that. We're going to leave this same panel up, bring  
15 down the visual people and handle the glint and glare next.

16 So really with regard to the condition, the LOSC in  
17 Condition 1, any questions from Basin and Range Watch?

18 MS. CUNNINGHAM: No. Thank you.

19 HEARING OFFICER CELLI: Ms. Belenky, any questions?  
20 She's shaking her head no.

21 Ms. Ileene Anderson, do you want to make a record  
22 on that? Go ahead.

23 MS. ANDERSON: No.

24 HEARING OFFICER CELLI: Thank you very much.

25 The record should reflect that Alfredo Figueroa

1 representing the Californians for Renewable Energy left for  
2 the day. He'll be back tomorrow.

3 So with that, then who do we have? I don't think I  
4 need any evidence at this time for traffic.

5 So should we call down your visual people?

6 MR. TURLINSKI: Yes, you have one already sworn,  
7 and we can swear Tim Zack on the telephone and then the  
8 Applicant's panel will be complete.

9 HEARING OFFICER CELLI: So there's Tim Zack on the  
10 phone. Do I need anyone else on the phone?

11 MS. MARTIN-GALLARDO: We have Bill Kanemoto and  
12 Greg Irvin on the phone for staff.

13 HEARING OFFICER CELLI: So I'm going to ask Greg  
14 Irvin, Bill Kanemoto and --

15 MS. MARTIN-GALLARDO: I should probably also ask if  
16 Alvin Greenberg is on the phone?

17 HEARING OFFICER CELLI: I'm not seeing him. I  
18 would have imagined if he was we would have heard from him by  
19 now. I'm just kidding. He's someone I know so I can say  
20 that.

21 Okay, so Tim Zack, Mr. Irvin, Greg Irvin, and --  
22 who was the other on the phone?

23 MR. FLORES: Bill Kanemoto.

24 HEARING OFFICER CELLI: Bill Kanemoto, Greg Irvin  
25 and Tim Zack, please stand, raise your right hand.

1           Do you swear to tell the truth, the whole truth,  
2 and nothing but the truth under penalty of perjury under the  
3 laws of the State of California?

4           Mr. Kanemoto?

5           MR. KANEMOTO: I do.

6           HEARING OFFICER CELLI: Mr. Irvin?

7           MR. IRVIN: Yes, I do.

8           HEARING OFFICER CELLI: Mr. Zack?

9           MR. ZACK: I do.

10          HEARING OFFICER CELLI: Thank you. Be seated.

11          And the rest of the panel is still sworn. We have  
12 for the record just for the benefit of the people on the  
13 phone, we have Charles Turlinski, Matt Stucky, Dan Franck,  
14 Andrea Grenier, Rafael Cobian, and David Flores here in  
15 person.

16          So this is on the visual, the overlap of glint and  
17 glare with traffic. Should we begin with Applicant or staff?  
18 Whose issue is this?

19          MR. TURLINSKI: Well, they're available for cross-  
20 examination. We don't have any direct testimony.

21          HEARING OFFICER CELLI: Okay. Staff, do you have  
22 direct?

23          MS. MARTIN-GALLARDO: We do not. The only  
24 questioner I think staff is prepared to address is the issue  
25 that did come up in cultural, which was the question as to

1 whether staff agreed with the KOP -- it was a question that  
2 was posed on the quality.

3 HEARING OFFICER CELLI: Oh, the quality of the  
4 photograph. Okay, so we need to bring that photograph back  
5 up, and while we're doing that I'm going to have to have  
6 Mr. Emmerich lay a foundation for his Exhibit 4000, and  
7 Ms. Cunningham.

8 So the photograph in question was -- or the  
9 photographs plural, there were several photographs during  
10 cultural that showed the KOPs, the before and after of the  
11 KOPs.

12 MR. GALATI: And just for the Committee's record,  
13 those are in Exhibit 1034, the full Visual Analysis Report,  
14 which was prepared by Tim Zack, who is now sworn.

15 HEARING OFFICER CELLI: 1034?

16 MR. GALATI: 1034.

17 HEARING OFFICER CELLI: I think the easiest way for  
18 me to do this is I'm just going to ask you, Mr. Emmerich and  
19 Ms. Cunningham, with regard to Exhibit 4000, how many  
20 photographs are in Exhibit 4000?

21 MR. EMMERICH: There's 11.

22 HEARING OFFICER CELLI: Okay. And I'm going to ask  
23 who took the photographs in Exhibit 4000?

24 MR. EMMERICH: I took the last five and first six  
25 were taken by Laura Cunningham.

1 HEARING OFFICER CELLI: And did you Photoshop or  
2 edit or in any way alter the photographs from the time you  
3 took the photograph?

4 MR. EMMERICH: No.

5 HEARING OFFICER CELLI: Okay. Anything further or  
6 any objection from you, Mr. Galati, about those?

7 MR. GALATI: Just what kind of camera did you use?  
8 What kind of camera did you use?

9 MR. EMMERICH: For the first five is a Nikon  
10 Coolpix 36X optical lens, and the second was a Canon 50X  
11 optical lens. I'd have to look up the exact model number.

12 MR. GALATI: That's okay, I remove my objection.

13 HEARING OFFICER CELLI: Thank you. Then at this  
14 time I'm going to let him move Exhibit 4000.

15 Do you have a motion with regard to Exhibit 4000,  
16 Mr. Emmerich?

17 MS. CUNNINGHAM: We make a motion to move in  
18 Exhibit 4000.

19 HEARING OFFICER CELLI: Any objection from CBD?

20 MS. BELENKY: No.

21 HEARING OFFICER CELLI: Any objection from  
22 Petitioner?

23 MR. GALATI: No.

24 HEARING OFFICER CELLI: Staff, any objection?

25 MS. MARTIN-GALLARDO: No objection.

1 HEARING OFFICER CELLI: Colorado River Indian  
2 Tribes, any objection?

3 MS. KING: No objection.

4 HEARING OFFICER CELLI: Thank you. 4000 is  
5 received as Exhibit 4000.

6 Now, these people are here to answer questions as  
7 requested by the Basin and Range Watch and Colorado River  
8 Indian Tribes, so I'm going to start with Basin and Range  
9 Watch.

10 Go ahead.

11 MR. EMMERICH: Okay. Well, I'll start by asking  
12 the first question again that I asked during cultural, and it  
13 was basically regarding the photos that are up there right  
14 now.

15 And does the staff agree with the Petitioner's  
16 opinion that these are actually good representations of what  
17 this would actually look like, or do you think they're a  
18 little too dim or not bright or contrast enough?

19 MR. FLORES: I'd like Bill Kanemoto or Greg Irvin  
20 to respond to that.

21 HEARING OFFICER CELLI: And I want to say for the  
22 record, Mr. Irvin and Mr. Kanemoto, can you see that we have  
23 KOP 3 Coxcomb Mountains up on the screen, can you see that?

24 MR. IRVIN: This is Greg Irvin, and yes, I see it.

25 MR. KANEMOTO: I don't see that but I can refer to

1 my own copy.

2 HEARING OFFICER CELLI: That was Mr. Kanemoto? You  
3 said you could not see it on your screen?

4 MR. KANEMOTO: Yes, that's right. This is the  
5 image of Coxcomb Mountain?

6 HEARING OFFICER CELLI: The Coxcomb Mountain KOP3.  
7 What this is is a simulation of that KOP.

8 KOP, for everybody, is Key Observation Point.

9 MR. KANEMOTO: I have that in front of me now.

10 HEARING OFFICER CELLI: Very good. And that was  
11 Mr. Kanemoto.

12 So Mr. Irvin and Mr. Kanemoto and Mr. Zack, before  
13 you speak, since we have three of you on the phone, I want  
14 you to say this is who you are, state your name and then  
15 speak, okay?

16 MR. IRVIN: Okay.

17 HEARING OFFICER CELLI: Who was that?

18 MR. IRVIN: This is Greg Irvin. If I may address  
19 this issue?

20 HEARING OFFICER CELLI: Please.

21 MR. IRVIN: I'm going to speak rather globally, not  
22 only to a photo of the simulation but to any actual photo of  
23 a site or a tower or a heliostat, either in operation or  
24 reflecting the sun.

25 As you know, a computer monitor can only display

1 brightness levels that are within its limits of its intensity  
2 profile, and a print of a photograph can only display the  
3 range of contrast that the inks are available to display. So  
4 any photograph of a bright light source will most certainly  
5 be subject to an underrepresentation of the perceived  
6 brightness.

7           For example, if you look at the sun, it's very  
8 bright and you have to look away or put on sunglasses. If  
9 you look at a picture of the sun, you will never have to look  
10 away from it because it'll never as bright as the sun. The  
11 same is true for a picture of fire. You will never burn your  
12 hand by placing it on a picture or a photograph of fire.

13           So with the power towers and with the heliostats,  
14 given their extremely high levels of luminance, there is no  
15 way to photograph what the brightness will look like and  
16 there is no way to simulate in a photograph what the  
17 brightness will look like.

18           HEARING OFFICER CELLI: Thank you.

19           Were you satisfied with that?

20           MR. EMMERICH: Well, would it be possible to take a  
21 look at our Exhibit 4000 at photograph, it would be the  
22 seventh photo.

23           HEARING OFFICER CELLI: 4000.

24           MR. EMMERICH: It's actually a photo of the Ivanpah  
25 project now and it's seen during a test of Unit 1. It's



1 actually seen from about the same distance as that last photo  
2 was taken, although there's a little more vertical relief,  
3 but this is taken with an optical lens not really using a  
4 zoom.

5           And what I would like to ask is do you think that  
6 that contrast captured by the optical lens really shows a  
7 better contrast than the photo simulations that we were just  
8 looking at? This is a question, I guess, for the staff.

9           MR. KANEMOTO: This is Bill Kanemoto. I think Greg  
10 Irvin can expand on this a little bit, but I think part of  
11 the reason why this photo of the Ivanpah shows bigger  
12 contrast is because it's being viewed against the background  
13 of the mountains, and so the darker color of the mountains  
14 makes the photograph of the receiver look brighter in  
15 relation.

16           But I think Greg's larger point is very important,  
17 which is that neither of them capture the brightness that  
18 constitutes the impact we're talking about. It's not a  
19 direct illuminated light source, it's just a piece of paper.

20           But yes, here the pictures of Ivanpah look, the  
21 contrast looks better because of the darker background, I  
22 think.

23           MR. ZACK: This is Tim Zack.

24           HEARING OFFICER CELLI: Tim, you're not coming  
25 through very clearly. We really need you to speak up. If

1 you're on a speakerphone pick up your handset, please.

2 MR. ZACK: Yeah, can you hear me now?

3 HEARING OFFICER CELLI: Much better. Stay like  
4 that.

5 MR. ZACK: Yeah. I would tend to agree with what  
6 Bill said. And if you look at another KOP, and I would draw  
7 your attention to KOP 12, that's a more identical set of  
8 circumstances where you're looking at the glow of the  
9 simulation at the top of the tower against the land backdrop.  
10 Because anything that has a diffuse glow will appear brighter  
11 on a darker background than if it's against the sky with a  
12 white or blue background.

13 So KOP 3 is not really one that we would be  
14 talking apples to oranges. KOP 12 would be more like what  
15 Mr. Emmerich is referring to.

16 HEARING OFFICER CELLI: Thank you.

17 Mr. Emmerich?

18 MR. EMMERICH: Well, the Petitioner made a comment  
19 that they felt that the landscape was going to retain a very  
20 large look in spite of the fact that there would still be a  
21 very large project built there, but do you think, if these  
22 contrasts are brighter, do you believe that that large look  
23 gets diminished in the perspective and the focus on this big  
24 focal point, and the Chuckwalla Valley would in fact not look  
25 quite as large if you could actually capture the full effect

1 of that glint and glare that's coming out.

2 That was my main concern about these photographs.  
3 I think they do undermine the full intensity of this project.

4 I mean, I'm assuming that staff have actually been  
5 to the Ivanpah project and even these optical lens photos do  
6 not compare to what that is, but what's your opinion or  
7 response to their opinion that the area still retains a large  
8 look? I mean, would a brighter contrast reduce that? I know  
9 that's an opinion but I'd be interested to hear it.

10 HEARING OFFICER CELLI: Staff, go ahead. On the  
11 phone. Which witness?

12 MR. IRVIN: This is Greg Irvin. If I understand  
13 your question correctly, you're asking if in this photograph  
14 that we're looking at now, if the tower was significantly  
15 brighter, would that affect the contrast in the surrounding  
16 areas.

17 MR. EMMERICH: Yeah. I just think that if you look  
18 at some of the KOP photos that were shown in this earlier  
19 presentation, there's a fairly non-contrasting appearance to  
20 them. And then the Petitioner made the argument that that  
21 would not take away from the vastness of the large look of  
22 the area.

23 Do you think if it were brighter, in your opinion,  
24 would that kind of reduce that vast effect?

25 MR. IRVIN: All right. Well, I think that the

1 contrast in the photograph is representative of the contrast  
2 in the real world with the exception of anything that's in  
3 the picture that actually saturates the pixels in the camera,  
4 so that could be the tower and part of the heliostat field in  
5 the picture that I'm looking at.

6 Now, if the tower brightness is significantly  
7 brighter than it is in the picture, which is the nature of  
8 reality, to the extent that that would wash out the contrast  
9 of the vista of the surrounding area, that's only true to the  
10 extent that that luminous scatters in the eye. The reduction  
11 in contrast is an interocular effect that's due to scattering  
12 within the eye, and that is a function of the luminous  
13 intensity as well as what the background luminance is.

14 So based on personal observations of Ivanpah and a  
15 tower operating in a partial mode, the brightness or the  
16 glare of the tower was limited to the region of the tower  
17 itself and did not appear to extend a vast distance where it  
18 would compromise the contrast of the environment remote from  
19 the tower.

20 MR. EMMERICH: Okay, that's all I have on these  
21 photos here.

22 HEARING OFFICER CELLI: Thank you.

23 Then let's hear from Colorado River Indian Tribes.  
24 Do you have any questions for this?

25 MS. CUNNINGHAM: I have one more question,

1 actually.

2 HEARING OFFICER CELLI: Ms. Cunningham, go ahead.

3 MS. CUNNINGHAM: Laura Cunningham, Basin and Range  
4 Watch. I just have a general question about Trans 7, 8 and  
5 9, yeah. You say the visual resources can't be mitigated,  
6 but we feel those are actually something that should be in  
7 visual resources.

8 HEARING OFFICER CELLI: Can you tell us exactly  
9 what it is about those conditions that you feel is the  
10 mitigation you're speaking to.

11 MS. CUNNINGHAM: In the FSA the visual resources  
12 chapter has no mitigation whatsoever for glint and glare, but  
13 if you're a hiker on wilderness areas, a recreationist, and  
14 you're not necessarily driving a car, you will be affected, I  
15 think, by glint and glare, especially if you're on a  
16 wilderness mountain area nearby, McCully Wilderness, the  
17 Joshua Tree National Park. So we just feel that those are  
18 mitigation measures that could be in the visual resources  
19 section.

20 HEARING OFFICER CELLI: Mr. Flores, do you want to  
21 speak to that?

22 MR. FLORES: Bill, do you want to address that, the  
23 visual resources?

24 MR. KANEMOTO: Well, I'm not quite sure what the  
25 mitigation measures that you're referring to.

1 HEARING OFFICER CELLI: Under Trans 6, 7, 8 and 9.

2 MR. FLORES: Trans 6, 7, 8 and 9 deals with the  
3 tower receiver luminance monitoring plan, and also they have  
4 secured permits (inaudible). Actually, that was 9. But  
5 actually, 7 deals with the heliostat positioning plan and  
6 monitoring.

7 MR. KANEMOTO: Right. And in actuality, not only  
8 did the visual section identify those impacts the intervener  
9 just referred to as exhibiting impacts, but I believe the  
10 section also refers to the mitigation measures in the  
11 transportation section. So yes, we agree with that point of  
12 view and we believe they're applicable, and I believe the  
13 sections refer to those measures, particularly the monitoring  
14 plan, but others as well.

15 MS. CUNNINGHAM: And then Trans 6 strikes out that  
16 it's not going to be a visual resource mitigation?

17 MR. KANEMOTO: I'm sorry, which one is Trans 6?

18 MS. CUNNINGHAM: To reduce glint and glare from the  
19 project, the project owner shall implement the following  
20 measures, and there's several measures, one to four,  
21 including -- which I think is a good idea, get a toll free  
22 number for the public to report a glare or glint issue, say,  
23 if they're in a wilderness area next to the Palen project.

24 MR. KANEMOTO: You're right, and that isn't  
25 specifically cited in the visual resource section. It's a

1 good idea.

2 MR. GALATI: I want to go on the record on the  
3 relevance of this. There are conditions in traffic that  
4 addresses, I think, what you want. I mean, ultimately, it'll  
5 be in the license, right? So whether it's in visual or  
6 traffic, we still have to comply with it.

7 HEARING OFFICER CELLI: Actually, Mr. Galati, I  
8 thought she was saying that her concern was that while  
9 traffic dealt with the impacts to drivers on Interstate 10,  
10 that she was concerned about the impacts of glint and glare  
11 to people hiking in mountains up above and not on  
12 Interstate 10, other areas.

13 If I understood what you said.

14 MS. CUNNINGHAM: Yes, correct.

15 MR. KANEMOTO: Well, yeah, the visual analysis  
16 acknowledges that those impacts are going to take place, and  
17 that mitigation measures would presumably mitigate them to  
18 some degree, but are you saying there would be something  
19 gained by referencing them within the visual section?

20 MR. GALATI: Number 1 specifically refers to  
21 pedestrian hikers in nearby wilderness areas. That's why I'm  
22 trying to understand is it an issue of that it's missing  
23 something or is it an issue it's in the wrong section?

24 MS. CUNNINGHAM: I don't think if you're a hiker in  
25 a wilderness or park you'd even know. There may not be a way

1 for the public to know that there's a way they could report  
2 to the Energy Commission about a glint and glare incident.  
3 This is something we just don't know about at all, so it's  
4 better to include more than less.

5 MR. EMMERICH: Would you consider working with  
6 federal agencies to put things on websites? I mean, this  
7 wouldn't be foolproof mitigation, but to tell people, you  
8 know, if you're up there on Clark Martin or Palen or McCully  
9 Wilderness, you might not want to look at that area or you  
10 might want to be careful about the level of intensity and  
11 brightness.

12 Another mitigation that you could think of is  
13 curtailing it on very busy weekends, during spring break --

14 HEARING OFFICER CELLI: Excuse me, Mr. Emmerich.  
15 I'm sorry to interrupt. Hold the thought.

16 MR. EMMERICH: Okay.

17 HEARING OFFICER CELLI: We're going to have to hold  
18 this thought. I have to take care of a problem right now.  
19 If you'll just hang in for one minute, I just want to have  
20 about a two-minute conversation with the court reporter. So  
21 we're going to be off the record for just a second.

22 (Off the record.)

23 HEARING OFFICER CELLI: Ladies and gentlemen, I  
24 think you're entitled to an explanation of what's going on in  
25 the middle of testimony.



1           It turns out that the court reporter can't continue  
2 at this pace. So we were supposed to have a backup, and the  
3 backup isn't coming.

4           What we can do, and I'm going to need a stipulation  
5 from the parties, I think, is we can proceed right now. We  
6 are recording the WebEx, so we have that. California Energy  
7 Commission has a recording taking place right now using  
8 WebEx, and I just spoke with the technical person, Matt  
9 Miller, who said that he would do a second backup just to  
10 make absolutely sure that I have a second audio recording  
11 (inaudible). Then we would send that for transcription.

12           So with that, let me ask Mr. Galati, do you have a  
13 problem if we just proceed by way of a WebEx audio recording?

14           MR. GALATI: No, just as long as we can make sure  
15 that we're actually recorded.

16           HEARING OFFICER CELLI: Yes.

17           MR. GALATI: I don't want to go through the hearing  
18 if nobody can get the recording.

19           HEARING OFFICER CELLI: Right.

20           Staff, any objection?

21           MS. MARTIN-GALLARDO: No objection.

22           HEARING OFFICER CELLI: Okay. CRIT, any objection?

23           MS. KING: None.

24           HEARING OFFICER CELLI: Okay. Basin and Range  
25 Watch, any objection?

1 MR. EMMERICH: No objection.

2 HEARING OFFICER CELLI: And then Ms. Belenky from  
3 Center for Biological Diversity?

4 MS. BELENKY: We don't have an objection but I am  
5 wondering if this is going to change the timing of the  
6 transcripts, et cetera, and that we will get a chance to look  
7 at them for accuracy, which we had been less concerned with  
8 when there's an official court reporter.

9 HEARING OFFICER CELLI: That's a good question.

10 What would happen is that the recording would go to  
11 the transcription company, I think it's California Reporting,  
12 and they would actually produce the transcript. We're  
13 supposed to get an expedited transcript of these proceedings  
14 in three days, so that just -- boy, yeah, they will need some  
15 help with that, but I think we're just going to have to  
16 proceed with the recording.

17 But thank you, Lisa, appreciate your help. Sorry  
18 for going long. Do you have all the business cards for all  
19 of the parties?

20 COURT REPORTER: (Inaudible)

21 HEARING OFFICER CELLI: Yes, you can. Here's a  
22 card. Thanks.

23 Okay, where were we? We were talking about -- I  
24 was hoping that perhaps, are our witnesses still here?

25 MR. TURLINSKI: We're just getting business cards.

1 HEARING OFFICER CELLI: Oh, good.

2 MR. FLORES: Yes.

3 HEARING OFFICER CELLI: We were talking about Trans  
4 7, 8 and 9 and conditions having to do with glint and glare  
5 to drivers versus hikers. I was hoping that that's where we  
6 were when we were interrupted. And the question was with  
7 Laura Cunningham. There was an objection as to relevance  
8 from the Petitioner, as I recall.

9 MR. GALATI: I withdraw the objection.

10 HEARING OFFICER CELLI: Okay. So is your question  
11 still pending, do you need to hear from somebody from staff,  
12 Ms. Cunningham?

13 MS. CUNNINGHAM: This is Laura Cunningham, Basin  
14 and Range Watch. To reformulate the question to ask staff,  
15 is the final version of light and glare, like in the FSA I  
16 know there's been some changes. I don't see it referring to  
17 Trans-6, which would include a phone number, but does it now?

18 MR. KANEMOTO: No, it doesn't.

19 MS. MARTIN-GALLARDO: Perhaps we should clarify  
20 that's Trans-7.

21 MR. FLORES: Under Trans-7, item 7, there is a new  
22 wording that's been added which indicates that the HPMP shall  
23 include a communication protocol for Riverside County with  
24 specific contact information for Riverside County, that they  
25 can speak to a representative.

1           And then as part of 8 there's also provide  
2 requirements and procedures to document and investigate and  
3 resolve legitimate complaints regarding glint and glare.

4           So it's pretty open ended as to whether it's visual  
5 or traffic, and I think that would satisfy your concerns from  
6 that standpoint.

7           MS. CUNNINGHAM: Okay, yeah, just clarifying.  
8 Thank you.

9           MR. FLORES: Okay.

10          HEARING OFFICER CELLI: Anything -- so that's all  
11 from Basin and Range Watch?

12          MR. EMMERICH: I'm just making one final comment  
13 about mitigation. I'm just going to throw this back in  
14 there.

15          HEARING OFFICER CELLI: I actually need you to ask  
16 a question rather than --

17          MR. EMMERICH: Go ahead. I have one final question  
18 about mitigation.

19          HEARING OFFICER CELLI: All right.

20          MR. EMMERICH: I'm sorry about that.

21          Then that would be, has anyone ever considered a  
22 mitigation for visual resources which is inconsistent with  
23 what's after every KOP, but that would be if you're looking  
24 at an area like this, the Chuckwalla Valley south of Joshua  
25 Tree National Park, not far from the Corn Springs turnoff,

1 you're going to have busy weekends, you're going to have busy  
2 times during the winter, you're going to have holiday  
3 weekends, and has anyone ever looked at a curtailment option  
4 during those times?

5 Of course, you would get glare -- you would not get  
6 glare, you would still have the towers, you would have night  
7 lighting, that sort of thing, but you would eliminate the  
8 glare during those times. You wouldn't solve a lot of the  
9 cultural issues; I'm not going to be insulting in that  
10 respect, but couldn't it be a way to reduce the impacts of  
11 visual -- the impacts to visual resources?

12 Thank you.

13 MR. KANEMOTO: So you're asking if the operation  
14 could be suspended for certain periods of time, if that would  
15 reduce the impacts.

16 MR. EMMERICH: Yes.

17 MR. KANEMOTO: Yes, undoubtedly it would reduce the  
18 impacts. That wasn't included in the FSA analysis, but it's  
19 true that it would reduce impacts because it would reduce the  
20 impacts in times of higher exposure, I suppose.

21 MR. EMMERICH: Thank you.

22 HEARING OFFICER CELLI: Thank you, Mr. Emmerich.

23 Any other questions with regard to visual?

24 MR. EMMERICH: No.

25 HEARING OFFICER CELLI: Okay. Colorado River

1 Indian Tribe.

2 MS. KING: Thank you. I just have one question.  
3 In the earlier cultural resources testimony, Petitioner's  
4 witness showed a map with the fuchsia coloring for new  
5 locations, geographic locations where the project could be  
6 seen as proposed to be revised. And I'm wondering, and I  
7 guess this is a question for staff, is there a document, some  
8 sort of graphic, a map like that one that shows increased  
9 intensity of visual impacts, not just new locations where the  
10 project site can be seen from? And if so, where is it?

11 MR. FLORES: Bill, can you address that?

12 MR. KANEMOTO: I'm sorry, could you repeat the  
13 question? I'm having a little bit of drop-out so I don't  
14 think I heard the entire question.

15 MS. KING: Yeah, I just said that in the earlier  
16 cultural resources testimony -- the map is actually now up on  
17 the screen, I don't know if you can see it -- we saw this  
18 map, which was represented to us as the pink showing new  
19 geographic locations where the project would be visible from  
20 compared with the earlier permitted version of the project.  
21 And I'm wondering if there is a similar map or depiction to  
22 this that shows the revised project's increased intensity of  
23 visual impacts, not just new locations where the project can  
24 be seen from.

25 MR. KANEMOTO: I see. No, there's actually no

1 mapping that indicates levels of intensity because those  
2 aren't really, you know, clearly understood.

3           You know, I think that the best figure for  
4 referring to the viewshed is the one that appears in the  
5 visual section. Visual resource Figure 3, which has a kind  
6 of an overall mapping of the viewshed in totality of this  
7 project.

8           As far as levels of brightness, maybe Greg could  
9 speak to this a little bit, but I don't think that such a map  
10 exists or could be created right now.

11           MR. IRVIN: This is Greg Irvin. I don't think we  
12 could create such a map. Such a map is purely subjective.

13           HEARING OFFICER CELLI: Nothing further from CRIT?

14           MS. KING: Nothing further.

15           HEARING OFFICER CELLI: Staff?

16           MR. FLORES: No.

17           MS. MARTIN-GALLARDO: No, staff has no questions.

18           HEARING OFFICER CELLI: Petitioner?

19           MR. GALATI: Yeah, I have two questions,  
20 Mr. Flores.

21           MR. FLORES: Yes.

22           MR. GALATI: Just to make it clear for the record.  
23 At the prehearing conference you made reference that you  
24 agreed with Petitioner's changes to Trans-6 and Trans-7 in  
25 their entirety, is that correct?

1 MS. MARTIN-GALLARDO: Actually, I think you mean  
2 just Trans-7.

3 MR. GALATI: Oh, I apologize, just Trans-7?

4 MR. FLORES: Trans-7, yes, that's correct.

5 MR. GALATI: And then I also have one follow-up  
6 question with Mr. Zack.

7 Tim, are you on?

8 MR. ZACK: Yes, I'm here.

9 MR. GALATI: Tim, you prepared the visual  
10 simulations, right?

11 MR. ZACK: Yes.

12 MR. GALATI: And did you use acceptable scientific  
13 methods to do so?

14 MR. ZACK: Absolutely, yes.

15 MR. GALATI: No further questions.

16 HEARING OFFICER CELLI: Any further questions from  
17 anybody as follow-up? Noting all the parties shook their  
18 heads in the negative.

19 Then that means we are finished with both visual  
20 and transportation at this time, except for receiving  
21 evidence on it?

22 MR. GALATI: Yes.

23 HEARING OFFICER CELLI: Okay. In terms of  
24 witnesses. Okay.

25 Then at this time, first I'm going to take traffic



1 and transportation, and then I'm going to take visual.

2 So Petitioner, do you have a motion with regard to  
3 traffic and transportation?

4 MR. GALATI: Yes, I'd like to move into evidence  
5 Exhibits 1003, 1010, 1040, 1041, 1042, 1044, 1057, 1059,  
6 1063, 1069, 1073, 1074, and 1076. I'd like to move those  
7 into evidence at this time.

8 HEARING OFFICER CELLI: Thank you.

9 The motion is to move into evidence 1003, 1010,  
10 1040, 1041, 1042, 1044, 1057, 1059, 1063, 1069, 1073, 1074,  
11 and 1076 marked for identification.

12 Any objection from staff?

13 MS. MARTIN-GALLARDO: No objection.

14 HEARING OFFICER CELLI: Any objection from the  
15 Colorado River Indian Tribes?

16 MS. KING: No objection.

17 HEARING OFFICER CELLI: Any objection from Basin  
18 and Range Watch?

19 MS. CUNNINGHAM: No.

20 HEARING OFFICER CELLI: Any objection from the  
21 Center for Biological Diversity?

22 MS. BELENKY: None.

23 HEARING OFFICER CELLI: Those exhibits will be  
24 received into evidence as identified.

25 Staff, do you have a motion?

1 MS. MARTIN-GALLARDO: We do. We move for numbers  
2 2000, 2002, 2003, 2008.

3 HEARING OFFICER CELLI: That's traffic.  
4 Motion is to move into evidence Exhibits 2000,  
5 2002, 2003, 2008.

6 Is there any objection from the Colorado River  
7 Indian Tribes?

8 MS. KING: No.

9 HEARING OFFICER CELLI: Basin and Range Watch?

10 MR. EMMERICH: No.

11 HEARING OFFICER CELLI: CBD?

12 MS. BELENKY: No.

13 HEARING OFFICER CELLI: Petitioner?

14 MR. GALATI: No.

15 HEARING OFFICER CELLI: Those exhibits marked 2000,  
16 2002, 2003, 2008 for identification are received into  
17 evidence as those exhibits.

18 Next let's hear from the Colorado River Indian  
19 Tribes. Did you have any evidence on traffic and  
20 transportation?

21 MS. KING: No.

22 HEARING OFFICER CELLI: And Basin and Range Watch.  
23 We've already received your only exhibit, which is 4000.

24 MR. EMMERICH: Correct.

25 HEARING OFFICER CELLI: Okay, very good.

1           Let's talk about visual.

2           MR. GALATI: I'd like to move into evidence Exhibit  
3 1003, 1005, 1012, 1015, 16 -- excuse me, 1016, 1019, 1020,  
4 1021, 1025, 1026, 1033, 1034, 1076.

5           HEARING OFFICER CELLI: Any objection from staff to  
6 the admission of exhibits 1003, 1005, 1012, 1015, 1016, 1019,  
7 1020, 1021, 1025, 1026, 1033, 1034, 1076?

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

9           HEARING OFFICER CELLI: Any objection from Colorado  
10 River Indian Tribes?

11          MS. KING: No.

12          HEARING OFFICER CELLI: Basin and Range Watch?

13          MR. EMMERICH: No.

14          HEARING OFFICER CELLI: Center for Biological  
15 Diversity?

16          MS. BELENKY: No.

17          HEARING OFFICER CELLI: The exhibits will be  
18 received.

19          Staff, do you have any visual evidence you wish to  
20 move in?

21          MS. MARTIN-GALLARDO: Staff would like to move into  
22 evidence 2000, 2002, 2003 and 2008.

23          HEARING OFFICER CELLI: The motion is to move into  
24 evidence exhibits marked for identification 2000, 2002, 2003  
25 and 2008.

1 Any objection from the Colorado River Indian  
2 Tribes?

3 MS. KING: No.

4 HEARING OFFICER CELLI: Basin and Range Watch?

5 MR. EMMERICH: No.

6 HEARING OFFICER CELLI: Center for Biological  
7 Diversity?

8 MS. BELENKY: No.

9 HEARING OFFICER CELLI: Petitioner?

10 MR. GALATI: No.

11 HEARING OFFICER CELLI: Okay.

12 Now, we've already received Exhibit 4000, and no  
13 other parties had any exhibits to put in on visual; is that  
14 correct?

15 MS. MARTIN-GALLARDO: That's correct.

16 MR. GALATI: Mr. Celli, I made an error on traffic  
17 and forgot about the additional exhibits that got put up.

18 HEARING OFFICER CELLI: Okay, what are those?

19 MR. GALATI: I apologize. 1116 through 1121, I'd  
20 like to move into evidence as traffic.

21 HEARING OFFICER CELLI: Any objection to the  
22 admission of 1116 through 1121, staff?

23 MS. MARTIN-GALLARDO: No objection.

24 HEARING OFFICER CELLI: 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: So 1116 through 1121 will  
6 be received into evidence.

7 And with that, I can excuse this panel, everyone?

8 Thank you all for coming and testifying today.

9 MS. CLARK: Hearing Officer Celli?

10 HEARING OFFICER CELLI: Yes.

11 MS. CLARK: Winter and I need to go and catch a  
12 flight, so we will be leaving, but Nancy from CRIT will be  
13 here.

14 HEARING OFFICER CELLI: Okay. Thank you very much.

15 We have an individual Keith Cooley, are you here?  
16 Where is Keith Cooley? He wanted to make a comment on Trans-  
17 7. Well, we'll let him comment, then, when we get the time.

18 MS. NORTH: Hearing Officer Celli?

19 HEARING OFFICER CELLI: Yes. Who is speaking?

20 MS. NORTH: This is Tiffany North, Deputy County  
21 Counsel.

22 HEARING OFFICER CELLI: Hello.

23 MS. NORTH: I work with Keith Cooley. I was the  
24 one that wanted to make a comment on Trans-7.

25 HEARING OFFICER CELLI: Well, then go ahead, why

1 don't you make your comment right now.

2 MS. NORTH: Okay. Thank you.

3 I just wanted to clarify the County and Palen Solar  
4 Holdings has reached an agreement on the language for  
5 Trans-7, and on number 7 of Trans-7, I just want to ask  
6 regarding the communication protocol, I wanted to make sure  
7 that the condition is expanded to include that the specific  
8 contact information for the representatives at PSEGS will be  
9 knowledgeable about the heliostat operations and have the  
10 authority to take immediate steps to stop the interference of  
11 the operation of the County's PSEG communications system, if  
12 necessary.

13 HEARING OFFICER CELLI: Very good. That comment is  
14 now in the record.

15 MS. NORTH: All right, thank you.

16 HEARING OFFICER CELLI: Thank you.

17 Is there a Keith Cooley here from County of  
18 Riverside?

19 MS. NORTH: Keith Cooley will be there tomorrow to  
20 talk about the worker safety and fire protection.

21 HEARING OFFICER CELLI: Oh, okay. Thank you.  
22 Somebody passed me a note that said that he was here and  
23 wanted to comment, but I guess that isn't -- Okay.

24 MS. NORTH: All right.

25 HEARING OFFICER CELLI: Okay. We're not going to

1 assume it was an imposter.

2 MS. NORTH: Thank you.

3 HEARING OFFICER CELLI: Thank you very much for  
4 your comments, Ms. North.

5 With that, then we've completed cultural,  
6 transportation and traffic, visual. According to today's  
7 agenda, we were going to do geology and paleontology.

8 MS. MARTIN-GALLARDO: Alternatives?

9 HEARING OFFICER CELLI: No, alternatives we were  
10 going to do last after CBD. So I was going to take  
11 geo/paleo. I also have project description and soil and  
12 water that have to taken care of.

13 Geo/Paleo is strictly between Petitioner and staff,  
14 according to my notes.

15 MR. GALATI: That's correct.

16 HEARING OFFICER CELLI: And what is the issue here?

17 MR. GALATI: The issue is we don't agree with the  
18 addition of, I think it's PAL-9.

19 HEARING OFFICER CELLI: Okay. So who is your  
20 witness for geo and paleo?

21 MS. BELENKY: I'm sorry, Mr. Celli. The CRIT  
22 people already left, but I thought one of the issues that  
23 they raised during the cultural about the augers going in,  
24 then you said we're going to talk about that in paleo, so now  
25 I'm a little more confused than ever.

1 HEARING OFFICER CELLI: Well, but we still have --  
2 I thought Ms. King was still here for CRIT. Where did she  
3 go? All the other people were leaving except Ms. King.

4 FEMALE VOICE: (Inaudible)

5 HEARING OFFICER CELLI: Yeah, I also thought they  
6 got their question answered, too, but might as well let the  
7 record -- there you go.

8 Ms. King, we're going to need you here. Your  
9 services are needed.

10 Are any parties going to have somebody on the  
11 telephone for geo and paleo?

12 MR. GALATI: No.

13 HEARING OFFICER CELLI: Okay. Thank you.

14 Now, Mr. Stucky and Mr. Nials, you're still under  
15 oath.

16 Mr. Weaver, I need to swear you in, I guess.

17 Who else besides Mr. Weaver do you have? Okay.

18 Mr. Weaver, please stand, raise your right hand.

19 Do you solemnly swear to tell the truth, the whole  
20 truth, and nothing but the truth under penalty of perjury  
21 under the laws of the State of California?

22 MR. WEAVER: Yes, I do.

23 HEARING OFFICER CELLI: Thank you, please be  
24 seated.

25 Now, this is geo and paleo. How should we kick



1 this off, staff or applicant?

2 MR. GALATI: We'd be happy to go first and tell you  
3 what we -- why we disagree with PAL-9.

4 HEARING OFFICER CELLI: Okay. Is that Mr. Nials or  
5 Mr. Stucky?

6 Mr. Nials, please go ahead.

7 MR. NIALS: Fred Nials, thank you.

8 Our problem with the paleontology recommendation  
9 from staff basically stems with definition. We have a  
10 problem with some of the definitions that are used. Staff  
11 has accepted a very standard but a very restricted definition  
12 of high paleontologic potential. And if I can read from  
13 this, I think you'll understand why we disagreed or why we  
14 have problems with it.

15 "Rock units from which vertebrate or significant  
16 invertebrate plant or trace fossils have been recovered are  
17 considered to have a high potential for containing additional  
18 significant paleontological resources. Rock units in this  
19 class for having a high potential include but are not limited  
20 to sedimentary formations, some volcanic classic formations,  
21 some low grade metamorphic rocks with contain significant  
22 paleontological resources anywhere within their geographical  
23 extent, and sedimentary rock units temporally or  
24 lithologically suitable for the preservation of fossils" --  
25 In other words, if there's anything older than about 5,000

1 years, roughly -- "fine grain sandstones, fluvial sandstones,  
2 archelaticious and carbonate-rich paleosols, crossfitted point  
3 bar sandstones, fine grain marine sandstones." These are the  
4 examples they give.

5           We have paleosols in our area, but we don't have  
6 marine sediments, we don't have fluvial deposits of the type  
7 that they're talking about. And their definition is  
8 basically so restrictive that it includes virtually anything  
9 that's older than about 5,000 years old that's not volcanic  
10 or (inaudible) in origin.

11           We do have a soil, a paleosol which is older than  
12 5,000 years. It's ice age, of age. It is carbonate-rich.  
13 It does have clay in it. But in every other way the area is  
14 basically unfavorable for the preservation of vertebrate  
15 fossils.

16           If you look at any geology text book -- and I  
17 taught geology -- I taught paleontology, excuse me, for a  
18 number of years at the university level. If you look at any  
19 beginning paleontology text book it will tell you a set of  
20 conditions that are favorable for the preservation of  
21 fossils. These include, basically, rapid deposition. In  
22 other words, the organism is buried rapidly, it's buried  
23 deeply, it is encased in some sort of preservative mechanism  
24 or sediment, preferably fine grain, and ideally it's kept  
25 either wet all the time or dry all the time.

1           We don't have any of those conditions here. These  
2 are alluvial sand deposits. The sediments for deposit by  
3 high energy streams coming out of the mountains were not in  
4 light deposits, were not in any kinds of situation where  
5 water is standing. So, and deposition is relatively slow, so  
6 that any organism that dies on the surface is going to remain  
7 on the surface for a while.

8           One of the reasons that it bothers me to consider  
9 this as an area having high potential, I grew up on a ranch  
10 in eastern New Mexico, west Texas, and during the fifties  
11 there was a terrible drought. Everybody lost most of their  
12 cattle. We couldn't afford to buy feed, and my grandmother  
13 drove around and picked up cow bones to take to a phosphate  
14 plant so that she could sell it for fertilizer in order to  
15 buy feed for our cattle. So I spent a lot of time picking up  
16 cow bones.

17           And if you look at what happens to an animal, the  
18 pathonomy of an animal that's left on the surface for a long  
19 period of time, you see that it goes through a set of events.

20           First of all the animal dies, the scavengers go to  
21 it, they pull it apart, they scatter it around. They destroy  
22 some of the bones, particularly the finer ones. And it  
23 rains, the wind blows, this scatters the bones still further.

24           After the bones lay there or lie there for a period  
25 of three or four years, they start getting much, much lighter

1 and they get a sort of checked appearance on the surface.  
2 Pretty soon you can take one of those bones and break it  
3 apart in your hands. This is what happens to the vast, vast,  
4 vast majority of all bones from animals that die on the  
5 surface that are not very rapid. So first of all, the  
6 potential for preservation is very, very, very low in this  
7 kind of area.

8           Now, staff has stated that this is a sensitive area  
9 because we've got a lot of fossils in the area. Previous  
10 projects have recovered vertebrate fossils, and these are  
11 significant fossils.

12           I would have to look at the record of what has been  
13 found. Desert Sunlight and a total of -- well, prior to the  
14 start of the solar facilities, if you went through the museum  
15 records, there have been a pocket mouse, a tortoise, a horse,  
16 and a camel calf. Not complete sets, but these are bones  
17 that could be identified to some level but not we're not  
18 talking museum quality specimens where you see a mammoth  
19 mounted at the entrance to a museum.

20           In addition, additional works at these previous  
21 facilities got an additional eight or ten specimens. We're  
22 looking at horse, camel, mice, birds, rodents, and that is  
23 their identification. We've not been able look at the genus  
24 of some of these. And a possible large mammal pelvis. We're  
25 obviously not talking about very high quality organisms.

1           If we look at what is considered significant, the  
2 Bureau of Land Management and U.S. Forest Service has defined  
3 fossils of scientific value using the following criteria:

4           Preservation of soft body parts. Not going to  
5 happen.

6           Preservation of uncommon invertebrate fossils. We  
7 know that we have horse, camel, saber tooth tiger, rodents,  
8 birds, tortoise. We've known this for decades. We're not  
9 finding anything new in the area.

10           Close or intimate association of plants with  
11 animals. At the present time the preservation potential for  
12 plants within the footprint area is virtually zero.

13           Preservation of the skull, whole, isolated bones or  
14 other diagnostic materials. It's not going to happen. It's  
15 the wrong environment. The bones, the organisms that -- the  
16 pieces of fossils that have been found are just that, pieces.

17           You have a saber tooth cat in one of the other  
18 areas. This sounds really exciting, a saber tooth cat, but  
19 it's basically a toe bone of a saber tooth cat. We're  
20 talking pieces and small pieces. We have very few whole  
21 organisms. Most of these are fragments of a larger bone.

22           Concentration of diversity of plants and animals in  
23 restricted geologic or geographic range. So far we haven't  
24 seen anything of that sort.

25           Restricted stratigraphic range --

1 HEARING OFFICER CELLI: I need you to pull your  
2 mic a little closer. Especially now that we're relying  
3 entirely on audio, I need to make sure that everybody's  
4 speaking very clearly.

5 I want to kind of bring us back, Mr. Nials. You  
6 started off by saying that you objected to the overbroad  
7 definition in a condition, CUL-7, I think --

8 MR. NIALS: Well, why I'm saying this definition is  
9 overbroad is that, first of all, the fossils that we're  
10 finding are very, very few. They're not significant using  
11 the criteria of the Forest Service and Bureau of Land  
12 Management, although it does fit the Society of Vertebrate  
13 Paleontology classification of high potential.

14 HEARING OFFICER CELLI: Did you provide, or did  
15 Petitioner provide alternative language or an alternative  
16 definition to staff?

17 MR. NIALS: I have not provided an alternative  
18 definition, although using the standard Bureau of Land  
19 Management classification, this would fall into either low or  
20 unknown characteristics according to my interpretation.  
21 Those categories would require, basically, little or no  
22 management decisions once they know what is there.

23 HEARING OFFICER CELLI: Okay.

24 MR. GALATI: If the Committee would indulge, I  
25 probably could ask a couple of quick direct questions that

1 would get right to the point.

2 HEARING OFFICER CELLI: Please.

3 MR. GALATI: Okay. Mr. Nials, could you please  
4 describe whether you believe that the impacts from this  
5 amendment for paleontology are the same, less or greater than  
6 the impacts for paleontology from the original project.

7 MR. NIALS: I believe significantly less. If you  
8 look at the numbers, the original project had four and a half  
9 million cubic yards of material to be moved. The present  
10 project, two hundred thousand.

11 The present project, they're vibrating in pylons to  
12 a depth of eight feet. The total volume of earth that would  
13 be displaced by the pylons is something like 21,930 yards,  
14 which comes out to about thirty-five thousandths of one  
15 percent of the total volume of the footprint area to a depth  
16 of eight feet.

17 MR. GALATI: And Mr. Nials, is it your  
18 understanding that this disagreement with PAL-9 is then added  
19 because staff believes the impact is greater than the  
20 approved project?

21 MR. NIALS: I'm not sure why it's in there,  
22 frankly. I believe it's because they feel that they can't  
23 mitigate for pylons which are driven in. They can't see the  
24 dirt.

25 HEARING OFFICER CELLI: Well, let's ask them

1 directly since we have staff here, that's their job.

2 MR. GALATI: That's fine.

3 HEARING OFFICER CELLI: Okay. Mr. Weaver, please,  
4 can you respond?

5 MR. WEAVER: To the PAL-9?

6 HEARING OFFICER CELLI: Exactly, the issues that  
7 were raised.

8 MR. WEAVER: I can, yes. There's lots of issues  
9 that I can discuss. One in particular is the classification  
10 of the paleontological resources on the site. The FSA, the  
11 AFC, the final decision all indicated soils onsite are highly  
12 likely to contain fossils, considered a highly sensitive  
13 paleontological risk. All the documents that have been  
14 presented indicate that.

15 There's a lot of stuff that Mr. Nials said that is  
16 right. There are pieces. They're not looking at museum  
17 quality skeletons. I don't believe any of those have been  
18 found in that area other than, oh, like the tortoise and with  
19 the eggs in place at Rio Mesa, because at Rio Mesa there were  
20 834 fossils blasted into particles. There were the first  
21 fossils ever found in Riverside County and some were  
22 acknowledge the first ever found in all of California. So  
23 that's an important aspect. A lot of them are actually  
24 burrowed into the paleosol, there's paleosol onsite. So  
25 there's a lot of indication that these things do exist at the



1 Palen site too.

2 HEARING OFFICER CELLI: Well, let's stay on the  
3 Palen site and talk about that.

4 MR. WEAVER: Well, the reason I bring that up is  
5 that paleosol has been identified on the Palen site, so sites  
6 have seen paleosol associated with fossils.

7 And there's been no subsurface exploration  
8 conducted on the Palen site, so you can't really rule  
9 anything in or out. There's no information for buried paleo  
10 resources onsite other than all the documents that indicate  
11 that they are likely to exist.

12 Let's see. It's true most of the pieces that have  
13 been discovered, Desert Sunlight, Desert Harvest --

14 (Music Interruption)

15 HEARING OFFICER CELLI: There you go. Sorry about  
16 that.

17 MR. WEAVER: These other projects have discovered,  
18 disarticulated pieces that are not vertebrate. We're mostly  
19 interested in vertebrate fossils, you know, (inaudible)  
20 vertebrate fossils. The reason that they are important is  
21 that it establishes the paleoecology of the region. So even  
22 though it's a fragment that you can identify, you know that  
23 that species lived there at that point, you can look at the  
24 variety of different animals that lived in the area and you  
25 can the develop the paleoecology of the region, and that's

1 important information for the people who study that. The  
2 significance then, again, is the pieces you can classify and  
3 determine what was there.

4 HEARING OFFICER CELLI: So, let me ask you this.  
5 The original project was going to basically bulldoze, you  
6 know, to take four and a half million cubic feet of material  
7 or whatever. Now, they're going to vibrate in these pylons  
8 to a depth of eight to twelve feet as I understand. And so  
9 what we're trying to get to is what's the difference here in  
10 terms of paleontology?

11 MR. WEAVER: Let me read from this. I think it  
12 will help clarify.

13 HEARING OFFICER CELLI: Thanks.

14 MR. WEAVER: While staff appreciates the  
15 advantages of pylon insertion methodology regarding project  
16 costs and impact to other disciplines, the pylons would be  
17 inserted into soils likely to contain fossils, disturbing  
18 those fossils in which the pylons come in contact with,  
19 without recovery, identification or curation of the fossils.  
20 Without identification, collection and curation of fossils  
21 would have taken place with the larger grading operation from  
22 the approved project.

23 So with that recovery, the mitigation of the impact  
24 would be the understanding the paleoecology in the area. So  
25 the link of it, it's not recovering any museum quality

1 fossils, it's identifying what was there so you can look at  
2 the paleoecology of the region that particular site  
3 contributes to.

4 In order to mitigate the potential significant  
5 impacts from the proposed pylon construction technique, staff  
6 is proposing to discover, recover and report the type and  
7 variety of fossils in the solar field before the area is  
8 affected by pylon insertion. Staff is proposing mitigation  
9 to that impact in modified Condition of Certification PAL-9.

10 HEARING OFFICER CELLI: Okay. So Mr. Nials says  
11 that the definition is overbroad and contains materials or  
12 geologic conditions that just aren't to be found at the site  
13 that we're talking about now, so how do you respond to that?

14 MR. WEAVER: The paleontological investigation was  
15 conducted onsite as a pedestrian survey walking onsite. The  
16 site is now about a foot and half, based on the geotechnical  
17 investigation report, a foot and a half of loose Holocene  
18 (inaudible) sands. Underneath that are older, 13,000 year  
19 old or older Pleistocene paleosols and older sediments that  
20 are likely to contain Pleistocene fossils.

21 There hasn't been a subsurface investigation  
22 conducted onsite that indicates that it's not there. And in  
23 fact, all the documentation previous shows that there's a  
24 concern that it's a highly fossiliferous containing unit.

25 HEARING OFFICER CELLI: I just don't want to lose

1 sight of what we're dealing with here in terms of the issue.  
2 The question -- the only issue that we're talking about here  
3 between staff and Applicant, and this is in geo/paleo, is the  
4 overbreadth of that definition in PAL-9. Do I have that  
5 wrong?

6 MR. GALATI: Yeah. Mr. Nials was talking about the  
7 definition that staff used to determine whether something was  
8 significant, not the definition in PAL-9. We're saying that  
9 the definition is overbroad. They found significant impacts  
10 which they may put in PAL-9 which we believe that are not  
11 required.

12 MS. MARTIN-GALLARDO: And I can clarify. This is  
13 Jennifer Martin-Gallardo. I can clarify.

14 In the same vein, what staff's argument is that  
15 these, the pylon insertion method is not using the  
16 traditional technique that we would be able to mitigate for.  
17 So what staff has done is use this same determination of how  
18 sensitive the soil resource is, how likely it is to contain  
19 paleontological resources as the original (inaudible), and is  
20 saying, because we're not going to be digging things out like  
21 we used to, what we want to do is, by PAL-9 -- which staff,  
22 by the way, has revised -- and wants to have some subsurface  
23 excavation on the sand through PAL-9 to determine what is  
24 there. So it's staff's effort at getting the same type of  
25 information that we would get from traditional subsurface

1 excavation.

2 HEARING OFFICER CELLI: And how intensive is that  
3 survey that they would be doing?

4 MS. MARTIN-GALLARDO: First, I would like Casey to  
5 provide everyone with a copy of what staff has revised inside  
6 PAL-9 to make more clear that the intention here is not to  
7 require -- we don't want -- staff's intention is not to  
8 require avoidance or some new pedestals to be done. We  
9 wanted to clarify for everyone here what the intent of PAL-9  
10 is. And I would want this as Exhibit 2011.

11 HEARING OFFICER CELLI: 2011?

12 MS. MARTIN-GALLARDO: Correct.

13 HEARING OFFICER CELLI: For identification, Exhibit  
14 2011 is Geology and Paleontology Revisions to Conditions  
15 PAL-9 and PAL-5.

16 MS. MARTIN-GALLARDO: Can you explain?

17 MR. WEAVER: Which part?

18 MS. MARTIN-GALLARDO: PAL-9.

19 MR. WEAVER: Sure. Initially PAL-9 was protective  
20 of the resources by suggesting alternatives, alternative  
21 foundation design, and avoidance issues, different methods,  
22 again, for protecting the resource.

23 We realize that these aren't museum quality  
24 resources. You know, we're not going to dig up a full  
25 skeleton (inaudible) somewhere, but the individual pieces

1 again are important to identify what they are. So what we  
2 did was revise PAL-9 to reflect a recovery, curation  
3 deflection effort in order to characterize the paleoecology  
4 of the region, which would be similar to the mitigation  
5 provided in the final decision PAL-1 through 7 where the  
6 excavation of the project was going to recover, identify and  
7 cure those fossils. So it's actually a similar mitigation as  
8 the initial final decision, just in a different manner.

9 HEARING OFFICER CELLI: There's two pages.

10 MR. GALATI: Oh, it's two pages. Don't ever trust  
11 a lawyer to do something like walk around.

12 HEARING OFFICER CELLI: Okay. Mr. Galati, while  
13 everyone is figuring out what's on the paper, I've got some  
14 confusion here and maybe you can help clear this up for me.

15 MR. GALATI: Yes.

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

21 MR. GALATI: If I might make an offer of proof.

22 Mr. Nials was making the point that, using the  
23 definition staff did on when something is significant was  
24 overbroad and that there weren't going to be a lot of fossils  
25 there that were of any significance.

1 HEARING OFFICER CELLI: Okay.

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

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

13 HEARING OFFICER CELLI: And basically your  
14 objection is?

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

20 HEARING OFFICER CELLI: Well, we'll allow just  
21 limited cross, and please try to be broad in your questions,  
22 because we're dealing with Mr. Weaver, not the lawyers.

23 MS. BELENKY: Could I ask one clarifying question,  
24 because I'm getting confused. This project amendment still  
25 has grading, so would the old conditions be on the grading

1 parts and then the new condition on the non-graded parts?

2 MR. GALATI: That's correct.

3 MS. BELENKY: Okay. I just --

4 MR. GALATI: We didn't ask for a change for any of  
5 the normal conditions of monitoring grading. This is a new  
6 one for the areas where we're only bi-grading the soil to  
7 about (inaudible) acres.

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

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

14 MR. GALATI: In a percentage, do you --

15 HEARING OFFICER CELLI: Going to catch a hundred  
16 percent of the fossils that get moved around in that grading  
17 activity?

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

20 MR. GALATI: No. I'm asking what percentage of the  
21 amount of dirt that you saw move, do you think a  
22 paleontological monitor would be able to actually see or  
23 sieve or observe to see if there was a fossil in it, of the  
24 4.5 million cubic yards? All of it?

25 MR. WEAVER: No, the upper foot and a half at least



1 we assume is non-fossil bearing because it's younger than the  
2 Pleistocene sediments that are deeper. For the buried soil  
3 that we have not looked at, not done a subsurface  
4 investigation 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's witnesses.

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 characterized 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 classified that way in all the documents?

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

7 MR. WEAVER: Because it's believed that the  
8 Pleistocene age soils under a lot, a mantle of Holocene,  
9 would have fossils and be highly significant.

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

13 MR. WEAVER: Yes, the AFC, the FSA, the DEIS, the  
14 joint document that we did, and the final decision all  
15 indicate that it's high sensitivity.

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

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

22 MS. MARTIN-GALLARDO: And you would say PAL-9, the  
23 purpose of that is to provide some kind of mitigation that is  
24 similar to that as what exists for traditional excavation  
25 methods.

1           MR. WEAVER: That's the intent of the development  
2 of PAL-9, yes.

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

4           HEARING OFFICER CELLI: Questions from Colorado  
5 River Indian Tribes, please?

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

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

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

21           MR. WEAVER: I'll bite. The upper foot and a half  
22 about, you know, its average across the site, in some places  
23 a little deeper, is Holocene age soil, so those soils would  
24 likely, if there were cultural resources in the area, that's  
25 where it would be contained. We're looking at the

1 Pleistocene age soils that are in subsurface below that area.

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

8 MS. KING: Nothing else, thanks.

9 HEARING OFFICER CELLI: Thank you.

10 Ms. Belenky, any questions of these witnesses?

11 MS. BELENKY: No, thank you.

12 HEARING OFFICER CELLI: Thanks.

13 Anything further, Mr. Galati?

14 MR. GALATI: Yeah, just one redirect.

15 HEARING OFFICER CELLI: Oh, I'm sorry, I didn't see  
16 Mr. Emmerich.

17 MR. EMMERICH: No, thank you.

18 HEARING OFFICER CELLI: Okay, go ahead, Mr. Galati.

19 MR. GALATI: Mr. Nials, when you monitor mass  
20 grading using scrapers, do you see all of the soil as a  
21 paleontological monitor?

22 MR. NIALS: I have not done paleontological  
23 monitoring but I have done cultural resource monitoring,  
24 which is very similar. We're probably lucky if we get, this  
25 is a guess, 20 percent, 25 percent. And in dealing with a

1 relatively small fossil remains such as rodents or things of  
2 this sort, fragments of teeth, the monitor would see it if it  
3 happened to fall in the right direction so that it would slip  
4 into his line of sight.

5 I would point out also, if I may, that there has  
6 been some subsurface work done in the area. I put in over  
7 300 feet of backhoe trenches into the Pleistocene soil, and  
8 while my purpose was not looking for fossils, I was  
9 describing the soil in detail and I would have seen any  
10 fossils that were there.

11 MR. GALATI: And Mr. Nials, again, how many cubic  
12 yards would be disturbed by vibrating all 170,000 heliostats  
13 into the ground?

14 MR. NIALS: The entire 170,000, I think it was  
15 21,000 and something. There we go, 21,930 cubic yards, which  
16 is about, as I said, thirty-five thousandths of a percent.

17 MR. GALATI: No further questions.

18 HEARING OFFICER CELLI: Are we done with geo/paleo,  
19 parties?

20 MS. MARTIN-GALLARDO: I have two follow-up  
21 questions.

22 HEARING OFFICER CELLI: Go ahead.

23 MS. MARTIN-GALLARDO: For Mr. Nials.

24 On that calculation, how deep, what was --

25 MR. NIALS: That's based on a ten-foot depth, which

1 is a very conservative figure because the vast majority of  
2 the pylons will be driven to a depth of eight feet. Twelve  
3 feet only in the areas where there are washes and things of  
4 that sort.

5 MS. MARTIN-GALLARDO: Thank you. And with the  
6 trenching work that you did, was there a paleontologist on  
7 hand monitoring for paleontological resources, by chance?

8 MR. NIALS: There was not a paleontologist, no.

9 MS. MARTIN-GALLARDO: Thank you.

10 MR. NIALS: I was just doing it for cultural  
11 purposes.

12 MS. MARTIN-GALLARDO: Thank you.

13 HEARING OFFICER CELLI: Anything further from CRIT?

14 MS. KING: No.

15 HEARING OFFICER CELLI: BRW?

16 MR. EMMERICH: No.

17 HEARING OFFICER CELLI: CBD?

18 MS. BELENKY: No.

19 HEARING OFFICER CELLI: Petitioner?

20 MR. GALATI: Just to make a motion to move in my  
21 exhibits.

22 HEARING OFFICER CELLI: Okay. We are talking about  
23 geo and paleo. Do you have a motion, Petitioner?

24 MR. GALATI: Exhibit 1003, 1060, and Exhibit 1077.  
25 I'd ask those moved into evidence.

1 HEARING OFFICER CELLI: That's the motion to move  
2 in 1003, 1060, 1077. Any objection, staff?

3 MS. MARTIN-GALLARDO: No objection.

4 HEARING OFFICER CELLI: Any objection, CRIT?

5 MS. KING: No.

6 HEARING OFFICER CELLI: Any objection BRW? I need  
7 to hear you speak into the microphone.

8 MS. CUNNINGHAM: No objection.

9 HEARING OFFICER CELLI: Thank you.

10 MR. EMMERICH: No objection.

11 HEARING OFFICER CELLI: And CBD?

12 MS. BELENKY: No objection.

13 HEARING OFFICER CELLI: Exhibit 1003, 1060 and 1077  
14 are received into evidence.

15 Staff, you have a motion?

16 MS. MARTIN-GALLARDO: Yes, I'd like to move into  
17 evidence Exhibit 2000, 2003, 2008 and 2011.

18 HEARING OFFICER CELLI: Any objection to the  
19 admission of Exhibits 2000, 2003, 2008 and 2011, Colorado  
20 River Indian Tribes?

21 MS. KING: No.

22 HEARING OFFICER CELLI: Basin and Range Watch, any  
23 objection to those exhibits being admitted into evidence?

24 MR. EMMERICH: No.

25 HEARING OFFICER CELLI: CBD, any objection?

1 MS. BELENKY: No.

2 HEARING OFFICER CELLI: Petitioner, any objection?

3 MR. GALATI: No.

4 HEARING OFFICER CELLI: Okay. Exhibits 2000, 2003,  
5 2008 and 2011 are admitted.

6 CRIT, did you have any geo or paleo evidence to  
7 offer?

8 MS. KING: No.

9 HEARING OFFICER CELLI: Or Basin and Range Watch?

10 MR. EMMERICH: No.

11 HEARING OFFICER CELLI: Or Center for Biological  
12 Diversity?

13 MS. BELENKY: No.

14 HEARING OFFICER CELLI: Okay. Then I think that  
15 covers it. Can I excuse these witnesses?

16 MR. GALATI: Yes.

17 HEARING OFFICER CELLI: There you go. Thank you  
18 all very much for your testimony here. You're excused.

19 Let's get our witnesses down for project  
20 description next. And this is an issue that is brought to us  
21 by the Center for Biological Diversity. We don't seem to  
22 have any dispute between staff or Applicant on this or any  
23 other witness.

24 Now, am I losing CRIT for the night?

25 MS. KING: I don't plan on offering any questions,



1 but I can be available, though.

2 HEARING OFFICER CELLI: We have project  
3 description, soil and water and alternatives left. So does  
4 CRIT not have a position on any of those three topics?

5 MS. CLARK: We don't have a position on any of  
6 those topics.

7 HEARING OFFICER CELLI: Okay. Thank you very much.

8 MS. CLARK: You're welcome.

9 HEARING OFFICER CELLI: Have a good night.

10 Oh, good. Where is our court reporter?

11 Oh, good. Hi, welcome. Come on down.

12 We can keep going because we're still being  
13 recorded with the audio and I hope we won't have a gap.  
14 That's great.

15 Are you Ms. Novak? Oh, welcome. Thanks for  
16 coming.

17 MS. CUNNINGHAM: Excuse me, Mr. Celli.

18 HEARING OFFICER CELLI: Yes.

19 MS. CUNNINGHAM: Basin and Range Watch has to leave  
20 tonight, too, but we'll be back tomorrow morning.

21 HEARING OFFICER CELLI: Okay. We're covering  
22 project description and soil and water and alternatives. And  
23 all your evidence is in at this point.

24 MS. CUNNINGHAM: Yes.

25 HEARING OFFICER CELLI: Okay. Well, thank you for

1 being here.

2 MS. CUNNINGHAM: Okay. Thank you.

3 HEARING OFFICER CELLI: If you could have a seat,  
4 Ms. Novak, right there and get yourself set up and  
5 comfortable. You're the third court reporter we've had here.  
6 We're just killing them off. Thanks for being here.

7 We are still on the record. What we have is we're  
8 taping this, we have an audio tape, so I'm going to keep  
9 rolling, and then when Ms. Novak is ready, just catch up.

10 Now, project description, who are your witnesses  
11 for project description, Mr. Galati?

12 MR. GALATI: Matt Stucky and Charles Turlinski,  
13 they've both been sworn.

14 HEARING OFFICER CELLI: And staff, for project  
15 description who do we have?

16 MS. MARTIN-GALLARDO: We have Christine Stora, our  
17 project manager.

18 HEARING OFFICER CELLI: Ms. Stora.

19 MS. MARTIN-GALLARDO: And she does need to be sworn  
20 in.

21 HEARING OFFICER CELLI: And no other witnesses,  
22 this is our full complement of witnesses, nobody on the  
23 telephone?

24 MR. GALATI: None for Applicant.

25 HEARING OFFICER CELLI: Okay. Ms. Stora, would you

1 please stand and raise your right hand.

2 Do you solemnly swear to tell the truth, the whole  
3 truth and nothing but the truth under penalty of perjury  
4 under the laws of the State of California?

5 MS. STORA: I do.

6 HEARING OFFICER CELLI: Thank you. You may be  
7 seated.

8 Now, this is really Center for Biological  
9 Diversity. I'm going to ask you to sort of kick this off  
10 because this is your concern, Ms. Belenky.

11 MS. BELENKY: Yes, thank you. We'd like to ask  
12 some questions to clarify there's a couple of things that are  
13 not clear as far as we could tell from the documents.

14 The footprint of, I guess we're calling it the  
15 proposed amendment, includes those parts of Alternative 2 and  
16 Alternative 3, is that correct, from the original approval?

17 MR. TURLINSKI: That's correct. And I would add  
18 it's correct and it's also been revised to actually minimize  
19 so that it's actually (inaudible).

20 MS. BELENKY: Well, that was not my question, so...

21 HEARING OFFICER CELLI: Are you Mr. Turlinski?

22 MR. TURLINSKI: Yeah.

23 HEARING OFFICER CELLI: That's who's speaking. I  
24 just wanted to say that on the record so people understood.

25 Go ahead, Ms. Belenky.

1 MS. BELENKY: Okay. So it includes portions --  
2 what happened before, just for the record, is that the  
3 Commission approved either the use of Project Alternative 2  
4 footprint or the use of Project Alternative 3 footprint. And  
5 this actually takes parts of each of those and makes another  
6 footprint that was never approved by itself. So I need to  
7 clarify, because there's been a lot of confusion and looking  
8 at the documents and the mapping, it actually is very  
9 confusing.

10 My second question is, my understanding of the  
11 original approval was that there would be an access road but  
12 on the inside of the fence to access the entire all the way,  
13 to be able to go all the way around the project site. Are  
14 you still intending to put access roads inside the fence or  
15 are you intending to also put access roads outside the fence?

16 HEARING OFFICER CELLI: So there's two questions  
17 pending, right?

18 MS. BELENKY: No.

19 HEARING OFFICER CELLI: And if you would,  
20 Mr. Turlinski, pull that mic right up to you closely.

21 MR. TURLINSKI: Right. My understanding of the  
22 project description in the FSA, which is what I would refer  
23 back to, is that there is an access road that goes along  
24 inside the fence.

25 MS. BELENKY: In the new proposal.

1 MR. TURLINSKI: Right.

2 MS. BELENKY: Inside the fence.

3 MR. TURLINSKI: Correct.

4 MS. BELENKY: And do you have any plans to access  
5 the outside of the fence?

6 MR. TURLINSKI: I'm not sure what you mean by  
7 access.

8 MS. BELENKY: To be able to access with a motorized  
9 vehicle on the outside of the fence.

10 MR. TURLINSKI: From a project operations  
11 standpoint.

12 HEARING OFFICER CELLI: Ladies and gentlemen,  
13 everybody, listen to me.

14 First, I need everybody to speak directly into  
15 their mic.

16 Secondly, I can't have two people speaking at once  
17 or it's completely garbled and I have no record. So  
18 witnesses, I'm going to ask you to let the questioner ask the  
19 question, then wait until the question is finished, then  
20 answer the question.

21 So the question pending right now from Ms. Belenky  
22 is whether there is going to be, as I understand it, a road  
23 around the external perimeter of the fence; is that correct?

24 MS. BELENKY: Yes.

25 HEARING OFFICER CELLI: That's the question.

1           Go ahead, Mr. Turlinski.

2           MR. TURLINSKI: No.

3           HEARING OFFICER CELLI: By the way, Ms. Belenky,  
4 did you ever get an answer to the question of whether the  
5 footprint of the PSEGS amended project covered Alternative A  
6 or B and Alternative A and B, or whatever you --

7           MS. BELENKY: I think I got an answer that it  
8 covers parts of each of the earlier alternatives.

9           HEARING OFFICER CELLI: Okay, great. Thanks. Then  
10 we're current.

11          MS. BELENKY: Seems to be correct. It's very  
12 unclear from the mapping that has been provided.

13          Okay. So and then my last question was, do you  
14 have any plan, is there any plan for accessing with a  
15 motorized vehicle the outside of the fence?

16          MR. TURLINSKI: From an operational standpoint, no.

17          MS. BELENKY: I don't know what that means, but  
18 from an operational standpoint.

19          MR. TURLINSKI: I guess from a construction  
20 standpoint, to construct the fence, I would presume at that  
21 time in the project description you would need to be on both  
22 sides of the fence to construct the fence with vehicles.

23          From an operational standpoint, there's no intent  
24 to access the outside, the external side of the fence, with  
25 vehicles, in the project description.

1           MS. STORA: This is Christine Stora. I'd like to  
2 add something to that.

3           Although we are talking about worker safety and  
4 fire protection tomorrow, there is a plan to let four wheel  
5 drive fire trucks access the project site through two access  
6 gates from the perimeter of the fence, and technical staff  
7 tomorrow can certainly answer any of your specific questions  
8 about that.

9           MS. BELENKY: Okay. That's good to know.

10                           (Hearing continues behind certificate  
11                           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 on pages 1 through 254 was transcribed by me, Terri Harper, a Federally Certified Transcriber, in draft form on the 16th day of November, 2013. **The aforementioned text was then further proofread to audio and corrected on January 26, 2014.**

I certify that the aforementioned text is accurate 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 26th day of January, 2014.



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 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

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

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

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

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 know 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

1 trying to understand it. It will be relevant to 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,

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 KV 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.

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

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

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.

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.

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

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



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. 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

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. 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. 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. 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 --

1 MS. 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. 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.

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. 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. 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

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

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

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

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. 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. 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

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. 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. 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. ANDERSON: Okay. I have two more.

21           HEARING OFFICER CELLI: The first point being  
22 the increased footprint of jurisdictional water.

23           MS. 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. 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. 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 one.

15           MS. ILEENE ANDERSON: That is now issue number  
16 one.

17           HEARING OFFICER CELLI: Okay. Why the increase?  
18 And you also mentioned cryptobiotic soil --

19           MS. ANDERSON: Yeah.

20           HEARING OFFICER CELLI: -- which is also  
21 biology.

22           MS. 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. 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

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. 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. 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. 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 of certification, there was a  
2 requirement to have the waters, as they left the site,  
3 mimic the offsite 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. ANDERSON: I think it's --

11 MS. BELENKY: Oh, yeah. I think it was --  
12 was it in the FSA, I guess, Condition 17?

13 MS. 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. 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. 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. 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. ANDERSON: Yes.

1 MS. 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. 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 offsite hydrology



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 offsite 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 offsite impacts.

8 MS. 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. MARTIN-GALLARDO: If you'd like to  
21 take some time to find that, you're welcome to.

22 MS. 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. 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

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. 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. 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. 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. TAYLOR: The -- the table on --

18 MS. BELENKY: Just the table, but no  
19 discussion --

20 MS. TAYLOR: Yeah.

21 MS. BELENKY: -- summarized your findings?

22 MS. 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. 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. 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

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. 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 Reclamation 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. 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. 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. 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. 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?

1 MR. GALATI: No.

2 HEARING OFFICER CELLI: Any objection, staff?

3 MS. 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. 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. 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. 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. 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. 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. 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. MARTIN-GALLARDO: I don't know if

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. 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,

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. MARTIN-GALLARDO: Correct.

17 HEARING OFFICER CELLI: Okay. But she's  
18 available?

19 MS. HINDE: Who are you talking about?

20 MS. MARTIN-GALLARDO: We're talking  
21 about you, Jeanine.

22 MS. 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

1 doing bio. All of the parties have issues with bio.

2 I don't know if you were here during cultural?

3 MS. 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. 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



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. 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. 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. MARTIN-GALLARDO: On bio. They're  
3 not bio experts. We have --

4 HEARING OFFICER CELLI: Kanemoto and --

5 MS. 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

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. Specifically pages 256 through 315.

I further certify that I have no interest in the event of this action.

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KIMBERLY NOVAK, CSR  
Certificate No. 13135