

## DOCKETED

<b>Docket Number:</b>	09-AFC-07C
<b>Project Title:</b>	Palen Solar Power Project - Compliance
<b>TN #:</b>	202873
<b>Document Title:</b>	Transcript of the July 29, 2014 Evidentiary Hearing
<b>Description:</b>	Supersedes TN's 202861 and 202859.
<b>Filer:</b>	Cody Goldthrite
<b>Organization:</b>	Energy Commission Hearing Office
<b>Submitter Role:</b>	Committee
<b>Submission Date:</b>	8/1/2014 2:33:30 PM
<b>Docketed Date:</b>	8/1/2014

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	)	
<hr/>	)	

PALO VERDE COLLEGE  
ONE COLLEGE DRIVE  
BLYTHE, CALIFORNIA  
TUESDAY, JULY 29, 2014

APPEARANCES

COMMITTEE:

Karen Douglas, Presiding Commissioner

David Hochschild, Associate Commissioner

HEARING OFFICER:

Kenneth D. Celli, California Energy Commission

ADVISORS:

Gabriel Taylor, Advisor to Commissioner Hochschild

Jennifer Nelson, Advisor to Commissioner Douglas

PUBLIC ADVISOR:

Alana Matthews, Public Advisor

CEC STAFF:

Jennifer Martin-Gallardo, Attorney

Jeff Ogata, Attorney

Christine Stora, Compliance Project Manager

PETITIONER/APPLICANT:

Scott Galati, Attorney for Palen Solar Holdings, LLC

Charles Turlinski, Palen Solar Holdings, LLC

Matthew Stucky, Abengoa Solar, Inc.

Andrea Grenier

INTERVENERS:

Center for Biological Diversity:

    Lisa Belenky, Attorney; Ileana Anderson

Basin and Range Watch:

    Kevin Emmerich, Laura Cunningham

Colorado River Indian Tribes

    Sara Clark, Attorney; Nancy Jascula, Attorney

Californians for Renewable Energy

    Alfredo Figueroa

PANEL ONE - TRANSPORTATION/GLINT AND GLARE

Jim Adams, CEC Environmental Planner II

Greg Irvin, Spectrus LTD

Matthew Stucky, Abengoa Solar LLC

Gustavo Buhacoff, Brightsource

Laura Cunningham, Basin and Range Watch

Matt Binner, Airwork

Andrea Koch, CDC Environmental Planner II

Gary Cathey, Chief Division of Aeronautics

PANEL TWO - CULTURAL

Matt Stucky, Abengoa Solar LLC

Mary Barger, Palen Attorney

Fred Nials, Geomorphology - Geoarchaelogy

Lorey Cachora, Quechan Indian Tribe  
Thomas Gates, Energy Commission Staff  
Mike McGuirt, Energy Commission Staff  
Amanda Barrera, Colorado River Indian Tribes  
David Harper, Colorado River Indian Tribes  
Alfredo Figueroa, Californians for Renewable Energy

PUBLIC SPEAKERS:

Robert Sullivan, Argonne National Laboratory  
Edward Smith, Chemehuevi Indian Tribe  
Joe Ontiveres, Indian Tribe  
Johnson Fisher, Colorado River Indian Tribes  
Linda Otero, Mojave Culture Society  
Phillip Smith, Colorado River Indian Tribes  
Arlene Kingery, Quechan Indian Tribe  
Valerie Welsh-Tahbo, Indian Tribe

## INDEX

PROCEEDINGS	7
TRAFFIC & VISUAL/GLINT AND GLARE	29
CULTURAL RESOURCES, CUL-1	123
PUBLIC COMMENT	264
ADJOURNMENT	301
REPORTER'S CERTIFICATION	302
TRANSCRIBER'S CERTIFICATION	303

## EXHIBITS

	ENTERED
<u>TRAFFIC/GLINT AND GLARE</u>	
PETITIONER	
1142, 1180, 1187, 1191	120
STAFF	
2017, 2018, 2023, 2024, 2025, 2026, 2027, 2028, 2033	119
BASIN AND RANGE WATCH	
4001 THROUGH 4006	122
COLORADO RIVER INDIAN TRIBES	
8031 THROUGH 8034	122
<u>CULTURAL</u>	
PETITIONER	
1126, 1171, 1172	262
STAFF	
2017 THROUGH 2020	263
COLORADO RIVER INDIAN TRIBES	
8028, 8029, 8039, 8035, 8036	264

1 BLYTHE, CALIFORNIA  
2 TUESDAY, JULY 29, 2014

3 -o0o-

4 HEARING OFFICER CELLI: Good morning, folks.  
5 We're going to start. According to the clock at the back  
6 of the room it's 24 minutes after 8:00 a.m., but that's  
7 not right. It's almost 9:00 o'clock.

8 MALE VOICE: That's wrong too.

9 HEARING OFFICER CELLI: That is? We're in the  
10 neighborhood of 9:00 o'clock. And what I'm about to do is  
11 I'm going to check in and see who's on the telephone. I  
12 recall that in the County of Riverside, which is where we  
13 are right now, there's a rule of court that says in the  
14 summer months lawyers do not have to wear their jackets.  
15 So feel free to take your coat off?

16 FEMALE VOICE: How about witnesses?

17 HEARING OFFICER CELLI: And witnesses, we'll let  
18 witnesses, you know, we'll let you take your coats off so  
19 we can keep it cool in here.

20 Okay. Are you good, Cal?

21 Okay. Ladies and gentlemen, we have begun.  
22 We're not on the record yet, but I'm going to introduce  
23 myself. I'm Kenneth Celli, C-E-L-L-I. I'm the Hearing  
24 Advisor for this particular committee, which is made up of  
25 Commissioner and Presiding Member Karen Douglas and



1 Commissioner David Hochschild.

2           We are using this WebEx, and I'm really  
3 addressing my comments now to the people who are on the  
4 telephone using WebEx, because we want to know who's on  
5 the phone so that we can address you in case we need to  
6 mute somebody or somebody's dog is barking in the  
7 background or something like that. So most of the people  
8 who are on computers and typed in, we know who you are,  
9 but then there are those people who actually just called  
10 in on a telephone and are not using a computer and when  
11 you call in on a telephone that shows up on our computer  
12 as call-in user number one, two, three, four or whatever.

13           So I'm just going to ask the people on the  
14 telephone, if you would, please speak up and identify  
15 yourself so we can change you from call-in user number  
16 four, let's say, to whatever your name actually is. So  
17 who's on the phone can identify themselves, please?

18           MR. CATHEY: Gary Cathey, Caltrans Division of  
19 Aeronautics is on the phone.

20           HEARING OFFICER CELLI: Thank you. Call-in user  
21 number five is Gary Cathey. Go ahead, who's on the phone?

22           MR. BINNER: Matt Binner, pilot.

23           HEARING OFFICER CELLI: Say it again, Matt?

24           MR. BINNER: Matt Binner.

25           HEARING OFFICER CELLI: Matt Zimmer. We're

1 going to need to bring the house mics way up, please? It  
2 sounded like Matt Zimmer. Do I have that right, Matt?

3 MR. BINNER: Matt Binner, B as in Bravo, Binner.

4 MR. GALATI: B-I-N-N-E-R, Matt Binner, he is our  
5 Traffic and Transportation pilot witness.

6 HEARING OFFICER CELLI: Okay. All right, Matt  
7 Binner, can you hear me?

8 MR. BINNER: Yes, I can hear you.

9 HEARING OFFICER CELLI: Okay. That was call-in  
10 user number six. But where, if you wouldn't mind Matt,  
11 just stay with me for a minute, because we're having some  
12 difficulty hearing you in the room. And we need to bring  
13 up the mics.

14 MR. BINNER: Yeah, I'm having a little bit of a  
15 difficult time hearing you guys as well.

16 HEARING OFFICER CELLI: Okay. You just got  
17 better. How do I sound to you, Matt? One-two-three-four?

18 MR. BINNER: That's now loud and clear.

19 HEARING OFFICER CELLI: Is that better? Okay.

20 MR. BINNER: Yeah, I got you now.

21 HEARING OFFICER CELLI: Very good. And I --  
22 where did Andrea go?

23 ANDREA: I'm right here. Hi.

24 HEARING OFFICER CELLI: What's the sound man's  
25 name again?

1           ANDREA: It's Rod. (Phonetic)

2           HEARING OFFICER CELLI: Rod, thanks. Thank you,  
3 Rod. That's much better. Is there any possibility that  
4 we can get that monitor up just one more tic or is that at  
5 max?

6           ROD: For the phone?

7           HEARING OFFICER CELLI: For the phone-in, yeah.

8           ROD: (Inaudible)

9           HEARING OFFICER CELLI: That sounds, I think  
10 that's good. Okay. Call-in user number five, you're  
11 dangling your keys, that's how good it is. We can hear  
12 that.

13           Okay. On the phone, if someone is on the phone,  
14 please identify yourself.

15           MS. KOCH: Andrea Koch, Environmental Planner  
16 with the Energy Commission. I helped write the Traffic  
17 and Transportation section.

18           HEARING OFFICER CELLI: Was that call-in user  
19 number five, was Andrea Koch. Thank you, Ms. Koch.

20           On the phone, please identify yourself,  
21 telephone callers?

22           MR. HO: Hi. This is Cliff Ho with Sandia Labs.

23           HEARING OFFICER CELLI: That was number seven.  
24 Cliff, how do you spell your last name?

25           MR. HO: H-O.

1 HEARING OFFICER CELLI: Cliff Ho, okay thank  
2 you. And any other call-in telephone users on WebEx  
3 please identify yourself?

4 MR. SULLIVAN: This is Bob Sullivan from Argonne  
5 National Laboratory.

6 HEARING OFFICER CELLI: Bob Sullivan is call-in  
7 user number ten.

8 Okay. Anyone else on the phone, please? We  
9 have several people on the phone. It's okay if you want  
10 to be a lurker, you can do that too. You don't have to  
11 identify yourself, but we like to know who's on the phone  
12 so we can tell you if we're muting you, because we hear  
13 dogs barking in the background or anything else like that.

14 Anyone else on the telephone, please if you  
15 would identify yourself?

16 MR. SULLIVAN: Sorry, did you hear that Bob  
17 Sullivan from Argonne National Laboratory is on?

18 HEARING OFFICER CELLI: Bob Sullivan from  
19 Argonne National Laboratory is call-in user number ten,  
20 yes we did. Thank you, you're loud and clear, that's  
21 really good.

22 (Off-mike discussion)

23 COMMISSIONER DOUGLAS: All right, how's this?  
24 Is this coming through?

25 HEARING OFFICER CELLI: Let's see who's in the

1 back. Mr. McGuirt, can you hear Commissioner Douglas?

2 COMMISSIONER DOUGLAS: Can you hear? Can you  
3 hear when I speak?

4 MR. MCGUIRT: Yes, ma'am.

5 COMMISSIONER DOUGLAS: Thank you.

6 All right, so I'd like to welcome everybody to  
7 the reopened evidentiary hearings on the proposed  
8 amendment to the Palen Solar Electric Generating System.  
9 Before we begin we'd like to introduce the Committee and  
10 then ask the parties to introduce themselves for the  
11 record.

12 My name's Karen Douglas. I am the Presiding  
13 Member on this Siting Committee. My colleague,  
14 Commissioner Hochschild, is on his way. He is driving now  
15 and expected to get in today around 11:00 o'clock. We'll  
16 pause and introduce him when he gets here.

17 To my left is my advisor, Jennifer Nelson. To  
18 my right, Ken Celli, our Hearing Advisor, and to his  
19 right, Gabe Taylor, Commissioner Hochschild's advisor.

20 I've also got an intern in the room I just want  
21 to point out. Kelly Johnson, could you stand up or wave  
22 your hand? So Kelly is here. I just want to make sure  
23 everyone knows she is associated with the Committee and  
24 she's working for me this summer.

25 We have Public Advisor Alana Matthews in the

1 room. Alana, could you please stand up or wave? There  
2 she is, Alana Matthews, so she'll help facilitate public  
3 comments and she'll help with any questions members of the  
4 public might have about how to participate today or in  
5 subsequent stages of this proceeding.

6 Let me know ask now for Petitioner, Palen Solar  
7 Holdings, if you could identify yourselves, please?  
8 Mr. Galati.

9 MR. GALATI: Scott Galati, representing Palen  
10 Solar Holdings.

11 MR. TURLINSKI: Charles Turlinski, Palen Solar  
12 Holdings.

13 MR. STUCKY: And Matt Stucky, Palen Solar  
14 Holdings.

15 COMMISSIONER DOUGLAS: All right, thank you.  
16 Staff please?

17 MS. MARTIN: Jennifer Martin-Gallardo  
18 representing staff.

19 MS. STORA: Christine Stora, a project manager  
20 for staff.

21 COMMISSIONER DOUGLAS: Thank you.

22 Intervener Lisa Belenky, Center For Biological  
23 Diversity.

24 MS. BELENKY: Good morning. This is Lisa  
25 Belenky with the Center for Biological Diversity and Ilene

1 Anderson is also here with me.

2 COMMISSIONER DOUGLAS: Thank you. Welcome.

3 Intervener Kevin Emmerich, Basin And Range  
4 Watch.

5 MR. EMMERICH: Hello. This is Kevin Emmerich,  
6 Basin and Range Watch and Laura Cunningham is here too.

7 COMMISSIONER DOUGLAS: Thank you.

8 Intervener Alfredo Figueroa, Californians For  
9 Renewable Energy.

10 MR. FIGUEROA: Alfredo Figueroa, the La Cuna De  
11 Aztlan Sacred Sites Protection Circle.

12 COMMISSIONER DOUGLAS: Welcome.

13 Intervener Tanya Gulesserian with CURE.

14 HEARING OFFICER CELLI: She may be on the phone.

15 COMMISSIONER DOUGLAS: Tanya Gulesserian with  
16 CURE or any representative of CURE, are you on the phone?  
17 Tanya Gulesserian or Elizabeth Klebaner? Okay. Not yet  
18 anyway.

19 Do we have anyone here from LiUNA; either here  
20 or on the phone?

21 All right, intervener Colorado River Indian  
22 Tribes?

23 MS. CLARK: This is Sara Clark, good morning,  
24 for Colorado River Indian Tribes. I also have Nancy  
25 Jасsulca here with me this morning.

1 MS. JASCULCA: Good morning.

2 COMMISSIONER DOUGLAS: Good morning. Welcome.

3 Do we have any federal government agencies  
4 represented here in the room? Could you please introduce  
5 yourself at the mic, please?

6 MR. VON STADT: Okay. Michael Von Stadt, I'm a  
7 wildlife ecologist at Joshua Tree National Park.

8 COMMISSIONER DOUGLAS: Thank you.

9 MR. SABALA: Luke Sabala, Physical Scientist,  
10 Joshua Tree National Park.

11 MR. MCMANNING: Frank McManning, (phonetic)  
12 project manager with BLM. (phonetic)

13 COMMISSIONER DOUGLAS: Thank you. Any other  
14 representatives of federal government agencies in the  
15 room?

16 MR. WEIR: Dave Weir, I represent the Commander  
17 General of the Marine Corps Installations West. I'm the  
18 Director of Aviation (inaudible).

19 COMMISSIONER DOUGLAS: Thank you. All right,  
20 what about on the phone, any federal government agencies  
21 represented on the phone or WebEx?

22 MS. HOWARD: Hello. This is Amy Howard with the  
23 National Park Service.

24 COMMISSIONER DOUGLAS: Thank you, anyone else?

25 All right, are there any representatives of



1 state or local government agencies in the room or on the  
2 phone, other than the Energy Commission, of course?

3 MR. CATHEY: This is Gary Cathey. I'm with the  
4 Caltrans Division of Aeronautics.

5 COMMISSIONER DOUGLAS: Right, thanks. Great.

6 Riverside County, anyone here yet from Riverside  
7 County?

8 All right, are there any officials here  
9 representing Native American tribes or nations besides the  
10 Colorado River Indian Tribes, who have already been  
11 introduced as an intervener?

12 All right, not yet anyway. Are there any  
13 elected officials here in the room or on the phone line?

14 All right. Well, we're through introductions  
15 then. At this point I'll turn this over to the Hearing  
16 Advisor.

17 HEARING OFFICER CELLI: Thank you, Commissioner.

18 How is my sound in the back, Mr. McGuirt, that's  
19 good? Okay. So I can speak from this far, which is about  
20 six inches from the mic.

21 Good morning, everybody. This evidentiary  
22 hearing is an administrative adjudicatory proceeding to  
23 receive evidence into the formal evidentiary record from  
24 the parties. Only the parties who are the applicant, or  
25 in this case the Petitioner, interveners, and the

1 California Energy Commission staff, only they may present  
2 evidence for introduction into the formal evidentiary  
3 record, which is the only evidence upon which the  
4 Commission may base its decision under the law.

5 Technical rules of evidence may be relied upon  
6 as guidance. However, any relevant noncumulative evidence  
7 may be admitted if it is the sort of evidence upon which  
8 responsible persons are accustomed to rely in the conduct  
9 of serious affairs.

10 Testimony offered by parties shall be under  
11 oath. Each party has the right to present witnesses,  
12 introduce exhibits, and to rebut evidence of another party  
13 subject to limitation by the presiding member.

14 Questions of relevance will be decided by the  
15 Committee. Hearsay evidence may be used to supplement or  
16 explain other evidence, but shall not be sufficient in  
17 itself to support a finding.

18 The Committee will rule on motions and  
19 objections. The Committee may take official notice of  
20 matters within the Energy Commission's field of competence  
21 and of any fact that may be judicially noticed by the  
22 California Courts.

23 The official record of this proceeding includes  
24 sworn testimony of the parties' witnesses, the reporter's  
25 transcript, the exhibits received into evidence, briefs,

1 pleadings, orders, notices and comments submitted by  
2 members of the public.

3           The Committee's decision will be based solely on  
4 the record of competent evidence in order to determine  
5 whether the project complies with applicable law.

6           Members of the public who are not parties are  
7 welcome and invited to observe these proceedings. One  
8 moment. There will be an opportunity for the public to  
9 provide comments today at noon when we break for lunch.  
10 And also, at the close of taking evidence today. We only  
11 have two issues today. We're talking about traffic and  
12 transportation, glint and glare issues and we're talking  
13 about cultural condition of certification CUL-1. And so  
14 we suspect that this may be a short day. At the end of  
15 the evidence we will take public comment again, so we'll  
16 do it at noon and we'll take it at the end of the evidence  
17 or at 5:00 o'clock, whichever is earlier.

18           Now, depending on the number of persons who wish  
19 to speak, the Committee may have to limit the time allowed  
20 for each speaker. I don't think that's going to happen  
21 here, but sometimes we have to do that.

22           This public comment period is intended to  
23 provide an opportunity for persons who attend the hearing  
24 to address the Committee. It is not an opportunity to  
25 present supplemental written, recorded or documentary

1 materials other than your comments themselves. However,  
2 such materials may be docketed and submitted to the Energy  
3 Commission for inclusion in the administrative record.

4           And members of the public who wish to submit  
5 written comments, if they would prefer to submit a written  
6 comment you may do so instead of actually speaking in  
7 front of large groups of people. I know that that's  
8 unnerving to a lot of people.

9           If you want to make a comment you should fill  
10 out a blue card. Now, Alana Mathews is standing up and  
11 holding up one of the blue cards, the aforementioned blue  
12 cards, one of those blue cards that we were just talking  
13 about. If you fill out the blue card, then Alana will  
14 bring us the blue card. And then when it's time to take  
15 public comment I'll read the names off the blue card and  
16 that's how we know who is here and who wants to make a  
17 comment. So if you do wish to make comments today, please  
18 see Alana and fill out one of the blue cards. And you can  
19 do that any time including right now.

20           Now a word about exhibits and witnesses. We put  
21 out -- I put out an exhibit list on the table next to  
22 where Alana, the Public Advisor, is standing. That is  
23 most of the list. I understand there's some new things  
24 that came in on the dockets yesterday, but it's a good  
25 guideline for now.

1           The exhibit list has been posted to the Palen  
2 website. When I'm talking about PSEGS today that's the  
3 P-S-E-G-S, that's mnemonic for the Palen Solar Electricity  
4 Generating Systems. We may call it Palen. We may call it  
5 PSEGS. We're talking about the project when we refer to  
6 Palen or PSEGS. So the e-Filing system automatically has  
7 the exhibit lists and those are on the webpage.

8           The parties listed their witnesses in their  
9 prehearing statements and they filed them all on July  
10 21st, 2014. And we used these lists to organize the  
11 receipt of evidence into the record.

12           As explained at the prehearing conference, which  
13 we had last week, I believe it was Wednesday, rather than  
14 taking the time with the usual formal direct and  
15 cross-examination of individual witnesses we will proceed  
16 by way of an informal hearing format. This informal  
17 hearing format will begin with parties moving their  
18 pre-filed testimony into the record. To save time we will  
19 deem all parties' opening and rebuttal testimony as their  
20 direct examination. There is no --

21           (WebEx feedback interruption)

22           That was our WebEx making its presence known.  
23 And that is going to happen throughout the day. We may  
24 get some feedback, people's dogs barking in the background  
25 or whatever. I just want to confirm, and Garrett Larimer

1 is our WebEx person today, so thanks for being here  
2 Garrett.

3           The only party -- well, the two parties that  
4 haven't shown up here in person today are California  
5 Unions for Reliable Energy and LiUNA, which is Laborers  
6 International Union of North America. So you may want to  
7 take a moment right now and check and see if anyone from  
8 CURE or LiUNA is on the phone. Let's unmute everybody for  
9 a moment. I'm going to ask again, if CURE and LiUNA are  
10 on the phone. Is there anyone from CURE or LiUNA on the  
11 telephone? Please speak up. Okay. Hearing none, I think  
12 the way that we're going to deal with that is from time to  
13 time, and you may want to remind me Garrett, to ask them  
14 to send a chat. So if they come and if you've muted  
15 everybody on entry --

16           MR. LARIMER: I did it.

17           HEARING OFFICER CELLI: Oh, okay. But that  
18 might be a good way to go and what I'm thinking is we'll  
19 just ask them to send a chat from time to time.

20           So, if there's anyone from CURE or LiUNA on the  
21 telephone, please send a chat message asking for us to  
22 unmute your line.

23           Where were we? Okay. So we were talking about  
24 expert testimonies and we were saying that we are deeming  
25 all the experts' testimony that we've received so far, the

1 rebuttal testimony and the opening testimony, to be your  
2 direct testimony, your witnesses' direct testimony.

3           We have all of the experts resumes, I believe  
4 available, and so therefore unless there's an objection to  
5 the witness qualifying as an expert we really don't need  
6 to get into people's resumes.

7           Witnesses may only testify on topics on issues  
8 within their expertise.

9           If anyone has an objection please state your  
10 objection first and avoid speaking objections, so what do  
11 I mean by that? If you're going to make an objection,  
12 because you think something's irrelevant, I want you to  
13 say "objection, irrelevant" and give the Committee an  
14 opportunity to decide how to rule on that objection.  
15 Rather than saying, "I object, it's irrelevant and the  
16 reason I think it's irrelevant is because  
17 blah-blah-blah-blah-blah." We don't want to hear that.  
18 We don't want to hear that. We just want to know what  
19 your objection is and what the basis is and we'll make a  
20 ruling. We'll probably ask the other parties for an offer  
21 of proof and let them explain why they think it's  
22 relevant, if they think it's relevant. But I am just  
23 trying to avoid turning an objection into a soapbox  
24 speech, so that's what I mean by speaking objections.

25           The informal hearing process will generally

1 proceed in the following order. First, all parties  
2 experts' who are going to be sitting along this back row  
3 here will be sworn in as a panel. Petitioner's experts  
4 will generally provide a brief opening statement  
5 summarizing the key points and conclusions of their  
6 testimony.

7           After that the staff experts will provide a  
8 brief opening statement summarizing their key points and  
9 conclusions of their testimony.

10           After that the interveners experts' would  
11 provide a brief opening statement summarizing their key  
12 points and conclusions of their testimony. And for  
13 purposes of today, I'm just going to call the interveners  
14 in the order that you're sitting from my -- from your  
15 right, from my left to right, your right to left. Okay.  
16 So starting with the California Unions for Reliability and  
17 coming down to Basin and Range Watch is the order that we  
18 will be calling the interveners in.

19           Each party's expert will be allowed to state  
20 their position without interruption before any dialogue  
21 ensues. After all the experts have stated their position  
22 the Committee will guide the discussion between the expert  
23 panelists. We envision that testimony would include  
24 discussions among the panel without the lawyers and  
25 non-lawyer interveners asking any questions.



1           Please remind your witnesses to identify  
2 themselves every time they wish to speak in order to  
3 provide a clear transcript. And that's more than just a  
4 clear transcript, folks. Because we're using the WebEx  
5 and people are listening in on the telephone, I'm going to  
6 ask that before you speak say, "This is Ken Celli," and  
7 then make your statement. So that we always know who's  
8 speaking, so that the people who aren't here can tell who  
9 the speaker is.

10           If the panelists appear to be unduly  
11 confrontational, combative, or any panel discussion  
12 becomes unproductive the Committee will take over the  
13 questioning. The discussion will continue until the  
14 Committee determines that it has heard enough evidence.

15           Next, attorneys may follow up with questions of  
16 their own or of other expert witnesses to the extent the  
17 Committee finds the question productive.

18           I want to just say to all of the parties that  
19 when we open it up to parties asking questions this is not  
20 an opportunity to rehash or restate your expert's  
21 position. If they've already made that record the record  
22 stands. It's in the record. We don't need to hear it  
23 over and over and over again, okay? So, I'm going to ask  
24 that you not ask them to repeat their testimony.

25           At the conclusion of the attorneys' examination

1 of the experts the Committee may ask witnesses additional  
2 questions or allow panelists to ask additional questions  
3 of each other. And then we would probably allow the  
4 attorney's further follow-up questions after that. The  
5 Committee may revert to standard, formal examination after  
6 discretion.

7           If we allow cross-examination, please be ready  
8 to state the page number and line of any testimony you  
9 seek to cross-examine the witness about. Please remember  
10 to allow the witness to finish their answers. It's very  
11 important, folks. We have a court reporter, everything's  
12 being recorded today. We can't have two people talking at  
13 once, so experts who are here in the room, you need to  
14 listen to each other, let each other finish and then  
15 begin. If you start talking over each other I will cut in  
16 and start separating that out. But it's really important  
17 that one person should be able to talk.

18           Okay. The testimony may include discussion with  
19 the panel without the lawyers asking questions. The  
20 Committee will ask the questions of the panel if time  
21 permits the -- okay.

22           Today's hearing schedule. We are going to start  
23 with aviation and glint and glare issues, which we said  
24 was mostly traffic and transportation, could be some  
25 visual, but mostly we think it's traffic and

1 transportation. And when we finish that we're going to do  
2 cultural resources, condition of certification CUL-1.

3 I'm of the opinion that we can get that done  
4 pretty quickly today. And I hate to waste -- have an  
5 empty afternoon. So if the parties are able, because  
6 tomorrow we were supposed to start with project  
7 description including storage and gas. If all of the  
8 witnesses are here today and if we can get started a  
9 little bit on the project description today that would be  
10 really great, because we're all down here. It's 150  
11 degrees out. I don't know what people are going to do  
12 today, but it would be better to be in an air-conditioned  
13 room taking testimony is my thought. So let's see what we  
14 can accomplish.

15 Any topics that cannot be completed on Wednesday  
16 will spill over into Thursday. But I want to be clear  
17 that Wednesday, which is tomorrow, will include project  
18 description, which is storage and gas and the new  
19 information that came from the Petitioner: alternatives,  
20 overrides and biology, which is a big one. That includes  
21 impacts to birds and bats, insects, mitigation of solar  
22 flux impacts including curtailment and deterrence. That's  
23 going to be a huge day and we're going to get as much as  
24 we can done tomorrow. So we may go late tomorrow in order  
25 to offset today's lighter day. But as we said we've got

1 the day, we have this room, and we can if we need to spill  
2 over into Thursday we will.

3 So with that let's get all of the witnesses then  
4 on glint and glare in to -- oh I'm sorry, go ahead,  
5 Ms. Kane. (phonetic)

6 MS. CLARK: Hi, actually Ms. Clark.

7 HEARING OFFICER CELLI: Clark, I'm sorry.

8 MS. CLARK: I'm Sara Clark. I just have a quick  
9 question about public comment?

10 HEARING OFFICER CELLI: Yes?

11 MS. CLARK: At the prehearing conference I  
12 believe you said that public comment could also be taken  
13 at 5:00 p.m. today and so we've informed some of our  
14 members that if they are only available then, that they  
15 could come at 5:00. I don't know if anyone will, but I  
16 wanted to make you aware that that has been put out to the  
17 public.

18 HEARING OFFICER CELLI: Yes. And I remember  
19 saying that, so I guess I will have to be here at 5:00  
20 o'clock to take any public comment. So today the plan  
21 would be, we'll do it at the lunch break, we'll do it at  
22 the close of -- when I say do it, we will take public  
23 comment at noon. We'll take public comment at the close  
24 of evidence. And then if the close of evidence is at say,  
25 2:00 o'clock then we would come back at 5:00 o'clock and

1 reopen for public comment if there's any at 5:00 o'clock  
2 today.

3 MS. CLARK: Okay.

4 HEARING OFFICER CELLI: Okay. Any other  
5 questions before we swear witnesses from any of the  
6 parties? Mr. Galati?

7 MR. GALATI: I just wanted to mention some  
8 logistics. As you know Andrea Grenier worked very hard to  
9 get this room. Let you know the location of the  
10 restrooms, coffee and water is just outside in the hallway  
11 and lunchboxes will be provided at noon. And the  
12 restrooms are where?

13 MS. GRENIER: Far down on the right.

14 MR. GALATI: Far down on the right.

15 HEARING OFFICER CELLI: Thank you. And thank  
16 you Andrea Grenier, who's done a great job of taking care  
17 of everybody here and getting us a nice room. This is  
18 very nice, you did a good job.

19 MS. GRENIER: Thanks.

20 HEARING OFFICER CELLI: It was very well set up  
21 and I appreciate the water and so forth. Any question  
22 from staff, Energy Commission staff, before we take  
23 evidence? Or any interveners, any further questions  
24 before we proceed?

25 Okay. Then let's call the Glint and Glare

1 experts. Is this everybody?

2 MR. GALATI: For the Petitioner we also have  
3 Matt Binner on the telephone.

4 HEARING OFFICER CELLI: Okay. We're going to  
5 need to unmute Matt Binner on the telephone. And I'm just  
6 going to say one more time that if there are any  
7 representatives from California Unions for Reliable Energy  
8 or LiUNA on the telephone, please send a chat and let us  
9 know you're there, so we can unmute you. Okay?

10 Marlee, did you want to --

11 MS. KOCH: Hi, it's Andrea Koch on the  
12 telephone.

13 HEARING OFFICER CELLI: Say again, Andrea Coke?  
14 (phonetic)

15 MS. KOCH: Andrea Koch, K-O-C-H.

16 HEARING OFFICER CELLI: Koch, yes and you're  
17 with who?

18 MS. KOCH: I'm with the Energy Commission. I  
19 helped prepared the traffic section.

20 HEARING OFFICER CELLI: Oh, so she's a witness.  
21 Okay, so she's got to be unmuted as well. Any other  
22 witnesses on the telephone for glint and glare, traffic  
23 and transportation, visual issues?

24 MR. HO: I'm not sure if I'm an official  
25 witness, but this Clifford Ho from Sandia Labs. I wrote

1 the report and email that was docketed recently.

2 HEARING OFFICER CELLI: With staff?

3 MALE VOICE: Yes.

4 MS. MARTIN: Correct.

5 HEARING OFFICER CELLI: Okay. So we'll leave  
6 him unmated as well.

7 MS. MARTIN: And there's also a representative  
8 from Department of Fish and -- no.

9 MR. GALATI: Government transportation, Gary  
10 Cathey, who's announced his presence via phone.

11 HEARING OFFICER CELLI: Thank you. Let's make  
12 sure then that he is also unmated. Any others?

13 Okay. Now, on the telephone I just want to --  
14 who's going to be testifying on the telephone?

15 MR. GALATI: Matt Binner.

16 MS. KOCH: Hi, it's Andrea Koch. I'll likely be  
17 testifying.

18 HEARING OFFICER CELLI: So Matt --

19 MS. KOCH: Andrea for the Energy Commission.

20 HEARING OFFICER CELLI: Okay. Andrea Cook, Matt  
21 Binner, Andrea Cook and who else will be testifying on the  
22 phone, because they need to be sworn.

23 MS. MARTIN: Gary Cathey, if he's able to be  
24 sworn.

25 HEARING OFFICER CELLI: Gary Cathey. They're

1 all able, the question is, are they willing?

2 MS. MARTIN: Exactly, I meant able in the  
3 willing sense as well as Clifford Ho.

4 HEARING OFFICER CELLI: And what's Clifford's  
5 last name?

6 MS. MARTIN: H-O.

7 HEARING OFFICER CELLI: Clifford Ho. Okay.  
8 Marlee, do you want to swear -- so I'm going to have the  
9 court reporter swear in the people in the room first. Go  
10 ahead.

11 (Panel Sworn)

12 HEARING OFFICER CELLI: Okay. The panel of  
13 witnesses who are here in the room are sworn. Now, I'm  
14 going to ask Matt Binner, Andrea Koch, Gary Cathey and  
15 Clifford Ho to be sworn in on the phone.

16 HEARING OFFICER CELLI: Mr. Binner?

17 MR. BINNER: I'm having a hard time hearing.

18 HEARING OFFICER CELLI: Okay. Oh, that's --  
19 I'll take it, I'll do it.

20 Mr. Binner, do you swear or affirm that the  
21 testimony you're about to give will be the truth, the  
22 whole truth and nothing but the truth under penalty of  
23 perjury pursuant to the laws of the State of California?

24 MR. BINNER: Yes, I do.

25 HEARING OFFICER CELLI: Thank you.



1           And Andrea Koch, do you swear or affirm to tell  
2 the truth, the whole truth and nothing but the truth under  
3 the laws of the State of California?

4           MS. KOCH: I do.

5           HEARING OFFICER CELLI: And Gary Cathey, do you  
6 swear or affirm that you will tell the truth, the whole  
7 truth and nothing but the truth under penalty of perjury  
8 under the laws of the State of California?

9           MR. CATHEY: I do.

10          HEARING OFFICER CELLI: And Clifford Ho, do you  
11 swear or affirm that you will tell the truth, the whole  
12 truth and nothing but the truth under penalty of perjury  
13 under the laws of the State of California?

14          MR. HO: Yes.

15          HEARING OFFICER CELLI: Okay. The panel then is  
16 sworn and the way we're going to proceed then is let's  
17 hear first from the applicant's witnesses, which are  
18 Matthew Stucky and I'm sorry?

19          MR. BUHACOFF: Gustavo Buhacoff.

20          HEARING OFFICER CELLI: Gustavo?

21          MR. BUHACOFF: Buhacoff.

22          HEARING OFFICER CELLI: Buhacoff and Matthew  
23 Stucky are the witnesses for the Petitioner. And then  
24 for staff we have James Adams and sitting next to  
25 Mr. Adams?

1 MR. IRVIN: Greg Irvin.

2 HEARING OFFICER CELLI: Greg Irvin.

3 Mr. Buhacoff, we're going to ask, do you have business  
4 cards?

5 FEMALE VOICE: He has it (inaudible)

6 HEARING OFFICER CELLI: Oh, do you have that?  
7 We're going to need a business card for the court  
8 reporter, okay?

9 Go ahead then if you're prepared, Mr. Stucky.

10 MR. STUCKY: Sure. Last year, Petitioner and  
11 CEC staff negotiated and agreed to language that would be  
12 included in Condition of Certification TRANS-7. That  
13 condition language included, among other things, specific  
14 language that addressed the Riverside County concerns. It  
15 defines the type of solar reflection defense that would  
16 have to be addressed by the project owner. And it clearly  
17 identifies pilots as one category of people who should not  
18 be put in jeopardy by the project. And the condition has  
19 requirements and procedures for the project owner to  
20 document, investigate and resolve legitimate complaints  
21 with respect to glint and glare.

22 Yesterday, staff filed a new TRANS-7.  
23 Unfortunately, they did not appear to use the most recent  
24 version of our Condition of Certification. And so we  
25 don't agree with, basically, the changes that they've made

1 and the form of the condition they've used. Our position  
2 is that the formerly negotiated condition is adequate.

3           It's my understanding that a condition like this  
4 exists for Ivanpah and this topic is being discussed  
5 today, because of events that happened at Ivanpah, which I  
6 believe have been addressed. And to speak to that, I'd  
7 like to turn it over to Mr. Buhacoff.

8           HEARING OFFICER CELLI: Thank you. Before you  
9 do, let me just ask you to please tell us what are the  
10 disputed -- what's the dispute in TRANS-7 right now? What  
11 is the language in question?

12           MR. STUCKY: Well, I don't have -- I haven't had  
13 time to do a careful side-by-side comparison. But I do  
14 know that there are things in the old version, which we  
15 had worked on staff with, which are important to this  
16 project that must be included. And namely that would be  
17 identifying the actual reflection event that must be  
18 addressed.

19           Like we recognize that occasionally a stray  
20 heliostat may inadvertently shine a reflection offsite.  
21 But unless that poses a risk to someone, to human health  
22 and safety, which we think is the standard here, that  
23 isn't something we think that necessarily needs to be  
24 formerly documented, addressed and resolved in some set  
25 period of time. We'd like to limit the types of events

1 that we're compelled to address under this condition.

2 HEARING OFFICER CELLI: Okay. Well, if you  
3 don't have it now I suspect we will get to it from the  
4 staff. So let's go ahead and hear from Mr. Buhacoff.

5 Am I pronouncing your name right, Buhacoff?

6 MR. BUHACOFF: Buhacoff, yes.

7 HEARING OFFICER CELLI: Buhacoff, okay. Go  
8 ahead, sir.

9 MR. BUHACOFF: Okay. My testimony is with  
10 respect to the changes requested by staff to TRANS-7. I  
11 am familiar with the Ivanpah Project and the conditions in  
12 TRANS-7 are similar to those used by the Ivanpah Project.

13 The reason I disagreed with their conclusion is  
14 because Ivanpah Project has been working through their  
15 heliostat positioning plan and it has proven to be  
16 effective. The plan requires the owner to respond to  
17 complaints. Their complaints are logged, they are  
18 investigated. There are recommendations made based on the  
19 investigation, and based on recommendations, there is an  
20 implementation of changes. These changes result in  
21 improvement of the conditions or mitigation of everything  
22 that has been complained about.

23 For example, Dr. Ho is on the phone, he  
24 conducted part of the investigation based on the  
25 complaints we received and the project responded to his

1 recommendations and implemented changes. This system  
2 works and it takes care of any issues that come up.  
3 Therefore I believe there's no reason to change TRANS-7  
4 for PSEGS.

5 HEARING OFFICER CELLI: Anything further,  
6 Mr. Buhacoff?

7 MR. BUHACOFF: What? No, thank you.

8 HEARING OFFICER CELLI: No? Sorry, I'll get  
9 better at that.

10 Mr. Adams?

11 MR. GALATI: We also have Matt Binner on the  
12 phone, who's part of our panel.

13 HEARING OFFICER CELLI: Okay. Did he have a  
14 statement? Let's hear from Mr. Binner.

15 MR. GALATI: Yes, he does.

16 HEARING OFFICER CELLI: Mr. Binner, are you on  
17 the phone?

18 MR. BINNER: Yes, sir. Yes, this is Matt  
19 Binner. I'm with Airworks Las Vegas. We have been flying  
20 over the site doing photo shoots of Ivanpah, which is a  
21 similar project, from 2010 to 2014 here, over the last  
22 four years as it was being constructed. And it's my  
23 opinion during all phases flight, when we fly over the  
24 site, the glare does not produce an unsafe condition for  
25 pilots. Although I agree it's a distraction, but in my

1 opinion it's not a hazardous or unsafe distraction.

2 HEARING OFFICER CELLI: Anything further,  
3 Mr. Binner, at this time? We're going to allow further  
4 discussions on this, but I just want to know if there was  
5 anything further in terms of your opening salvo?

6 MR. BINNER: Not at this time.

7 HEARING OFFICER CELLI: Okay. Thank you.

8 And none of the interveners have glint and glare  
9 experts; is that correct?

10 MR. EMMERICH: Yes.

11 HEARING OFFICER CELLI: I need you to speak into  
12 your mic, Mr. Emmerich?

13 MR. EMMERICH: Yes. I submitted a brief  
14 testimony.

15 HEARING OFFICER CELLI: Okay. And that's your  
16 opening statement essentially, correct?

17 MR. EMMERICH: Yeah. I -- just now you mean?

18 HEARING OFFICER CELLI: If you want to make a  
19 statement now, please go ahead.

20 MR. EMMERICH: Oh, okay. I submitted a brief  
21 testimony, mostly to point out that there was a glare  
22 event that we documented by photograph of the Ivanpah  
23 Project in April and it was from a commercial flight. And  
24 it was long after a lot of these other reports came from  
25 pilots that were also documented on the Ivanpah case and

1 the website and the Energy Commission compliance report.  
2 And we just wanted to document that that was a very bright  
3 event. It was observed by Laura Cunningham, who is here,  
4 but when I submitted this as evidence we weren't sure she  
5 was going to be here at the time. That's why I put that  
6 in. And we put some other evidence in as well, to  
7 compliment that.

8 HEARING OFFICER CELLI: Thank you, Mr. Emmerich.

9 MR. EMMERICH: Okay.

10 HEARING OFFICER CELLI: Any other interveners  
11 with witnesses on glint and glare issues? Okay, hearing  
12 none then let's hear from the California Energy Commission  
13 staff.

14 Go ahead, please.

15 MR. ADAMS: Good morning, my name is Jim Adams.  
16 I'm the Traffic and Transportation Analyst for the  
17 Environmental Office of California Energy Commission. I  
18 do have an opening statement. I believe Counsel had  
19 copies of it and can be provide it to the Commissioner  
20 Hearing Officer.

21 Staff stated in the PSEGS FSA that Condition of  
22 Certification TRANS-7 would mitigate pilot glare to less  
23 than significant. However, earlier this year staff began  
24 receiving complaints from pilots about disabling glare  
25 associated with the Ivanpah Solar Electric Generating

1 System, ISEGS. A plant that uses solar power technology  
2 similar to that proposed for PSEGS.

3 To investigate these complaints, myself, Greg  
4 Irvin seated with me, and Gary Cathey the Chief of  
5 Caltrans Division of Aeronautics, flew around the ISEGS  
6 site on May 8th, 2014. Altitude ranged from about 5,000  
7 to 13,000 feet above mean sea level. All three passengers  
8 experienced disabling glare from multiple heliostats in  
9 the standby position while looking in the direction of  
10 ISEGS.

11 As a result of this experience staff concluded  
12 that PSEGS could cause pilots to experience disabling  
13 glare, a significant impact.

14 To reduce these impacts staff proposes modifying  
15 TRANS-7 to require that the APMB Heliostat (inaudible)  
16 describe how disabling glare to pilots from the heliostat  
17 in the standby position would be mitigated through methods  
18 such as limiting the number of mirrors in the standby  
19 position, changing the geometry of the standby range to  
20 disperse reflections, improving calibration and  
21 positioning algorithms of the heliostats, providing a  
22 light dump for receiving heliostat standby reflections or  
23 use of any other method that would effectively mitigate  
24 glare.

25 On July 17th, 2014 staff received a report from



1 Sandia Laboratories called "Evaluation of Glare at the  
2 Ivanpah Solar Electric System" as part of their required  
3 compliance submittals for the ISEGS plant. The report is  
4 consistent with the staff's analysis for PSEGS stating  
5 that the glare from the heliostats in the standby position  
6 at ISEGS is the major concern and proposing mitigation  
7 measures similar to those proposed by staff for PSEGS as  
8 part of the modification of TRANS-7.

9           On July 25th, 2014 staff received an email from  
10 Clifford Ho of Sandia National Laboratories about an  
11 aerial survey taken on July 22nd, 2014 to observe glare  
12 after some engineering modifications had been implemented  
13 at the ISEGS unit 1 and 2, but not 3, pursuant to his  
14 earlier recommendations. Mr. Ho found that there was  
15 still glare visible from all the units, but there were  
16 differences in the glare from the modified units 1 and 2  
17 as compared to unmodified unit 3. When viewed from the  
18 northeast and west of the solar plant the glare was not as  
19 significant as that seen at the unmodified unit 3. He  
20 believes that with further modifications the impact of the  
21 glare can be further reduced or mitigated.

22           The staff believes that TRANS-7 with proposed  
23 modifications, which I understand are still being worked  
24 on, should be able to reduce impacts with a lessening  
25 significant. While there's not been a full resolution of

1 glare issues, the process at ISEGS indicates that progress  
2 is being made and solutions are likely. And that  
3 concludes my statement.

4 HEARING OFFICER CELLI: Mr. Irvin, did you wish  
5 to make a statement?

6 Okay. I need you to say yes and no on the  
7 record.

8 MR. IRVIN: No.

9 HEARING OFFICER CELLI: Thank you. Just to be  
10 clear everybody, we can't do pantomime in here. We have  
11 to hear yeses and nos and responses to all of the  
12 questions that people ask, so that we have a clear record  
13 of who said what.

14 So let me just get clarification now, because  
15 we're at that point where we'd like to hear the panelists  
16 discuss their differences. Just for clarification's sake  
17 though, from staff, these changes that are in the second  
18 paragraph of your statement pretty much sum up what the  
19 changes are that you're proposing in TRANS-7, which the  
20 Petitioner has an issue with. Do I have that right? The  
21 change of the geometry, standby points, the number of  
22 mirrors on standby, the light dump, are those the things  
23 that Petitioner has the problem with, Mr. Stucky?

24 MR. STUCKY: I don't think we have a problem  
25 with listing those things. It's I don't have that

1 statement in front of me, it's not clear exactly how the  
2 language is used. And can I see the statement?

3 HEARING OFFICER CELLI: Sure. (Inaudible)

4 MS. MARTIN: Yes, this is Staff Counsel. Last  
5 night we discovered that the TRANS-7 that was filed  
6 yesterday was not the PMPD's version, not the version that  
7 everyone had agreed to at the prior conference. Staff in  
8 Sacramento is currently revising that.

9 Now, the issues -- there very well may not be  
10 issues and I'll let the Petitioner speak to that. The  
11 language that was being added to the incorrect version  
12 were things like, were statements generally about how the  
13 HPMP, the Heliostat Monitoring Plan should be revised in a  
14 way to address these issues.

15 MR. GALATI: I mean, if I can jump in and  
16 provide clarification?

17 MS. MARTIN: Hi.

18 HEARING OFFICER CELLI: Go ahead, Mr. Galati.

19 MR. GALATI: If staff were to use the current  
20 version we negotiated and add these items I think we may  
21 be very, very close. I would ask the Commission, and  
22 think it would be best use of your time today, to maybe  
23 order us to go into a workshop after Cultural. Maybe  
24 staff can propose or get to us what this provision might  
25 look like. And as long as they use what's in the PMPD,

1 which was negotiated I think we may be very close to be  
2 able to resolve the issue.

3 HEARING OFFICER CELLI: Okay. So to be clear  
4 the PMPD language was acceptable to the Petitioner.  
5 Subsequent to the PMPD, new language came out, which is  
6 objectionable to the Petitioner, but then staff is saying  
7 that some of that was incorrect language. And you can  
8 work it out today and so then that was the dispute between  
9 at least Petitioner and staff.

10 MR. GALATI: Yes.

11 HEARING OFFICER CELLI: Okay. Somebody was just  
12 trying to talk on the phone --

13 MS. KOCH: Me here, hi it's Andrea Koch from the  
14 Energy Commission. The Applicant is correct that there  
15 was a modification to a version of TRANS-7 that was not  
16 current. I apologize for that. This morning I went ahead  
17 and I got the TRANS-7 from the PMPD and merged that with  
18 our modifications that we made with TRANS-7. So I have  
19 available to you that imported TRANS-7 language from  
20 TRANS-7 in the PMPD. And I can email that to somebody if  
21 that would make thing easier and get the changes into the  
22 record later.

23 HEARING OFFICER CELLI: Well, the problem I have  
24 with it is I have a whole group of interveners who've  
25 never seen this before. And they need to see it, so they

1 can effectively ask questions and participate in the  
2 hearing. So is there the language that Petitioner and  
3 staff find agreeable here in the room?

4 MS. MARTIN: No, because it's just being drafted  
5 right now. There is a way, if we do workshop this we  
6 could get an email, we could get an email and print  
7 everything out. We can meet with everyone to discuss --

8 (Off-Mike Discussion)

9 HEARING OFFICER CELLI: Okay. So the Committee  
10 is inclined to allow the parties to break, so that they  
11 can get this language and distribute it to all of the  
12 parties. And to workshop whatever these disputes are  
13 amongst the parties.

14 What we would like to do is we'd like -- the  
15 Committee has several questions about Glint and Glare.  
16 And it would be best if we asked those now, so that when  
17 you all get together you can talk about those questions.

18 So Commissioner Douglas, did you want to ask  
19 your questions?

20 COMMISSIONER DOUGLAS: So I had a -- thank you,  
21 I had a few questions for the Applicant and possibly for  
22 Clifford Ho. I know he didn't give an opening comment  
23 yet.

24 As I understand Applicant's position, it is that  
25 the current TRANS-7 essentially requires that legitimate

1 complaints raised about glare providing safety hazards to  
2 pilots, have to be addressed satisfactorily. In other  
3 words, it's a standard that says if these issues occur  
4 they will be resolved. Is that your understanding of it?

5 MR. STUCKY: Yes, it is.

6 COMMISSIONER DOUGLAS: Okay. And as I was  
7 reading through staff's testimony, what came through was  
8 that staff probably shared that understanding of the  
9 condition, but expressed concerns about the feasibility of  
10 resolving the issue below the level of significance.

11 And I just want to understand from Mr. Adams  
12 what level -- you know, what prompted that concern, what  
13 level of significance were you thinking of when you  
14 expressed that you weren't certain of the issues being  
15 able to be satisfactorily resolved and on what basis? I  
16 understand it might be some of the work done by Mr. Ho,  
17 but on what basis do you think that the issues might be  
18 resolvable?

19 MR. ADAMS: Well, I think that first of all we  
20 do share the concern that we did get these reports from  
21 pilots that they had experienced significant glare. We  
22 also are aware that one of them said that they'd contacted  
23 their traffic controllers and had been told that they get  
24 a lot of complaints. And so this is what initiated our  
25 investigation in this issue, because it appeared that this

1 was a significant adverse impact on pilots. And it was  
2 occurring, not just once or twice, but frequently.

3 We also decided to do our own flyover with Gary  
4 Cathey, Greg Irvin and myself. And we did take photos,  
5 one of which is there on the -- and a video that showed  
6 significant glare that was really impacting us. And we  
7 really felt that that was really not acceptable. And we  
8 felt that -- and I'm not aware of what Andrea's doing  
9 right now with TRANS-7, but we wanted to put in some new  
10 language, add some stuff about potential things that could  
11 help solve this problem with adjusting the algorithms on  
12 the heliostats and the various things that I referred to  
13 in my statement.

14 And so we are hopeful that some of the  
15 modifications that are in -- I don't know if you saw  
16 Clifford Ho's email that was docketed two days ago?

17 COMMISSIONER DOUGLAS: Yes.

18 MR. ADAMS: He says there has been some  
19 modifications that he knows reduced glare on units 1 and  
20 2. And he feels that if we continue along this line of  
21 modifying the facility that we can get these glare events  
22 down to where they are less than significant, and much  
23 less frequently. And that's staff's hope, but I think  
24 we're sort of in the middle of it now trying to. And  
25 that's why we also are interested in a workshop where we

1 could have our engineers and the engineers for  
2 BrightSource or whoever get together and really figure out  
3 what can be done, when can it be done by, and then how can  
4 we verify that the glare is no longer significant and  
5 we're not causing a potential hazard to pilots. And so  
6 we're hopeful that we can get to a real resolution. We  
7 just haven't had the workshop and I don't think we've had  
8 the face-to-face with the technical experts and staff to  
9 really work this out. But I'm hopeful that we can.

10           And perhaps today we can work out the language  
11 for TRANS-7, which Andrea took the lead on. I've been  
12 gone a couple weeks and so I'm not sure exactly what her  
13 thoughts were in terms of changing the language. And  
14 apparently, we didn't have the proper TRANS-7 from the  
15 PMPD. So I think if she could email that to Staff  
16 Counsel, we can make copies, then I think we can all take  
17 a look at what she has. But I'm hopeful we can solve this  
18 issue and we just haven't gotten to the point where we can  
19 say, "Yes, we've identified what needs to be done to get  
20 the glare to a less-than-significant level."

21           COMMISSIONER DOUGLAS: Thank you, Mr. Adams.

22           Mr. Ho, a similar question. I did see your  
23 email of a couple of days ago, but I'd be interested in  
24 you elaborating on how the work that you have -- you know,  
25 the report that you've been involved in and



1 recommendations for Ivanpah have informed your conclusions  
2 about what kinds of mechanisms are available and what  
3 kinds of measures are available to reduce glare from the  
4 project in terms of it impacting pilots and the likely  
5 effectiveness of those sorts of measures.

6 MR. HO: I think based on the work that we've  
7 done at Ivanpah, and in particular the helicopter  
8 flyovers, as you know, we came to the conclusion that it  
9 was these heliostats in standby mode. So really it comes  
10 down to the ability to develop algorithms for these  
11 heliostats that are in this standby mode or position, when  
12 they're not shining on the receiver but somewhere next to  
13 the receiver.

14 And then it's really a trade-off then, I think  
15 the operators will have to determine if they want them  
16 close enough to the receiver, so that they can put them on  
17 in a rapid manner when they need the energy. But by  
18 pointing up in the sky we have this glare, as we know now,  
19 for pilots.

20 So I think what we have proposed in the report,  
21 and I've spoken with Gustavo trying out different  
22 algorithms, to either space out the heliostats, so they're  
23 not coalesced into one large point of glare. That was  
24 actually done or tried at units 1 and 2. We went up again  
25 last week in the helicopter to look at the results of the

1 glare. And I took a number of photos. I have not had a  
2 chance to process the results. There was a difference.  
3 There was a notable difference in the glare. It was still  
4 there.

5 I'm actually -- I'm not saying it was improved,  
6 there was still visible glare, but I have had a subsequent  
7 discussion with Gustavo. I do believe that by altering  
8 the positioning of these heliostats in standby mode, I'm  
9 hopeful that we can reduce the impact for pilots.

10 COMMISSIONER DOUGLAS: Thank you. I've got one  
11 more question then we'll see, and Mr. Celli has a few  
12 questions.

13 So for Matt Binner, I guess, you know, I'm not  
14 entirely sure what to make of your testimony. I was  
15 hoping maybe you could help me out. You have testified  
16 that you have flown over the site yourself multiple times,  
17 over the course of years and you have seen glare that  
18 amounts to maybe a distraction, but not an unsafe level of  
19 glare in your opinion.

20 And the fundamental question I have about that  
21 is whether that might due to the fact that glare events  
22 were not occurring or where not as severe for some reason  
23 when you flew over the site, or whether you are  
24 articulating a different standard or level of sensitivity  
25 for how much glare actually you would consider a

1 distraction versus maybe a safety issue. And so, if you  
2 can shed any light on that for me that would be helpful.

3 MR. BINNER: Sure, this Matt Binner speaking.  
4 And we flew over the sites at dawn, sunrise, midday,  
5 afternoon, and dusk multiple times throughout the last  
6 four years. My most recent flight was with Clifford Ho on  
7 July 22nd and that was when the glare, I believe, is at  
8 its strongest. And although it was a distraction, what I  
9 was doing was looking directly at the glare for a short  
10 period of time, and then looking away to see if there was  
11 any after image. And there was not any after image.

12 And we flew from 500 feet above ground level,  
13 which is 3,500 above sea level up to 6,000 feet above  
14 ground level, which is 9,000 above sea level. And  
15 throughout that altitude range I did not experience any  
16 after image and although, like I said I agree it's a  
17 distraction, it's much like the sun. As pilots we're  
18 taught not to look directly into the sun, you know, just  
19 kind of look off to the side and focus on your flight  
20 path, not the sun or any of the glare that's coming from  
21 the ground.

22 COMMISSIONER DOUGLAS: All right. Were you  
23 wearing sunglasses or any other eye protection when you  
24 looked at the glare?

25 MR. BINNER: I was. I was wearing sunglasses,

1 yes.

2 COMMISSIONER DOUGLAS: Can you describe them?  
3 Were they like sunglasses you could buy at Wal-Mart or  
4 were they special sunglasses?

5 MR. BINNER: Actually Costco, Ray Bans.

6 COMMISSIONER DOUGLAS: Okay, thank you. And did  
7 you notice any change in the amount of glare between lower  
8 and higher altitude flight, any difference?

9 MR. BINNER: There was. Basically it's like an  
10 upside-down cone, so at lower levels close to the site the  
11 glare was more intense. And as you got farther away, if  
12 you stayed at a lower level, the glare would go away. But  
13 as you got farther from the site if you went higher than  
14 the glare would remain there. And so we had to kind of --  
15 we had to maneuver quite a bit to keep the glare and if  
16 you're like directly over the site we didn't see it as  
17 prominent. Like I said it's more like an upside-down cone  
18 shape in my opinion.

19 COMMISSIONER DOUGLAS: One more question, I  
20 guess, and then I'd like to hear if Mr. Adams or Mr. Ho or  
21 anyone else has any follow-up comments based on what  
22 you've heard.

23 You know, the sun is pretty far away and so from  
24 that standpoint it's relatively easy to, you know, look  
25 away from it wherever you are. I would imagine that when

1 you're flying over the site at different altitudes,  
2 depending on the angle and your altitude and where you  
3 are, you might have the glare filling up relatively more  
4 of your view space and making it hard to look away or  
5 relatively less and making it easier to look away.

6 Can you describe -- I mean, does that -- I'll  
7 just start with am I right with that basic premise?

8 MR. BINNER: I don't think so. When I'm flying  
9 to Las Vegas I'm on my flight path towards the city and so  
10 if you're not looking directly at the glare, and like I  
11 said it is a distraction, it catches your eye, but it's  
12 easy to look away from it. If you stare at it for a long  
13 period of time, which I think a lot of pilots do, because  
14 they're not sure what it is, they're more curious. For  
15 example, I was flying and I heard a pilot comment on Air  
16 Traffic Control for Los Angeles Center and he said, "What  
17 is that glare?" And he wasn't complaining about it, he  
18 was just curious as to what it was. And when we fly by  
19 it, I believe in my opinion, it's easy to just focus out  
20 on the horizon and not look at it.

21 COMMISSIONER DOUGLAS: All right. And then  
22 there was the one report by a pilot saying that it had  
23 filled a pretty substantial portion of his view space.  
24 Was it a third or a (inaudible)?

25 MR. ADAMS: Yes, it was a third.

1           COMMISSIONER DOUGLAS: Okay. Do you have  
2 anything to add, Mr. Binner? And then I'll just go to  
3 staff quickly.

4           MR. BINNER: No, not at this time. I think I've  
5 pretty much covered everything.

6           COMMISSIONER DOUGLAS: All right, thank you.  
7 That was very helpful for me. Go ahead, Mr. Adams.

8           MR. ADAMS: Yes, having experienced it -- and I  
9 would like Greg to speak and also Gary Cathey, who was the  
10 pilot at the time. And if you recall his supplemental  
11 testimony he did not want to look at it at all, because it  
12 was almost painful.

13                   And the problem with that is the pilot needs to  
14 be able to look everywhere in their space to see if  
15 there's any other aircraft. So if you've got something  
16 that, in effect, has taken away a third of your airspace,  
17 because you can't look at it that's a problem in terms of  
18 aviation safety issues. But in my view it was  
19 significant, and it was something that you'd want to put  
20 your hand up to kind of block it.

21                   And I think of the photos you've seen -- if  
22 you've seen the video, it's very intense. And we know  
23 that there's thousands of aircraft that fly over there  
24 during the month of May, almost 12,000. We've had pilots  
25 experience it at 30,000 feet. We've had them experience

1 it. We started at 13,000 feet right where one of the  
2 pilots was when he reported significant glare. And we did  
3 too and then we circled around, got down to probably about  
4 5,000 feet. And we experienced significant glare pretty  
5 much through that whole period of say 20-25 minutes and it  
6 was at noon.

7           So just not as a pilot, but just as somebody who  
8 was in the plane and saw it, I would think it was more  
9 than a distraction. It was definitely something that had  
10 a significant impact. And it was something where you  
11 didn't want to look at it. And it just sort of said --

12           Okay. Now we're trying to film and take photos  
13 and we're inside the plane, so it's not quite the same  
14 thing. Those pictures really don't display the intensity.  
15 I mean, you can look at it, but when you really are there  
16 and you see it, it is intense.

17           COMMISSIONER DOUGLAS: And were you -- I'm  
18 sorry, were you wearing sunglasses?

19           MR. ADAMS: I had sunglasses, but I was taking  
20 them off, so I could try to take photos. And it was a  
21 very jarring flight, so we were hanging on for dear life  
22 to some degree. But Greg did a great job of getting some  
23 great photos, mine didn't turn out very well at all. But  
24 anyway, I would like Greg to comment. And I'd also like  
25 Gary, who was the pilot at the time, to comment because I

1 think the Commission Hearing Office needs to hear what  
2 they experienced as well.

3 HEARING OFFICER CELLI: And before you do, I  
4 just want to ask the one question I had, because this  
5 leads directly to what you're talking about. I read, and  
6 I'm just dealing with the evidence that I've seen so far  
7 that's come through, but I did read the two reports, the  
8 ASRS?

9 MR. ADAMS: Yes, Aviation Safety Reporting  
10 System, it's sponsored by NASA.

11 HEARING OFFICER CELLI: Right. And in both of  
12 those the pilot said for up to five minutes they were  
13 essentially blinded. They couldn't look around in the sky  
14 to see if there were other aircraft. And this is my  
15 question, because I don't understand this very well, but  
16 in the testimony, I think it was staff's testimony, staff  
17 researched how many flights are flying over the PSEGS  
18 property. In a given day it was 8,000-some odd.

19 MR. ADAMS: Actually, that was over the month of  
20 May.

21 HEARING OFFICER CELLI: Oh.

22 MR. ADAMS: During the month of May, this past  
23 May, about 8,500 flights flew within a 1,500 kilometer  
24 radius from the PSEGS site. And the same thing was done  
25 with Ivanpah and in that case it was almost 12,000 in the



1 month of May were flying over at elevations from ground  
2 level up to 40, 50,000 feet. And we provided -- I don't  
3 know if you've seen this, but we provided the report that  
4 showed the track and type of aircraft and where it was  
5 going and where it was coming from. I thought the FA did a  
6 very good job of giving us some data that we could take a  
7 look at and say, "Over this point this is what, how many  
8 aircraft flew over during the month of May of this year."

9 HEARING OFFICER CELLI: And it was really very  
10 clear. It was good evidence. The question I had though,  
11 was the glare isn't 360 degrees, it's pointed in a  
12 particular slice or wedge of the airspace over; is that  
13 correct?

14 MR. ADAMS: Actually, why don't you respond to  
15 that?

16 MR. IRVIN: All right, good.

17 HEARING OFFICER CELLI: And so what I'm getting  
18 at is as I was reading that I was thinking, "Well, the  
19 danger would be to those pilots that are experiencing it.  
20 And if they are experiencing that same glare, they have to  
21 be in the same airspace pretty much and in close  
22 proximity." And there would be the danger. I may have  
23 that completely wrong, so if you can clear that up for me.

24 MR. IRVIN: Greg Irvin speaking. The glare  
25 field is coming from the heliostats in the standby

1 position. So that is a full circle around the tower  
2 projecting in all directions. What you see in the  
3 photograph over here is you're looking at a donut that's  
4 actually just a projection ring. And you're looking at  
5 the two sides of that where the concentration is the  
6 greatest. So the projection field is into the sky 360  
7 degrees in an extremely large wedge, probably occupying  
8 about 50 percent of the sky's space if you will. So a  
9 pilot in most of the airspace will experience direct solar  
10 reflections from the heliostats independent of their  
11 azimuth. (phonetic) It'd be a function mainly of  
12 elevation.

13 HEARING OFFICER CELLI: So is it then that if  
14 it's in 50 percent of the airspace then all flights in  
15 that 50 percent are also experiencing that same level of  
16 glare?

17 MR. IRVIN: Depending on the angle of the sun  
18 it'll vary, but in my opinion it'll all be --

19 MR. ADAMS: Yes, it would change with the time  
20 of day, because with the height of the sun above the  
21 horizon. It would change possibly by the season. But the  
22 point is I take it at some point glare is being generated  
23 often in some part of the airspace that is being used by  
24 an aircraft. It would depend. It's so precise, but it  
25 does go out in like a ray like this. So when you hit that

1 at whatever elevation you encounter this beam, if you  
2 will. And when you do that you experience that. You  
3 experience significant glare that would affect your  
4 ability to look around in the airspace around you.

5           And I think that's happening on a fairly regular  
6 basis at Ivanpah. And hopefully the reductions that Cliff  
7 has talked about are minimizing that now and we're getting  
8 where we can improve, but the fact is I think for the last  
9 several months these pilots are reporting what they're  
10 encountering and the air traffic controllers are hearing  
11 about it a lot, particularly mid-morning to mid-afternoon.  
12 And that tells me that it's a relatively frequent  
13 occurrence, relatively speaking. And therefore it is a  
14 hazard in my view, in terms of aviation safety.

15           MR. IRVIN: Mr. Irvin, Greg Irvin again. I  
16 agree with Jim's assessment. And he had addressed some of  
17 his subjective experiences from the over flight.

18           Some of my subjective experiences, given that I  
19 was attempting to take photographs as well as video  
20 recordings is that that is a very bright source. And as a  
21 vision scientist clearly it's a disabling visual glare.

22           The intensity of it is yet to be determined, but  
23 from Cliff's report it appears that if you add up the  
24 glare fields on each side of the tower plus the tower, the  
25 irradiance is in excess of one sun. It's spatially

1 distributed over a larger area and therefore it has less  
2 probability of causing any retinol damage, but  
3 nonetheless, the glare is very significant.

4           From my personal experiences doing the  
5 recording, once I engaged and directly fixated the glare  
6 field from the first event at that point I could no longer  
7 see my camera display. The video camera, I could no  
8 longer see it. I didn't even know if my camera was still  
9 recording. I just trusted and hoped that it was, because  
10 my visual ability was so compromised by the glare  
11 adaptation that I no longer had the acuity or the contrast  
12 sensitivity to read. So I could not even see the image on  
13 my camera.

14           So I'm not sure if the presence or absence of an  
15 after image is an appropriate metric. When you're exposed  
16 to adapting light your retina is bleached. It has a time  
17 course of recovery. That time course of recovery maps to  
18 acuity, contrast sensitivity, legibility and whether or  
19 not you can see an after image is almost irrelevant,  
20 because an after image is stabilized on the retina. And  
21 you've probably all had the experience where you have an  
22 after image, it disappears, but if you blink a couple of  
23 times it'll come right back. That's because you've moved  
24 your eyes and you've destabilized that image. So the  
25 presence or absence of an after image is de-correlated

1 with the changes in visual sensitivity over time from an  
2 exposure such as this.

3 HEARING OFFICER CELLI: All right, that kind of  
4 goes to my question though, because I'm not so much -- as  
5 I read the testimony I didn't see so much as retinol  
6 damage, as the other -- let's say there are other pilots.  
7 If you were up in the air on that day, in a plane, other  
8 pilots coming towards you or across your path, if they're  
9 in that same area where they're suffering the same glare  
10 then they are also -- their ability to see you is also  
11 disabled. So I'm concerned about the possibility of  
12 collision.

13 MR. ADAMS: That's correct.

14 HEARING OFFICER CELLI: Which was why I was  
15 looking at the number, the volume of traffic that was in  
16 that part of the staff's report. Was I was trying to get  
17 a sense of how many people are up there at any given time.  
18 And what are the odds of these essentially  
19 temporarily-blinded pilots from not being able to see each  
20 other, because it's 360 degrees. There could be a plane  
21 behind, above, below, across your bow and that was what my  
22 -- as I read this that was my concern. Was the inability  
23 to see cross traffic.

24 MR. ADAMS: Right. And the thing that's  
25 frustrating for us is that we think the FAA could've been

1 doing a better job of documenting these incidents of  
2 glare, because often times the pilots either won't report  
3 it if they experience it. Or if they do report it the  
4 controllers are so busy they don't write down the  
5 particulars: what plane, what elevation, what time of day.

6           So I think what's happening is pilots complain  
7 about it and tell controllers about it and they say,  
8 "Okay." But nothing, it doesn't end up in the ASRS  
9 system. It's just a discussion between a controller and a  
10 pilot and then they move on. And I've criticized them for  
11 not making an effort to please have controllers write down  
12 just, you know, time of day, aircraft, elevation, just  
13 something so we can start putting a handle on, "Is this a  
14 problem 30 miles from Ivanpah or is it 15 miles. Is it  
15 the elevation from ground level up to 40,000?" We're not  
16 sure, but my feeling is it's happening quite a bit and  
17 it's something that they've experienced and they just deal  
18 with it.

19           MR. CATHEY: This is Gary Cathey, is this a good  
20 opportunity for me to provide a couple of comments?

21           HEARING OFFICER CELLI: One moment.

22           MR. CATHEY: Sure.

23           HEARING OFFICER CELLI: Okay. Briefly before  
24 Mr. Cathey, let's hear from Clifford Ho and then  
25 Mr. Cathey. Go ahead, Mr. Ho?

1           MR. HO: I don't have anything to add to the  
2 discussion.

3           HEARING OFFICER CELLI: Okay, thank you. Then,  
4 Mr. Cathey.

5           MR. CATHEY: Yes. My name is Gary Cathey. I'm  
6 Chief of the Division of Aeronautics. I've been a  
7 FAA-certified pilot since 1984. I've got commercial  
8 instrument and multi-engine aircraft ratings. And I have  
9 to say unequivocally that the glare that I experienced  
10 from flying in the vicinity of Ivanpah was the most  
11 intense that I've ever observed.

12           I flew what's called a standard approach that  
13 instrument pilots fly into Las Vegas. I was flying on a  
14 specified airway at a specified altitude, the same  
15 altitude that commercial airlines would fly at. And we  
16 entered the fix at 13,000 feet, approximately 150 knots  
17 and then we began several visual maneuvers, so we could  
18 get a better vantage point of the facility. And when I  
19 was looking in the general direction of Ivanpah I  
20 actually, and I was wearing sunglasses, I had to shield my  
21 face with my hand to avoid looking at the substantial  
22 amount of intense glare that was generated from the  
23 facility. Like I said, I've never seen anything as  
24 intense in all my flying days that I've been a  
25 certificated pilot.

1           So and I also wanted to add something about a  
2 couple of the points that were made by other individuals.  
3 One is the air traffic controllers, if a pilot does  
4 comment or ask a question about it it's probably because  
5 that facility was bright enough to catch his attention  
6 even if he wasn't looking in that general direction of it.  
7 So it's a very bright thing. He could be looking straight  
8 ahead and it could be at a 90-degree angle off to your  
9 right or left, and you will see it very clearly.

10           And because a pilot may not complain about it  
11 formally, and document his complaint with the NASA ARS or  
12 ASR system, doesn't mean he doesn't have a concern about  
13 it. You know, I would say an analogy would be if you're  
14 driving from point A to point B and you hit a pothole, how  
15 likely is it that somebody's going to pick up the phone  
16 and call up the county or the state highway department and  
17 complain about the particular pothole? Most people, I  
18 would say a very large percentage of people, would pretty  
19 much say, "I don't like that. I'm not going to drive  
20 there next time," but they don't take any formal actions  
21 to document their concerns. And I think that it's kind of  
22 a similar scenario with pilots when they fly by Ivanpah.

23           And so I don't know all the technicalities of  
24 TRANS-7, but I just wanted to offer my observations as  
25 somebody who's got a lot of years of experience in flying



1 aircraft. And I also wanted to point out that if there  
2 are any mitigation measures that can be implemented at  
3 Ivanpah and also at the new proposed site, I would highly  
4 encourage the Commission to mandate the developers to take  
5 action to mitigate the glare as much as feasible.

6 COMMISSIONER DOUGLAS: Thank you. I think that  
7 at this point we've asked a number of questions. We've  
8 heard a lot and been it's helpful. Let me ask if the  
9 Petitioner's witness has anything to add at this point.

10 MR. STUCKY: No, nothing.

11 COMMISSIONER DOUGLAS: Okay. And that's fine,  
12 you'll have another opportunity when you come back from  
13 the workshop, so that's fine. How long do you anticipate  
14 a workshop taking on this topic?

15 MS. MARTIN: This is Jennifer Martin-Gallardo,  
16 sorry. I do believe that Andrea Koch has completed her  
17 revisions to that TRANS-7. I haven't seen the email of  
18 those changes.

19 HEARING OFFICER CELLI: Can we ask her, if she's  
20 on the line?

21 MS. MARTIN: Andrea Koch, are you --

22 MS. KOCH: Hi. It's Andrea Koch from the Energy  
23 Commission. I have made the changes on a piece of paper.  
24 They're fairly minor, but I still need to quickly type  
25 them up and email them over to you. They mainly concern

1 adding in language about the Riverside County PSEGS  
2 Project tower.

3 MS. MARTIN: No. Andrea, we were going to be  
4 going off of the PMPD's version.

5 MS. KOCH: Yes. Yes, and that (inaudible)

6 MS. MARTIN: And so that information is all in  
7 there, so that's the one we need to be adding in anything  
8 we need to.

9 MS. KOCH: That's exactly what I'm doing, yes.

10 MS. MARTIN: Okay.

11 HEARING OFFICER CELLI: Okay. So it doesn't  
12 make sense for the parties to take a break now. Let  
13 parties' workshop whatever issues need to be taken care  
14 of, because we would probably prefer to complete Glint and  
15 Glare before going on to Cultural.

16 MR. ADAMS: Could we have an estimate, Andrea,  
17 when you might be able to email something? I guess it  
18 would go to Jennifer and then she can download it, print  
19 it out and provide copies? Because I believe that's what  
20 we're going to need to do to be able to see what is the  
21 new language, and if that's acceptable to all parties.  
22 And so we absolutely need that I think to make the  
23 workshop fruitful.

24 MS. KOCH: Well, I guess it depends if I -- and  
25 I guess this goes back to what Jennifer was just saying.

1 It's a lot easier for me to add in the PMPD language to  
2 our currently modified TRANS-7, because that just involves  
3 less work. If I add our modifications to the PMPD version  
4 that's more work. So I guess it depends on what I need to  
5 do.

6 MS. MARTIN: Can I make a suggestion?

7 HEARING OFFICER CELLI: Please.

8 MS. MARTIN: That we give Andrea some time to do  
9 this job the right way, use the PMPD version. Make the  
10 changes that we want to add to the currently existing PMPD  
11 version, so that the changes that we're adding for this  
12 reopener are clear to all the parties. So we have that  
13 basis. We just fold the additional information that is  
14 made to this reopener. And then we can have that  
15 discussion. And my thought is that we, it's a suggestion,  
16 that we actually do move on to Cultural to give Andrea  
17 some time to do this correctly. And then I can give you  
18 an update about where she's at.

19 My hope is that perhaps we can even do this at  
20 the lunch hour. I know that a work would probably have to  
21 be open to the public, so we could keep the mics if  
22 anybody had any comments. It would be helpful, obviously,  
23 for Andrea to be able to talk to everyone. So we wouldn't  
24 want to have something that was closed, off the record.  
25 These are just considerations and suggestions.

1 HEARING OFFICER CELLI: Okay. Let's hear from  
2 the interveners.

3 MS. CUNNINGHAM: Yeah, Laura Cunningham, could  
4 we continue with some questions to the witnesses before we  
5 do the workshop?

6 HEARING OFFICER CELLI: Sure, so is there any  
7 objection to this workshop from any party?

8 MS. CUNNINGHAM: No.

9 HEARING OFFICER CELLI: Okay. So we can  
10 (inaudible) Go ahead Ms. Cunningham. And then I guess  
11 I'll be working from right to left. Go ahead  
12 Ms. Cunningham.

13 MS. CUNNINGHAM: Laura Cunningham, Basin and  
14 Range Watch. I just was a little confused. I just wanted  
15 to clarify from the staff and Petitioner what this is. So  
16 there's never been any glint or glare during operation  
17 from the heliostats? It's been pretty well determined its  
18 only during standby position?

19 MR. ADAMS: (Inaudible) It's my understanding,  
20 and this is based on discussions, that the glare that we  
21 have identified is from these heliostats are in the  
22 standby mode around the tower. And what they're  
23 effectively doing is they're reflecting the glare that  
24 comes from the sun away from the tower, because if it was  
25 focused on the tower, it would basically burn it up. So

1 its function is to take the glare and shoot it away from  
2 the tower, thereby creating this beam of glare that goes  
3 out and that is what is causing pilots to see it. So it's  
4 a function of the standby mode around the tower that is  
5 reflecting the glare away and basically letting it glare  
6 out into the air space.

7 MS. CUNNINGHAM: Okay. That helps, but you --

8 MR. IRVIN: Greg Irvin, here. If I could say it  
9 a little bit differently. And this is from a layman's  
10 perspective since I'm not a heliostat operations engineer,  
11 by any stretch of the imagination. But during nominal  
12 operations, and when I say nominal, let's say during the  
13 day full sun. There's more than enough mirrors to be  
14 present on the tower. And from the literature I've read,  
15 approximately as many as 20 percent of the heliostats  
16 could be in a standby position, projecting it to the sky.

17 The reason they're there is they need to be able  
18 to get on to the tower very fast in order to maintain  
19 operations when the solar flux decreases, like a cloud  
20 goes by. Then they bring them there, and then when the  
21 cloud goes away, they pull them off again. And that's a  
22 very fast hydration that needs to take place in real time.  
23 And the operational constraints on that, I don't know.  
24 But apparently in the design there is a large proportion  
25 of heliostats that are projecting their energy into the

1 sky during nominal operations when there's no haze or  
2 clouds present.

3 MS. CUNNINGHAM: If I recall during the original  
4 Ivanpah hearing that say during noon, on a really hot  
5 summer day, maybe 20 percent or so would be in a standby  
6 position, because they didn't need the entire field?

7 MR. IRVIN: Yes.

8 MR. ADAMS: That's our understanding, yes.

9 MR. IRVIN: They need it when the clouds are  
10 there, though.

11 MS. CUNNINGHAM: Well my question is, and you've  
12 sort of clarified it by saying there's not a lot of data  
13 from pilots actually reporting things during their  
14 flights, complaining. But would that help to have a  
15 matching of when pilots send in complaints or comments and  
16 what percentage of those complaints are during operation?  
17 What time of day? Which units are in standby mode  
18 completely 100 percent and which are in operation? I  
19 mean, that would be really useful, but it might be kind of  
20 hard to get.

21 MR. ADAMS: That's the problem. In fact, and  
22 it's in our supplemental testimony, but the FAA did put  
23 out a letter to airmen about the glare at Ivanpah and  
24 encouraged pilots who do experience it to file a report  
25 with the Aviation Safety Reporting System. So that we can

1 get at basic data about time of day, elevation, direction,  
2 etcetera, so that we could flesh it out. And yes we'd  
3 like to know that. And I know that it's happening and  
4 it's not being recorded. But I know, based on one of the  
5 pilot reports that say that traffic controllers hear about  
6 it every day or frequently. But we just don't know  
7 exactly.

8           That's why it's important to deal with the  
9 reports that we have received. And that's why it was  
10 important for staff to do a flyover, so we could  
11 experience it ourselves with a pilot and see what it --  
12 and, you know, we encountered glare almost constantly over  
13 the 25-minute period that we were there. But we wish we  
14 had more data and more information, because I believe it's  
15 happening a lot more than what has been officially  
16 reported.

17           MS. CUNNINGHAM: Okay. Yeah, quickly that's a  
18 start. And then one other quick comment is have you  
19 looked at recreational use of nearby mountains, which I  
20 think one is at 9,000 feet, Clark Mountain, nearby. And  
21 that would actually be like someone in a plane looking  
22 down. Has the Energy Commission looked at hikers and  
23 recreationists' views down to how they're affected by  
24 glint and glare from it? There's wildernesses and Mojave  
25 National Preserve.

1           MR. ADAMS: This is where we start crossing the  
2 line into visual resources, because for the Traffic and  
3 Transportation the question is, "Is it affecting  
4 aircraft?" "Is it affecting pilots?" as a traffic and  
5 transportation issue? But I am aware that there have been  
6 allegations or whatever that recreationists, which would  
7 be considered in a visual resources analysis, may have  
8 experienced it as well. And we haven't addressed that in  
9 Traffic and Transportation. That would be something,  
10 that's where sometimes we have this nexus between one  
11 technical area and another one. And this is a good  
12 example of it. There may be visual resource impacts that  
13 we haven't analyzed in Traffic and Transportation, because  
14 it's just not appropriate, it's not in the technical area.

15           MS. CUNNINGHAM: Okay. Yes, I understand.  
16 Thanks, because that information would be really useful  
17 for recreationists and the parks and hybrid.

18           MR. STUCKY: May I add to that? I'll just point  
19 out that the condition that we are proposing --

20           HEARING OFFICER CELLI: Just this is Matt Stucky  
21 now speaking, right? I just want everybody to remember to  
22 identify yourselves before you speak. Go ahead,  
23 Mr. Stucky.

24           MR. STUCKY: Thanks. I just want to point out  
25 that the condition that we're proposing, the first step is



1 to identify the combination of sun positions, heliostat  
2 positions and offsite observers including pilots,  
3 motorists, pedestrians, hikers in nearby wilderness areas  
4 and the Riverside County PSEG towers. This is the first  
5 part of any heliostat monitoring plan is to identify those  
6 combination of equipment and people that could create an  
7 unsafe condition. And to make sure that you program the  
8 heliostat field to avoid those glare events.

9 MS. CUNNINGHAM: Okay, thank you. And the Basin  
10 Range Watch witness, Kevin Emmerich, do you have comments  
11 to add to this?

12 MR. EMMERICH: Yeah. I actually have a couple  
13 of things to say. Can I ask a question?

14 HEARING OFFICER CELLI: Certainly

15 MR. EMMERICH: Well first off you talk about a  
16 light dump. And the Crescent Dune Solar Power Tower, it's  
17 north of Las Vegas, has what is like a focus area for  
18 standby. It's very large and as you probably know that's  
19 a 650-foot powered tower. It's thermal storage. They  
20 have a very large rectangular cube right below the tower  
21 and that's to help focus the light.

22 And they're testing that project now. They're  
23 actually testing it. I've talked to BLM, (phonetic) they  
24 don't have any incidents of any complaints. And the air  
25 space there is probably not as busy, granted, but is that

1 part of your mitigation proposal? I would just like to  
2 ask the key Applicant or even the Energy Commission would  
3 that work?

4 The BLM indicated to me that focusing a lot of  
5 the mirrors under the main tower might actually cause  
6 another type of glare. And I don't know that. I'm not  
7 sure, but I'd like to ask that. Anybody?

8 MR. STUCKY: I'm afraid I don't have enough  
9 information to answer that.

10 MR. HO: Well, this is Cliff Ho. So I think the  
11 target you're referring to is a beam characterization  
12 target and typically you're only going to show one  
13 heliostat at a time to characterize that beam to ensure  
14 that it's in alignment and in focus, as you mentioned. I  
15 did actually suggest in the report that perhaps using some  
16 sort of a shield, to handle multiple heliostats, might be  
17 used. It's an issue of it would need to be cooled like  
18 the receiver, to be able to take away the heat. If you  
19 put on more than a few heliostats on to that shield at  
20 Crescent Dune, it'll start to melt it if not actively  
21 cooled.

22 But I think that if we were to design something  
23 that could preheat the steam, for example, use it as a  
24 preheater. This is something I'd like to talk about with  
25 Gustavo from BrightSource. That might be an option and

1 even though you've got a lot of heliostats on that the  
2 reflection off of that surface is likely to be diffused or  
3 more scattered than the reflections that you're seeing off  
4 of these standby heliostats, which are mirrors. And  
5 you're seeing a very specular direct reflection, which is  
6 much more intense.

7 MR. EMMERICH: Okay. One other question and  
8 comment I have, I think more of a comment. Is that if we  
9 start getting into plans where we're repositioning  
10 heliostats, putting some in horizontal positions and  
11 whatnot, that is going to ripple over into the biology  
12 issues of not necessarily flux, maybe flux, but lake  
13 affect and polarized glare in attracting avian species.  
14 So if you're going to make a safety plan regarding  
15 repositioning heliostats for avian you're going to have to  
16 take some time to think about or excuse me, for aviation,  
17 for airplanes, you're going to have to take some time to  
18 think about how that might ripple effect and impact bird  
19 population and insect population. Thank you.

20 HEARING OFFICER CELLI: Thank you, Mr. Emmerich.  
21 I'm going to my left, so that would be Ms. Clark.

22 MS. CLARK: Thank you. This is Sara Clark, on  
23 behalf of CRIT. I just have a few questions. This is  
24 for, I suppose, Mr. Buhacoff? In your testimony you state  
25 that the glare is caused by an errant heliostat pedestal.

1 And I'm just curious if that's something that's different  
2 than the standby glare that the staff has recognized?

3 MR. BUHACOFF: This is Gustavo Buhacoff. There  
4 are two different types of glare. Mostly what you  
5 experience on the ground is from the errant heliostat.  
6 What pilots see is mostly from the standby position.  
7 That's the difference.

8 MS. CLARK: Okay. So the Applicant then  
9 recognizes that the glare is being caused by the standby  
10 position as well?

11 MR. BUHACOFF: Yes.

12 MS. CLARK: Okay. My second question is to  
13 both staff, well staff first and then perhaps the  
14 Applicant. And I'm wondering how, it seems like a lot of  
15 data is coming up very quickly about the ability of the  
16 Heliostat Positioning Plan to sort of dump the glare, so  
17 we don't see it. And I'm wondering if any thought has  
18 been given to the difference in height between the towers  
19 at Ivanpah and the difference in height at PSEGS and  
20 whether the ability to dump this glare that might work at  
21 Ivanpah might not be as applicable in Palen, because of  
22 the difference in height.

23 MR. ADAMS: And I'd have to say, at least I  
24 haven't given that a whole lot of thought, in terms of  
25 what would be the difference if you have a tower that's

1 750-feet high versus something that's 450-feet high. It's  
2 my understanding with Palen is the mirrors would be in a  
3 different position. They would be closer, this you would  
4 need to -- and this where we need the engineers to  
5 actually talk about what would be the difference in the  
6 type of glare that would be generated when you have either  
7 a taller tower or the heliostats are located in a  
8 different position.

9           Certainly I would hope that what we can learn  
10 from Ivanpah could be incorporated in the design and the  
11 construction, if it moves forward, so that we can create  
12 it so that it doesn't have this effect that Ivanpah has  
13 had. And yet it is still an efficient facility. But I  
14 don't think we're that far down the road yet to be able to  
15 talk about even how do we do a light dump at Ivanpah? And  
16 let alone comparing the different towers and things.

17           In response to your first question, we did see  
18 glare events from an errant heliostat. They were very  
19 much noticeable compared to what you're seeing there.  
20 Clearly that's the standby. But oftentimes you'll see one  
21 or two heliostats give off a little bit of glare. That  
22 was not a significant glare on the same order of magnitude  
23 as that, so there are differences. And we saw them in our  
24 overflight.

25           HEARING OFFICER CELLI: And for the benefit of

1 the people on the phone that was the Energy Commission  
2 staff's witness, Mr. Adams speaking.

3 MR. ADAMS: I'm sorry.

4 HEARING OFFICER CELLI: Go ahead. Just please  
5 remember to identify yourselves before you speak. Go  
6 ahead, Ms. Clark.

7 MS. CLARK: And so one final question to that.  
8 I note that in your testimony, oral testimony today, you  
9 reached the conclusion that you thought the glare could be  
10 reduced to a less than significant level. But as you've  
11 spoken further, it seems like you're not sure whether  
12 that's possible. And I'm just hoping you could clarify  
13 the level of certainty that you have that we really could  
14 get to a less than significant level for the Palen  
15 project.

16 MR. ADAMS: This is Mr. Adams. I am hopeful  
17 that based on what we've seen from Cliff Ho, that there  
18 has been some modifications that have had an effect of  
19 reducing the glare. But yes, I'm not totally confident  
20 that we can have enough engineering modifications to get  
21 it to the point where it's always going to be less than  
22 significant. We just don't have the information. We  
23 don't have the engineering analysis.

24 But I'm hopeful that we can make changes, but I  
25 can't say for certainty that we will. It just seems like

1 there are things that have been done. They've had an  
2 impact. Perhaps there are other things that can be done  
3 that would have an impact. Perhaps there are other things  
4 that could be done that would have an impact. And the  
5 goal would be glare is less than significant. We're not  
6 there yet.

7 MS. CLARK: So just to clarify, we're still sort  
8 of at potentially significant level then?

9 MR. ADAMS: Potentially significant, yes.

10 MS. CLARK: And then finally, I'm wondering. We  
11 might have already exhausted this point, but I'm just  
12 wondering if there's anything that anyone thinks could be  
13 done to require additional reporting of these incidences?  
14 It seems like we might touch on FAA's regulations and  
15 NASA's regulations, but it seems to me that there's such a  
16 lack of data about what is happening, what pilots are  
17 experiencing that we're continue to have that problem.  
18 And I'm just am wondering if anyone's given any thought to  
19 any sort of mandatory reporting requirements?

20 MR. ADAMS: Well, you're right. This is  
21 Mr. Adams. I have talked to the Director of the ASRS and  
22 encouraged her to forward any reports from pilots. I've  
23 talked to FAA personnel, talked to them about improving  
24 the reporting of glare events. The letter to airmen was  
25 helpful in encouraging them to do that, but it's not

1 happening with the frequency that I would like to see it.  
2 We don't have any authority over the FAA or NASA, so all  
3 we can do is make suggestions. We can just deal with the  
4 authority that we have, the Commission has. And all we  
5 can do is encourage them to be more forthcoming with  
6 additional reports.

7 MR. IRVIN: Greg Irvin here. It's true that we  
8 don't that we do not know what the ratio is between  
9 reported incidents and incidents experienced. We know  
10 that that ratio is very small. And we don't want to rely  
11 on that ratio, given what has been witnessed at Ivanpah in  
12 terms of disability glare and have that be the driving  
13 function for any type of mitigated procedures. That's  
14 what prompted the changes to TRANS-7.

15 And the primary change to TRANS-7 is, "Describe  
16 within the Heliostat Positioning and Monitoring Plan how  
17 disabling glare to pilots from heliostats in the standby  
18 position would be reduced..." and then we make a number of  
19 suggestions. And as Jim pointed out, not being the  
20 engineers and not knowing all the details of the  
21 capabilities and limitations of the control algorithms of  
22 the heliostats, some of our concepts might be right on,  
23 some of our concepts might be a little bit naive. And  
24 that's why we were forced to the conclusion of we can't  
25 say with certainty that if unknown mitigation mechanisms



1 are implemented properly, that it will be reduced less  
2 than significant.

3           So that's still ambiguous. And we're looking  
4 forward to working with the Applicant to be able to come  
5 up with creative ideas and multiple creative ideas for how  
6 to go about doing that mitigation.

7           MR. HO: This is Cliff Ho. Can I make a comment  
8 on the last question?

9           HEARING OFFICER CELLI: Go ahead, Mr. Ho

10          MR. HO: The question about getting data from  
11 pilots. I'm not sure if you're aware of the Air Force  
12 Cooperative Research Program, the ACRP Report Number 108.  
13 It came out just this last year. They did a survey of  
14 pilots, there were 383 total pilots responding and it was  
15 specifically about glare and their observations of glare  
16 and how significant it was. In particular it was asking  
17 about whether or not they had viewed glare from solar  
18 installations and if so, was it a significant event, was  
19 it a hazard to safety? I recommend taking a look at that  
20 report; again it's ACRP Report Number 108. It's available  
21 online.

22          And just for example, it does show that of the  
23 383 respondents 45 percent said they were aware of the  
24 solar park facilities near airports, 44 percent were  
25 uncertain of the type of technology, 31 percent said they

1 were aware it was CSP. And of those nine percent of the  
2 respondents said they had experienced the glare, 74  
3 percent they did not. And of the pilots who experienced  
4 the glare, four percent classified the glare as a  
5 significant nuisance, 24 percent as a moderate nuisance  
6 and 72 percent not a nuisance.

7           And at least that's a quantified or at least  
8 somewhat semi-quantified data of all the people that make  
9 reports or have experienced this. It isn't a significant  
10 event compared to that. What I've heard today is one  
11 pilot said it was not a hazard. One pilot said it was a  
12 significant concern. Maybe a survey like this could be  
13 issued now that Ivanpah has been out for awhile, to  
14 collect some quantified data on the significance of that  
15 glare for safety.

16           HEARING OFFICER CELLI: And just for the record,  
17 is the document that Mr. Ho was just speaking about, is  
18 that an exhibit? Is that being offered by any party?

19           MR. ADAMS: Actually, I have a copy of it. We  
20 did not put it in the exhibit. And the problem, and I'd  
21 have to review it again, but as I recall it didn't  
22 distinguish between different types of solar projects. We  
23 have not heard of glare being generated by PV or even  
24 solar-thermal. I think it's peculiar to the solar tower,  
25 which is why it's the first time that we've heard about

1 this type of significant glare. So I'm not sure that that  
2 survey distinguished between the type of solar energy and  
3 that would be something that would put that survey into  
4 question in terms of if it didn't involve Ivanpah and I'm  
5 not sure it would be relevant.

6 HEARING OFFICER CELLI: Okay. I just wanted to  
7 know if it was put --

8 MR. HO: And this is Cliff Ho. I just put that  
9 forth as possibly a way to collect data rather than  
10 forcing, being able to try to force pilots. For those  
11 pilots who have the route that goes past Ivanpah, perhaps  
12 doing a survey like this. The last one appeared to get a  
13 lot of respondents. Perhaps something similar could be  
14 done?

15 MR. CATHEY: This is Gary Cathey at Caltrans. I  
16 just wanted to state that I've participated on ACRP, which  
17 is the Airport Research Projects done under the  
18 Transportation Research Board. It's the Airport  
19 Cooperative Research Program, ACRP. I've participated on  
20 a number of those panels as a subject matter expert. And  
21 I think it would be a good idea to do a project perhaps,  
22 but generally they don't focus on a particular or limit  
23 the research on a particular type of a facility. And to  
24 get it to apply and get it approved could take one to two  
25 years at a minimum.

1 MR. HO: Yeah. And sorry, this Cliff Ho. I'm  
2 not suggesting that we apply for an ACRP grant. This was  
3 done specifically by us on a -- it could be done a Google  
4 survey, for example. You can issue it as long as you have  
5 the contacts. You can do this, that's all I'm suggesting.

6 MR. CATHEY: I see. Okay.

7 HEARING OFFICER CELLI: Thank you. So we're  
8 with Ms. Clark.

9 MS. CLARK: No further questions.

10 HEARING OFFICER CELLI: Okay, thank you.

11 Ms. Belenky?

12 MS. BELENKY: Thank you. This is -- wait.

13 HEARING OFFICER CELLI: Bring it up a little  
14 more towards you.

15 MS. BELENKY: Thank you.

16 HEARING OFFICER CELLI: Rob, it's that mic  
17 doesn't seem to be working for (inaudible)

18 MS. BELENKY: Thank you. This is Lisa Belenky  
19 with the Center for Biological Diversity. So just to  
20 follow up on the last question, I want to clarify the  
21 report you referenced. I think this was someone from  
22 Caltrans on the phone referenced a report that is not in  
23 evidence in this matter. And my just briefly trying to  
24 find the report, it looks like that survey was taken  
25 before Ivanpah Project was online. So I just want to make

1 -- is that correct? Whoever it was you referenced this  
2 Report 108.

3 MR. CATHEY: That was Mr. Ho.

4 HEARING OFFICER CELLI: Mr. Ho, please?

5 MR. HO: Yeah, the results of the survey were  
6 done prior to the conditioning in whenever it was, January  
7 or February, of Ivanpah. But it could have included  
8 incidences around Ivanpah. You know, it was being  
9 operated prior to that time. It wasn't a general --

10 MS. BELENKY: I guess I want to understand, are  
11 you offering this as evidence or something or not?

12 MR. HO: No. Again, my purpose was simply to  
13 use it as an example of how we can collect data to  
14 understand the impact of the glare at Ivanpah on pilots.

15 MS. BELENKY: Thank you.

16 MR. HO: It contained a survey and we can use a  
17 similar manner to collect that information.

18 MS. BELENKY: Thank you, so your discussion of  
19 the results of this document, this report, are not being  
20 offered into evidence here; is that correct?

21 MR. HO: No. It's meant to show that you can  
22 get quantified information about perceived significance  
23 and impact of the glare from similar solar energy  
24 installations and from pilots by doing these surveys.

25 MS. BELENKY: Thank you, except my question was

1 in the negative and you said no. So I would prefer if you  
2 could just answer the question. You are not offering the  
3 results of this survey into evidence to make any statement  
4 regarding this project?

5 HEARING OFFICER CELLI: Actually, since it --

6 MR. HO: Correct. Correct, I am not offering  
7 that as evidence. It was used as an example.

8 MS. BELENKY: Thank you. So I have a couple of  
9 questions that partly go to, I think, what Basin and Range  
10 Watch eloquently put as the nexus between the different  
11 technical areas. So one of the -- and this is a question  
12 I think that will maybe need to be workshopped.

13 One of the discussions that staff has raised is  
14 this idea of improving calibration and algorithms  
15 regarding the standby points for the heliostats. And  
16 heliostat positioning and how quickly they can be moved,  
17 was also raised as an issue for curtailment. So I want to  
18 make sure that it's understood that if there is new  
19 information about how the heliostats can move and how  
20 quickly and how they can be positioned, then that needs to  
21 be also looked at in that area.

22 The video has been mentioned, I believe, two or  
23 three times. There was a video that was docketed and it  
24 said you had to contact the docket for a copy. And I did  
25 contact the docket and I was never contacted again, so

1 I've never been able to see that video. I don't know if  
2 other people have had a similar problem.

3 HEARING OFFICER CELLI: Do we have that video  
4 here?

5 MS. MARTIN: Yes we do.

6 MR. CATHEY: Maybe we can play it in a little  
7 while.

8 HEARING OFFICER CELLI: I've seen it. You know  
9 the problem with -- I mean just personally, the  
10 photographs or the video, is it's not quite the same as  
11 being there live. But I did see that video and it exists.

12 MS. BELENKY: Okay. I just it was a -- I had  
13 never seen that used as a process before where someone  
14 docketed something but you can't actually access it.

15 The standby points, again the whole question of  
16 standby points as whether its points or a ring has been a  
17 significant issue in avian impacts and the flux fields  
18 etcetera. So again this is something that bridges if  
19 they're going to change how the standby points are done or  
20 the ring, what was previously being called a ring. I hope  
21 that at this workshop that that will be flagged that that  
22 needs to then also be discussed in the biological section,  
23 because these are significant issues we've already dealt  
24 with in Bio.

25 Lastly, I would just -- I wanted to say that

1 staff docketing something yesterday and not providing  
2 copies is a problem for us. I understand in this  
3 particular case it turned out to be the wrong thing that  
4 was docketed, but several other documents were put in by  
5 staff yesterday. And we have not been able to get copies,  
6 because we have been traveling as well.

7 Also, Mr. Celli, I understood that Friday was  
8 the last day to docket anything for this hearing, so I am  
9 concerned about that. You may want to deal with that  
10 separately.

11 HEARING OFFICER CELLI: Yeah. I actually saw  
12 the new documents when I was on the plane, on my  
13 Blackberry, so I couldn't see what they were. So I think  
14 we'll cross that bridge when we get to it. When the  
15 documents start coming in, we'll find out what they are,  
16 and whether there's any objection to them.

17 MS. BELENKY: Thank you.

18 HEARING OFFICER CELLI: Okay. Then  
19 Mr. Figueroa, any questions? We're talking now about  
20 Glint and Glare.

21 MR. FIGUEROA: Yes, my name is Alfredo Figueroa.  
22 There's been a lot of talk about glare, but not about the  
23 change of the atmosphere. Last year around this time two  
24 pilots, professional pilots from Blythe, California  
25 working for the Desert Center Project crashed, because



1 they were flying over the site. And just last week we had  
2 a report from the Riverside Enterprise that the atmosphere  
3 changes had been 800 Fahrenheit.

4 MR. GALATI: He is being (inaudible) could I  
5 just enter an objection?

6 MR. FIGUEROA: How hot that is was (inaudible)

7 HEARING OFFICER CELLI: Sustained in terms of  
8 the causation. Sustained. Go ahead, Mr. Figueroa.

9 MR. FIGUEROA: Well, there has to be --  
10 especially Palen is going to be surrounded by the Desert  
11 Center, the Genesis and these pilots that are flying  
12 through there. Let me tell you, it's going to be very  
13 hazardous not just for the pilots, but also for the -- we  
14 know about the birds and all that. So we need to talk  
15 more about the atmosphere, how it changes drastically.  
16 That's what I wanted to add on.

17 HEARING OFFICER CELLI: Okay. Thank you,  
18 Mr. Figueroa. Maybe the parties can discuss that during a  
19 workshop.

20 We are with the Petitioner. Any follow-up  
21 questions at this time?

22 MR. GALATI: Dr. Ho, can you hear me? This is  
23 Scott Galati with the Petitioner.

24 MR. HO: I can hear you.

25 MR. GALATI: Yes. Dr. Ho, you said you went up

1 on Tuesday and you flew over the site and with Matt  
2 Binner; was that correct?

3 MR. GALATI: Did you feel unsafe at all when you  
4 were up in the air.

5 MR. HO: I did not.

6 MR. GALATI: Did you believe that the changes  
7 you recommended reduced the glare at Ivanpah?

8 MR. HO: I don't know if they significantly  
9 reduced the glare. There was an issue with unit 1 where  
10 the changes were made and something might've tripped, but  
11 it wasn't at full power at the time. They were just  
12 coming back on when were up in the air. Unit 2, I did  
13 notice that the glint, the heliostats in standby mode were  
14 more spread out. I'm not sure if that had a significant  
15 reduction with regard to my ocular impact.

16 I have a way to quantify the radiance from the  
17 glare. I have not done that yet from all the images I  
18 took. But I felt that the glare was still visible and I'm  
19 not sure if it was a significant reduction in the  
20 intensity.

21 MR. GALATI: Do you believe that if your  
22 recommendations are implemented it will reduce the glare  
23 at Ivanpah?

24 MR. HO: I believe that if we work on various  
25 iterations, I'm not sure I have all the answers, but I do

1 feel confident that if I work together with, for example  
2 Mr. Buhacoff, that we can come up with a strategy that  
3 does reduce or mitigate the ocular impacts of the glare  
4 from the standby heliostats while providing a sufficient  
5 operational strategy for the plan.

6 MR. GALATI: This question is for staff. Are  
7 you having the kind of conversations we had just here,  
8 with Ivanpah?

9 MR. ADAMS: We've attempted to. And here it  
10 would be more the Compliance Project Manager, Joe Douglas,  
11 who's probably had more of these conversations than I've  
12 had. But we have stressed a need to have meetings and  
13 workshops with Ivanpah personnel, so that we can talk  
14 about some of the things that Greg suggested. And we  
15 haven't had as much contact as I would have liked. And  
16 I'm not quite sure why that is, but certainly we would  
17 like to have the kinds of discussions that we're having  
18 today with the engineers involved. And see what is  
19 feasible, how long it will take, and how can we measure  
20 the difference in the glare by some sort of formula or  
21 another over flight? But we haven't got there yet.

22 MR. GALATI: Is there something inherent about  
23 their condition of certification that prevent you from  
24 having that conversation with Ivanpah?

25 MR. ADAMS: Well, again I have had these

1 discussions with both Joe Douglas, and encouraged him to  
2 contact them. And it's my understanding that he's made  
3 attempts, but we just haven't seen any results in the  
4 sense of having a workshop where we can sit and talk about  
5 it.

6 MR. GALATI: Okay. Maybe I'll frame my  
7 questions more instead of just you, as Mr. Adams, and  
8 versus the CEC staff. Doesn't the CEC staff have to  
9 approve the Heliostat Positioning Plan for Ivanpah?

10 MR. ADAMS: That is correct. And it is  
11 currently a draft, because it has been modified once or  
12 twice. And it should probably be modified again based on  
13 the Glare Report that Cliff Ho submitted. So and at this  
14 point it is a draft Heliostat Position HPP.

15 MR. GALATI: But doesn't their condition require  
16 just that? The investigation and revision to the  
17 Heliostat Position Plan to address what the investigation  
18 shows?

19 MR. ADAMS: And it's my understanding that's  
20 what they are doing, but it's just taking longer than we  
21 would like.

22 MR. GALATI: Okay. And doesn't the Palen  
23 condition do that exact same thing? Require an  
24 investigation and a revision to the Heliostat Positioning  
25 Plan?

1 MR. ADAMS: I'm not sure exactly what the  
2 language is at the PNP, and what Andrea is coming up  
3 with, so I don't think I can answer that question right  
4 now.

5 MR. GALATI: Do you believe that the appropriate  
6 standard is to reduce any human health and safety hazards  
7 to less than significance for traffic and transportation?

8 MR. ADAMS: Yes.

9 MR. GALATI: I don't have any further questions.  
10 Thanks.

11 HEARING OFFICER CELLI: Thank you, Mr. Galati.  
12 Ms. Martin-Gallardo?

13 MS. MARTIN: I don't have any questions.

14 HEARING OFFICER CELLI: Commissioner Douglas,  
15 please?

16 COMMISSIONER DOUGLAS: I just wanted to break in  
17 and recognize Commissioner Hochschild who's here.

18 And with that I think we've gone all the way  
19 around, correct?

20 HEARING OFFICER CELLI: Uh-huh.

21 COMMISSIONER DOUGLAS: Ms. Martin-Gallardo, have  
22 you received the language?

23 MS. MARTIN: I'm refreshing right now. I don't  
24 have it at the moment.

25 MR. GALATI: I'd be happy to put this together.

1 I have the PMPD, and I have theirs. If I could take ten  
2 minutes I will take all of your changes and put them in a  
3 PMPD version, so we can have a conversation.

4 HEARING OFFICER CELLI: Okay. Let's just give  
5 us a second here.

6 (Off-Mike Discussion )

7 We're still on the record and we're doing very  
8 well this morning. I want to thank the parties for the  
9 way that they've been proceeding. What the Committee  
10 needs to do now is what we think would be useful, is to  
11 allow Mr. Galati to put together the documents, so that  
12 the parties can all work with a single document.

13 And then while he's doing that we will start  
14 taking some public comment now. And this is on anything,  
15 so if there are people here who want to make a comment,  
16 because they have to leave and it's on Cultural rather  
17 than Glint and Glare issues we'll accept those comments  
18 now. Or Bio or anything, because we think that would be a  
19 more efficient way to go. And then we don't have people  
20 sitting around waiting to speak to the Committee.

21 So we'll let Mr. Galati take care of that. And  
22 then at some point, after the public comment, we would  
23 break for your workshop. And then we would come back on  
24 the record, hear what you have to say, and finish up on  
25 Glint and Glare get into Cultural.

1           MR. ADAMS: Can I comment on that? My only  
2 concern would be that Andrea may be making some  
3 ramifications that are not either in what Mr. Galati would  
4 be using, and therefore we might -- the condition that  
5 she's coming up with would be different.

6           HEARING OFFICER CELLI: Right, I understand what  
7 you're saying. So in other words, Andrea's busy writing  
8 one document, Mr. Galati is doing a second one and there's  
9 no ability to compare.

10          MR. ADAMS: Right.

11          HEARING OFFICER CELLI: But I suspect that if  
12 everybody is using Microsoft Word, that when the iteration  
13 that Andrea is working on comes in, they could do a quick  
14 compare and iron out those wrinkles.

15          MR. ADAMS: That would be fine from my point of  
16 view.

17          HEARING OFFICER CELLI: I'm hoping that's the  
18 case. So members of the panel, and those of you who are  
19 still on the phone, you're still under oath. We are going  
20 to then break now for public comment, so the experts that  
21 are here now you can go sit with your friends or take a  
22 load off or whatever you want to do, but stick around.  
23 When Mr. Galati comes back we will resume or we will find  
24 out where we stand with regard to getting this new  
25 exhibit. Okay?

1           So yeah, ladies and gentlemen who are here, we  
2 have a podium set up with a microphone. And I'm hoping  
3 that microphone is live. Yes, Rod? It is. And so if you  
4 wish to make a comment, Alana, would you please stand and  
5 hold up a blue card? Have you received any blue cards  
6 yet?

7           MS. MATHEWS:     No.

8           HEARING OFFICER CELLI:   Okay. She has not  
9 received any blue cards. We use the blue cards to tell us  
10 who wants to make a comment, so if you would like to make  
11 a comment, please see Alana, fill out a blue card. She  
12 brings us the blue card. I read the name off the blue  
13 card and I put it in the "done" pile. So this is how I  
14 know who wants to make a comment, we've taken care of  
15 those who have, and know who hasn't. So if you wouldn't  
16 mind please filling out a blue card, so we can take public  
17 comment? Go ahead.

18          MR. HO:   This is Cliff Ho. Can I ask a quick  
19 question about interpretation at the workshop that you  
20 mentioned?

21          HEARING OFFICER CELLI:   Yes, Mr. Ho. But I want  
22 you to know that even though we're still on the record the  
23 Petitioner isn't here. Ms. Martin-Gallardo is here and  
24 the experts are no longer sitting at the table, so what is  
25 your question?



1 MR. HO: I just wanted to know, you mentioned  
2 breaking for the workshop. Are you saying that that's  
3 going to be held today or I was expecting it to occur  
4 offsite some other time?

5 HEARING OFFICER CELLI: No, no, no. The request  
6 as I understood it was the workshop was going to happen  
7 here. And we, the Committee, would relinquish the  
8 microphones, so that all the people on the phone could  
9 participate in that workshop. But we would take a break,  
10 the Committee would take a break with the parties'  
11 permission. Leave the room, because really a workshop is  
12 in the order of a settlement conference, really. Let the  
13 parties' speak freely and then...

14 MR. HO: I apologize. I was not aware of that.  
15 I was told that I would need to be on for maybe an hour or  
16 so. I have other meetings and commitments that I have  
17 this afternoon starting in an hour.

18 HEARING OFFICER CELLI: Mr. Ho, are you with  
19 staff?

20 MR. HO: I'm not sure who I'm with.

21 HEARING OFFICER CELLI: Do you work for the  
22 California Energy Commission?

23 MR. HO: I do not. I work for Sandia Labs.

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

25 Well, unfortunately we're at a point where

1 there's a document that's in issue. And all of the  
2 parties do not have this document. We need to get a  
3 document that all of the parties, that they are literally  
4 looking on the same page and that's what we're trying to  
5 accomplish right now. And so unfortunately --

6 MR. HO: That's fine, I guess I just want to let  
7 people know that I will need to go in about 15 minutes.

8 HEARING OFFICER CELLI: Okay. Well, I  
9 appreciate that, Mr. Ho. And I will ask -- I see Andrea  
10 Grenier is walking out there she heard that conversation.  
11 We'll let the Petitioner know that his witness is only  
12 available for another 15 minutes.

13 In the meanwhile, let's hear from Arlene  
14 Kingery. I'm sorry if I mispronounced names, I'm going to  
15 do my best today.

16 MS. KINGERY: Arlene Kingery, I'm with the  
17 Arlene Kingery, Quechan Indian Tribe.

18 HEARING OFFICER CELLI: Thank you. Go ahead,  
19 Ms. Kingery.

20 MS. KINGERY: I just have two questions. One is  
21 you're talking about doing research and investigation into  
22 the Heliostat Positioning Plan. And I'm just kind of  
23 wondering what steps are going to take place for that?  
24 And also what's the time frame you're estimating? You  
25 said have a draft plan right now, but what's the mechanism

1 here, looking to see how you can bring it to less than  
2 significant or mitigate it? So you're going to have to do  
3 the research, so what's the time frame for that?

4 And then the other one is if there is an  
5 incident, an aviation accident or something like that, who  
6 would bear responsibility for that?

7 HEARING OFFICER CELLI: That's a good question,  
8 two questions you've asked. The first one was what is the  
9 time frame for that draft? And the answer is I don't  
10 know, but in a Condition of Certification, there are two  
11 parts to every Condition of Certification. There's the  
12 condition itself. "Thou shalt create a Heliostat Position  
13 Plan" or something like that. And then the second half is  
14 verification. The project owner must do whatever the  
15 steps are by such and such a date and that kind of thing.  
16 So that should be contained within the condition. If it's  
17 not, it may not be a great condition and we may need to  
18 fix that, but that's usually how you know by when things  
19 have to be completed is through the verification.

20 The second issue is a question for the courts,  
21 because what's going to happen is if a plane goes down,  
22 there's going to be a big investigation. The FAA is  
23 involved. I'm not even sure whether it's federal  
24 jurisdiction or who sues who, but that's in the end after  
25 all of the aggrieved parties come in, file complaints and

1 sometimes they settle with the insurance companies,  
2 etcetera. You know the usual legal rigmarole.

3           Then it's there that the legal responsibility  
4 would probably be determined, because as we're sitting  
5 here talking and just off the top of my head as a lawyer  
6 I'm thinking, "Well, you might have proof problem there."  
7 But who knows? You know, that would be something that  
8 would have to be adjudicated, you know, to say that the  
9 lights caused the accident or something like that.

10           Anything further, Ms. Kingery? Okay. She's  
11 shaking her head, no.

12           MS. KINGERY: No.

13           HEARING OFFICER CELLI: Do we have any other  
14 people who would like to make a comment of any sort on any  
15 topic: Bio, Cultural?

16           Ms. Mathews, do we have any blue cards?

17           MS. MATHEWS: No.

18           HEARING OFFICER CELLI: Well, this is the kind  
19 of day we're having. We're having a very efficient day.  
20 We have only one comment, which we've now heard. Okay.

21           COMMISSIONER DOUGLAS: Do you have a sense how  
22 long the workshop will take?

23           MS. MARTIN: I would hope that once we have a  
24 version that it would take not very long, maybe half an  
25 hour, to an hour.

1 HEARING OFFICER CELLI: Okay. It's now about  
2 five after 11:00 according to my watch. If we take a  
3 lunch break for --

4 MS. GRENIER: I just (inaudible) lunch won't be  
5 here until about noon. She's just left right now to get  
6 it.

7 HEARING OFFICER CELLI: Okay. Now, folks who  
8 are here the Petitioner has provided box lunches for  
9 everybody. So if you want to eat whatever's going to be  
10 in these box lunches they're going to be available at  
11 noon.

12 (Off-Mike Discussion)

13 Okay. So tentatively what we're thinking now is  
14 we would take a break until 11:30.

15 Now I'm going to need all of the parties in  
16 here, because I want to know whether the parties want to  
17 have their workshop on the record or off the record. We  
18 usually don't have a record of the workshop. This is,  
19 again it's sort of like a settlement conference, and we  
20 wouldn't have a record of it. It would not be part of the  
21 record unless the parties want that. I see Ms. Belenky  
22 shaking her head no, would not want it on the record. So  
23 if I couldn't get a full complete stipulation, we wouldn't  
24 go on the record.

25 MS. MARTIN: This is Jennifer Martin-Gallardo.

1 I don't think it's necessary for it to be on the record,  
2 however having people available to listen in on it, you  
3 know, through WebEx, is our standard procedure for  
4 workshops.

5 HEARING OFFICER CELLI: Right. Correct and  
6 that's what we intend to do. So what I'm proposing with  
7 the parties' permission, and I want to make sure that this  
8 is okay with everybody, is that the Committee would vacate  
9 the podium and let the parties have a workshop starting at  
10 11:30 And go let's say until 12:30?

11 MS. MARTIN: At most.

12 HEARING OFFICER CELLI: Okay. If we went until  
13 12:30? Do you have your documents yet?

14 MS. MARTIN: Nothing yet.

15 HEARING OFFICER CELLI: Okay. So that's why we  
16 figure we give you a break, it's ten after 11:00 now. If  
17 we take a break until 11:30, when we resume at 11:30, that  
18 would be the workshop from 11:30 to 12:30. At 12:30 the  
19 Committee returns and we resume and hopefully complete the  
20 Glint and Glare portion of today's testimony.

21 Is there any problem with that, staff?

22 MS. MARTIN: I have no problem with that.

23 HEARING OFFICER CELLI: Or Mr. Galati?

24 Ms. Mathews?

25 MS. MATHEWS: Yeah. This is Alana Mathews, the

1 Public Advisor. I do have a concern. If there are  
2 members of the public who are here, who want to be present  
3 during the workshop, we're essentially only giving them 20  
4 minutes for lunch. So if they want to take a break and  
5 get something to eat, if we start back up at 12:30, they  
6 won't have time to have eaten.

7 HEARING OFFICER CELLI: That's why we have box  
8 lunches. They can bring them in here and have lunch --

9 MS. MATHEWS: Okay.

10 HEARING OFFICER CELLI: -- and listen to the  
11 workshop, so that's the whole idea of this. We're killing  
12 two birds with one stone.

13 MS. MATHEWS: Okay. Assuming that everyone  
14 wants to eat the box lunch then that would be perfect.

15 HEARING OFFICER CELLI: Thank you and now  
16 Mr. Galati?

17 MR. GALATI: No objections.

18 HEARING OFFICER CELLI: Okay. And Ms. Belenky?

19 MS. BELENKY: I'm a little confused, because I  
20 thought you said you had noticed public comment for noon.  
21 And so that taking it at eleven I was already a little  
22 confused about, but assuming that you don't think that's a  
23 problem --

24 HEARING OFFICER CELLI: We actually didn't  
25 notice it for noon. I just mentioned this morning that we

1 would open it up around noon, so that people who are here  
2 could make comments. I just opened it up for the record  
3 and we got one comment for all of the people who are here.  
4 Maybe more people will comment. After I think the  
5 workshop, I might open it up again for any stragglers that  
6 would like to make a public comment then. And then we're  
7 going to have later public comment, so go ahead.

8 MS. BELENKY: Okay. So the proposal is to do  
9 the workshop now?

10 HEARING OFFICER CELLI: At 11:30 until 12:30,  
11 I'm hoping you can tackle all the issues in an hour. And  
12 at 12:30 the Committee would come back and resume.

13 MS. BELENKY: That's fine. No objection from  
14 the Intervener Center for Biological Diversity.

15 HEARING OFFICER CELLI: And CRIT?

16 MS. CLARK: No objection.

17 HEARING OFFICER CELLI: And Basin and Range  
18 Watch?

19 MS. CUNNINGHAM: No objection.

20 HEARING OFFICER CELLI: Is Alfredo Figueroa  
21 still here? Does anyone see Mr. Figueroa? Mr. Figueroa,  
22 come on in? Mr. Figueroa, if you wouldn't mind stepping  
23 to this microphone? Yes, please go ahead.

24 The reason that I'm asking you to do this is I'm  
25 asking the parties whether there's any objection to a



1 workshop that begins at 11:30 and will go until 12:30. Do  
2 you have any objection?

3 MR. FIGUEROA: Say that again, please?

4 HEARING OFFICER CELLI: The parties have  
5 requested a workshop. And we're going to start that  
6 workshop at 11:30. Its ten after 11:00 now. We'll take a  
7 break now. At 11:30 the parties would workshop the Glint  
8 and Glare issues of TRANS-7, Condition TRANS-7. And at  
9 12:30 the Committee will be back and we will resume the  
10 taking of testimony and essentially that would be the end  
11 of the workshop; any objection to that?

12 MR. FIGUEROA: No objection.

13 HEARING OFFICER CELLI: Okay, thank you.

14 MR. FIGUEROA: Thank you.

15 HEARING OFFICER CELLI: So I think we've heard  
16 from all of the parties. And again if California Unions  
17 for Reliable Energy, CURE, or LiUNA, if you're on the  
18 phone and you're muted please send a chat telling us that  
19 you're here and would like to be unmuted.

20 (WebEx feedback)

21 Did you unmute everybody just now? Okay. Whew,  
22 this is why there's a button called "mute on entry," so  
23 that when people call in they're muted immediately. But  
24 if you are a party, which would be LiUNA and CURE, we  
25 would like you to participate, so send us a chat and we

1 would unmute your phone line.

2 Okay. And with that we're going to take a  
3 break. We're off the record and we will resume at 12:30.

4 (LUNCH RECESS)

5 --o0o--

6 AFTERNOON SESSION

7 HEARING OFFICER CELLI: Are we on the record?

8 Okay. We're just going to take any public comment at this  
9 time. If you're someone who's here who knows you can't be  
10 here tonight for the 5:00 o'clock comment then we would be  
11 happy to take your comment now. Just go see Alana, please  
12 fill out a blue card.

13 We have Robert Sullivan on the phone, who wanted  
14 to make a comment? Mr. Sullivan, go ahead.

15 MR. SULLIVAN: Okay, thank you. Hold on just a  
16 second. I'm sorry, can everyone hear me? I'm calling via  
17 cell phone.

18 HEARING OFFICER CELLI: I can hear you  
19 beautifully, please keep going.

20 MR. SULLIVAN: Okay. My name's Robert Sullivan.  
21 I'm a visual impact analyst in the Environmental Science  
22 Division at Argonne National Laboratory. I conducted the  
23 visual impact analysis for BLM and BOE's Solar Energy  
24 Programmatic EIS. (phonetic) I have been conducting  
25 (inaudible) sorry?

1 HEARING OFFICER CELLI: Keep going.

2 MR. SULLIVAN: I've been conducting observations  
3 for solar facilities visual impacts including glare for  
4 several years with funding from BOE, BLM and the National  
5 Park Service. This work has been confined to addressing  
6 visual impacts, not health and safety impacts. And all of  
7 our observations have been ground-based.

8 I have got three comments to make that address  
9 some of the testimony that was provided this morning. And  
10 they're based on our observations.

11 My first comment is as follows, one of the  
12 persons who testified this morning said that in repeated  
13 observations the glare that he observed was a distraction,  
14 but not a hazard. Another person reported that the glare  
15 was so bright that he had to shield his eyes from the  
16 facility. And we also heard reports of other people  
17 saying that the glare was painfully bright. While these  
18 people obviously were looking at different glare events, I  
19 wanted to point out that based on multiple observations  
20 that we make over several observers viewing a facility at  
21 the same time, that it's possible for one person to  
22 perceive the lighting they see from glare is painfully  
23 bright. While the person sitting next to them may not  
24 perceive it to be so bright or at least not have the same  
25 deleterious effect on their vision.

1           Several times during our observations I have  
2 personally felt that the glare I perceived was painfully  
3 bright and I couldn't look at it for even one second.  
4 While another person standing next to me did not have a  
5 problem looking at the glare for significantly longer than  
6 I was able to.

7           So while I'm not an optical (inaudible) vision  
8 expert I believe that this may be, because there is some  
9 variability in sensitivity between people. So if I'm  
10 correct in my assumption about there being variability  
11 between people in the sensitivity of their vision I think  
12 it's important to take that into account when considering  
13 eyewitness reports of glare events.

14           My second comment concerns photographic and  
15 video representations of glare compared to eyewitness  
16 experiences from the fields. Our observations routinely  
17 involve photography and sometimes video capture of solar  
18 facility glare incidents. Based on my own experience and  
19 informal questioning of the colleagues and other persons  
20 observing solar facility flare, it is routinely the cases  
21 that glare observed in the field is brighter and often  
22 significantly brighter and often significantly brighter  
23 than the glare shown in photography or video clips.

24           I believe this is primarily because of the  
25 limitations that media use to display them. Computer

1 monitors and printed paper are not capable of showing the  
2 full dynamic range of brightness that the human eye is  
3 capable of receiving and that a light source is capable of  
4 producing. In other words, we know that it's possible for  
5 an illumination source to literally blind people. But  
6 it's not possible for a computer monitor or printed piece  
7 of paper to cause occupant damage. So I think it's very  
8 important when assessing the magnitude of glare incident.  
9 That everyone understands that no matter how bright the  
10 glare looks in a photo or video clip it is often, if not  
11 always, significantly brighter in reality.

12           My final comment concerns glare from the  
13 individual heliostat. In an observation we made last May  
14 at Ivanpah, from a location on the ground at a distance of  
15 approximately ten miles from the facility. The glare we  
16 observed was bright enough to cause visual discomfort that  
17 made a standing viewing difficult.

18           We were able to look at the glare for an  
19 extended period of time, so it was not as bright as some  
20 glare incidents that we have observed in smaller  
21 facilities. But it certainly was bright enough to rate as  
22 a visual distraction. Looking at the photos we took, it  
23 appears that the glare was caused by a single heliostat,  
24 not a large group of heliostats.

25           In my opinion glare from even a single heliostat

1 can be significant and should be considered when  
2 addressing glare impacts. Though I'm in a position to say  
3 that glare from a single heliostat could cause health and  
4 safety affects.

5 That is all of my comments. I appreciate the  
6 opportunity to comment. Thank you.

7 HEARING OFFICER CELLI: Thank you, Mr. Sullivan.  
8 Is there anyone else Alana Mathews? She's indicating no,  
9 so there's no further comments from the room.

10 Garrett Larimer, did any further comments -- no  
11 comments from the phone.

12 MR. LARIMER: Yes.

13 HEARING OFFICER CELLI: Okay. So can somebody  
14 please, Mr. Galati, bring us up-to-date or  
15 Ms. Martin-Gallardo and what did you accomplish in your  
16 workshop?

17 MR. GALATI: The version that was provided on  
18 Monday was the changes were put into the PMPD version, so  
19 that we could see what part of the PMPD version that was  
20 negotiated, survived. Once we saw that our concerns were  
21 lessened. And we talked about two primary issues, which  
22 was writing an appropriate performance standard, so that  
23 there would be a performance standard. We tried to link  
24 that performance standard to using terminology like the  
25 DSRH, which is the defined term in the Condition.

1           And also one that, and I don't know if I have  
2 the language perfect as I jotted it down, that resulted in  
3 a health and safety concern or issue. So we tried to get  
4 an appropriate performance standard in the Condition to  
5 show that interim methods of work through the Heliostat  
6 Positioning Plan would yield some result. And that  
7 result, we had agreed, we had talked about, was what we  
8 thought was the threshold of significance for Traffic and  
9 Transportation, but not Visual. And that was one of our  
10 concerns with the language.

11           We also modified, staff lengthened the time that  
12 we need to monitor before we could petition the CPM that  
13 we no longer need to monitor. And we agreed to that.  
14 They lengthened that from 12 months to five years. But we  
15 wanted the ability that if we did get a legitimate  
16 complaint and we resolve it, that might be something we  
17 could petition to also be relieved from the continuous  
18 monitoring. And so staff modified the language to allow  
19 that, so that it wasn't --

20           HEARING OFFICER CELLI: Rob, does he need to  
21 have more distance between the mic and his mouth? You're  
22 good, Mr. Galati.

23           MR. GALATI: It's my nose, isn't it? It is, you  
24 didn't want to say that. I've had it for a long time, I  
25 know what the comments going to be.

1 MR. STUCKY: It's on the record.

2 HEARING OFFICER CELLI: Anyway, for those who  
3 don't know, that was Mr. Galati.

4 MR. GALATI: So we modified some language. We  
5 think we have agreement on the language for a TRANS-7.

6 HEARING OFFICER CELLI: What I'd like to do  
7 then, is I'd like to go around through the interveners and  
8 let's sort of finish this up. Do we have -- I feel like  
9 we're missing some experts at the table? What happened to  
10 Mr. Buhacoff and Mr. Stucky?

11 MR. BUHACOFF: I'm right here.

12 HEARING OFFICER CELLI: Oh, there you are. You  
13 just moved your spot. Can I have you back around again,  
14 Mr. Stucky, sitting next to Mr. Buhacoff.

15 You're still under oath. I'm going to see if I  
16 can do this in a systematic way, starting Basin and Range  
17 Watch. And I'm going to first ask, is there anything  
18 further as a result of the workshop that you need to  
19 enquire of these experts from Basin and Range Watch?

20 MR. EMMERICH: No.

21 HEARING OFFICER CELLI: Okay. And that was no  
22 for the record, in case that didn't come across on the  
23 microphone.

24 Colorado River Indian Tribes?

25 MS. CLARK: No. We have no further questions.



1 HEARING OFFICER CELLI: Ms. Belenky?

2 MS. BELENKY: No, we have no further questions  
3 for these experts.

4 HEARING OFFICER CELLI: Okay. You say for these  
5 experts. Let's talk about Glint and Glare in general, is  
6 there anything further that we need to take care of before  
7 we excuse these experts?

8 MS. BELENKY: The Center's position is that now  
9 some of the ways they're talking about mitigating or  
10 minimizing for Glint and Glare implicates other issues  
11 within Bio. So we don't have any need for the experts on  
12 the Glint and Glare issue and the Transportation. But we  
13 are not satisfied that this question has been fully heard.

14 HEARING OFFICER CELLI: Got it, very clear.

15 Mr. Figueroa, any further questions of these  
16 witnesses?

17 MR. FIGUEROA: No.

18 HEARING OFFICER CELLI: From the Petitioner, any  
19 further questions?

20 MR. GALATI: Just one, a question for staff.  
21 With the Condition, with the appropriate threshold of  
22 significance and standards, if we now believe that the  
23 project can result in less than significant outfit  
24 impacts?

25 MR. ADAMS: I believe that with the

1 modifications to the new Certification of TRANS-7, it is  
2 likely that glare could be impacted. Glare would have to  
3 be less than significant.

4 MR. GALATI: No more questions, no further  
5 questions.

6 HEARING OFFICER CELLI: Staff?

7 MS. MARTIN: I have no questions.

8 HEARING OFFICER CELLI: Okay. So go ahead --

9 MS. CLARK: Sorry, can I ask you a question in  
10 response to that question? So earlier when I asked, have  
11 you changed your position from your earlier statement that  
12 you thought there were still potentially significant  
13 impacts that would result?

14 MR. ADAMS: I think with the changes that we've  
15 agreed to, that it is likely that the glare can be  
16 impacted to a less than significant level, yes.

17 MS. CLARK: Can you explain what the changes  
18 were that we discussed, that go you to that point? I am  
19 unaware of what those could be.

20 MR. ADAMS: Well, I could read the changes.  
21 Obviously, we're just making notes and stuff, but if it's  
22 helpful I can read the changes that we've just agreed to.

23 MS. CLARK: No, I'm happy for you to explain, so  
24 the only substantive change that was made was that change  
25 of performance standard. And in my opinion, it is now

1 less stringent than it was prior to the change. And so  
2 I'm just curious how you've arrived at a different  
3 conclusion?

4 MR. ADAMS: Because I think with the Condition,  
5 in the way that it's written now, that it will provide for  
6 meaningful resolution of complaints about glare and  
7 mitigation measures will be taken and it is likely that  
8 the glare would be reduced to less than significant  
9 levels.

10 MS. CLARK: And are you certain that it's  
11 feasible to be so, given the information that we currently  
12 have?

13 MR. ADAMS: I think that the word "certain" is  
14 perhaps too strong. But I think with the potential  
15 modifications that we identified, and the project owner's  
16 identified, that they will be able to resolve these  
17 complaints about significant glare events to the point  
18 where they are less than significant.

19 HEARING OFFICER CELLI: Anything further,  
20 Ms. Clark?

21 MS. CLARK: No, thank you.

22 HEARING OFFICER CELLI: Then unless I hear from  
23 any of the parties I'm going to excuse these witnesses and  
24 the witnesses who are on the telephone. And we are going  
25 to declare the Glint and Glare -- the record on Glint and

1 Glare with regard to Traffic and Visual to be closed.

2 Anything further from anyone on that?

3           Okay. Then let's -- oh, no. I'm not closing  
4 the record yet, because I need to have the parties move  
5 their exhibits into the record. So let's start with the  
6 Energy Commission staff.

7           MS. MARTIN: I wanted to just make one point of  
8 clarification there, because during the workshop we  
9 discussed changes to TRANS-7. At the earlier hearings  
10 that we had on this we provided a stipulated condition.  
11 I'd be happy to read those things into the record right  
12 now or we can just provide the Committee with a  
13 stipulated?

14           HEARING OFFICER CELLI: Let's have you read it  
15 into the record right now, please?

16           MR. ADAMS: I can read it.

17           HEARING OFFICER CELLI: Okay.

18           MR. ADAMS: The first change is in paragraph  
19 number six. It will read, "The monitoring plan shall  
20 insure that the project owner continues to try different  
21 methods of reducing glare, so that it is not a DSRH event  
22 that is a health and safety issue.

23           The second change is to under the verification,  
24 the fourth paragraph will now read, "If no legitimate  
25 complaints are received and/or if the legitimate complaint

1 is received and the project owner has resolved the source  
2 of this complaint within the first five years of the  
3 project, the project owner -- excuse me, the project  
4 operation, the project owner can request its safety  
5 (phonetic) and release the project owner from the  
6 obligations under Section 6 of this condition after the  
7 fifth year of project operations."

8 We are now keeping the paragraph that had a  
9 strike-through before --

10 MS. MARTIN: Oh, I'm sorry. That was a mistake  
11 on my part. I think we're done on that.

12 MR. ADAMS: Okay, fine. Those are the two  
13 substantive changes.

14 (Off-Mike Discussion)

15 HEARING OFFICER CELLI: So do we have --

16 MR. GALATI: If there is a conforming change to  
17 that change, both in the Condition and the Verification  
18 and they both say the same thing, and so the change that  
19 Mr. Adams just read in is both in the Condition and in the  
20 Verification.

21 MR. ADAMS: That's correct.

22 MR. GALATI: Good, thank you.

23 HEARING OFFICER CELLI: A motion by Energy  
24 Commission staff with regard to exhibits?

25 MS. MARTIN: I'm sorry, I'm not prepared.

1 HEARING OFFICER CELLI: Here's what I'm going to  
2 -- ladies and gentlemen, and while she's figuring out what  
3 exhibits they are we need to know exactly what exhibits,  
4 what documents they are moving into the record. And we  
5 did provide a list of exhibits this morning to everyone,  
6 if you wanted to follow along. But this is how we know  
7 what the exhibits that relate to this particular topic.  
8 And so it's kind of weird and formalistic, but we're going  
9 to listen to the attorney say, "I'm moving in 1, 2, 3, 4,  
10 5, 6, 7 and 8, just count them.

11 MS. MARTIN: And I'll also, just be alert  
12 everyone, that we have docketed things that were not  
13 identified as exhibits in the prehearing conference  
14 (inaudible) I will give those exhibit numbers right now.

15 HEARING OFFICER CELLI: Okay. Well, why don't  
16 you make the motion and I'll and I'll hear from the  
17 parties if there's any objections.

18 MS. MARTIN: Staff would like to move into the  
19 record, for Traffic and Transportation, Exhibit No. 2017,  
20 Exhibit No. 2018 and what I'm marking as Exhibit 2023 to  
21 add the glare video, Exhibit 2024, the -- would you like  
22 CN numbers?

23 HEARING OFFICER CELLI: No. I want to hear  
24 exhibit numbers.

25 MS. MARTIN: Okay. 2024, that is an email

1 regarding the Ivanpah Power Plant Site Reconnaissance,  
2 dated May 9th, 2014 from Gary Cathey. Marking this  
3 Exhibit 2025, and email with the attached Palen  
4 Aeronautical Study dated June 9th, 2014. Exhibit No.  
5 2026, an email regarding your request for Ivanpah reports  
6 dated June 10th, 2014. Exhibit No. 2027, the  
7 determination of no hazard to air navigation for tower  
8 one. Number -- this ISEGS I believe -- Exhibit No. 2028,  
9 the determination of no hazard to air navigation for tower  
10 two. As Exhibit 2033, a glare evaluation of ISEGS, the  
11 Clifford Ho email. And that will be done (inaudible)

12 HEARING OFFICER CELLI: Okay. So the motion is  
13 to move into evidence Exhibits 2017, 2018, 2023, 2024,  
14 2025, 2026, 2027, 2028 and 2033.

15 MS. MARTIN: Correct.

16 HEARING OFFICER CELLI: Is there any objection  
17 by Petitioner?

18 MR. GALATI: No objection.

19 HEARING OFFICER CELLI: Any objection by  
20 Californians for Renewable Energy?

21 MR. FIGUEROA: No.

22 HEARING OFFICER CELLI: Any objection from the  
23 Center for Biological Diversity?

24 MS. BELENKY: No.

25 HEARING OFFICER CELLI: Any objection from the

1 Colorado River Indian tribes?

2 MS. JASCULA: No objection.

3 HEARING OFFICER CELLI: Any objection from Basin  
4 and Range Watch?

5 MR. EMMERICH: No.

6 HEARING OFFICER CELLI: And just I'm going to  
7 ask this again, is there anyone on the telephone from  
8 either CURE or LiUNA? If so, please send a chat email.

9 With that then there being no objection,  
10 Exhibits 2017, 2018, 2023, 2024, 2025, 2026, 2027, 2028  
11 and 2033 are received into evidence.

12 HEARING OFFICER CELLI: Petitioner, do you have  
13 a motion?

14 MR. GALATI: Yes. I'd like to move in Exhibit  
15 1180, the Traffic and Transportation rebuttal testimony,  
16 Glint and Glare. Exhibit 1187, Traffic and Transportation  
17 Rebuttal Testimony -- Glint and Glare. Exhibit 1191,  
18 Ivanpah SEGS Heliostat Positioning Plan report and Exhibit  
19 1142, which is the ISEGS file documents on pilot  
20 complaints.

21 HEARING OFFICER CELLI: That's the motion, any  
22 objection from Californians for Renewable Energy,  
23 Mr. Figueroa?

24 MR. FIGUEROA: No.

25 HEARING OFFICER CELLI: Thank you, Center for



1 Biological Diversity?

2 MS. BELENKY: No.

3 HEARING OFFICER CELLI: CRIT?

4 MS. CLARK: No.

5 HEARING OFFICER CELLI: Basin and Range Watch?

6 MR. EMMERICH: No.

7 HEARING OFFICER CELLI: Okay. Exhibit 1180,  
8 1187, 1191 and 1142 will be received into evidence.

9 Any -- there are no exhibits from Californians  
10 for Renewable Energy with regard to Glint, correct?

11 MR. FIGUEROA: I don't remember.

12 HEARING OFFICER CELLI: I don't think we  
13 received any.

14 MR. FIGUEROA: I want to make a presentation.

15 HEARING OFFICER CELLI: Well, but that's  
16 Cultural isn't it? Okay, so we'll go to it then.

17 MR. FIGUEROA: Yeah, we didn't submit any.

18 HEARING OFFICER CELLI: Okay. Center for  
19 Biological Diversity, exhibits with regard to Glint and  
20 Glare?

21 MS. BELENKY: No.

22 HEARING OFFICER CELLI: No exhibits. Colorado  
23 River Indian River Tribes?

24 MS. CLARK: Yes. I would like to re-add, move  
25 into evidence Exhibit 8031, the testimony of Ted Swendra;

1 Exhibit 8032 the FAA World Aeronautical Chart Section  
2 CG-18; Exhibit No. 8033, the Ivanpah ASRS Report and  
3 Exhibit No. 8034 Glare Factor Solar Installations and  
4 Airports article.

5 HEARING OFFICER CELLI: Before I take that  
6 motion, let me just ask because I thought, did anyone else  
7 put in what you -- 8033 was the?

8 MS. CLARK: The ASRS Report, I think it's in the  
9 record multiple times at this point.

10 HEARING OFFICER CELLI: I just want to know that  
11 I'm not putting in a duplicate exhibit. That's not one of  
12 the one's that you just moved in, either staff or  
13 Petitioner?

14 MS. MARTIN: I don't, the ASRS?

15 HEARING OFFICER CELLI: Right. If not, I mean  
16 it's not a problem. I'm just trying to avoid duplication.

17 MS. MARTIN: I don't believe so.

18 HEARING OFFICER CELLI: Okay. Then the motion  
19 is for 8031, 8032, 8033 and 8034. Any objection from  
20 Basin and Range Watch?

21 MR. EMMERICH: No.

22 HEARING OFFICER CELLI: Staff?

23 MS. MARTIN: No objection.

24 HEARING OFFICER CELLI: Petitioner, any  
25 objection?

1 MR. GALATI: No objection.

2 HEARING OFFICER CELLI: Californians for  
3 Renewable Energy and Center for Biological Diversity?

4 MR. FIGUEROA: No.

5 MS. BELENKY: No objection.

6 HEARING OFFICER CELLI: Okay. 8031, 8032, 8033  
7 and 8034 are received into evidence.

8 Basin and Range Watch, you have a motion?

9 MR. EMMERICH: Oh, yeah. We'd like enter into  
10 evidence Exhibits 4001 a photograph, 4002 photograph, 4003  
11 photograph, 4004 photograph and then 4005 is an article  
12 reference and 4006 is another article reference. Motion  
13 4001 to 4006.

14 HEARING OFFICER CELLI: Okay. There's a motion  
15 that Exhibits 4001 through 4006 be received into evidence.  
16 Is there any objection from Energy Commission staff.

17 MS. MARTIN: No objection.

18 HEARING OFFICER CELLI: Petitioner?

19 MR. GALATI: No.

20 HEARING OFFICER CELLI: Californians for  
21 Renewable Energy?

22 MR. FIGUEROA: No.

23 HEARING OFFICER CELLI: Center for Biological  
24 Diversity?

25 MS. BELENKY: No.

1 HEARING OFFICER CELLI: Colorado River Indian  
2 Tribes?

3 MS. CLARK: No.

4 HEARING OFFICER CELLI: Okay. Then Exhibits  
5 4001 to 4006 inclusive are received into evidence. And  
6 that takes care of the Glint and Glare topic. Thank you,  
7 witnesses are excused.

8 And at this time I just want to check in again  
9 with Alana Mathews to see were there any new -- no new  
10 comments, she's saying no. So I just wanted to tackle  
11 anybody who came in wanting to make a noon-time comment.

12 The next topic we're going to cover now is  
13 cultural, limited to the terms of Cultural 1, the  
14 Condition of Certification Cultural 1. I'm going to ask  
15 the parties then to call your witnesses and have them sit  
16 along where the witnesses have been sitting directly  
17 across from the committee. Let's try to group you  
18 together so I've got petitioner's witnesses sitting  
19 together, staff's witnesses sitting together, CRIT's  
20 witnesses.

21 How many witnesses do you have for Cultural for  
22 staff?

23 MS. MARTIN: Three.

24 HEARING OFFICER CELLI: So the three cultural  
25 witnesses should be sitting together from staff. And then

1 how many witnesses do we have from the Petitioner?

2 MR. GALATI: We have three.

3 HEARING OFFICER CELLI: One, two, three, okay.

4 So Mr. Cachora, if I could scoot you down to your left one  
5 seat, then we could fit in all of Petitioner's witnesses  
6 next to you. Thank you. And then are these CRIT  
7 witnesses, these two folks here?

8 MS. CLARK: Yes, these two.

9 HEARING OFFICER CELLI: Okay. And are there any  
10 other witnesses that any of the other parties are calling  
11 or have on the telephone? Do any of you have telephonic  
12 witnesses?

13 MS. CLARK: No.

14 HEARING OFFICER CELLI: Okay. So we've got  
15 Mr. Stucky. And your name next to Mr. Stucky, ma'am?

16 MS. BARGER: Mary Barger.

17 HEARING OFFICER CELLI: Mary Barger.

18 MR. NIALS: Fred Nials.

19 HEARING OFFICER CELLI: Fred Nials. Rory  
20 Cachora.

21 MR. GATES: Thomas Gates.

22 HEARING OFFICER CELLI: Tom Gates.

23 MR. MCGUIRT: Mike McGuirt.

24 HEARING OFFICER CELLI: Mike McGuirt. Your  
25 name, ma'am?

1 MS. BARRERA: Amanda Barrera. Amanda Barrera.

2 HEARING OFFICER CELLI: Amanda Barrera. Can you  
3 spell it?

4 MS. BARRERA: It's B-a-r-r-e-r-a, and I'm from  
5 the Colorado River Indian Tribes.

6 HEARING OFFICER CELLI: Barrera.

7 MS. BARRERA: Yes.

8 HEARING OFFICER CELLI: Got it, thank you.

9 MR. HARPER: Gabe Harper, Colorado River Indian  
10 Tribes.

11 HEARING OFFICER CELLI: Harper. And then,  
12 Mr. Figueroa, do you intend to be a witness?

13 MR. FIGUEROA: I'm not with the Colorado River  
14 Indian Tribes.

15 HEARING OFFICER CELLI: Right, but I just was  
16 asking whether you intended to testify.

17 MR. FIGUEROA: Oh, yeah, definitely. I have a  
18 PowerPoint presentation.

19 HEARING OFFICER CELLI: Okay. I'm going to ask  
20 that you all stand and the court reporter will please  
21 swear in this panel.

22 (Panel sworn)

23 HEARING OFFICER CELLI: Thank you, you are all  
24 sworn.

25 Now, we are talking about CUL-1, and as I

1 understood it, the major player in this one is going to be  
2 staff unless, Petitioner, are your people ready to make an  
3 opening statement?

4 MR. GALATI: Yeah, we're ready to give a  
5 statement of about 15 minutes.

6 HEARING OFFICER CELLI: Okay, let's do that and  
7 then we'll work our way down.

8 MS. BARGER: Good afternoon. It was going to be  
9 good morning, but I'm going to go with good afternoon. I  
10 appreciate this opportunity to address the committee. My  
11 testimony will look at the proposed staff activities and  
12 evaluate them against the guidance from the committee and  
13 then make some recommendations.

14 We've looked at what the committee recommended  
15 regarding changes to CUL-1 and then reevaluated the  
16 proposed condition. As a reminder, on January 7th, 2014,  
17 the committee made three recommendations.

18 "CUL-1 seems too oriented towards state  
19 interests and not as well suited to the Native American  
20 concerns."

21 Two, "The committee would like the tribes to  
22 have a significant voice in developing the mitigation  
23 proposal for cultural resource impacts."

24 And three was, the impact of the project on  
25 Native Americans and, quote, "What is the nexus here

1 between impact and mitigation?" We agree with the  
2 Commissioner that the primary impact is visual and to  
3 tribal values.

4 As a corollary, I've worked with the tribes in  
5 Grand Canyon for over 16 years. As you can appreciate,  
6 the Grand Canyon is a tribal landscape identified as a  
7 traditional cultural property to many tribes. We are  
8 changing how we work with the tribes based on  
9 consultations on activities performed in Grand Canyon.  
10 The message we hear from those tribes is to consult prior  
11 to even developing any activities and to let them drive  
12 the bus. As a result, we are working in that direction in  
13 Grand Canyon.

14 I see this as similar to what the Commissioner  
15 advised us and believe staff should let the tribes at the  
16 very least assist in developing the activities, not just  
17 commenting on an already developed activity. That was our  
18 message from the tribes associated with Grand Canyon.

19 For the Palen project we believe to mitigate the  
20 effects to the visual values of the tribes, the tribes  
21 should decide how and which project should be completed.  
22 We feel that staff is not very responsive to the guidance  
23 from the committee since none of the state interest  
24 activities that were proposed for CUL-1 from the FSA have  
25 changed. I'd like to place this in context.



1           The state's interests are not protected by CUL-1  
2 alone, but are also protected and addressed in the other  
3 cultural conditions, including monitoring and mitigation  
4 for prehistoric and historic sites. The costs for these  
5 are significant and unknown at this time and are already  
6 being borne by the project.

7           Taking another look at CUL-1, it appeared staff  
8 tried to address the Commissioner's concerns in three  
9 ways. One was by adding a percentage onto each CUL-1A  
10 activity for tribal involvement, two was by creating  
11 CUL-1B, and three was by increasing funding levels.

12           We did not see that staff rewrote CUL-1A to  
13 address the comment that CUL-1 was "too oriented to the  
14 state interests and not as well suited to the Native  
15 American concerns." It appears that staff sees CUL-1A as  
16 the state's interests and CUL-1B as the tribal interests.  
17 Staff did not consider rewriting or reducing CUL-1A to  
18 better address the tribal voice in developing the  
19 mitigation proposal. Staff's funding for CUL-1A has  
20 increased from the original CUL-1 and is still more than  
21 CUL-1B, which is supposed to be representing the tribal  
22 interests. Since the nexus for mitigation is the visual  
23 impacts for tribal values, we don't agree with this  
24 approach.

25           Addressing the first, there were cost allowances

1 added to each activity for tribal involvement based on the  
2 money allocated. These varied from zero percent to forty  
3 percent as an add-on for each total budget, but with no  
4 explanation or justification for these amounts. It is not  
5 clear that this was discussed with the tribes and if these  
6 percentages actually included what the tribes would like  
7 to do to participate. We did not see that this was  
8 responsive since the Commissioners wanted the tribes to  
9 have "a significant voice in developing the mitigation  
10 proposal."

11 The description of the activities and the base  
12 costs have not changed significantly from the previous  
13 version, which would indicate no tribal voice. It is not  
14 clear if the consultation that staff had with CRIT and the  
15 concerned tribes discussed these activities and how the  
16 tribes would be involved. It would seem that staff only  
17 discussed CUL-1B activities with the tribes.

18 The Commissioner had recommended that CRIT and  
19 other interested tribes work with the staff and the  
20 applicant to develop these, not just CUL-1B. Staff  
21 reported that they consulted with all tribes, five  
22 responded, but we are unclear on the tribal support for  
23 the way all of the activities are designed and  
24 implemented, so we are not clear if these percentages and  
25 the level and type of involvement that staff's CUL-1A

1 activities was done through tribal consultation and was it  
2 approved by the tribes.

3 The second method was to add CUL-1B to address  
4 mitigation for tribal interests. By creating CUL-1B it  
5 separated the state's interests from the tribal interests  
6 whereby the state's interests are CUL-1A and the tribal  
7 interests are CUL-1B. CUL-1B still includes the tribal  
8 working group concept that is not working at Genesis.

9 We heard from the tribes that are part of the  
10 Genesis tribal working group that they are not pleased  
11 with how it's working. Even so, staff also made a similar  
12 recommendation that included a final say by the CPM and  
13 includes funding similar to Genesis. As a point, the  
14 funding levels for mitigation for Genesis were part of a  
15 settlement agreement established after artifacts were  
16 destroyed during construction, so it is not clear staff  
17 consulted with CRIT and the other interested tribes on the  
18 development of the activities in CUL-1B. And as an aside,  
19 at Palen we will be avoiding as many sites as possible  
20 within the footprint and we have significantly less dirt  
21 removal than Genesis.

22 Staff's argument for justifying the nexus  
23 between impact and mitigation seemed to have more focus on  
24 state's interests rather than the Native American concerns  
25 that were discussed by the Commissioner. We believe the

1 tribes have a stronger voice for the nexus for mitigation  
2 and should be more involved in the development of all of  
3 the activities including everything in CUL-1A.

4           Based on what I've described, we took another  
5 look at the proposed mitigation, trying to use the  
6 Commissioner's guidance to have the tribes develop the  
7 mitigation. As a result, we recommend the tribes help  
8 develop the activities described in CUL-1 and determine,  
9 one, whether they support the mitigation strategies; two,  
10 how they might change them; and three, how they would be  
11 involved in developing and completing the work.

12           The committee had asked for an evaluation of the  
13 nexus with impact and mitigation, so we also looked at the  
14 proposed six activities and whether or not they focused on  
15 tribal or state's interests. We think looking at which  
16 activities are state's or tribal interests is important  
17 due to the direction provided by the committee.

18           First activity, Class II surveys. Since the  
19 Class II surveys are focused on finding traditional  
20 cultural properties or sites with resources of interest to  
21 the tribes, we believe the tribes may be supportive of  
22 this activity. However, we propose the tribes develop the  
23 survey strategy and locations for the field inventory.  
24 They may have information that would be helpful in  
25 focusing on areas about which they have higher interest or

1 knowledge. They would also decide their level of  
2 involvement in the field survey, interpretation and  
3 documentation. By retaining this activity with the  
4 emphasis on tribal direction and participation, it is  
5 still addressing state's interests but placing in context  
6 the PRGTL landscape of the tribal, cultural and spiritual  
7 values.

8           Activity two, the Paleo environmental study.  
9 After conducting some additional research of our own, we  
10 removed this activity for three reasons. One, we don't  
11 see a nexus to visual impacts. Two, there are 324 packrat  
12 midden samples already collected and reported on within  
13 approximately 100 mile radius of the project, so the data  
14 is available if staff wanted to review and interpret that  
15 already published data. And three, we don't see this as  
16 meeting tribal interests, but meeting archeologist and  
17 scientist interest. The packrat midden information is  
18 widely available to the public in online databases which  
19 also provide summaries.

20           Third activity, petroglyph study. We believe  
21 the tribes may be interested in additional studies on  
22 petroglyph sites in the Chuckwalla Valley. However, we  
23 think they should direct which sites are included, the  
24 methods for documentation and participation in the  
25 documentation interpretation. By retaining this activity

1 with the emphasis on tribal direction it is still  
2 addressing state's interest as well as the tribal  
3 interest.

4           Activity four, the PTNCL context and field  
5 manual revision. We're not convinced that this has a  
6 nexus to the impacts on visual and mitigation. We just  
7 don't see this as a mitigation measure for tribal values.  
8 The revision of an existing context as well as the  
9 revision of an existing field manual is more of a tool for  
10 archeologists in interpreting and recording archeological  
11 sites.

12           Activity five, public outreach. Since Genesis  
13 had problems implementing this piece, we thought if it was  
14 kept it should have more focus on providing information  
15 for teaching tribal children about their heritage.  
16 Otherwise, information for the public is more of a state  
17 interest. However, a simpler way to accomplish this might  
18 be to complete public information education information  
19 perhaps as brochures or signage resulting from the  
20 archeological inventories and the petroglyph study.  
21 Again, this would be at the guidance of the tribes since  
22 some of the information the tribes may not want to broadly  
23 disburse to the public. By doing it this way it covers  
24 both state's interests and tribal interests.

25           Number six, the last activity, treatment for

1 cumulative effects. This is a program similar to the  
2 PTNCL context study whereby it would fund documenting the  
3 PRGTL within the Chuckwalla Valley. However, there are no  
4 funds for tribal involvement and no discussion of how this  
5 activity could be accomplished.

6 One final activity we propose based on comments  
7 provided by CRIT Exhibit 8035 from David Harper is adding  
8 an activity to document the importance of birds and  
9 insects to the tribal communities. The tribes would  
10 develop and lead this project.

11 Regarding CUL-1B, we did propose to combine  
12 CUL-1A and CUL-1B to make it clear these are all  
13 activities supported by and designed by the tribes, not  
14 separate for state's interests versus tribal interests.  
15 Remember, the project's impact is visual to tribal values.  
16 CUL-1B's activity for the tribal advisory group was  
17 retained by staff even though the tribes had issues with  
18 this concept. Staff admitted they could not come up with  
19 a feasible alternative. Staff didn't mischaracterize our  
20 approach in their PowerPoint. We are not recommending to  
21 use the tribal advisory group to make all decisions. We  
22 would like the tribes to decide the method for them to  
23 make the decision for activity participation and  
24 development. We are concerned that if the advisory group  
25 is not supported by the tribes, why then did the staff

1 still propose it?

2           Related to this and perhaps to help with the  
3 tribal concern for oversight of this group, should it be  
4 approved, we are proposing a revision to Exhibit 1172  
5 under tribal, cultural and spiritual activities. In the  
6 last sentence we would remove the word "approved" and add  
7 "using the PGRTL account." That sentence would then read,  
8 "Specific activities shall be implemented by the CPM using  
9 the PGRTL account."

10           In summary, the state had an obligation under  
11 CEQA to identify cultural impacts from this project. Your  
12 staff identified this visual impact that will affect the  
13 cultural interests of the tribes. The state's interest is  
14 protected to the identification of this impact as well as  
15 supporting the mitigation that the tribes direct. We  
16 believe that further tribal consultation with all  
17 interested tribes is necessary to reevaluate and redevelop  
18 all of the CUL-1 activities with tribal guidance. This  
19 would meet the request of the committee to "bring the  
20 condition to be open and responsive to tribes post  
21 certification." In our opinion, all the funding should go  
22 to the tribes to mitigate the visual impacts to their view  
23 shed. This may or may not include the activities that the  
24 staff listed. We believe some of those activities are of  
25 interest to the tribes, but it really should be up to the



1 tribes.

2 Thank you.

3 HEARING OFFICER CELLI: Thank you, Ms. Barger.  
4 Was there anything further from any of the Petitioner's  
5 witnesses? Okay, they're indicating no.

6 MR. GALATI: No, they're available for  
7 questions, though.

8 HEARING OFFICER CELLI: Thank you.

9 Staff's witnesses, did any of you have an  
10 opening statement you wish to make?

11 MR. GATES: This is Thomas Gates with the  
12 California Energy Commission. The three of us that are  
13 expert witnesses on behalf of staff would like to make our  
14 opening statement via the PowerPoint and the three of us  
15 will tag team through this PowerPoint.

16 HEARING OFFICER CELLI: Thank you.

17 MR. GATES: We want to start by, first of all,  
18 acknowledging that some of the photographs that are in our  
19 PowerPoint actually came from Basin and Range Watch and  
20 was entered in prior during the previous hearing as  
21 evidence, and we want to thank them for the use of those  
22 photographs.

23 In starting out, we think that most of our case  
24 has been well made in our ethnographic report, our final  
25 staff assessment, and then going forward into the hearings

1 that were previously held and in our supplemental  
2 testimony. And we really feel that that case, the  
3 groundwork of that has been made previously.

4 Next slide please.

5 I don't want to belabor all of the things on  
6 this map that you're now looking at. This is the  
7 Chuckwalla Valley portion of the Pacific to Rio Grand  
8 trail landscape. There are a lot of components to it. We  
9 put it here simply to remind everyone what we are  
10 partially trying to identify and assess effects to and  
11 mitigate. It is a map available electronically should we  
12 get into discussion and have questions about where studies  
13 may or may not happen. We thought that it might be useful  
14 simply to have this available during this proceeding.

15 Next slide please.

16 We also felt that in setting the pace here would  
17 like to remind all of us where we were after the hearing  
18 and how that was characterized in the presiding member's  
19 preliminary decision. I'll read from my notes here.

20 We identified that there indeed was a landscape  
21 and that it would have profound and irreparably -- the  
22 project as proposed would profoundly and irreparably  
23 degrade the ability to convey historical significance.  
24 Later on, my colleague Michael McGuirt will talk about  
25 this historic significance. We think that that is a

1 critical thing to understand.

2 We also were at that time and I think it's safe  
3 to say that the PMPD fairly characterized that we were at  
4 a loss for how to fully mitigate for this landscape, and  
5 to do that to less than significant level. We still  
6 maintain that position. And again, that is clarified in  
7 the third quote on that page.

8 Next slide please.

9 So moving forward and starting to really set the  
10 stage for our discussions today, we think that the  
11 committee identified that there were two interests and we  
12 think that they were correct in that staff focused more on  
13 one of the interests and less on the second interests. We  
14 have reasons why that played out. We are prepared to  
15 bring solutions forward and we think that our revisions to  
16 CUL-1 do that, and we'd like to discuss that further as we  
17 get into this opening statement and perhaps the  
18 discussions that ensue.

19 We also acknowledge as the last quote on this  
20 page that, again, our position in previous iterations of  
21 CUL-1 were more oriented towards the state interests, not  
22 enough towards the Native American interests in the  
23 impacts to this landscape that would perhaps censure or  
24 lessen their ability to perpetuate their culture.

25 So one thing I wanted to simply underscore as we

1 go forward is that these two interests, state interest,  
2 Native American interest, I think in other places called  
3 cultural and spiritual interest, going forward staff has  
4 chose two words to plainly characterize those two  
5 interests. One the one hand, we would talk about the  
6 state interest or a historic preservation interest as  
7 simply the place. And as we talk to particularly in  
8 CUL-1B the interests that Native Americans have towards  
9 that landscape and their ability, or inability should the  
10 landscape be impacted, to perpetuate their culture as a  
11 people interest. So we just characterize these two  
12 interests as place, that is related to CUL-1A, and people,  
13 CUL-1B, and when we say people we're particularly focusing  
14 on Native American cultures affiliated to the Chuckwalla  
15 Valley. But we do think that what we have brought forward  
16 in the revised CUL-1 answers some of the advice that came  
17 out of the January 7th committee conference.

18           What I would want to do, acknowledging that we  
19 are trying to move forward and broaden our understanding  
20 of CUL-1B and those, we wanted to -- go to the next slide  
21 please. We wanted to give an opportunity here for our  
22 Native American expert witness Lorey Cachora to speak to  
23 some of these impacts on the people side of the impact and  
24 potential mitigation.

25           MR. CACHORA: Thank you, Tom. As I get into the

1 slide, what I would like to say is that this is one tribe.  
2 You heard from the past that we are here mainly to  
3 educate. I know that there's such word as mitigation and  
4 other technical words that we are aware of, and we also  
5 are aware that this is a major project and it's really  
6 needed, we understand that. It's mandated by the  
7 president, we know that. But what I'm here to tell you is  
8 that down south where I'm from we are Quechan people, and  
9 in some ways we always have found a way to manage what's  
10 being discussed as deep values of tribal history that is  
11 left by our ancestors. But today a good percentage of my  
12 people, traditional people at a community level, they  
13 gather at their leisure to discuss future directions of  
14 their tribal culture on this enclosed property. And I can  
15 safely say today that there are organizations led by  
16 persons with a little knowledge of tribal culture and  
17 their limited status of history, but they do [0:26:58  
18 through memories to draw a vision of a map where their  
19 ancestors were once placed, and that is from the world  
20 that they live. And we have known some of those years,  
21 like 1,000 years, 5,000 years, 10,000 years; 40,000 years,  
22 that's a little bit outrageous, but it is there.

23 Quechan people have given testimonies of these  
24 histories before federal, state, counties, of our strong  
25 traditions and have dedicated their activities and

1 projects obtaining a greater future for the Quechan  
2 people. They believe in the future with high principals  
3 derived from the values, beliefs of the Quechan ancestors  
4 who left significant cultural values in the desert that  
5 you are now discussing.

6 Today, American students, adults don't know  
7 about tribal people. It is not their fault. This we  
8 know. It is one of the many indicators that this country,  
9 institution did not inform people about tribes of either  
10 present or past. Tribal people are non-history, which  
11 also makes them non-news. Quechan history is not taught  
12 in schools, only presentations about Quechan people.  
13 Quechan tradition values are not a part of American  
14 conscience or present day activities, and therefore we  
15 struggle. We are rarely reported in the newspapers or  
16 television, and now Internet, but we know the reasons.  
17 They are part of guilt. It's not considered good  
18 programming for an audience to see what American  
19 institutions have systematically avoided discussing.  
20 There is the "what's in it for me?" factor. American in  
21 general do not see how anything to do with the Native  
22 American has anything to do with them.

23 Fairness is degrading rapidly. People are now  
24 trained to look out for number one that there has been a  
25 near total loss of truism. And we know that it's because

1 of the speedy world that we live in today where they fail  
2 to identify such people as the Quechan people.

3           So in the last few years tribal elders  
4 volunteers in land use department have become advocates in  
5 the tribal culture to correct the mistakes non-Indians  
6 make and their scientific studies of locations, tools,  
7 tribal history and history, historic times of our  
8 ancestors.

9           So the new project that we understand to be a  
10 great assistance to humanity, but that's swell for  
11 renewable energy. But we continue to speak renewable  
12 energy, of its simplification, but overlook many other  
13 (non-English word) of tribal ancestors, natures and wild  
14 land and traditionary evidence that have been instrumental  
15 to our achievement as a tribal nation.

16           We cannot accept this swell and rise high above.  
17 We do not believe that the (non-English word) was forever  
18 fixed since we do not find wisdom, foresight, sense of  
19 justice exhibited by the presenters, particularly  
20 (non-English word). To the contrary, the government they  
21 devised was defective from the start, requiring several  
22 amendments to documents and momentous environmental  
23 transformation to attain the system of written policies,  
24 regulations and agreement, which we also feel that in  
25 today as we look for renewable energy, some of these

1 regulations we feel are obsolete.

2           Quechan people, their history is a rich one and  
3 stems from the land that was once a paradise, abundance in  
4 its environment. This abundance, however, did not lead to  
5 the erection of edification to glorify or idol. Rather,  
6 Quechan people developed rich intellectual metaphysical  
7 world aware of the galaxies. This will be very different  
8 for you to understand the constellation. It's not just  
9 that we're aware of the life cycle of the nature to the  
10 animal, smallest birds and insects. Each identity was  
11 valued in its own right. This is a common history among  
12 Quechan people. This was what the beginning of learning  
13 of the national law and today it has been denied to us due  
14 to the unacknowledged invasion, an invasion sanitized by  
15 words of discovery, settler of society, colonization, and  
16 now mitigation.

17           We are here today to continue with these words.  
18 At the very beginning of this I was surprised,  
19 embarrassed, dismayed, all at once at the attitude of some  
20 professionals that I should not be part of the hearing.  
21 That made me feel like an accomplice (inaudible). I took  
22 this challenge to protect an important tribal values, yet  
23 this is not unusual of their feeling against Native  
24 American. These are the basic views of Native American as  
25 expressed daily. I have several examples I could tell you



1 but that would be irrelevant.

2           So this is how we see the project. This is how  
3 we feel about the project. So in our ways how we  
4 determine things that you see up here, the rattlesnake,  
5 the plant, the lizard, and to explain what is before me,  
6 that it is we also call it indigenous jurisprudence,  
7 (non-English word) the land is a source of law, and this  
8 is why. The plants, animals, the birds are important to  
9 us. The beginning of the creation, the message delivered  
10 to the spiritual people, environment and ecology was the  
11 relationship and connection. The Creator directed all  
12 spiritual beings to keep relationship through dreams,  
13 songs and omen that you hear so often. From then on they  
14 played a active role in the relation for generations and  
15 generations until spirits became humans and continued to  
16 obey the directive given by God, the Creator, up to  
17 present day.

18           For recognition purpose he divided each species  
19 that you see here into four areas, the plants, animals,  
20 the birds and the insects. Now from American science we  
21 know that plants do not always grow random from the lower  
22 elevation to higher elevation, and any time you go on an  
23 incline you will see the difference of the plants at  
24 different elevations.

25           Animals also survive at certain elevations and

1 it becomes difficult for all species to survive at certain  
2 elevation. This is according to American history. But  
3 for us the tribal signs that explains that this is a  
4 different way to sustain life, species would dwell in  
5 certain parts of an area.

6 At the lower range such as the corridor that we  
7 are talking about today, the pattern for the lower  
8 elevation is the same, although some of the plants  
9 dominate an area, but the environment, the ecology, we  
10 recognize the division of the created species. Therefore,  
11 we can pretty much tell what type of an area that we are  
12 either approaching or arrived at, and this is how we  
13 determine specific location. Very insightful for us.

14 I'm only here again to tell you that to hear and  
15 to educate why this area is important to us and how I'm  
16 available today. I challenge you to ask me any type of  
17 questions that you want to know. So that's basically why  
18 I am here today. Thank you.

19 HEARING OFFICER CELLI: Thank you. Is there  
20 more, Mr. McGuirt?

21 MR. GATES: Yes, sir.

22 HEARING OFFICER CELLI: Okay, go ahead.

23 MR. MCGUIRT: Next slide please. I'm going to  
24 speak for a moment about the regulatory context for CUL-1.

25 CUL-1 in a nutshell is about balance. It's

1 about working toward balance and mitigating for both the  
2 state's regulatory obligations as they relate to historic  
3 preservation and to the tribes. It's not a choice of one  
4 or the other, it's both.

5           There's been a lot of discussion throughout the  
6 consideration of this amendment about the nexus between  
7 the amended project's potential effects and the mitigation  
8 measures set out in CUL-1. I would like to briefly recap  
9 the regulatory context for CUL-1 to help clarify the  
10 degree to which CUL-1 was originally able to satisfy the  
11 Energy Commission's historic preservation obligations  
12 under CEQA and to clarify further how staff revised CUL-1  
13 to address the concerns of the committee.

14           Under CEQA the Energy Commission is obligated to  
15 identify significant cultural resources on which a  
16 proposed project may have significant effects, and where  
17 significant effects to significant cultural resources may  
18 occur, the Commission is also obligated to devise measures  
19 to avoid, reduce or in some other way mitigate those  
20 significant effects.

21           The PMPD adopts staff's conclusions in the Final  
22 Staff Assessment, the FSA, that there are no apparent  
23 means to either avoid or reduce the amended project's  
24 visual effects on the entire landscape. Since the  
25 avoidance or reduction of the amended project's visual

1 effects on the Chuckwalla Valley portion of the Pacific to  
2 Rio Grand Trails landscape, or PRGTL, appears to be  
3 infeasible, staff developed a suite of measure the goal of  
4 which is to partially compensate the public for the loss  
5 of particular values which make the landscape historically  
6 significant. This compensatory goal is the nexus between  
7 the amended project's effects and the measures in CUL-1.

8           Unlike mitigation measures designed to prevent  
9 or reduce an effect, measures which implicitly have a  
10 direct nexus to the assessed effect, compensatory measures  
11 often include a much broader range of mitigation options.  
12 Staff developed the original version of CUL-1 in the FSA  
13 as compensatory mitigation for the amended project's  
14 potential to irreparably degrade particular associative,  
15 artistic and information values in the landscape. The  
16 committee referred to these values as being the state's  
17 interests. The state's interests in the original CUL-1  
18 are parsed out in this slide before you relative to  
19 particular values that the state is required to consider  
20 under CEQA. The California Register of Historical  
21 Resources defines these values.

22           CUL-1 as originally written provides partial  
23 mitigation for the public's loss of associative values,  
24 artistic values and information values under California  
25 Register criteria 1, 3 and 4 respectively. Staff did not

1 recommend the Chuckwalla Valley portion of PRGTL to be  
2 eligible for listing on the California Register under  
3 criterion 2.

4 CUL-1 originally sought to accomplish mitigation  
5 through a suite of field investigations which would be the  
6 basis of efforts to describe and interpret PRGTL for the  
7 public, to develop public outreach materials and to  
8 support ongoing work to conserve the material remains of  
9 the landscape. Please note that these measures are  
10 mitigations to the amended project's effects on historical  
11 resources, on the landscape as a whole and the physical  
12 elements within it, on the places.

13 These measures were never intended to mitigate  
14 for the amended project's effects on people. Such effects  
15 are outside the purview of a cultural resources analysis  
16 under CEQA. Nonetheless, the committee asked the staff,  
17 taking interests and concerns of Native Americans into  
18 account. Staff's subsequent revisions to CUL-1 are  
19 intended to address the committee's direction.

20 Next slide please.

21 To reflect the distinction between measures  
22 designed to mitigate for the amended project's effects on  
23 places and on people, staff split CUL-1 into parts A and  
24 B. CUL-1A represents compensatory mitigation under CEQA  
25 for the amended project's effects on the landscape and the

1 elements which compose the landscape, on the places.

2 CUL-1B represents compensatory mitigation for  
3 the amended project's effects on the tribes with ancestral  
4 ties to the Chuckwalla Valley portion of PRGTL, for the  
5 project's effects on people.

6 The CUL-1A side includes the field  
7 investigations, public outreach measures, resource  
8 management support and cumulative effects mitigation from  
9 the original CUL-1 in the FSA, and includes additional  
10 budget line items to support program management and the  
11 incorporation of tribal input into the development and  
12 execution of these tasks.

13 On the CUL-1B side --

14 MR. GATES: I'd like to point out that on CUL-1B  
15 that there two line items. I want to specifically point  
16 out that the first line item which addresses the  
17 facilitation, the management of a proposed advisory group,  
18 that that perhaps should not be counted as mitigation  
19 towards tribes because it is more of a business thing. It  
20 would be the cost to facilitate, the cost for travel and  
21 the things to just simply allow that advisory group to  
22 operate. So really when we're looking at 1B it's  
23 important to differentiate those two costs and so that's  
24 why they show up on two different lines.

25 I think another important point to bring up on

1 this slide is that the \$512,000 that is up in CUL-1A is  
2 not intended to mitigate for the loss that tribes perhaps  
3 would have from this landscape being impacted. That  
4 roughly slightly more than half a million dollars, I would  
5 characterize as integrating tribes into those studies, and  
6 our condition one is pretty specific for the design and  
7 the execution of those studies to make those studies  
8 simply more successful, to make them more valid.

9 I think Mr. Cachora in his opening statement  
10 addressed the need for educating the broader public on  
11 Native American values. And if part of the vehicle to do  
12 that are in the studies and the presentation of those  
13 results of those studies to the public, we want those  
14 studies to reflect tribal values, but we should not then  
15 slip to thinking that that half million dollars is to  
16 compensate tribes for their loss. Maybe indirectly tribes  
17 would be compensated by having the public better educated  
18 over the long run, but we don't think that the issues that  
19 Mr. Cachora has brought up can be solved in just one  
20 project. He's bringing up an issue of historic  
21 proportions over probably a couple centuries of the  
22 history of the United States and Native Americans  
23 coexisting within similar boundaries. But it is a start.

24 Next slide please.

25 The next slide, we are trying to provide the

1 committee with the various positions that are in front of  
2 you. We hope we've done a good job of that. We recognize  
3 some of the recent, well, some of the other parties'  
4 submissions into the record that they feel that this does  
5 not characterize some of their positions accurately. I'm  
6 not going to go into those details unless that is brought  
7 up during discussion.

8 We generally think that these stand for  
9 themselves. I think we've addressed most of these. We  
10 provide these simply for clarification and also for the  
11 committee should they have also questions of us after  
12 discussion, this might be a basis for asking those  
13 questions.

14 So at that point, I'm going to dispense with --  
15 Garret, if you could please just hit the next slide, and  
16 then the next one.

17 So there are three areas or three slides where  
18 we're trying to characterize these differences of  
19 position. I'll simply point out that they are there for  
20 you to take a look at if you want to get into that. And  
21 what I would like to do now is move towards closing our  
22 opening statement by handing this back over to  
23 Mr. Cachora.

24 MS. CLARK: Can I just voice an objection  
25 quickly? I just want to make sure that the Commission is



1 aware we filed a request for clarification of this slide.  
2 If you can go back one.

3 HEARING OFFICER CELLI: Go back one slide,  
4 please.

5 MS. CLARK: Thank you. The middle column in  
6 particular that summarizes CRIT's position that we agree  
7 with the CUL-1A and CUL-1B amounts is incorrect. CRIT has  
8 never vocalized that position and I just want to make sure  
9 that that objection is on the record.

10 HEARING OFFICER CELLI: Sustained.

11 MR. GATES: Next slide please.

12 MR. CACHORA: [1:44:47 proof to audio]

13 In closing, all I'm saying is that sometimes we  
14 are known as Aborigine people, but Quechan people that we  
15 have existed here from the beginning. And, as you've  
16 heard, that it took centuries before America corrected  
17 themselves to become better citizens for those who were  
18 already here. And so along with that, to make it short,  
19 the invention technologies, although it did take several  
20 years, but we still see problems of some of the new ideas,  
21 inventions.

22 But what I wanted to really cover here is that  
23 when I talk about people, the ground, the earth,  
24 everything, that it's similar to stakeholders, how we feel  
25 that's what we have also with our tribal values and our

1 culture and the property before American became  
2 (non-English word) land acquisition.

3           But either way, like I said, we shared songs,  
4 and today we still do, during funerals, celebrations. I  
5 lost my train of thought here, but as part of the river  
6 tribes, we go. What it is is that we do have funerals  
7 that people of other reservations come into our area.  
8 They bring with them their sons or their feelings, their  
9 traditional ways that they share with the group, and that  
10 way we have this common thing that we call shareholders in  
11 history. We are not separate as science thinks we are.  
12 We do have a connection in that way. It's continuous no  
13 matter where we're at, what tribes, we recognize each  
14 other. We do the same, we go up and we share our  
15 traditional values with them, during crisis, during  
16 celebration.

17           So this is why we say it's similar to a  
18 shareholder where we have something that was given to us  
19 in the very beginning, a very powerful thing that we are  
20 equipped with as a Quechan people. And this is why we say  
21 the things that we do when something major such as this  
22 comes along, and we try to do that because it is what you  
23 know also as a word common bond, the connection. That  
24 goes beyond your thinking. It goes beyond the science  
25 thinking in that part that we haven't been able to talk

1 about, but yet this what makes us who we are as a native  
2 people, is that what's behind that.

3           And the corridor that you're talking about here  
4 is a part of that. And if you're a scientific person and  
5 you're in that position, it is your responsibility, I  
6 think, to go back and look back on the reports from your  
7 previous anthropologists, your studies and so on, books,  
8 and be able to educate yourself in this way to see why we  
9 say these things. And from the impression that I received  
10 up to now is that you haven't done so, so there's always  
11 that question what are you talking about? But it was you  
12 that wrote those books, it's in place. If you take that  
13 and have a little understanding and we can do the rest of  
14 the explanation to that, and that's what I call working  
15 together to come to a place like this to make that  
16 decision. There are other places that can be utilized,  
17 but again, in historical time this happened to be one of  
18 those and you've selected that and now you're up against  
19 what you've seen here.

20           So it is that connection that makes us who we  
21 are. And I don't speak from just the words that comes to  
22 me, but it's also something that I've learned growing up  
23 way back with the numbers I just read long ago. This is a  
24 continuous education for me up to now, and I believe that  
25 I am the last of the person that can hold on to my

1 culture. There are others that are coming. There's  
2 (non-English word), but yet we are being oppressed by  
3 what's happening here with this modern technology, so it  
4 is up to us, I know, to come up and find a solution to  
5 this. But all I'm saying is that you have to start  
6 somewhere and to start listening to us.

7 Thank you.

8 HEARING OFFICER CELLI: Thank you, Mr. Cachora.  
9 Anything further from staff?

10 MR. GATES: Not at this time.

11 HEARING OFFICER CELLI: Okay. Ms. Barrera or  
12 Mr. Harper, did either of you wish to make a statement at  
13 this time?

14 MR. HARPER: Thank you. My name's Dave Harper.  
15 I'm a member of the Colorado River Indian Tribes. I've  
16 been the traditional spokesman for the Mojave elders  
17 committee for the past approximately 25 years.

18 I just want to say I appreciate Mr. Cachora's  
19 words. I strongly agree with him on his position.

20 I want to say that welcome to the Colorado River  
21 Indian Tribes. Just five miles down the road is where our  
22 reservation begins. And in this area here close to McCoy  
23 project is where my parents, my mother's father cowboys  
24 and has cattle here, and so we have direct link to this  
25 area and to this land.

1           To the south of us there was a woman by the name  
2 of Than Anu, and she held over our land and our  
3 reservation, and in the early 1900's. She was well  
4 respected and an elder.

5           This area is Aboriginal land to the Mojave  
6 people. Now I want to make sure you understand this. The  
7 Mojave people and the Quechan people are sister cousins,  
8 tightly bound since the beginning of time. That's why I  
9 would never disagree with Mr. Cachora, because his  
10 perspective is my perspective. What he says is what I  
11 believe. We will not be separated by organization or by  
12 state or by federal government because we have that  
13 sisterly tie together from (non-English word) where we  
14 were created and we came out of that mountain up above  
15 Laughlin where our people were created from, that's where  
16 we Quechan and Mojaves came out of that mountain. And  
17 that's where the same creator (non-English word) are  
18 cremated and take care of our people for the next world  
19 and spirit world. So we know that in the end when you are  
20 all gone, we'll still be here amongst us, and we'll just  
21 band together. Because I can tell you stories of Quechan  
22 and Mojaves fighting \*, fighting other native tribes in  
23 California to sustain, not to fight out of anger but to  
24 sustain our culture and our viability of who we are and  
25 where we come from and to protect our people and our land.

1           So today we say we're in spiritual warfare. We  
2 are here because we have to protect our landscape. This  
3 is Aboriginal territory of Mojave people. Three thousand  
4 artifacts lay in San Diego, three thousand. We do not  
5 want any more of our artifacts to lie in somewhere when  
6 they should be home. Each and every time when we've said  
7 we want our artifacts back \* to the Palen project.

8           And the question I have is when was this  
9 mitigated, when was this stuff not talked about was being  
10 presented today to our people? Why hasn't the CEC come to  
11 our reservation, talked to our elders, talked to our  
12 people and ask what is it you want? How can we best  
13 preserve your culture and your landscape? Not once do I  
14 know have they come to our reservation to talk about that  
15 specifically.

16           In fact, we can even say your own CEC committee,  
17 we as a tribe and you as a committee, we have a very long  
18 large issue in regards to consultation. Tribe says come  
19 to the table. Sit down, let's talk about it, let's see  
20 what we can do, let's mitigate, let's talk about what are  
21 the things we're able to do. But your Commission can't  
22 come to the tribe to talk about this issue.

23           So we have two perspectives that are creating  
24 cultural differences amongst us, and it keeps from these  
25 projects moving forward, because you have a procedural

1 process that does not enable you to come to the table to  
2 meet with us to hear our perspective. And I think that's  
3 one of the bigger issues, because we can say now today we  
4 have cultural differences with the California Commission.  
5 And it's true, it's a fact.

6           Someone said at the last meeting \$28 \*.  
7 \$512,000 while Palen's projected cost per year to make is  
8 six billion. Why would we accept finances of a one-time  
9 deal to alter, to destroy, to remove our traditional  
10 landscape? Why would we accept that? While Palen project  
11 stands to make six billion dollars a year. A year. That  
12 seems like that would be social injustice.

13           And yet who developed these financial amounts of  
14 monies? Who came to the table to meet with the tribe and  
15 asked us? It may have been the most ridiculous question  
16 in the world to us, but at least you come to us and say,  
17 hey, we're going to alter your landscape. What does that  
18 mean to you and a traditional perspective? What does that  
19 mean to you? Even though that would be the most  
20 ridiculous question to us, at least it was asked to us to  
21 our face.

22           But I kind of get a feeling, and I'm not sure,  
23 but even in this morning's discussion it took about two  
24 hours for CEC staff and the other people to work things  
25 out or at least come to a consensus of sitting at the same

1 table. But that happened here, but that never happened  
2 with us. Why?

3 Will get today a workshop so we can sit and ask  
4 the questions about the mitigation cost and the factors?  
5 Will we get to sit down and do the same process? Because  
6 we were never brought to the table, and so the big  
7 question we have to go back, back to our people and we  
8 have to go back and say this is the proposal from a  
9 traditional, from a contemporary, from an administrative  
10 point of view, it still has to be asked to the people  
11 because it is the people that all things belong to. No  
12 one can own anything because it belongs to the people.  
13 It's like owning air and this is my air; we can't do that,  
14 that's not our way. That's again our cultural differences  
15 that we have, because of our different perspectives.

16 In closing I just want to say, you know, these  
17 issues that I bring up are real and they're today.  
18 They're relived every day. We have to live with the McCoy  
19 project, we have to live with the Genesis project, we have  
20 to live with the \* project. We have the Palen project,  
21 the \* project.

22 You know, much of the discussion was about the  
23 effects. And the saying is you want to do something that  
24 keeps you from having a victim, right? To keep from  
25 having a victim. A victimless law to where things are



1 made safe, things where everybody agreed upon and nobody  
2 becomes a victim to that cause.

3 Right now at the beginning it was kind of  
4 backwards because we are the victim to start with, and it  
5 could all have been alleviated had the Commission come to  
6 the tribe, not create the numbers of what the perception  
7 is, because if I heard correctly in your own opening  
8 statement was we anticipate the tribe may or may not agree  
9 with it. So that tells you the tribe was never addressed.

10 And so in closing I want to say, you know, that  
11 I thank the people, I thank my Mojave elders for being  
12 here today to be supportive to us. I welcome you to our  
13 land. This is Aboriginal land of the Mojave people. And  
14 it is true that we are sister tribes of the Quechan people  
15 and that we are one, and that that's where we're at today.

16 Thank you.

17 HEARING OFFICER CELLI: Thank you.

18 Ms. Barrera, did you wish to make a comment as  
19 well, or a statement?

20 MS. BARRERA: Yes. Excuse me just a minute, but  
21 I want to say thank you for my elders that are here from  
22 CRIT. I apologize my back's to you and to my fellow  
23 council members, but also welcome to the rest of the river  
24 tribes that are here in this fight that we have for our  
25 lands and for what it means to us as our people and to the

1 Mojave people of this area. So excuse me for my back to  
2 you, I apologize.

3 And just as Mr. Harper said, I want to welcome  
4 you, welcome you to the land of the Mojave people, and I  
5 want to give you an overview of the Colorado River Indian  
6 Tribes.

7 Just as Mr. Harper stated, we are five miles  
8 located from here, within a boundary that was developed by  
9 non-Indians telling us this box we shall live within. But  
10 as native people we wandered this whole area.

11 I am a councilmember from the Colorado River  
12 Indian Tribes, but I'm not Mojave, I'm Chemehuevi. And  
13 CRIT makes up four tribes, Mojave, Chemehuevi, Hopi and  
14 Navajo, and as we're taught, four tribes living and  
15 working together for one cause, for our land and our  
16 people and our waters, our natural resources.

17 But yet we are all different. We're different  
18 in our traditional upbringings and the ways that we think  
19 and who we are. And I've been very fortunate that serving  
20 as a woman on our council, but also being allowed into the  
21 Mojave elders group to hear their concerns in regards to  
22 these solar projects and other projects that come up that  
23 impact traditional lands, not just within the boundaries  
24 of the Colorado River Indian tribes but outside the  
25 boundaries. And I've learned a lot. I've learned a lot

1 that I can pass on and pass on to others. But I brought a  
2 lot of that with me in the trainings that I had and what I  
3 was taught from my elders.

4 I'm the daughter of Fred and Ernestine Sharp, \*  
5 and Chemehuevi. My grandmother is Libby Scott and she is  
6 a direct descendent of Chief Tacopa, who is known as the  
7 peacemakers of the Chemehuevi people. And I was taught  
8 those ways, and I was taught it very strongly and learning  
9 the language and not learning any English until after  
10 coming over the mountains and then heading down to Parker  
11 where I was enrolled.

12 But we come here because of all of this and we  
13 talk about consultation. Obama's strive is to consult  
14 with tribes, but yet under these projects we consult at a  
15 later date, after the fact. After everything's been  
16 developed, after everything's been said, and then we come  
17 to the tribes. Or we close the door and we say we can't  
18 talk to you directly.

19 As Indian people we sit and we meet and we greet  
20 you, we break bread with you. However, but we hold those  
21 discussions and it's in regards to what's best for our  
22 people. And as a leader that's what I try to sustain for  
23 the people that I represent, is to bring their voice  
24 forward, to let you know that these things that are  
25 happening, you know, they're not.

1           You know, when we deal with individuals when it  
2 comes to solar projects and they talk about the desert and  
3 there's nothing that lives out here, that is not the word  
4 that you tell a Native American person. It's a living  
5 being. We're taught we are one, without the other we  
6 cannot exist. So it may be a desert to you, but to us  
7 everything lives in it, it serves a purpose. The creosol,  
8 medicine to us, sustaining us, tobacco to us, you know,  
9 all of that.

10           The animals. Turtles. They put up fences to  
11 teach a turtle not to go on a route that has been  
12 ingrained in them since time immemorial. And as  
13 traditional people those were used for medicines, they  
14 were used for food, they were used in our ceremonies, you  
15 know, so you can't teach them something that's already  
16 ingrained in them.

17           And just like with us. The physical part of  
18 this, the emotional part of it, the spiritual they talk  
19 about, you can't separate it. We sit here and talk about  
20 a cultural approach. It's very hard for me to break that  
21 down because that's not how I'm taught. I'm taught  
22 everything works together for a purpose.

23           So we talk about the consultation and the  
24 differences and that hinders what CRIT itself has put in  
25 place just as what the tribal working group with the

1 Genesis project. We're given minutes that say they were  
2 approved but yet we have no policies and procedures  
3 developed and no recognition that each individual tribe,  
4 not just CRIT itself but the 15 other participating, we  
5 have our own constitution, our own bylaws. We're not a  
6 voice as a councilperson of the full tribe, it takes a  
7 council action to stand forward.

8           So we took our action, we filed our notice with  
9 them. And let it be known that those were not actions  
10 taken by CRIT but they're the voice of individuals  
11 representing, because any action that's taken officially  
12 has to be acted upon by our tribal council, by our  
13 constitution by a majority vote. And that's not how  
14 things are being presented forward.

15           We're given an idea of a scholarship for \$20,000  
16 for four years. It's going to be regulated by somebody  
17 else. And talk about a slap to a tribe's face when we  
18 operate multi-million dollar grants and contracts, but yet  
19 we have to jump through an additional hoop when it would  
20 have been easier to give to the tribes a small amount of  
21 money for CRIT when we were looking at it, because we take  
22 care of our own. We totally fund wherever they want to go  
23 education-wise, but yet we were at that table discussing  
24 it.

25           It doesn't work. It doesn't work from the full

1 perspective because you're looking at the tribes but  
2 you're not recognizing we are a sovereign nation within  
3 this nation. And to sit and even to talk with state  
4 representatives, we've above that level as nations, but  
5 yet we're here before you because it's the lands of the  
6 people that's being impacted and it's a pristine desert  
7 landscape, living and breathing landscape that will be  
8 destroyed by these projects.

9           You know, along with that I just want to do a  
10 closing in a statement that was developed by the elders,  
11 but it comes from elders who have gone on before me, and I  
12 want to close with their words in the fight that they've  
13 done for us, and they're elders who have gone on, but yet  
14 we still live and abide by these words that they have  
15 spoken. In the words of our elders, Pete Homer, Senior,  
16 Jose Sharp and Herman D. Laffoon, Senior, who have gone  
17 before us.

18           When we were all young boys the cremation  
19 ceremonies would last several days and then the old people  
20 would tell us these things and talk to us that we would  
21 know how to live as Mojave. "This is your land," they  
22 said, "take care of it, as is the Mojave way. If you see  
23 cattle wandering, tell us. If you have problems, remember  
24 the right way to act. Ever mindful, be good farmers.  
25 Don't waste water." They also said, "We may have lost

1 some of the old traditions, but we still have the land."  
2 They also said, "We may have lost some of the land and you  
3 must take care of it. If you are not good stewards of the  
4 land, it will be taken from you." As Chief \* told us to  
5 our grandparents told us, today we are still here. Still  
6 strong and still guarding this land, which is our home.  
7 As protectors of the land, we express ourselves in utmost  
8 respect and ask you to listen with your hearts and deny  
9 the proposed project and its impacts.

10 Thank you.

11 HEARING OFFICER CELLI: Thank you. One moment.  
12 We'll stay on the record but I just want to just have a  
13 quick consultation.

14 (off-mike colloquy)

15 HEARING OFFICER CELLI: Thank you, everyone.

16 Mr. Figueroa, again we're in a situation as we  
17 were last time we had the evidentiary hearings where  
18 Californians for Renewable Energy did not come to the  
19 prehearing conference and supply any evidence to the other  
20 parties that you wanted to put in.

21 Now, we told parties that we didn't want them to  
22 come in with late filed evidence, and that is the whole  
23 reason we had the prehearing conference last Wednesday,  
24 and Californians for Renewable Energy did not show up. So  
25 before we rule on this we'd like to know what it is you

1 would like to present and how long do you think it would  
2 take?

3 MR. FIGUEROA: I'd like to present a PowerPoint  
4 maybe 20 minutes.

5 HEARING OFFICER CELLI: And what does it purport  
6 to show?

7 MR. FIGUEROA: Report show the sacred sites that  
8 are all around the Palen project there.

9 HEARING OFFICER CELLI: Okay. Any objection  
10 from staff?

11 MS. MARTIN: I don't have a serious objection, I  
12 just thought that we might have heard it before. I don't  
13 know, I'm not sure if you've made this same presentation  
14 before?

15 MR. FIGUEROA: Excuse me, a little louder.

16 MS. MARTIN: Sure. I have no objection to you  
17 making it. I was just not certain if this is the same  
18 presentation you made at the last evidentiary hearing?

19 MR. FIGUEROA: No, it's not the same.

20 MS. MARTIN: Okay.

21 MR. FIGUEROA: It's been amended a lot, because  
22 at first we didn't want to reveal all this, but now \*, so  
23 that's why we think it's very important that we continue  
24 now to add where the sites that be reported and include.

25 HEARING OFFICER CELLI: How many PowerPoint



1 slides do you have?

2 MR. FIGUEROA: Nineteen.

3 HEARING OFFICER CELLI: Okay. Any objection,  
4 Mr. Galati?

5 MR. GALATI: No.

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

8 MR. EMMERICH: No.

9 HEARING OFFICER CELLI: Colorado River Indian  
10 Tribes?

11 MS. CLARK: No objection.

12 HEARING OFFICER CELLI: Center for Biological  
13 Diversity?

14 MS. BELENKY: No objection.

15 HEARING OFFICER CELLI: Okay, then.

16 MR. FIGUEROA: Do I have to stand here or can I  
17 stand over there?

18 HEARING OFFICER CELLI: Wherever you like, just  
19 --

20 MR. FIGUEROA: So I could use this. You know  
21 what I mean?

22 HEARING OFFICER CELLI: Mr. Larimer, he wants to  
23 switch his own slides with the clicker.

24 MS. CLARK: No, he wants to use a pointer.

25 HEARING OFFICER CELLI: Oh, the pointer. Well,

1 the problem is that the committee is looking over here  
2 because we're looking at that screen, and everybody else  
3 is looking at this screen, so if you say "See where I'm  
4 pointing" we wouldn't see it over there, we'd see it on  
5 this.

6 If you want, you can sit over here,  
7 Mr. Figueroa. Actually, if you used your cursor on the  
8 computer, then it would be on both screens and everybody  
9 would see exactly what you're talking about.

10 I just want to make sure that there's a  
11 microphone there so that everything he says is going to go  
12 into the record.

13 MR. FIGUEROA: Well, I can talk louder if you  
14 want me to.

15 HEARING OFFICER CELLI: I want you to talk into  
16 a microphone so let's make this work.

17 Can we use that wireless microphone from the  
18 podium? He's nodding his head in the affirmative.

19 So, okay, Mr. Figueroa, we're going to give you  
20 this microphone. Please speak directly into it. He's got  
21 that microphone so let him use that mike.

22 MR. FIGUEROA: Good afternoon. Thank you very  
23 much, or I'm sorry that we didn't go to Sacramento. Our  
24 group down there in San Francisco was going to go but they  
25 didn't go.

1           So anyway, I just wanted to make sure that you  
2 understand the graveness of what Palen project is going to  
3 cost like some of our relations have already stated. This  
4 is just a PowerPoint where we can relate how the Palen  
5 project's associated with what is called Granite Peak  
6 (non-English word) that we have some acquaintances that  
7 still survived the Spanish Inquisition that we've been  
8 able to overlay them in the Colorado River areas.

9           This is Granite Peak, Tamoanchan the Tree of  
10 Life (non-English word). That's why my name is Alfredo  
11 but I'm El Tata. Tata represents the cosmos. Nana  
12 represents Mother Earth.

13           So here we have the eagle represents the cosmos,  
14 and the eagle, when it lands, it lands right here on top  
15 of what is called Granite Peak like I told you before.  
16 And all you got to do, don't believe me, just look up May  
17 the 15th, 2002 is when the lining up of the planets and it  
18 landed right there on top. (non-English word) called  
19 before Jack Rabbit Island where I live when I was born.

20           So all of this we have to assume, like our good  
21 friend Rory Cachora said, it's hard for any of us to  
22 understand what we have to say and we have, because our  
23 belief and we can prove. That's why I'm proving here,  
24 because we have a word that's called (non-English word),  
25 seek the roots of the truth, and that's why the

1 archeologists don't want to seek the roots of the truth  
2 here with the California Commission or the Bureau of Land  
3 Management. They don't because they say we didn't read  
4 this or we didn't learn this in college. My lands, go to  
5 the Colorado River, you'll find them, go ahead.

6           So here we have the big eagle, right there at  
7 the (non-English word) mountains, that is the eagle. Here  
8 is the eagle, eagle, eagle here, and that represents  
9 Granite Peak, and here's where the eagle lands, right  
10 there on Granite Peak.

11           And here we have the base of the Creator.  
12 Here's his nose, mouth, chin and head. But I'm seeing  
13 this from my house on Carlton Street where we live.

14           So that's it, that's why the eagle descends.  
15 This represents what the May the 15th, 2002, when the  
16 lining up of the planets landed right there on top of  
17 Granite Peak. These are facts, go ahead.

18           Now at the base is what we call Nahui-Ollin.  
19 People Mount, Ollin Mount, Eagle Mountain. That's why  
20 Eagle Mountain is called (non-English word) represents the  
21 Eagle Mountain. And right there (non-English word), and  
22 right here is the Palen project and right here is where it  
23 lines up straight with the Nahui-Ollin, which is the  
24 swastika. The swastika is the most recognized image there  
25 is in the world. That's why not all the other tribes all

1 over the world, they recognize it. And here the majority  
2 -- not the majority but a lot of the people used to have  
3 this as a tattoo in their forehead until Hitler came along  
4 and it was outlawed that you couldn't have the swastika as  
5 a tattoo.

6           So this is where it forms the four corners. The  
7 only corner that is made by humans is the (non-English  
8 word). And we need a lot of protection there. We need a  
9 lot, because we know that some of these people are just  
10 going and destroying like they're destroying over here,  
11 (non-English word) and (non-English word), which is ET.  
12 (non-English word) is a spirit that takes you to  
13 (non-English word). So this is it right here. Ollin  
14 Mount, Eagle Mountain, People Mountain and Ripley  
15 Intaglio. Palen Project.

16           So now we have the geoglyph. These are  
17 geoglyphs. Geoglyphs are the designs our creators travel  
18 on earth. That's why these are geoglyphs here in the  
19 Colorado River from Needles down to Rocky Point. And if  
20 you don't know where Rocky Point is, it's just around a  
21 hundred -- not even a hundred, 75 miles south of the  
22 Delta, that's where the geoglyphs are, from Needles down  
23 to Rocky Point. And we've been to these places, and  
24 they're just on the side of the Colorado River.

25           So this X represents the X over there of the

1 cosmos lands on earth, and this is right there where the  
2 McCoy and the (inaudible) projects are being built right  
3 now. We should be over there like we did with (inaudible)  
4 Valley and sat there for 118 days. That's where we should  
5 be right now, right over there before they destroy all  
6 this.

7           So here we have what is called (non-English  
8 word). Hey Frank, look here, here's the one you had. Oh,  
9 you've seen it. Thanks. See, this represents the  
10 descending of the cosmos to mother earth. This represents  
11 mother earth, this represents the descendent. And Frank  
12 had this to let you know that when it's the end of your  
13 time (non-English word). Now here it is, this is the  
14 petroglyph -- I'm sorry, the pictograph. This is a  
15 pictograph inside the case in Joshua Tree National Park.  
16 So you'd better watch out, Joshua Tree, because you're  
17 probably going to have to have a lot more guards out  
18 there, because this is it.

19           That's what we're doing now. Why? Because we  
20 have no alternative. You know, it seems like the whole  
21 world, especially the government of the United States, is  
22 turning against us. So here it is. Just read what it  
23 says there. And we can prove all this. I can take you  
24 right there. Go ahead.

25           So here we have this is the descending on this

1 here. We call it El Tosco, because this mountain right  
2 over here is called Texcatlipoca, and our relations call  
3 it (non-English word) or other names, but it's all related  
4 to the same creation story here in the Colorado River.

5           Here's when you're descending. We took that  
6 picture on the airplane, and it lines up straight with  
7 Granite Peak. And you don't believe me right now. You  
8 can go outside and you'll see Granite Peak right over in  
9 the northwest. Don't believe everything I say, I'm 80  
10 years old, but check the facts. Check the facts.

11           Like a guy named Dragnet, Joe Friday. Check the  
12 facts, ma'am. Check the facts. So there it is. And  
13 these are right there in the same place where the solar  
14 power McCoy and the (inaudible) solar power merge  
15 together. That's going to be destroyed if we don't stop  
16 it now.

17           Now here is the Codexes. These Codexes relate  
18 to what I'm saying right now of Granite Peak. Been there  
19 before we been born.

20           And this is the eye, the eye of (non-English  
21 word). He who has no name and has all the names.  
22 Everybody here, we're all part of it. Nobody's no big  
23 shot. No hot tamales around here. Everybody's the same,  
24 and he's keeping an eye on everybody right there.  
25 (non-English word) So this is our Codexes as best as we

1 can describe.

2 Now here's our other Codexes. This outlines the  
3 swastika. Now this Codexes were made before the coming of  
4 Cortes or a guy named Columbus.

5 So here we have the horny toad right there in  
6 the middle. This horny toad is the one that is  
7 represented by the Ireca Mountains. That's why the horny  
8 toad is so important. We know that. That's why  
9 (non-English word) a plant down in the Imperial Valley,  
10 because of the horny toad that has to be respected, and  
11 but we have no respect here right there in the (inaudible)  
12 and McCoy project, they're just damn the torpedoes.

13 Here's a crude, but this look like the  
14 hourglass. Here is the swastika going left, and then the  
15 (non-English word) goes north, so this is all like when  
16 you see right here symbolizing the earth, meaning mother  
17 of the cosmos, meaning earth. So that's why in the gorge,  
18 the (non-English word), in the gorge that has the swastika  
19 with a swastika going right, not in the earth. See this,  
20 it's going left, going left, going left. And in the  
21 cosmos it goes right, right, right, right. That's why in  
22 the gorge you have that swastika but going right.

23 Now here we have this is the hourglass and it's  
24 all over. One of the first ones is over there at  
25 (non-English word), which is Spirit Mountain, which we



1 call (non-English word). This is (non-English word).

2 See, we've been pursuing this going to all parts  
3 down south when we migrated and they went the four  
4 directions, so they went part went down south to  
5 (non-English word) where my great-great grandmother's  
6 buried. But here they are. That's the hourglass, and  
7 that's over there at Spirit Mountain too.

8 And the people over there in the Middle East,  
9 they built a tower, the Tower of Babel, but they made it  
10 out of concrete -- I mean out of adobe. That's why it got  
11 destroyed. But ours over here is solid rock (non-English  
12 word).

13 Now Eagle Mountain, why is it called Eagle  
14 Mountain? Because (non-English word) means eagle. Eagle  
15 that descends right there. Summer solstice on Eagle  
16 Mountain. There is sunset if you want to go on June the  
17 21st and see the sunset, sun, right there, this is what is  
18 called Dragon Wash. That relates to the woman's womb.  
19 And here comes the sun, bingo. No sacrifices, so you  
20 don't have to worry, Christina, they would never sacrifice  
21 you. This is everyday cycle and every June the 21st.

22 Okay. So this is cracks right there, and you  
23 know what it's called? Dragon Wash. And you know where I  
24 took this picture from? Right there from the offramp of  
25 Corn Springs. The Offramp of Corn Springs right there.

1           This one I took from the (non-English word).  
2   When? June the 21st. You want to go June 21st with me?  
3   Go on, and I'll take you, so you can have the facts and  
4   don't say that old man was just pulling our leg.

5           So what is the bottom of the Dragon Wash. Here  
6   we have these are the petroglyphs and it's right at the  
7   base of Dragon Wash. So here we have this guy here, he  
8   (non-English word) and he's running west, because he's  
9   getting out of town because here comes the sun, that past  
10   picture that you saw, and here is (non-English word), Big  
11   Nose. Night time. Going to catch up with you. Oh, come  
12   on. This represents earth. Earth. Texcatlipoca. That's  
13   why the little bird that makes all the noise, Woody  
14   Woodpecker, that's him right there. So Texcatlipoca is  
15   this one. The other one is the sun, and the red is  
16   (non-English word), and the fourth is the earth.

17           So we've been doing this for how many years?  
18   We've been doing it as long as I can remember, thanks to a  
19   lot of our elders that live right there.

20           So you're talking about Big Nose and all this  
21   and that, okay. That is right there at the edge of right  
22   there by the river there where it has -- what's the name  
23   of that place? Anyway, right by the river. So here is  
24   the Codexes and here is right there Eagle Mountain. That  
25   right there (non-English word) represents this guy here.

1 This is the Codexes. Big Nose. Texcatlipoca.

2 Texcatlipoca.

3 That's why it has this. This represents like a  
4 mirror. Mirror, mirror on the wall. Who is the finest  
5 one of all? That's your conscience. That's your  
6 conscience. We all have a conscience.

7 One thing to know the truth, another thing is to  
8 know the truth and don't respect it, and then your  
9 conscience takes over.

10 Okay, go ahead. And here the poor guy goes to  
11 sleep. His name is Yohualtechuhtli. Yohualtechuhtli.  
12 That's his nose, that's his eye, that's his forehead.  
13 This is just right next to the feet of Dragon Wash.

14 And next door to him is right there where we  
15 have (non-English word) is the woman's breast. So where  
16 does a baby go when he goes to sleep? At the woman's  
17 breast. He goes to sleep with mama right there.

18 And also, here is the dolphin, when the earth  
19 was full of water. When the earth was full of water, the  
20 dolphin represents mother earth like the turtle represents  
21 mother earth on dry land.

22 Go ahead.

23 So here we have, ha-ha-ha-ha. You think that's  
24 a joker? He's laughing, that's why we have these masks.  
25 This is the winter solstice on Eagle Mountain, and right

1 above him right there is the owl. Watch out with  
2 Yohualtecuhtli. The owl is the one that brings and takes.  
3 Brings and takes. That's Yohualtechuhtli right here.  
4 Right there. You just got to put him up like this. Like  
5 this guy too. Ah-ha. And right here is where the Y of  
6 Dragon Wash is, right there. And right here is there the  
7 petroglyphs are over here. See. This is taken from also  
8 from the offramp.

9           And here is a guy, this guy is this guy, but  
10 this is in Maya. Maya country. See, the Mayan, they left  
11 from here too, and other people are related to them and  
12 they come back.

13           So this relates to all this. We can sit in the  
14 middle and let the people know the truth and we can have  
15 hundreds of archeologists and anthropologists and we can  
16 relate these truths how the migrations took to the order  
17 it exists.

18           Go ahead.

19           So this is it. This is (non-English word) over  
20 there with the Mississippi, and here's our guy  
21 (non-English word). The hand. (non-English word) means  
22 among all, we do all for the benefit of all. Different  
23 sizes, different shapes, but altogether in the trunk of  
24 the human race. You respect me, I respect you, and we'll  
25 have everlasting happiness. But don't try to destroy why

1 we're here as guardians of mother earth, especially a  
2 group like the California Energy Commission that's  
3 supposed to be like the BLM like our guy over there Frank.  
4 Don't go to sleep, Frank.

5 We need you to understand that it's not for the  
6 capitalist countries to destroy our relationship. I've  
7 already stated a lot of that so I don't have to go into  
8 that.

9 So you have any questions, I'm more than willing  
10 to answer questions. Or else otherwise I'm free to take  
11 you guys right now outside, tell you where (non-English  
12 word) is or whatever you want to know as far as the  
13 presentation that I made. I'm available right now. It  
14 isn't going to cost you a penny, not one penny. It costs  
15 a Subway sandwich, that's okay.

16 Thank you very much.

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

18 Ladies and gentlemen, it's 3:00 o'clock. We're  
19 going to take a 15-minute break, let everybody get up and  
20 around and walk around and get your circulation going  
21 again. When we resume at 3:15 we want to remind all of  
22 the witnesses that you're under oath. We want you to  
23 resume your seat, the experts. We're going to have  
24 further discussion amongst the experts regarding CUL-1 and  
25 all of the discussion around that. So we'll see you back

1 here at 3:15. Until then we're off the record.

2 (Off the record from 3:04 until 3:24)

3 HEARING OFFICER CELLI: Okay. If we can have  
4 people start taking your seats again, please, and let's  
5 get settled back in and we can resume the testimony on  
6 cultural resources condition of certification Cultural-1.  
7 So come on back in the room, folks.

8 If anybody wishes to make comments, please  
9 remember to fill out a blue card and give it to Alana  
10 Matthews. Thank you, Alana.

11 We're on the record now. We're all here and  
12 we're all back and we've heard everybody's opening  
13 statements.

14 Commissioner Douglas, did you wish to address  
15 the panel?

16 MS. CLARK: Mr. Celli, can I have David Harper  
17 make a quick clarification of his opening testimony before  
18 we get to that?

19 HEARING OFFICER CELLI: Sure.

20 MR. HARPER: I just want to say that it's six  
21 billion the project stands to make, not six billion per  
22 year. So if I could make that correction. I am human,  
23 I'm sorry.

24 HEARING OFFICER CELLI: The record will so  
25 reflect.

1 MR. HARPER: Thank you.

2 COMMISSIONER DOUGLAS: All right. Well, thank  
3 you for that. So I have a couple of questions here. I'll  
4 start with questions for staff.

5 One of the questions the committee asked staff  
6 to address in particular is the nexus between the  
7 mitigation proposed in especially CUL-1A and the impact.  
8 And as I understand it from staff's testimony, the CEQA  
9 impact that CUL-1A, starting with that, is designed to  
10 mitigate is the impact of the project on the landscape and  
11 the associative, artistic and informational value which  
12 would lessen the ability of the landscape to convey its  
13 significance to the people of the state of California.  
14 I'm more or less reading that. Is that correct?

15 MR. MCGUIRT: Yes, ma'am. And the people of  
16 California would include both Native American and  
17 non-Native American components of the general public.

18 COMMISSIONER DOUGLAS: Thank you, because I was  
19 going to ask about that next. Or not next, but soon.

20 Now, Mr. McGuirt, you cited significant criteria  
21 in state historic preservation law and you found three or  
22 four criteria relevant. You found A, C and D, so events  
23 contributing in broad patterns to California history and  
24 cultural heritage, places of high artistic values  
25 (petroglyphs) and places that yield important information

1 in pre-history, including prehistoric, prehistoric  
2 habituation, travel, resource extraction, procurement and  
3 so on.

4 Now, when I read these factors and I think about  
5 the record we have as to the significance of the landscape  
6 where the Palen project is proposed, the events  
7 contributing to patterns of California history, the  
8 artistic values, the information about pre-history, to me,  
9 all of those factors come back to the uses of the land and  
10 the significance of the land to the Native Americans who  
11 have inhabited it and use and continue to. Is that a fair  
12 assessment in your mind?

13 MR. MCGUIRT: It's partially fair. Those issues  
14 are very definitely important, because obviously being a  
15 resource for Native Americans for so many thousands of  
16 years, their use of it and their feelings about it and  
17 their association with it is very definitely critical.  
18 But as we practice cultural resources management under  
19 CEQA, we also take into account the non-Native American  
20 public's ability to associate with on a broader sort of  
21 scale of humankind with those sorts of landscapes and that  
22 sort of traditional way of life, because whether we're  
23 from Europe or Asia or Africa or wherever, at some point  
24 in pre-history all of our peoples, you know, lived in a  
25 similar way and derived from a similar lifestyle. It may



1 have been a longer time ago for us than it was for the  
2 Native Americans, but there is an associative value there  
3 that the public we very strongly believe can derive a  
4 benefit from. So we're trying to balance the non-Native  
5 American public's ability to associate with these  
6 resources on one level and then the Aboriginal or the  
7 negatives of the traditional folks that are here now,  
8 their ability to associate with those resources through  
9 their own cultures.

10 COMMISSIONER DOUGLAS: Okay. So what you're  
11 saying, and I think I agree with what you're saying but  
12 I'll just repeat and make sure I'm hearing clearly what  
13 you're saying. What you're saying is that there is -- I'm  
14 going to back up.

15 CUL-1A, the studies, the research that called  
16 out in CUL-1A is really focused on Native American uses,  
17 petroglyphs, the surveys and studies, I mean, that is the  
18 focus of CUL-1A.

19 MR. MCGUIRT: That's true, and the purpose of  
20 that is to document the resource itself, the landscape and  
21 the components within it, to document the  
22 paleoenvironmental context, sort of the environmental  
23 stage, if you will, that all of these events unfolded  
24 under, and in the case of the petroglyphs themselves,  
25 particularly outstanding examples of the Native American

1 culture, to understand those better.

2           And from the data that's collected there, the  
3 public outreach that we speak of can go two ways. Part of  
4 it is public outreach for the non-Native American public  
5 to have that information to be able to interpret these to  
6 folks who are not Native American, and part of the reason  
7 we included the integration of the tribes into the  
8 development and execution of the studies is so we could  
9 have a more whole holistic understanding to interpret for  
10 the non-Native American public what those values are.  
11 What was there, how it was, and to allow them to have  
12 their experience, to the extent we can when we're doing  
13 this kind of mitigation, enriched by the Native American  
14 perspective in that way.

15           COMMISSIONER DOUGLAS: All right. And so --  
16 Mr. Gates?

17           MR. GATES: I think I would like to also  
18 underscore and just elaborate somewhat. Mr. McGuirt has  
19 said, and as Mr. Cachora said and as I've also heard in  
20 some of the opening statement from CRIT, there's a real  
21 need to educate non-Native American people about Native  
22 American values, about the desert, how Native American  
23 peoples have survived in the desert over eons of time and  
24 what that means to them. And right now absent that,  
25 that's lacking. And as areas become impacted as we have

1 identified, that ability to tell that story is diminished  
2 because that valley is no longer the best classroom for  
3 presenting that.

4 COMMISSIONER DOUGLAS: All right. So just to  
5 track through this hopefully not too pedantically. The  
6 impact of the project on the landscape and the  
7 associative, artistic and informational value it conveys  
8 really are fundamentally about Native American uses of  
9 land, how they survived on the land, significance of the  
10 land. The CUL-1A studies are, in staff's view, designed  
11 to help categorize, better understand, ultimately  
12 communicate aspects of that.

13 Mr. McGuirt, you've argued and I assume it's  
14 broadly staff's position that it is both Native Americans  
15 and non-Native Americans who have some interest in these  
16 issues and in particular in this landscape. So far, so  
17 good, you're nodding?

18 MR. MCGUIRT: Yes, ma'am, I would agree with  
19 that. And I would say, too, that staff's understanding of  
20 cultural resources management and historic preservation  
21 under CEQA is that the state is required to address both  
22 of those, that we can't pick one or the other, but in  
23 order to be fully in compliance with CEQA we need to do  
24 our best to address both.

25 COMMISSIONER DOUGLAS: All right. Now, the

1 committee found in the PMPD a disproportionate impact on  
2 Native Americans because we found essentially, and I have  
3 not gone back to look and see exactly how we phrased it,  
4 so if I'm rephrasing it not perfectly, that's because I  
5 haven't gone back and looked. But essentially we found a  
6 disproportionate impact and I think it's because pretty  
7 clearly the interests of the Native Americans themselves  
8 who have been a part of this land and living on this land  
9 and have values associated and continue to with this land,  
10 is relatively greater and therefore the project impacts  
11 will be felt relatively more severely than the interests  
12 of the broader general public. Do you agree with that  
13 outcome in the PMPD?

14 MR. MCGUIRT: I would agree with that statement,  
15 and one of the issues that we had in trying to balance out  
16 these two broader sets of needs between the non-Native  
17 American public and the Native American public is there's  
18 a certain threshold beyond which, if we don't mitigate for  
19 the non-Native American perspective side of this thing,  
20 then we haven't fulfilled our obligations under CEQA to  
21 mitigate for it. And at the same time I think you're  
22 right in characterizing that the effects of the project to  
23 the Colorado River Indian tribes and the desert tribes is  
24 substantially greater than it is for the non-Native  
25 American public. But it's like if we drop the mitigation

1 too low on the non-Native American side, we haven't met  
2 our CEQA thresholds for mitigation and then we're sort of  
3 left with this game of how do we balance this.

4 COMMISSIONER DOUGLAS: I see. Okay. Because in  
5 the -- I'm on page 33 in the staff's testimony if anyone  
6 wants to follow along. I think I'm paraphrasing  
7 reasonably well, but in the tribal interests section, and  
8 of course staff divided the interests that I encouraged  
9 you to think about into place interests and people  
10 interests, and I'm going to kind of go back to that in a  
11 moment.

12 But in the tribal interest section staff says  
13 the impairment of the landscape diminishes Native American  
14 people's ability to perpetuate their cultures. This  
15 impairment is disproportionately placed on tribes that  
16 have relied and continue to rely on the Chuckwalla Valley  
17 for thousands of years.

18 Let me ask you a question. To me, that is a  
19 place-based interest, not a people interest. And I don't  
20 think it's just semantics here. To me, the interests of  
21 the Native Americans who have testified in this proceeding  
22 have articulated is a fundamentally place-based interest.  
23 To me that statement in the staff testimony appears to  
24 substantiate that assertion. What do you think about  
25 that?

1           MR. GATES: If I could, I'd like to take that  
2 up. I think if we were to look at general American  
3 culture, pop culture, you know, Anglo culture, however you  
4 want to characterize that, I don't think it is critical  
5 for the perpetuation of that American culture that a  
6 landscape exists or does not.

7           That might be a comment on us as American  
8 people, but we don't necessarily need a cultural landscape  
9 and a desert for us to perpetuate our own culture. Some  
10 of us may be recreationists and need that as a culture  
11 that imbues those types of values, but it's not critical.  
12 American culture will go on.

13           I think when you start to look a Native American  
14 cultures, that's not the case. As landscapes get  
15 impacted, as there is a disincentive for Native Americans  
16 to return to those landscapes because of how they are  
17 being developed, there is a critical issue with how they  
18 can therefore perpetuate their culture.

19           Their only recourse then is to go to books or  
20 other things or to go find some other landscape some other  
21 place, and as those become encroached, their ability to  
22 perpetuate, because it's directly linked to the land, as  
23 we've heard, and I think that's the critical difference.

24           So that impact to the people, I think the word I  
25 picked up in your January 7th committee conference was

1 perpetuate the culture, and that's perpetuation generation  
2 to generation that I think is perhaps what we're trying to  
3 capture in 1B. Although, it is certainly linked to 1A as  
4 an impact of place, so there is a linkage and we are  
5 talking about one place, not two landscapes. There's  
6 clearly one landscape but there's these two different  
7 values for how culture continues.

8           COMMISSIONER DOUGLAS: So I hear what you're  
9 saying and I think I understand where you're coming from,  
10 but the struggle I had when the distinction that staff  
11 made between impact to place versus impact to people is  
12 that more of a legal distinction. Something, Mr. McGuirt,  
13 you said in your opening testimony. I think it makes it  
14 easy to say that impacts or effects on people are outside  
15 of CEQA and the effects of CEQA really focuses on our  
16 effects on place.

17           In this instance, though, to the extent that  
18 there is an effect on people, and the PMPD came out and  
19 said yes, there's an effect, it's a disproportionate  
20 effect, but it's linked to the effect on the landscape,  
21 it's linked to an effect on place. Do you agree with  
22 that?

23           MR. GATES: I would certainly agree, but I would  
24 say on the side of 1B it's more than place but how that  
25 impact then moves on to a people to continue their

1 identity, which is something more, and that starts to get  
2 into that environmental justice side of the equation,  
3 which isn't exactly articulated in CEQA under historic  
4 preservation sections of CEQA.

5 COMMISSIONER DOUGLAS: Right.

6 MR. MCGUIRT: It's a tiered effect, it tiers off  
7 of place, because -- to give you an example, one of the  
8 things that we learned a lot in the last few years with  
9 projects here in this area and with other projects we're  
10 in compliance on is that when we remove artifacts and  
11 features from the ground during construction and whatnot  
12 and take them to the lab and clean them up and put them in  
13 a box in a warehouse someplace, this is deeply disturbing  
14 to the people.

15 We have taken what they've described -- and I  
16 hate to paraphrase what Native Americans tell us but we're  
17 trying to learn -- that we've taken, you know, part of the  
18 footprint, part of their cultural footprint out of the  
19 land and stripped it from the land and sent it someplace,  
20 and then it strips them of something that's a very deep  
21 connection to their culture. And they've asked us stop  
22 this, don't do this to us, you know. They speak of having  
23 nightmares and dreams, you know, that we've upset the  
24 ancestors and the present people's call to maintain the  
25 stewardship of the land.



1           So it starts with place, but it has this ripple  
2 effect and it's about the people and the effects of the  
3 project in this way on the people themselves and their  
4 ability to perpetuate their culture, pass down the  
5 learnings and teachings from person to person, generation  
6 to generation.

7           COMMISSIONER DOUGLAS: Mr. McGuirt, you said in  
8 your testimony on CUL-1A that when you come to  
9 compensatory mitigation, essentially where you've got an  
10 impact that's significant and probably unmitigable and  
11 what you're trying to do with mitigation is make up for  
12 some portion of that unmitigable impact. There's some  
13 flexibility in terms of how you do that.

14           Do you think that mitigating some of the ripple  
15 effect of impact on place through to impact on people is  
16 within that description within the framework for  
17 mitigation?

18           MR. MCGUIRT: I think under criterion A, again,  
19 that we're called to address both. We're required to  
20 address the effects, you know, the loss of the general  
21 non-Native American public's ability to experience these  
22 associative values as well as the Native Americans'  
23 ability to do that.

24           The flexibility that's there, yeah, there is  
25 some flexibility. I think with compensatory mitigation

1 there's a lot of options. And again, it's a balancing act  
2 of making sure you're covering some of both.

3 I do believe, however, there is sort of a bottom  
4 line someplace that if you don't mitigate enough on one  
5 side then we've failed in our obligation to do historic  
6 preservation. So it's how do we balance that? What is  
7 that bottom threshold where that's done?

8 And I do feel that more comfortably these  
9 concerns with how the tiered effect affects the people  
10 themselves falls more squarely under an environmental  
11 justice kind of consideration. That's why we placed it  
12 outside of cultural resources management analysis proper.  
13 It's not typically something that we deal with per se, nor  
14 is it something that we understand the existing historic  
15 preservation program to accommodate under CEQA on the  
16 state side or under section 106 on the federal side. I  
17 mean, we're also balancing our needs under CEQA with the  
18 106 side with the BLM trying to come up with something  
19 that makes sense.

20 COMMISSIONER DOUGLAS: All right. Well, I'm  
21 going to make a suggestion. I'd like to hear comments on  
22 that from certainly the other parties as well as staff.  
23 Well, I'm talking to you about it right now, but I  
24 actually liked Petitioner's suggestion of combining CUL-1A  
25 and CUL-1B, and I think the reason that I like it is that,

1 to me, unless you can convince me otherwise, I think that  
2 the impact that we're talking about is fundamentally an  
3 impact to place.

4 Now, Petitioner described it as a visual impact  
5 and I think fundamentally it is. You know, staff  
6 describes it as an impact that affects associative value  
7 and so on. And as you mentioned, Mr. McGuirt, those  
8 values are held by people of the state of California as a  
9 whole and those values are held by tribal people, and this  
10 committee's already found that disproportionately the  
11 values held by tribal people are what's affected.

12 In terms of what the appropriate balance of  
13 values is, I think that where we are is staff and the  
14 parties propose and if we get there the committee will  
15 come up with what we think is appropriate, when and if we  
16 get there. But I see problems in separating those  
17 categories and I'd suggest you try to think about them  
18 together.

19 And let me just ask. I see Mr. Cachora reaching  
20 for his microphone. Let me ask you a question and then  
21 also hear what you'd like to say. My question is  
22 fundamentally, my premise is that the impact on tribal  
23 people from the visual impacts of the project, the  
24 diminishment of the associative value of the Chuckwalla  
25 Valley or portions thereof, is an issue of place that

1 afterwards filters into and has multiple effects on  
2 cultural or other practices. I'd appreciate if you could  
3 speak to that and whatever else you were going to say.

4 MR. CACHORA: It goes back to what I said  
5 earlier about relationship. Each one is sort of  
6 categorized on its own when you talk about petroglyphs.  
7 And I know from my world that a lot of times areas such as  
8 that, I know of other cases where once a project is set in  
9 place you can no longer get to it and you're scrutinized  
10 after that. But areas like that, to us, it's safe to say  
11 we don't look at petroglyphs like non-Indians do, as  
12 pictures, it's beautiful, it's a drawing of this and that;  
13 we don't do that.

14 We look at it and it's a way where, yes, you go  
15 there for a purpose, because one petroglyph is not the  
16 same as the other, so you have a selection, or let's say a  
17 variety of petroglyphs and that you may be connected to.  
18 And thereafter, I cannot talk about that part, but when  
19 you walk away.

20 In other words, what I'm saying I guess you  
21 don't decipher for that picture. It's there for something  
22 that you walk away with and in time that sort of seeps  
23 into your system and becomes one, and that's how it works  
24 for us. That's why petroglyphs are very important to us,  
25 it reveals things that are something that's out of the

1 ordinary, so it's very important that petroglyphs that we  
2 have here such as Corn Springs and I can go on and on with  
3 all of them, but it has its own specific thing that you  
4 can approach that you need.

5           So in other words, when you destroy or are  
6 unable to reach in this case, you've sort of lost that one  
7 because that other one is a lot different so it doesn't  
8 fit this one. So it's kind of like the pages in books  
9 like they say that you rip one out and then, especially at  
10 the end you never know the end of it, so it's kind of like  
11 that. It's something that seeps into your system, not  
12 through your vision.

13           COMMISSIONER DOUGLAS: So I hear you. I think  
14 I've understood what you've said. I'm going to repeat  
15 what I've understood just to give you a chance to help me  
16 if I didn't get it all right.

17           You know, if I were to go out and decide to look  
18 at petroglyphs, I could look at one or look at another and  
19 I could think that's very nice, that's pretty. Maybe  
20 there could be someone there to explain or help me  
21 understand some aspect of it, but fundamentally somebody  
22 who does not have the cultural background of the Native  
23 Americans would maybe have a little more ability to say,  
24 you know what, rather than go look at petroglyphs in an  
25 area where there's a power tower and maybe the associative

1 values or, you know, the landscape looks more industrial  
2 because look over there, there's a solar project, I might  
3 go look at petroglyphs somewhere else and it might be the  
4 same to me.

5 But for you I think what I heard you say is  
6 specific petroglyphs in specific places have their own  
7 meaning, and they're not interchangeable.

8 MR. CACHORA: Correct, because, first of all, I  
9 didn't just go there directly. It's sort of like you  
10 already have a vision of that where you're supposed to be,  
11 and it's real clear that it'll guide you there. even if  
12 you're walking unexpectedly for some reason it pulls you,  
13 so that's another type of life that we live really  
14 compared to the non-Indians. It's a form of power that we  
15 talk about. But beyond that, we don't date talk how we  
16 get or retrieve those powers; we don't do that, because  
17 it's only for our benefits and if you do reveal such  
18 information, then you lose that ability yourself, so  
19 that's when it becomes very sacred.

20 COMMISSIONER DOUGLAS: I just have a follow-up.  
21 Mr. Gates, maybe you can help me with this. So my  
22 understanding is that staff focused on associative values  
23 and visual impacts because the proposal does not directly  
24 impact petroglyphs or access to petroglyphs. Can you  
25 clarify or correct me if that's not right?

1           MR. GATES: I think the answer bifurcates as  
2 well, depending on what viewers or participants we're  
3 talking about, so it's always a double answer. I think on  
4 the non-Indian side, I think just going with petroglyphs  
5 and realize the landscape is more than petroglyphs.

6           COMMISSIONER DOUGLAS: Yeah.

7           MR. GATES: You know, there's this problem with,  
8 as these are revealed, there's looting. People are  
9 removing them, taking them to their houses or selling them  
10 for money. That starts to look at petroglyphs as art,  
11 right? You possess it, you own it, you hang it, you sell  
12 it, you trade it. That's a certain value there. and I  
13 think more and more the population needs to be educated on  
14 why that's not appropriate in general -- simply there's  
15 laws to protect against that -- and why it's not  
16 appropriate compared to Native American culture. There's  
17 an educational thing that needs to be done there, and to  
18 educate the public about why that's not appropriate, they  
19 have to understand, as Mr. Cachora said, that you remove  
20 one page from a book, you might ruin the book. And it's  
21 not just petroglyphs in a system of petroglyphs in the  
22 Chuckwalla Valley, but how those petroglyphs relate to  
23 other things, such as certain plants and animals, certain  
24 other places, springs, I can go on and on.

25           So the public needs to understand that

1 interconnectedness in a way that the public is receptive  
2 to that. That's one thing and that's one challenge that  
3 we would have going forward.

4           And one way that we can perhaps understand and  
5 get the public to understand the interconnectedness as  
6 Native Americans view is also to have the public be able  
7 to go to Chuckwalla Valley, where appropriate, or to go to  
8 websites or however else we choose to educate to  
9 understand that interconnectedness, okay, but that's a  
10 certain challenge, whereas when we go to the Native  
11 American side it's about their ability to practice and  
12 perpetuate, and I think there's an impact there when  
13 they're trying to do that and it must be at this place as  
14 they're directed, however they are directed, and I think  
15 there's a certain impact not only from what the public's  
16 doing but also from what a project is doing with a tower,  
17 with the knowledge that certain things are being  
18 compromised that relates to their interconnected values to  
19 that, and for them to then educate their young people in  
20 what those values are for who they are as Native American  
21 people, that's hard to do when there is, for example, a  
22 looming tower and all these other things out there about  
23 what they may or may not do to the world.

24           And so we've got these two different things that  
25 do intersect, and that intersection is the Chuckwalla



1 Valley portion of PRGTL, the place, but there's two things  
2 there. Now, if we mesh those together into one  
3 mitigation, we may not achieve that balance. That's why  
4 staff chose to separate those out to preserve that  
5 distinction. Perhaps we didn't articulate it as well as  
6 we could. But we also realize that they are  
7 interconnected. That's why we continued to advocate for  
8 the integration of Native American values into those  
9 studies, and we think at a significant portion, yet also  
10 preserve this other issue of Native American perpetuation  
11 in a standalone thing that could go on its own without the  
12 public overlooking our shoulders on that aspect of it.

13 COMMISSIONER DOUGLAS: So you read my mind,  
14 Mr. Harper. We were going to go to you and Ms. Barrera  
15 and ask what you would like to add on these points.

16 MR. HARPER: Thank you. Dave Harper.

17 It's been the elders' position that since the  
18 Genesis project, the 3,000 artifacts that were removed,  
19 and working with the McCoy project, the elders' position  
20 was that any discovery of artifacts we asked that they be  
21 left alone and that we would as a tribe repatriate those  
22 items back in. The company can go ahead and archive it,  
23 do what they need to get done, but at the end of the day  
24 we wanted to repatriate it back in there.

25 Because you know, I'm going to say something.

1 I'm Mojave Indian, I was born Mojave, and when I die I'm  
2 going to be cremated as a Mojave and I'm going to back to  
3 my place amongst my people. And I'll probably have my  
4 face tattooed because that's the Mojave way. And I'll be  
5 laid face-down on a pyre and I will be cremated amongst my  
6 people and I'll go back home to where I came from, because  
7 that's all I know.

8           When you come and ask me as a Mojave man the  
9 perspective of what we practice, I'll tell you. I won't  
10 read a book, I won't look it up on the Internet, but I'll  
11 tell you what it is and who I am, because I'm Mojave and I  
12 was raised the traditional way. And for me to sit here  
13 and to hear this non-Indian person tell me what an Indian  
14 should do or is is very disrespectful to me as a Mojave  
15 man, and I take offense to it.

16           Because you should be asking us, the people of  
17 the land, of what our perspective is and what we do,  
18 because we're the people, the Aboriginal indigenous people  
19 of the area, not your staff.

20           And so, as a Mojave man, I can tell you that we  
21 fast. We fast. We look as destiny of how we come across  
22 these items. The petroglyphs, who said you're to  
23 understand who we are? Who said you're supposed to  
24 understand the Mojave tradition? Because Mojave tradition  
25 is based on religion. We have a religious perspective.

1 The same as Israel, Christianity, the same perspective our  
2 religious base should be respected and profound. It is  
3 for us to live as Mojave people. It is for us to  
4 understand who we are as Mojave people.

5 We ask that you respect our perspective, not get  
6 to know and get within our religious base of who we are,  
7 because you're not supposed to because you're not Mojave.  
8 We are Mojave people, and that's who we are.

9 And so the questions that you're asking, again I  
10 go back to is disrespectful. We do not want people to  
11 know where our petroglyphs are, because the same thing  
12 that has been happening this whole time, the same thing  
13 that happens is the destruction. Why would you want to  
14 know what our petroglyphs stand for? Human curiosity?  
15 It's a religious base again, and so I'm thinking as a  
16 Mojave man and as a representative of my elders, you know,  
17 we go back, we go to (non-English word). If we want to be  
18 a Mojave traditional bird singer we go to (non-English  
19 word), and in the dream it'll come like a river and you'll  
20 be gifted as a bird singer, as a singer, but you go to the  
21 base.

22 If I am in a spiritual warfare, I will go to  
23 (non-English word), Red Tail Mountain, representation of  
24 the Mojave warriors. That's where I am. I'm not a chief,  
25 I'm not a warrior. I'm a warrior, that's what I am, and

1 so that's why I'm here standing before you for my people,  
2 because I'm a warrior, that's my traditional role. And  
3 I'm here as a traditional warrior to protect my culture  
4 and my people, at no cost to my people, but that is our  
5 given right, our inherited right.

6           And who are we to take away our inherited right  
7 of our young children for the next seven generations to  
8 give up our landscape? Who are we to say no, we don't  
9 want our information to be cataloged and developed? We  
10 have a seven generation responsibility to sustain our  
11 people. We've been here since time immemorial, since the  
12 beginning of time. Our Creator created us and taught us  
13 the traditional way of how to cremate that we still  
14 practice today. And so who are we to take that away from  
15 our children and our children's children and down the  
16 line?

17           And so, you know, again I go back to, did you  
18 ask the people of the land? Did you come to us and ask  
19 us? Did you come and tell us what is it, how can we work  
20 together? But here it seems like this is being shoved  
21 down our throat.

22           And so I just want to say, why is it so hard to  
23 come and talk? Why is it so hard to come and hear our  
24 perspective? You don't have to understand it, you just  
25 have to respect and hear it. But when we get to that

1 point, we'll get there, maybe.

2           But I just want to say as a man, a Mojave man,  
3 as a representative of our culture and tradition, as a  
4 representative of our elders, it's my responsibility to  
5 stand up and say we need to talk, we need more dialog. We  
6 need a better understanding of what your perspective is,  
7 what you're coming at us so we can have an understanding  
8 of where we come from to you. Otherwise, we're going to  
9 run into each other. We're going to run into each other.  
10 And I think come to us and ask us.

11           Not one person can speak for everybody, but he  
12 can speak for himself. Not one person can tell another  
13 person how to live or how to be a religious perspective,  
14 because how I live as a Mojave man, I have that  
15 responsibility to the Creator only. And so I for the past  
16 25 years I've worked with these elders. And not just  
17 these elders, the elders, 90-year-olds, and I heard their  
18 perspective.

19           And I'm not saying I'm right. I'm not saying  
20 I'm wrong. I'm not saying I'm the only one that knows  
21 anything because I don't know nothing in today's lifespan,  
22 but I can tell you this. We need to be represented and  
23 our voice heard, and for shame if we don't stand up for  
24 that. Thank you.

25           COMMISSIONER DOUGLAS: Thank you. And let me

1 make a couple comments because a couple things, and then  
2 I've got maybe a couple more questions.

3 I want to be clear that we the committee are not  
4 asking what your petroglyphs mean. We don't need to know.  
5 We don't need to know what your spiritual practices are.  
6 The questions that I was asking to our staff relate to  
7 clarifying what's obvious and what you've told us many  
8 times, which is that they are tied to the land and the  
9 project will impact those values in a significant way.  
10 And that's related to our legal construct. That's related  
11 to how we do CEQA analysis and mitigation, but it does not  
12 require that we know anything in any level of detail about  
13 what those practices are or what petroglyphs mean.

14 We do need to understand the linkage, what we  
15 call the nexus between the project and what it will do and  
16 the impact that it will have on you, and so what I'm  
17 working to parse out is what is that, without crossing the  
18 line into asking you to tell me things that you're not  
19 comfortable telling me and that I don't need to know.

20 So I'm sorry if I was confusing or if I seemed  
21 to be asking for more than I thought I was asking when  
22 talking about petroglyphs. The point to me is that they  
23 mean something. It is exactly what you're saying. They  
24 mean something more and different to you than they might  
25 to me, and I'm happy stopping there. so let me start with

1 that.

2           And then I do want to talk about consultation,  
3 because you're raised it now twice, and I know it's a  
4 significant issue between the Energy Commission and the  
5 CRIT and other tribes, and a significant frustration that  
6 tribes are accustomed to dealing directly with decision  
7 makers. And in the way that CRIT and other tribes are  
8 accustomed to dealing with federal and state government,  
9 you would have the decision makers come to you and talk  
10 directly to you about what is being proposed, what can be  
11 done about it, how do we work together, are there  
12 solutions.

13           We find ourselves in what you, Mr. Harper,  
14 characterize as a cultural divide or cultural distance; I  
15 don't remember the exact words you used, and I will add to  
16 that legal divide and distance, because if we could -- we  
17 the decision makers, we the committee -- if under our law  
18 we could consult with the tribes, we would on specific  
19 projects, but we have legal prohibitions against ex parte  
20 communications, and that's not just because CRIT's an  
21 intervener and because you're a party we can't do that.  
22 We can't do that kind of discussion and negotiation about  
23 substantive matters in a case under our laws and under our  
24 regulations.

25           I think that's a problem or that's an issue and

1 a set of expectations that we the Energy Commission would  
2 like to resolve. I know that staff has reached out on  
3 consultation, and again because CRIT's a party there have  
4 been some issues and some challenges there.

5 This may not be the place, but the question of  
6 how we better match the Energy Commission's process with  
7 the expectations and practices and the degree of respect  
8 that tribes like to be afforded is something that we can  
9 talk about outside of how it's applied in any particular  
10 case. I'd just like to let you know directly that that's  
11 something that I'd be willing and very happy to talk to  
12 you about outside of how it affects or how it plays out in  
13 a particular case, because it is a problem and I've heard  
14 repeatedly that it's a problem and it's an issue.

15 It's an issue for you and it's an issue because  
16 it affects the information, type of information, type of  
17 interaction staff is able to have with you. So I'd love  
18 to hear any additional comments from you, from  
19 Ms. Barrera, and turn to other parties certainly, but just  
20 do understand that in terms of consultation allowed, we  
21 have real restrictions.

22 If there are solutions, if there are ways that  
23 we can address broader issues and not projects outside of  
24 the context of a case, we're very open to do that at the  
25 Commissioner level.



1 MS. BARRERA: Amanda Barrera, Colorado River  
2 Indian Tribes tribal council member. I'll go ahead and  
3 respond to that from the administrative point.

4 I guess in some education in non-Indians in  
5 recognizing what it means to a native nation, specifically  
6 CRIT. We have our own laws, we have our boundaries.  
7 Although not the boundaries that we chose, they were the  
8 ones selected for us which we live within, and within  
9 those boundaries we have our own protocol and our own  
10 regulations, our constitutions that govern us. And in  
11 CRIT we have a body of nine council members representing  
12 the four tribes, the Mojave, Chemehuevi, Hopi and Navajo,  
13 and it's our policy you come to us.

14 And we do come out and we attend the  
15 consultations and stuff, but when you deal with CRIT  
16 specifically in regards to areas that impact us, it's a  
17 direct letter to our chairman, and then it's sent out to  
18 council and it's set before a council meeting with the  
19 majority of council in attendance if not the full body.  
20 And that tends to be a problem that happens across and  
21 throughout Indian countries that people don't recognize  
22 we're a sovereign nation governed by our laws.

23 It's like if you went to Mexico and you abided  
24 by the laws of the state of California, they are not the  
25 laws of Mexico. You enter our boundaries, you enter our

1 jurisdiction. You abide by our laws and you respect our  
2 laws as we respect those of other nations.

3 And that's all we ask for is that recognition.  
4 And I think from Colorado River Indian Tribes the one that  
5 we look at is the uniqueness of us because we're four  
6 tribes basically all different, but the indigenous people  
7 are the Mojave people of that area, and of this area and  
8 of the reservation there.

9 So consultation, true consultation means you  
10 come before us and you speak with us. You hear what we  
11 have to say, and you may not take it as a grain of salt,  
12 but we're sharing what we can share with you and there's  
13 not a lot that we can or will not do, and I'm speaking  
14 from my perspective and how I view it. And, but true  
15 consultation is face to face with us as an individual  
16 nation, not as a lump sum nation as it's usually done in  
17 consultation. A notice goes out maybe a week before, but  
18 it means coming before us individually meeting with us and  
19 allowing us that respect.

20 COMMISSIONER DOUGLAS: And do you see,  
21 Ms. Barrera, my understanding is that consultation  
22 involves the decision maker going to the tribe, and so  
23 what would your view be of that consultation being done by  
24 staff in our process? Because I know that staff did send  
25 some letters and initiate consultation with some tribes,

1 but I'd love to hear your perspective about that.

2 MS. BARRERA: My personal perspective is that I  
3 know you have limitations that you as the Commissioners  
4 yourselves cannot come forward, but your staff, if they do  
5 come forward, that they're able to make a decision, they  
6 have some authority. Because in coming and not being able  
7 to make any authority, it's like me sending my secretary  
8 to a meeting where you want a decision, and they have to  
9 bring it back to me for that decision to be made.

10 But I think if you send out staff and they have  
11 their marching orders what they can and can't do, they  
12 clearly understand that administrative direction and  
13 recognizing too that the tribes are wanting that, because  
14 for you and for me it would be a waste of time to send  
15 somebody who has no authority to make any decisions or to  
16 hold that discussion and to be, you know, that open with  
17 the tribes.

18 COMMISSIONER DOUGLAS: Well, thanks for that,  
19 and I appreciate your flexibility in that, because  
20 obviously you are with that suggestion or with that idea  
21 also recognizing the limitations that we have. And  
22 those limitations are not absolute. You know,  
23 Commissioners can talk directly to tribes about many, many  
24 things that are not specific to a case, and you understand  
25 that. Thank you for that suggestion.

1           Is there anything more at this point from  
2 Ms. Barrera or Mr. Harper? I was going to just make sure  
3 we give everybody a chance to speak.

4           MS. BARRERA: I think for me in closing I want  
5 to share a little something, because I'm not Mojave. I  
6 can only give you my perspective of what I've been allowed  
7 to hear, and I can only give you what I know as a  
8 Chemehuevi woman. And as a Chemehuevi woman we are taught  
9 to be very strong and very vocal, and I think I've picked  
10 up the family task in that regards in doing that, because  
11 I am very vocal.

12           But I was always taught and I was very fortunate  
13 in my upbringing. I was not brought up in the modern way,  
14 I was brought up in the old very traditional way. If I  
15 wanted something to eat, I went out and I killed it,  
16 helped cut it up, helped got it ready. If I wanted soap,  
17 I went to the mountains and I got the yucca and I prepared  
18 it for its many uses.

19           But I also gave thanks for that, and I recognize  
20 not growing up in this area but growing up in the Nevada  
21 areas, the abundance of the land and the abundance of  
22 what's here.

23           You know, the creosol that you destroy is  
24 medicine for many diseases, for many cures that we use  
25 from athletics feet to upset stomach to high blood

1 pressure, numbers of ways, but you have to know how to use  
2 it. And it's traditional people and as Indian people and  
3 as we're taught, you're born with a talent. You're not  
4 just landed on this earth without a place to belong.  
5 You're given that talent and it's up to you to take that  
6 talent and to use it. Whether it means that you're  
7 somebody who can heal someone, that you have that in you,  
8 it's passed down from generation to generation, and you've  
9 been chosen. That you know where to go in that desert and  
10 you know what to pick. The medicines modern people call  
11 medicines that are out there.

12           And that's something that's a given, but it's up  
13 to us as individuals to seek that out and to use it for  
14 our purpose. And I'm talking from what I was taught,  
15 because my grandmother said until the day you die is the  
16 day you quit learning. But what you're taught and what  
17 you pass on and what you have to understand from Indian  
18 people is we're oral.

19           When you sit with a book and you read to a  
20 child, it's called quality time. But when you sit as an  
21 Indian person and you speak from your heart, what you've  
22 heard from here and what comes from the heart and out of  
23 your mouth, you've served your purpose because you've  
24 passed on what you've been taught. It's not read by  
25 somebody with no feeling or somebody who never experienced

1 it.

2           So that's what we do as Indian people, we take  
3 those talents and we go forward because that's how we're  
4 taught. That's how I was taught.

5           So I want to thank you that, you know, you've  
6 heard us. And I pray to the man upstairs that you've  
7 really heard us, because we've spoken from our heart and  
8 what this means to us.

9           I went on that trip to San Diego. My heart  
10 ached because I knew what it meant for those artifacts  
11 that sit in San Diego. I knew they were in the ground. I  
12 knew why they were there, and that feeling, it still  
13 brings tears to my eyes because I know they're somewhere  
14 that they don't belong. They were put here for a reason.  
15 They're to be left there for a reason, and it's up to us  
16 as Indian people to put them back, and for the Mojave  
17 people to put them back.

18           So I want to thank you. Thank you.

19           COMMISSIONER DOUGLAS: I want to thank you as  
20 well. I also want to note CRIT is the first federally  
21 recognized tribe to participate formally in one of our  
22 proceedings. And in another proceeding, Richard Arnold,  
23 Southern Pipe. And so participated in the Hidden Hills  
24 proceeding.

25           It has greatly enriched and improved our

1 proceedings, especially in cases like this where Native  
2 American issues are so central to have your participation.

3 I would like to speak with you in the future  
4 about how you viewed your participation, how you viewed  
5 our process, how we can make this work better. Whether  
6 it's with tribes as interveners or tribes participating in  
7 other ways, and so I'd like to extend that offer as well,  
8 because it is very valuable to us to have your  
9 participation.

10 Mr. Cachora, the same to you. I know you must  
11 have a lot of thoughts from your experience and your  
12 participation this proceeding. Let me ask now and we'll  
13 give you another opportunity, if you'd like, to say more.

14 Mr. Figueroa, additional comments? We've had a  
15 long discussion. Any additional comments?

16 MR. FIGUEROA: I'm sorry, I didn't understand.

17 COMMISSIONER DOUGLAS: I just asked if you had  
18 any comments at this point?

19 MR. FIGUEROA: No, that's fine.

20 COMMISSIONER DOUGLAS: All right, thank you.

21 Let's see, applicant. Just one moment.

22 (off-mike colloquy)

23 COMMISSIONER DOUGLAS: So I'd like to add at  
24 this point I do agree with you on the place/person thing.  
25 I guess I was a little confused by it because to me it was

1 still a place and there was a nexus with the people. And  
2 I also feel that under CEQA the tribes are still part of  
3 the American public too. So to meet CEQA and if you met  
4 some of the tribal needs as well, you're still meeting  
5 CEQA. To say that they're only addressed under CUL-1B I  
6 felt a little uncomfortable with, so I still think that  
7 combining the projects makes sense for those purposes that  
8 you described and it could still meet the state's  
9 interests.

10 MS. BARGER: You meant combining CUL-1A and  
11 CUL-1B. You said combining the projects.

12 COMMISSIONER DOUGLAS: Yes, I'm sorry.  
13 Combining CUL-1A and CUL-1B. Thanks.

14 MS. BARGER: Thank you.

15 COMMISSIONER DOUGLAS: I have a question at this  
16 point and it's a question for all of the parties.

17 Mr. Harper, you suggested earlier, you mentioned  
18 that there had been a long workshop on the glint and glare  
19 issue and you asked if there was going to be an  
20 opportunity for a workshop on this issue, especially the  
21 cultural resources CUL-1A and CUL-1B as proposed by staff.

22 I am aware that staff has had at least one  
23 workshop on this proposal, but I want to ask both you,  
24 Mr. Harper, and the other parties if you see benefit in  
25 pausing the proceeding right now for an opportunity for



1 the parties to have a discussion about CUL-1A and CUL-1B,  
2 or if your sense is that the parties are really at an  
3 impasse and there's -- you know, I don't know how much  
4 benefit there is at this point from that discussion, but  
5 you did raise the idea and I'll ask you first and then go  
6 to the others. I'd like to hear input about whether  
7 that's something the parties would benefit from.

8 MR. HARPER: Then I guess initially what I want  
9 to do is make a correction. I know your Commission is the  
10 -- I don't want to say hierarchy, but it's a Commission  
11 that has a staff there. When I was talking about  
12 consultation, maybe it isn't two-fold, but I was thinking  
13 consultation with staff more so than anything else,  
14 because from my recollection over the past two years I  
15 don't recall meeting with the staff, and then to have  
16 these numbers and ideas brought up without the tribe's  
17 involvement, that's the issue that I think that I was  
18 addressing.

19 I understand your role and I understand your  
20 capacity, but you could still come to our tribe and get to  
21 know us in our land base, but I think mostly it was the  
22 staff. Because you can sit in the city and make decisions  
23 based on what you thought or who you talked to on the  
24 phone, but until you get out to the land to really  
25 interact with the people and the culture and the impact

1 you're having on the culture, you're really just setting  
2 yourself up for almost like you're writing a book about  
3 somebody but you've never met them and you've never been  
4 there and you've never heard inside their brain or their  
5 inside of their intellect or their spirituality of being.  
6 And so I think had we done that, we wouldn't have to ask  
7 for a workshop.

8           COMMISSIONER DOUGLAS: I hear you and I think I  
9 hear you clearly. And I remember that staff, when they  
10 offered consultation opportunities to other tribes did  
11 have some issues with the fact that CRIT is an intervener  
12 and we have additional rules restricting communications  
13 between staff and interveners. I see you're nodding.

14           Let me ask staff what level of consultation were  
15 you able to have with CRIT given those rules?

16           And those rules are regulations. Those rules  
17 are more within our control. Not that they can change  
18 overnight but it is by regulation.

19           Go ahead, Mr. Gates.

20           MR. GATES: So on record on consultation with  
21 all tribes that are affiliated to the project, which is 15  
22 technically tribes, you know, obviously we have docketed  
23 as we've gone forward with sending out letters both early  
24 on after we received the application and were responding  
25 to that. And obviously we renewed consultation after the

1 hearing and after the redirection from the January 7th  
2 committee conference, and those are docketed. And in  
3 addition to that, we summarize that in our various  
4 documents. So that's a general statement.

5           And I think it's also been written in our  
6 supplemental testimony and I believe we also in our  
7 PowerPoint today indicated in the revised or the renewed  
8 consultation on CUL-1A and CUL-1B that we submitted, put  
9 out letters, we made phone calls to everyone that  
10 responded, and at the end of the day we got five responses  
11 from five of those tribes.

12           We met with each of those tribes individually.  
13 You know, we characterized very, very generally,  
14 respecting and not wanting to air a lot of those  
15 differences and details that came out of those meetings,  
16 but we could summarize the five meetings as the answers.  
17 There was no uniform conclusions that came out of that  
18 where staff could say ah-ha, this is way forward. Those  
19 ideas were quite disparate. And except for the thought  
20 that there needed to be more funds put into 1B, that was  
21 unanimous across all five tribes that we did talk with.

22           We did have a meeting with CRIT, and it wasn't  
23 the first related to Palen, but it was the first since  
24 they had become an intervener. At that time our reading  
25 of particularly I think it's 1710 of regulations, reading

1 that, we felt that that regulation guided us that we could  
2 not have substantive conversation over mitigation, which  
3 is what exactly we were asking to consult on, and we did  
4 not publicly notify that. I didn't think CRIT nor the  
5 staff wanted that to be a public meeting. So we were at  
6 that impasse.

7 We did sit and we did talk, but I don't think we  
8 walked away with any clear direction because of those  
9 constraints in that conversation. And simply if I was to  
10 characterize that, I would not characterize that as  
11 government to government consultation. I'll acknowledge  
12 that when we came out in the workshop we made a mistake  
13 and it got counted that way, and I quickly wanted to  
14 correct that and I'll repeat that again, that the best I  
15 could characterize that one meeting was informational.

16 And so that's our track record today. It's in  
17 our documents, it's in the docket as to what we've done  
18 and the character of those letters and conversations.

19 COMMISSIONER DOUGLAS: Thank you, Mr. Gates.  
20 And consultation is a new process for the state. We're  
21 just now in the process of finalizing our policy; is that  
22 right, it's not quite final yet, or will be?

23 MR. GATES: We hope to have a revised policy  
24 within the next month or so. This case particularly has  
25 taken up our time.

1 COMMISSIONER DOUGLAS: I understand.

2 MR. GATES: But I should also say that we have  
3 -- consultation is iterative, it's ongoing. I'm not sure  
4 if it's ever in these cases opened or closed. We are  
5 constantly talking. In fact, we had meetings with tribes  
6 as of a couple days ago, on Palen, and we continue to do  
7 that and we will continued to do that.

8 And I will point out that we've also -- there's  
9 another way of doing it, and it's not to denigrate the way  
10 CRIT has proceeded, that's certainly their right and we  
11 certainly welcome interveners and tribes as interveners.  
12 We find that to be a successful way to put the message out  
13 from their point of view. But I want to also point out  
14 that there are other options as well.

15 Some tribes prefer to talk to us and prefer not  
16 to participate in this form. Other tribes prefer, at  
17 least in this case, to provide us with expert witnesses  
18 directly. Some propose to work with us as we prepare our  
19 original documents. But that's across the board and each  
20 of the tribes, as they are wont to do as sovereign  
21 nations, to choose their own course and their own tact in  
22 these proceedings. And so it's robust and it's multitude  
23 in how those approaches are taken up.

24 COMMISSIONER HOCHSCHILD: So I've been listening  
25 all day, and first of all, I just want to thank you for

1 your very heartfelt and candid comments. And I just want  
2 you all to know we are listening. I'm listening. That's  
3 why I got up at 4:30 and flew down here this morning and  
4 we're going to stay as late as it takes to hear from  
5 everybody.

6 And my observation is that actually many things  
7 are happening today. This is on one level it's a planned  
8 evidentiary hearing for a proposed solar project, but it's  
9 also a conversation about cultures, and I think it's also  
10 a conversation about history, because I think there's a  
11 whole history as it affects how things are arranged today  
12 that comes out. And I guess I think the best we can do is  
13 to really try and understand each other.

14 And I just wanted to make clear, we are  
15 operating within pretty strict constraints. We can't do  
16 what you're suggesting, just, you know, individual  
17 Commissioners going and meeting the tribes.

18 I would like to do that, just so you know. We  
19 have these strict rules around ex parte meetings, and so  
20 we met in October in Palm Desert, had a hearing. We  
21 listened to you at another meeting in January in  
22 Sacramento. We're listening here this week and going into  
23 tomorrow and Thursday and possibly beyond.

24 But I just want you to know that within those  
25 restrictions, and there's a reason for those, because they

1 want to have a process that's fair and transparent so that  
2 when we're having dialog everyone can participate and it's  
3 open to the public, and that's the rationale for that.  
4 And so but please don't misunderstand the intent behind  
5 that, that there's some desire not to. I mean, that's why  
6 that rule's in place.

7           But I think the one thing we could do and I'm  
8 personally willing to commit to is a conversation with the  
9 tribes about how the dialog happens. And we can talk  
10 about more general issues, we can't talk about specifics  
11 of the project. So I just wanted to personally make that  
12 commitment today. I'm happy to come and have that  
13 conversation with Commissioner Douglas and just extend  
14 that.

15           COMMISSIONER DOUGLAS: Let's hear from the other  
16 parties. Is that all for now, Mr. Gates? Do you have  
17 more to add?

18           MR. GATES: There are some details that were  
19 left on the table back in the opening statement, and I'm  
20 not sure if this is the time to go back into that and  
21 revive a bunch of conversation, so I'm not sure I want to  
22 go there. Should my counsel want to direct me, we can go  
23 there. And I'm not sure where we're going in the  
24 proceeding at this point, so I'm not sure if I should  
25 bring something up or --

1 COMMISSIONER DOUGLAS: Not yet.

2 MR. GATES: -- just let it rest.

3 COMMISSIONER DOUGLAS: Not yet. So here's what  
4 we'll do. I want to make sure we give the parties a  
5 chance to speak, and then I want to go back to the  
6 question of whether the parties believe that an  
7 opportunity to have some informal dialog, in other words,  
8 a workshop on any of the CUL-1A and CUL-1B proposals is  
9 something that the parties would value and would like to  
10 do at this time.

11 I mean, we'll still meet our commitment to do  
12 public comment at 5:00, so don't worry those of you in the  
13 audience who are not committed to staying here through the  
14 end. But I do have that question I'd like to go back to  
15 and then we will at some point go to the attorneys and ask  
16 if they have any redirect or cross, essentially.

17 So Mr. Galati.

18 MR. GALATI: Yes, can I make a comment and  
19 answer your question about the value of a workshop?

20 COMMISSIONER DOUGLAS: Please do.

21 MR. GALATI: Only because I think I've been  
22 successful in having workshops just like this and  
23 resolving issues fairly clear. I don't believe that we'll  
24 be able to do that. Let me tell you why, there's a little  
25 bit of history.



1           We interpreted what you wanted very similar to  
2 the way staff did. We proposed a CUL-1A and CUL-1B,  
3 trying to separate the interests, and we proposed that  
4 first, and that was back in February, and we wanted to  
5 have a workshop on it. And you may remember in our status  
6 reports we wanted to have a workshop on it.

7           Staff took that proposal, did their own  
8 proposal, but it also had the same approach of CUL-1A and  
9 CUL-1B. Then we did have a workshop, but I don't know if  
10 Mr. Harper participated, but we did have a workshop, and  
11 it was relatively unanimous and it was loud and clear to  
12 me that the tribes were very much offended by the concept  
13 of having a slush fund, a blood money fund, about being  
14 bought off.

15           And so we regrouped and just completely  
16 abandoned the idea. That's why you see us trying to  
17 incorporate a tribal voice in one CUL, that's why we did  
18 it. But I don't know if we're going to be able to do much  
19 better than that and let the tribal consultation with  
20 staff continue in that framework over however long it  
21 takes and implementation of that condition, but I don't  
22 believe we're going to be able to get into the nitty  
23 gritty in a workshop and say we like this particular group  
24 and we like this particular activity and we want the money  
25 spent this way. And I think until that's done, I'm not

1 sure that a workshop would be that official. That's, I  
2 think, the Petitioner's position.

3 COMMISSIONER DOUGLAS: CRIT?

4 MS. BARRERA: Okay. I think in our discussion  
5 it would defeat our purpose of having the Commission here  
6 to be able to hear our perspective and stuff. But the  
7 other point would be that it's pitting tribes against  
8 tribes, and you'll never come to a conclusion because of  
9 our uniqueness and our sovereignty and where we stand  
10 from. So I think it would at this point defeat that  
11 purpose.

12 COMMISSIONER DOUGLAS: Thank you, Ms. Barrera.  
13 I will offer that we don't have to do a traditional  
14 workshop where the committee leaves the room. In fact, we  
15 would be interested in hearing your thoughts about any  
16 aspects of CUL-1A and CUL-1B that you'd like to tell us  
17 right now with us in the room.

18 And I want to say that I hear loud and clear  
19 that the tribes do not want any input that the tribes  
20 might provided on CUL-1A or CUL-1B or anyone else to be  
21 construed as endorsing the project or in any way appearing  
22 to support it.

23 My assumption, and I've heard this again loud  
24 and clear from CRIT and we'll see what we get in public  
25 comment, but I think that we will hear some pretty strong

1 unanimity or near unanimity from commenters from the  
2 tribes that actually what you would like is this project  
3 not to happen, and no amount of mitigation would change  
4 that desired outcome. And so I hear that loud and clear.

5           At the same time -- and so I want to assure you  
6 that input that you offer, should you choose to offer it,  
7 on those conditions, how they might be structured, the  
8 decision making processes within them, would not be  
9 construed as endorsement of the project or in any way  
10 diminishing your opposition to the project.

11           So saying that, you know, we don't have to leave  
12 the room, we can sit right here, and we would like to hear  
13 what you have to say.

14           Let me ask would you like to take a 15-minute  
15 break and have a little time? All right. We'll be back  
16 in -- so what time is that, Mr. Celli?

17           HEARING OFFICER CELLI: Right now it's, I have  
18 4:35, so we will return at 4:50 and we will be off the  
19 record until 4:50.

20           (Off the record from 4:36 until 4:55)

21           HEARING OFFICER CELLI: Okay. So we're back on  
22 the record now, ladies and gentlemen, and were we are in  
23 the flow of the process is it's now ten to five. We said  
24 that we would take comment at five o'clock, but we also  
25 wanted to hear whether there was any interchange or

1 discussion among the expert witnesses themselves, and we  
2 did want to hear more from CRIT about some of the issues  
3 that are raised by staff. So with that, we'll leave it  
4 open to any of you, please, start the discussion.

5 Mr. Gates, you had a question?

6 MR. GATES: I simply want to report that during  
7 the break a number of tribes approached me with concerns  
8 that they would like to also weigh in on these issues. We  
9 understand that most of the tribes are not interveners,  
10 but they're concerned about their ability to speak either  
11 now or should a workshop be fashioned, and would like to  
12 know what their abilities are to participate in that, and  
13 they're also saying that, should it go to a workshop, a  
14 lot of the other tribes are not prepared to do that. They  
15 would have brought different people to this meeting, and  
16 so there's some of those concerns now circulating.

17 HEARING OFFICER CELLI: Right. And so, really,  
18 the workshop is for parties in the process, so CRIT,  
19 Colorado River Indian Tribes are the only tribal group who  
20 actually petitioned to intervene in these proceedings, so  
21 they are the only actual party in these proceedings just  
22 as the applicant.

23 Correct. We can allow other parties to make the  
24 comments, and that's why we have a comment period, but I  
25 just wanted to draw that distinction, because if you're

1 just a commenter, then you can't put in evidence and that  
2 sort of thing as a party would.

3 COMMISSIONER DOUGLAS: So let me just add  
4 something. We would like to hear from CRIT first, that's  
5 first order of business coming back from the break. We  
6 can provide an opportunity right after we hear from CRIT  
7 for other tribes to stand up and make comment. I mean,  
8 this really is not evidence of fact. We're interested in  
9 comments about process, comments about a condition or to  
10 proposed conditions, so we can allow that comment to occur  
11 right after we hear from CRIT, whatever the comment is.

12 So thank you for raising that, Mr. Gates. It's  
13 important for you to raise that.

14 Let's go to CRIT.

15 MS. BARRERA: Thank you. Thank you also for  
16 allowing this opportunity to discuss amongst ourselves for  
17 those who are present. I also have a couple other council  
18 members present here with me. Valerie Welch, who is our  
19 treasurer, I'd like to recognize her. And Johnson Fisher.

20 And in our discussion when we're talking about  
21 the workgroup in regards to the Culturals-1A and B, at  
22 this point in time I think that's something that needs to  
23 go back to tribal council for discussion in regards to how  
24 we would handle it and what our wishes are and which  
25 direction we're taking, but at the same point in time we'd

1 like to extend that invitation to invite your staff and  
2 the company to meet with CRIT and to hear from us  
3 specifically, and we have a couple dates we'd like to  
4 throw out right now, being August 1st, Friday, or August  
5 8th, next Friday, or we can set you up for a nine o'clock  
6 appointment to meet specifically with CRIT council.

7 But we also want to reiterate that in coming to  
8 our meetings that it's based on tribal law and what  
9 governs it, and our tribal law is only for tribal members  
10 only and only by invite that you enter the chambers, but  
11 we would like to extend that invitation to you to meet  
12 with us and so that we can decide as a whole through a  
13 tribal council action, which is what we're regulated by.

14 COMMISSIONER DOUGLAS: Thank you. And let me  
15 just clarify. You said specifically extend the invitation  
16 to CEC staff and the Petitioner?

17 MS. BARRERA: Uh-huh. Yes.

18 COMMISSIONER DOUGLAS: Okay. It's not much time  
19 to check the calendar, staff and Petitioner, but let me  
20 just ask if you have any response right now if you'd like  
21 to -- because if you'd like a little time we can go into  
22 public comment right now and we'll hear from some of the  
23 other tribes in the room as well as perhaps the other two  
24 CRIT council members and anyone else who would like to  
25 speak.

1           MR. GATES: As to staff's availability on those  
2 two dates, I can only speak for myself. I'm certainly  
3 available, more on the 1st than the 8th. And as for the  
4 idea of expediency, I would think that if that was to be  
5 entertained the 1st would probably be more favorable than  
6 the 8th, regardless of anybody's schedule. I do know  
7 personally I have some other plans for the 8th, but I can  
8 work around that.

9           Staff is always willing to discuss further. I  
10 would wonder, however, should that offer be taken up, what  
11 would be the role of other tribes in that forum?

12           MS. BARRERA: From CRIT's perspective we're the  
13 interveners, so at this point it would be only with CRIT.

14           COMMISSIONER DOUGLAS: Petitioner.

15           MR. GALATI: I guess a difficult one to answer.  
16 We'd be happy to have a conversation. We're very, very  
17 late in the game, Commissioner. We solved the problem of  
18 not having input by allowing the tribes to work with staff  
19 at the input.

20           I personally can't make it on the 1st. I don't  
21 know if I need to be there. I'll be officiating a  
22 wedding, but I can make it on the 8th.

23           But the problem that I have is I'm not sure that  
24 informs your decision. I think the decision in front of  
25 you is, how both processes, whether you adopt staff

1 splitting, or ours putting it together, allows the tribes  
2 and staff to continue consultations.

3           And I think it's important to keep in  
4 perspective that we're talking about impacts that don't  
5 occur on the ground, and so this consultation could go on  
6 for years to determine what the right projects are with no  
7 impact to those areas that would prevent any studies or  
8 anything else from continuing. So that's why we envision  
9 that this would kind of a long lengthy process and it  
10 would be an ongoing consultation that would take place,  
11 should the project get a license and should it begin  
12 construction, it could continue even through construction.  
13 But I'm not sure we're going to be able to in a meeting  
14 solve that particular problem for you.

15           We'd like to have a better relationship with  
16 CRIT and the other tribes, so we're not going to turn down  
17 an opportunity to come meet with them. I just don't know  
18 if that's going to inform your process, and I want to make  
19 sure we don't get to we think that it will, have  
20 expectation, and then put things on hold until the result  
21 of that, because we never got the input on how to do this  
22 in the publicly held workshops we did have. And we've had  
23 a lot on this project, both phase one -- I shouldn't say  
24 phase one -- both the original project which began in 2008  
25 that I've been working on since then, and now, so it's



1 been six years, we still don't have a solution to that  
2 particular issue, so I'm not sure it'll be effective for  
3 the Commission, but I think it would be effective for your  
4 staff to continue to meet with CRIT and others and inform  
5 how best to manage the funds that go into CUL-1, whether  
6 it's CUL-1A or CUL-1B.

7 COMMISSIONER DOUGLAS: Thank you, Mr. Galati.  
8 Do you have anything to add?

9 MS. MARTIN: I have nothing to add.

10 COMMISSIONER DOUGLAS: Okay. Yes.

11 MS. BARRERA: Could we -- I would like to  
12 respond to that.

13 COMMISSIONER DOUGLAS: Please do.

14 MS. BARRERA: Specifically in regards to the  
15 dollars, you lose sight. It's not about the dollars; you  
16 still haven't grasped that. It's about those petroglyphs,  
17 it's about the (inaudible), it's about the impact out  
18 there. And it's only specifically this project, so there  
19 will be an outcome because then we will come up with a  
20 decision and I think it's very important for your  
21 attendants, your staff, whatever, in regards to this  
22 project.

23 Now, fast track, all the projects, each one of  
24 them is going to be different because it's going to be  
25 impact to each one of us.

1           So not about the dollars and there will be an  
2 outcome, because we are the interveners as we intervened  
3 in the other project of Genesis. We are not going to get  
4 lost again in this process and have to divide up a pot as  
5 we did in Genesis, and became backdoor players against 15  
6 other tribes that pitted us against each other.

7           This one is CRIT, we're the intervener, but we  
8 recognize the other tribes who we are related with that  
9 intertwines and everything else, but specifically to this  
10 it didn't stop any other tribe stepping to the plate once  
11 we filed.

12           Thank you.

13           COMMISSIONER DOUGLAS: Thank you. So I've got a  
14 couple comments and then I think we might be able to move  
15 on and see if any of our expert witnesses have, for  
16 example, questions for each other.

17           We've already got all of your testimony in the  
18 record, we don't need, just because you might not have  
19 said everything in your opening testimony, we certainly  
20 hope you did, but we don't necessarily need that  
21 reiterated.

22           Let me just say I appreciate CRIT putting on the  
23 table a consultation meeting. I hope that staff and  
24 applicant will be able to take advantage of it. There's  
25 nothing that prevents staff from consulting again with

1 other tribes as well, although I do acknowledge the fact  
2 that time is moving on and the consultation is clearly the  
3 process, it's clearly not something that you meet once and  
4 you're done, it's a relationship, it's a long-term  
5 process, and we have to be realistic about what we get out  
6 of any one meeting and we have to be committed to the  
7 relationship in the long term commitment to meeting and to  
8 consultation.

9           So with that, I think that we are able to move  
10 on and ask at this point do any of our expert witnesses,  
11 based on all the discussion we've heard, have any  
12 questions right now for each other that you would like to  
13 ask, and -- we'll just stop there.

14           MS. CLARK: Could I just --

15           COMMISSIONER DOUGLAS: Yes. And then we'll go  
16 to the attorneys. But go ahead.

17           MS. CLARK: I don't have a question in that way,  
18 but I just have a question about what you've just proposed  
19 and I'm wondering if CEC staff and Palen can come and we  
20 do have an opportunity to have a meeting with CRIT tribal  
21 council. I know traditionally the evidentiary record  
22 would close at the end of these hearings, and I would ask  
23 that if we do have a meeting and we are able to agree on  
24 certain points, that that additional evidence could be  
25 submitted to the record after the close of this

1 evidentiary hearing, just on the specific issue about  
2 CRIT's opinions about CUL-1A and CUL-1B.

3 HEARING OFFICER CELLI: Let me poll the parties.  
4 Is there any objection if we left the record open just for  
5 that evidence from Basin and Range Watch?

6 MR. EMMERICH: No.

7 HEARING OFFICER CELLI: From the Center for  
8 Biological Diversity, any objection?

9 MS. BELENKY: No.

10 HEARING OFFICER CELLI: Californians for  
11 Renewable Energy, any objection?

12 MR. FIGUEROA: No.

13 HEARING OFFICER CELLI: Staff, any objection to  
14 leaving the record open to receive just any resolution  
15 that comes out of the staff and CRIT meeting?

16 MS. MARTIN: Should there be a meeting.

17 MR. GATES: I would again reiterate that staff  
18 would love to meet in that forum. Whatever came out of  
19 that, I think we would be remiss in our consultation  
20 obligation to the other tribes if we did nothing also then  
21 have an opportunity to discuss how we might consider  
22 changing CUL-1A or B or otherwise with the other tribes.  
23 We might walk away with a great solution with CRIT, but  
24 open up unanswered questions with a host of other tribes  
25 that we have a different relationship other than

1 intervener relationship.

2 HEARING OFFICER CELLI: Ms. Barrera.

3 MS. BARRERA: Thank you. Understanding that  
4 consultation process, Mr. Gates, but specifically in  
5 regards to Palen project, Colorado River Indian Tribes,  
6 Parker, Arizona, boundaries within Arizona and California,  
7 are the only interveners who, based on your policies and  
8 procedures, are having to be able to have that opportunity  
9 right now to do this. Any other consultations you want to  
10 have with tribes, we'll be open, unless those tribes or  
11 CRIT decides to file as an intervener, as I understand it.

12 COMMISSIONER DOUGLAS: Let me ask another  
13 question of you, Ms. Barrera, and Mr. Gates. Staff still  
14 does face the challenge of not being able to negotiate on  
15 conditions outside of a workshop, and so a consultation  
16 held under the current version of our regulations, which  
17 this conversation makes me very much want to change --

18 MS. CLARK: Please do.

19 COMMISSIONER DOUGLAS: Thank you -- you know,  
20 could take the form of staff presenting information and  
21 staff hearing what the CRIT council has to say and perhaps  
22 the CRIT council passing a resolution or taking some  
23 action that says something that could go into our record,  
24 but it really could not be a negotiation, nor I think  
25 would it in the normal course of interaction, but is that

1 what you have in mind? Because we do have -- because  
2 obviously we cannot notice the CRIT council -- as you  
3 said, this is invite only, this is not going to be a  
4 public meeting, Ms. Barrera.

5 (Off-mike colloquy)

6 COMMISSIONER DOUGLAS: While the parties are  
7 talking among themselves, are there any members of the  
8 public who signed up to do five o'clock public comment who  
9 are concerned about it being past five and who need to be  
10 allowed to speak right now?

11 I see one hand in the air. What's your time  
12 limitation, sir? At what point do you go from concerned  
13 to I've got to go?

14 MALE: I can be here all night, but I'd like to  
15 go ahead and voice my opinion as soon as possible.

16 COMMISSIONER DOUGLAS: Thank you. So let's let  
17 this wrap up and as soon as possible we'll get to public  
18 comment.

19 MALE: My comment kind of --

20 COMMISSIONER DOUGLAS: Relates to this.

21 MALE: -- relates to the whole decision making.

22 COMMISSIONER DOUGLAS: I understand. Thank you.

23 MS. BARRERA: Let me see if I have this right  
24 and then I'll probably go to Sarah to kind of clarify  
25 this. But what I'm hearing from you is that, due to the

1 fact of where we're at in this process, that it's not  
2 appropriate to hold a sort of consultation of sorts at  
3 this point in time. So we propose to you what our  
4 constitution and our bylaws state in meeting with our  
5 council for a formal decision, but it seems like we're at  
6 a head gate or we're stuck twirling. So I think at this  
7 point in time, then, it would be -- if we were to meet  
8 with CEC and the staff, actually it would be the first  
9 formal consultation, which unfortunately by historic is  
10 the same way it happened with Genesis, after the fact. So  
11 at some point in time we'll get on the same level, because  
12 I think a decision is probably going to be made from your  
13 end because of where we're at, and I'm recognizing that.  
14 Unfortunately, as per CRIT, we're left off again.

15 MS. CLARK: Just to add one quick thing. You  
16 know, we're trying to respond to Commissioner Douglas's  
17 earlier questions about what CRIT wants out of CUL-1A and  
18 CUL-1B, and we're informing you of the process that you  
19 would need to go through in order to get that input. And  
20 it sounds like the Commission and the state law cannot  
21 accommodate the process that would be required, and so as  
22 Councilwoman Barrera says, we're at an impasse here. We  
23 can't offer you anything else.

24 COMMISSIONER DOUGLAS: I think you're right.

25 MS. CLARK: But we also can't answer your

1 question.

2 COMMISSIONER DOUGLAS: I think you're right. I  
3 think the kind of consultation that you would like to have  
4 with CEC staff at this point in the process is severely  
5 restricted by our regulations, and you could have a  
6 meeting but it probably would not be satisfactory in terms  
7 of what you would like out of the meeting, and I think  
8 that's the conclusion I'm reaching, too.

9 So staff, anything to add on this point?

10 MS. MARTIN: Are you allowing me to ask a  
11 question?

12 COMMISSIONER DOUGLAS: You may ask a question,  
13 thank you.

14 MS. MARTIN: Sure. In this discussion and in  
15 the testimony that we've heard there have been comments  
16 about the Genesis proceeding and the working group, and I  
17 have heard you make comments about CUL-1B and in that  
18 CUL-1B we do have the proposal of a working group.

19 I'm going to simplify here. Genesis experience  
20 improved, and staff outlines in their testimony how they  
21 would hold this working group in a way that is improved  
22 upon the Genesis experience.

23 But I think it's important for the committee to  
24 hear staff's perspective on how that Genesis proceeding  
25 has been going given the fact that there are 15 tribes, I



1 think, interested in that area, and I believe many of  
2 those same tribes are interested in the Palen area. I'll  
3 let Tom speak to the specifics, but I would like to hear  
4 about your experience with that.

5 HEARING OFFICER CELLI: Before we do that I just  
6 want to ask, because I recall reading in the record  
7 there's the recommendation of the tribal advisory  
8 committee, but then I believe that CRIT submitted  
9 testimony including things like parliamentary procedure  
10 and so forth, and I believe that there was rebuttal  
11 testimony that said that CRIT was not interested in those  
12 modification and improvements as offered by staff, and I  
13 don't want to have to rehash old testimony that's already  
14 in the record unless there's something new here.

15 MS. MARTIN: I do believe, and correct me if I'm  
16 wrong, Tom, but I don't remember seeing anything in  
17 testimony about how well or how poorly you believe things  
18 have been going at Genesis. It's not so much as what we  
19 would take as far as lessons learned from that, but in  
20 general how is the process working from your vantage point  
21 there.

22 MR. GATES: If that's allowable then I'll try to  
23 keep it at that general level and not bog down into the  
24 details of what we're proposing going forward lessons  
25 learned. That is in supplemental testimony.

1           I would simply point out that in the Genesis  
2 situation there have been bumps. We are optimistic and we  
3 continue to go forward. In fact, we think we are doing  
4 much better than we had if you had taken a look in on that  
5 process a year ago. We think we are overcoming some  
6 problems and we're adjusting to it.

7           You have to recall that at the Genesis situation  
8 is responding to mitigations that come out of a discovery  
9 and out of a different condition than what we are now  
10 talking about, and that that then solution to how to  
11 handle that evolved from that discovery situation with  
12 time pressures put upon us by that project owner. That  
13 creates a certain microcosm and pressure that we may have  
14 more luxury should this get approved, should this working  
15 advisory group remain, we might have more luxury and less  
16 pressure.

17           The additional thing is that in the Genesis case  
18 we have the applicant holding the funds and under  
19 compliance to perform. This condition is not suggesting  
20 that. We want to remove that party, not that that party  
21 is unwelcome, it's simply -- you've got to remember at  
22 Genesis there are 15 tribes. Not all 15 tribes  
23 participate equally. In fact, there is I think one or two  
24 tribes that have never participated, it's just that the 15  
25 are on the list. It can't be more than 15. You've got a

1 federal agency, state agency, and you've got the owner  
2 right in the middle of that.

3           Given all of that, given all those differences  
4 at the table, we think we're doing pretty good. And  
5 again, we are adapting both in that situation going  
6 forward and we are proposing things to be even more  
7 adaptable should Palen go forward with this concept  
8 intact.

9           HEARING OFFICER CELLI: Ms. Barrera, I  
10 understand you're on that advisory group. We'd like to  
11 hear your impressions of what Mr. Gates was just talking  
12 about.

13           MS. BARRERA: Thank you. Yeah, I'd like to  
14 respond to that, too.

15           I think when you talk about success at the  
16 amount of \$190,000-plus and a botched bluestone study, if  
17 that's a success, then that's success number one,  
18 Mr. Gates.

19           If you talk about success number two, the  
20 ethnographic and the issues and concerns we have there,  
21 that's success number two.

22           Success number three is in the scholarships in  
23 regards to guidelines being set up and the tribes not  
24 consulted in regards to how the scholarships could be set  
25 up and be utilized so it best meets out needs of our

1 individual communities, and that's success number three,  
2 my opinion.

3 Success number four would be in the inability  
4 for the working group, it's staff, CEC and Genesis Next  
5 Era to recognize each individual tribe as an individual  
6 sovereign nation with procedures and policies in place and  
7 requesting those present, whether they be lay staff or  
8 council representatives, to make and determine by a minute  
9 recording as parliamentary decisions that have not been  
10 established. So if that's a success story, then I need to  
11 learn a lot more.

12 But it doesn't work. And I'll tell you, Genesis  
13 would not exist and that procedure, that working group  
14 decision there, if it wasn't for CRIT from the get go who  
15 filed also in that case.

16 And when you ask CEC and BLM staff who's  
17 accountable for what, and nobody responds, then that's  
18 another success.

19 It doesn't work, because you don't recognize in  
20 that setting the individuality of the sovereign nations as  
21 individual. We don't come together. We will never agree.  
22 We'll come to a consensus, but we will never agree. We  
23 have our own setup, our own way of running things, and  
24 we're accountable to the people who put us in those seats,  
25 and those decisions for CRIT, as we filed at the last

1 letter, is made by a tribal council action, not by me as  
2 the tribal working group, not by the museum director, not  
3 by anybody else in attendance. It's made by tribal  
4 council action, then it becomes official. When that's  
5 recognized for CRIT, then it will be a viable working  
6 group.

7           Could I also add in there -- thank you -- in our  
8 discussion when we brought up the issue in regards to the  
9 scholarship and just dividing the monies up and giving it  
10 to the tribes, there was a statement made basically that  
11 the tribes were not trusted, which sparked a response from  
12 CRIT.

13           We have multi-million dollar contracts. We're  
14 accountable to federal agencies in regards to that for our  
15 process, but for \$20,000 we were not trusted.

16           HEARING OFFICER CELLI: All right, Ms. Barrera,  
17 thank you.

18           Ms. Martin-Gallardo, did you have any other  
19 further questions?

20           MS. MARTIN: I do not.

21           HEARING OFFICER CELLI: Okay. Mr. Galati, any  
22 questions?

23           MR. GALATI: Yeah, have I few questions.

24           Mr. McGuirt, when you came up with your total  
25 amount for CUL-1A and CUL-1B, did you consider the revised

1 phasing plan that was filed later?

2 MR. MCGUIRT: We had come up with those figures  
3 before the phasing plan came out, but we did consider  
4 after the phasing plan came out what we thought the  
5 difference would be.

6 MR. GALATI: And it's the same?

7 MR. MCGUIRT: That's correct.

8 MR. GALATI: You made a comment about you want  
9 to be careful not to make the amount so low on the state's  
10 interest or place interest, as you identified it, or you  
11 have failed your CEQA obligation. Did I characterize that  
12 statement correctly?

13 MR. MCGUIRT: I was speaking to that part of our  
14 compliance with CEQA that would relate to the non-Native  
15 American public's loss of associative values.

16 MR. GALATI: And in this case, though, for that  
17 particular impact, you found that no amount of money or  
18 studies would mitigate it to a level of less than  
19 significant, right?

20 MR. MCGUIRT: That's right.

21 MR. GALATI: And so isn't it true that the  
22 Energy Commissioners could satisfy their CEQA obligation  
23 by merely making a finding of override?

24 MR. MCGUIRT: We believe in the cultural  
25 resources unit our understanding of an ultimately

1 unmitigable impact is that we need to do what is  
2 reasonable and feasible in an attempt to try and mitigate  
3 for that at least partially.

4 MR. GALATI: So when you say failing your CEQA  
5 obligation, you're saying spending a reasonable amount of  
6 money or funding or do a reasonable amount of studies; is  
7 that the CEQA obligation that you're quoting?

8 MR. MCGUIRT: I'm saying to put together at the  
9 very least a suite of mitigation measures that would pass  
10 the red face test that said we've gone out there and we  
11 tried to do something, and that it was a coherent hole.  
12 Whatever the suite was, it was a coherent hole. It had  
13 logic, it had a theme to it and would satisfy those needs.

14 MR. GALATI: And in your opinion, the amount of  
15 money and the studies that you've allocated for CUL-1A is  
16 the minimum amount necessary to satisfy that CEQA  
17 obligation?

18 MR. MCGUIRT: That's right. For each of those  
19 line items we went through and costed out, based on  
20 certain assumptions, what each of those things would cost,  
21 and we felt like that that was the amount that was a  
22 minimally acceptable amount that would demonstrate that we  
23 had done what was reasonable and feasible and mitigated  
24 for that. And that's the budget that we've come up with  
25 to do that.

1           What we found since the last set of hearings  
2 was, and we made note of this in our supplemental  
3 testimony, that based on our observations at Ivanpah that  
4 in fact the effects of the light intensity and the extent  
5 of the brightness and whatnot was a lot greater than we  
6 had anticipated. So we felt kind of strongly that, yes,  
7 that was our minimum sort of level.

8           MR. GALATI: And that was not affected at all by  
9 the revising phasing plan of constructing one tower first.

10          MR. MCGUIRT: Given the magnitude of each of the  
11 towers and the intensity involved that we've all been  
12 discussing all day about glint and glare and whatnot, to  
13 use a metaphor, maybe a poor one, we felt like essentially  
14 with even erecting one of the two towers you've sort of  
15 shattered the mirror.

16          And yes, by adding another one you might add a  
17 few more cracks to the shattered mirror, but nonetheless,  
18 the mirror's already been shattered, because the presence  
19 of that tower and that facility is of a magnitude that  
20 visually it's fairly profound, so one or two in terms of  
21 the kind of visual effects we're looking at, we didn't see  
22 that there was a difference.

23          MR. GALATI: No further questions.

24          HEARING OFFICER CELLI: Thank you, Mr. Galati.

25          Any further questions from Californians for



1 Renewable Energy for this panel?

2 MR. FIGUEROA: No.

3 HEARING OFFICER CELLI: Thank you.

4 Center for Biological Diversity, any questions  
5 of this panel?

6 MS. BELENKY: No, thank you.

7 HEARING OFFICER CELLI: Colorado River Indian  
8 Tribes, any further questions?

9 MS. CLARK: Yes, I have a couple of  
10 cross-examination questions.

11 HEARING OFFICER CELLI: Go ahead, Ms. Clark.

12 MS. CLARK: So first, this is going back to much  
13 earlier in the afternoon to when we were talking about the  
14 difference between places and people, and I think there  
15 was some confusion here about that distinction. And I  
16 wanted to -- I was wondering if you could elaborate on  
17 whether one could make the distinction instead based on  
18 scientific interests and cultural interests, and if that  
19 might be a way of dividing or at least understanding what  
20 you were getting at in CUL-1A versus CUL-1B.

21 MR. MCGUIRT: The routine path through cultural  
22 resources analysis is to go out and try and inventory the  
23 cultural resources that are out in a particular project  
24 area and then to evaluate whether or not they're eligible  
25 for listing in the California Register. And that

1 determination of eligibility, or in our case our  
2 recommendation of eligibility to the Commissioners is  
3 based on an assessment of whether the resources that are  
4 found have certain values.

5           Associative values of two different kinds,  
6 artistic values or design values or information values.  
7 And if in fact the resource has those values and could be  
8 significant, then one has to look at the seven aspects of  
9 integrity of that resource to see whether or not, given  
10 the particular value for which it may be significant,  
11 whether the resource retains enough integrity to convey  
12 that significance.

13           So when we did our analysis on it, to say that  
14 it's scientific, that would typically be associated with a  
15 mitigation for information value, you know, typically an  
16 archeological site.

17           And in the case where we were looking at these  
18 associative values and we recognized that they were both  
19 non-Native American and Native American associative values  
20 with these resources, the non-Native American associative  
21 values -- in other words, you know, we're trying to  
22 restore to some degree that we could to compensate the  
23 public for their loss, the general public's ability to  
24 experience those resources, there is a suite of what you  
25 could consider to be scientific measures to do that, and

1 the reason for that is that we were trying to have enough  
2 information, enough background data in order to be able to  
3 do a reasonable job of interpreting it for the public.  
4 And as we've said, we've include the Native American  
5 integration component in that so that we get a more  
6 holistic view of that.

7 The Native American associative values issue, in  
8 our minds in the revision to CUL-1, we rolled that  
9 consideration into CUL-1B and made it part of that.

10 MS. CLARK: Okay. So perhaps we could use the  
11 term western then to describe 1.

12 MR. MCGUIRT: Yeah, I think that's fair. Yeah,  
13 I think you could split associative value considerations  
14 under A into western and non-western categories.

15 MS. CLARK: Okay. Thank you. So my second  
16 question then is -- this is also for staff -- is whether  
17 you considered in determining how much money to allocate  
18 in the pot, if you ever looked at tying this to some sort  
19 of annual payment to the tribes or a structure that's tied  
20 to the company's revenue as opposed to -- I'm not quite  
21 sure how you arrived at the number you arrived at for  
22 CUL-1B.

23 MR. MCGUIRT: For CUL-1B.

24 MR. GATES: CUL-1B is the tough number to  
25 derive, particularly when tribes -- and I said this in

1 supplemental testimony -- particularly when tribes feel  
2 that, by them providing some dollar amount or some  
3 concepts that allow staff to derive a dollar amount,  
4 they've also somehow tacitly approved or given some sort  
5 of indication to decision makers that they're agreeing to  
6 the approval, so it's a tough calculation to make.

7           We do better on the 1A side. That's our bread  
8 and butter as cultural resource managers. We've got  
9 decades of experience in calculating those costs and we  
10 brought that to bear in coming up with those costs.

11           So absent a precise method for calculating 1B,  
12 we went to a percentage, what we started to call a parody,  
13 that whatever is in one, if there's some ratio between  
14 them you can extrapolate and come up with a calculation on  
15 the second one.

16           We understand that tribes don't really care for  
17 that calculation, but we feel we had to calculate  
18 something and put out a dollar amount, particularly  
19 because the applicant was asking for financial certainty,  
20 so we felt we had to be responsive to that. So that's our  
21 method.

22           However, I'm sure if you look at the numbers, we  
23 didn't achieve that 100 percent on this side equals 100  
24 percent on that side. There is disparity currently, and  
25 without us exactly saying what that number should be to

1 bring it to some sort of parity, we have suggested in our  
2 supplemental testimony that perhaps that amount in 1B  
3 could be higher, and we also provided information that  
4 that could be based not only just on the calculation  
5 between 1A and 1B, but staff also realized late in the  
6 game that based upon Ivanpah, which all three of us had  
7 gone out and witnessed, that our ideas of the brightness,  
8 the luminosity, we were off the mark. We were focusing on  
9 the brightness as it ensued from the top of the tower. We  
10 had not considered the spectral glare. We had not  
11 considered the other types of glint and glare that were  
12 talked about this morning.

13           And so without us actually putting a dollar  
14 amount on that, we think that that perhaps could justify  
15 an increase on 1B, but it's the ratio that is our best  
16 method at this time for calculating that.

17           MS. CLARK: So I hear you to say that you've  
18 (inaudible) the number based on the CUL-1A calculations,  
19 that it's a percentage somewhat of the CUL-1A numbers.  
20 And I'm wondering if you've considered pegging up another  
21 number, say, the company's revenue.

22           MR. GATES: We did not consider that.

23           HEARING OFFICER CELLI: One moment, Ms. Clark.  
24 The question was that whether you pegged that number from  
25 CUL-B to CUL-1A, and you are nodding in the affirmative,

1 Dr. Gates, so I just wanted to know. If your answer was  
2 yes, it's not in the record, so you have to say that  
3 audibly if that's so.

4 MR. GATES: We did calculate 1B based upon our  
5 calculations in 1A.

6 HEARING OFFICER CELLI: Thank you.

7 I'm sorry, Ms. Clark, go ahead.

8 MS. CLARK: Okay. And you didn't consider  
9 having an annual payment that's made out over the course  
10 of the project as opposed to just one payment.

11 MR. GATES: No, we did not.

12 MS. CLARK: So moving on to what you've alluded  
13 to already about glint and glare and increased impact.  
14 Earlier this morning we heard that the heliostat  
15 positioning plan does not intend -- or will not be used to  
16 address glint and glare impacts to recreational users or  
17 hikers and presumably also to any tribal members that  
18 would use the site for cultural purposes. And I'm just  
19 hoping you can confirm, then, that despite the  
20 modifications to the heliostat plan represented under  
21 transportation and traffic this morning, that your  
22 recommendation that CUL-1B increase is based on the  
23 increased glint and glare still stands.

24 MR. GATES: Yes, it does.

25 MS. CLARK: And then I have a few questions for

1 Palen as well. And actually, this ties a little bit to  
2 Commissioner Douglas's proposal.

3           So as I understand it, you've proposed, the  
4 company has proposed to lump everything together into  
5 CUL-1A, and as I read your -- or into just a CUL-1  
6 proposal. And as I read the modifications to the actual  
7 text of the condition, it says that the CPM will  
8 distribute the money at the direction of Native American  
9 tribes. And I'm wondering if you could walk us through  
10 how exactly you see that process working, particularly  
11 given that now you'll not only have 15 tribes coming to  
12 the CPM to ask for specific objects, but also CEC staff  
13 coming to say, hey, we need to mitigate for the state  
14 interests or place or whatever you want to call what's  
15 currently under CUL-1A.

16           MS. BARGER: Well, we knew that the tribal  
17 advisory group was not working and we knew that Tom had  
18 tried to talk about some other options, so we did feel  
19 that this was a long-term consultation thing with the  
20 tribes to make the recommendation that could work for you  
21 guys, because you are different. Each of the tribes is  
22 different, manages things differently.

23           And we can suggest things, but we sit on the  
24 outside and we don't really understand all of the  
25 complications that can occur in each of the tribes, you

1 know, your closed meetings where you do need the tribal  
2 council to make those decisions. So we felt that the  
3 tribes should get together and try to come up with a plan  
4 that could work, because otherwise, you know, it's going  
5 to be people like us telling you what we think should work  
6 and you're going to tell us that they may not work.

7           So that's the only reason, is because the tribal  
8 advisory group's not working. Maybe the tribes have a  
9 better idea of what could work, and so we were hoping that  
10 you could tell us, you could work through some ideas that  
11 might work.

12           MS. CLARK: And so, if I'm understanding  
13 correctly then, the money would sit in the pot with the  
14 CPM until the tribes and the CEC staff could agree what  
15 the proper distribution would be?

16           MS. BARGER: Well, and I'm not suggesting that  
17 the CEC staff would participate in that.

18           MS. CLARK: So you're suggesting that what's  
19 currently in CUL-1A, none of that would happen unless the  
20 tribes said that they wanted it to happen.

21           MS. BARGER: That's correct.

22           MS. CLARK: And follow-up to that and to  
23 Mr. Gates and Mr. McGuirt is, do you think that that  
24 satisfies your obligation under CEQA if that's what we  
25 move forward with?



1           MR. GATES: Because that would be left to the  
2 future, we would not be able to say today that it would  
3 satisfy. It would all depend on what comes out of those  
4 deliberations. And so I don't think we could answer that  
5 in affirmative now, but I'll defer to my colleague.

6           MR. MCGUIRT: I think the problem that happens  
7 and has been characterized as a trust issue between the  
8 state agency and the tribes is really more of an issue  
9 from the state side, I believe, of being accountable to  
10 the public, under CEQA, in fact, the mitigation measures  
11 that we've developed and are implementing actually fulfill  
12 our obligations under CEQA to mitigate in some way for  
13 these measures.

14           So it becomes very difficult for the state  
15 agency, not because we don't want to, but because if we  
16 simply turn over the money and have no further input into  
17 how it's spent, we're not auditable. If we were audited  
18 we could not say that we've fulfilled our obligations  
19 under CEQA. And so I think that's behind a lot of it.

20           MS. CLARK: And then the follow-up. If the  
21 tribes couldn't agree, would the money sit there  
22 indefinitely? What would happen at that point?

23           MS. BARGER: I think that would be another thing  
24 that had to be discussed, that if the tribes -- I think  
25 you're bringing it up right now, what would happen. What

1 would happen, for example, as we know, 15 tribes aren't  
2 showing up for the Genesis meeting. Let's say 12 tribes  
3 are showing up and the 12 tribes get together and say what  
4 are we going to do? Maybe at that point you do divvy up  
5 the money, maybe you do come up with another plan, or  
6 maybe you divide into subgroups and the subgroups would  
7 each choose some projects that they would like to work on,  
8 or some activities or studies or research that you would  
9 like to do that would benefit your tribes.

10 I agree with Mike, what Mike said is that I  
11 think it's a trust issue. I think we need to trust that  
12 the tribes are going to choose some projects that are  
13 mitigation.

14 HEARING OFFICER CELLI: Ms. Martin-Gallardo, I'm  
15 going to ask you to return to your seat, please.

16 I'm sorry for that interruption, go ahead.

17 MS. BARGER: But I think we should trust that  
18 the tribes are going to choose some mitigation. The  
19 tribes understand that this is a mitigation measure and  
20 it's for mitigation for Palen. You know, I think there  
21 has to be that trust, and it may be that the CEC would  
22 provide some guidance and say, you know, within this  
23 circle of types of projects you can choose, and you can  
24 choose that maybe more of the money would go over here and  
25 less of it over here, but we're going to trust that you're

1 going to do that.

2           And you may do studies, but no one's allowed to  
3 see the reports because it's protected information of the  
4 tribes. You might send a summary letter to the CEC and  
5 say, yeah, we did it and this is what we did, and we're  
6 happy with it and we feel really good about what we did.  
7 I think that's what we should be moving towards for a  
8 project like this.

9           MS. CLARK: So as a follow-up question I'd like  
10 to ask Ms. Barrera what you think the likelihood of that  
11 occurring, of 15 tribes reaching consensus on how to  
12 distribute all of the money?

13           MS. BARRERA: What I can elaborate on is what I  
14 see not occurring through the tribal working group, so I  
15 can only respond for what I've seen and the  
16 recommendations that come forward cannot be made by just  
17 one individual, whether it's the tribe or the company or  
18 CEC or BLM. It needs to be that all the tribes, you know,  
19 agree upon it, and based on each individual whether --  
20 we've had discussion that some of the tribes in California  
21 it takes a tribal resolution by the full community to take  
22 an action. Our tribe is by tribal council action or  
23 resolution, and generally in incidents like this it's been  
24 by resolution so it becomes a matter of a living record  
25 within our archives.

1           So it would be very difficult for it to work,  
2 but it comes back to that point of trust. Again, you  
3 know, trust, you said -- I think I heard a comment about  
4 not being audited. Tribes are audited left and right.  
5 That accountability, we go through audits all the time.

6           There's comments made in regards to it in the  
7 working group meeting about gaming issues. We're audited,  
8 you know, three, four times a year. We're reaudited. We  
9 spend megabucks for accountability of dollars that we  
10 utilize within our community, and who can best speak for  
11 their community but the leadership that the people make  
12 the choice of what's needed in the community, and we're  
13 all individually different. We have different needs.

14           Some of us need counselors in specialty fields  
15 of alcoholism. Some of us need doctors. Just general  
16 practitioners. You know, and all the changes going on.  
17 So it doesn't work, because that's our uniqueness of  
18 sovereign nation.

19           MS. CLARK: Thank you. So one final question.  
20 What I've seen in your testimony is that you have  
21 classified the paleoenvironmental study, the PRGTL field  
22 manual and the public outreach to a certain extent as not  
23 being relevant to the tribes, and I'm not going to make a  
24 comment on whether or not that's true, but I'm curious why  
25 you just took the money out entirely as opposed to just

1 allocating it to the CUL-1A as a whole.

2 MS. BARGER: We didn't address the funding issue  
3 at all, so I just proposed that those activities would be  
4 removed. I didn't propose that the funding go, because I  
5 was going to combine all the activities into one CUL-1,  
6 and then that's what we proposed. And then we proposed  
7 that maybe these aren't relevant to the guidance that was  
8 provided by the committee; therefore, the money that's  
9 allocated then could be redistributed among those tribes  
10 of activities.

11 MS. CLARK: And maybe I'm misinterpreting your  
12 testimony, though, to indicate that the proposed amount is  
13 less.

14 MR. GALATI: That wasn't the intention. I think  
15 the proposal that was on the table from the company was on  
16 the order of 2.4 or something million. If you add up the  
17 CUL-1 number in our current proposal it's still that  
18 number.

19 MS. CLARK: Okay. And then finally I just  
20 wanted to ask one question also of Mr. Harper or  
21 Ms. Barrera. So we've heard some opinions earlier about  
22 the difference in impact between having one tower built  
23 now and one tower built later or one tower built at all,  
24 and I'm just hoping you can offer your opinion on whether  
25 the impacts from one tower versus two towers, whether one

1 tower will be just as significant as having two towers.

2 MS. BARRERA: I think in regards to that  
3 response we have to remember that the impact would still  
4 be the same to the point that it would directly change  
5 what we consider a pristine living landscape, which  
6 impacts the cultural and spiritual pathways as has been  
7 discussed by the Mojave people. So no matter what you do  
8 out there.

9 MS. CLARK: I have no further questions.

10 HEARING OFFICER CELLI: Thank you. Mr. Emmerich  
11 or Ms. Cunningham?

12 MR. EMMERICH: We don't have any questions.

13 HEARING OFFICER CELLI: Okay. At this time,  
14 staff, do you have a motion with regard to exhibits,  
15 cultural?

16 MS. MARTIN: Staff would like to move into the  
17 record Exhibits 2017, 2018, 2019, 2020, and that's it.

18 HEARING OFFICER CELLI: Any objection to those  
19 exhibits, Petitioner?

20 MR. GALATI: No objection.

21 HEARING OFFICER CELLI: Californians for  
22 Renewable Energy, Mr. Figueroa, any objection?

23 MR. FIGUEROA: No objection.

24 HEARING OFFICER CELLI: Center for Biological  
25 Diversity?

1 MS. BELENKY: No objection.

2 HEARING OFFICER CELLI: Colorado River Indian  
3 Tribes?

4 MS. CLARK: No objection, other than the  
5 objections that we raised earlier about the PowerPoint,  
6 which you sustained.

7 MS. MARTIN: We are not moving that.

8 MS. CLARK: Okay.

9 HEARING OFFICER CELLI: So is there an objection  
10 to 2017, 2018, 2019 and 2020 being received into evidence?

11 MS. CLARK: Just to clarify, you're not moving  
12 the PowerPoint into evidence, that's not one of those?

13 MS. MARTIN: That is correct.

14 MS. CLARK: Okay. Then no objection.

15 HEARING OFFICER CELLI: Any objection Basin and  
16 Range Watch?

17 MR. EMMERICH: No objection.

18 HEARING OFFICER CELLI: Okay. Those exhibits,  
19 Exhibit 2017, 2018, 2019 and 2020 are received.

20 Motion by the Petitioner.

21 MR. GALATI: Petitioner moves to move Exhibit  
22 1126, 1171 and 1172 in the record.

23 HEARING OFFICER CELLI: 1125, 1171 and 1172, any  
24 objection Mr. Figueroa?

25 MR. FIGUEROA: No objection.

1 HEARING OFFICER CELLI: Ms. Belenky?

2 MS. BELENKY: No objection.

3 HEARING OFFICER CELLI: Ms. Clark?

4 MS. CLARK: No objection.

5 HEARING OFFICER CELLI: Mr. Emmerich?

6 MR. EMMERICH: No objection.

7 HEARING OFFICER CELLI: Ms. Martin-Gallardo?

8 MS. MARTIN: No objection.

9 HEARING OFFICER CELLI: Petitioner's Exhibit  
10 1126, 1171 and 1172 are received.

11 Could we have any evidence from Center for  
12 Biological Diversity on cultural? I don't think so.

13 CRIT.

14 MS. CLARK: We would like to move into the  
15 record Exhibit 8028, 8029, 8030, 8035 and 8036.

16 HEARING OFFICER CELLI: The motion is to move  
17 into the record Exhibit 8028, 8029, 8030, 8035 and 8036.  
18 Is there any objection from Basin and Range Watch?

19 MR. EMMERICH: No objection.

20 HEARING OFFICER CELLI: Energy Commission staff?

21 MS. MARTIN: No objection.

22 HEARING OFFICER CELLI: Petitioner?

23 MR. GALATI: No objection.

24 HEARING OFFICER CELLI: Mr. Figueroa?

25 MR. FIGUEROA: No objection.



1 HEARING OFFICER CELLI: Center for Biological  
2 Diversity?

3 MS. BELENKY: No objection.

4 HEARING OFFICER CELLI: CRIT. Oh, I'm sorry.  
5 Full circle there.

6 Okay. Exhibits 8028, 8029, 8030, 8035 and 8036  
7 are received into evidence.

8 Basin and Range Watch, did you have any evidence  
9 on cultural?

10 MR. EMMERICH: No, we don't.

11 HEARING OFFICER CELLI: Okay. Then I believe  
12 we've taken in all of the evidence on the cultural  
13 resources regarding Cultural-1.

14 At this time, then, I would excuse the witnesses  
15 on cultural, thank you, and then I'm going to call the  
16 following people who have requested to make a comment.

17 First person who requested was Edward D. Smith.  
18 Mr. Smith, are you still here? Please come forward.  
19 Thank you. I'm going to ask you to move that mike up a  
20 little closer and I'm going to ask people who are in the  
21 room to please be quiet so we can hear.

22 MR. SMITH: Can you hear?

23 HEARING OFFICER CELLI: Yes.

24 MR. SMITH: Okay. My name's Edward Smith, I'm  
25 Chairman of the Chemehuevi Indian Tribe, Lake Havasu. I

1 was going to let you know that the Chemehuevis, there's  
2 three groups of Chemehuevi people. One is Colorado River  
3 Indian Tribes, (inaudible) Chemehuevi, and Chemehuevi Lake  
4 Havasu.

5 Chemehuevi is a Mojave word, and we're actually  
6 southern Paiute (inaudible) the southern Paiute. And I  
7 don't know whether I can comment on the religious aspect  
8 because I heard some religious aspect come from Colorado  
9 River Indian Tribes but not relating to the Chemehuevi  
10 people and their religion and how that works.

11 The Chemehuevi occupy almost every section,  
12 every area of what is called the Mojave Desert, so we've  
13 been here. We moved off the desert and put on a  
14 reservation at Lake Havasu. Early 1900s they were still  
15 moving us off the desert between here and Barstow.

16 When the people got to Lake Havasu reservation  
17 because they couldn't live out there anymore, so they  
18 established the reservation in 1907 and we had to live on  
19 the reservation.

20 So after getting to the reservation sometime  
21 after 1907, 1915 people start coming on. Metropolitan  
22 Water District comes in about mid 1930 along with Central  
23 Air General Project and looked at Lake Havasu and they  
24 found an area where they'd like to build a dam called  
25 Parker Dam.

1 Chemehuevi Valley was lush in cottonwoods,  
2 willows, pastures, saloons, everything you needed and  
3 suited the people just fine, and that's where we survived  
4 after they moved us there.

5 So the government asked the tribe to sell the  
6 reservation. They got 17 people to sign, one was a miner.  
7 So the government agent (inaudible) went back to  
8 Washington D.C. said Chemehuevis don't want to sell their  
9 property.

10 Secretary of Interior says no problem, I'll just  
11 condemn it. So they condemned our reservation. Made us  
12 move.

13 If you've ever been to Lake Havasu before Lake  
14 Havasu city was built, it was nothing but desert once the  
15 lake came in. So our people had to leave. They scattered  
16 all over. A few run cattle so they kept cattle at the  
17 lake, but everybody else left. A lot of them came to  
18 Colorado River Indian Tribes and become members down the  
19 Colorado River here. Some went to Las Vegas. To this day  
20 we have Chemehuevis in almost every state of the union.

21 1970 tribe reorganized and wanted to come back,  
22 and they're coming back. And what happened when they  
23 (inaudible), we lost a lot of our culture, because when  
24 you live together you keep your language, you keep your  
25 culture and you keep your religion. And when you get sent

1 off and you go to Los Angeles and your neighbor's not  
2 tribal, well, you start losing that stuff and you start to  
3 lose your language.

4           And you know, our tribe is not objecting to  
5 green energy, renewable energy. We're for it. If we  
6 could do it on our reservation, we would do it, but we're  
7 still quite remote from the main transmission lines that  
8 it would cost about \$80 million to build new transmission  
9 lines and no company wants to do that.

10           So we lost a lot, but one thing we didn't lose,  
11 and I heard CRIT talk about their religion, we didn't lose  
12 our religion. A lot of our people still believe in it.  
13 They're not Christians, they believe in the way we go to  
14 heaven. And there's songs that go with you when you  
15 travel.

16           I've got a map over here. When we die and our  
17 spirits leave us, they travel from here (non-English  
18 word). And will leave the area, they would walk almost to  
19 Utah like this and come back down through Nevada all the  
20 way over to the Big Bear Mountains and work their way back  
21 right to the area that we're talking about today, or right  
22 here to Blythe. In fact, (inaudible) I think when it gets  
23 back to it and then our soul's at rest.

24           And that's the kind of stuff I didn't walk to  
25 talk about. That's why we didn't become interveners and

1 we didn't become expert witnesses. This is ours, and I  
2 think you need to know that.

3           You know, we're open to mitigation along with  
4 the other tribes, but we still hung onto our religion.  
5 It's still there.

6           My son just passed away about ten days ago, he  
7 was 42 years old. He wanted a traditional burial. We  
8 gave him as close as it could be to traditional. There  
9 was no Christian prayer, it was our prayers.

10           Many religions in this world, I heard someone  
11 say, and every one is a different one. We believe it is.  
12 We didn't lose it. Government tried to whip it out of our  
13 parents.

14           By the way, my name's Edward Smith. Smith's a  
15 given name. When they took my father to government  
16 school, boarding school and were going to have Indian  
17 assimilate into society, they put them in boarding  
18 schools. Had no idea how old he was. Estimated age when  
19 I looked at the records from Washington D.C. he was about  
20 seven years old. And there was two columns in the book,  
21 one was the Indian name, one was the given English name.  
22 If they couldn't spell your name, you got an English name.  
23 Very few got their traditional names. So we became Smith,  
24 my father was named Harry Smith, so we became Smith.  
25 Simple to spell our last name, our last name's simple to

1 spell. Why they put it there I don't know, but  
2 (inaudible) like a badger, like badgers could be like a  
3 spirit, that's who we are, but they named us Smith.  
4 (Inaudible)

5 Didn't totally understand your process. You  
6 tried to explain it to me and I was educated by other  
7 people to understand what the interveners were, to  
8 understand the expert witness. I decided to just sit back  
9 and see what happened.

10 But we're very concerned about all these areas.  
11 What we want to do is have documentation to show our  
12 children that are coming back to the reservation where  
13 we've been, what's ours.

14 Like I say, every place in the desert you can  
15 find evidence that we were there in the great field of  
16 what's called the Mojave Desert, we were in all that area.  
17 Ended up at Lake Havasu.

18 No, we're concerned about the process. We're  
19 concerned about what's going on. No, we can't stop the  
20 green energy process. Renewable.

21 Kind of a little concerned about President Obama  
22 and his coal fire plants and closing them down. I just  
23 seen on the Internet news just two days ago that the coal  
24 industry is selling coal to other countries, so there's a  
25 double standard there. You can go back, it was in the

1 news two days ago. Coal companies are loading ships with  
2 coal and sending it to other countries. So why isn't  
3 President Obama pushing this green energy? I don't know,  
4 it's just a good thing, but why are we selling coal to  
5 other people?

6 I'll tell you, I grew up in a coal environment.  
7 I worked for a power company. I got most of my education  
8 from that power company. I understand boilers and stuff  
9 like that. Ivanpah engineers designed (inaudible) boilers  
10 to fire the unit up (inaudible). They made a mistake and  
11 built too small aux boiler, it's an auxiliary boiler that  
12 starts the steam rolling before the solar system takes  
13 place.

14 So really concerned about President Obama's  
15 stand on green energy, if he's going to allow other  
16 countries to buy our coal.

17 Basically that's all I have to say is, you know,  
18 we're concerned. We didn't know how the process worked,  
19 we didn't jump in, but we'll make our presence. Thank  
20 you.

21 HEARING OFFICER CELLI: Thank you, Mr. Smith.  
22 And thank you. I just want to tell you that the committee  
23 that's here was also the same committee in the Hidden  
24 Hills matter and so they took a lot of testimony on  
25 (inaudible) and landscape and they both learned quite a

1 bit about that, so thank you for sharing that.

2 Joe Ontiveres. I'm sorry if I mispronounce  
3 names.

4 MR. ONTIVERES: Don't worry about it, I'll  
5 correct you.

6 HEARING OFFICER CELLI: Come forward please and  
7 address the committee.

8 MR. ONTIVERES: I tried to fix it but it went  
9 the other way. Anyway, my name is Joe Ontiveres, I'm the  
10 Cultural Resource Director for the (inaudible) Indians.  
11 We've been consulting on this project basically from the  
12 beginning from the initials notifications. We've actively  
13 consulted on Genesis II as well, so we're very familiar  
14 with that project.

15 Our interests in this project basically is based  
16 on the fact that the project location actually is located  
17 along our traditional bird trails where our bird songs  
18 talk about traveling through.

19 The other concern that we have is, of course for  
20 visual, because now it's been determined that it is going  
21 to be visible from Mount San Jacinto, which is our sacred  
22 mountains close to us. I can't go into certain detail  
23 about the reason why it would impact it, but of course  
24 there is.

25 These are some of the things that we've been



1 able to detail and discuss with staff on a government to  
2 government level. But anyway, basically that's it.

3           So my first comments is, just sitting here and  
4 listening today, if there's anything -- and I mean, you  
5 know, I have reviewed both of the different documents that  
6 were drafted for Cul-1A and Cul-1B. Anything that's  
7 really drafted and mimicked off of Genesis should not be  
8 included at all. I mean, I'll be the first one to tell  
9 you. And we were one of the earliest ones to consult on  
10 Genesis. Everything that happened there was botched.  
11 There's nothing there that happened positive.

12           You know, right now, everything that happened at  
13 Genesis was after the fact, and right now we're just  
14 trying to pick up the pieces. That's what everybody's  
15 trying to do.

16           This project right now is in a unique position  
17 to be able to go out and make things right before the  
18 project even moves forward, so looking at Genesis and  
19 looking at this project now, they're both completely  
20 different and I don't think the idea should be sold off on  
21 the fact that, you know what, well, this is what happened  
22 on Genesis. Maybe this might work a little better here.  
23 That is not the case here.

24           Nothing happened on Genesis that was right. It  
25 was a prototype and the majority of it got botched.

1           The second thing that I'd like to address is you  
2 had asked, Ms. Douglas, earlier you had asked a question  
3 as to whether the impacts were directed towards the land  
4 or towards the people, and I don't really remember hearing  
5 a like a direct answer to you for that.

6           And you know what? It's both, you know. It  
7 might be kind of hard to understand that, but to tell you  
8 the truth, it's both. And it goes down to the fact that  
9 we're having a meeting today in regards to cultural  
10 resources and tomorrow you have another one for bio.  
11 They're integrated for us. Both of those have to be seen  
12 together. It's not just the land itself, it's everything  
13 above the land, everything under the land and everything  
14 that sits on top of it. You can't have one without the  
15 other.

16           And it's not an area that people once inhabited.  
17 It's an area that people still inhabit today, and I think  
18 the majority of the discussion that was directed today was  
19 geared toward the fact of past tense, and it's not  
20 specifically past tense, it's current, it's happening  
21 right now. That's why the impacts are so great.

22           The other thing that I have, I guess it's based  
23 off a question I have to ask you. When is the last time  
24 that the Commission actually moved forward with advancing  
25 into a workshop with one of the tribes? Or anybody for

1 that matter, because that was an option that was on the  
2 table and it's a major concern with us.

3 COMMISSIONER DOUGLAS: So let me ask staff. Are  
4 you asking the date of the last --

5 MR. ONTIVERES: No, I'd like to know when you  
6 actually moved forward with moving the hearing into an  
7 actual workshop with a federally recognized tribe before.

8 COMMISSIONER DOUGLAS: This is the first time a  
9 federally recognized tribe has intervened in our  
10 proceeding.

11 MR. ONTIVERES: Okay.

12 COMMISSIONER DOUGLAS: And today we did not move  
13 into a workshop.

14 MR. ONTIVERES: I understand that. I understand  
15 that.

16 COMMISSIONER DOUGLAS: So I think the answer  
17 would be never in terms of being in an evidentiary hearing  
18 and moving into a workshop. There have been workshops on  
19 this topic.

20 MS. MARTIN: Yes. The most recent workshop, I  
21 believe, was April 8th.

22 MR. ONTIVERES: Okay. That specifically with  
23 the tribe that's intervening is a major curveball for us,  
24 because I'm not the only one but there's other tribal  
25 representatives that are here that wish to voice their

1 opinion and to come up and speak. If it had moved into a  
2 workshop, we would have been left out.

3 COMMISSIONER DOUGLAS: Uh-huh.

4 MR. ONTIVERES: Decisions would have been made  
5 without any input from the other tribes. Now, I feel --  
6 and correct me if you think I'm wrong, but coming up with  
7 decisions like that, it is going to limit the staff on  
8 their availability and their opportunity to be able to  
9 consult with tribes that are actively consulting under  
10 CEQA effectively.

11 COMMISSIONER DOUGLAS: Uh-huh.

12 MR. ONTIVERES: In other words, it turns into  
13 just talk. It's not adequate consultation anymore. And  
14 if something like that would have been disclosed that  
15 there was a possibility, then we probably would have and  
16 I'm sure a lot of other tribes would have chose to  
17 intervene as well, and came prepared with legal counsel  
18 and everybody else. So, I mean, it's out of the ordinary.

19 But all I ask is that you do entertain that idea  
20 and consider what can happen if it does happen, I guess,  
21 in the future. But that's about it from us. Thank you.

22 COMMISSIONER DOUGLAS: Thank you.

23 HEARING OFFICER CELLI: Thank you very much for  
24 those comments.

25 Johnson Fisher.

1           MR. FISHER: I'm Johnson Fisher with the  
2 Colorado River Indian Tribes. I'm a council member. And  
3 I never attend these meetings because, like you said, it's  
4 just going to be talking and going around and around, so  
5 going back to this path we never got the answer, so  
6 they're not going to come and entertain -- okay, let's  
7 back up.

8           I'm taught one thing when I was a child. One,  
9 the land is not yours. It's the people's land and the  
10 god's land. Two, don't ever give away your land. Three,  
11 never waste or ruin your land.

12           So I like this presentation. That was a good  
13 presentation. And to me, sitting back there, it was kind  
14 of insulting. It was insulting because that land is  
15 priceless. That land is priceless. His presentation  
16 showed it. Now, but all of a sudden 2.4 million divided  
17 by 15 tribes, that's funny. That is funny.

18           So as for intervening for staff, I think you  
19 should. We're the only tribe that did step up. And we're  
20 not trying to take away anything else from the other  
21 tribes, you know, we're not. But it's not about the  
22 money, like we said.

23           You guys want a process but you guys don't want  
24 to go meet us. That's understandable, you're going to a  
25 wedding. It's more important.

1           So my thoughts here, if you're going to  
2 continue, if you want to start making process, we need to  
3 start having this meeting. Plain and simple.

4           But if not, who knows, maybe next year we'll  
5 have this meeting and solar tower's going to be up in the  
6 air already. We don't know, you know.

7           And we didn't tell them to come put a solar  
8 tower right there. We didn't do that, we didn't ask for  
9 that. They decided to do it. Not just them but other  
10 solar companies. They could have put it in back of their  
11 private beach. They could have put it somewhere high in  
12 the mountains. But no, that's what they did. And I think  
13 if we're going to get through this process I think you're  
14 going to have to meet with us. That's plain and simple.  
15 If you really want the results.

16           And my father lived at Eagle Mountain, so I know  
17 what he was talking about. I know what he was talking  
18 about. But that was, that was right on. Priceless. And  
19 that's what I'm saying.

20           And as for the other tribes, this is a perfect  
21 way to split us up. It's a perfect way to like, okay,  
22 here you go. You know, even the company's telling us how  
23 to. I mean, that's insulting. It is insulting. Here's  
24 the money but you do what we want with it. You know,  
25 that's not right. You're going to take priceless land and

1 you're going to give us change.

2           So if I was (inaudible) I would meet with us and  
3 we'll see where it goes from there, because you guys never  
4 did answer our question if you're going to meet or not.  
5 Thank you.

6           HEARING OFFICER CELLI: Thank you, Mr. Johnson  
7 -- or Mr. Fisher, I'm sorry.

8           Is Linda Otero still here?

9           MS. OTERO: Yes, she's still here. Wake you up,  
10 huh? Yeah. Good afternoon or good evening,  
11 Commissioners. It's been awhile since I've been attending  
12 any of the meetings or been a part of any consultation. I  
13 think the last meeting I attended or hearing was in August  
14 -- excuse me -- October of last year. At that time I took  
15 another position. The council at the time appointed me  
16 acting health director, so I was in that capacity for  
17 until end of June, July. So it's been awhile, I've been  
18 playing catch-up for the last two days, three days, to try  
19 to run through some of the documents and get me up to  
20 speed in terms of what has taken place. But nonetheless  
21 (inaudible) from what concern that has been raised by the  
22 Mojave tribe and other tribes as well.

23           And let me step back in terms of a personal  
24 story and why I am a part of the health department and why  
25 I am a part of the Mojave Culture Society, which oversees

1 the resolution protecting, perpetuating and preserving the  
2 Mojave culture.

3           Years ago I took direction to (inaudible) the  
4 health, find wellness within our people. And I looked  
5 towards everyone does when they get out of school, take  
6 the western way of going through the academics. It was  
7 sometime in that period after graduating and doing some  
8 intern work and so forth, I worked at various hospitals,  
9 UCLA, those teaching hospitals because that's where I was  
10 trying to get my foot in the door.

11           But there was a elder man who said "Your  
12 medicine's right there at your back door in your  
13 backyard." That meant a lot, but what it meant for me was  
14 to find my journey and to figure out what that was.

15           Sometimes people talk and they let you find and  
16 search for what it is, and it's a self-searching as well.  
17 That's why when you hear about the concerns being raised  
18 by tribal people, it's about the land, it's about the  
19 animals, it's about the plants and it's about your way of  
20 integrating with them, being a part of one with them. And  
21 being well means being well mentally, physically and  
22 spiritually, all in alignment, and that's what we strive  
23 for.

24           This is what it does as well when we talk about  
25 protecting and preserving and perpetuating our life ways,



1 because we want to bring that balance to who we are as a  
2 people (inaudible).

3           And we know there's changes because there's  
4 evolving things around us. We have to learn how to not  
5 adapt but be able to live in harmony. We know there are  
6 differences in the ways of our cultures. You are not me,  
7 I am not you, but the biggest thing is for people as a  
8 humanity be able to rise to the level in which the Creator  
9 has put us here all on earth. We know there are going to  
10 be differences, but how do we address that?

11           Well, now we have these things that they call  
12 development, that impose the land upon the land, that  
13 impose upon the water, that impose upon the animals,  
14 impose upon the life of plants. But we are the  
15 spokespeople to protect them, to stand up for them. And  
16 in a way you become, in this journey it has let around me  
17 to see into different realms, and that's what's the  
18 journey of all of us who we should be able to do, tribal  
19 or non-tribal. But in our beliefs it's set, it's from the  
20 very beginning. We take that step to continue on that, so  
21 it has taught me a lot.

22           And then we could understand why it meant so  
23 much and you learn from that, but I still have teachers  
24 today as teachers are in human form, they're also in other  
25 forms as well. And those are the ones that you have to

1 recognize that they're speaking and you have to listen  
2 intently. That's the part of why it's so important for us  
3 to stand up and make that voice be heard when that plant  
4 is telling you something, that animal has shared something  
5 with you.

6           On my way down this way yesterday I saw in the  
7 sky. I had to listen to that as well. Something revealed  
8 itself. So you have to be more aware and open. But it's  
9 not always easy to convey that into document form, and  
10 it's that crossover that we try to really understand as  
11 well.

12           Like I said, I've taken the path of western  
13 academic thinking for awhile, but this other way of  
14 thinking is very real and it's a part of our lives, part  
15 of me, integrated throughout. I can't let it go off me,  
16 it's who I am.

17           It's important for us to still sit at the table  
18 to understand and converse and get our points across, so  
19 yes, I have to understand what this system is about.

20           I did not know (inaudible) when we engaged in  
21 the Genesis project. Really, had we known, there would  
22 have been a different story. But we live with the  
23 horrific pain that has been a suffering for all of us  
24 since the project won approval.

25           And that project could have been stopped and we

1 had discussions and consultations with tribes and  
2 agencies, both the federal and the state, to avoid a  
3 portion of that. But that didn't happen because it was  
4 based on an economic analysis. (Inaudible) But an  
5 economic analysis determined how in the (inaudible) would  
6 weigh out and a company not losing their tax credits, but  
7 yet we didn't have that little of value to weigh.

8           There is not an equal way of valuing that. From  
9 the standpoint of how we enter into even CEQA and NEPA,  
10 it's limited. But the value of the land, the value in the  
11 supreme value, as I might say, is not even equal to what  
12 is the monetary value.

13           That's the struggle I have, and that's why it's  
14 very hard to come up with some number that says Cul-1A or  
15 Cul-1B, what would be the way to go. It's very hard, very  
16 difficult. And going through this process and having, you  
17 know, some input in that, it's hard. And that's why the  
18 decision goes to oppose this, to decline the process and  
19 approval for this project (inaudible) because it cannot  
20 happen again. We could have a repeat in history, and we  
21 already know what happened there.

22           Now that we have tribes at the table, which is  
23 good because there's a point maybe a year or so ago when  
24 the while process was explained to us by the state, step  
25 by step by step. They even explained to us you can enter

1 in as an intervener, enter in as a expert witness or be a  
2 part of staffing integration here. So those options at  
3 that time it was just at the cusp of what we ended up  
4 doing, but I commend CRIT for stepping up and being an  
5 intervener. And I also support Mr. Cachora who stepped in  
6 to be an expert witness for the state. Because now that  
7 also teaches everyone else here at this table and others.  
8 That's the step forward. We know those change is needed  
9 and (inaudible) doesn't even have any inkling of tribal  
10 input whatsoever. None whatsoever. That's why we're in  
11 this dilemma. We're trying to figure out how to make the  
12 fit, and I think we've approached it before that tribal  
13 consultation.

14 I appreciate the state taking a step by step by  
15 step. I think with the Genesis you didn't have anyone  
16 interacting with the tribes on their level. We waited  
17 until the federal, and the federal did what they did. But  
18 now we have someone of a caliber of not only archeology  
19 but (inaudible) to address that, knowing that there's the  
20 concerns that tribes really opened that door. When you  
21 have opened the door a little wider with acknowledging  
22 that there is a need for consultation, a protocol or  
23 policy. That's opening the door. I commend you for doing  
24 that. I think that's a way of looking and responding to  
25 how the tribes have not been able to change that law.

1 I understand we knew that something within this  
2 last year where they're waiting at the table of that too.  
3 I don't know what it takes, but should that come up again,  
4 we need certainly to include the tribes at that level,  
5 because that's important. And I think if the state hasn't  
6 already an executive order on consultation and  
7 acknowledging the importance of tribes here in the state,  
8 then we need to be moving to that direction to make that  
9 change. So we're not here when it comes down to only  
10 mitigation to describe how we're going to address that,  
11 because then we're narrowly looking at things here.

12 Now, going back to a bit of what we're  
13 struggling with under the coal stuff. You know, I  
14 hesitate to really engage in that because, like I said,  
15 there's nothing that can come of that, and I think you've  
16 made that statement in your decision too as well. I  
17 appreciate seeing that and knowing and acknowledging that  
18 it's unmitigable to that level.

19 We just don't like how CEQA works in a sense as  
20 well, as I've had other projects that had to work under  
21 for the CEQA process as well, and less in significance and  
22 able to mitigate are just not the fit for things that are  
23 very unmitigable in that sense, because of the value in  
24 which they hold. Value not of a monetary, but the value  
25 of a life, the value of the supreme level in which life

1 and all things that the Creator has given us. It doesn't  
2 have a fit to that.

3 I think where we get in a dilemma is when we  
4 have a NEPA and CEQA process and all of a sudden we're  
5 talking business matters. And I saw that with the  
6 Genesis. And I said earlier that to move forward with the  
7 economic analysis, that changed the dynamics for me to see  
8 it that way. Even with the group.

9 I'll tell you this. (inaudible) tribes just  
10 stepped away from that because it was just so horrific and  
11 painful to even be engaged with the development of the  
12 mitigation plan and everything else moving forward, but  
13 yet we knew we still had to be all somehow some way, so  
14 we've chosen not to be a part of that mitigation package,  
15 whatever it was. Although we introduce something else to  
16 have a review to how that process works, and we've  
17 introduced a proposal to that. The only compensation is  
18 to our experts who are going to assist us in working with  
19 that, but none of that is coming forward with the tribes.

20 That's the difference in how we approach and  
21 want to see this as well. It is not about the monetary  
22 level of it, it is about where do we stand and whether the  
23 Commission is making the right decision on how to go  
24 forward.

25 One of the things I wanted to talk about is he

1 keeps mentioning these projects and energy development.  
2 Okay, yeah, that's fine. I think there is an initiative  
3 from Washington and it's been accepted in the state of  
4 California back in 2005 the Energy Act was signed and  
5 implemented and all that. And then you have subsequent  
6 years that developed at the state and federal agreements.  
7 None of the tribes were involved or even with other  
8 programs, even the (inaudible). None of the tribes were  
9 involved.

10 So we have a process that doesn't work, and then  
11 again here we come back to Cul-1 and 2. You think the  
12 world's going to change (inaudible). And you have energy  
13 zones developed. Will the tribes really need to integrate  
14 into part of that for development and identify where it  
15 should be? No, those were all again agencies determining  
16 that, and here we are at Cul-1 and Cul-2 trying to make an  
17 answer to this particular project.

18 So there's layers that have been already  
19 developed, created, without tribes. And yes, tribes need  
20 to be at the table, either through consultation or some  
21 other means. But I think what I'm trying to get across  
22 here, the answers are not easy. You also have to see what  
23 has been paved out there already. And we have a lot to  
24 move forward and I think if we rise to that level, the  
25 state takes that lead and I appreciate that because

1 whatever becomes of this final determination, that's just  
2 going to go over to the federal side. They'll pick up, we  
3 may not have federal consultation and may not change that  
4 decision. That's what happened during the Genesis  
5 project.

6           So it really lies here, it really does. And I  
7 hope you understand the depth and the level that's been  
8 expressed by many of the tribal folks here, and the time  
9 engaged in it, because it's a lot. Didn't have the means  
10 to be intervener, but that was a thought, you know, a  
11 light bulb went up, but the means weren't there. And  
12 little did I know I was going to take this other  
13 assignment.

14           But yet, going back to that, part of that  
15 discovery of myself as well in others that we need to  
16 teach. That's why you keep seeing still intact, because  
17 they've got to learn for themselves as well. They've got  
18 to find that connection. The backyard is not there within  
19 a arm's throw of a softball. It's the landscape, it's the  
20 cosmos, it's the things below ground. All of that's  
21 important, because from my clan comes from my mom's side,  
22 they're from the natural world. Tomorrow you'll hear  
23 about the birds. That's a part of the natural world.  
24 Things that you hear from the ground, things that are  
25 below ground, that's from the natural world. That's a



1 clan as well.

2           They're all around here, they're a part of us,  
3 so we listen and we have to respond.

4           So one thing that I did see hasn't changed too  
5 is having staff and cultural staff being a part of the  
6 biology, because that opened a window there as well. I  
7 think we've covered it during the Rio Mesa where you just  
8 can't compartmentalize tribal involvement, just only in  
9 cultural.

10           Opening it up to the biology now and others is  
11 important, and I think you're heading in that direction  
12 and I commend you for thinking on those terms, so that's  
13 good.

14           There's one other point. I think I lost it.  
15 Oh, here it is. Environmental justice. It's not spelled  
16 out clearly under CEQA, but I think the way I feel and how  
17 we try to address it in not only this project with Palen  
18 but any others coming into the area.

19           We is the only group that is taking the burden  
20 of a lot of these changes to the environment, the Native  
21 American people, people of the river, people of the  
22 desert. Time in, time out. Time in, time out.

23           (inaudible) within a neighborhood close by as  
24 it's defined in the environmental definition. But then  
25 why is it always the native people having to address these

1 things time in and time out? How do we address, how do we  
2 change environmental justice to identify within this scope  
3 of work here that it is something to be looked at. It is  
4 something to be identified and taken seriously as well.  
5 So I hope there's a little bit more exploration into how  
6 environmental justice fits into this process.

7 That's it. Thank you.

8 HEARING OFFICER CELLI: Thank you, Ms. Otero.

9 Phillip Smith. Is Phillip Smith still here?

10 MR. SMITH: Yeah.

11 HEARING OFFICER CELLI: If there's anyone else  
12 who wants to make a comment who's still here, please see  
13 Alana Matthews over at the table and fill out a blue card,  
14 because I have Mr. Smith and one other and that's it on  
15 our public comments.

16 Go ahead, Mr. Smith.

17 MR. SMITH: My name is Phillip Smith. I'm a  
18 concerned Chemehuevi member of Colorado River Indian  
19 Tribes. I'm concerned about these solar projects too.

20 I know our people were here when Father Garza  
21 first came up the river. The first place he ever met  
22 Chemehuevis was here in Blythe.

23 But I was also thinking about the Ivanpah  
24 project. To me, in my heart as an Indian, it was a dirty  
25 project. I was one of the first, or the only first Native

1 that went to the meeting when they had a meeting. The  
2 first meeting they ever had at Ivanpah. Now, most of them  
3 didn't know what the word Ivanpah meant, but that is a  
4 Chemehuevi word. And they took us to a field trip right  
5 by there underneath (inaudible) coming from the Hoover Dam  
6 going to the big city. This is where they was going to  
7 put that project. A small project because the company  
8 couldn't afford a bigger one, I guess, at that time.

9 But Obama comes out with this fast track money.  
10 All of a sudden it's not a small project, it's just grew.  
11 They didn't need that trap fishing line from Hoover Dam,  
12 they're going to build their own trap fishing line  
13 wherever they feel like it. No monitors from tribes. No  
14 compact with tribes. When I mentioned I was a Chemehuevi  
15 at that meeting, mentioned what that word Ivanpah meant, I  
16 thought they said at that time contact (Non-English word),  
17 our people of the areas.

18 There was never contact with Indian tribes that  
19 I know of. They just rammed that thing in, in a pristine  
20 area where our people used to run. Hundreds of turtles in  
21 that area, and they relocated them. Today I'd like to  
22 know where they're at today and what's still alive or  
23 what's still surviving.

24 I think a year before that there was a proposed  
25 airport on the Nevada side with contact with people down

1 there in the Paiute Nations Tribes. We talked about that  
2 area. We talked about the turtles at that time. The  
3 owner says cannot relocate them, the Creator put them  
4 there.

5           When I talked to BLM, they're going to relocate  
6 those turtles, I said I thought they're endangered  
7 species, you're supposed to protect them.

8           He said only in the wilderness area. This is  
9 not the wilderness area. On the other side of the freeway  
10 they're protected, that freeway that goes to Las Vegas.  
11 It makes sense to me, because I know if I picked one up,  
12 if I took it home, I'd be in deep trouble. Deep, deep  
13 trouble.

14           But the law has lifted a lot of these things.  
15 When they start striping the area, you know, there goes  
16 the turtles. There goes the packrats, there go the  
17 snakes. And the poor hawk's got no more. He flies around  
18 and he can't find nothing to eat no more. He has to move.  
19 All these areas where the projects are located at or  
20 they're putting them at, you see diminishing areas of the  
21 habitat, animals or whatever it is, plants. It shrinks,  
22 it's less and less.

23           When they're talking about the landscape of the  
24 areas, leave it alone. Leave it the way it is. That's  
25 part of my concern.

1           I have nothing against clean energy. That's not  
2 what we're talking about, but clean energy, I guess in the  
3 solar projects, to (inaudible). But at the same time to  
4 this very day today, there's 80,000 tons of coal on a ship  
5 from the United States headed for South America. So we  
6 clean up our act over here, but we dirty act on the other  
7 side. This don't make sense to me, the whole thing.

8           You know, I fear about the project going in. I  
9 would because of Ivanpah, you know, it's so bright. When  
10 I took a trip out there from (inaudible) heading down,  
11 start going down the valley, I saw the bright light. Man,  
12 brighter than Bethlehem. It was just ugly. The whole  
13 thing looked ugly to me as an Indian. Maybe not to nobody  
14 else, because I know what used to be there. We used to  
15 roam in the area. People lived there. That's what hurt  
16 me the most.

17           HEARING OFFICER CELLI: Excuse me.

18           Rob, the sound just went off on the mike.

19           Excuse me, Mr. Smith, we want to hear what you  
20 have to say and we want it to get into the record and your  
21 mike just quit. So Rob's going to bring you a new mike  
22 here. I'm sorry, go ahead.

23           MR. SMITH: Well, anyway, yeah, I've been coming  
24 out, try to attend some of these meetings on these solar  
25 projects because of concerns, because the places they're

1 locating them at, cultural sites, burial sites, a bit  
2 concerning. You don't know where anybody's buried at,  
3 where they're buried at.

4           But I'm glad to tell you right now our family,  
5 we have a burial site out in the desert. I would think  
6 about. And it's not documented, there is no records on  
7 it. It's just that we found out about it and we know  
8 where it's at and only our brothers and cousins and all  
9 related to the same family. They don't talk about it,  
10 because of the possibility of people that like to hunt  
11 could dig these graves up, so we have to be quiet about  
12 it.

13           But I think about the cremation site from a site  
14 that was found down here. Could be anywhere. I think  
15 that part of my concern is this is where the people want  
16 to be buried at or have their ceremony and stuff like  
17 that. This is where they want to be. We don't dig them  
18 up or you guys dig them up and take them down to San Diego  
19 or wherever you have them at. To me, that's devastating.  
20 It hurts. Even if it's not my people, it's my kind of  
21 people. That still hurts.

22           So I think that's about all I got to talk about  
23 today about these projects. Like I said, I'm not against  
24 clean energy. I'm just so mad about where you locate  
25 these things.

1           HEARING OFFICER CELLI: Thank you, Mr. Smith for  
2 your comments.

3           I only have one left if there's anyone else who  
4 wants to make a comment, please go over and see the public  
5 advisor Alana Matthews.

6           Arlene Kingery.

7           MS. KINGERY: Hi, I'm Arlene Kingery, Historic  
8 Preservation Officer for the Quechan Indian Tribe. And I  
9 just tried to jot some things down while everyone was  
10 talking, so one of the things that the tribes keep talking  
11 about is the consultation process. And they talk to you  
12 very nicely about it, but for almost like 500 years the  
13 consultation process was really just a coercion process.

14           I mean, you have the Spanish coming. You have  
15 the railroads taking the right-of-ways. You have the  
16 utility companies taking the right-of-ways. You have them  
17 being told that their kids will do better if they go to  
18 the boarding schools. You have the dams that are put in  
19 along the Colorado River. You have the mining that  
20 occurs. You have a lot of tribal members that were  
21 relocated to the big cities during World War II to work in  
22 the defense plants. And all of those were pretty much  
23 they were doing their part to help the community and they  
24 thought it would make things better.

25           I mean, you say you're still working on the

1 consultation process, but you still haven't gotten it  
2 right yet. And you know, it's about time that the state  
3 and federal government fix this. I mean, you just haven't  
4 done it yet.

5           One of the things about the consultation process  
6 besides just doing the face-to-face meetings, we're not  
7 privy to a lot of the information that you have. We don't  
8 see a lot of the archeological records. You have all  
9 these scientific teams and advisory groups, the renewable  
10 energy advisory team. You have the technical advisory  
11 groups. We're not privy to anything that happens with  
12 them.

13           Once in a while we'll get some of the stuff  
14 posted like some of their meeting minutes or some of the  
15 reports they have. They have consultants that go to their  
16 meetings that are experts on things, but I don't think a  
17 tribe has ever been asked to come in, be a consultant or  
18 provide information if they're discussing anything like  
19 that.

20           And when I'm going on the Internet there was  
21 like a 2010 mitigation cost schedule that was put together  
22 for solar millennium that's (inaudible) now with a cost  
23 schedule that was for mitigation but it was with the  
24 National Fish and Wildlife Service where you have like a  
25 nice little schedule with different pricing for habitat,



1 for survey work and everything, and the amounts are pretty  
2 high, like \$1,000, \$1500 per acre for these just studies  
3 or habitat, and this agreement for cultural is like \$35 an  
4 acre.

5           When you're looking at the cost things for that  
6 too, like just last week APS and IID go fined \$6 million  
7 for shutting off the electricity to San Diego a couple  
8 years ago. To us that's a lot of money, but it's like for  
9 a 24-hour blackout.

10           We just really don't understand how these  
11 mitigation costs are calculated. And the Quechan Tribe  
12 has never usually wanted a monetary mitigation, they  
13 wanted something like a museum restored or some sort of  
14 activity, something like that. They've always tried to do  
15 something like that.

16           The Department of Interior came out with Order  
17 3330 which says in October 13th, 2010, which was supposed  
18 to develop mitigation strategies and provide transparency  
19 to the tribes and have us involved in the process. And we  
20 just don't see that happening that much.

21           We know that other government agencies get to  
22 work with you, like U.S. Fish and Wildlife, California  
23 Fish and Game, the federal BLM, but we're still not  
24 allowed, like David said, to come to the table, and we  
25 just think it's about time something was said. I mean,

1 this has been going on for years. And now we're able to  
2 at least comment to you, but as you can see from the past  
3 projects, it hasn't made much affect.

4 And our tribe, when the Spanish first came, I  
5 mean, they must have known what was coming because they  
6 burned the mission and they killed all the priests and  
7 they thought that would maybe stop the progress of what  
8 was happening, but it didn't.

9 And the tribe now, you know, they've tried legal  
10 action. They've tried protests with other tribes. And  
11 now they're trying negotiation, and hopefully this will be  
12 something that you guys will get right, because it just  
13 hasn't happened.

14 Thank you.

15 HEARING OFFICER CELLI: Thank you, Ms. Kingery.

16 Lastly I have Valerie Welsh, is it Talbo or  
17 Talso? I can't -- I'm sorry. You know who you are.

18 MS. WELSH-TAHBO: I sure do. It's Tahbo.

19 HEARING OFFICER CELLI: Tahbo, thank you.

20 MS. WELSH-TAHBO: Tahbo is a Pueblo name. Hopi  
21 means little rabbit, but I'm not Hopi. My husband is  
22 Hopi. I am (non-English word). I am Mojave, as my cousin  
23 spoke earlier about our family having history here and  
24 raising cattle in the area, going to and fro. I'm not  
25 going to spend too much time, but I appreciate all the

1 comments that everybody has made.

2 I come from a family of bird singers. My father  
3 was a bird singer. He was raised by his grandfather. And  
4 in our society and in our culture, as we have talked about  
5 the cremation, our family was responsible for that. And  
6 it was, actually, it's a big responsibility because this  
7 world is just momentary. The real world is what we would  
8 call the happy hunting grounds. That's where we want to  
9 be. That's where we aspire to be. And it was our  
10 family's responsibility to get us there, so my father grew  
11 up singing bird songs and then my brothers and now my sons  
12 and my nephews.

13 But one of the things that I heard one of my  
14 nephews talk about not too long ago, we were talking about  
15 Genesis and we were in that fight. He stood up before the  
16 council and he says, he says, "You know, my father used to  
17 take us through here, through the mountainous regions.  
18 Now just because we don't recreate, you know, and you  
19 don't see us out there, doesn't mean that we're not out  
20 there. Doesn't mean that our presence isn't out there.  
21 Because we don't have a business out there, because we  
22 don't sit out there or, you know, spend all our time out  
23 in some of these range areas, doesn't mean that we don't  
24 want to be there, because that's what he talked about as a  
25 young person.

1           And he refers to those lands and the people that  
2 he felt there as the ancients, and it was really  
3 disheartening when the young people had to step up. Think  
4 about it like this. When you lose your parent, or if you  
5 were to lose a parent or a child, you know, something very  
6 near and dear to you, what would you do? You would want  
7 to put them on a pedestal as they make their exit out of  
8 this world. And indeed, everything that they were,  
9 everything, every memory, every loving kiss is something  
10 you would hold near and dear. And that's how they looked  
11 at the lands there.

12           But it was unfortunate and disheartening that  
13 they had to put that land to rest, the Genesis project.  
14 And I have to really commend our elders for having to  
15 learn all the sections, 106, everything. They went to  
16 Sandra Day O'Connor while I was in Lincoln, Nebraska  
17 giving their testimony to the National Congress of  
18 American Indians, and they were still studying it and  
19 turning it into a Sandra Day O'Connor issue, cultural work  
20 session. And they're very active and I appreciate them.  
21 In fact, they were one of the first people that I went to  
22 when we heard about Genesis and we thought we'd be able  
23 to, you know, bear down and do something.

24           We need to figure this thing out and fast.

25           But the thing that throughout the day listening,

1 and I really wasn't going to make comment because I think  
2 my colleagues did an excellent job today, Amanda and Dave.  
3 But I can't help but think that, you know, for you and the  
4 western folk and the economics and everything that's  
5 involved in this and the money that people are going to  
6 make, it's a good thing for them, but all things come to  
7 an end.

8           What's going to happen when that structure,  
9 those buildings, those mirrors are abandoned and left out  
10 there? That's why we had to do the ceremony at Genesis,  
11 to deem it no more. To deem it dead. To have a funeral  
12 for it, as you would your loving member of your family.  
13 That's what that meant to us.

14           Linda talked about the amount of money, you  
15 know, funds put into that. It's a conundrum for us. We  
16 can't figure that out. We can't quantify it. And shame  
17 on us if we ask for money. But that's not what we want to  
18 do, it's almost like we have to do. And it's a real  
19 conundrum and a quandary for us.

20           So thank you.

21           HEARING OFFICER CELLI: Thank you, ma'am.

22           At this time I'm going to go to the telephone  
23 and see if there's anybody on the line who wishes to make  
24 a public comment at this time. It appears I have one  
25 call-in user. If you would like to make comment at this

1 time, please speak up. Anyone who's on the telephone and  
2 would like to make a comment at this time, please speak  
3 up. Go ahead.

4 Okay, hearing none, there must be no interest in  
5 making public comment.

6 Okay. The word I got, folks, is that there's a  
7 spaghetti dinner available via from the Petitioners out  
8 here, and we have to be out of the building before 8:00  
9 o'clock, so bon appétit.

10 With that, I'm going to hand it over to  
11 Commissioner Douglas for adjournment.

12 COMMISSIONER DOUGLAS: All right. I just want  
13 to thank everybody. Certainly the parties, particularly  
14 however people from the tribes who have come, I know in  
15 many cases from long distances to sit through this long  
16 day of proceedings with us to make public comment, to  
17 engage us in a dialog and to invite us to further dialog.  
18 This has been very helpful to us, so I want to thank you.

19 We will reconvene here tomorrow at 9:00 a.m.  
20 correct?

21 HEARING OFFICER CELLI: Correct.

22 COMMISSIONER DOUGLAS: All right. So we'll see  
23 you all tomorrow. We'll see some of you tomorrow at 9:00  
24 o'clock. Thank you.

25 (ADJOURNED AT 6:49 P.M.)

1

## CERTIFICATE OF REPORTER

I, MARTHA L. NELSON, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Horse Racing Board Meeting; that it was thereafter transcribed.

I further certify that I am not of counsel or attorney for any of the parties to said conference, or in any way interested in the outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of July, 2014.

/s/ Martha L. Nelson  
MARTHA L. NELSON

**TRANSCRIBER'S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of July, 2014.



---

Terri Harper  
Certified Transcriber  
AAERT No. CET\*\*D-709