

DOCKETED

Docket Number:	97-AFC-01C
Project Title:	High Desert Power Plant
TN #:	211493
Document Title:	Transcript of 04/21/16 Committee Status Conference
Description:	N/A
Filer:	Cody Goldthrite
Organization:	California Energy Commission
Submitter Role:	Committee
Submission Date:	5/16/2016 1:17:41 PM
Docketed Date:	5/16/2016

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BEFORE THE
CALIFORNIA ENERGY COMMISSION

Petition to Amend the) Docket No. 97-AFC-01C
)
HIGH DESERT POWER PLANT)
)
_____)

California Energy Commission
High Desert Power Plant Committee
STATUS CONFERENCE

CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Art Rosenfeld Hearing Room
Sacramento, California

THURSDAY, APRIL 21, 2016
2:01 PM

Reported by: Lisa M. Tilden, CSR No. 11465

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APPEARANCES:

Committee:

Karen Douglas, Commissioner, Presiding Member

Janea A. Scott, Commissioner, Associate Member

Hearing Officer:

Susan Cochran

Paul Kramer, Assistant Chief Counsel, Hearing and Policy Division

Advisors:

Jennifer Nelson, Advisor to Commissioner Douglas

Le-Quyen Nguyen, Advisor to Commissioner Douglas

Rhetta DeMesa, Advisor to Commissioner Scott

Kristy Chew, Technical Advisor to the Commission on Siting

CEC Staff:

Joseph Douglas, Compliance Project Manager

Kerry Willis, Assistant Chief Counsel, Siting Division

Michelle Chester, Staff Counsel, Siting Division

Matthew S. Layton, Supervising Mechanical Engineer

Abdel-Karim Abulaban, Associate Civil Engineer

Christine Root, Compliance Office Manager

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APPEARANCES (CONTINUED):

Petitioner:

Jeffery D. Harris, Esq., Ellison, Schneider & Harris, LLP
Peter J. Kiel, Esq., Ellison, Schneider & Harris, LLP
Mark Kubow, President, Middle River Power, LLC
High Desert, CP Crane, Big Sandy, Wolf Hills

Intervenors:

Nancee Murray, Senior Staff Counsel
California Department of Fish and Wildlife

(Via Teleconference):

Alisa Ellsworth, Senior Environmental Scientist
California Department of Fish and Wildlife
Kit Custis, Senior Engineering Geologist, Hydrogeologist
California Department of Fish and Wildlife

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1 P R O C E E D I N G S

2 APRIL 21, 2016

2:01 PM

3 COMMISSIONER SCOTT: Good afternoon, everyone.

4 We are here for the High Desert Power Plant Project
5 Status Conference. And we are headed to closed session. We
6 want to let folks know that we will not be back earlier than
7 3:00 PM for the public part of the Status Conference.

8 HEARING OFFICER COCHRAN: If we are going to be much
9 later than 3:00, we'll send someone down to let everyone
10 know our estimated times of arrival.

11 And we are going into closed session pursuant to
12 Government Code section 11126, that allows a committee to
13 enter into closed session to discuss items pending before
14 it, including scheduling, pending motions, and other issues.

15 So at this point, we are in closed session.

16 COMMISSIONER SCOTT: We'll be back.

17 (Whereupon, closed session commenced at 2:04 PM.)

18 ---o0o---

19 (Whereupon, open session resumed at 3:04 PM.)

20 COMMISSIONER DOUGLAS: Good afternoon. This is a
21 Status Conference of the Committee of the California Energy
22 Commission regarding proposed amendments to the High Desert
23 Power Plant.

24 The Energy Commission has assigned a committee of
25 two commissioners to conduct these proceedings. I'm Karen

1 Douglas, a presiding member of the Committee. Janea
2 Scott -- she is to the left of the hearing advisor -- is the associate
3 member of the Committee.

4 I'll start by introducing some of the people here
5 today: Susan Cochran, to my immediate left, our hearing
6 advisor; to my right, my advisors, Jennifer Nelson and
7 Le-Quyen Nguyen. And Kristy Chew, technical advisor to the
8 Commission on Siting members is in the audience.

9 Do we have anyone here from the Public Advisor's
10 Office? I don't see anyone yet at this point.

11 So let me ask the parties to please introduce
12 themselves and their representatives at this time, starting
13 with the Petitioner.

14 MR. HARRIS: Good morning -- afternoon, I guess. Jeff
15 Harris on behalf of High Desert.

16 MR. KUBOW: Mark Kubow with High Desert.

17 COMMISSIONER DOUGLAS: Great. Thank you. Staff?

18 MR. DOUGLAS: Joe Douglas, compliance project manager.

19 MS. WILLIS: Kerry Willis, assistant chief counsel for
20 Siting.

21 MS. CHESTER: Michelle Chester, staff counsel with
22 Siting.

23 MR. LAYTON: Matt Layton, Siting Division.

24 COMMISSIONER DOUGLAS: All right. Thank you.

25 Intervenor, California Department of Fish and

1 Wildlife?

2 MS. MURRAY: I'm Nancee Murray, staff counsel with the
3 California Department of Fish and Wildlife.

4 And I believe we have some people on the phone.

5 COMMISSIONER DOUGLAS: If you'd like to introduce
6 them, that would be great. Are they unmuted? Speak up if
7 you are on the phone with CDFW or go ahead and call out
8 their names, if you'd like.

9 MS. MURRAY: I think Kit Custis and Alisa Ellsworth
10 are on the phone for the California Department of Fish and
11 Wildlife.

12 COMMISSIONER DOUGLAS: Great. Thank you.

13 All right. So are there any other public agencies,
14 federal, state or local government agencies in the room or
15 on the phone at this time?

16 Anyone representing Native American tribes or nations?
17 All right.

18 At this time, I will hand over the meeting to the
19 hearing advisor, Susan Cochran.

20 HEARING OFFICER COCHRAN: Thank you so much. Good
21 afternoon, everyone.

22 The notice for this meeting included the fact that we
23 were going to be starting with a closed session at 2:00 PM.
24 We did, in fact, such hold a closed session. There is no
25 reportable action coming from that decision -- or

1 discussion, I should say.

2 Notice of the Status Conference was given on April
3 11th. This case concerns proposed modifications to the
4 water supply to the High Desert Power Plant. The
5 High Desert Power Plant was certified by the Energy
6 Commission in 2000, in May 2000, and began commercial
7 operations in 2003.

8 The High Desert Power Plant is an 830-megawatt natural
9 gas-fired combined-cycle electric generating facility
10 located in the City of Victorville in San Bernardino County.

11 At the time of its certification in 2000, the HDPP, or
12 High Desert Power Plant, was limited to using water obtained
13 from the State Water Project for plant cooling requirements.

14 At this time, the plant is seeking a "Loading Order"
15 to allow it to use a combination of water: Water from the
16 State Water Project, banked water from the State Water
17 Project, and adjudicated groundwater from the Mojave Basin.
18 They would be blended in that order of preference.

19 Currently, the High Desert Power Plant may use
20 groundwater from the Mojave River Basin, but only until
21 September 30th of this year.

22 On March 15th, the Committee held what had been
23 scheduled to be a Prehearing Conference and Evidentiary
24 Hearing; however, the Prehearing Conference became more in
25 the nature of a Status Conference. At the conclusion of the

1 Prehearing Conference, the Committee issued orders directing
2 two things:

3 First, Staff was to hold a Public Workshop in or near
4 Victorville to obtain information on five topics as
5 identified in the "Orders after Prehearing Conference."
6 Staff, in fact, held that Workshop on April 15th.

7 The parties were also ordered, and California
8 Department of Fish and Wildlife, an Intervenor, was invited,
9 to submit briefing on a number of topics. The Committee
10 received opening briefs from all of the parties, including
11 California Department of Fish and Wildlife, or CDFW, along
12 with reply briefs from Staff and the Petitioner.

13 Today we will discuss the outcome of the Staff
14 Workshop, review any remaining issues or questions from the
15 parties' briefs and create a path forward for this
16 proceeding.

17 So as I said, the Staff did, in fact, hold a Public
18 Workshop in Victorville last Friday. And if I could hear,
19 Ms. Willis or Ms. Chester, what was the outcome of that
20 Workshop? What progress, agreements, compromises have been
21 reached on any of the questions that the Committee included
22 in the "Orders after Prehearing Conference"?

23 Oh, it's Mr. Layton.

24 MR. LAYTON: Yes, we did hold a Workshop. We had
25 published an agenda. We had added some items to the agenda.

1 The Petitioner took some exception; one is to identify
2 those additions. We did identify them at the beginning of
3 the Workshop as Staff added. Again, we took you to heart
4 that you said "at a minimum." So we did try to have a
5 robust discussion.

6 I think we agreed that there could be some interim
7 relief offered. I think we disagree on the exact language
8 of that interim relief. And beyond that, I'm not sure we
9 reached much agreement on the other issues.

10 Would you like to walk through all the issues or one
11 by one?

12 HEARING OFFICER COCHRAN: Well, why don't we take a
13 little side jaunt because you just mentioned interim relief.
14 What I will do is, first, I'd like to hear from you,
15 Mr. Layton, what you perceive the agreements as being. And
16 then I will turn it over, then, to the Petitioner, so that I
17 can hear where they are. So let's talk a little more about
18 interim relief.

19 MR. LAYTON: Okay. We do look forward to the
20 Petitioner laying out why they expect to need interim relief
21 in 16 and 17 or 17 and 18. But we do understand that we are
22 in a drought, and the State Water Project water deliveries
23 are precarious; and therefore, there is probably a reason
24 that they would need or seek interim relief.

25 We think one of the mechanisms of interim relief would

1 be to allow them to enter into an agreement with the Mojave
2 Water Agency to bank or percolate State Water Project water
3 to form a bank, which would provide them a buffer against
4 these interruptions.

5 We had provided some language at the 15th Status
6 Conference or Prehearing Conference. The Petitioner has
7 pointed out that they think the language that we provided
8 was too aggressive in quantity of water that they should
9 bank, and also too aggressive in the time that was allowed
10 for them to achieve what we considered to be a sustainable
11 amount of water. And they also were just concerned that it
12 was seeming like a long-term solution rather than just an
13 interim solution.

14 So we have prepared some edits to those conditions,
15 which would address their concerns or attempt to address
16 their concerns, and we are prepared to talk about those
17 today.

18 HEARING OFFICER COCHRAN: Okay. Mr. Kramer, could you
19 pull up out of the tray the PDF that I believe shows Staff's
20 proposed changes to what we talked about at the last
21 Prehearing Conference as Exhibit 1000? That is the
22 document. Exhibit 1000 was from the Petitioner's opening
23 testimony. And this document, which is TN210088, shows the
24 proposed Staff edits.

25 If I understand you correctly, Mr. Layton, there are

1 additional changes other than what are shown here; is that
2 correct?

3 MR. LAYTON: Yes. We -- previously, we had only been
4 talking about banking and not about two years of relief and
5 access to groundwater. So we do have some revisions to
6 SOIL & WATER-1.

7 And so because the Petitioner would like some interim
8 relief and access to groundwater in the next two years, we
9 had not addressed that in this proposal that you see on the
10 screen. But we have also made some edits to what you see on
11 the screen where, for example, on the SOIL&WATER-4, the
12 quantity of water that would be banked would be -- we had
13 proposed that by the time they reach 2,000 acre feet, then they
14 would stop injection banking.

15 The Petitioner had expressed concern that if we do
16 what we were proposing, which was move away from injection
17 banking -- because it seems to present a lot of problems and
18 costs. And the Petitioner has indicated that they are
19 very -- appreciate how thoughtful we are in worrying about
20 their costs.

21 But we had suggested that there was an interim or
22 transition period on moving from just injection banking to
23 injection and percolation banking and finally to percolation
24 banking. We think the percolation banking is more reliable,
25 can be used any time the plant is on or off. Because right

1 now, they can only bank when they are operating because they
2 need some heat, and they also need to dispose of the waste
3 stream from the banking process in the cooling tower.

4 And also, there was some water quality issues which
5 had prevented banking consistently in the past. So with
6 percolation, you avoid all that. So it did not seem logical
7 to us to maintain injection banking.

8 So we had proposed that by the time they reached 2,000
9 acre feet, they would switch or do away with injection and
10 move on to just percolation. We had changed that to 3,000
11 acre feet to give them more time for the transition. And
12 then in SOIL&WATER-G, we changed it from 13,000 acre feet
13 plus or minus 4,000; so 9,000 plus or minus 3,000.

14 Again, they use about 3,000 acre feet in an average
15 year. And 9,000 would be about three years worth of water,
16 which might transition, then, through most drought
17 situations. And then instead of 2021 to achieve the 9,000,
18 we put in 2024.

19 MS. ROOT: So this is Christine Root. We have these,
20 and we have them in tracked changes if the Committee would like
21 to see them on the screen.

22 HEARING OFFICER COCHRAN: Yes.

23 MS. ROOT: I figured that was probably a little bit of
24 a chewy conversation without the visual.

25 MR. HARRIS: And can I add a couple things? We

1 haven't seen this yet.

2 HEARING OFFICER COCHRAN: Okay.

3 MR. HARRIS: And this is also a markup of our
4 proposal, so you are looking at a --

5 HEARING OFFICER COCHRAN: It's a double markup.

6 MR. HARRIS: It's a -- well, I --

7 HEARING OFFICER COCHRAN: It's a markup of a markup.

8 MS. ROOT: Yeah, it's a double markup. You'll see
9 it's color-coded. And he is correct; this is new
10 information that has not been shared yet.

11 HEARING OFFICER COCHRAN: I would also like to remind
12 everyone that this item will need to be docketed as soon as
13 possible.

14 And while we wait for that to load, I did have some
15 questions. Because I had reviewed TN210088, which does not
16 show up here. And your discussion heightened it for me,
17 Mr. Layton. I think I understand it now, but I want to make
18 sure.

19 So I know that at the last meeting in March, there was
20 discussion of injection and percolation and banking. And it
21 seemed to me that those have specific, almost terms of art
22 status, that if you say "banking," it means one thing;
23 "percolation" means something else; "injection" means
24 something else.

25 Am I understanding this correctly?

1 MR. LAYTON: I hope I've used "injection" or
2 "percolation" exclusively.

3 HEARING OFFICER COCHRAN: You did.

4 MR. LAYTON: Both are "banking."

5 And "percolation" means spreading it in a pond and
6 having it work its way into the aquifer. "Injection" means
7 cleaning it up and then injecting it directly into the
8 aquifer through a well in a pump.

9 HEARING OFFICER COCHRAN: Okay, thank you very much.
10 That's very helpful.

11 So, Mr. Harris, I hope that you can multi-task because
12 I'm going to now turn to you. And I know that you are
13 looking at some of this for the first time. But you just
14 heard Mr. Layton speak. Did you have anything that you
15 wanted to add?

16 I know you haven't seen this particular language
17 before, but is there a consensus as between the Applicant
18 and the Staff on this sort of -- on the contours of what
19 interim relief might look like.

20 MR. HARRIS: Well, let me back up to the philosophical
21 level. I think there is a consensus on percolation being a
22 benefit. I think that consensus is among the Staff, the
23 Applicant, and in the Department as well. So we have some
24 common ground. But let me back up a little further.

25 We really have two forms of interim relief we have

1 been requesting. So far we've focused on the Staff's
2 document. One option for the Committee would be to focus on
3 what we actually propose. I think it actually works as is.
4 What you are seeing is a markup of that language.

5 But setting aside whose draft we are looking at for
6 the moment, we really have two different needs for interim
7 relief. We talked about this last time. The first one is
8 for -- there is some ability to get to the groundwater for
9 an additional two years. Two years were granted originally,
10 thinking that we would be done with this proceeding by now.
11 And here we are two years later, not quite done.

12 And so interim relief number one is a request that
13 extends our ability to be able to use groundwaters for two
14 more water years through September 30th of 2018.

15 And I just e-mailed Mr. Kramer, if he has access to
16 his own e-mail, our language, which actually talks about
17 this first form of relief. It really relates to the
18 question of access to groundwater. And we have marked up
19 that condition. And so maybe we can view these two interim
20 reliefs separately.

21 Basically, what we have asked for in our Attachment A
22 is to change those dates on Soil and Water Condition 1 and
23 sub (a).

24 HEARING OFFICER COCHRAN: Mr. Harris, is that the
25 language that was included in the petition that you filed

1 last October, November?

2 MR. HARRIS: It was included in -- let me get the
3 right document here. It's Attachment A to our Opening Brief
4 in Response to the Committee Questions.

5 HEARING OFFICER COCHRAN: Okay, thank you.

6 MR. HARRIS: I had to check myself. There are so many
7 documents in the record here. But that's the first form of
8 interim relief. And that just really is just marking up the
9 condition to allow those year dates to be moved out to 2018.

10 I don't know if Paul is going to be able to get that
11 up there or not.

12 MR. KRAMER: When was the brief filed?

13 MR. HARRIS: April Fools' Day.

14 HEARING OFFICER COCHRAN: Do you want the TN? The TN
15 is 210931.

16 MR. HARRIS: April 1st, I believe.

17 HEARING OFFICER COCHRAN: Yes.

18 MR. HARRIS: This is a separate form of interim
19 relief. And while Paul is looking for the document, the
20 reason we are proposing two separate forms of interim relief
21 is that there are two difference water supplies at issue.
22 There is the access to the groundwater, which I'm talking to
23 you about now. And then there is also the access to State
24 Water Project water. We are actually having a good water
25 year this year, and the ability to use our allocation is

1 important. So we'll get to the percolation question in a
2 moment.

3 It's Attachment A, Paul, so it's going to be near the
4 end. There you go; and down to the highlighted line, the
5 highlighted language.

6 For the first form of relief that we've asked for,
7 this is the only change that we've requested. That's
8 basically changing the dates on the water years. We
9 currently have the ability to use groundwater through the
10 end of 2016, to September. So we just changed all the dates
11 to reflect an end date of 2018, September.

12 HEARING OFFICER COCHRAN: Go ahead. I'm listening.
13 I'm a parent. I multi-task.

14 MR. HARRIS: I'm glad one of us can. Mr. Kramer, if you can
15 move on to the next page, the highlighted language (e). The
16 second issue we talked about is the ability -- the second form of
17 relief is the ability to percolate groundwater. And this is the
18 area where I think we have agreement among the parties.

19 And what we have requested with our language in (e) is
20 basically the ability to go out and get the agreements that
21 we need in place to be able to percolate groundwater. And
22 that's what our changes to (e) -- that's the simple change
23 we propose moving forward.

24 There are some other changes that follow that that are
25 really just conforming changes that deal with the

1 distinction between injection of groundwater and
2 percolation, as there are two different ways to build our
3 bank. So we need to make that distinction.

4 But at the end of the day, we thought that was the
5 simplest way to allow us to be able to access the second
6 supply of water. We do have a lot of concerns with Staff's
7 original language, which they are apparently marking up now.
8 It really did come down to three major things.

9 Number one: Staff's proposed language that deletes
10 injection as an option. Our position is why not give us as
11 many tools as possible to fill that groundwater bank, and so
12 that -- we think Staff's concerns are mostly related to
13 financial issues. We already had this infrastructure in
14 place. We would like the ability to both percolate and
15 inject. So that was the first concern we had with the Staff
16 language.

17 Second -- and I guess these numbers are moving around
18 a bit -- but under the current language, we have to keep a
19 thousand acre feet in our bank at all times. So there is a
20 thousand acre feet that basically can't be touched.

21 Staff's proposed changes, it really increased that
22 number from a thousand acre feet to 9,000 acre feet. So it
23 was really a nine-fold increase in our banking obligation.
24 And that's a significant change, from our perspective, and
25 not a change in the right direction. The other thing -- and let me

1 impress this to you -- is in addition to upping it by nine
2 times, it also gave us an obligation to have water in the
3 ground by September 30th of 2021.

4 The thing about a banking obligation like this is
5 simply this. There is only one sources of water to build
6 the groundwater bank, and that's State Water Project water.
7 And so we have, on the one hand, Staff saying that State
8 Water Project water is an uncertain supply. You can't
9 drought-proof with that supply; and on the other hand saying
10 build your bank with that supply and putting some pretty
11 prescriptive milestones in there.

12 So we think our approach in Attachment A is much
13 simpler and much more consistent. I am willing to look at
14 the language that Staff has put together, but I think the
15 Committee should probably use our Attachment A language to
16 resolve these issues.

17 HEARING OFFICER COCHRAN: Thank you.

18 Under the current banking arrangement, is there a
19 ratio that's in place for the amount? So in other words, is
20 it one-to-one? Is it two-to-one? Is it three-to-one? In
21 terms of when groundwater is used, and you're replenishing
22 or building the groundwater bank, is it on an acre foot,
23 gallon, whatever measurement you want to use, basis; or is
24 it, you know, if you use a gallon of groundwater, you have
25 to replace it with two State Water Project?

1 MR. HARRIS: So two different answers, depending on
2 the supply. We have our own bank. We are the only user in
3 this basin that has a groundwater bank within the
4 groundwater bank. So when we are using water that we've
5 injected into the system using our injection system, we can
6 put that into the ground. There is a dissipation factor
7 that's applied so that it's not quite one-to-one. When we
8 inject an acre foot, we get something slightly less than an
9 acre foot of credit. But that water, when we are drawing on
10 our own inject to State Water Project water, is one-to-one.

11 When we are drawing on the fourth source, and we are
12 drawing on the groundwater from the Mojave River Basin --
13 the adjudicated groundwater, we have called that -- that's
14 all dictated by the requirements of the adjudication. And
15 effectively, that is a two-to-one ratio. So we are required
16 to fund a two-to-one replacement for that water.

17 So there is accounting that goes on here, depending on
18 which color molecule you're going to color things here. But
19 the overall idea is to bring as much surface water as you
20 can to allow that to be put into the basin, added to the
21 native groundwater. So one-to-one for our bank and
22 two-to-one for the Mojave water.

23 HEARING OFFICER COCHRAN: Thank you for that
24 clarification, Mr. Harris.

25 Ms. Murray, you have heard Staff and Applicant

1 talking, and I know that there are some issues that the
2 Department has identified. Is there anything you would like
3 to say about the interim relief that we are talking about
4 today?

5 MS. MURRAY: We have no objection. We encourage
6 interim relief and have no objection to either the CEC or
7 the High Desert interim relief proposals.

8 HEARING OFFICER COCHRAN: Okay, thank you.

9 So if we could pull up, then, Staff's proposal that was
10 presented today.

11 So Mr. Harris, if the Committee were going to be
12 considering the proposal from Staff today -- I know that you
13 haven't had a chance to look at it -- how long would you
14 need to provide comments to the Committee?

15 MR. HARRIS: Well, I can give you some comments right
16 now just based on what I see.

17 HEARING OFFICER COCHRAN: Okay.

18 MR. HARRIS: (E) looks like it's, again, deleting our
19 ability to inject groundwater, if I'm reading those tiny
20 words from that far away.

21 Again, our position is we ought to have both means
22 available to us. We already have the infrastructure to
23 inject. There is no reason to remove our ability to also
24 inject. There may be some times when we are both going to
25 be percolating water and injecting water and operating as a

1 power plant. So we are not going to be able to reach a
2 comprise with Staff on (e) if I'm reading that correctly.

3 (F) is the same issue. It's taking away our ability
4 to inject after we have 3,000 acre feed, if I'm reading that
5 correctly. And, again, those issues go hand-in-hand. So I
6 need until now to respond to those.

7 In terms of maintaining a combined bank, we still have
8 the very basic concern that they are creating an obligation
9 now that's nine times our current obligation. And it's
10 requiring us to do it exclusively with State Water Project
11 water when we are hearing that that supply may not be
12 reliable. So I don't think the Staff's proposed changes
13 cure the problems we had in the past. There are movements
14 in our direction. I acknowledge that. But we still have
15 the same fundamental disagreement.

16 HEARING OFFICER COCHRAN: Okay. Another question I
17 have is I see here that it requires some work with the
18 Mojave Water Agency. Did the Mojave Water Agency
19 participate in the Workshop?

20 MR. HARRIS: They did not, but I would like to provide
21 one clarification. We don't have any agreements with Mojave
22 Water Agency. All of our water supplies come from the City
23 of Victorville in one way or another. They are our water
24 provider. So there's a whole series of different contracts
25 that are involved for the use of recycled water.

1 But the last comment that I have is the last touch is
2 with the City; same thing with State Water Projects, with
3 the City. And banked water, adjudicated water, all those,
4 the last deliveries are from the City.

5 Having said that, we have had discussions with Mojave.
6 They are the Watermaster. They ultimately are the ones who
7 manage the basin. They are going to ultimately, probably,
8 be involved in whatever slight changes we need to make to
9 the existing agreement to allow us to percolate water.

10 HEARING OFFICER COCHRAN: I'm a little bit confused.

11 MR. HARRIS: It's confusing.

12 HEARING OFFICER COCHRAN: So because the Mojave Water
13 Agency is the Watermaster for the groundwater basin, you are
14 currently injecting into the groundwater, correct?

15 MR. HARRIS: Yes. We have the ability to bank State
16 Water Project water, yes.

17 HEARING OFFICER COCHRAN: And that agreement that
18 allows you to bank is with the City of Victorville?

19 MR. HARRIS: Correct. There's an aquifer storage and
20 recovery agreement, it's called. Again, we are in the City
21 of Victorville service territory. So that agreement between
22 the High Desert and the City of Victorville, again, it's
23 called an aquifer storage and recovery agreement. It's just
24 for that.

25 Basically, there is a treatment system on our site.

1 There is a pipe that runs out to the well fields. It's a
2 one-way pipe, so we can be sending water out to be injected,
3 or we can have water brought into -- after being withdrawn.
4 So that is called, again, called the aquifer storage and
5 recovery agreement. That's between us and the City of
6 Victorville.

7 The City of Victorville is a party to the
8 adjudication. And so as a party to the adjudication, they
9 have a storage agreement with the Watermaster.

10 So the Watermaster is in charge of the entire basin.
11 So I guess if you want to work your way down to the
12 Watermaster, we have the Watermaster overseeing the entire
13 basin. They have an agreement, a storage agreement, with
14 the City of Victorville, who is also part of the
15 adjudication. And as our provider of water, we have an
16 agreement with the City of Victorville, through the aquifer
17 storage and recovery agreement, to allow our water to flow
18 to the wells to be injected or from the wells to be used.

19 HEARING OFFICER COCHRAN: Okay. Does the City of
20 Victorville have a preference of injection over percolation?
21 Is that a hallmark of this aquifer storage and recovery
22 agreement?

23 MR. HARRIS: No, it's not. The City of Victorville
24 would not be involved -- well, it would be involved. Let me
25 back up.

1 They don't -- I don't think they have a stated
2 preference for percolation. It's a different set of
3 agreements to allow us to percolate water.

4 HEARING OFFICER COCHRAN: So you would need something
5 other than the aquifer storage and recovery agreement in
6 order to be able to percolate?

7 MR. HARRIS: I think we would probably need an
8 amendment, slight changes to the existing agreement. I
9 don't think we're going to put any new agreements in place.
10 I think we are going to have to probably modify the existing
11 agreements.

12 I'm looking at my partner, Peter Kiel, who I forgot to
13 introduce, by the way; not very bright. He's our water
14 expert, and he's shaking his head "yes," so I feel better.

15 HEARING OFFICER COCHRAN: Thank you.

16 MR. LAYTON: Hearing Officer?

17 HEARING OFFICER COCHRAN: Yes. I'm sorry, Mr. Layton.

18 MR. LAYTON: I'm hiding over here.

19 In discussions with MWA, they thought that an
20 agreement could be reached. I will leave it up to the
21 lawyers for the details, but MWA would be receptive to enter
22 into a percolation agreement. They would percolate the
23 water where they needed it in the basin and withdraw the
24 water from where they needed it; or perhaps it would come
25 out of the existing wells that the City operates for

1 High Desert.

2 And also, the City -- there was a discussion at the
3 Workshop. The City thought injection was more complicated
4 and more maintenance -- required more maintenance on the
5 pumps. And then Victor Valley, the gentleman, Logan
6 Knowles, from Victor Valley Waste Water Reclamation, thought
7 percolation had some drawbacks. So there was a discussion
8 on what might be better, percolation or injection.

9 But, again, we continue to try to simplify this. And
10 the proposal that we put up is both an interim and
11 long-term. So, yes, we are looking to have 9,000 acre feet
12 in the ground at some point in time. The reasonable
13 direction from the Committee was to drought-proof this
14 project. Its supplies are going to be unreliable for power
15 plants throughout California, and for them to have an
16 insurance policy, I think, is appropriate.

17 What is also up there -- we have also marked up
18 SOIL & WATER-1. We didn't do that last time, but we did it
19 this time so that if you go up to the top of what we -- the
20 screen there, we have different changes to SOIL & WATER-1,
21 of course, because we seem to disagree with the Petitioner.

22 HEARING OFFICER COCHRAN: Could you scroll up, please,
23 Mr. Kramer, to SOIL & WATER-1? Thank you.

24 MR. LAYTON: We did mark up the dates to allow them
25 two more years. We left the number at 2,000 rather than go

1 up to 3,090.

2 And we continue to be concerned about the loading
3 sequence and the enforceability of that. So there is
4 language in there, and then we put language in the
5 verification about how the loading sequence might be --
6 might play out.

7 What they are proposing is reliant on a chloride level
8 in the cooling tower. We are just saying that you can't use
9 the groundwater unless you use all the banked water you have
10 and all the State Water Project water is not available.

11 So if you scroll down to the next page --

12 HEARING OFFICER COCHRAN: Paul, can you make it a
13 little bit bigger, maybe?

14 MR. HARRIS: Or make my eyes better.

15 MR. LAYTON: We did bring copies.

16 HEARING OFFICER COCHRAN: So here in the verification
17 is where you were saying that --

18 MR. LAYTON: What the Petitioner has originally
19 proposed was discussion of chloride levels, and that they
20 would mix different quality of water to adjust their
21 chloride levels in the cooling tower. And what we are just
22 saying is use recycled water, preferentially. If you need
23 to blend water, because both the -- recycled water is higher
24 in TDS and has some other conditions.

25 So the hierarchy we propose says used recycled water.

1 If you need to blend water, use State Water Project Water or
2 use banked State Water Project water. And banked can be
3 either injection or percolation. And only after all those
4 are used or unavailable, not just driven by chloride, but
5 just unavailability, then you can use the groundwater.

6 We had thought we had put that in the condition back
7 in 2014; we had not. So we would like to put it in there
8 now. Because we do think that groundwater should be the
9 last resort emergency. The way it's written right now, it
10 allows them to choose when to use groundwater based on water
11 quality and the chloride level in the cooling tower.

12 HEARING OFFICER COCHRAN: Thank you.

13 MR. HARRIS: If I may, we'll go back and look at this
14 language. My immediate reaction is that this is not
15 interim. These are -- the verification, in particular --
16 these are concepts that are in our actual petition. I'm
17 glad to see there is some embracing of those concepts.

18 But there is no need to, in an interim relief
19 situation for groundwater, to make the kind of changes that
20 are proposed here. So this, to me, really does not look
21 like interim relief. It's not simply the ability to give us
22 two more years of groundwater. This is actually a change in
23 the regulatory regime.

24 And, again, there is no need to remove our ability to
25 inject water as well as percolate. I just don't see what --

1 I don't see this as interim relief at all.

2 HEARING OFFICER COCHRAN: Let me ask Mr. Layton
3 directly. Is the change from injection to percolation part
4 of the interim solution or is that the long-term solution?
5 Because you said that Staff's exhibit included both.

6 MR. LAYTON: I think what we are proposing is both an
7 interim solution -- I think it would help them transition
8 and resolve this petition. We also think it would provide
9 long-term water supply for this particular project.

10 We think that it is -- we allow transition. They
11 don't have to do away with injection banking until they
12 achieve two or 3,000 feet. We proposed two initially, and
13 now we are proposing three. So until they get 3,000 acre
14 feet in the ground through percolation, they can do both.

15 And Mr. Harris has already indicated they are not
16 likely to get 2,000 in the ground very soon. So in the next
17 two years, they probably will have access to both injection
18 and percolation banking.

19 But we are trying to move this along towards something
20 that might work for the project for the long term. Again,
21 we want the power plant to have a reliable supply of water.
22 One of the ways we think we can achieve that is putting some
23 water in the ground for emergencies.

24 MR. HARRIS: We don't disagree with any of that. We
25 have every incentive to fill our groundwater bank. We

1 would love to have 10 years worth of water in the bank and
2 allow us to contract this facility a lot easier.

3 But at the end of the day, what Staff's proposed
4 changes here do is drive this project to 100 percent
5 recycled water. And that's Staff's substitute proposal.
6 That's not interim relief.

7 If they say we can't use groundwater until all other
8 supplies have been exhausted, that's not what our petition
9 is about. Our petition is about a diversity of water
10 supplies. We have to be able to blend recycled water with
11 other supplies because the project cannot operate on 100
12 percent recycled water. Staff's changes are basically
13 Staff's substitute proposal; they are not interim.

14 This requires to be 100 percent recycled water, which
15 we physically cannot operate that way. And I know Staff
16 doesn't like that answer. But that's what our petition
17 said, and that's our concern about the Staff's proposal.
18 And it may be a concern that the Department shares as well.

19 MR. LAYTON: Nowhere in this interim condition is
20 there a requirement for 100 percent recycled water.

21 MR. HARRIS: "Use of adjudicated groundwater shall be
22 limited to situations when a sufficient amount is not
23 available from other sources based on the quality of the
24 water."

25 So I read that to say I can only use groundwater after

1 attempting to run the project on 100 percent recycled water.

2 MR. LAYTON: Or banked water or State Water Project
3 water that you still get in deliveries.

4 MR. HARRIS: These are not in the nature of interim
5 relief. These are certainly not going to the question of:
6 Should we have access to the groundwater basin? There is a
7 whole loading sequence dealing with cooling tower,
8 chemistry, and a whole bunch of other things that are
9 completely unrelated to availability of that supply.

10 So this is not interim relief. This is a move towards
11 Staff's substitute proposal. So, again, if you want a more
12 detailed response, I can give it to you. But I can tell you
13 right now it doesn't satisfy our objectives.

14 HEARING OFFICER COCHRAN: Okay. And I think that this
15 is why we started out with we sort of agreed that there
16 should be some interim relief. The devil is going to be in
17 the details. And I believe that we've heard what the
18 Applicant's position is. We've heard from Staff. We have
19 also heard that the Department, or CDFW, supports some type
20 of interim relief; that if, when we start talking about the
21 permanent relief, that it becomes a much different
22 conversation.

23 There were some other topics other than the interim
24 relief that were supposed to be discussed at the Staff
25 Workshop. One of them, specifically, was: Is there a

1 stipulation or other agreement among the parties regarding
2 the effect of the 2003 Memorandum of Understanding between
3 Fish and Wildlife and the Victorville -- the Victor Valley
4 Water Reclamation Authority as it relates to recycled water?

5 Was that even discussed? What was the outcome of
6 those conversations?

7 MR. LAYTON: Yes, it was discussed; and no, I don't
8 think there is agreement or stipulation. I think there is
9 agreement that a study would provide information that might
10 change what water could be diverted. And without the study,
11 I think Fish and Wildlife -- and I am speaking for them. I
12 apologize -- without a study, they would not agree that
13 there are no impacts from the diversion.

14 Staff, we did rely on the MOU as being indicative of
15 water that could be diverted. So that's how we got to where
16 we thought Victor Valley or Victorville 2 and the
17 High Desert Project had access to that water. But no
18 agreements were reached or any stipulations that I could
19 see.

20 But there was a discussion about one -- one study is
21 scoped out, and the stakeholders are identified. Money
22 would probably become available. Victor Valley indicated
23 that they could go to the Board and probably obtain money
24 for a study to participate in the study so that so there are
25 agencies that are interested. And, again, MWA has indicated

1 that they would do the study. But, again, we haven't scoped
2 it out, and we don't know how much it would cost.

3 I think it would probably be either more than a year
4 and less than two years to complete such a study. Again,
5 that's without knowing exactly what we are going to study.

6 MS. MURRAY: Just to clarify, quickly, on the study,
7 it's really -- it's not an on-the-ground studies of all
8 these animals and plants and what's out there. It's a water
9 balance. And the judgment already requires that the
10 transition zone, the depth to groundwater in the transition
11 zone, be 10 feet or less. That's what the plants -- back in
12 1996, that was what was agreed upon is needed.

13 So we don't need to go and verify that. It's in the
14 judgment. The transition zone, which the VVWRA discharge
15 area is in the transition zone, is an essential area for
16 plants and species within the High Desert. We need to see
17 how to maintain the depth groundwater of 10 feet or less and
18 whether or not -- we just have some reservations about 4,000 acre
19 feet a year being diverted away and what that would do to
20 the groundwater levels in the transition zone.

21 HEARING OFFICER COCHRAN: Mr. Harris?

22 MR. HARRIS: Again, thank you.

23 What to study was the question. I think that the
24 short answer is to study our request in the petition.

25 We are very much concerned that this issue goes to a

1 regional water planning process. That's not what's before
2 the Commission. What's before the Commission is our
3 petition.

4 We have laid out in great detail, although maybe not
5 read or believed, an analysis of what this petition
6 proposes. And that's the GSI study I keep referring to
7 that's attached to, I think, our opening testimony. I will
8 get the exact citation to you, but it is the GSI report.

9 That report does study the proposed use of water by
10 this facility, including the petition. So one of the
11 important things in that GSI report is that in every case,
12 we assume that the obligations of the MOU are satisfied
13 first. And that's laid out right in the GSI report so that
14 every one of the six scenarios that are analyzed in the GSI
15 report, in the base case, says before High Desert can use a
16 drop of recycled water, the entire requirements of the MOU
17 are met first.

18 And frankly, that's what results in an outcome with
19 three out of 10 years when there is no recycled water
20 available to the project. Again, that's in our testimony
21 and our opening brief about the three out of 10 years there
22 is no recycled water available. In those three out of 10
23 years when there is no recycled water available, there is
24 9,000 acre feet plus whatever obligation -- there's more
25 nuance to the MOU than just the 9,000. But I'll use the

1 9,000 as shorthand. The 9,000 is satisfied. And that's
2 part of the reason we end up with zero for the project three
3 times.

4 So does the basin want to study, you know, regional
5 issues? That's fine. But let's not turn the petition into
6 a regional planning process.

7 And let's also not forget the Mojave Water Agency.
8 They are the Watermaster in this area. They keep a water
9 balance. You can go to their website today and look at
10 their documents filed with the court telling you exactly
11 what's going in this basin. They are the ones who are
12 responsible for making sure that the wells -- groundwater
13 stays -- I have to get this right -- 10 feet or higher.

14 It's counter-intuitive, right? You want more water in
15 the ground, so the ground level table comes up. So there is
16 already a mechanism in place to make sure that there aren't
17 any concerns about the water use here.

18 So I really implore the Committee to avoid the
19 invitation to turn this petition into the regional water
20 planning process. It's not what's before you, and
21 it's really important that we move forward in a timely way
22 in what we have actually requested here.

23 HEARING OFFICER COCHRAN: Thank you.

24 Does anyone else wish to speak on this issue regarding
25 the MOU? Were there any other topics that you think the

1 Committee needs to know about from the Workshop?

2 MS. MURRAY: I just want to indicate that I hear what
3 Mr. Harris said in terms of the GSI report. We have been
4 looking at that, especially since the Staff Workshop. And
5 it's not exactly correct to say that under this scenario, we
6 would always get the 9,000. That's why there needs to be
7 some kind of water balance. We would take issue with that
8 description.

9 MR. HARRIS: I guess I do feel the need to point out
10 that there is currently no limit on our use of that recycled
11 water, and we are amenable to talking about something less
12 than 100 percent recycled water. So from a baseline
13 perspective, we are CEQA compliant and currently authorized
14 to use up to whatever we need in terms of recycled water for
15 the project.

16 Now, we've told you there is a physical limitation on
17 what we can use. And we told you we can't use 100 percent
18 recycled water. But let's not lose site of the current
19 authorizations. And the current authorizations would allow
20 us to use the amount of water that is at issue here. And we
21 are amenable to maybe taking some kind of limit to move that
22 back in a way that moves it from the current baseline.

23 MR. LAYTON: And I would actually like to acknowledge
24 that I do agree with Mr. Harris, first time. But the
25 study -- you asked us to report on the study and what

1 stipulations might come out of it.

2 We are not suggesting that we agree that a study is
3 needed or not or should be part of this proceeding or not,
4 but just that the parties agree that a study would provide
5 the information that might move the issue forward. And
6 whether that helps resolve this petition, I guess, is
7 another question. But we are not sure that the Petitioner
8 or you want to wait two years while a study is done.

9 HEARING OFFICER COCHRAN: Thank you for that. So
10 other than the water balance calculation and/or a --

11 MR. ABULABAN: Can I add something to what Mr. Harris
12 just said about the three out of the 10 years when no recycled?

13 COURT REPORTER: Excuse me, sir. Your name?

14 MR. ABULABAN: Karreim Abulaban.

15 COURT REPORTER: Karreim --

16 MR. ABULABAN: I'm Staff. I'm Energy Commission
17 Staff. I'm sorry.

18 COURT REPORTER: Please spell your last name.

19 HEARING OFFICER COCHRAN: Please provide your name?

20 MR. ABULABAN: Abulaban, A-B-U-L-A-B-A-N.

21 The three out of 10 years is not that there is no
22 recycled water available. There is recycled water
23 available, but it's below the maximum that the project
24 needs. So whenever the available amount is less than 4,000,
25 the Applicant of the GSI study concluded that 10-year when

1 recycled water is not available. So every 10 years, there
2 is 2,500 acre feet; 3,000 acre feet. Those years are
3 considered to be recycled water is not available.

4 HEARING OFFICER COCHRAN: Okay. Thank you for that
5 clarification.

6 Anything else coming out of the Workshop?

7 MR. HARRIS: I'll just note that's not my
8 understanding. And we'll have an expert available when the
9 Committee wants to get to those issues.

10 HEARING OFFICER COCHRAN: Workshop, anything else?

11 MR. LAYTON: Well, we did go through the list of
12 questions that the Committee had posed, and we did have a
13 discussion on, a lively discussion, on High Desert water
14 use, historic and future.

15 The Petitioner does agree that their past use has been
16 about 50 percent. But they don't know what the future
17 holds, and neither do we. We don't think the -- even with
18 climate change, even with Aliso Canyon, even with the
19 drought, I'm not sure their capacity factor is going to
20 change dramatically. It's not going to shoot up to 150 or
21 200 percent, obviously, which is a joke. I apologize.

22 But what we continue to argue about, the water use,
23 they use about 50 percent a year of their capacity. What
24 they are looking for is about a 400 percent supply. They
25 want 100 percent of State Water Project water, 100 percent

1 of recycled water -- up to what they can use, not 100 percent
2 -- and 100 percent of State Water Project water banked, and then
3 they want 100 percent of groundwater is what they are asking
4 for. So they are asking for 400 percent to satisfy 50
5 percent of their annual need, which is about 2,000, 3,000
6 acre feet.

7 Most power plants have a water supply that is 100
8 percent. You go get a Will Serve Letter from a water
9 purveyor, and they say they will supply 100 percent of your
10 needs, not 200 percent, but 100 percent. And then if you
11 need an emergency backup, you can go to the backup. So it
12 may be a 200 percent supply is adequate, not 400 percent.

13 This is where we disagree. And that discussion came
14 out when we started talking about past use and future use of
15 High Desert water. So that was part of the discussion at
16 the Workshop.

17 MR. HARRIS: On the 400 percent argument, it's
18 specious. We want a diversity of supplies. We can't use
19 400 percent of water. We may use 25, 25, 25, 25; 30, 30,
20 30, 30. There are various combinations. But we'll never
21 use 400 percent.

22 If there is any one supply that right now could supply
23 100 percent needs of the project, it would be groundwater. We
24 could be involved in the adjudication and use nothing but
25 groundwater, and that would be the 100 percent supply.

1 We are not asking to do that. We are asking to be
2 able to maximize our use of recycled water. But again, I
3 guarantee that we will not use 400 percent water. There is
4 a physical limit on how much water the project can use.

5 We may have used less than the theoretical maximum in
6 the past. That is always going to be the case. But we need
7 to be able to have the ability to run during a heat storm if
8 that happens in California. We need to be able to tell the
9 Cal ISO that we are able to run 100 percent of the time or
10 else we become a use-limited resource.

11 So we need a supply that we will probably never use in
12 any single year on paper. And we have described that before
13 as a regulatory envelope. We need a big enough envelope so
14 we can do that, so we can be able to provide all the
15 services that the power plant intends to provide to
16 California.

17 And we are well-positioned to help with the
18 Aliso Canyon issue. I'll refer you back to the record.
19 There is a 2014 Cal ISO order for this project to run
20 because of gas shortages in Southern California. And what
21 happened at that time is somehow the operators had issues.
22 It related -- resulted in gas pressure problems in Southern
23 California. In 2014, this project ran.

24 So we want to be available to fill that gap. I want
25 to be clear. We are not saying we are the answer to

1 Aliso Canyon. Believe me; there are answers to that
2 question. There is not a single -- and good luck in finding
3 all those. It's going to be a tough puzzle for us all.

4 But I think we can be part that answer by being
5 available. And to be available, we need to have a water
6 supply that is diverse. And then you can call it 400
7 percent. But I guarantee we won't use more than 100
8 percent.

9 HEARING OFFICER COCHRAN: That brings me to another
10 question that I had, and that is: What is the Cal ISO
11 position on this plant and its need for reliability,
12 particularly in light of what's going on in Aliso Canyon?
13 Has Cal ISO weighed in? Have they -- I know that we've
14 asked that they would please come and participate in the status
15 conferences. I don't see them here today.

16 MR. LAYTON: This is Matt Layton again.

17 I have talked to the ISO. And they point to the
18 recent report that came out about Aliso Canyon and
19 identified High Desert as one of the plants that might fill
20 in. And ISO thought that would be satisfactory and would
21 prefer not to come and testify about a specific plant and
22 how it fits into their needs.

23 HEARING OFFICER COCHRAN: Okay. Thank you for that.

24 Let me look at my notes very quickly. I think we are
25 ready to move on to something much more fun.

1 Oh, one other question. In the event that the
2 Committee does need confidential data, was there an
3 agreement about what sort of the process that we would use for
4 that or were you much more interested in discussing water
5 rights?

6 MR. LAYTON: I was more interested in discussing water
7 rights, but we did bring this up. And the only reason I
8 brought it up -- because I have no idea how to do this. But
9 I did want the parties there to be aware that there might be
10 such an event. And if they wanted to participate, they
11 should make it clear early on such that you can understand
12 what it means having five different water agencies
13 participate in a confidential hearing if they chose to
14 participate.

15 HEARING OFFICER COCHRAN: Okay.

16 MR. LAYTON: They have not indicated "yes" or "no."
17 They just took that in.

18 HEARING OFFICER COCHRAN: Fair enough. So now for
19 something completely different, I would like to turn our
20 attention to Executive Order B-29-15, which was issued by
21 Governor Brown April 1st of last year, and that as to the
22 Energy Commission -- as it relates to the Energy Commission,
23 it really does two things.

24 First of all, it says that we shall expedite
25 processing of all petitions, and that section 1769 of our

1 regulations is waived for any such petition, and then that
2 the Energy Commission is authorized to create and implement
3 an alternative process to consider such petitions, and that
4 this process may delegate amendment approval authority as
5 appropriate to the executive director.

6 Secondly, in paragraph 26 of the Executive Order, it
7 essentially dispenses with CEQA for drought relief actions
8 taken pursuant to these paragraphs.

9 So we received extensive briefings from the parties
10 about that and we still have some open questions about that.

11 I guess the first question that I would ask is: What
12 is the role of the Commission discretion under the
13 Warren-Alquist Act in considering the petition? And I'm
14 distinguishing that from our regulations, as well as from
15 CEQA.

16 The second -- and I think Mr. Layton sort of mentioned
17 this in his opening comments about what happened at the
18 Workshop -- is what evidence we have regarding the need for
19 an alternative water supply necessary for continued
20 operation. What do we currently have in the record and what
21 effect would banking water, whether through injection or
22 percolation, have on that? And we already just talked about
23 plant reliability.

24 So if someone would like to have a discussion with me
25 about the Warren Alquist-Act and where we are right now in

1 the record regarding the need for an alternative water
2 source, I am ready to hear.

3 MS. CHESTER: This is Michelle Chester with the Energy
4 Commission. So Mr. Harris came before the Commission three
5 times -- this is in our reply brief -- and requested a
6 committee be appointed. A committee was appointed according
7 to Public Resources Code section 25211.

8 And at this point, we don't think reverting back to
9 authority cited in the Executive Order is appropriate.
10 There is no authority either in our Warren-Alquist Act or in
11 our regulations, and it's not imagined by the Executive Order
12 that there be a blending of authority under the Executive
13 Order and the Warren-Alquist Act.

14 HEARING OFFICER COCHRAN: Thank you. Mr. Harris?

15 MR. HARRIS: Thank you. We did ask for a committee.
16 And in doing so, we also suggested to you directly that you
17 had the authority to answer -- to use Executive Order to act
18 expeditiously to approve the entire petition.

19 If you will look at our filing that was made -- it was
20 quoted in the Staff's reply brief in the third paragraph and
21 paragraph two -- it says that, you know, accordingly, the
22 Commission must act expeditiously to approve the petition
23 for the purposes of securing an alternative water supply or
24 continue in operation of the project consistent with the
25 directions set forth in the Executive Order.

1 So we did ask for a committee. We did -- and in doing
2 so, we also asked that you act under the Executive Order on
3 the entire petition. So asking for something in the
4 alternative is not waiving our ability to move forward.

5 Rather than letting the lawyers fight about their
6 briefs, I think there are really three different ways that
7 you can act in response to what you have before you.

8 The first one is to simply -- the typical course of an
9 order of the full Commission. So, number one, this
10 Committee makes a recommendation to the full Commission.
11 The full Commission notices that on a regular-scheduled
12 business meeting, and the full Commission votes on it. That's typical
13 process, you are obviously not relieved at all of
14 your typical process. That's number one.

15 Number two, and the second and third one, are all
16 under the Executive Order. The Executive Order allows the
17 executive director to approve requests for alternative water
18 supplies to continue operations of power plants. That is an
19 authority, Executive Order authority; not the same Executive
20 Order, but a similar authority as used by the executive
21 director related to the fires in Lake and Sonoma County.

22 So I think, very clearly, the executive director has
23 the ability. You have an order -- you have a standing order
24 from the Commission approving the executive director's
25 authority. So I think the executive director has the

1 authority under the Executive Order to approve the entire
2 petition. So that is still very clear.

3 Then the third way: That Executive Order also says
4 you can create an alternative process other than the
5 executive director to consider this. So that would require
6 an act of the full Commission to say we delegate to the
7 Committee the authority to provide interim relief.

8 So those are the three bases on which things can be
9 approved moving forward.

10 HEARING OFFICER COCHRAN: I'm not sure that really
11 answered my question, though, which is: Does this Committee
12 still have the discretion in considering the cost benefits
13 of granting the petition?

14 MR. HARRIS: I'm not sure I understand. Can you try
15 that again?

16 HEARING OFFICER COCHRAN: So the process/procedure
17 which is acted upon versus the substance of the decision.
18 So is there a distinction in the Executive Order between
19 process and substance; and if so, what is the substantive
20 responsibility of this Committee as we move forward?

21 MR. HARRIS: I think the Committee has the ability to
22 recommend approval of the request in the petition. I think
23 they can do that, as I said, either through asking the
24 executive director to exercise his authority or by asking
25 the full Commission to do so.

1 I don't -- maybe I'm not answering your question
2 still, if I'm reading your body language correctly.

3 HEARING OFFICER COCHRAN: That's fine.

4 MS. CHESTER: Staff's position is that the Petitioner
5 has the opportunity either to avail itself to the Commission
6 or to work under the Executive Order. And by appointing a
7 committee, they chose that option, the Executive Order no
8 longer being an available option. What the Executive Order
9 offers is expedited review in an alternative process which
10 is defined as reviewed by the executive director. That was
11 not used here.

12 I know the process, the Executive Order process, has
13 been used before by Calpine or in the Calpine case. And
14 there is no switching here. There is no similarity in that
15 option.

16 MR. HARRIS: Would you cite some authority for that
17 position that supports Staff's desire?

18 MS. WILLIS: This is Kerry Willis for the Staff.

19 As Ms. Chester said, in the Calpine case, Calpine
20 actually requested the executive director to make certain
21 recommendations and follow that approval process on quite a
22 few various units of the geysers. There was a process in
23 place for that, and they clearly followed that process.

24 In this particular instance, the project owner
25 petitioned the full Commission for a delegation to a

1 committee, and that changed the process.

2 MR. HARRIS: There is no authority to support that,
3 absolutely no authority. Let me give you a minute to pull
4 up our petition to the full Commission. Because in that
5 petition itself, the language says clearly that we think you
6 can act under the Executive Order.

7 Today -- if you want all of us out of your hair today,
8 you could go to Mr. Oglesby and recommend approval of the
9 petition, and he could do that. And there is nothing in the
10 Executive Order that would stop that from happening. It's
11 not an either/or process. And, God, please do that and get
12 us all out of this little bit of purgatory we are in.

13 But you are not relieved of your ability to act under
14 the Executive Order simply because we got tired of waiting
15 for the Staff to produce a document and petitioned for the
16 assignment of a commission. It's a nice theory, but it's
17 not the law.

18 HEARING OFFICER COCHRAN: Thank you, Mr. Harris.

19 So this brings me, now, to where do we go from here?
20 It sounds as though that there is some agreement that a form
21 of interim relief is necessary to allow the plant to
22 continue to operate, and that that interim relief may
23 proceed more quickly than the final determination of the
24 issues underlying the petition itself.

25 So as we are thinking about that, what the parties

1 previously identified in their Prehearing Conference
2 statements, what they perceive the issues to be for which
3 live testimony, or for which evidentiary hearings needed to
4 be conducted, are there still issues of that nature
5 remaining?

6 MR. HARRIS: Yes. We believe that you can greatly
7 focus this proceeding by ruling on our request that the
8 Staff's substitute proposal is outside the scope of this
9 proceeding.

10 We have a petition before you for changes. Those
11 petitions are specific. They do not require consideration
12 of a 100 percent recycled water substitute proposal. That
13 is simply the Staff's vision of what they would like to see.
14 We have briefed that issue extensively. We do not believe
15 that it's a CEQA alternative, and if it's one, it's not one
16 you need to consider.

17 I would also, I think, maybe point out to you, as
18 hopefully a bright light in all this, is that you can avoid
19 all the questions about confidential hearings if you grant
20 our request to not hear the substitute proposal.

21 We only have to have confidential hearings if you want
22 to talk about the economic feasibility of converting this
23 project to 100 percent recycled water. We completely avoid
24 confidential hearings if the Staff's substitute proposal is
25 not properly before you. Because the issue of economic

1 feasibility of the Staff's proposal of conversion to 100
2 percent recycled water would not be before you.

3 So I think legally, the doctrine we have talked about
4 in our brief -- Goat Tavern, God bless him, talking
5 about our ability to continue use of this facility -- is a
6 legal basis for you to hear our petition and our petition
7 only. And I think it also really focuses the issues. If we
8 got through the hearing on our petition, and for some reason
9 you decided, well, maybe we ought to hear the Staff's
10 substitute proposal next, you could make that decision at
11 that point as well.

12 But I think we have requested that you rule the
13 Staff's substitute proposal is not properly before you, and
14 I think that will extremely narrow the issues before the
15 Committee and allow us to get through this process in a
16 couple of months, as opposed to years.

17 HEARING OFFICER COCHRAN: Ms. Willis or Ms. Chester?

18 MR. LAYTON: Hearing officer, excuse me for --

19 HEARING OFFICER COCHRAN: I'm sorry, Mr. Layton?

20 MR. LAYTON: -- talking -- I don't mean to talk when
21 the lawyers are talking but --

22 HEARING OFFICER COCHRAN: It's okay.

23 MR. LAYTON: We don't think ours is a substitute
24 proposal. But what we are looking for is some commitment to
25 use recycled water. So they have argued -- and we

1 disagree -- they can't use 100 percent or 100 percent is not
2 available. We disagree. But what would be helpful is if
3 they could define what number they could live with and
4 therefore make that enforceable.

5 Again, right now, what they are asking for is 400
6 percent more or less. And we are suggesting maybe there is
7 some refinement of those numbers such that there is not such
8 an exposure. What they are asking for is all the risk is
9 transferred to all the water users in the state, and none of
10 the risk is theirs on water supply.

11 Again, everybody is responsible for building a power
12 plant that can work, a power plant that can safely deliver
13 power, and these people are also responsible for that. But
14 they don't need 400 percent water supply to be able to do
15 that; that they can put some limits on how much water they
16 need from recycled, how much water they need from the bank,
17 how much water they need from the groundwater. And they are
18 not willing to take any limits on any one of those.

19 We don't think it's an alternative proposal. We just
20 think it's a refinement or correction to their proposal.

21 MS. MURRAY: This is Nancee Murray with California
22 Fish and Wildlife.

23 I agree that having numbers that are enforceable would
24 be a good thing in the ultimate certification. We, of
25 course, would want a maximum amount of recycled water, and

1 then the others could be however much they can contract for.

2 MR. HARRIS: So please understand our dilemma. We
3 have Matt down here on this end telling me use 4,000 acre
4 feet of recycled water, and we have the Department here
5 telling me, don't you dare use 4,000 acre feet of water.
6 And we need to probably find a middle course.

7 We've got us telling you we can't use 100 percent
8 recycled water. But I will stipulate right now that we will
9 never use more than 100 percent supply. Okay? I can
10 stipulate to that 100 percent, bet everything on it. We
11 will not use 100 percent supply.

12 I just need to know what the weather is and how we are
13 going to operate this plant each year going forward to be
14 able to tell you how much of those four supplies I need.
15 And no one has been able to do that for us.

16 So if we come up with numbers, those numbers have to
17 be flexible. Right? If the Staff wants us to use as much
18 recycled water as possible, and I have the Department
19 telling me use as little as possible, and it's a dry year,
20 and I have to use one supply or the other, I've got to have
21 some kind of rolling average, some way to smooth out the
22 years.

23 One of the things that we propose is a five-year
24 rolling average. We would be willing to look at some
25 numbers. But again, it's got to have parameters around it

1 that allow for the reality that nobody can tell me whether
2 the drought is over or not. We have four supplies, but
3 really, we don't.

4 The third -- the second and third and fourth supplies
5 are all State Water Project water. We have State Water
6 Project water as surface water. We have State Water Project
7 water as water that is brought into the basin that we
8 inject, and we have State Water Project water that is added
9 to the native groundwater and available through the
10 adjudication. So we really have State Water Project water
11 and recycled water.

12 Recycled water is not free. What is recycled water?
13 Recycled water is native groundwater and imported State
14 Water Project water. So this is a very complex,
15 four-dimensional game of chess. And to lock us into a
16 single number, I think, is going to be problematic.

17 Now, we are willing to work in the parameters of that
18 and, you know, maybe cut these numbers down, maybe get a
19 number that's less than 4,000 so the Department feels
20 better. But at the end of the day, there may be a year out
21 there when have to draw heavily on one supply. And we need
22 the flexibility to be able to do that or else we're not
23 going to be able to answer when the ISO calls.

24 HEARING OFFICER COCHRAN: I think that's all that we
25 have under item three on our agenda, to my knowledge, other

1 than Mr. Harris's pending motion that we rule on whether the
2 Staff's proposal is part or not part of this proceeding. I
3 don't know of any other pending motions.

4 Are there any members of the public or other
5 interested persons and entities that would like to speak to
6 the Committee?

7 I don't see a rush to the microphone here in
8 Sacramento.

9 Is there anyone on the telephone who would like to
10 speak to the Committee, anyone at all?

11 At this point, the Committee will adjourn to closed
12 session in accordance with Government Code section
13 11126(c)(3), which allows a state body to hold a closed
14 session.

15 There will probably be orders coming from this Status
16 Conference. And with that, we will now be in closed
17 session.

18 We are not going to do anything substantive this
19 afternoon, so feel free to leave. Madam Court Reporter, I
20 will let you know what time we actually adjourn.

21 Oh, one thing is that it is likely that we will be
22 adjourning this meeting to another closed session, a closed
23 session only, to Friday, April 29th, at 10:00 AM. The
24 parties will not need to appear for that because it will
25 just be a continuation of the closed session.

1 With that, we are in closed session.

2 (Whereupon, closed session commenced at 4:19 PM.)

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4 (Closed session adjourned at 5:02 PM.)

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1 CERTIFICATE OF OFFICIAL SHORTHAND REPORTER

2

3 State of California)
4 County of Sacramento) ss.

5

6 I, Lisa M. Tilden, hereby certify that I am a
7 Certified Shorthand Reporter, and that I recorded verbatim
8 in stenographic writing the proceedings had APRIL 21, 2016,
9 in the matter of HIGH DESERT POWER PLANT, Docket No.
10 97AFC-01C, completely and correctly to the best of my
11 ability; that I have caused said stenographic notes to be
12 transcribed into typewriting; and that the foregoing pages
13 5-56 constitute a complete and accurate transcript of said
14 stenographic notes taken at the above-mentioned proceedings.

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Dated: APRIL 21, 2016

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Lisa M. Tilden, CSR No. 11465

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