

RENEWABLES COMMITTEE HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )

Development of Statewide )  
Guidelines for Reducing )  
Wildlife Impacts from )  
Wild Energy Development )

Docket No.  
06-OII-1

**DOCKET**

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CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

MONDAY, AUGUST 13, 2007

9:00 A.M.

**ORIGINAL**

Reported by:

John Cota

Contract Number: 150-07-001

COMMISSIONERS PRESENT

John L. Geesman, Presiding Member

Jackalyne Pfannenstiel, Associate Member

ADVISORS PRESENT

Suzanne Korosec

Jan McFarland

Tim Tutt

STAFF PRESENT

Richard L. Anderson

Brian McCullough

Susan D. Sanders

N. Misa Ward

CALIFORNIA DEPARTMENT OF FISH AND GAME

Scott A. Flint

Bronwyn Hogan

ALSO PRESENT

Frederick W. Noble, Wintec Energy, Ltd. and Desert  
Wind Energy Association

Greg Blue, enXco Development

Julia Levin, National Audubon Society

Annie Mudge, California Wind Energy Association

Carl Zichella, Sierra Club

Peter Weiner, Center for Energy Efficiency and  
Renewable Technologies

Kim Delfino, Defenders of Wildlife

Michelle Conway, Oak Creek Energy Systems

Nicole Hughes, RES Americas Developments

Paul Vercruyssen, Center for Energy Efficiency and  
Renewable Technologies

Nancy Rader, California Wind Energy Association

Marcia Wolfe, Oak Creek Energy Systems

Stu S. Webster, Clipper Windpower Development  
Company

Kenneth Stein, FPL Energy Project Management (via  
telephone)

Andy Linehan, PPM Energy

Ted Weller, USDA Forest Service (via telephone)

Jim Lindsay, FPL Energy Project Management and  
Bat and Wind Energy Cooperative (via telephone)

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

2 9:07 a.m.

3 PRESIDING MEMBER GEESMAN: I want to  
4 welcome you all to a workshop of the California  
5 Energy Commission's Renewables Committee. I am  
6 John Geesman, the Presiding Member of the  
7 Committee. To my left, Commissioner Jackalyne  
8 Pfannenstiel, the Commission's Chair and the  
9 Associate Member of this committee. And to my  
10 right, Suzanne Korosec, my staff advisor.

11 This is a workshop on our proposed  
12 guidelines for reducing the impacts to birds and  
13 bats from wind energy development. I think that  
14 most of you have probably participated in our  
15 earlier workshop, several staff workshops on the  
16 same topic. It is our hope that we can wrap this  
17 up today.

18 As a consequence what I'd like to do go  
19 into as much detail as any of the commentators feel  
20 is necessary or appropriate for us to fully  
21 understand the content of what you're saying and  
22 attempt to work through areas.

23 I recognize the likelihood that there  
24 will be particular topics in which people simply  
25 don't agree. That's fine. What Commissioner

1 Pfannenstiel and I need to do is determine as best  
2 we can where each of the parties stands on a  
3 particular issue.

4 So if you will, this may be a little  
5 more painstaking than some of our past workshops  
6 but I think that the effort today will hopefully  
7 bear some fruit.

8 With that, our agenda, we have a welcome  
9 and schedule update from Misa Ward of our staff.  
10 Misa.

11 MS. WARD: Thank you, Commissioner  
12 Geesman. As stated my name is Misa Ward, I work  
13 in the biology unit of the California Energy  
14 Commission. I am here just to go through a couple  
15 of things with you.

16 First of all I want to thank everybody  
17 for coming out. We hear that some members may be  
18 delayed due to an accident so we're hoping that  
19 they will be able to join shortly here before we  
20 get too deep into the discussion.

21 Just a few housekeeping items before we  
22 begin. For those of you not familiar with the  
23 building, and I see that a lot of you probably  
24 are, the closest restrooms are located either to  
25 your left or to your right as you exit the hearing

1 room here. There is a snack bar on the second  
2 floor underneath the white awning if you need any  
3 refreshments. And lastly, should there be an  
4 emergency, we ask you to follow the employees to  
5 the appropriate exits and we'll reconvene at  
6 Roosevelt Park, which is just diagonally across  
7 the street from this building.

8 With those items covered I just want to  
9 go through some other things here. And that would  
10 be that there are a number of handouts at the  
11 front on the tables. We actually have some copies  
12 of the guidelines document for those of you that  
13 may not have a copy with you today.

14 We have the Notice of Availability for  
15 the documents and we have a workshop notice which  
16 contains instructions for commenting and how to  
17 docket items that you might want to submit on the  
18 guidelines document.

19 The agenda is also there and I'll go  
20 through that with you. There is also a sign-in  
21 sheet. In case you didn't see that, we'd like to  
22 record your names, make sure we get them accurate  
23 for the transcript here.

24 There are also some blue cards out front  
25 and those are if you would like to make a

1 statement. You can give those blue cards to Brian  
2 McCullough who is sitting up front. We also have  
3 some -- We may have some people on the phone that  
4 may want to give some comments and Brian will also  
5 be filling out blue cards for those folks.

6 There is also a lunch map out front  
7 should this go into the lunch time and you need a  
8 place to go near the building.

9 So as far as the agenda review. It's  
10 going to follow a similar format to the last  
11 meeting, which is we are going to have a brief  
12 staff presentation on the committee draft  
13 guidelines and then we'll open it up to public  
14 comments. Then after that the Renewables  
15 Committee may have some concluding remarks and  
16 next steps for us.

17 So with that I'll jump right into the  
18 schedule update. Since the last workshop the  
19 document has since become a committee draft. And  
20 that means the Renewables Committee has been and  
21 will continue to direct CEC and Fish and Game  
22 staff to make final adjustments for the Committee  
23 final draft.

24 We expect some changes to the document  
25 from this hearing to be reflected in the final



1 document to be considered for adoption. The  
2 Business Meeting to consider adoption will be  
3 September 26. The Committee final draft plus a  
4 decision document, which states reasons for  
5 changes not made, will be posted on-line just  
6 before that Business Meeting.

7 As a reminder, the comments for this  
8 draft are due on August 22. And just to close out  
9 the guidelines website, we plan to leave that  
10 operational posted option for ongoing feedback.  
11 And that's all I have, thank you.

12 PRESIDING MEMBER GEESMAN: Susan, are  
13 you going to give the staff overview?

14 MS. SANDERS: Um-hmm. My name is Susan  
15 Sanders, I'm one of the four authors of the draft  
16 guidelines. And I'd like to thank you all for the  
17 many detailed, specific comments that you have  
18 once again provided and for the many useful  
19 suggestions for improvements to the guidelines.

20 As with past drafts we've incorporated  
21 many but not all of the comments and suggested  
22 revisions. A decision document, as Misa  
23 mentioned, will be released with the next version  
24 of the guidelines to discuss all the comments that  
25 were not incorporated, along with the reasons they

1 were not accepted.

2 Many of the changes that were made were  
3 minor rewordings and there were quite a few  
4 specific suggestions on some of the technical  
5 elements of study protocols, especially in  
6 Chapters 3 and 5. Many of these were accepted and  
7 we are grateful to those experts who read the  
8 draft so carefully and made so many thoughtful  
9 recommendations for improvements.

10 I won't go over those minor rewordings  
11 or technical revisions today but will summarize  
12 the major topics for which we received suggestions  
13 and how they were addressed. These include, one,  
14 tiering and categories of projects; two,  
15 recommended methods for bats; three, research  
16 fund; four, science advisory committee; five,  
17 operations monitoring; and six, the voluntary  
18 nature of the guidelines.

19 Scott will then go over some of the  
20 comments received on Chapters 2 and 4 and will  
21 discuss the Department of Fish and Games decisions  
22 on some of the recommended revisions.

23 One, tiering and categories of projects.  
24 CalWEA and CEERT provided some detailed  
25 suggestions for categorizing projects in classes

1 that would have different tracts of study effort  
2 and permitting. The revised draft has  
3 incorporated the suggested framework with some  
4 modifications.

5 The categories of project sites are as  
6 follows: One, project sites with existing wind  
7 wildlife data such as in-fill development and  
8 those near existing low-impact wind facilities;  
9 two, project sites with little existing  
10 information and no indicators of high wildlife  
11 impacts from preliminary site screening; three,  
12 project sites with high or uncertain potential for  
13 wildlife impacts; and four, project sites  
14 inappropriate for wind development.

15 The basic recommendations for pre-  
16 permitting and operations monitoring study methods  
17 have not changed substantially with one exception  
18 that I will describe soon. This categorization  
19 clarifies that some projects, such as Category 1  
20 sites, are likely to need less study than others  
21 while some, such as category three projects, might  
22 need more. We feel this categorization provides  
23 guidance to lead agencies as to the appropriate  
24 level of review but still retains the flexibility  
25 needed to address the unique features of each

1 site.

2 Category 1 does not include any kind of  
3 categorically exempt status for a project that  
4 would sidestep the careful site assessment and  
5 evaluation of existing data. And Scott will talk  
6 more about this.

7 Category 1 does not explicitly mention  
8 repowering projects because we don't yet have the  
9 data to support the conclusion that newer, taller  
10 turbines reduce bird and bat impacts. Repowering  
11 data are still developing but a comparison of  
12 fatality data for repowered turbines versus old  
13 turbines in Solano County suggest wildlife impacts  
14 may not be reduced with repowering, or may be  
15 reduced for some species but not for others. A  
16 recent analysis of bat fatality data throughout  
17 North America suggest that bat collisions increase  
18 as turbine heights exceed 65 meters.

19 The categories and the guidelines are  
20 sufficiently flexible so that some repowering  
21 projects may fit into Category 1 and need less  
22 study but that decision cannot be made without a  
23 project by project assessment.

24 Two, bats. Some commentators pointed out  
25 the current uncertainty in using acoustic

1 monitoring for bats to predict impacts, questioned  
2 the value of acoustic monitoring during operations  
3 and suggested as an alternative contributions to  
4 an experimental mitigation fund to do bat research  
5 on a regional basis.

6 The revised report has eliminated the  
7 recommendation for two years of bat acoustic  
8 monitoring during operations and suggested instead  
9 an evaluation of pre-permitting data and  
10 consultation with agencies and other knowledgeable  
11 scientists to determine if acoustic monitoring for  
12 bats is warranted during operation study.

13 The recommendation for one year of pre-  
14 permitting acoustic monitoring for bats still  
15 stands because these studies provide project-  
16 specific information needed to assess impacts,  
17 develop operations monitoring study plans and  
18 develop mitigation measures. If there's questions  
19 about the recommendations for bats we have one of  
20 the bat experts from the science advisory  
21 committee, Bronwyn Hogan, here today to answer  
22 your questions.

23 In response to the comments received the  
24 revised report does do a better job acknowledging  
25 the uncertainty in correlating acoustic monitoring

1 data with fatalities, indicates that  
2 recommendations may change with new research, and  
3 that this is an issue that will receive research  
4 attention.

5 With respect to contributions to an  
6 experimental mitigation fund as an alternative to  
7 project-specific studies for bats. Currently  
8 there is no such fund and no mechanism for an  
9 applicant to contribute money on a project-by-  
10 project basis so it can not yet be included as a  
11 recommendation and guidelines.

12 And that brings us to the third topic,  
13 the research fund. Everybody here strongly  
14 supports establishment of a mitigation research  
15 fund with contributions from private and public  
16 sources to do collaborative, focused research on  
17 the impacts of wind development on bats, and other  
18 issues about which research is needed.

19 The Energy Commission and Fish and Game  
20 agree that a research fund would have great  
21 benefits. The Energy Commission has already  
22 committed \$1 million for PIER to study wind  
23 wildlife issues and would like to see additional  
24 research above and beyond this program. PIER's  
25 research plan will identify opportunities to

1 leverage research funds and certainly supports  
2 collaborative efforts for stakeholders.

3           Some of the unresolved issues on the  
4 suggestion is determining which entity has the  
5 authority and the resources to collect the funds  
6 and administer the program. Also contributions by  
7 a research fund by itself is not a legally  
8 acceptable, project-specific impact assessment or  
9 mitigation measure.

10           Discussion of how to create and manage a  
11 mitigation research fund is a large and complex  
12 topic and it is beyond the scope of these  
13 guidelines. However, the revised draft includes  
14 language that serves as a placeholder until a  
15 research fund and program can be developed for a  
16 science advisory committee. Some comment letters  
17 noted that an open, public process would be needed  
18 for creation of a statewide standing science  
19 advisory committee.

20           Some commentors wanted the guidelines to  
21 describe a more expansive wrong for the standing  
22 SAC and wanted them to clarify that no SAC members  
23 would have a conflict of interest. The SAC  
24 discussion in the revised draft now consists of  
25 two paragraphs on page 40 describing the purpose

1 of the standing SAC, clarifying that the SAC would  
2 function solely as an advisory body to be  
3 consulted at the discretion of the lead agency and  
4 that SAC members should have no conflict of  
5 interest.

6 The revised guidelines note that there  
7 will be opportunities for all interested parties  
8 to have input in establishment of the science  
9 advisory committee but did not provide any more  
10 details on how that would happen. As with the  
11 research fund, this is a topic that is beyond the  
12 scope of the guidelines and needs to be addressed  
13 in another forum.

14 Five, operations monitoring. The most  
15 significant comments we received on the operations  
16 monitoring chapter were that bird use counts and  
17 acoustic monitoring for bats was not useful for  
18 assessing collision risk after construction and  
19 should be eliminated. As I described earlier, the  
20 recommendation for two years of operations  
21 acoustic monitoring for bats has been eliminated  
22 in the revised guidelines.

23 The recommendation for bird use surveys  
24 during operations still stands. Data on bird  
25 species, composition and abundance during



1 operations is essential in order to interpret the  
2 fatality data and to determine if pre-permitting  
3 assumptions and estimates were accurate. If  
4 fatalities turn out to be higher than forecast we  
5 need to know whether or not this difference  
6 resulted from unusually high numbers of birds in  
7 the area or if some other unanticipated factor is  
8 at work.

9 In other parts of the operations  
10 monitoring chapter we have added the language  
11 suggested by commentors to increase the  
12 flexibility of how operations monitoring might be  
13 conducted, particularly in the second year. For  
14 example, we have added the suggestion that the  
15 second year of operations monitoring could be  
16 conducted a few years after the first, which would  
17 provide time for habitat to recover in temporarily  
18 disturbed areas and for birds to possibly  
19 habituate to the turbines.

20 We've noted that the second year of  
21 monitoring may need to focus more effort on  
22 turbines on habitat types where impacts were  
23 higher than expected by shifting searches away  
24 from areas that showed little or no fatalities.  
25 Similarly we suggest that first year monitoring

1 results might warrant a reallocation of study  
2 efforts to those seasons where more impacts were  
3 recorded.

4           And finally the voluntary nature of the  
5 guidelines. Some commentors said the guidelines  
6 were too prescriptive and inflexible in the  
7 recommended pre-permitting and operations  
8 monitoring study protocol. They suggest that  
9 instead of providing specifics such as conduct 30  
10 minute surveys once per week that we outline goals  
11 and the kind of information needed to answer  
12 questions about bird and bat impacts, and leave  
13 the specifics of methodology to be determined on a  
14 project-by-project basis.

15           Some commentors were also concerned that  
16 permitting agencies might interpret and treat the  
17 guidelines as mandatory, and language throughout  
18 that document such as will, should require,  
19 reinforce that interpretation. The revised draft  
20 has replaced those terms where possible and  
21 included some phrasing suggested by commentors  
22 that better emphasizes the voluntary nature of the  
23 guidelines.

24           However, the specific recommendations  
25 that spell out details of study methodology have

1 not changed much. We feel that being specific on  
2 these recommended protocols will reduce delays and  
3 conflict during the permitting process because all  
4 parties will have a common understanding of what's  
5 a reasonable level of study effort needed to  
6 assess the impacts of wind development on birds  
7 and bats. And that's all I have. And Scott, it's  
8 your turn.

9 MR. FLINT: Good morning everyone. On  
10 behalf of the Department I would just like to say  
11 it has been a great opportunity working on this  
12 collaborative effort to put together these  
13 guidelines. The series of workshops we have had  
14 over the past year or so have been interactive, a  
15 lot of ideas have come through the discussions  
16 we've had there and many of those have been  
17 incorporated directly into the document. I think  
18 that helps make it a much better document.

19 On specific comments that we received  
20 for Chapter 2 in general. First I'll say that  
21 there were quite a few minor comments that we took  
22 note of and made some minor wording and editorial  
23 changes to the document throughout Chapter 2 to  
24 help it be more readable and clarify the purpose  
25 of some of those sections of the chapter. So in

1 general many minor changes were made in wording.

2 More specifically some commentors had  
3 asserted that the guidelines have regulatory  
4 weight and that the guidelines recommend  
5 mitigation beyond that required by CEQA and that  
6 this recommendation rises to, therefore rises to a  
7 level of rulemaking. They also note that it is  
8 impossible to comply with state and federal  
9 wildlife laws and therefore studies should be  
10 aimed at securing the information needed to inform  
11 citing decisions under CEQA.

12 Again, as I said, we made some minor  
13 revisions and clarifications in response to the  
14 specific comments. There was an area in the  
15 document where we added some incomplete wording  
16 out of CEQA, that has been corrected.

17 However, in general we think the  
18 approach in Chapter 2 is sound, related to the  
19 other wildlife laws. It's not a matter of -- The  
20 guidelines aren't out there as a way to describe  
21 how we would comply with the wildlife laws. The  
22 guidelines are out there to guide project siting,  
23 make better project decisions when citing to  
24 minimize impacts to birds and bats, that's the  
25 purpose of the guidelines.

1           The studies are, the study protocols are  
2           laid out and designed, and study timings and study  
3           recommendations are laid out and designed to  
4           collect that information. The same information  
5           that would be required to make decisions on how to  
6           minimize impact to birds and bats from the other  
7           wildlife laws is the same set of information that  
8           is required to make analysis of CEQA significance  
9           by a lead agency under CEQA. So regardless of the  
10          purpose of collecting the data this is the same  
11          sort of data that would be required to make all  
12          decisions about project impacts.

13                 In the impacts and mitigation chapter  
14          both the industry and environmental groups  
15          commented that compensation should be a last  
16          resort mitigation option if avoidance and  
17          minimization fail. Industry commented that  
18          compensation should occur only for CEQA-  
19          significant impacts and that seasonal shutdowns  
20          should be off the table as a mitigation option.

21                 We made revisions to emphasize that  
22          compensation is the last resort to mitigation.  
23          That's always been the process we walk through as  
24          we make decisions on project siting and is the  
25          process that this document walks through.

1 Avoidance and minimization are the first steps to  
2 reducing impacts.

3 And in the case of citing wind energy  
4 facilities the citing is the primary avoidance  
5 measure once a project is built there are not many  
6 ways to -- built and in place and operating.  
7 There are not many opportunities to change citing,  
8 if any, and not a lot of other ways to minimize  
9 impacts so those remaining impacts need to be  
10 compensated for.

11 And in the case of a wind facility that  
12 goes ahead and constructs in an area with high  
13 bird mortality, if there's not any other way to  
14 compensate or minimize that, seasonal shutdowns  
15 still remain a possibility that we may need to use  
16 from time to time.

17 As far as the flexibility of the  
18 document, we think the document is highly  
19 flexible. The categories that we have added lay  
20 out some ways to break projects into groups or  
21 look at how they may need to be addressed under  
22 the guidelines. We did not add a category on  
23 categorical exempt sites.

24 We felt that was beyond the scope of  
25 this document, this being a technical document to

1       advise lead agencies on how to study sites for the  
2       CEQA process. So we did not specifically put that  
3       there. We also thought that would be clearly  
4       usurping local authority for making that decision  
5       under the CEQA process. The lead agency can still  
6       decide what sites may receive a categorical  
7       exemption for construction.

8               While we've had some comments throughout  
9       the process on streamlining, how to streamline and  
10       move the process faster, we feel this document  
11       goes a long way towards that by setting a  
12       framework, a common framework of study that can be  
13       applied to most sites across the state.

14              Lead agencies will have this information  
15       going into discussions on siting a new project so  
16       there won't be timely discussions on the type of  
17       studies that need to be done. Those lead agencies  
18       that haven't encountered such projects will be  
19       quickly informed as to the potential impacts they  
20       need to be looking for and how to study those for  
21       the CEQA process.

22              That's what I have for this morning,  
23       thank you.

24              PRESIDING MEMBER GEESMAN: Thanks Scott.

25              Okay, what I'd like to do is, at the

1 risk of having many of you get out of your chairs  
2 more frequently than perhaps you're accustomed to  
3 at these workshops, I'd like to break this into  
4 several different segments. It is my intention to  
5 go chapter by chapter and ask for comments on each  
6 chapter. As I think the notice indicates, it is  
7 more helpful if you can focus on a word, rather a  
8 page and line number. But if your comment is  
9 thematic in nature that's fine as well but I am  
10 going to ask you to determine which chapter they  
11 relate to.

12 The first group that I am going to take  
13 is the Step-by-Step Approach to Implementing the  
14 Guidelines combined with Chapter 1, the  
15 Preliminary Site Screening chapter. So if there  
16 are members of the audience that would care to  
17 address us on either the Step-by-Step Approach or  
18 the Preliminary Site Screening it's open mic.

19 Yes sir. You need to make certain the  
20 green light is on on the microphone. There's a  
21 button there on the base of the mic.

22 MR. NOBLE: I don't see the button. Now  
23 it's on, I see it.

24 Mr. Chairman of the Subcommittee and  
25 members of the Energy Commission staff, I am



1 Frederick Noble, President of Wintec Energy,  
2 Limited. I am here today on behalf of the Desert  
3 Wind Energy Association composed of wind park  
4 operators in the San Gorgonio Pass near Palm  
5 Springs and on behalf of my own company. I think  
6 I am going to give you some things that I find  
7 difficult to say and you may not want to hear but  
8 they should be said.

9 The Energy Commission sponsored my first  
10 windmill project in 1980. There would be no wind  
11 energy industry in California if it hadn't been  
12 for your predecessors, Bob Thomas and some of the  
13 early staff members who set up the legislation.  
14 And I was there when that happened.

15 As it relates to Riverside County, and  
16 perhaps statewide, you are about to impose  
17 unnecessary expense and give opponents a free hand  
18 to attack and slow down and stop wind energy  
19 projects throughout the state. The guidelines are  
20 based upon a foundation of quicksand. The driver  
21 here has always been the Thelander and Smallwood  
22 study in Altamont Pass.

23 I have for you, if you care to look at  
24 it, some examples of the altered and forged  
25 documents which are the underpinning of the study

1 and which were produced by your staff as a result  
2 of a freedom of information request. It is my sad  
3 duty to call your attention to the fact that over  
4 and over again the studies done or the reports  
5 done by the field investigators have been altered  
6 when they went into your database.

7 For example, the field data shows cause  
8 of death of a bird as unknown. When it shows up  
9 in your database it's shown as a turbine  
10 collision, per protocol. Perhaps you'd like to  
11 see this.

12 What you are going to see is just the  
13 tip of the iceberg. It was difficult to get this  
14 information from staff but it is damning in terms  
15 of the fundamental study that was accomplished,  
16 which underpins your rulemaking activity.

17 As it relates to the San Gorgonio Pass  
18 there is one study that has some weight. It was  
19 done by NREL by Mr. Anderson. And he concluded in  
20 a recent letter in connection with an EIR that  
21 bird/windmill interaction in the desert is  
22 biologically insignificant. Yet you have  
23 statewide guidelines which essentially shut us  
24 down for two or three or four years.

25 In my case I would like to repower some

1 old projects, about 50 megawatts. But I've got to  
2 tell you, if these rules or anything like them get  
3 adopted I'm just not going to do it, I'll take it  
4 down and put in trailer parks, which the city  
5 would like to have me do. And the cats owned by  
6 the trailer owners will kill far many birds, more  
7 birds than we ever have.

8 I visit my projects, 1100 acres, every  
9 day. My office is in the wind farms. In my 30  
10 years in this business in the desert I have found  
11 one dead bird in a wind farm, and it was a crow  
12 killed by a transformer that was open being  
13 maintained. He was electrocuted.

14 In the desert we do not have rodents for  
15 the birds to hunt. They don't come down. So you  
16 are going to impose upon us a solution for a  
17 problem that doesn't exist.

18 Inevitably as the underpinning and the  
19 errors found in the underpinning, which is the  
20 study, bubble to the surface, it will get  
21 legislative and judicial scrutiny to the great  
22 discredit of the Commission if you don't look into  
23 it yourself. It's a serious, serious matter.

24 Another great flaw in the study is the  
25 assumption that any bird found in a wind farm that

1 is dead was killed by a windmill. In many cases  
2 birds that have been dismembered are attributed to  
3 windmill collision.

4 The blade of a windmill isn't sharp.  
5 It's blunt, two or three feet across. If it hits  
6 a bird it will crush it. It doesn't cut the wings  
7 off, it doesn't cut the head off. What cuts the  
8 wings off and the head off are power lines or  
9 other raptors. Yet every single bird that is  
10 dismembered shows up as killed by a windmill. I  
11 won't bore you with other examples but they are  
12 legion and the study is to be discredited.

13 A word on bats. There is no evidence of  
14 any windmill/bat interaction in Riverside County.  
15 Yet you wish to impose upon us elaborate studies  
16 before we can repower projects that have been  
17 there for years which have never killed a bird or  
18 a bat. It's like me telling you --

19 You have to try to prove a negative here  
20 and that's a big mistake in the assumptions. It's  
21 like you having to prove you don't cheat on your  
22 income tax. How do you prove that? How do I  
23 prove I don't kill bats? I can tell you I don't.  
24 Perhaps you'll give my testimony as much credence  
25 as people who alter and forge data. That would be

1 good if you did.

2 As I said, this will bubble to the top  
3 if it isn't fixed here, to your great discredit.  
4 To the biologists I will simply say that you know  
5 the ends do not justify the means. Legitimate  
6 study to solve legitimate problems would have my  
7 wholehearted support. I would contribute to those  
8 funds. However, we will not be held hostage to  
9 false data or to rules that have no application to  
10 our part of the state. Thank you.

11 PRESIDING MEMBER GEESMAN: Thank you,  
12 Mr. Noble. Anyone else care to address the Step-  
13 By-Step approach or Chapter 1, the Preliminary  
14 Site Screening? Come on up, Greg.

15 MR. BLUE: Good morning. I have a  
16 presentation, and I can give it later, but since  
17 you're going to go this way I'll just give a few  
18 comments on this. I'm Greg Blue, I'm with enXco  
19 Development. EnXco is a California-based  
20 renewable energy developer specializing in wind  
21 and recently announced now going into solar energy  
22 development, both here in California and in the  
23 west.

24 As far as the step-by-step approach to  
25 implementing the guidelines. We think these are

1 good recommendations if in fact this document is a  
2 set of recommendations. It goes back to the  
3 voluntary nature, I guess. Actually I do have one  
4 comment before this, it's actually on the cover  
5 page. It should read, Voluntary California  
6 Guidelines, just to make the point there.

7 As far as Chapter 2. These are all the  
8 things that any developer is going to do anyway,  
9 whether we have these guidelines or not. A lot of  
10 us are already being proactive on avian issues,  
11 whether we have guidelines or not.

12 ASSOCIATE MEMBER PFANNENSTIEL: Greg,  
13 when you say Chapter 2 do you mean the chapter  
14 that's labeled --

15 MR. BLUE: Excuse me.

16 ASSOCIATE MEMBER PFANNENSTIEL: --  
17 Chapter 1?

18 MR. BLUE: Chapter 1.

19 ASSOCIATE MEMBER PFANNENSTIEL:  
20 Preliminary Site Screening.

21 MR. BLUE: That's correct, sorry. Those  
22 types of activities are already going on, whether  
23 we had guidelines or not. I do have some other  
24 comments a little bit later if we're going to go  
25 by section. I guess in general I think the staff

1 has done -- has moved. We'd give it an incomplete  
2 if we were going to give a report card and I'll  
3 give you some more comments. And of course we're  
4 going to file written comments with more details.  
5 Thank you.

6 PRESIDING MEMBER GEESMAN: Okay, thank  
7 you. Anyone else on the Step-By-Step Approach or  
8 Chapter 1, Preliminary Site Screening?

9 MS. LEVIN: I'm sorry, it's going to be  
10 a little more disorganized, I wasn't expecting to  
11 go through this chapter by chapter by my own fault  
12 for not reading the notice carefully enough. I  
13 wasn't planning to start this way but I do feel --

14 PRESIDING MEMBER GEESMAN: You need to  
15 introduce yourself, Julia.

16 MS. LEVIN: I'm sorry. Julia Levin,  
17 formerly the California policy director for  
18 Audubon California, I am now the national global  
19 warming director for the National Audubon Society.  
20 I do want to respond to a couple of comments of  
21 Mr. Noble and above all point out that while the  
22 guidelines are themselves voluntary, and I think  
23 the word guideline implies that, if they were not  
24 they would be regulations. They are supposed to  
25 help explain what is likely to be required by

1 existing state law.

2 And I'm troubled that in front of this  
3 Committee of the Commission that someone would  
4 essentially say that that's not very important to  
5 this process and that it's okay to ignore what are  
6 very important state and federal laws. And if  
7 there are people present, wind companies or others  
8 that don't like those laws, I think they should  
9 take up those issues in the Legislature.

10 But I think it is very important that  
11 this body and the stakeholders in this process  
12 remain focused on the fact that these laws exist  
13 already and the purpose of these guidelines is to  
14 make clear what compliance with those laws, with  
15 good faith efforts I think that the guidelines are  
16 very clear now, what good faith efforts to comply  
17 with those laws would look like.

18 And I think that they provide enough  
19 flexibility and they are very helpful in that  
20 regard. So I am very troubled that this late in  
21 the process there would still be members of the  
22 wind industry claiming that they are regulatory in  
23 nature when they are so clearly not and that the  
24 underlying laws are themselves not important to  
25 comply with. So I wanted to start out with a much



1 more positive statement rather than a negative  
2 statement but I could not refrain from commenting  
3 on that, I find it very troubling.

4 My more positive overall comments, and I  
5 do have a couple of specific comments on the first  
6 few chapters, I think that the guidelines are much  
7 clearer. I think that the staff and consultants  
8 of both Fish and Game and the Energy Commission  
9 have done an absolutely outstanding job. I have  
10 never in 17 years working on environmental policy  
11 worked in a process where there was so much public  
12 input. And I think you, Commissioners, have set  
13 the standard very high here and that it's worked.

14 That the guidelines are much more user-  
15 friendly. I think that where there is flexibility  
16 they have demonstrated that. I think that they  
17 have made the purposes and the streamlining goals  
18 in the guidelines much more clear where there are  
19 overlapping permitting requirements. They've  
20 clarified what may help to comply with one versus  
21 another and where they still need to remain  
22 separate. So I think that they really have done  
23 an outstanding job and have my very sincere  
24 thanks. I know this has not been easy.

25 I do also think that the purpose of the

1 guidelines is much clearer. And again I encourage  
2 Mr. Noble and others who still have concerns about  
3 the purpose to reread that and reread some of the  
4 underlying wildlife and environmental laws.

5 Then my two comments on the first two  
6 chapters in particular are, while I agree with  
7 CEERT and CalWEA that I think that creating the  
8 categories so long as they aren't absolute and  
9 there remains some flexibility for local  
10 permitting agencies, I think the creation of the  
11 categories is very, very helpful and I appreciate  
12 the effort that CEERT, CalWEA and staff and the  
13 consultants took to define them in the way that  
14 they did and continue to allow some flexibility.

15 I am as a wildlife advocate a little bit  
16 troubled or nervous about Category 1, particularly  
17 the fact that it doesn't specify any length of  
18 study and you could read it to mean that no amount  
19 of study is suggested or required. And I think --  
20 I can't quite imagine the case where absolutely no  
21 study would need to be conducted. At least I  
22 don't think we're there yet. I don't think we  
23 know enough even about in-fill or repowering or  
24 neighboring sites to say that those can go without  
25 any study at all. A site right next door may have

1 very different migratory bird patterns or seasonal  
2 patterns.

3 My other specific comment is, while in  
4 most places I think the guidelines are extremely  
5 helpful at pointing out particular databases or  
6 lists of species, when it lists the federally  
7 endangered bird species in California, it mentions  
8 that there are 18, I would just ask you actually  
9 to name them. I think as much as possible as  
10 these guidelines can help local permitting  
11 agencies avoid having to go themselves and do  
12 research it is to everyone's benefit.

13 So I will have some additional comments  
14 on later chapters. But again, my overall comment  
15 is just very, very sincere gratitude and  
16 appreciation.

17 PRESIDING MEMBER GEESMAN: Anyone else?

18 MS. MUDGE: Good morning, Commissioners.

19 PRESIDING MEMBER GEESMAN: Good morning,  
20 Annie.

21 MS. MUDGE: Annie Mudge for CalWEA.

22 Nancy Rader called me to say that she's stuck in  
23 ugly, ugly traffic coming from the Bay Area so she  
24 expects to be late but she will be here.

25 Like Julia I didn't tailor my comments

1 to the chapter by chapter approach but the first  
2 chapter does bring forward a lot of the main  
3 ideas. So while I may have some additional  
4 comments I do have sort of some thematic comments  
5 that are raised by this chapter.

6 And the first is just that in reviewing  
7 this in terms of the balance of approach of what  
8 we are trying to achieve by the guidelines I do  
9 think that the guidelines are going to add a  
10 significant burden to wind development in  
11 California. I am involved on a day to day basis  
12 in trying to get permits for wind projects and  
13 this is a raising of the bar in terms of the kind  
14 of data that is going to be sought now by the  
15 local agencies. So a lot of information is going  
16 to be collected.

17 What I am somewhat skeptical about is  
18 whether or not this is going to have a real impact  
19 in reducing avian mortality. I am really not  
20 certain it is. So I think what we're going to see  
21 is a very large increase in burden without a  
22 concomitant benefit.

23 I also think that what the effect of  
24 these are going to be is it is going to push most  
25 projects towards full blown EIRs and I think that

1 is unfortunate. Even though I think the  
2 guidelines don't say that they are going to be  
3 interpreted in that way.

4 And so I think we're missing an  
5 opportunity here if the goal of this Committee,  
6 and I think it is, is to provide a benefit and to  
7 encourage wind development at the same time as  
8 minimizing bird impacts. That you provide  
9 expressed suggestions, and merely suggestions if  
10 indeed these guidelines are voluntary, they cannot  
11 usurp the role of the local agency. So I think it  
12 is a little disingenuous to say it would usurp the  
13 role of the local agency to make suggestions about  
14 what kind of CEQA approach to take.

15 To suggest that there may projects for  
16 which categorical exemptions and mitigated  
17 negative declarations would be appropriate.  
18 Because right now I think a local agency decision-  
19 maker reading these guidelines is going to think  
20 to themselves, EIR, on just about every project  
21 that comes before them. And I just don't think  
22 that that's necessary. I think that adds an  
23 enormous amount of time. And frankly, in many  
24 cases, wasted energy and paper to projects when  
25 there are certain projects that really this

1 Commission, this Committee, should be encouraging.

2 So in terms of the Category 1 I do  
3 think, like the CEQA guidelines that OPR puts out,  
4 these guidelines should suggest that there are  
5 certain categories of projects that may be  
6 appropriate for streamlined CEQA review. Not that  
7 they are or -- they can't, obviously, these are  
8 voluntary guidelines. And it is up to the local  
9 agency to make that ultimate decision.

10 But without some encouragement from  
11 these guidelines the local agencies I think are  
12 going to err on the side of going to full blown  
13 EIRs. I think it's a misunderstanding to say that  
14 a categorical exemption does not require a  
15 baseline of data, it does. In order to use a  
16 categorical exemption under CEQA you have to prove  
17 that your project will have no significant  
18 environmental impact. And if there is evidence  
19 that it will have a significant environmental  
20 impact you're going to flip into a higher category  
21 of environmental review.

22 So the idea that a cat ex does not  
23 require a baseline of data is simply wrong. Like  
24 the OPR CEQA guidelines I would urge you to  
25 suggest that there may categories of projects that

1 are suitable for categorical exemptions and  
2 mitigated negative declarations. And I think it's  
3 a lost opportunity to not have that in here.

4 I think I'm going to reserve the  
5 remainder of my comments for other chapters, thank  
6 you.

7 PRESIDING MEMBER GEESMAN: Thank you,  
8 Annie. Peter. Go ahead, Carl.

9 MR. ZICHELLA: Thanks. I had to sneak  
10 up to get my shot here, got the juices going now.  
11 Good morning. I'm Carl Zichella, I'm the regional  
12 director for the Sierra Club for California,  
13 Nevada and Hawaii. I also have some thematic  
14 question -- comments rather and a couple of quick  
15 comments on the step-by-step and Chapter 1.

16 First of all like everyone else I want  
17 to thank the staff for the work that they did on  
18 this and thank you, Commissioners, for the work  
19 that you've put into this. It has been a long  
20 road to this point and I think we've got something  
21 that really makes a lot of sense right now.

22 I also want to thank my colleagues in  
23 the wind energy industry that we have worked with  
24 over the more than a year now to come up with  
25 these guidelines. I think they have really helped

1 those of us in the environmental community  
2 understand a lot of the constraints on them and I  
3 think we have helped them understand that it is  
4 critically important to us that these wind energy  
5 facilities be sited and as quickly as we can site  
6 as many of them as we need to do.

7           There is a balance between protecting  
8 the wildlife and getting these wind energy  
9 resources online and I think these guidelines  
10 really sort of nail it at this point.

11           I really appreciated the presentations  
12 this morning from the staff explaining some of the  
13 additions that were made and changes that were  
14 made to the document. I really appreciate the  
15 direction that this has taken.

16           I do think that the step-by-step process  
17 and the categorizations that were mentioned  
18 earlier and that are in the document are very  
19 flexible. They do provide the sort of range of  
20 review options that people were looking for in the  
21 previous workshops. I think they really get us  
22 there. I think they also reflect a lot of the  
23 compromises I was just talking about from  
24 environmental groups trying to understand the  
25 constraints on the wind energy industry and not to



1 impose undue financial burdens on them.

2 I don't think anyone can predict whether  
3 or not counties are going to require EIRs for  
4 every project. I disagree with that notion. But  
5 I do think that people who are in good faith  
6 complying with these guidelines and taking a step  
7 by step approach that is described here are going  
8 to have a much easier path I think in getting  
9 their programs up and running and also avoiding  
10 the kind of obstructionism that was described by  
11 our first speaker today.

12 And I'm sorry that he didn't attend any  
13 of the workshops and was not involved in any of  
14 the discussions on this because I think his mind  
15 would be substantially more at ease had he done  
16 so. Denouncing one study was not a constructive  
17 thing because that isn't the basis of these  
18 guidelines, wasn't the basis of these guidelines,  
19 and the guidelines were established to help people  
20 on both sides of this question come together to  
21 get wind farms sited. So like Julia I wanted to  
22 make a quick comment on that. Sorry to be so  
23 scattered, I wasn't expecting to go chapter by  
24 chapter either.

25 I don't think this process is going to

1       replace CEQA so the categorical exemption process  
2       still stands. I think this does lay out a process  
3       by which people who care about wildlife can be  
4       assured that they will be properly considered in  
5       the siting of these projects. And that is a very,  
6       very important and useful thing.

7                 One final comment I wanted to have is  
8       that something I had mentioned at our last  
9       workshop that I attended about certification of  
10      compliance. There is no way at the end of the day  
11      that people can just understand who actually made  
12      an effort to comply with the guidelines and who  
13      haven't. And I think for organizations like ours  
14      it would be very useful for us to know that.

15                One of the things that I have repeatedly  
16      said, and the Sierra Club would like to reinforce  
17      is that we don't want good players in the wind  
18      energy industry to be penalized by people who have  
19      no intention of complying with the guidelines. If  
20      people are going to spend money and spend precious  
21      project time in doing the kinds of things that are  
22      outlined in these guidelines we want to see those  
23      people treated fairly.

24                So I think there is additional scrutiny  
25      that we as public interest organizations would

1 apply to organizations that do not, wind energy  
2 companies that do not intend to comply with the  
3 guidelines or don't make a good faith effort to do  
4 so. Now I would personally like to see the  
5 document amended in some way to reflect some sort  
6 of certification process that at the end of the  
7 day you can say that this company made every  
8 effort reasonably to comply with the wildlife  
9 guidelines for the state of California.

10 And finally, the Sierra Club led the  
11 effort in Congress recently to prevent the more  
12 prescriptive regulatory regime from being applied  
13 to wind energy companies nationwide. We have  
14 worked in good faith in this process to help find  
15 a voluntary way forward that people would comply  
16 with and use to help address our concerns about  
17 wildlife.

18 Now I have to say that the comment that  
19 this is really ground-breaking or this is going to  
20 be setting a high bar isn't necessarily all that  
21 true. I think we are going to be the first out of  
22 the gate with state voluntary guidelines, yes.  
23 But I think it's inevitable that there is likely  
24 to be some national guidelines to follow.

25 The National Academy of Sciences, as you

1 know, have been involved in this effort. So it's  
2 been incumbent upon us, those of us who have  
3 worked together to make this document work, to  
4 come up with something that actually physically  
5 works.

6 It's critically important for this  
7 country that we get wind energy, wind farms built,  
8 wind energy facilities built across our country.  
9 And we will not be able to do that. We'll be  
10 fighting litigation right and left if we don't  
11 have meaningful guidelines. And we think that  
12 this is a very well-measured, balanced way to go  
13 forward on this. I want to thank you again. I'll  
14 have other comments in other sections.

15 PRESIDING MEMBER GEESMAN: Thank you,  
16 Carl. Peter.

17 MR. WEINER: Thank you, Mr. Chairman,  
18 members of the committee. I'm Peter Weiner on  
19 behalf of CEERT. Like everyone else I didn't  
20 exactly organize my remarks appropriately but I am  
21 going to try very hard to comply. I have a lot of  
22 comments on Chapter 2 and the voluntariness of the  
23 guidelines in relationship to CEQA and other  
24 environmental laws. I will withhold them for now.

25 In Chapter 1 the tiering system is first

1 set out. And I think what is troubling to me  
2 about the tiering system at the moment is that  
3 staff has said that there is not enough  
4 information on repowering to justify a more  
5 streamlined tier for repowering.

6 At least from our experience at the  
7 Altamont with Diablo Winds we have one year of  
8 data, we don't have a lot of years yet. It  
9 certainly seems to be that repowering is one  
10 answer. Not the answer but one answer, and a very  
11 important answer to reducing avian mortality. It  
12 cannot replace good siting decisions, it cannot  
13 replace other things, but it is very important.  
14 In part because you have so many fewer turbines  
15 and we know all the rest of the reasons.

16 For these guidelines to even think of  
17 becoming final without streamlining any kind of  
18 tiering for repowering I think will be a great  
19 disservice to the advancement of wind energy and  
20 reduction of avian mortality in the state of  
21 California. If what we do is insist that people  
22 live out the entire economic lives of the turbines  
23 they have because repowering is so difficult under  
24 these guidelines and therefore under CEQA, which  
25 we'll get to in Chapter 2, then I think we've done

1 a great disservice rather than a great service.

2 That is the one thing that we should be  
3 able to count on going forward in addition to new  
4 wind energy is repowering. So I would urge that  
5 we take another look at the information we have.  
6 We have one study from Solano but we also have the  
7 study from Alameda, there may be others. I would  
8 appreciate a re-look at this. Because otherwise I  
9 fear that we are going to put in concrete that  
10 repowering is not entitled to streamlining and  
11 that would be a great disservice. Thank you.

12 MS. DELFINO: Good morning,  
13 Commissioners. My name is Kim Delfino and I am  
14 the California director for Defenders of Wildlife.  
15 I just wanted to give a couple of quick comments  
16 and we'll follow up with other comments as we move  
17 through the chapters.

18 First of all just to get it out in the  
19 open. We strongly support these guidelines. We  
20 thank you for taking leadership and moving forward  
21 and doing such a good job. I think Carl and Julia  
22 have already stated fairly eloquently the points I  
23 would have been making anyway so I'll just echo  
24 what they said.

25 My comments today are going to be

1 focused more on bats than birds. I think Julia  
2 will probably, and Carl, will cover the bird area  
3 and we would strongly support the points that they  
4 make. But I did want to come and give a plug for  
5 the issue of bats because I know it has been one  
6 of the more controversial issues. So I'll be  
7 prefacing this for the rest of my comments.

8 We strongly believe bats should be  
9 included in the guidelines. Again, these are  
10 guidelines. And bats, while it is true there has  
11 not been an enormous amount of research done in  
12 California, there is research. And the bat  
13 experts are telling us that we need, there are  
14 impacts to bats. And there are certain things  
15 that we need to be doing in both pre-permitting  
16 and post-construction projects to get a better  
17 handle on what the impacts are to bats.

18 And I think it would be better for us to  
19 get a handle on this issue sooner rather than  
20 later. Taking an approach of sort of sticking  
21 your head in the sand and hoping that the impacts  
22 are not that great is, I think, a shortsighted way  
23 of going. So we would strongly encourage that  
24 bats stay within the guidelines.

25 Also I wanted to address the issue -- we

1       also support the categorization that you have laid  
2       out here in the first chapter. I would though  
3       echo Julia's comment regarding Category 1. It is  
4       a little vague in how this set of projects are  
5       described. It simply says that some proposed  
6       projects have the advantage of an existing  
7       foundation of data on bird and bat use and  
8       potential impacts from nearby, similar projects.  
9       That's very vague. I have no idea what level of  
10      data, what quality of data. In order to be able  
11      to give a category of projects lesser scrutiny I  
12      think there needs to be maybe a little more  
13      specificity in what you're looking for.

14                   And then the point about how these  
15      guidelines are now going to trigger a deluge of  
16      EIRs. The only point I would make here is I think  
17      one of the strengths of these guidelines is that  
18      it is going to provide a good foundation of  
19      existing data from which you can make the decision  
20      of whether or not you should have a categorical  
21      exclusion or a mitigated neg dec or an EIR. And I  
22      don't think that having pre-permitting or  
23      surveying requirements necessarily means that you  
24      are going to trigger a much weightier CEQA review.  
25      On the contrary, you could find that you don't



1 have the impact.

2 The other point is that these are just  
3 guidelines for birds and bats. There's lots of  
4 other impacts related to wind powering. So, you  
5 know, I don't think that's necessarily birds and  
6 bats will be the thing that are going to suddenly  
7 put you over the top to requiring an EIR. There's  
8 other wildlife impacts. There's noise impacts,  
9 there's transmission lines. So I wouldn't take so  
10 much of a view that suddenly this is suddenly  
11 going to mean that every project is going to  
12 necessarily need an EIR.

13 But I do think it will certainly inform  
14 the decision much better than maybe previous  
15 projects have. I'll just reserve the rest of my  
16 comments as we move through the chapters and  
17 appreciate, again, the amount of detail and  
18 thought that has gone into this with the staff in  
19 both Fish and Game and the Energy Commission.  
20 Thank you very much.

21 PRESIDING MEMBER GEESMAN: Thank you,  
22 Kim.

23 MS. CONWAY: Michelle Conway, Oak Creek  
24 Energy Systems. We're a wind farm developer and  
25 operator in California. With respect to the step-

1 by-step approach section I just wanted to come up  
2 and state that we don't agree that the categories  
3 as they have been included go far enough. We'd  
4 like to see more delineation amongst the  
5 categories. We appreciate staff for taking  
6 industry's suggestion that they be included but  
7 it's still fuzzy and the categories still seem to  
8 require the same bird use counts and bat studies  
9 across the board. So we'd like to see more  
10 delineation.

11 And to emphasize the comment by CEERT  
12 about repower. We do understand that repowers may  
13 not be appropriate in every instance and we are  
14 not suggesting that they are but we don't agree  
15 that it shouldn't be included in Category 1. I  
16 think staff could easily draft language to explain  
17 where it would and wouldn't be appropriate. Thank  
18 you.

19 PRESIDING MEMBER GEESMAN: I will say,  
20 this repowering question is a fairly perplexing  
21 one to me. I am a believer that scientific  
22 discovery is new every day. But I also think that  
23 where you can make conclusions, even on a  
24 preliminary basis, you're compelled to do that.

25 And I'm reminded that several years ago

1 on the basis of scientific research that our staff  
2 and contractors had done you felt quite strongly  
3 that repowering was an important mitigation  
4 measure, particularly in the Altamont Pass.

5           You persuaded us to the extent that we  
6 put it very prominently as a recommendation in I  
7 believe it was the 2004 Integrated Energy Policy  
8 Report Update. As I recall we even had a picture,  
9 for those that don't read our reports, to  
10 understand how higher blade height would impact  
11 avian mortality.

12           And I don't know if the problem or  
13 rethinking or retrenching the staff has gone  
14 through is away from that type of sweeping  
15 conclusion. If you might be able to make more  
16 regional-specific conclusions with respect to  
17 repowering.

18           If you can, as Ms. Conway indicated,  
19 draft some clarifying language indicating where it  
20 may not be an appropriate candidate for Category  
21 1. But to have it kind of fall off the face of  
22 the map is troubling to me. And I'd be happy to  
23 -- If you have any reaction now. I don't expect  
24 that you need to have one. We've got a little bit  
25 of time to figure out how to deal with this before

1 we take it to the full Commission but I do want to  
2 register some concern there.

3 MR. WEINER: Mr. Chairman, may I just  
4 make one point off of what you just said.

5 PRESIDING MEMBER GEESMAN: Go ahead.

6 MR. WEINER: The High Winds Project in  
7 Solano County, which we believe staff is referring  
8 to, was not a repowering project. It does involve  
9 the use of taller turbines but it is not a repower  
10 project. Diablo Winds in Altamont in Alameda  
11 County is a repowering project. I believe that  
12 parts of Shilo, which is an enXco project, may be  
13 repowering.

14 But repowering and greenfield projects  
15 are different. One of the issues is the  
16 comparison and that's one of the reasons that  
17 we're talking about repowering and would like to  
18 make a distinction when we're talking about these  
19 things.

20 MS. HOGAN: I just wanted to make a  
21 comment about the timing perhaps. And I don't  
22 know if this is exactly why --

23 PRESIDING MEMBER GEESMAN: You need to  
24 introduce yourself.

25 MS. HOGAN: I'm sorry, I'm Bronwyn Hogan

1 and I'm on the Science Advisory Committee dealing  
2 with bats.

3 One of the things that happened  
4 basically right before I think that 2004 was the  
5 issue of bat impacts coming from the East Coast.  
6 So I think one of the issues with repowering and  
7 taller turbines in general is the evidence, which  
8 is not great because there haven't been a lot of  
9 bat studies done anywhere in the country, but it's  
10 growing that there potentially are more impacts to  
11 bats from taller turbines.

12 So that's one of the things that's  
13 coming up. And again, High Winds is not a  
14 repowering project but it does have taller  
15 turbines and it did have bat impacts. So I just  
16 wanted to make that comment.

17 PRESIDING MEMBER GEESMAN: Thank you.

18 MS. HUGHES: Hi, I'm Nicole Hughes, I  
19 represent RES Americas Developments. We are  
20 currently permitting two commercial wind projects  
21 in the state of California. I was not involved  
22 with the earlier workshops. The opportunity  
23 wasn't available so I'm playing catch-up. But I  
24 appreciate the opportunity to voice my concerns.

25 And I wanted to echo a previous

1 speaker's concerns about the categories at the  
2 beginning. It seems even though there's different  
3 levels of study implied here there's really no  
4 protocols for these. So a little bit further  
5 delineation is required, I believe. Particularly  
6 for Category 4. I think the category should be  
7 removed all together. I don't see anywhere where  
8 the National Park Service or the US Forest Service  
9 was consulted on the inclusion of discussing not  
10 to develop projects on national park lands so I  
11 don't think that's necessary to include in this.

12 I work on permitting wind projects all  
13 over the United States and it's widely known among  
14 most energy developers that California has a  
15 relatively complicated permitting process as it  
16 is. We feel that the addition of these guidelines  
17 for avian impacts will hurt the industry and force  
18 developers to consider taking their business to  
19 other states where permitting is less complicated.

20 Our main concerns are how agencies,  
21 specifically the California Department of Fish and  
22 Game, will be taking on additional review  
23 responsibilities and how this will affect timing  
24 and cost of development.

25 We appreciate the CEC's emphasis on the

1 voluntary nature of these guidelines but we are --  
2 It has been suggested to me by one California  
3 Department of Fish and Game office that these  
4 guidelines will be adopted as, potentially adopted  
5 as policy. And studies that don't include all the  
6 recommended surveys will be dismissed as  
7 inadequate.

8 We are already experiencing significant  
9 delays with comments on projects from California  
10 Department of Fish and Game. I'm at 125 days out  
11 waiting on comments for an NOP right now. And it  
12 has been suggested to me that the time it is going  
13 to take to even draft these guidelines is one of  
14 the reasons for the delays. It's putting  
15 significant strain on our ability to do business  
16 in the state of California.

17 We feel that the wind industry is being  
18 unfairly singled out for relatively minor  
19 environmental impacts to wildlife and would like  
20 to point out that RES and other developers have  
21 practiced sound -- have conducted sound studies  
22 and done all the work necessary under CEQA to  
23 assess impacts and mitigate these as necessary and  
24 feel that these guidelines are unnecessary.

25 At a minimum considering that these

1 guidelines will be updated as necessary we'd like  
2 to ask for a higher level of guidelines to be set  
3 and that the specifics be left at the expert level  
4 or at the California Department of Fish and Game  
5 and US Fish and Wildlife Service and lead agency  
6 level to be worked out on a site by site basis.

7 We'd like to see more references in the  
8 document to following CEQA time lines when we're  
9 talking about the responsibilities of Fish and  
10 Game responding to comments. We'd like to see the  
11 time lines listed in there.

12 You know, everyone knows under CEQA  
13 there actually is no requirement for studies to  
14 prepare impact statements. So we'd like to -- We  
15 hope that the Department of Fish and Game will see  
16 when it's not necessary for studies to be  
17 conducted to determine potential impacts. And not  
18 just assume because the guidelines weren't  
19 followed that the appropriate level of work wasn't  
20 conducted.

21 And finally I'd like to see a statement  
22 in here limiting the retroactive use of these  
23 guidelines. There's projects that are currently  
24 in the permitting process or have finished  
25 permitting or are in post-construction monitoring.



1 We feel that there is a potential that when these  
2 guidelines are accepted that decisions will be  
3 made to go back and retroactively apply the  
4 guidelines and enforce more studies on projects  
5 that are already in the permitting phase.

6 I don't have -- I didn't organize my  
7 comments, again, chapter by chapter so I may come  
8 up again.

9 PRESIDING MEMBER GEESMAN: That's fine.

10 MS. HUGHES: But thank you for the  
11 opportunity.

12 PRESIDING MEMBER GEESMAN: Thank you,  
13 Nicole. Anyone else on the step-by-step approach  
14 or Chapter 1. Julia, you want a second bite?

15 MS. LEVIN: Julia Levin, National  
16 Audubon Society. I just wanted to respond on the  
17 repowering issue and make a suggestion so maybe we  
18 could reach some closure on that.

19 I'm sympathetic to the wind industry and  
20 the Commission and the renewable portfolio  
21 standard goal that is going to be a very difficult  
22 stretch for California and I would like to see  
23 repowering occur as well. But we don't know  
24 enough yet and what we do know about repowering is  
25 that the results are mixed and for some species it

1 is actually worse than the smaller, older  
2 turbines.

3 The limited data we have suggests that  
4 we can't make this a categorical exemption or  
5 automatically include repowering in Category 1. I  
6 think it would be appropriate, however, to have  
7 language in Category 1 that said that repowering  
8 projects that otherwise fall within that category  
9 could then be in Category 1. But I don't think  
10 that there can be a statement that repowering per  
11 se is on some fast track. Because in some places  
12 repowering may have greater impacts than what's  
13 there now or different impacts.

14 So Audubon would support language that  
15 puts repowering, that qualifies that repowering  
16 that otherwise has low impacts or meets the other  
17 criteria in Category 1 should follow the  
18 suggestions in Category 1. But Audubon would  
19 strongly oppose language that implies that  
20 repowering is given some sort of exemption or  
21 automatic fast tracking.

22 PRESIDING MEMBER GEESMAN: You mentioned  
23 data available. Do you know of any affecting  
24 species other than bats?

25 MS. LEVIN: Yes.

1                   PRESIDING MEMBER GEESMAN:   And where?

2                   MS. LEVIN:   I believe it's the Diablo  
3   project.   Of the four raptor species in the  
4   greater Altamont area three did appear to have  
5   fewer fatalities.   Again, it's just one year of  
6   study and bird movements and patterns vary a great  
7   deal from year to year.   So I don't think one year  
8   should be considered conclusive no matter what.  
9   But in that one year three of the four raptor  
10  species studied did appear to have lower  
11  fatalities.   But one species, and I believe it was  
12  a hawk species, the red tail hawk, actually had  
13  higher fatalities with the taller, larger  
14  turbines.

15                   So I think that the staff's caution is  
16  entirely appropriate at this point but we would  
17  like to work on some language that allows, you  
18  know.   There may be places in Southern California  
19  in the desert or elsewhere where repowering does  
20  make sense to put on a faster track.   And I think  
21  it would be helpful for the guidelines to say that  
22  but not provide some categorical fast tracking for  
23  it.

24                   PRESIDING MEMBER GEESMAN:   How would you  
25  determine that?

1                   MS. LEVIN: I think where it otherwise  
2 meets the criteria laid out for Category 1 then it  
3 should be placed in Category 1.

4                   PRESIDING MEMBER GEESMAN: And up until  
5 your remarks about hawks at the Diablo Wind  
6 project, and other than the Solano experience with  
7 bats, I would have thought it an appropriate  
8 candidate for the Altamont. So how would you make  
9 the determination as to where it is appropriate or  
10 not?

11                   MS. LEVIN: In the same way that I would  
12 for any other new site, which is looking at  
13 surrounding areas, looking at what's already known  
14 about the site. If it's generally known to be a  
15 low bird use or bat use area and there aren't  
16 other surrounding sites. And we know at Altamont  
17 it's a very high frequency use for a number of  
18 species. So I think everything at Altamont speaks  
19 to the need for caution and more data.

20                   But I think there are other parts of the  
21 state where we know with a pretty high degree of  
22 confidence that it's relatively low, at least bird  
23 use. I really can't speak to the bat issues, it's  
24 just not an area I'm qualified to speak on. But  
25 for bird use I think there are areas that are

1 appropriate for Category 1, including repowering  
2 projects.

3 PRESIDING MEMBER GEESMAN: I certainly  
4 agree with you with respect to bats because I  
5 don't think bats, to put it bluntly, were on our  
6 radar screen in 2004. But I think on the basis of  
7 quite a bit of data and the analytic tools we had  
8 available to us the staff felt, and quite easily  
9 persuaded the Commission, that for the Altamont,  
10 repowering as I recall, reduced mortality 83, 84  
11 percent in the projections that were made.

12 Now that would seem to me to provide a  
13 sounder basis to make that type of conclusion for  
14 that particular region than we're likely to have  
15 elsewhere. I acknowledge the fact that bats  
16 weren't within our contemplation at the time. How  
17 do we balance empirical evidence like that versus  
18 your summary of one year's study at Diablo Wind?

19 MS. LEVIN: Well I think Altamont in  
20 virtually every area is an exception. It has been  
21 so well studied and there we know the impact level  
22 is already very high and in violation of numerous  
23 laws. So I think there we have a much better idea  
24 of where to put the new turbines. It isn't just a  
25 question of replacing them. It's in many cases

1 moving them.

2 PRESIDING MEMBER GEESMAN: The same  
3 study.

4 MS. LEVIN: Yes.

5 PRESIDING MEMBER GEESMAN: That dare not  
6 speak its name.

7 MS. LEVIN: Exactly. Well, there have  
8 been multiple studies there. I would not say  
9 we're all relying on just one. But I think in  
10 other parts of the state there is enough  
11 information to indicate that there is low bird use  
12 generally or there may just be an absence of  
13 information.

14 And that is my concern. That while I  
15 think most of us are hoping and would like to test  
16 the assumption that repowering will help at  
17 Altamont in other parts of the study we just don't  
18 have enough data to know whether repowering will  
19 help or hurt. I hope in many places it helps.

20 And we would like to work with industry  
21 to move as quickly down that path as possible and  
22 gather more data. Which kind of goes to Annie's  
23 point about, is this going to create a lot more  
24 work without really reducing impacts. Well, so  
25 much of the trouble we all face is lack of

1       certainty and I think that this process will  
2       provide much better information so that in the  
3       future we have more certainty and hopefully can  
4       fast track more categories and more individual  
5       projects. Thank you.

6               PRESIDING MEMBER GEESMAN: Thank you.

7               MR. NOBLE: Mr. Chairman, just very  
8       quickly. If I could make one, short comment here.

9               PRESIDING MEMBER GEESMAN: Sure.

10              MR. NOBLE: I think as I hear all of  
11       this, Altamont is Altamont and the desert is the  
12       desert and you would be well-advised to consider  
13       the regional nature of things.

14              We would like to repower 50 megawatts in  
15       the desert. We have not found a dead bat or a  
16       dead bird in 20 years except for one crow killed  
17       by a transformer. That's the fact of life in the  
18       desert and to tangle us up in the Altamont's  
19       difficulties is a mistake. So I would highly urge  
20       you to consider the regional nature of things.

21              Implicit in all of this is the demand we  
22       prove a negative. There might be birds, there  
23       might be bats. So I've got an offer to the  
24       biologists. Anybody that can find a dead bat on  
25       my real estate, and they can come look whenever

1       they want, I'll pay them \$1,000 a bat.  If anybody  
2       can find a dead bird in my real estate I'll pay  
3       them \$1,000 a bird.  And I'll do that for the next  
4       90 days.  They can come look whenever they want.

5               We have no problem down there, thank  
6       heavens.  There is no game for the birds to hunt  
7       and so they don't, they don't come down there.  We  
8       have burrowing owls and the burrowing owls have  
9       never been killed by a windmill in 30 years.

10              Perhaps you'll accept my statement in  
11       this regard as of equal weight to those who alter  
12       and forge documents.  Thank you.

13              PRESIDING MEMBER GEESMAN:  Paul.

14              MR. VERCRUYSEN:  Good morning,  
15       Commissioners.  My name is Paul Vercruyssen, I'm  
16       here from the Center for Energy Efficiency and  
17       Renewable Technologies.  I would like to thank the  
18       Commission for its leadership on this and the  
19       staff who has worked very diligently on this  
20       project for I guess over a year now.  And we do  
21       support the process to develop these guidelines  
22       but I want to make the distinction that there are  
23       parts of these guidelines that still present some  
24       serious problems with the development process for  
25       wind developers.



1                   And we have narrowed those, at the  
2                   credit of the staff and everyone else involved, we  
3                   have narrowed those down to some very specific  
4                   things. But they are, they are fairly major, I  
5                   think, from the perspective of many wind  
6                   developers and our organization as well. And  
7                   we'll get into those a little bit later so I don't  
8                   want to slow us down any more than we already  
9                   have.

10                   I will say on the issue of bats, it's  
11                   come up a little bit already and which we will be  
12                   commenting on during the bat section. Part of the  
13                   frustration with the most recent draft of the  
14                   guidelines is that we have really tried to  
15                   participate constructively in offering alternative  
16                   solutions to language that has been proposed in  
17                   the draft. And I think Kim from Defenders was  
18                   mentioning a comment that was submitted by one of  
19                   the developers who couldn't be here today that the  
20                   guidelines should perhaps not address bats at all.

21                   That frustration, I think that is more  
22                   frustration than an actual approach to these  
23                   guidelines because our suggestions have seemed to  
24                   have fallen on deaf ears in most cases. And we  
25                   are not quite sure where to go because we feel

1       that we have proposed very logical alternative  
2       solutions.  So I want to sort of give a little bit  
3       of additional context to that.

4               And I want to sort of draw one  
5       distinction.  And maybe it's just, I'm hoping that  
6       it's just simply a clarification.  But it was  
7       discussed in the opening statements by the staff  
8       that the post-construction use monitoring, some  
9       additional flexibility had been added.  This is in  
10      addition to bats the number two in terms of the  
11      concern that our organization has.  And  
12      particularly the very costly post-construction  
13      bird use counts.  It says on page 73 lines 2641:

14                        >Data on bird and bat  
15                        abundance and site use should  
16                        accompany all fatality studies  
17                        of wind energy project sites."

18      That is unambiguous language to me.  So I think  
19      that should in some way be reconciled.  But this  
20      is an example of some of the concerns that we have  
21      with the guidelines that are outstanding.  And  
22      I'll save the rest of my comments for later on.

23               PRESIDING MEMBER GEESMAN:  Anyone else  
24      on this first chapter?

25               MR. ZICHELLA:  One last quick thing.  I

1 don't think it was our understanding that  
2 repowering would be excluded from Category 1, we  
3 didn't read it that way. So I just wanted for the  
4 Sierra Club, we wanted to second what Julia was  
5 saying about some way of addressing inclusion of  
6 repowering. If that needs to be explicitly put in  
7 there, fine. We didn't think it was excluded.

8 PRESIDING MEMBER GEESMAN: Anything else  
9 on the step-by-step or Chapter 1?

10 MR. WEINER: Well at some risk of --  
11 Peter Weiner again.

12 PRESIDING MEMBER GEESMAN: Don't worry  
13 about it. We're going to stay here as long as it  
14 takes to get through this document.

15 MR. WEINER: It's so cool. I was  
16 shocked and disappointed by the vehemence of  
17 Julia's comments but of course as usual she made  
18 me see the light. I think first of all, we're  
19 still looking at the data from Diablo Winds and I  
20 believe that Annie Mudge may have some other data  
21 as well. But I think we are still persuaded that  
22 repowering is an answer at Altamont. And indeed  
23 that's what we're working with Golden Gate Audubon  
24 and other Audubon chapters on.

25 But what strikes me most about

1 repowering is that you are not on a clean slate.  
2 And what is most inappropriate about these  
3 guidelines as they apply to repowering is that  
4 they do assume a tabula rasa and say, let's do two  
5 years of pre-construction, let's do this, let's do  
6 that. Where instead you're working in a working  
7 landscape, an already disturbed landscape, in the  
8 sense that you already have wind turbines there.

9           And so what we need perhaps is instead a  
10 different tier. A tier that is called repowering  
11 and that says, these guidelines don't apply to  
12 repowering. Rather, there are aspects of the  
13 guidelines that may apply or may not apply because  
14 you will already have some data in an existing  
15 wind farm. You will need different data for  
16 repowering in the Altamont than you perhaps do in  
17 San Gorgonio.

18           And I think that that's really what is  
19 appropriate to say here. It may be totally  
20 streamlined, it may not be. But because certainly  
21 in the Altamont we are doing studies on the  
22 effects of repowering as we go along. What is  
23 inappropriate is to apply these guidelines to a  
24 repower project as if there were nothing there.

25           PRESIDING MEMBER GEESMAN: Anything

1 else? Nancy, you made it.

2 MS. RADER: I made it, sorry. That's  
3 what I get for not taking the train. (Laughter)  
4 But I was in my Prius. If it's all right, I did  
5 not anticipate the chapter by chapter approach and  
6 so I have one set of overall comments I would like  
7 to present and then can particularize those as we  
8 go along. But thank you and good morning.

9 PRESIDING MEMBER GEESMAN: You need to  
10 introduce yourself, Nancy.

11 MS. RADER: Nancy Rader, California Wind  
12 Energy Association. Nearly two years ago you  
13 might recall that CalWEA urged you not to launch  
14 this guideline development process because we  
15 pointed out there was really no evidence of a  
16 problem. That new wind energy facilities in  
17 California are sited with an appropriate  
18 environmental review, which is why the Altamont  
19 avian fatality problem remains unique.

20 We feared spending a lot of time and  
21 resources on solutions in search of a problem at a  
22 time when there are really very many real and  
23 significant issues facing the wind industry in  
24 California that require our attention if wind is  
25 going to help the state address the mother of all

1 environmental problems, global warming. And this  
2 is taking resources away from our activities at  
3 the ISO, the PUC and other areas.

4           Nevertheless over the past 14 months  
5 CalWEA has participated substantively in every one  
6 of the many workshops and hearings that have been  
7 held all over the state and we submitted eight  
8 sets of detailed comments. We did so in the hope  
9 that the guidelines could be a useful tool for  
10 developers and siting agencies alike. Frankly  
11 though we never really felt that staff heard our  
12 comments in this process because they never  
13 engaged in real conversation about our initial  
14 suggestions for how these guidelines should take  
15 form or the concerns we raised later.

16           While the staff's drafts concerned us  
17 greatly we had hoped that you had heard our  
18 concerns and hopefully read our comments.  
19 Unfortunately we now see the Committee's draft and  
20 we have to strongly oppose it. While a number of  
21 our particular comments have been incorporated the  
22 major flaws remain. If the guidelines were to be  
23 adopted in anything like their form, their current  
24 form, they would have wide ranging negative and  
25 unjustified impact on the development of wind

1 power in California.

2 I'd just like to briefly summarize our  
3 problems in six points, which may seem familiar  
4 since we've made them since the very beginning of  
5 the process. First we feel that the overall  
6 approach taken in the guidelines is wrong. It's  
7 far too prescriptive going far beyond guidelines.  
8 The draft prescribes particular courses of study  
9 at every site despite various types of terrain,  
10 varying wildlife populations and different bases  
11 of knowledge at every site.

12 The guidelines should instead be focused  
13 on the information that is needed to determine  
14 whether significant impacts are likely to occur at  
15 a proposed project site and they should recognize  
16 the various existing sources of information and  
17 the various scientifically valid techniques that  
18 can supply the needed information. So second, the  
19 result of that prescriptiveness is to  
20 significantly raise the costs without necessarily  
21 reducing impacts.

22 The guidelines prescribe specific long-  
23 term field studies that are not necessary to make  
24 determinations of significant impact under CEQA.  
25 They recommend protocols that go far beyond local

1 agency and industry permitting practice under  
2 CEQA. They would at a minimum recalculate and add  
3 on the order of \$2 million to the cost of  
4 permitting each potential project, which is  
5 already very costly in California.

6 You've already discussed the guidelines  
7 would require acoustical monitoring studies for  
8 bats at every site continually for three years,  
9 even though the document itself states that this  
10 technique has yet to be shown to be strongly  
11 associated with estimates of collision risk or  
12 impacts.

13 And worse, because little is known about  
14 bats, and that became very clear to me in the  
15 workshops, even collecting this data will not  
16 inform determinations of significant impact  
17 because there is simply an information void around  
18 bats. So these excessive study requirements  
19 effectively constitute state mandated research  
20 projects at the expense of the wind industry.

21 Third, the Committee's draft would  
22 significantly delay project permitting by  
23 elevating the authority of CDFG in the CEQA  
24 process. The draft guidelines require  
25 consultation with, and in some cases approval by



1 CDFG on the study methods to be used at many  
2 points before and after a land use permit is  
3 issued by the CEQA lead agency. This will add  
4 months if not years of delay to a process that  
5 already routinely exceeds the one year time frame  
6 intended under CEQA for preparing and certifying  
7 an EIR.

8 CDFG is understaffed and already does  
9 not respond to requests for review within CEQA's  
10 required comment period. These guidelines will  
11 compound that problem many fold and we really want  
12 CDFG staff to expend their limited resources on  
13 wind projects instead of timber sales, housing  
14 developments, dams and other far more  
15 environmentally destructive projects.

16 In addition by inserting CDFG into the  
17 CEQA process the Committee draft dilutes local  
18 agencies' constitutional land use authority over  
19 wind projects. Because CDFG is charged with  
20 administering zero tolerance wildlife laws they  
21 are likely to set a high bar for all projects in  
22 order to catch a few projects that may be unable  
23 to comply to the letter with very rigid wildlife  
24 laws which prohibit the inadvertent take of even  
25 one individual of a certain species.

1           By their nature wind projects cannot  
2           achieve zero bird mortality. It's just a fact of  
3           life. While CalWEA supports good faith attempts  
4           to limit unnecessary bird and bat mortality we  
5           believe the industry is taking those steps. We  
6           disagree that funding expensive and unnecessary  
7           research is required to demonstrate such good  
8           faith efforts.

9           Fourth, the Committee draft misses an  
10          opportunity to foster streamlined permitting for  
11          low impact projects. In your 2006 IEPR update you  
12          urged the state's energy agencies to evaluate  
13          incentives to encourage the repower of aging wind  
14          facilities to boost generation from these prime  
15          wind sites while reducing avian impacts. And you  
16          stated that as a fact, that repowering would  
17          reduce avian impacts.

18          And yet there is nothing in this  
19          document that would accelerate permitting for  
20          repowers in areas of the state where avian usage  
21          and impacts are known to be low. That is, we  
22          already know the impacts are less than significant  
23          under CEQA so we could expect that repowers under  
24          reasonable studies, reasonable logic can be shown  
25          to have less than significant impacts under CEQA.

1                   And we didn't say it should be an  
2                   automatic thing. You should have to show certain  
3                   things. But once you show those certain things  
4                   you should be eligible for a categorical exemption  
5                   or a negative declaration.

6                   CEQA and this Commission already enable  
7                   reduced environmental review for repowered fossil  
8                   fuel projects and many other types of projects.  
9                   Why shouldn't repower wind projects get similar  
10                  treatment? We propose that certain types of  
11                  projects including repowers be deemed eligible for  
12                  such treatment, meaning reduced study  
13                  requirements. But staff never engaged in a  
14                  dialogue on this proposal, even though as you have  
15                  heard avian groups do not object to the concept  
16                  across the board.

17                  Fifth, the Committee draft cites  
18                  discredited reports. The Committee draft  
19                  continues to cite, and I will name it, the 2004  
20                  study by Smallwood and Thelander despite the fact  
21                  that your own, independent reviews cast serious  
22                  doubt on the credibility of the report's methods,  
23                  findings and conclusions. And you didn't even  
24                  review the data, which we did, and found  
25                  significant discrepancies between the raw data and

1 what was entered into the database.

2 Application of the findings of that  
3 report could result in inaccurate impact  
4 predictions and ineffective mitigation. I don't  
5 think anybody wants that. That the Commission  
6 cannot acknowledge and correct its own mistakes  
7 greatly undermines trust in this agency's  
8 commitment to good science.

9 Sixth and finally, the Committee draft  
10 does not discourage retroactive application of the  
11 guidelines. CalWEA members are already  
12 experiencing efforts to retroactively apply these  
13 guidelines. In one case a project that was in the  
14 last stage of the permitting process was told that  
15 approval of its EIR may need to wait for and be  
16 reconducted based on the final version of the  
17 guidelines. That kind of retroactive application  
18 could set projects back by several years. The  
19 Committee draft fails to advise lead agencies to  
20 apply the document prospectively only.

21 More generally we are quite concerned  
22 that the Committee draft will take on a life of  
23 its own if it is not quickly withdrawn or  
24 replaced. For all of these reasons we strongly  
25 oppose this committee draft and we urge you to

1 reconsider this effort. The Energy Commission  
2 should be seeking to reduce barriers to wind  
3 development, not creating new barriers that  
4 address problems that don't exist. Thank you.

5 PRESIDING MEMBER GEESMAN: Thank you,  
6 Nancy. Is there anyone else?

7 MS. WOLFE: I'm Marcia Wolfe, plant and  
8 wildlife ecologist working for Oak Creek Energy  
9 Systems. And my comments are not according to  
10 chapter so I'm totally discombuberrated here. But  
11 since this morning we have heard so many people  
12 touting the fact that they believe that this has  
13 been an interactive workshop process I need to say  
14 something here. And it doesn't have to do with  
15 Chapter 1, it has to do with the overall process.

16 And I hesitate to have to say this  
17 because about seven of my friends have been  
18 involved in staff positions working on this and I  
19 still hope afterwards we're still talking. But we  
20 don't -- Although the workshop process can be good  
21 this really has not been an interactive workshop  
22 process. And we don't believe because of that the  
23 wind energy realities have been integrated fully  
24 into the process.

25 We have had no response from agency

1 staff on any of our comments. In no place have  
2 agency staff provided reasons for not considering  
3 the majority of our comments nor have they  
4 responded or engaged in a discussion concerning  
5 the substance and importance of our comments nor  
6 even has a request for clarification occurred.

7 And I hear they made lots and lots of  
8 minor grammatical edits but that's not really what  
9 we're worried about. Our comments have not been  
10 frivolous or made of plain contentiousness. Our  
11 comments have been serious and well thought out.  
12 We are concerned with both the actual wind farm  
13 operations and the science of attempting to  
14 characterize baseline avian and bat issues.  
15 Evaluating that information and somehow being able  
16 to interpret it relative to potential impacts and  
17 mitigation.

18 And by the way, this is something that  
19 is complex and not easy to do. And it is not  
20 something conducive to an inflexible cookbook  
21 approach. And after having made many of the same  
22 comments over and over again the conclusion is  
23 that our comments and objectives are being  
24 ignored. This is so disappointing as many, many  
25 collective hours were spent on review, research,

1 compiling, preparing the comments and attending  
2 the workshops.

3 And we heard this morning that or  
4 comments that weren't accepted will be responded  
5 to in some kind of decision document. That is not  
6 an interactive process where we can then respond.  
7 Perhaps their understanding or misunderstanding of  
8 our comments -- if you know, if there had been an  
9 integration of that we would have come up with  
10 better results.

11 Something else that we kind of noticed  
12 as well. That all our names are included in the  
13 document and it is being kind of used to give the  
14 impression that we all agree with what's in the  
15 guidelines. I think just because someone  
16 participated in this process doesn't mean that we  
17 all agree with everything that's in it.

18 This is all choppy because I don't have  
19 a chapter by chapter response so I'll be back.

20 Thank you.

21 PRESIDING MEMBER GEESMAN: Thank you.

22 Sir.

23 MR. WEBSTER: Good morning Mr. Chairman  
24 and CEC Renewables Committee. My name is Stu  
25 Webster and I am the permitting and environmental

1 manager for Clipper Windpower Development Company.  
2 As an active developer of renewable wind energy in  
3 California we greatly appreciate the attention and  
4 the effort the CEC Board, staff and consultants  
5 have put towards the guidelines development to  
6 assist public and private stakeholders in  
7 addressing avian and bat impacts. A pause here  
8 for a moment just as a note. This is going to be  
9 a thematic response. I have not read the document  
10 about chapter by chapter.

11 In reflecting back on the evolution of  
12 the draft siting guidelines, comments that I made  
13 before this Board and those submitted to the Board  
14 in writing I would characterize the effort today  
15 as beneficial progress but short of having yet  
16 reached a successful conclusion. What seems to  
17 have occurred to date is a partial addressing of  
18 the relatively straightforward comments and  
19 concerns regarding such things as the guideline's  
20 use of prescriptive language, inconsistent  
21 recommendations and clarification of discretionary  
22 enforcement.

23 However, what is lacked thus far is a  
24 higher level view of the implications of the  
25 guidelines as currently drafted have on developing



1 renewable wind energy in California. The draft  
2 guidelines remain disconnected with the stated  
3 intention of the CEC to facilitate a consistent  
4 and robust understanding of what can be done to  
5 understand the biological characteristics of a  
6 proposed wind energy area. Rather it focuses on a  
7 worst case scenario applied with little to no  
8 flexibility and assessed outside of existing  
9 environmental review mechanisms such as CEQA.

10 For example, the guidelines fail to  
11 provide a discussion as to the scientific  
12 reasoning for the recommended duration of the  
13 suggested surveys. My efforts to date have not  
14 discovered a single instance of a project  
15 undergoing a 52 week avian survey period but  
16 rather appropriately scoped surveys that fit the  
17 conditions and uncertainties of the specific  
18 project area and/or region.

19 Additionally there is no indication how  
20 one year of pre-assessment surveys and two years  
21 of post-construction surveys produce data that is  
22 statistically significant when compared to surveys  
23 conducted of a shorter duration, focused on a  
24 regionally-specific species and conditions found  
25 at a given project.

1                   As the economic implications to  
2                   conducting the extensive pre-assessment and post-  
3                   construction surveys suggested in these guidelines  
4                   by my estimates, \$1 million per year. A  
5                   scientifically reasoned justification for the  
6                   durations is necessary. Without providing  
7                   justification for the proposed durations the  
8                   protocol appears to be arbitrary and fully based  
9                   on a worst case scenario.

10                   To speak to the aforementioned criticism  
11                   of only partially addressing stakeholder concerns  
12                   the current draft guidelines now suggest the  
13                   abridged studies may be agreed as appropriate by a  
14                   given project's stakeholders with sometimes  
15                   explicit concurrence from US Fish and Wildlife,  
16                   and more commonly, California Department of Fish  
17                   and Game. For example, lines 724 through 728.

18                   This unfunded, quasi-mandate for these  
19                   agencies to review projects and proposed study  
20                   protocols is simply an inevitable bottleneck for  
21                   already resource-constrained agencies. To respond  
22                   that this is not the intent of the guidelines may  
23                   be accurate but our concerns to the contrary are  
24                   already self-evident with proposed project reviews  
25                   by the California Department of Fish and Game on

1 hold stating, the finalization of these guidelines  
2 is the reason for the delay.

3 If this document is a truly voluntary  
4 set of guidelines all references or implications  
5 for the requirement to have Fish and Wildlife and  
6 CDFG approve surveys, protocol and/or methodology  
7 need to be removed or at least accurately applied  
8 under CEQA.

9 We at Clipper believe that the legacy of  
10 a given project's relatively benign ecological  
11 impacts is a direct reflection on us as a wind  
12 development company wishing to remain viable in a  
13 highly competitive industry. And more  
14 importantly, a broader reflection upon a necessary  
15 and appropriate technology in the United States  
16 progress toward diversified and renewable energy  
17 generation, including California's efforts to meet  
18 the renewable goals of AB 32.

19 Therefore I once again recommend that  
20 the CEC consider these points, refocus the content  
21 of the guidelines to be more robust, a menu of  
22 options and conditions by which stakeholders  
23 become more informed. This is not a substantial  
24 undertaking as the content of the guidelines thus  
25 far compiled contains useful information.

1           It is the implications that: one,  
2           California wind energy development will  
3           consistently occur in high avian and bat use  
4           areas. Two, that the US Fish and Wildlife and  
5           California Department of Fish and Game are to  
6           carry an unfunded mandate to take on a more  
7           discretionary role of project review than intended  
8           by California law such as CEQA. And three, that  
9           the lack of scientific knowledge concerning avian  
10          and bat impacts by renewable energy should be  
11          shouldered exclusively by industry and independent  
12          of support by other private and public  
13          stakeholders.

14                 These are the concerns that we feel need  
15          to be addressed. I stated for the record in a  
16          February 2006 workshop that Clipper Windpower  
17          endorses the intent of the draft guidelines but  
18          takes significant exception to the content and  
19          format that it was currently in.

20                 Therefore to close and in order to  
21          emphasize our position I'll reiterate that Clipper  
22          remains supportive of the CEC efforts, will  
23          continue to participate in the development process  
24          and endorses the original intent of the guidelines  
25          but unequivocally opposes the current state the

1 guidelines are in.

2 We encourage the CEC to retool the  
3 document such that its contents can be used as a  
4 consistent point of reference by all stakeholders,  
5 similar to what has been developed in Kansas,  
6 Pennsylvania, South Dakota, Washington and New  
7 York, rather than presupposing the applicability  
8 of a costly and oftentimes unnecessary burden to  
9 renewable energy development. Thank you.

10 PRESIDING MEMBER GEESMAN: Thanks Stu.  
11 Anyone else by steps, Chapter 1?

12 Let's move on to Chapter 2.

13 MS. MUDGE: Annie Mudge for CalWEA. I  
14 just want to make three points here that are sort  
15 of implicated by Chapter 2. First is -- And this  
16 is the chapter that sort of integrates the  
17 existing framework of the law with the guidelines.  
18 It talks about CEQA and the federal and state  
19 laws.

20 With respect to CEQA. I started this  
21 morning by just sort of talking about a lost  
22 opportunity here to have these guidelines provide  
23 guidance. Again, voluntary guidance to local  
24 agencies about the level of environmental review.  
25 There is no discussion at all about what might be

1 appropriate here. And that decision is of course  
2 left up to the local agencies. But if this  
3 document doesn't encourage the use of certain  
4 streamlined procedures the silence on that fact I  
5 think is going to lead local agencies away from  
6 the use of mitigated negative declarations and  
7 categorical exemptions where appropriate.

8 So if the Committee is really interested  
9 in encouraging wind energy development while  
10 minimizing avian impacts I think it would be a  
11 real benefit to these guidelines, which otherwise  
12 place a very large burden on the industry, to show  
13 the way. That these are available tools to it to  
14 streamline appropriate projects.

15 You know, global warming is a choice so  
16 let's not make it unreasonably difficult to permit  
17 projects in California. I am seeing a trend of my  
18 clients saying, hey, we're just not going to start  
19 new projects in California, we're going to go to  
20 Texas, we're going to go to Minnesota. It is  
21 very, very difficult to get projects permitted in  
22 this state. It is very expensive and it is very  
23 difficult. We do have tools that allow  
24 streamlining under certain circumstances and I  
25 think it would be a lost opportunity to not

1 suggest that they be used where appropriate.

2 And that leads me to the repower issue.

3 And I want to echo what CEERT has been saying.

4 That I think that there is another opportunity  
5 here to put repowers in a separate category. I am  
6 aware of a project, I was involved in the  
7 permitting of it up in Solano County, it's called  
8 the enXco Five project. It removed ninety 56/100  
9 turbines and replaced them with six 1.5 megawatt  
10 turbines. So a vast, vast reduction in the number  
11 of turbines.

12 There were robust studies that were done  
13 pre-permitting that showed that there was going to  
14 be a reduction in raptor kill. A mitigated  
15 negative declaration was approved for that  
16 repower. That's the model that I'm suggesting  
17 here. I am not saying under all circumstances you  
18 rush to a categorical exemption. Perhaps a cat ex  
19 would have been appropriate there. The choice was  
20 a mitigated neg dec.

21 I think the environmental impacts of the  
22 repower were fully and fairly vetted and the  
23 project was approved. So a reduction from ninety  
24 turbines to six turbines without a loss in  
25 electrical capacity. And it is showing a

1 reduction in raptor kill. So that's the enXco  
2 Five project in California.

3 Peter mentioned something that I think  
4 is work repeating and that is that repowers are  
5 uniquely I think qualified for special  
6 categorization because the areas are already  
7 developed. They are already degraded, if you  
8 will. Birds have already become habituated and  
9 birds do habituate. Birds do learn to fly around  
10 the wind turbines. Various birds do this better  
11 than others.

12 But repowers are like in-fill urban  
13 development. You already have wind power in that  
14 area. Most repowers reduce, vastly reduce the  
15 number of turbines without reducing electrical  
16 energy. We should be encouraging repowers. And  
17 the CEC guidelines are an important opportunity to  
18 do that.

19 Finally, with respect to CDFG's role. I  
20 also want to point out that right now the current  
21 law is CDFG is a commenting entity to local  
22 agencies under the CEQA process. And one of the  
23 things I am concerned about in the guidelines is  
24 that they elevate CDFG to more than a commenting  
25 entity by virtue of having to get pre-approval



1 from CDFG to design your studies. It is going to  
2 delay the process significantly.

3 If lead agencies today feel that they  
4 need expert opinion from CDFG or US Fish and  
5 Wildlife they certainly have the ability to go and  
6 ask for a consultation. But the guidelines as  
7 they are currently drafted put CDFG in a much  
8 different position where you have to actually go  
9 seek and obtain active approval from CDFG.

10 They are a very heavily worked agency  
11 and there have been times when the responsiveness  
12 has been less than ideal, through no fault of any  
13 individual. But it is not an efficient use of the  
14 CEQA process to inject them in that sort of active  
15 role. Lead agencies when they need help in  
16 designing survey protocols, if they're different  
17 than what's been suggested here, can ask for  
18 consultation. Thank you.

19 MS. HOGAN: I have a quick question  
20 before you go. Were there any bat surveys done in  
21 that repowering project?

22 MS. MUDGE: You know, I can't remember  
23 but I would be happy to provide you a copy of the  
24 document.

25 MR. FLINT: Can I make a comment real

1 quick?

2 PRESIDING MEMBER GEESMAN: Go ahead,  
3 Scott.

4 MR. FLINT: I'd probably get to this  
5 later. It's going to come up in Chapter 2 again  
6 but just a couple of things. I've heard a theme  
7 here of the guidelines inserting or elevating Fish  
8 and Game's status. I just must point out that the  
9 document doesn't read that way. The Department is  
10 both a responsible agency and a public trustee  
11 agency under CEQA. Consultation with the  
12 Department is mandated in CEQA for projects.

13 What the guidelines are doing is laying  
14 out a framework of study with plenty of  
15 flexibility from site to site that can be brought  
16 to Fish and Game for discussion. We are not  
17 elevating our status, we're playing the same role  
18 that we are always supposed to play in the CEQA  
19 process. Chapter 2 simply outlines the existing  
20 process, both with the environmental law of CEQA  
21 and the other laws. It is simply 95 percent  
22 recitation of what's in the statute. So I don't  
23 see that necessarily the same way.

24 And I think Annie's example of this  
25 project, this repowering project that had a study

1       beforehand to show it would reduce raptors, went  
2       through the mitigated neg dec process and then  
3       significantly reduced the number of turbines. I  
4       think that's exactly the model that we're  
5       proposing here in the guidelines.

6                 That had an appropriate pre-project  
7       study. They probably used existing information.  
8       The same thing we're proposing in here in the  
9       guidelines. And it was modified for the site-  
10      specific conditions and the nature of that  
11      project. That would be great if all of them went  
12      that way.

13                PRESIDING MEMBER GEESMAN: Julia.

14                MS. LEVIN: I'd like to respond to a  
15      couple of things that Annie said in the second  
16      chapter and then make a few additional points. I  
17      think CalWEA from the beginning of this process  
18      has wanted to limit the applicability of the  
19      guidelines to CEQA.

20                And I think the Commission has already  
21      made the determination that the purpose of the  
22      guidelines is to clarify existing laws to protect  
23      birds and bats and it is not limited just to CEQA.  
24      So I think --

25                The concern that I have heard from a

1 number of speakers about, as Scott said, elevating  
2 the role of the Department of Fish and Game,  
3 giving them an inappropriate role in CEQA, is not  
4 really apropos to these guidelines, which are not  
5 limited to compliance with CEQA. They are about  
6 reducing impacts on wildlife, which is very much  
7 not just the role but the obligation of the  
8 Department of Fish and Game. They are a trustee  
9 agency for all of us to enforce existing wildlife  
10 laws.

11 Which is my other comment, particularly  
12 about Chapter 2 but overall. I think that there  
13 is a misperception about these guidelines. Aside  
14 from the fact that they are voluntary I think the  
15 purpose from the Commission has been clear from  
16 the get-go. And from the stakeholders. That they  
17 are to provide a framework for how to comply with  
18 existing laws.

19 Which unfortunately have been largely  
20 ignored until recent years. And the reason they  
21 are no longer being ignored is there were a number  
22 of lawsuits. Which I don't think any of us want  
23 to see more of. Whatever the cost of compliance  
24 with the guidelines I am quite sure as an attorney  
25 myself, and there are many attorneys in the room,

1       that more litigation would be more expensive and  
2       slow the development of windpower down more. So I  
3       think it is in everyone's interest to find a way  
4       to avoid that.

5               Annie, you've made the comment and so  
6       have others about raising the bar. That these  
7       guidelines raise the bar. I think the bar has  
8       been there for many years. Many of these wildlife  
9       laws have been on the books for decades. The bar  
10      is there. What we're trying to avoid is having  
11      new developments or repowering projects bump into  
12      that bar.

13              So this is not a new bar, it is not a  
14      new requirement. I feel like a broken record and  
15      yet I don't think people are listening to that  
16      record. That we are not establishing new legal  
17      requirements here. We are trying to explain what  
18      compliance with existing legal requirements means  
19      in general categories of cases. I just wish we  
20      could move beyond that point. It's frustrating to  
21      continue to have to point that out.

22              PRESIDING MEMBER GEESMAN: Well let me  
23      jump in there and maybe this can be of assistance  
24      to others as well. You really don't have to  
25      persuade each other. You should be concerned

1 about whether Commissioner Pfannenstiel and I are  
2 listening. I can assure you we are. But like  
3 everybody else we have a limited attention span  
4 and a reduced tolerance for too much iteration,  
5 reiteration, re-re-reiteration.

6 So not specifically calling you out,  
7 Julia, but to everyone. There is no need to  
8 address your remarks to each other. You are  
9 really trying to clarify things for Commissioner  
10 Pfannenstiel and me.

11 MS. LEVIN: Okay. Well I would also  
12 like to say from at least Audubon's perspective,  
13 we have found staff and Commissioner, your staff,  
14 very receptive. And while I understand that not  
15 everyone has seen changes in this draft that they  
16 wanted to see, including Audubon. We would have  
17 liked to have seen more study in some places and  
18 the categories defined more clearly in some places  
19 as well.

20 I think there is a difference between  
21 staff not being receptive or ignoring comments,  
22 which I would strongly disagree with. That has  
23 not been our experience at all. I don't think it  
24 has been the experience of many of the wind  
25 companies. We are not all going to get what we

1 want but I don't think that there is a fair  
2 categorization or characterization of how staff  
3 has acted in this process.

4 My one other specific comment about  
5 Chapter 2 is I think that on page 33 you asked us  
6 to be very specific. There is an incorrect  
7 characterization of the Fully Protected Species  
8 Act. Well I would love to go hand-in-hand with  
9 wind companies to the Legislature in a few years  
10 and create a categorical exemption to the Fully  
11 Protected Species Act when wind developers take  
12 certain actions. I don't think we're there yet.  
13 Right now the law is very clear that there is no  
14 take except for very limited scientific purposes  
15 and recovery purposes.

16 So I think that the language on page 33  
17 that suggests that minimizing impacts would be  
18 sufficient needs to be changed. There is similar  
19 language about the Federal Migratory Bird Treaty  
20 Act that I think would be more appropriate, it's  
21 on page 35 and elsewhere in the document that is  
22 to be honest a little squishier but I think that's  
23 what is more appropriate. That it would be seen  
24 as good faith compliance with things that are a  
25 little more general.

1           But it is not an accurate statement of  
2           the Fully Protected Species law to say that simply  
3           minimizing impacts is enough. That may not be as  
4           any of us would like but that is existing law and  
5           I think it is very important to be respectful of  
6           the law. I think those were my only comments  
7           about Chapter 2 for now, thank you.

8           PRESIDING MEMBER GEESMAN: Peter.

9           MR. WEINER: Peter Weiner and as  
10          promised I have comments on Chapter 2.

11          The problem in walking the tightrope  
12          between voluntary guidelines and underground  
13          regulations, which are rules of general  
14          application that haven't been adopted under the  
15          APA, is that it's hard to do. And I think you  
16          hear a lot of that tension in the room. People  
17          would like to have the yellow brick road to follow  
18          but they are worried that it will become a highway  
19          without offramps, if you will.

20          The problem is that many of these  
21          guidelines will be viewed as written as a standard  
22          for compliance with CEQA. I think that some of  
23          the remarks today certainly counsel me that what  
24          we need in this document is a discussion of CEQA  
25          tools in a paragraph. That under CEQA one can do



1 a categorical exemption, a negative declaration, a  
2 mitigated negative declaration, an EIR, there may  
3 be others. Certainly where you already have an  
4 EIR you can have a supplemental, an addendum, et  
5 cetera.

6 And what we need is a clear statement  
7 that these guidelines are neutral as to which CEQA  
8 tools should be used by a lead agency. I don't  
9 think that it is appropriate in these guidelines  
10 to say that they must counsel an EIR, must counsel  
11 a categorical exemption or a negative declaration.  
12 They should be neutral. That's with regard to  
13 CEQA.

14 The other thing that is important I  
15 think is to state that these guidelines are  
16 general and as a consequence will not apply to  
17 every site. You've done that in the tiering but I  
18 think it's important to state that non-compliance  
19 with everything recommended with the guidelines  
20 will not be taken to be non-compliance with CEQA.  
21 Nor will compliance with the guidelines, if you  
22 want to go the other way, in certain situations be  
23 sufficient.

24 The Pine Tree decision, which no one has  
25 mentioned yet today, which is an unpublished Court

1 of Appeals case, is one which we will submit to  
2 you as an attachment later on by the 22nd. But  
3 the reason for it is not that it's a citeable case  
4 as we lawyers would say but rather because it is  
5 informative and good counsel as to how to look at  
6 CEQA in these situations. And it does quote from  
7 several published cases in this regard.

8 But what I would note is that a Court of  
9 Appeal in the Pine Tree case found that just as an  
10 example, some of the pre-construction monitoring,  
11 which would be different and which I think the  
12 gentleman from Clipper mentioned, focused studies  
13 instead of 52 weeks and so on, were found to be  
14 acceptable under CEQA.

15 Usually that case is noted because of  
16 its refusal to require acoustic studies and  
17 nighttime studies for songbirds. But it has other  
18 examples as well that these guidelines are general  
19 and they may apply generally but they don't apply  
20 necessarily as a measure of CEQA compliance.

21 With regard to the relationship to other  
22 wildlife laws. I want to be clear that yes, in  
23 the first workshop that we had Carl Zichella said,  
24 what we would like is guidelines that if people  
25 comply with them there will be prosecutorial

1 discretion by the Department of Fish and Game, the  
2 Fish and Wildlife Service, to not prosecute people  
3 who are complying with the guidelines. If you  
4 follow the rules you don't get hit.

5 And certainly it seems to me that that  
6 was what was meant by the statement on page 33  
7 lines 1181, 1182 that in the presence of fully  
8 protected species we want to ensure impacts are  
9 minimized. That has to do not with compliance  
10 with the fully protected species law, not with  
11 compliance with the Migratory Bird Treaty Act.  
12 Those laws don't allow take. And we have several  
13 other examples of that. But rather what  
14 discretion will the agencies use as to whether to  
15 prosecute those people who are trying to minimize,  
16 following voluntary guidelines, rather than  
17 emphasize one bird or one bat, whatever these  
18 species may be. That was the intent I thought  
19 from the get-go of these guidelines and its  
20 relationship to other environmental laws.

21 It was not to say how to comply with  
22 them, quote/quote, because compliance is no take  
23 whatsoever, but rather to state the circumstances  
24 under which the fish and wildlife agencies would  
25 refrain from prosecution.

1                   And in that first workshop we had a  
2 gentleman on the phone from the Fish and Wildlife  
3 Service who was talking about Fish and Wildlife's  
4 use of its guidelines with regard to transmission  
5 lines and saying that where people comply with  
6 them we don't prosecute. And that was one of the  
7 models that we followed there.

8                   So it may be useful to state that that's  
9 one of the intentions here is to provide, I won't  
10 say quite a safe harbor, but a guideline for the  
11 agencies that if people are in good faith trying  
12 to minimize those impacts that that is a standard  
13 for prosecutorial discretion.

14                   So I wanted to state that with regard to  
15 Chapter 2 because it has to do both with CEQA and  
16 other wildlife laws. I think the guidelines have  
17 a bearing on both. Thank you.

18                   PRESIDING MEMBER GEESMAN: Thank you  
19 Peter. Carl.

20                   MR. ZICHELLA: Being Peter took my name  
21 in vain, Carl Zichella. I think he's accurate  
22 about how we were talking about trying to have  
23 guidelines that if people complied with them that  
24 they would be recognized and rewarded for that.  
25 Because there are so many unknowns and we need to

1 have at least some basic level of compliance.  
2 We've had quite a bit of conversation in  
3 succeeding workshops about that and other people  
4 disagreed with me.

5 But I have to say, just generally on  
6 Chapter 2, the Sierra Club is fine with Chapter 2.  
7 I don't have any problems with the way this is  
8 written at all. I do think that if there was some  
9 clarification about the entirety of the CEQA  
10 process and what it entitled in total that would  
11 be okay with me too. I don't think a paragraph  
12 the likes of which Peter just described about the  
13 various options under CEQA would be objectionable  
14 because basically what Chapter 2 does is describe  
15 the process. So I don't have a problem with  
16 describing the process.

17 The fact is they are guidelines, they  
18 are voluntary, they say it right up front. That  
19 is all pretty clear to me so I don't think that  
20 you need to have every single thing in there. And  
21 I am not so sure that others would agree that  
22 prosecutorial discretion needs to be explicit in  
23 there.

24 What I have said repeatedly throughout  
25 the process also is that I think this will be a

1 tool to provide discretion for those who might  
2 have brought the lawsuits that have so tied  
3 licensing and siting in knots in the state. That  
4 this is going to be a very useful tool to prevent  
5 those kinds of lawsuits.

6 I will mention, I think the Sierra Club  
7 believes we need to move forward on this. I would  
8 hate to see this process delayed any further. I  
9 think we need to move forward. You can't have it  
10 both ways. You can't say the fact the guidelines  
11 aren't finalized are creating a bottleneck and the  
12 guidelines themselves are a bottleneck. You know,  
13 you have to be able to move forward at some point  
14 and let's give it a try.

15 You can't make the perfect be the enemy  
16 of the good. This document is dramatically  
17 changed from the first iteration. Those people  
18 that are saying that their comments have been  
19 completely rejected I think are being  
20 disingenuous, that's not true. That these  
21 documents have definitely progressed, they have  
22 changed.

23 We have made a lot of compromises after  
24 listening carefully and actively to the concerns  
25 of the wind energy industry. In fact the

1 categorization is a great example of that. We all  
2 agreed that that was a useful way to provide  
3 flexibility.

4 Finally I think you have to, and it is  
5 your responsibility, to bear in mind that there is  
6 a balance between some prescriptions that there  
7 actually truly is a guideline and the flexibility  
8 that people have so said they wanted. I have sat  
9 in many workshops and heard people say they want  
10 to be told what's necessary, they want clarity.

11 Then in the next breath they want  
12 flexibility. Well there's a tension between those  
13 two concepts and I think this document actually  
14 addresses it pretty well. So I want to urge that  
15 we move forward on this. Chapter 2 is fine with  
16 me. But I would not hope that we get this thing  
17 delayed any further.

18 We have a need to move forward. There  
19 is federal legislation that we barely fought off  
20 that would have been prescriptive that would have  
21 made this look like a child's game had it gone  
22 through the resources committee. And the  
23 environmental groups like Audubon and Sierra Club  
24 fought against that provision. And one of the  
25 reasons was because we were working cooperatively

1 with industry to come up with guidelines that  
2 mattered. Those here that are in the industry  
3 that are speaking against these guidelines now, I  
4 think you better think twice the next time a bill  
5 comes up in the House of Representatives.

6 PRESIDING MEMBER GEESMAN: Well two  
7 points. One, Commissioner Pfannenstiel and I have  
8 not been asleep. We have paid careful attention  
9 to the process for the last 18 months so we're  
10 pretty familiar with what the history of the  
11 various drafts and the various positions have  
12 been.

13 Secondly, let's take off the table right  
14 now any prospect for delay. Those that don't  
15 think these guidelines are a good idea I'd suggest  
16 you reserve your arguments for the full Commission  
17 when we take it up on the 27th of September. What  
18 we are trying to do today is focus on what the  
19 content of the guidelines will be. So with that  
20 notion any further comments on Chapter 2? Nancy.

21 MS. RADER: Nancy Rader again, CalWEA.  
22 I had a couple of comments in response to some of  
23 the other comments that were made, just briefly.  
24 We were pleased to see the categories, which were  
25 very similar to what we proposed, in there. The



1 thing that was missing was what goes along with  
2 the easy category. There was no associated, and  
3 CEQA should be easier for category whatever it  
4 was, 1 or 4. You know, the low-impact category.  
5 The sort of the punch was, you know, the important  
6 part was missing.

7 Secondly I wanted to explain why it is  
8 that CDFG's authority is in fact elevated in this  
9 document beyond what CEQA requires. CEQA requires  
10 consultation by the lead agency with CDFG. This  
11 document requires prior approval of study methods  
12 before you can deviate from the 52 weeks, three  
13 years of study or the bat acoustical monitoring or  
14 other things. You have to get advanced approval  
15 from CDFG. That is not now a part of CEQA.

16 And then just to echo a little bit what  
17 Peter Weiner said. The wildlife laws don't allow  
18 even one take. This document seems to say, if you  
19 collect reams and reams of data, years and years  
20 of data, then we'll turn the other way. But  
21 collecting reams of data won't eliminate the take.  
22 So it doesn't -- it's like this document is  
23 requiring a whole ton of research by the wind  
24 industry in exchange for looking the other way on  
25 one inadvertent take and we just don't think that

1 is appropriate. Thank you.

2 PRESIDING MEMBER GEESMAN: Others on  
3 Chapter 2?

4 ASSOCIATE MEMBER PFANNENSTIEL: One on  
5 the phone?

6 PRESIDING MEMBER GEESMAN: We have one  
7 on the phone?

8 MR. McCULLOUGH: I think we have Kenneth  
9 Stein on the phone.

10 PRESIDING MEMBER GEESMAN: Could we take  
11 him first. I've had his card here for a few  
12 minutes. Mr. Stein.

13 MR. STEIN: Yes, can you hear me?

14 PRESIDING MEMBER GEESMAN: Yes, go right  
15 ahead.

16 MR. STEIN: All right, thank you. This  
17 is Kenny Stein, I'm representing FPL Project  
18 Management. Thank you, Commissioners. I manage  
19 all of FPL Energy's environmental and permitting  
20 initiatives in the Western US.

21 FPL Energy echoes others in commending  
22 the CEC and Fish and Game staff for their efforts  
23 to date. We continue to support the guideline  
24 development process and remain hopeful that we'll  
25 end up with a document that we can all be proud

1 of. However, we can't support the guidelines in  
2 their current form since we believe, as many  
3 others do here obviously, that there remain  
4 several critical flaws in the document.

5 We have made several comments on the  
6 previous draft issued in April. While we're happy  
7 to see that many of them were accepted many were  
8 apparently rejected since the July draft did not  
9 reflect those comments.

10 Up until the second draft of the  
11 guidelines there was, we believe, a fairly open  
12 and productive exchange of ideas and opinions  
13 amongst the various stakeholders. However that  
14 dialogue essentially ceased once the April draft  
15 came out. And because several critical and  
16 crucial comments that we had on the draft were not  
17 accepted we are left with very little  
18 understanding as to why many of those comments  
19 were not accepted.

20 I heard from Susan this morning that the  
21 plan is in September once the final draft is  
22 issued to have an explanation for those but it  
23 seems a little late in the game. We would prefer  
24 either in writing or via a more formal verbal  
25 exchange an explanation as to why our comments

1 were not accepted and an opportunity to better  
2 explain our positions in the event that maybe some  
3 of our comments may have been misunderstood.

4 I think that kind of exchange is even  
5 more critical now than it was in the early stages  
6 of the guidelines. We now have words on paper  
7 telling us exactly what is expected.

8 I guess I'll reiterate a couple of  
9 concerns here, though they are the same ones that  
10 we've made on previous drafts. Specifically with  
11 respect to Chapter 2 there's only a couple. On  
12 line 1043 of the July draft there's a statement  
13 that says:

14 "The permit conditions  
15 may have to include mitigation  
16 measures that address the  
17 other wildlife laws discussed  
18 below, in addition to those  
19 required by CEQA, to avoid,  
20 minimize, and fully mitigate  
21 impacts to birds and bats."

22 While we agree that measures should be taken to  
23 evaluate and minimize impacts, perhaps even  
24 impacts that might not otherwise be considered  
25 significant under CEQA. Because I think as Scott

1 pointed out earlier a lot of times the studies  
2 that you do, you'd have to do anyway regardless of  
3 significance.

4 But we strongly disagree that wind  
5 projects should be required to mitigate or  
6 compensate for impacts that are less than  
7 significant under CEQA. The guidelines as written  
8 require mitigation in cases where frankly the law  
9 currently doesn't require it.

10 For example, while certain strict  
11 liability wildlife laws prohibit the take of  
12 certain birds they don't necessarily require that  
13 any and all takes be mitigated as the guidelines  
14 currently imply. In fact, they don't allow  
15 mitigation. And there is certainly no law  
16 requiring that all bat impacts be mitigated for.

17 CEQA was intended to define those  
18 impacts for which the state requires mitigation.  
19 I'm concerned that the guidelines as written  
20 suggest full mitigations for every single bird and  
21 bat. And I don't think it's -- We don't think  
22 it's appropriate for these guidelines to recommend  
23 a mitigation threshold that is much higher for  
24 renewable energy wind projects than what the law  
25 currently prescribes for other projects.

1                   One other, one other note on Chapter 2  
2                   on line 1030 and a similar statement is made on  
3                   line 306. At 1030 it says:

4                   "-- following the CEQA  
5                   Guidelines alone may not  
6                   highlight all of the species  
7                   and issues that need  
8                   evaluation and mitigation."

9                   I am not sure I agree with that. CEQA does really  
10                  require that you evaluate all environmental  
11                  impacts, birds and bats included, and then  
12                  determine significance. So we'd like -- I have  
13                  made this request before. I think having a  
14                  statement in there that suggests that CEQA doesn't  
15                  -- that somehow CEQA doesn't require us to assess  
16                  impacts on birds and bats isn't true. And I'll  
17                  save my other comments for the other chapters,  
18                  thank you.

19                  PRESIDING MEMBER GEESMAN: Thank you  
20                  Kenny. Nicole.

21                  MS. HUGHES: I just wanted to -- Scott,  
22                  you had addressed California Department of Fish  
23                  and Game's role in this. I just wanted to share a  
24                  story with you to show how we believe that this  
25                  will and has already impacted our ability to do

1 business in California.

2 In late 2005 we approached the  
3 California Department of Fish and Game with a  
4 protocol for studying birds, which included a  
5 year-long study. At that time there was no  
6 comments. Now since the inception of these draft  
7 documents the Department of Fish and Game has come  
8 back and basically said, all the things that are  
9 -- you know, they haven't come out and said it but  
10 all the items that are in these guidelines that we  
11 have not conducted now are going to be needed for  
12 our project.

13 So here is an example of where these  
14 guidelines are being applied retroactively and  
15 we're kind of being held hostage by the Department  
16 of Fish and Game. We don't want to go to the step  
17 of waiting for the Department of Fish and Game to  
18 comment on our EIR once it's gone to the public  
19 draft so we're being really patient and trying to  
20 work with them on it but it has been pretty  
21 difficult.

22 So there's two places in Chapter 2 that  
23 I would like to point out where this is evident.  
24 One is just on page 32 lines 1144 through 1149. I  
25 would like to see, this would be a location where

1 I would like to see the CEQA time line inserted  
2 into here to discuss -- there's review periods  
3 that California Department of Fish and Game should  
4 be following under CEQA. And that any non-  
5 comments should be considered a concurrence with  
6 your study plans.

7 And then additionally I just have a  
8 small problem with on page 29, line 1009 through  
9 1011:

10 "Inadequate data  
11 acquisition may prompt a lead  
12 agency to apply more stringent  
13 impact avoidance, minimization  
14 or mitigation measures to  
15 ensure species protection and  
16 may result in increased levels  
17 of operations monitoring."

18 My concern is that, again, if we don't get timely  
19 comments from California Department of Fish and  
20 Game up front and at the back end of our project  
21 the data analysis is considered adequate. We'll  
22 then be penalized with more stringent mitigation  
23 measures. So those are two parts of Chapter 2  
24 that are really disconcerting to me.

25 PRESIDING MEMBER GEESMAN: Anyone else



1 on Chapter 2? Why don't we go to Chapter 3.

2 MR. BLUE: I thought I'd jump up here  
3 and get the soapbox while I can. Greg Blue with  
4 enXco. I am going to give a couple of comments on  
5 Chapter 3 but while I'm here, while I have the  
6 microphone I am going to make a couple of other  
7 quick comments.

8 We are members, board members of CEERT  
9 and CalWEA and we support their comments today.  
10 Also strongly support the ideas or suggestions  
11 about an explicit statement on grandfathering the  
12 projects that are already in the permitting  
13 process right now. It's not in there. Or a  
14 specific start date of this program is not in  
15 there.

16 Specifically we have heard a lot about  
17 the categorizations and I'll say this. From  
18 enXco's position there has been a lot of movement  
19 by staff. One of our major concerns earlier on  
20 was the formal role of the Science Advisory  
21 Committee. We've seen that drastically changed so  
22 we applaud that. We've seen some of the document  
23 reordered and some different orders from the  
24 earlier drafts. We appreciate that. We also see  
25 the attempt at the categorizations as a positive

1 step. Unfortunately, as I said earlier in my  
2 earlier comments, this grades out as an  
3 incomplete.

4 Our specific problem is, if you want to  
5 go to a specific line is on page 37 starting on  
6 line 1273. And also companion line 1361, that  
7 paragraph there on page 39. What those two lines  
8 are basically saying is that the burden of proof  
9 is on the applicant to deviate from the standard  
10 programs that have been laid out. Not only that,  
11 the burden is being set by Fish and Wildlife  
12 Service, California Fish and Game's biologists and  
13 other appropriate stakeholders.

14 We think that's really not practical.  
15 We think that if anybody is going to -- We would  
16 be happy with the Energy Commission being the body  
17 that sets the categories. We think you have  
18 enough expertise to do that. The other specific  
19 issue -- So we'll be giving you some written  
20 comments on that particularly.

21 As I said, overall we think the comments  
22 are moving in the right direction. Again, I think  
23 there is time without delay to make some of these  
24 changes that you are hearing today and I think  
25 you're hearing some of the frustration. And I

1 think Mr. Stein from FPL really brought out the  
2 issue that we haven't had dialogue in the last few  
3 months to take some of these changes and I think  
4 you're hearing some of that today. Thank you.

5 MR. LINEHAN: Good morning,  
6 Commissioners. My name is Andy Linehan, I am  
7 director of permitting for the wind portion of PPM  
8 Energy. I work with projects nationally. I have  
9 been part of this process of developing guidelines  
10 over at least, it's been close to two years now  
11 and I am very supportive of it and I'd like to see  
12 it concluded on the schedule that you've set. And  
13 I certainly compliment staff on responding to many  
14 of the comments that the stakeholders have raised  
15 over the course of the process. I think it's made  
16 a lot of changes over time.

17 We still have a few specific issues that  
18 I think are problematic to us and we'd like to see  
19 fixed and I believe there is time to do that. And  
20 I would like to focus specifically on what is said  
21 about bat pre-project, pre-construction and post-  
22 construction monitoring methods.

23 Now the bat issue is one that PPM is  
24 very familiar with. We have been monitoring bats,  
25 bat mortality at most of our projects around the

1 country whether required to by permit or not. We  
2 are also founding members of the Bat and Wind  
3 Energy Cooperative and have been working closely  
4 with Bat Conservation International on a number of  
5 fronts, including testing new risk assessment  
6 technologies as well as starting last week testing  
7 a bat deterrent device at our project in upstate  
8 New York.

9 The guidelines as you know suggest that  
10 there should be a full year of pre-project, I  
11 should say pre-construction acoustic monitoring  
12 with acoustic monitors raised up at close to hub  
13 height and that these monitors be placed at a  
14 frequency of approximately one per section of  
15 land. We're familiar with that approach to pre-  
16 project risk assessment.

17 We're working with BCI, Bat Conservation  
18 International, at three of our sites in the  
19 Northeast, Hoosac in Massachusetts, Casselman and  
20 South Chestnut in Pennsylvania, and are attempting  
21 or are trying that technology to see if in fact it  
22 is a good method to assess bat risk. But as we do  
23 that this is all -- the places where we're doing  
24 that it has been entirely considered research by  
25 the regulatory agencies.

1           In all cases the funding is coming from  
2 multiple parties including BCI, the developer and  
3 also state agencies. And the reason it's getting  
4 multiple funding is that it is an untested  
5 technology, an untested methodology. We don't  
6 know if it will work to assess risk for bats at  
7 sites. We believe it's hopeful but we don't know  
8 that it will work yet.

9           In California at our Dillon site, which  
10 is in the Palm Springs area, we're working with  
11 Ted Weller of the Forest Service who has received  
12 funding from PIER as well as from BCI as well as  
13 funding from PPM Energy to test this methodology  
14 at a 45 megawatt site in San Geronio. The  
15 project has a budget of \$200,000. That is only  
16 for the acoustic portion of the testing. It does  
17 not include post-construction mortality monitoring  
18 which will have to accompany that. The funding  
19 again is from multiple parties.

20           It is appropriate we think to be doing  
21 research like this to see if that methodology will  
22 in fact help us do a better job of assessing that  
23 risk. But we do not believe it is appropriate for  
24 all developers in all sites in California to be  
25 required to do this as a routine manner.

1           What we proposed through CEERT was a set  
2 of research projects funded by multiple parties,  
3 including funding by developers who are not  
4 involved in a particular site, at a range of sites  
5 around California to try out this methodology in a  
6 very rigorous way to see if in fact it works.

7           And we have obviously made our site in  
8 Palm Springs available for that kind of research.  
9 We'd certainly make other sites available to it  
10 and would contribute funding to it. But we don't  
11 believe that this should be required as a standard  
12 practice at all sites until we know that in fact  
13 it works.

14           And if you talk to many bat experts in  
15 this field, for example Ed Arnett, and Ted Weller  
16 may even say the same as well, this is still a  
17 trial. We are not clear if this methodology will  
18 work. And until we have a better track record  
19 that in fact this will work at sites it should not  
20 be required at all sites. Thank you.

21           PRESIDING MEMBER GEESMAN: Thank you  
22 Andy. Other comments on Chapter 3?

23           MS. HOGAN: I'd like to briefly address  
24 the issue on bats. I don't know if you were going  
25 to talk about this. I have two comments and one

1 is going to slightly jump back to Chapter 2.

2 The bats that currently we are very  
3 concerned about in California are migratory bats.  
4 And I just have to look at this bit of CEQA. And  
5 one of the things that CEQA is concerned about is  
6 whether a project is going to interfere  
7 substantially with the movement of any native  
8 resident or migratory fish or wildlife species.

9 So to jump back to Chapter 3. I guess I  
10 actually wish Ed or Ted were here to comment on  
11 this because I am not sure that they would sort of  
12 say, every site doesn't need to have surveys at  
13 this point. Because again I think this gets back  
14 to the fact that we do not have a mechanism to set  
15 up a statistically appropriate way of surveying  
16 for these things.

17 And in fact we do get project-specific  
18 information from acoustic surveys at a site.  
19 Solano County has been brought up a couple of  
20 times. Solano County, based on the little  
21 evidence that is there, is probably, is likely to  
22 be a migratory corridor both north and south and  
23 east and west for hoary bats and red bats and  
24 possibly silver-haired.

25 I just talked with Paul Cryan who has

1       been doing work on migratory hoary bats in the  
2       Farallon Islands. In his opinion the evidence  
3       shows that California is likely to be one of the  
4       places where both male and female hoary bats,  
5       potentially a majority of the population  
6       potentially in the Western US and Canada, winter  
7       in California. So this is really an important  
8       thing. And project-specific acoustic monitoring  
9       will give us information about pulses of migratory  
10      activity of bats.

11               And I just want to make a comment that  
12      we have in the guidelines put in, there was some  
13      early concern about the cost of analyzing acoustic  
14      data. And you get reams and reams of data if you  
15      leave out acoustic monitors. There are ways to  
16      filter that data and scan it and look for pulses  
17      so you are not trying to identify the species of  
18      every single bat call that you're getting.

19               So it's not that there's not expense but  
20      sometimes I wonder if we're talking about exactly  
21      the same thing when we're talking about expense in  
22      terms of bat surveys. So I just wanted to make  
23      that point.

24               MS. DELFINO: Kim Delfino, Defenders of  
25      Wildlife again. That actually does go to a couple



1 of points I was going to make regarding the bat  
2 survey methods. Defenders of Wildlife strongly  
3 supports the survey methods that are currently in  
4 the guidelines. Bats, as I am sure you have  
5 already heard, they are long-lived, they have a  
6 low reproductive rate. We are in what some people  
7 think is a major migratory route.

8 Bats, if they are being impacted, will  
9 because of their low reproductive rate are slow to  
10 rebound. So we could have potentially huge  
11 impacts on all bat populations. And for that  
12 reason I think we need to take a precautionary  
13 approach. These guidelines I don't think are  
14 unreasonable in asking for this particular survey  
15 method. I think Fish and Game has already made  
16 the point about justifying why this method is the  
17 right method.

18 And frankly, I would like to know what  
19 -- I'd like to know what method the opponents  
20 would propose for each project. I think it's good  
21 to have a standardized approach. That's one of  
22 the criticisms that Ed Arnett from Bat  
23 Conservation International made in his testimony  
24 before the House National Resources Committee in  
25 May was that there is a lack of standardization of

1 information to know and understand what is going  
2 on in a broader context. And so here I actually  
3 think the standardization is a good thing.

4 And these are guidelines. So after a  
5 couple of years or a few years of doing research  
6 there is no reason why guidelines can't be  
7 changed. These are not etched into stone. So  
8 maybe it is appropriate. Maybe we need stronger  
9 surveys. But I think as a beginning point I think  
10 we would be very upset to see the change, any  
11 change made to the current survey protocols that  
12 are set forward for bats here in Chapter 3.

13 PRESIDING MEMBER GEESMAN: Let me ask.  
14 Do you think that it is reasonable to expect that  
15 there could be a potential adverse impact on bats  
16 at every site?

17 MS. DELFINO: On every single site?

18 PRESIDING MEMBER GEESMAN: Yes.

19 MS. DELFINO: You know, it's possible.  
20 And I think you made the point in Category 1 that  
21 if there are -- if there was existing data to show  
22 that surveys had been done in that particular area  
23 recently that bats don't exist then that's the  
24 case. And I think you've built wiggle room in  
25 here and some flexibility in the survey methods

1 under Category 1.

2 But, you know, with bats it's a hard  
3 issue because there isn't a lot of data out there.  
4 And again I would argue we'd be more protective  
5 than less. Especially given the fact that we're  
6 along major migration routes and they are slow to  
7 reproduce so the impacts could be quite great. So  
8 I think, again, that it's appropriate and I think  
9 you have built in some flexibility in Category 1.

10 PRESIDING MEMBER GEESMAN: How easily  
11 identified are those major migration routes?

12 MS. DELFINO: They are not that easy. I  
13 mean, the data out there is not, there is not a  
14 lot of data out there. So I don't know if Fish  
15 and Game wants to give you any more detailed  
16 response than that.

17 MS. HOGAN: Well again, I mean, up until  
18 recently there just hasn't been the tools to even  
19 begin to say anything about migratory corridors.  
20 The issue of sort of the east/west, potential  
21 east/west migration has actually been based on  
22 things like museum records and what time of year  
23 bats have been found in the Central Valley versus  
24 on the Coast.

25 But there is now beginning to be a

1 network of detectors for various studies that are  
2 actually showing these seasonal movements and  
3 pulses and it is just sort of the tantalizing  
4 beginning part of that. But again, based now on  
5 talking with three different people who have been  
6 doing acoustic work, and then also the work that's  
7 been done out on the Farallons, there is  
8 definitely migration going on in California.

9 And particularly for hoaries, which are  
10 one of the species that are found, have been found  
11 across the US and in California as mortality at  
12 wind farms. Not just males but males and females  
13 winter in California so you could potentially --

14 Again, this is one of these things where  
15 I think the reason why it's important to be  
16 precautionary is that my guess is there are going  
17 to be a lot of sites where it is not a problem.  
18 But at a site where it is a problem you could have  
19 a really big impact on bats that breed in Canada.  
20 You know, if your wintering females are all in  
21 California and they are all funneling through a  
22 certain area you could have a really significant  
23 impact. So again, you know, the lack of  
24 information is crazy-making.

25 PRESIDING MEMBER GEESMAN: Andy's point,

1 as I understood it, is that we have a clear  
2 research need but that it is inappropriate to  
3 saddle project applications with that research  
4 need. Instead we should focus our requirements  
5 for project applications on identifying what we  
6 believe to be potentially adverse impact.

7 He also I think in invoking Ed and Ted,  
8 who are easy to invoke since they are not here,  
9 questioned whether this was a mature research  
10 technique. And I think strongly inferred that it  
11 would be more rational to fund a property  
12 structured research study. The problem is there  
13 are no resources to fund such a study so I think  
14 that is a bit of a straw man.

15 How do you respond to that? Is this an  
16 appropriate obligation to saddle new project  
17 applications with?

18 MS. HOGAN: Well actually I may after I  
19 answer this take a break and go see if I can get  
20 them on the phone since we're talking about them.  
21 They both may be available to call in.

22 I think there's kind of a two-part  
23 answer. One is, I think it is appropriate on a  
24 project-specific basis to get this information  
25 because the question is, is this particular

1 project in this particular location in a potential  
2 migratory corridor. And again, I am not sure one  
3 year is going to tell you that. I mean, the  
4 California Bat Working Group guidelines, their  
5 recommendations were two years. The National  
6 Nocturnal Methods and Metrics document that came  
7 out recommends three years.

8 So it may be that you'll get negative  
9 data and you haven't really answered the question.  
10 But the fact is that you do get project-specific  
11 information. If you get some pulses of activity  
12 in the fall you then have some data saying, well  
13 maybe we are in a migratory corridor and we need  
14 to think how we're going to respond to that.

15 Then there is the secondary question of,  
16 sort of two secondary questions, of how does that  
17 relate to post-construction fatality. And that's  
18 kind of a separate question and that gets into the  
19 sort of research realm where -- again I think this  
20 idea of a research fund is a great one. It's not  
21 set up yet.

22 And frankly I was talking with Ed and he  
23 said at this point if you did have a research fund  
24 that was set up and you were already to go it may  
25 be that sort of from a statistical point of view

1       you would want every single wind farm project that  
2       is being proposed to be part of the research  
3       because that's what you need to be able to have  
4       that information.

5                   I mean, I'm kind of trying to separate  
6       the things because there is project-specific data  
7       that is worthwhile gathering from the acoustic  
8       stuff. There is the separate research question.  
9       But even if we had the fund it may be that the  
10      researcher setting it up would say, well you know,  
11      we need every wind farm that is being permitted  
12      right now in order to have a statistically valid  
13      study. Anyway, that's kind of --

14                   PRESIDING MEMBER GEESMAN: I appreciate  
15      that. Kim, I'm sorry to interrupt you.

16                   MS. DELFINO: That's okay. And actually  
17      she makes excellent points and I would completely  
18      agree with what she is saying.

19                   I wasn't going to bring up the two year.  
20      The fact that it was originally proposed as two  
21      years for per-permitting and it was reduced to  
22      one. I frankly would have liked to have seen two  
23      years. But, you know, I'm happy with one. Two  
24      would have been better. Going down to nothing and  
25      simply doing a research fund is unacceptable. I

1 think that one year is appropriate to determine  
2 site-specific impacts.

3 And I would wholeheartedly agree that we  
4 do need additional research. And if there is a  
5 way to set up a fund to do more research then I  
6 would support that but I don't think it  
7 substitutes for the one year pre-permitting survey  
8 work.

9 And then let's see, one other point to  
10 make. And that is on this issue that keeps being  
11 brought up over Fish and Game's role in surveying,  
12 approving survey protocols. In listening to the  
13 discussion I went back and reread Chapter 3 again  
14 thinking, I must have missed something.

15 But I have looked throughout the  
16 document, looked at both pages 37 lines 1274  
17 through 1276, then again under page 39 under the  
18 heading, Securing Appropriate Expertise to Develop  
19 Studies. It talks about working in consultation  
20 with the lead agency, Fish and Game, Fish and  
21 Wildlife, local environmental groups and other  
22 agencies. On 37 it talks about, you know,  
23 consulting the CEQA lead agency, Fish and  
24 Wildlife, Fish and Game, biologists with other  
25 expertise.



1           I find no reference here that somehow  
2     Fish and Game has been given this higher role than  
3     they already, that they somehow didn't have  
4     before. They are a public trustee agency. They  
5     are in charge of, constitutionally in charge of  
6     our fish and wildlife for the state of California.  
7     I don't understand where somehow there is this new  
8     objection to a role they have already been playing  
9     for many, many years.

10           And frankly if there's issues about Fish  
11     and Game being slow in responding then my -- this  
12     may be a little facetious but if I have to respond  
13     here. You know, I'm up every year in front of the  
14     Legislature asking for more money for the  
15     Department of Fish and Game. They're one of those  
16     under-funded agencies for the state of California  
17     and charged with one of the most broad-reaching  
18     responsibilities.

19           I would ask that the wind energy  
20     companies complaining about slow permitting to go  
21     and ask for more money from the Department to do  
22     the job it's charged to do, rather than saying  
23     that they somehow shouldn't be doing the job that  
24     they should be doing. So that would just simply  
25     be a point I would make on that. Thank you very

1 much.

2 PRESIDING MEMBER GEESMAN: Thank you.

3 Other comments on Chapter 3? Paul.

4 MR. VERCRUYSSSEN: Sure. Again, Paul  
5 Vercruyssen from CEERT.

6 On the bat issue again. I realize that  
7 Bronwyn isn't here and Ed may be calling on the  
8 phone so maybe we'll have to go back to this. But  
9 I think --

10 PRESIDING MEMBER GEESMAN: She's back.

11 MR. VERCRUYSSSEN: Sorry. Okay, so she  
12 is here. The issue that is of concern. And again  
13 I want to stress that the wind industry and CEERT  
14 are not trying to ignore the bat issue. We  
15 understand it, we're trying to proceed in a  
16 logical way. And our concern is that through  
17 these acoustic studies thus far you have been for  
18 the most part unable to assess risk to the bat  
19 species.

20 And I'll read a couple of excerpts from  
21 a study that was published August 2006 by Ed  
22 Arnett that we submitted as a notation to our  
23 previous round of comments but is not actually a  
24 notation in the current draft of the guidelines.  
25 I feel that it is an important document from the

1 Casselman site that Andy referenced earlier.

2 "Interactions between  
3 bats and wind turbines are  
4 poorly understood."

5 Which we all have kind of come to that conclusion.

6 I think pretty much everyone agrees with that.

7 "Post-construction  
8 monitoring has provided most  
9 of what little information has  
10 been gathered on bat  
11 fatalities at wind farms.  
12 Pre-construction surveys at  
13 wind facilities have been  
14 conducted and most commonly  
15 employ acoustic detectors to  
16 assess local bat species'  
17 presence and activity.  
18 However, using this  
19 information to predict bat  
20 fatality in thus risk at a  
21 site has proved to be  
22 challenging. Estimating the  
23 amount of activity is  
24 relatively straightforward but  
25 estimating abundance requires

1           differentiation between  
2           multiple passes of a single  
3           bat and multiple bats making a  
4           single pass, which is usually  
5           not possible."

6       These are all points that get to being able to  
7       differentiate. And I think what the concern of  
8       both Defenders and the Department of Fish and Game  
9       is, you know, trying to determine how to address  
10      this problem. And while we don't dispute that  
11      that's a concern we simply feel that requiring  
12      these acoustic surveys doesn't get you there.

13                 It has not been made clear and we have  
14      asked this previously, what you would do with the  
15      data. How that would how your project moves  
16      forward. Because the data that you take in from  
17      these acoustic surveys hasn't been able to be  
18      correlated with risk at all.

19                 Again, this leads to our concern that at  
20      this point it is really just a research project.  
21      it doesn't mean that you shouldn't be doing it but  
22      it means that it really, the burden shouldn't be  
23      entirely on the wind industry to do that kind of  
24      research. And so it kind of --

25                 Perhaps one of the other things that the

1 Department of Fish and Game can address is, once  
2 you have this data how do you use it? Because  
3 that really is not I don't think adequately  
4 discussed in these guidelines. And they are a  
5 significant cost to these companies.

6 The other issue that I'll just bring up  
7 that actually came up during the previous session  
8 a little bit was, it's continually been brought up  
9 that the Department of Fish and Game has some  
10 added authority from these guidelines. I think I  
11 would for the most part agree that the guidelines  
12 don't inherently give them some additional  
13 authority that they don't already have.

14 However it is of great concern that  
15 these guidelines are on behalf of the Department  
16 of Fish and Game causing delays in projects  
17 because people are waiting for their finalization  
18 and retroactivity is being applied.

19 Also I would like to say we have been in  
20 discussions with other public stakeholders in  
21 going to the Legislature for additional funding to  
22 the Department of Fish and Game to actually do  
23 these project reviews. We have not officially  
24 done it but we have had some informal  
25 conversations with folks in the Legislature about

1 it. And I think depending on how these guidelines  
2 come out that is something that we would very  
3 likely do quite proactively. Depending on when  
4 this year's budget gets passed maybe this year or  
5 perhaps next year. Anyway, I would like to hear a  
6 little bit more feedback from the Department of  
7 Fish and Game on those two points.

8 MR. NOBLE: Commissioner, I'll be very  
9 brief here. A flaw in all of this is the  
10 assumption that if birds or bats are present that  
11 windmills kill them. That has just become  
12 scripture and it is not always the case. And I  
13 really renew my offer. If anybody can find a bird  
14 or a bat killed by a windmill in the San Gorgonio  
15 Pass I'll pay them \$1,000 each. It just isn't  
16 happening in the desert.

17 So what I would like you to consider is  
18 exempting Riverside County until somebody can  
19 prove there is a problem. We're hearing it could  
20 be a problem, we're hearing lack of info is crazy-  
21 making. It is crazy-making. But there is a  
22 certain notion that, you know, guilty until proven  
23 innocent is probably a bad idea.

24 Until somebody can come forward and say  
25 that in Riverside County there is an issue here

1 you really have no business imposing a million  
2 dollar expense on me to do bat studies if I want  
3 to repower a project. It's not fair, I don't  
4 think it will withstand legislative or judicial  
5 scrutiny and it should be carefully considered.

6 The disconnect is between the presence  
7 of creatures and whether the windmills kill them.  
8 Or whether it's a power line that kills them or  
9 another predator that kills them. The study whose  
10 name cannot be spoken is obviously Exhibit A on  
11 that notion. Prosecutor discretion a very  
12 interesting concept.

13 I will tell you for sure that for every  
14 bird killed by a windmill ten are killed by PG&E's  
15 power lines and there's plenty of discretion being  
16 applied in that regard. There is no high-rise  
17 building in San Francisco that doesn't kill  
18 hundreds of birds and prosecutorial discretion is  
19 allowed there. Your cat probably kills more birds  
20 than my windmills.

21 So until there is a connection between  
22 the presence of the creatures and a study that  
23 shows that the windmills are killing them in any  
24 significant numbers, at least in Riverside County,  
25 you really have no business going forward with

1 this kind of a set of rules because they have no  
2 rational basis in fact as it relates to Riverside  
3 County. So I would like you to consider exempting  
4 the area until somebody can find one dead bird or  
5 one dead bat. Thank you.

6 PRESIDING MEMBER GEESMAN: Couldn't  
7 Riverside County make that determination? I mean,  
8 is there anything in these guidelines that would  
9 compel Riverside County to apply them?

10 MR. NOBLE: Well.

11 PRESIDING MEMBER GEESMAN: Anything at  
12 all?

13 MR. NOBLE: These guidelines of course  
14 in de facto are not voluntary. The county  
15 governments know that if they don't follow them  
16 they're going to get sued. If you're going to  
17 enact this you should do it as a rule so it can be  
18 challenged correctly. The Board of Supervisors of  
19 Riverside County will pass a resolution requesting  
20 that it be exempted from the guidelines and that  
21 is coming down the road for you.

22 PRESIDING MEMBER GEESMAN: I want to  
23 clarify what we're trying to do here is chart a  
24 path through the jungle. We didn't make the  
25 jungle. But California, as I think everyone will



1 probably stipulate to, is a permitting jungle.  
2 We're trying to articulate a set of guidelines  
3 that if local agencies elect to follow them they  
4 should have a reasonable assurance that this will  
5 get through the jungle. And Ms. Delfino and  
6 Mr. Zichella's local chapters won't come in and  
7 harass your project.

8 MR. NOBLE: And that is a laudable goal.  
9 It has as drafted unintended consequences and they  
10 are fundamentally that it is such a labyrinth to  
11 run that anybody that wants to litigate the EIR  
12 can't lose because you just can't really do  
13 everything that they could allege you should do.  
14 That's number one.

15 Number two, it's irrational to apply a  
16 statewide standard. The Altamont Pass, which has  
17 trillions of rodents for the raptors to hunt,  
18 versus the desert which has none. People think  
19 maybe there's a migratory path somewhere in the  
20 state, maybe there isn't. They're on the Farallon  
21 Islands, which is 30 miles off the coast perhaps.

22 You know, let's define the problem  
23 before we solve it, at least as it relates to my  
24 part of the world, and let's not solve a problem  
25 that doesn't exist. We just have had, I guess

1 it's good news for us s developers down there,  
2 it's a desert and we don't have the raptors coming  
3 down into the wind farm. They stay up in the  
4 mountains, 11,000 foot mountains. There's  
5 forests, they hunt up there.

6 So to apply all this on me and cost me  
7 two, three million bucks to repower a project, 50  
8 megawatts, I'm not going to do it. I'll take down  
9 the old machines when they wear out, which is now,  
10 and I'll build trailer parks, which the county  
11 would like me to do. And then you'll get 500  
12 cats. And I promise you, they'll kill more birds  
13 than every windmill in San Gorgonio Pass in the  
14 next 100 years. That's just the way it is. Thank  
15 you.

16 PRESIDING MEMBER GEESMAN: Thank you.

17 MS. LEVIN: Julia Levin, National  
18 Audubon Society. I have a couple of specific  
19 comments on Chapter 3. Again the Category 1. We  
20 strongly support the concept and we look forward  
21 to a time where we can have the majority of wind  
22 projects be fast-tracked. And I really do say  
23 that very, very sincerely. We want to see a five-  
24 fold increase of wind power in California. I  
25 think that is everyone's goal. We need to do it

1 to meet the RPS goals and hopefully expand the RPS  
2 goals in the future.

3 So I think that Kim's -- Kim used the  
4 word precautionary and I think that the point  
5 here, or a lot of the point is these are existing  
6 laws. To be sure that s we expand we don't have  
7 ten more Altamonts. None of us wants to see that  
8 again, in Northern or Southern California,  
9 Mr. Noble.

10 So some of the challenge is we are  
11 operating with a lack of data and the way that you  
12 avoid things is to get better data. So I think  
13 the reams of data I think will be very helpful.

14 And maybe we can all come back here in  
15 two or three or five years and say, okay, we don't  
16 need this part. It turns out it's really not a  
17 problem, we don't need this part.

18 But if the turbines are already up and  
19 running we see from Altamont how hard it is to fix  
20 a problem later if we didn't do the research ahead  
21 of time. I would be ecstatic, as would everyone  
22 at Audubon, if it turns out not to be a problem.  
23 We just don't know enough.

24 So for Category 1 we have a couple of  
25 specific suggestions. I continue to be very

1 concerned that the emphasis is on similarity of  
2 habitat. You can have very similar habitat on the  
3 ground and completely different things flying in  
4 the air. We can see that with Altamont and  
5 elsewhere in the state. You can have similar  
6 vegetation but on top of the hill there will be  
7 one type of bird using it at one time of day or  
8 one time of year and in the valley completely  
9 different migratory use or species use.

10 So it's not enough to look at similarity  
11 of vegetation or similarity of habitat because  
12 that I think to the average person, to the average  
13 permitting agency, is going to imply habitat on  
14 the ground. It really needs to be similar habitat  
15 and migratory use, migratory pathways.

16 Also I think the more Category 1  
17 projects we have, and again I hope it's a lot and  
18 more and more in the future, the more I think  
19 there will be importance on looking at cumulative  
20 impacts. Because we'll know single project, know  
21 single in-fill, know single repowering may be a  
22 problem when we do increase four or five or ten-  
23 fold the windpower in the state and nationally.  
24 They could become significant impacts  
25 cumulatively. So I think that's very important to

1 bear in mind as we go through this.

2 And finally as I said earlier, I think  
3 it's important even in Category 1 to give some  
4 indication of whether any level of study is  
5 recommended or if you're truly saying in Category  
6 1, no amount of study is required. Because it  
7 could be read that way now.

8 I think that one year should still be  
9 recommended. I don't think that sets back  
10 projects. I don't think it's anywhere near \$1  
11 million. I know what biologists cost, they come  
12 really cheap. Much cheaper than most of us in  
13 this room. I'm sorry for the biologists' sake. I  
14 think it can be done for a very reasonable cost in  
15 comparison to the cost of one turbine, which is  
16 well over \$1 million these days.

17 In Category 2 my comment is similar. I  
18 think that two years is a minimal level of study  
19 that should be required for projects in Category  
20 2, which is defined as a category. We know there  
21 will be significant impacts on wildlife. And  
22 because both birds, and I am now starting to  
23 learn, bats, vary a great deal from year to year,  
24 one year may not be sufficient. There are a  
25 number of birds listed specifically where it

1 probably won't be sufficient but I think there are  
2 probably a whole lot more.

3           And from the presentations that we had  
4 at the original AWEA, Audubon, CEC conference on  
5 this it is very clear that wind permitting takes  
6 several years in any case. And so I think again  
7 to demonstrate good faith on the wind industry's  
8 part there is no reason not to begin the bird and  
9 bat studies very early on and then two years would  
10 not create a delay in the project. I think that's  
11 a reasonable request until we know enough to know  
12 that it is not necessary.

13           In Category 4 I disagree strongly with  
14 the comment earlier that this should be excluded.  
15 We think this category is very, very important,  
16 just as Category 1 is important to the wind  
17 industry. I think we can all agree that there are  
18 places where wind development is not appropriate.  
19 The FAA and the military would set out certain  
20 categories.

21           I think similarly if you look at the  
22 founding purposes for national parks, state parks,  
23 wilderness areas, wildlife refuges, some of the  
24 other categories mentioned, none of those include  
25 energy development as one of the purposes for

1       their creation. And I think most of us who  
2       appreciate those very special and very limited and  
3       already overtaxed areas would say that no  
4       industrial development, energy or other, belongs  
5       in those places.

6                   And Audubon has met with the National  
7       Parks Service and State Park Service and I think  
8       if you met with Ruth Cole or others they would say  
9       very clearly they do not consider it appropriate  
10      to the trust resources that they are responsible  
11      for. So we do thank you very much for including  
12      Category 4 and recommend the other changes I just  
13      mentioned.

14                   PRESIDING MEMBER GEESMAN: Thank you.  
15      Peter.

16                   MR. WEINER: I do have to agree with  
17      Julia that non-mission uses should not be placed  
18      in state parks or national parks. That would  
19      include wind projects.

20                   With regard to the issues that have been  
21      mentioned so far I would like to distinguish, as I  
22      think it is probably possible to do, between birds  
23      and bats.

24                   When we talk about birds in these  
25      guidelines we are talking about not only CEQA but

1 we are talking about the Fully Protected Species  
2 Act, we're talking about the Migratory Bird Treaty  
3 Act, we're talking about the special protection of  
4 raptors under California law, of golden bald  
5 eagles under federal law.

6 So it may be appropriate in some cases  
7 that we talk in these guidelines about going  
8 beyond CEQA because we're talking, as I discussed  
9 earlier, about the relationship of these  
10 guidelines to prosecutorial discretion and the  
11 fish and wildlife agencies.

12 When we talk about bats we don't have  
13 those laws. And so the guidelines as applied to  
14 the bats come much more under CEQA unless we have  
15 an endangered species. If we have an endangered  
16 species of bat then those apply. But otherwise  
17 we're really talking CEQA. And obviously CEQA has  
18 constraints against speculation. It also doesn't  
19 call for research.

20 So when we call for research here. And  
21 I am strongly convinced that research is needed.  
22 Imposing that as a guideline, as a study that must  
23 be done for CEQA, is inappropriate because CEQA  
24 doesn't require those kinds of studies. CEQA  
25 requires full information, full presentation of



1 the information that currently exists. Not  
2 further studies.

3 And indeed there is always a tension in  
4 the cases between the need for early consideration  
5 of those impacts before some studies are done  
6 versus waiting until certain things that are  
7 already in process are done that aren't required  
8 by CEQA but that will be done.

9 So in this case yes, we can require  
10 several years for permitting of wind projects. I  
11 think its ironic that permitting of a fossil fuel  
12 plant seems to take a lot less time than would be  
13 required by these guidelines. So what are we  
14 promoting here in terms of returns on capital?  
15 Are we promoting fossil fuel or are we promoting  
16 renewable energy?

17 With regard to the bat studies. Again,  
18 I think to the extent that we cannot set up a  
19 mitigation fund except through legislation  
20 perhaps, perhaps that needs to be done. Because  
21 there seems to be no doubt and everybody seems to  
22 agree that more information is needed. But again,  
23 imposing those on each and every project does not  
24 seem justified by the science. It seems justified  
25 by the need for information but that is not a

1 justification under CEQA.

2 Finally just one, small reiteration of  
3 what I have been talking about a little while. On  
4 page 58 lines 2067 and 2068 it says that  
5 repowering -- it's just one sentence.

6 "Repowering requires pre-  
7 permitting studies using the  
8 same methods as those  
9 described above for new  
10 projects."

11 I take exception to that and would ask that that  
12 sentence be deleted. The rest of the repowering  
13 and pre-permitting assessment states that  
14 applicable data may be available from the site  
15 from the existing turbines and you should consider  
16 whether recent, credible and applicable pre-  
17 permitting study designs should address the fact  
18 that new turbines have different characteristics  
19 than set forth here.

20 That's fine, but it doesn't take the  
21 same methods as those described for new projects.  
22 That's over-reaching. Thank you.

23 PRESIDING MEMBER GEESMAN: Other  
24 comments on Chapter 3? Nancy.

25 MS. RADER: Again I wanted to respond to

1 some things I heard, particularly your exchange  
2 with Fred Noble about well gee, couldn't Riverside  
3 County just decide not to use these guidelines.  
4 But then you before or after that explained that  
5 this gets this through the jungle. In other  
6 words, they are going to be immune from lawsuits  
7 if they follow these guidelines.

8 And that's where we're at. Is that  
9 these guidelines put the weight of the state  
10 behind a particular course of study, 52 weeks for  
11 three years bird counts. So that if a project  
12 wants to take a different approach, an approach  
13 that was just approved by an appeals court in the  
14 Pine Tree case, the county is going to have to  
15 think twice. Because they're going to have to  
16 think, gee, in a court of law now the litigant can  
17 introduce these CEC guidelines to further bolster  
18 their case.

19 Now hopefully the science will prove out  
20 in the courts again. But what we don't want to do  
21 is require an unnecessary course of study just to  
22 avoid litigation. I mean, it's just wrong. And  
23 like Peter said, it promotes fossil fuel not  
24 renewables.

25 PRESIDING MEMBER GEESMAN: So in the

1 absence of these guidelines what's to stop someone  
2 in Mr. Zichella's local chapter going in and  
3 suggesting three years of acoustic surveys pre-  
4 construction for bats?

5 MS. RADER: Well nothing. But I guess,  
6 you know, the point is we want to consider  
7 rationally whether that is required under the CEQA  
8 process and I think Peter Weiner just explained  
9 that it is not.

10 I think what is most inappropriate is  
11 that clearly there is an information void about  
12 bats. My question is, why is it the wind  
13 industry's job to gather basic data about  
14 migration routes for bats across the state of  
15 California when we don't even know whether the  
16 presence of bats means that those bats are going  
17 to be killed by the wind projects.

18 Why isn't the housing industry, why  
19 isn't every other industry affecting bat habitat  
20 and bats flying into structures, why aren't they  
21 being also contributing to this research? Why is  
22 it the wind industry's job to fill this research  
23 void about bats. I mean, as G. Walker likes to  
24 point out, the fossil fuel industry isn't the one  
25 that did the research on global warming.

1                   And here we are, one of the ways we are  
2 going to fight global warming is being dragged  
3 down by this research requirement that really has  
4 no justification because we don't know that the  
5 presence of bats means they are going to be killed  
6 or in what circumstance. I mean, what would we do  
7 if we found out there were migrating bats across  
8 San Bernardino County where we have got a huge  
9 concentration of wind resources, the second-next  
10 to Tehachapi.

11                   Where are we going to go? There is no  
12 other resource area like that in the state. Are  
13 we going to not develop there because there are  
14 bats there? The implication is that we are not  
15 going to develop there if there's bats, even  
16 though we don't know that we're going to kill bats  
17 in sufficient numbers to be significant.

18                   I just don't know where it's going and I  
19 don't think it's appropriate to put that kind of  
20 burden on an industry that was trying to fight a  
21 much larger environmental problem that is going to  
22 affect every species on earth.

23                   PRESIDING MEMBER GEESMAN: Anyone else  
24 on Chapter 3?

25                   MS. HOGAN: I'd actually just like to

1 address Chapter 3 briefly and also kind of to  
2 Nancy's question. I think one of the things in  
3 terms of -- sorry Andy. One of the things in  
4 terms of the little bit of information that we do  
5 have about bats is that so far the evidence is --  
6 and again, it's not deep or wide but the evidence  
7 is that it's migratory behavior, that it's  
8 seasonal and that there are pulses.

9 So I guess one of the questions that  
10 comes up is, okay, well if you don't want to do  
11 any pre-construction monitoring to see whether  
12 there is something going on are you willing to  
13 agree to operational changes if it turns out these  
14 are predictable, seasonal events that can be  
15 avoided if you change operations.

16 And I don't know if that's going to be  
17 the case but it's sort of -- And CEQA does require  
18 that you look at whether a project is going to  
19 interfere substantially with the movement of  
20 resident or migratory fish and wildlife. And I  
21 totally understand the frustration that other  
22 impacts are not being addressed but we're not here  
23 to talk about housing construction. And frankly,  
24 you know, I do work on that issue and there are  
25 people trying to work on those issues but this

1 isn't the process to do that.

2           So I guess I just have to say that you  
3 do get project-specific information and there is a  
4 question about what we would do if we find out  
5 that there is a migratory pathway. And that leads  
6 to the fact that we need to look at some  
7 operational mitigation because that probably is  
8 going to be the only -- I can't imagine that a  
9 turbine is going to be removed unless there were  
10 a really dramatic circumstance.

11           And I'm going to talk about Ed since  
12 he's not here and he's in a management meeting so  
13 he won't be able to call in soon. I was talking  
14 to him the other day and he did want to talk about  
15 there keeps being this discussion about well we  
16 don't know if pre-construction acoustic monitoring  
17 is going to tell us anything about or be able to  
18 make a risk assessment about post-construction  
19 fatality.

20           And as he likes to say there is a  
21 difference between no correlation or the idea that  
22 there is not a correlation based on lack of data,  
23 which is what we have now. When people say there  
24 is no correlation it is not that we know that  
25 there is not a correlation, it's that we don't

1 have the data. And being able to say there is or  
2 isn't a correlation based on having collected data  
3 at a lot of sites across a state or a region and  
4 then say, after doing a proper analysis there is  
5 or isn't a correlation.

6 So I just wanted to put that out there  
7 because I keep hearing, well there is no  
8 correlation. Well, we don't know that there is  
9 not a correlation.

10 PRESIDING MEMBER GEESMAN: I've got a  
11 blue card from Ted Weller, USDA Forest Service.  
12 Is he on the phone?

13 MR. WELLER: I'm here. Can you hear me?

14 PRESIDING MEMBER GEESMAN: Yes, go right  
15 ahead.

16 MR. WELLER: Okay, great. My name came  
17 up a while ago and I called in then but it's taken  
18 a while for me to get here. I guess I agree with  
19 everyone who said that there is, that the link  
20 between pre-construction activity and potential  
21 fatalities is unknown. So the question is, how  
22 are we going to get at that?

23 And the way to do that is to measure the  
24 activity of bats during pre-construction and then  
25 to measure fatalities to look for correlations.



1       So I can only see two ways to go about that. One  
2       is to have some standardized protocol where we  
3       apply a limited amount of effort at each of these  
4       facilities and later link that with the data on  
5       mortality.

6                   And this would address the person from  
7       Wintec who is saying there aren't any bats there.  
8       We would be able to determine, well we found a  
9       large number of bat activity yet we found no  
10      mortalities. So that would lead us to believe  
11      that there wasn't a strong link. I just ruined it  
12      myself there.

13                   But there's two ways to go about it and  
14      one of them is to require some amount of activity  
15      monitoring at every site. The other is this idea  
16      of a research cooperative where we have several  
17      maybe more intensive efforts through this research  
18      fund and these would need to be conducted at  
19      several regions throughout the state because of  
20      the variability in habitat, et cetera. SO those  
21      are two options.

22                   And just thinking about it from a  
23      scientific perspective and how we're going to get  
24      the best information, it could be that we get it  
25      from having every project do a little bit.

1       Because we know that there's a lot of variability  
2       in the impact that we see. So a greater number of  
3       sites with maybe lesser effort might be the way to  
4       go.

5                   And this was demonstrated I think best  
6       in Alberta where there hadn't been any problems  
7       with bats for years and there were several wind  
8       farms online where they were searching for bats,  
9       nothing. And then one came online and it killed  
10      many, many bats. I don't know the numbers but I'd  
11      say it's in the thousands of bats in a single  
12      season was the estimated number. So it is not  
13      always predictable. So I think a greater number  
14      of sites is preferable to fewer.

15                   The other point I wanted to make is that  
16      Andy discussed the project that we're doing  
17      cooperatively, the Dillon Project down in the San  
18      Gorgonio area.

19                   That's not entirely just addressing this  
20      simple question of whether there is a link between  
21      preconstruction activity and mortality but it's  
22      more addressing some of the specifics that are in  
23      these guidelines about what level, what amount of  
24      monitoring do you need to conduct at each of these  
25      facilities to start to get a good idea about the

1 total amount of activity by various species groups  
2 and the variability that exists within an  
3 individual wind site. Because there is a reason  
4 to believe that it does vary from, that it might  
5 vary say between three points at an individual  
6 wind facility. So measuring just one of those  
7 wouldn't provide you a very accurate measure.

8 So I'll stop there, I guess.

9 PRESIDING MEMBER GEESMAN: Thank you.

10 Andy.

11 MR. LINEHAN: You've heard me talk a lot  
12 about that so I'll talk just a little bit more. I  
13 think what Ted just clarified about the work at  
14 Dillon, he said it better than I could articulate.  
15 But I still think what we're trying to do is test  
16 the methodology and see if it's something that is  
17 useful to apply elsewhere.

18 So then the question is, what do you do  
19 in the meantime? I think in the meantime we  
20 either do a reduced form of what's been proposed.  
21 That is not one bat per square kilometer -- excuse  
22 me, per square mile, because that could be quite  
23 intense, or we could look at other indicators of  
24 whether there is likely to be significant bat  
25 activity.

1                   We know from the projects we have in the  
2 Northwest -- excuse me, in the Northeast, as well  
3 as those we have in the Northwest, that mortality  
4 of these migratory bats is correlated,  
5 particularly with the presence of wooded areas and  
6 water bodies. They tend to be in their migration  
7 using those wooded areas and water bodies for  
8 shelter and for roosting. And we have seen  
9 consistently higher mortality at those sites and  
10 lower at the sites that don't have a lot of wooded  
11 cover.

12                   Now that may be a correlation that  
13 doesn't prove out long term. We really don't know  
14 a lot about bats. But we could be requiring that  
15 projects identify the presence of those kinds of  
16 risk factors. In addition there may be places  
17 where there are known bat hibernacula or bat  
18 activity. Those are obviously the higher  
19 indicators of higher levels of risk.

20                   But they should also be required to  
21 demonstrate or to conduct post-construction  
22 mortality monitoring so that we can start to  
23 accumulate this data that shows where bat fatality  
24 is an issue and where it isn't.

25                   The question has come up of if we went

1 to our recommendation to do a series of research  
2 projects in a variety of settings in California  
3 and what the funding mechanism might be. Well  
4 there is an existing funding mechanism, which is  
5 the Bat and Wind Energy Cooperative, which is  
6 administered and staffed by Bat Conservation  
7 International and it's used in a number of states  
8 as a mechanism to do exactly this kind of  
9 research. I am not aware of legal or other  
10 reasons why this couldn't be a tool in California  
11 as well. Thanks.

12 PRESIDING MEMBER GEESMAN: I've got a  
13 blue card from Kenny Stein and Jim Lindsay from  
14 FPL. I believe both of them are on the phone.  
15 One of you gentlemen want to address us?

16 MR. LINDSAY: FPL Energy Project  
17 Management and technical advisor to BWEC.  
18 Actually most of my comments have been very  
19 succinctly stated by a number of previous  
20 speakers. But in summary I feel that Energy  
21 Project Management endorses limited pre-  
22 construction acoustical monitoring with post-  
23 construction mortality monitoring to determine  
24 efficacy of the pre-construction work.

25 But the magnitude of monitoring proposed

1 in these guidelines adds an inordinate amount of  
2 cost and time the development of a project. And  
3 for answering more far-reaching research questions  
4 like determining broad front migration paths of  
5 multi-species such as red, hoary bats, that we  
6 would endorse more regional approaches such as  
7 what Mr. Linehan just talked about that. And he  
8 is very correct in that the mechanism is already  
9 in place through the Bat and Wind Energy  
10 Cooperative. Thank you.

11 MR. STEIN: This is Kenny Stein with FPL  
12 Project Management as well. I guess I will echo  
13 what Jim Lindsay just said. Also I just wanted to  
14 point out some statements from the draft  
15 guidelines. It states on line 2003 that:

16 "Acoustic monitoring for  
17 bats is currently the most  
18 common method used for  
19 assessing bat activity at  
20 proposed wind development  
21 sites but has yet to be shown  
22 to be strongly associated with  
23 estimates of collision risk or  
24 impact. The correlation of  
25 pre-permitting acoustic data

1 with collision risk is an area  
2 of active research and topic  
3 worthy of further  
4 investigation by the  
5 collaborative, public-private  
6 research partnership being  
7 considered by the Energy  
8 Commission, CDFG, wind energy  
9 developers and non-  
10 governmental organizations  
11 interested in wind-wildlife."

12 It also states at line 1957 that:

13 "-- a fundamental gap  
14 exists regarding links between  
15 pre-permitting assessments and  
16 operations facilities."

17 FPL Energy is in favor of trying to  
18 better understand interactions between wind  
19 turbines and bats. But it's clear that just  
20 because we don't have a good understanding we  
21 shouldn't be requiring every single project to  
22 basically engage in research.

23 It would be a terrible precedent for  
24 these guidelines to set. This is not required  
25 anywhere else. Where there's an opportunity to

1 fund appropriate research we're interested in  
2 participating in that. But to blanketly require  
3 the application of a protocol that is clearly  
4 still in the research phase is something we  
5 wholeheartedly can't support.

6 PRESIDING MEMBER GEESMAN: Thank you,  
7 anything else on Chapter 3?

8 MR. FLINT: I'd just like to clarify.  
9 It seems to me there's some differences of opinion  
10 on what is research versus what would be required  
11 for perhaps assessing a site for CEQA.

12 And I just want to point out that we see  
13 both things here. First of all there is a need to  
14 have some credible information about what's going  
15 on at the site to make a CEQA analysis.

16 Having that sort of assessment with the  
17 best available technology is one thing. And  
18 clearly something that goes on, that's imposed on  
19 all developers at all sites for all kinds of  
20 projects to figure out how to assess their  
21 impacts.

22 As to the efficacy of that particular  
23 methodology, that still needs to be researched.  
24 As to the correlation between pre and post that  
25 still needs to be researched.



1           There are both things going on here,  
2           which is why we had made some changes to the  
3           guidelines in response to comments we had to  
4           reduce the level of post-project monitoring and  
5           institute this payment into a research fund.

6           So I think we've, I just wanted to make  
7           sure it got across in that way. That's what I  
8           feel is in the document.

9           MS. WOLFE: Marcia Wolfe, Oak Creek  
10          Energy. I think everybody else has kind of  
11          summarized most of my bat comments already. But I  
12          do have a little bit of additional information  
13          here.

14          We're working on some bat studies in  
15          Tehachapi. For over a half year now we've been  
16          doing three-times-a-week, mortality, carcass  
17          surveys and seasonal, daily monitoring and we  
18          haven't found any dead bats.

19          Yet we are concerned about the extensive  
20          requirements. And we're hoping to gear up for  
21          this September to do a 13.5 square-mile, study  
22          area. But I want you to know it will be very  
23          expensive. The cost for the data collection would  
24          be about a half million dollars a year. The  
25          equipment alone for a single site we've got costs

1 us from two manufacturers \$50,000 each site, so  
2 there's \$100,000.

3 And that doesn't count good biologists  
4 who are experienced enough to be able to analyze  
5 the data and collate the data, analyze it and  
6 figure out what it means. Although some  
7 biological field techs come pretty cheap, people  
8 with experience and that know what they're really  
9 doing are not cheap. So that's it relative to  
10 bats. Not so inexpensive.

11 I have some other stuff on Chapter 3  
12 that I held off on because it had to do with  
13 birds. Are we ready to change subjects or shall I  
14 step down?

15 PRESIDING MEMBER GEESMAN: No, anything  
16 in Chapter 3 is fair game.

17 MS. WOLFE: Okay. All right, great. I  
18 think one of the points, main points that we  
19 wanted to make about the guidelines is we felt  
20 they were economically burdensome while not  
21 providing the information that we think we're  
22 going to need to be able to properly site our wind  
23 farms. Or to provide protection to the affected  
24 species proportionate to the relative impacts of  
25 wind energy compared to other impacts to birds.

1           The guidelines would require two, Oak  
2           Creek to hire two, full-time ornithologists to do  
3           the weekly sampling. We felt that is burdensome  
4           when seasonal sampling was statistically adequate.  
5           A number of points would provide far better data.

6           The guidelines require on the bird use  
7           counts one to 1.5 points per square mile and to  
8           stratify those points among the different habitat  
9           types.

10           I'm not a statistician but I've had  
11           enough statistics classes and I've designed enough  
12           scientific studies to know that if you have 64  
13           hundred square acre site and you only have 10 to  
14           15 points stratified among several different  
15           habitat types you will not have nearly the  
16           statistically, adequate data that you need from  
17           which to draw any type of conclusion.

18           Statistically whenever you have less  
19           than 30 points you have a small, what's considered  
20           to be a small number. And any conclusions based  
21           on small numbers are suspect.

22           In general the nationwide sampling  
23           standard for point counts are five to ten minutes  
24           per the US Forest Service guidelines.

25           Increasing the sampling time to 30

1 minutes does not make up for an inadequate number  
2 of points. Furthermore birds are highly mobile,  
3 consequently being able to get statistically,  
4 adequate data can be complicated, maybe impossible  
5 in some cases.

6 But I'd sure hate to spend \$100 million  
7 of my money to design and construct a wind farm  
8 that might end up being in the wrong place based  
9 on conclusions from statistically, inadequate  
10 data.

11 These are the types of issues that can  
12 result in huge, biological and ecological  
13 mistakes. And it's something that a friend of  
14 mine calls BGOs, blinding glimpses of the obvious.  
15 And we would certainly hope to eliminate these  
16 from the guidelines.

17 PRESIDING MEMBER GEESMAN: Thank you.

18 MS. HOGAN: I actually have kind of a  
19 question but I think it will clarify because  
20 there's --

21 PRESIDING MEMBER GEESMAN: Okay.

22 MS. HOGAN: -- there's been some cost  
23 talk. And I guess I have a question about what  
24 kind of equipment is it that's costing, did you  
25 say, \$50,000? Is this for acoustic?

1 MS. WOLFE: ANABAT stations, yes.

2 MS. HOGAN: Is this for acoustic  
3 stations?

4 MS. WOLFE: Yeah, and with solar --

5 MS. HOGAN: No, no, no. I just have to  
6 say, I mean we just bought an AnABAT setup with  
7 solar panels, with battery backups, with extra  
8 flashcards with two mics, with the ZCAIM and  
9 having them altered to deal with a flaw that came  
10 from the factory. And the total cost, I mean an  
11 over-estimate for the total cost for that was  
12 \$3,700. And so you're --

13 MS. WOLFE: Each one, and then you got  
14 to have somebody get it up there and climb up on  
15 another --

16 MS. HOGAN: Okay, so I'm just --

17 ASSOCIATE MEMBER PFANNENSTIEL: Excuse  
18 me, if your comments are going to get into the  
19 record you have to speak into the mic.

20 MS. HOGAN: Okay, sorry, I'm just, so I  
21 guess because I, so you're saying that for your  
22 whole study site that's how much? Okay. So not  
23 per station. So, okay, okay.

24 PRESIDING MEMBER GEESMAN: Carl.

25 MR. ZICHELLA: Thank you. Just a couple

1 of quick things. We're generally okay with  
2 Chapter 3. We have been sympathetic to the  
3 question of funding throughout this conversation  
4 over the last, greater than a year now, a year and  
5 a half.

6 But we also think we need to use the  
7 best tools that we have available to us to get the  
8 information that we need. It may not be perfect.  
9 As others have said we can always modify these  
10 guidelines later to reflect new understandings,  
11 and should.

12 This would mirror the history of just  
13 basically every other environmental regulation  
14 we've ever had. If we don't have perfect  
15 understanding when we begin the alternative is to  
16 do nothing and doing nothing I don't think is  
17 acceptable under these circumstances.

18 So while I do agree with a lot of what I  
19 heard from Andy about having to have some joint  
20 funding and setting up more robust protocols  
21 that's not an excuse not to do a basic,  
22 fundamental bit of information gathering required  
23 anyway under CEQA using the best information  
24 technologies we have.

25 PRESIDING MEMBER GEESMAN: Thank you.

1 Anything further on Chapter 3?

2 MS. CONWAY: Michelle Conway, Oak Creek  
3 Energy Systems. Chapter 3, page 39, lines 1341  
4 through 1348. The guidelines still contain a  
5 broad generalization with respect to larger sized  
6 projects.

7 Oak Creek has disagreed with this in our  
8 previous set of written comments. We see that  
9 it's still in the guidelines. We've pointed out  
10 that the number of turbines that make up a wind  
11 project and the overall size of a wind project  
12 may, of course, influence the need for more or  
13 less study but they are not the sole indicators.

14 Because you could have a small project  
15 with a small number of turbines in an area with a  
16 high number of sensitive bird or bat species.  
17 Therefore we requested in previous comments that  
18 the guidelines not state that as the number of  
19 turbines increase the magnitude of the potential  
20 harm to bird and bat populations also increases in  
21 every case.

22 We feel that this is misleading to the  
23 public and to agencies to lead them to immediately  
24 fear larger projects versus using the appropriate  
25 tools contained in the guidelines to put the

1 project into Category 1, 2, or 3.

2 We need larger projects in lower bird or  
3 bat impact areas. So we would request that the  
4 staff please consider our comments again.

5 And I would just like to reiterate that  
6 we agree with FPL's comment that September is too  
7 long to wait for an explanation as to why some of  
8 these comments haven't been included. Thank you.

9 PRESIDING MEMBER GEESMAN: Thank you.

10 MR. VERCRUYSEN: One more brief  
11 comment. Paul Vercruyssen again from CEERT. I  
12 just want to clarify and I apologize if you're  
13 already aware of this. But the question was  
14 brought up, what the wind industry would propose  
15 as sort of alternatives aside from the research  
16 projects.

17 In the interim between the last formal  
18 comment period and the release of this draft CEERT  
19 organized a conference call with your staff, Ted  
20 Weller, Ed Arnett, Carl Zichella was also on the  
21 phone. To basically discuss some of the  
22 alternatives that have been thrown out there  
23 today. Looking at hibernacula, possibly doing  
24 seasonal studies rather than a full year. Which,  
25 I mean, Bronwyn was talking earlier about the fact



1 that what appears to be most at risk is migratory  
2 pathways which would be seasonal rather than a  
3 full year.

4 And so we, again, I just want to make it  
5 clear that we have really tried to proactively  
6 propose alternative solutions. And that's where  
7 the frustration that I mentioned earlier is coming  
8 from. And so I think you've heard a couple of  
9 those ideas throughout this discussion. Thank  
10 you.

11 PRESIDING MEMBER GEESMAN: Other  
12 comments on Chapter 3?

13 Let's move to Chapter 4.

14 MS. MUDGE: Annie Mudge, CalWEA. This  
15 is kind of a hybrid comment. But it strikes me  
16 that when we're talking about the Categories 1, 2,  
17 3, those are -- Just as an example, Category 1  
18 could be a high-impact or a low-impact project.  
19 The categories are really referring to the  
20 existence of data. And so for instance, Category  
21 1 project sites with available wind data, Category  
22 2, project sites with little existing information,  
23 Category 3, projects with higher uncertain  
24 potential. They are being categorized not into  
25 impact categories but data categories.

1           And so what I think is missing from the  
2 guidelines is an encouragement by this body, say  
3 no matter what -- after you've gotten the data  
4 that you need to make that assessment, we  
5 recommend local agency that you provide  
6 opportunities for streamlining for low-impact  
7 projects.

8           And I think the Audubon Society would  
9 agree with that. That we should be focussing our  
10 efforts on the high-impact projects. So let's not  
11 lose sight of the fact that these categories are  
12 about effort and research, they are not about  
13 impact. And what's missing here is encouragement  
14 by this body to get wind production going in  
15 California for the lower-impact projects. In  
16 particular, re-powers but also in-fill projects.

17           So I think people are talking about  
18 these Categories 1, 2, 3 as high or low-impact and  
19 that's not what they are. So I wanted to just  
20 bring that out, thanks.

21           PRESIDING MEMBER GEESMAN: Julia.

22           MS. LEVIN: I have two comments. And  
23 I'm sorry I'm not sure if they're Chapter 3 or  
24 Chapter 4, I didn't track down and see where they  
25 were.

1           And just on Annie's point, I'm not sure  
2 whether I agree with that or not. I think that  
3 there's a blending of how much we know versus what  
4 level of impact is likely.

5           I think Category 2 is very much about  
6 where there is likely to be a more significant  
7 impact you need to do more. And Category 1 is if  
8 you know enough to know you're not going to have a  
9 very significant impact on protected species. I'm  
10 not sure there's such a clear distinction there.

11           My other two comments are on the  
12 Scientific Advisory Committee. We agreed with  
13 industry that at least in the first draft of the  
14 guidelines, while we agreed with the intention of  
15 staff and consultants and drafters that it  
16 appeared to be very burdensome and more regulatory  
17 in nature than I think was the intention.

18           And so I think the way that it is  
19 described now is very helpful. If anything we  
20 would be more comfortable with a further  
21 elaboration but that's probably not possible at  
22 this point. We still do very much think it's an  
23 important idea to pursue and encourage you to  
24 pursue it in whatever ways you can moving forward.

25           And I do want to go back to Kim's plea

1 about the funding. Audubon and Sierra Club to our  
2 very -- it was a very controversial but we were  
3 out in front trying to stop federally-mandated  
4 guidelines because we felt that the good-faith  
5 efforts of industry in many states including here  
6 and the voluntary-guidelines process is likely to  
7 be more constructive, to happen more quickly and  
8 that we want to stand behind this process that  
9 we've begun, particularly in California.

10 Those were not easy decisions for our  
11 organization. They were very controversial. And  
12 we were attacked by other wildlife conservation  
13 groups for putting our weight which, actually to  
14 be honest was more important than the wind  
15 industry in this fight in saying that we would  
16 rather continue with the voluntary-guidelines  
17 process.

18 I haven't seen similar efforts from the  
19 wind industry in California when it comes to the  
20 funding. I've heard complaints about Fish and  
21 Game. And believe me we share your concerns. We  
22 wish Fish and Game had a lot more resources.

23 We would like to see parallel, good-  
24 faith efforts from the wind industry.

25 Commissioner Geesman I know you've been helpful in

1       trying to make arrangements with the Department of  
2       Fish and Game. But the original reason for the  
3       Scientific Advisory Committee, to be very frank,  
4       was because Fish and Game wasn't able to fulfill  
5       those functions. Which were it adequately staffed  
6       and funded I think much of what the Scientific  
7       Advisory Committee would be doing could be done by  
8       Fish and Game. But they just simply don't have  
9       the resources and so we have to bring in these  
10      outside experts.

11                So I would say in the same way that  
12      Sierra Club and Audubon and Defenders and other  
13      wildlife groups have gone to Congress, have gone  
14      to the State Legislature, fought very hard to  
15      renew the production tax credit, to pass the  
16      renewable electricity standard federally.

17                I would ask the wind industry in  
18      California as a demonstration of your good faith  
19      to make, even if not the actual guidelines  
20      themselves, but to reduce impacts and take  
21      reasonable precautions, help us get that funding  
22      for Fish and Game. It is critical to make all of  
23      this work smoothly. And that is very much related  
24      to the Scientific Advisory Committee.

25                My last very specific comment is in a

1 number of places risk zone and direct impacts are  
2 limited to the rotor swept area or the turbine  
3 area. And there are other direct impacts and  
4 there are other risk zones, for lack of a  
5 different term, including new transmission lines  
6 that need to be built as a result of new wind  
7 farms and other direct impacts as well.

8 And so I think it's important not to  
9 ignore the other direct impacts that occur from  
10 wind development and not to limit the definitions  
11 or to narrow them more than is appropriate. Thank  
12 you.

13 ASSOCIATE MEMBER PFANNENSTIEL: Julia, I  
14 have a question. When you spoke to Congress about  
15 preferring voluntary guidelines to the mandatory  
16 guidelines that they were considering was this  
17 based on California or other states having  
18 successfully implemented voluntary guidelines?

19 MS. LEVIN: Honestly, we're not sure any  
20 of the states have yet successfully implemented  
21 guidelines. We have concerns of different types  
22 in every state that's taken on the process.

23 The reason that we did that was twofold.  
24 We feel like we have stated publicly that we  
25 support the voluntary guidelines in a number of

1 states. And now Audubon along with many  
2 conservation groups and industry members are on a  
3 federal advisory committee process to redo the  
4 federal draft guidelines.

5 And so we think those processes have  
6 begun. And given the lack of good information  
7 data that we don't, this isn't like in the  
8 technology field with the coal planners where we  
9 know if you do A, it will have B result.

10 We think given all of the uncertainties  
11 and need for additional research that voluntary  
12 guidelines are more appropriate at this point,  
13 assuming that there is good-faith effort to strike  
14 a reasonable balance.

15 We know we want the wind industry, we  
16 wind power to expand but we want to protect  
17 wildlife and other sensitive resources. But for  
18 the time being we think it's more appropriate to  
19 have voluntary guidelines until we have much  
20 clearer answers.

21 And then as I said many times we would  
22 love to stand up and create exemptions, create a  
23 wind-appropriate, habitat-conservation-type-plan,  
24 process if it will take permits. We just don't  
25 know enough yet for mandatory guidelines or these

1 categorical exemptions.

2 ASSOCIATE MEMBER PFANNENSTIEL: Thank  
3 you.

4 PRESIDING MEMBER GEESMAN: By my  
5 estimate we've got about an hour and a half left.  
6 And unless you all object violently I would  
7 suggest we take an hour break and come back at  
8 1:30. We'll see you at 1:30 then.

9 (Whereupon, the lunch recess  
10 was taken.)

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## 1 AFTERNOON SESSION

2 PRESIDING MEMBER GEESMAN: We had heard  
3 from Annie and Julia when we broke for lunch on  
4 Chapter 4. So are there other comments on Chapter  
5 4?

6 MR. WEINER: Peter Weiner for CEERT.  
7 One of the things that we've observed over time is  
8 that when it comes to mitigation, to put it  
9 mildly, the jury is out.

10 We have estimated, we have various  
11 researchers who have estimated what to do in order  
12 to mitigate impacts. But they shift ground over  
13 time so that what they said yesterday is not what  
14 they say today and we have very little in the way  
15 of proven mitigation measures.

16 The discussion beginning on page 62 on  
17 impact avoidance and minimization is rife with  
18 fudge language or qualifiers I guess we should  
19 say. And that's the problem. Is that what we  
20 need in here, and we'll suggest language, is some  
21 frank discussion of the fact that we don't have  
22 proven mitigation measures.

23 This is one of the reasons why at one  
24 point we proposed an experimental, mitigation  
25 fund, not research. But a fund that would conduct

1 experimental mitigation of some of the types that  
2 are talked about in this discussion.

3 Because when you look at the recent  
4 reduced impacts with appropriate turbine design  
5 it, if we take all the language out of about half  
6 a page worth it says, we don't know.

7 When you take a look at turbine layout  
8 it talks about estimates of avoiding avian  
9 mortality by various researchers who never were  
10 able to show any correlation yet. We're trying to  
11 do that for example at Altamont at this point.  
12 But it's not known.

13 On page 65 there's a particular problem  
14 where it talks about reducing artificial habitat  
15 for prey at the turbine base area. One of the  
16 issues that has arisen at the Altamont Pass wind  
17 resource area is that researchers said that the  
18 creation of artificial rock piles that were  
19 developed when rocks were taken out so you could  
20 level off turbine pads was a problem

21 But when our companies were prepared to  
22 move them the Fish and Wildlife Service said, well  
23 they can provide needed habitat for Kit fox and  
24 other terrestrial species so don't do it yet.

25 And there's an ongoing question as to

1       whether to remove such artificial habitat or move  
2       it instead of remove it. So these kinds of issues  
3       are complex. They are experimental. Some of them  
4       may be more proven such as avoiding power line  
5       impacts which is stated here.

6                So, but calling out which are proven and  
7       which are experimental and are possibilities I  
8       think would be useful in this document. Because  
9       it's almost always important to say what we know  
10      and not what we don't know.

11               MS. WOLFE: Marcia Wolfe, Oak Creek  
12      Energy. A little nit, Appendix H seems to be  
13      missing from my copy. I don't know if anybody  
14      else has Appendix H or not. But the reason I  
15      noticed is because it's supposed to be backup data  
16      for the use of reporting mortality per megawatt of  
17      installed capacity per year.

18               And although I understand the rationale  
19      behind that relative to needing or wanting to be  
20      able to see some metric that makes things  
21      consistent and to eliminate the difficulty and  
22      complexity of attempting to describe the  
23      differences in mortality between turbines of all  
24      different sizes, it may well be in fact the  
25      differences amongst the size turbines that make a

1 difference relative to mortality. And if you  
2 report mortality per megawatt you will mask those  
3 differences. You won't be able to see them.

4 PRESIDING MEMBER GEESMAN: Other  
5 comments on Chapter 4? Anybody on the phone?

6 Okay, let's move to Chapter 5 then.  
7 Comments on Chapter 5?

8 Comments on any of the appendices?

9 MS. WOLFE: Oh wait a minute I do have  
10 something on five. I just --

11 PRESIDING MEMBER GEESMAN: Okay.

12 MS. WOLFE: -- because my comments were  
13 not prepared in this order, I'm sorry. I was  
14 trying to sort them out. Marcia Wolfe again.

15 Post-construction, bird-use monitoring  
16 is required by the guidelines. And I understand  
17 superficially why people want to see that but it  
18 isn't going to help much and I'll try to explain  
19 why.

20 We already know for example from Dick's  
21 earlier studies in the Tehachapi that mortality of  
22 certain birds species is disproportionate to their  
23 presence in the base population. For example, you  
24 might have, and now these are made up numbers, but  
25 you might have two percent of the bird populations

1 being red tail hawks but 80 percent of the red  
2 tail, of the mortality may be red tail hawks.

3 So if you do post-construction  
4 monitoring what does it really mean if you have  
5 one or two years of data? If the birds after you  
6 put in the turbines, if there's more birds does  
7 that mean that maybe that the installation of the  
8 wind farm enhanced bird habitat? Or if there are  
9 fewer birds does that mean they were scared away?  
10 Well my contention is it doesn't really mean  
11 anything. Because you can't really tell anything  
12 from one or two years of data.

13 Bird populations go up and down  
14 naturally for dozens of different causes.  
15 Weather, food availability, disease and, excuse  
16 me, apparently global climate trends now as well.  
17 We need really long-term data, twenty plus years  
18 possibly to be able to even begin analyze trends  
19 and fluctuations in bird populations. And so  
20 monitoring birds post-construction for one or two  
21 years, well, that will give you some data but how  
22 are we going to interpret it?

23 So now am I suggesting that we need to  
24 monitor for 20 years before we can do a wind farm?  
25 No, that would be insane. But we need to be able

1 to use local, regional and statewide data to help  
2 get a handle on baseline conditions and what's  
3 happening.

4 This could be data from other wind  
5 farms, other types of studies and annual Audubon,  
6 regional, trend data. But the guidelines prohibit  
7 use of data that's older than five years.

8 And to me that makes no scientific sense  
9 when what we really need are longer data sets. So  
10 I wanted to make that point.

11 And I think that just because Dick's  
12 study in Tehachapi is older than five years right  
13 now according to the guidelines I can't use that  
14 information. Well that makes no sense. I'm  
15 building on that information. That's what we're  
16 doing. That's what we're doing now.

17 And I think that it seems like you have  
18 a lot of negative comments. They don't mean that  
19 Oak Creek Energy wants to do nothing. On the  
20 contrary, we are already implementing many  
21 environmental protective measures.

22 And we're interested in doing what makes  
23 sense for their project sites and the environment.  
24 For example, in the interest of reducing  
25 uncertainties Oak Creek has been conducting

1 carcass searches three times a week for the past  
2 year instead of the prescribed once every two  
3 weeks proposed in the guidelines.

4 And we're also doing a series of daily,  
5 seasonal surveys for bat carcasses because  
6 apparently like small birds they're getting picked  
7 up much more quickly than the larger birds.

8 We're trying to do things that make  
9 scientific sense. So cookbook guidelines do not  
10 provide that approach. And they're rigidity will  
11 prevent us from adapting our study methodologies  
12 to those that may be more statistically and  
13 scientifically sound for Oak Creek projects sites.

14 As well they do not allow for building  
15 on existing avian data which only increased costs  
16 but can preclude appropriate evaluation of  
17 sampling results. Thank you.

18 PRESIDING MEMBER GEESMAN: Thank you  
19 Marcia. Other comments on Chapter 5 or any of the  
20 appendices?

21 MS. LEVIN: My comment is on Chapter 5.  
22 Julia Levin, National Audubon Society. We think  
23 that the post-construction monitoring is a  
24 critical part of the guidelines at least until we  
25 have much better data and a much higher degree of

1       certainty about the impacts.

2               I think we all in this room recognize  
3       that there are a lot of open questions.  And that  
4       birds and bats do move from year to year.  I was  
5       happy to hear that acknowledged.  The patterns are  
6       not all the same from year to year.

7               In a perfect world if money were no  
8       object the post-construction monitoring would  
9       occur for much longer than two years but two years  
10      is certainly better than no years.  Particularly  
11      where we are having to estimate or even  
12      guesstimate.  I think in a number of cases that  
13      will be what occurs.

14              This is like a lot of areas in the  
15      guidelines, something that I hope in two or five  
16      or ten years we can all come back and say we only  
17      need one year.  And in the Category 1 cases maybe  
18      we won't need at that point.  But we're not there  
19      yet.

20              Maybe it would make industry more  
21      comfortable though if the guidelines explicitly  
22      acknowledged that over time this requirement, it  
23      may appropriate to or, not requirement, sorry I  
24      misspoke, that this suggestion could be lowered as  
25      we gain more knowledge about the habits of birds



1 and bats and particularly how they react to wind  
2 development in different parts of the state.

3 And with all the other changes going on  
4 maybe the suggested number of years for post-  
5 construction monitoring could go down in the  
6 future. But I don't think that at this point it  
7 would be appropriate at all. In fact, I think  
8 given the previous comments which we would agree  
9 with and all the changes from year to year if  
10 anything this is the lower end of the range that  
11 we think would be appropriate until we know a  
12 whole lot more.

13 PRESIDING MEMBER GEESMAN: Other  
14 comments on Chapter 5?

15 MR. VERCRUYSSSEN: Paul Vercruyssen again  
16 from CEERT. On the post-construction or the  
17 operations monitoring. There's two sort of very  
18 important different pieces to what's being  
19 recommended in the guidelines which is the  
20 fatality monitoring. Going around looking for  
21 dead birds and then the use monitoring, which is  
22 essentially, excuse me, doing the same  
23 observations, the same use counts that you were  
24 doing pre-construction.

25 And in my conversations with the staff I

1 understand that the view from the staff in  
2 requiring the use monitoring is to be able to put  
3 a proper context on what the fatalities numbers  
4 are which is to say that if you had an unusually  
5 high amount of use by a bird species for one year  
6 then unexpectedly high levels of mortality could  
7 be explained by that. And it wouldn't necessarily  
8 mean that there was having, that the site was  
9 having an unexpected level of impact.

10 That's the argument that's been put  
11 forward as I understand it. And this is in off-  
12 line conversations I've had with your staff since  
13 the last round came out.

14 In our last round of guidelines or last  
15 round of comments on the guidelines we had asked  
16 that these requirements for use studies which are  
17 the most expensive part of a monitoring regime,  
18 generally speaking, could be useful post-  
19 construction but in very limited circumstances.  
20 Which we hired a biological consultant who helped  
21 to draft our comments and you can refer back to  
22 those. But there are some displacement impacts  
23 that could be, where it could be useful, some  
24 other instances like that.

25 But given the cost to be incurred we

1 didn't feel that it was going to be helpful to  
2 simply go out and see how the birds were using the  
3 landscape. That said, I think it's, I think it  
4 could be useful if you did in fact have a higher  
5 level of impacts than anticipated if you in  
6 subsequent years then maybe did acquire some use  
7 monitoring.

8 But I think as a blanket statement and I  
9 certainly, I don't disagree with Julia at all that  
10 post-construction monitoring is one of the most  
11 crucial ways to determine, to fill a lot of these  
12 gaps that we've been talking about all day. But  
13 most of that is fatality monitoring that we're  
14 going to essentially be proving or disproving the  
15 efficacy of our pre-construction estimates.

16 And to use the use monitoring, post-  
17 construction works in certain instances and it  
18 could be sort of a later trigger but we don't  
19 think that it works as a blanket requirement. And  
20 we'll be adding some additional, more technical  
21 comments in our written comments.

22 Obviously I'm not a biologist but I have  
23 had a good deal of contact with them on this  
24 issue. And so, thank you.

25 PRESIDING MEMBER GEESMAN: Other

1 comments from the audience on Chapter 5?

2 Mr. Stein are you on the line?

3 MR. STEIN: I am.

4 PRESIDING MEMBER GEESMAN: Do you have a  
5 comment on Chapter 5?

6 MR. STEIN: I do and I actually have a  
7 few comments on three and four. I tried to chime  
8 in earlier but something must have been not  
9 working.

10 PRESIDING MEMBER GEESMAN: Okay.

11 MR. STEIN: On five and I apologize that  
12 I missed this because I was a couple of minutes  
13 late. I heard earlier that the two years of post-  
14 construction monitoring for, acoustic monitoring  
15 for bats was no longer required or even  
16 recommended. But it does seem that there's still  
17 language in the guidelines that says that those  
18 kind of studies should accompany all sites.

19 And there's another couple of places  
20 where it says, well, two years of post-  
21 construction bat monitoring would be necessary if  
22 the agency and the stakeholders think that it  
23 would be helpful for contextual purposes.

24 So I'd like some clarification as to  
25 whether or not I'm misunderstanding that because

1 with the language as it is we'd have to assume  
2 certainly from a cost point of view that we have  
3 to do that post-construction, bat monitoring as  
4 well.

5 I'd like to say we did not work with, I  
6 think it was Stu Webster from Clipper, but in  
7 doing some math came up with approximately the  
8 same number. About a million dollars a year to do  
9 both the avian and bat monitoring that's required  
10 with one year pre and two years post. You're  
11 looking at somewhere around three million dollars.

12 I'm wondering if, like it's done with  
13 the federal government when environmental  
14 regulations are issued and OMB requires that the  
15 agency do some sort of an economic impact analysis  
16 because we're talking about extremely costly  
17 studies here.

18 If the CEC and Fish and Game staff have  
19 done, gone through the effort of trying come up  
20 with a cost for implementing these protocols, give  
21 us an opportunity to discuss those costs so that  
22 the Commission has a better understanding of the  
23 cost/benefit analysis of some of the protocols  
24 that are being proposed.

25 On sticking with Chapter 5, when long-

1 term monitoring might be required we've made  
2 comments a couple of times that we don't think  
3 certainly after two years that there should be an  
4 open-ended requirement for long-term monitoring.  
5 The criteria when for when that would kick in is  
6 pretty vague. It just seems -- says that if  
7 fatality levels are high, but that's not really  
8 defined.

9 We suggested that if that was something  
10 that agencies or stakeholders or others would be  
11 interested in that perhaps the guidelines should  
12 recommend that the proponents open their sites up  
13 to allow agencies to conduct longer-term studies.

14 But it not be a requirement of the  
15 project proponent to do studies for potentially  
16 the life of the project. That comment was not  
17 taken and I haven't had an opportunity to get any  
18 reaction on that.

19 Protocols for post-construction, avian  
20 use monitoring as Paul just mentioned. We're  
21 concerned that the blanket requirement to do two  
22 full years of avian point counts in addition to  
23 the mortality monitoring ,so we're talking 52  
24 weeks a year for two years is, you know, at a  
25 significant cost. The benefits you get from that

1 don't justify the costs.

2           We'd like to explore, we see the value,  
3 the potential value depending on the site, of  
4 having some use data in conjunction with mortality  
5 monitoring. But perhaps there's a lower level of  
6 study that can be done maybe for focussed periods  
7 during certain seasons or less frequent site  
8 visits that can lower the cost of doing two full  
9 years of post-construction, avian mortality but  
10 still get data that's useful for providing the  
11 context for mortality data that you're looking  
12 for.

13           Going back to Chapter 4, where we had  
14 made some comments regarding adaptive management  
15 where if you're going to require additional  
16 compensation in cases where mortality turns out to  
17 be higher than expected that the project proponent  
18 will be credited if the mortality turns out to be  
19 much lower than expected.

20           And that comment was not taken so I'd  
21 like before the hearings why that was the case.  
22 If we should be paying more when there's higher  
23 than expected than why wouldn't we want to pay  
24 less if it's less than expected.

25           We also in Chapter 4 suggested that in

1 talking about mitigation lands that we should be  
2 required when mitigation lands are appropriate to  
3 find lands that have a biological value equal to  
4 or higher than the area impacted. That comment  
5 was not taken when and the guidelines just require  
6 that the mitigation land have a high biological  
7 value. However if the area that we're impacting  
8 has a low biological area I am not understanding  
9 why you necessarily have to find equal mitigation  
10 that has a high biological value.

11 And a couple of minor points. Back in  
12 Chapter 3, my apologies for going backwards. In  
13 the use count, pre-construction use count which I  
14 guess carries over to post-construction since you  
15 have to follow the same protocol, it still  
16 suggests that we include reference sites in there.

17 And I think we had all come to the  
18 conclusion that reference sites may be appropriate  
19 for studies where there's displacement issues but  
20 not necessarily for just bird use, avian use  
21 through the area. And that seems to remain in the  
22 guidelines. And coming up with reference sites is  
23 often really difficult because either we don't  
24 have control over those sites for the long term or  
25 if they're really good reference sites, meaning



1 similar habitat, similar vegetation we may very  
2 well want to put wind turbines there at some  
3 point.

4 Also I have the same comment that was  
5 made earlier that while in one statement it  
6 suggests that most projects would only be required  
7 to do one year of pre-construction studies, which  
8 we agree with, but then goes on to say that post  
9 projects that involve developing multiple groups  
10 of turbines over large geographic areas may need  
11 multi-year studies.

12 Well, that basically negates the first  
13 statement because most projects, or certainly a  
14 lot of them will be large projects with multiple  
15 turbine configurations so you take that almost  
16 immediately out of that one year category with  
17 that statement.

18 Another requirement in pre-construction  
19 was to do net searches out to three miles. When  
20 you have certain raptors, for example, golden  
21 eagles that might be in the area, we've commented  
22 that we thought going out to one mile was probably  
23 sufficient but didn't understand the requirement  
24 to go out to three miles.

25 Because if you're requiring pre-

1 construction point counts 52 weeks a year to  
2 understand what birds are at risk for flying  
3 through the rotor swept area then any birds that  
4 reside two, three, four, five miles out, you'll  
5 pick up that risk via the point counts.

6 But to actually go out and have to find  
7 every resident raptor within three miles, we just  
8 don't understand the basis for that requirement  
9 since it doesn't necessarily indicate risk over at  
10 the site. And the point counts are intended to do  
11 just that.

12 And finally a couple of general comments  
13 to just reiterate what has been said before.  
14 We're concerned that the guidelines don't have any  
15 statement regarding retro how they would be, how  
16 they could potentially be applied retroactively.  
17 So right now without things being explicit in  
18 there we're concerned that they would be applied  
19 retroactively to projects that are already started  
20 down the detailed, pre-construction phase.

21 And we also made a comment that the term  
22 pre-permitting be changed to pre-construction so  
23 that lead agencies would have the opportunity as  
24 they sometimes do to allow some of the studies  
25 that are longer term to finish after a permit has

1       been issued with appropriate conditions suggesting  
2       that if for some reason in the last few months of  
3       the study the conclusions showed something  
4       different than what was assumed then you now  
5       insist that obviously you'd have to go back and  
6       review them.

7                   But we've had situations in the past and  
8       hope there would be in the future where we  
9       wouldn't hold up the permitting process because a  
10      one or two year study needed to be completed and  
11      allow the lead agency the opportunity to condition  
12      the permit on completion of those studies. Thank  
13      you.

14                   PRESIDING MEMBER GEESMAN: Thank you.  
15      Other comments on Chapter 5 or the appendices?

16                   MR. ZICHELLA: Carl Zichella of the  
17      Sierra Club. Just one quick comment. I thought  
18      we had addressed that five year issue in a  
19      previous draft. I've just looked through this and  
20      I couldn't find it anywhere. Where we wanted to  
21      keep the research as current as possible  
22      recognizing that climate change is driving a lot  
23      of changes in behavior and when birds and bats and  
24      other animals migrate.

25                   So, yeah we do want to have current data

1 but if there was a relevant study we were  
2 convinced I thought at a previous workshop. Isn't  
3 that right, it's not a five year thing. Right,  
4 that's what I thought.

5 So I just wanted to clarify that point.  
6 And the two year, post-construction monitoring  
7 issue was a considerable compromise. Realizing we  
8 agreed that, you know, longer is better but we  
9 need to get these facilities on line and operating  
10 and not keeping undue costs on the generators.

11 PRESIDING MEMBER GEESMAN: Nancy.

12 MS. RADER: Nancy Rader, CalWEA. I just  
13 wanted to point out one of many instances where  
14 CDFG's approval is required to reduce the level of  
15 study. And this instance in Chapter 5 is on page  
16 72, line 2596 where it says, if you want to reduce  
17 the operational, the post-construction,  
18 operational monitoring shorter than two years you  
19 need to get the approval of CDFG and the US Fish  
20 and Wildlife Service.

21 So, you know, you'll probably wait for a  
22 response for them before, you'll probably wait the  
23 entire two years before you get a response from  
24 them but you'll probably have to do it anyway.

25 But since we know that they're inclined

1 to want more information there's, it's not likely  
2 that your studies are going to be shortened.  
3 That's just one of a number of instances where it  
4 says you have to get approval to deviate from the  
5 prescribed study.

6 MR. WEINER: Peter Weiner, one more  
7 thing. Kenny Stein mentioned the cost of these  
8 studies. And they are significant. And one of  
9 the questions is whether the Commission would feel  
10 comfortable perhaps outside the guideline process  
11 advocating to the Public Utilities Commission that  
12 these costs be rate recoverable pursuant to  
13 Section 701.1 and 701.3 of the Public Utilities  
14 Code.

15 Those sections, although I do not have  
16 them before me, and I hadn't thought about it  
17 before I came here today, are, if I recall  
18 correctly, authorization for the Commission to  
19 pass on costs of renewable energy projects to the  
20 public where justified by the environmental  
21 benefit. That's outside the market referent price  
22 and so on and so forth so far as I can tell in  
23 terms of statutory authorization.

24 And if we are going to impose these  
25 costs on a renewable energy source that we

1 otherwise think is beneficial to the environment  
2 in terms of our carbon footprint and all the other  
3 reasons we like renewable energy, then perhaps  
4 that is something that the Commission could at  
5 least let the PUC know that they've considered and  
6 might be advisable for the PUC to consider. Thank  
7 you.

8 PRESIDING MEMBER GEESMAN: Other  
9 comments on Chapter 5 or the Appendices? Well I  
10 think for today then we're just about done. As  
11 the notice points out we are soliciting written  
12 comments until August 22. The notice says, and I  
13 quote:

14 "The most useful comments  
15 are those that reference page  
16 and line numbers of the  
17 document and provide specific,  
18 recommended revisions."

19 That probably goes without saying.

20 I believe the staff has committed to  
21 responding to all of the various comments that we  
22 received with some written document when you  
23 release the next draft. Do you have a sense as to  
24 when that is likely to be?

25 MS. WARD: Let's see. The Business

1 Meeting is on the 26th of September so I would  
2 anticipate that to be about two weeks before then.

3 PRESIDING MEMBER GEESMAN: So  
4 approximately the 12th of September.

5 MS. WARD: We have it on our schedule as  
6 the 14th.

7 PRESIDING MEMBER GEESMAN: The 14th of  
8 September.

9 MS. WARD: Yes. That's when the  
10 Committee's final draft and decision document are  
11 posted online. And we intended address comments  
12 not taken. The many changes that did make we  
13 didn't feel that we needed to --

14 PRESIDING MEMBER GEESMAN: Okay. But  
15 the ones that you rejected then you would address.

16 MS. WARD: Yes.

17 PRESIDING MEMBER GEESMAN: And explain  
18 why you rejected it.

19 MS. WARD: Right.

20 PRESIDING MEMBER GEESMAN: Okay. Paul.

21 MR. VERCRUYSEN: Paul Vercruyssen again  
22 from CEERT. I actually had a question for you and  
23 perhaps for your staff as well.

24 The biological consultant which we have  
25 been using throughout the past couple of rounds of

1       commenting I have actually already talked to him  
2       and it is going to very difficult to have fully  
3       developed comments from him by the 22nd.

4               And I actually had talked to some of the  
5       other public stakeholders, one being Golden Gate  
6       Audubon, that had wanted to be here today but was  
7       unable to be here today. So I'm wondering how  
8       hard and fast that data is? I realize that the  
9       next Commission Business Meeting would be coming  
10      up fairly soon and so there is not a whole lot of  
11      flexibility. So I'm wondering how hard and fast  
12      that date is.

13              PRESIDING MEMBER GEESMAN: Let me  
14      address it from the back end. I think that you  
15      should regard the September 26 date, which I think  
16      I earlier misstated as September 27. The  
17      September 26 Business Meeting as hard and fast.

18              MR. VERCRUYSEN: Right.

19              PRESIDING MEMBER GEESMAN: And the  
20      August 22 deadline is a desirable deadline.  
21      You've heard the staff say that they intend to  
22      release the decision draft on September 14. So I  
23      think the closer you get to September 14 the more  
24      you reduce the likelihood that your comments will  
25      be reflected in that draft. The more that you end



1 up having to rely on the Commission changing  
2 something in the decision at the Business Meeting  
3 of the 26.

4 MR. VERCRUYSSSEN: Okay.

5 PRESIDING MEMBER GEESMAN: So it's  
6 really your call.

7 MR. VERCRUYSSSEN: I wonder if actually,  
8 and I apologize, if I could make one final  
9 comment.

10 PRESIDING MEMBER GEESMAN: Sure.

11 MR. VERCRUYSSSEN: I was actually struck  
12 today listening to some of the discussion earlier  
13 and this morning and thinking about some of the  
14 other work that I do, sometimes with your  
15 Commission and before the Commission in other  
16 places.

17 There are power plants in the state of  
18 California which quite apart from the global  
19 warming impact emit massive amounts of criteria  
20 pollutants, particularly particulate matter, which  
21 has a hand in the premature death of thousands of  
22 Californians each year.

23 Through the direction of the laws of the  
24 state of California those impacts can be mitigated  
25 with pollution offsets, which can be purchased

1 various ways and achieved various ways through the  
2 different air districts.

3 But that's deaths of human beings that  
4 we're talking about and that's why -- it's one of  
5 the reasons I and I think a lot of the people in  
6 this room work very hard to get a lot of these  
7 projects permitted.

8 And there is -- This has been said many  
9 times before in many settings. There is no silver  
10 bullet to global warming or any of these problems  
11 and there is no completely benign energy resource  
12 anywhere. This includes solar, this includes  
13 wind, geothermal, fossil fuels obviously.

14 And I would just urge everyone in this  
15 room. Staff, the Commission, the public  
16 stakeholders, to keep that in mind because it is  
17 something that sometimes when we get bogged down  
18 in the specifics of the scientific data we forget  
19 that there is an alternative scenario out there  
20 that I think everyone in this room seems to be  
21 committed to avoiding. It struck me today that  
22 sometimes we have gotten away from that.

23 So thank you.

24 PRESIDING MEMBER GEESMAN: I guess I  
25 would -- Your having said that I want to add what

1 I think is the complementary view, which I recall  
2 quite distinctly from the joint workshop that the  
3 Audubon Society and I believe it was the American  
4 Wind Energy Association sponsored in Los Angeles  
5 now more than a year and a half ago.

6 And that is that it is belief at the  
7 Commission that we very much need to accelerate  
8 the development of wind energy in California. And  
9 that the example of a litigative and scientific  
10 and political quagmire such as the Altamont proved  
11 to be is something that stands as a very real  
12 dangerous impediment to our objective in  
13 accelerating the development of wind energy.

14 It has been our belief since 2005 that  
15 the best way to do that would be to develop in as  
16 consensual a way as possible a set of voluntary  
17 guidelines that local lead agencies could rely  
18 upon in making permitting decisions. That's what  
19 we're trying to do. We won't be done until the  
20 end of September. Even when we are done it's  
21 going to be an imperfect document.

22 But I think that it has benefited  
23 greatly by the input from a variety of different  
24 interests, many of whom I suspect over the course  
25 of the last 18 months have had varying feelings of

1 support and non-support. These things being the  
2 way they are I suspect as we get closer to the  
3 close it's more likely that we'll hear the non-  
4 support than the support, and that's fine.

5 MR. VERCRUYSEN: Sure.

6 PRESIDING MEMBER GEESMAN: And that's  
7 fine. It helps us improve the end product. But I  
8 think that we shouldn't lose sight of the fact  
9 that the Commission's motivation here is one of  
10 energy policy and a very strong desire to  
11 accelerate the development of wind energy in  
12 California.

13 MR. VERCRUYSEN: That is evident and I  
14 appreciate and agree with those. Thank you.

15 ASSOCIATE MEMBER PFANNENSTIEL: I would  
16 like to add just a thought on that too though. I  
17 think there have been a few implications in the  
18 course of today that we're somehow impeding  
19 development of this resource, which as  
20 Commissioner Geesman just pointed out, couldn't be  
21 further from the truth.

22 But I would also like to point out that  
23 when the state passed AB 32 and adopted the  
24 greenhouse gas targets that we did, we did so very  
25 consciously saying, we will not allow degradation

1 of our environmental programs that are currently  
2 in effect. That we see the challenge of AB 32 as  
3 being able to reduce greenhouse gases while  
4 protecting the environment with the other  
5 regulations that are in place.

6 I just think it is really important for  
7 people to understand that from our perspective it  
8 isn't one or the other, we do intend to do both.

9 PRESIDING MEMBER GEESMAN: We'll be  
10 adjourned.

11 (Whereupon, at 2:14 p.m., the Committee  
12 Hearing was adjourned.)

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CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Committee Workshop; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said workshop, nor in any way interested in outcome of said workshop.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of August, 2007.

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