

## DOCKETED

<b>Docket Number:</b>	97-AFC-01C
<b>Project Title:</b>	High Desert Power Plant
<b>TN #:</b>	220246
<b>Document Title:</b>	Transcript of the 07/10/2017 Continued Committee Status Conference
<b>Description:</b>	N/A
<b>Filer:</b>	Cody Goldthrite
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Committee
<b>Submission Date:</b>	7/18/2017 10:43:01 AM
<b>Docketed Date:</b>	7/18/2017

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA

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

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HIGH DESERT POWER PLANT AMENDMENT COMMITTEE  
CONTINUED COMMITTEE STATUS CONFERENCE (CLOSED SESSION)

CALIFORNIA ENERGY COMMISSION  
1516 9TH STREET  
ART ROSENFELD HEARING ROOM A  
SACRAMENTO, CALIFORNIA

MONDAY, JULY 10, 2017

1:30 P.M.

Reported by:  
Gigi Lastra

APPEARANCES

COMMISSIONERS

Karen Douglas, Presiding Member

Janea Scott, Associate Member

ADVISERS

Jennifer Nelson, Advisor to Commissioner Douglas

LeQuyen Nguyen, Advisor to Commissioner Douglas

Rhetta DeMesa, Advisor to Commissioner Scott

Matthew Coldwell, Advisor to Commissioner Scott

Kristy Chew, Special Technical Adviser

HEARING OFFICER

Susan Cochran

STAFF

Lon Payne, Siting Transmission and Environmental  
Protection Division

Michelle Chester, Staff Attorney

Matthew Layton, Siting Division

HIGH DESERT POWER PLANT

Jeffrey Harris, Ellison, Schneider, Harris and Donlan

Peter Kiel, Ellison, Schneider, Harris and Donlan

Mark Kubow, Middle River Power, LLC

INTERVENERS

Nancee Murray, California Department of Fish and Wildlife

APPEARANCES

INTERVENERS

Kit Custis (via WebEx), California Department of Fish and  
Wildlife

Alisa Ellsworth (via WebEx, California Department of Fish  
and  
Wildlife

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

3 1:33 P.M.

4 SACRAMENTO, CALIFORNIA, MONDAY, JULY 10, 2017

5 COMMISSIONER DOUGLAS: Good afternoon everybody.  
6 If we're ready to get started, we'll go ahead and get  
7 started.

8 This is a Status Conference regarding the proposed  
9 amendment to the High Desert Power Plant. The Energy  
10 Commission has assigned a Committee of two Commissioners to  
11 conduct these proceedings. I'm Karen Douglas, the Presiding  
12 Member. Janea Scott, the Associate Member of the Committee,  
13 is to my left. And I'd like to introduce some of the people  
14 here today. Jennifer Nelson, my Adviser immediately to my  
15 right, Le-Quyen Nguyen, my Adviser, to Jennifer Nelson's  
16 right. On my left, our Hearing Officer, Susan Cochran. And  
17 Rhetta DeMesa to the left of Commissioner Scott.

18 Let's see here, is anyone here from the Public  
19 Advisers Office? I don't see anyone today, or not yet.

20 So let me, at this point, ask the parties to  
21 please introduce themselves and their representatives,  
22 starting with the Petitioner.

23 MR. HARRIS: Good afternoon. Jeff Harris on  
24 behalf of High Desert.

25 MR. KUBOW: Mark Kubow with High Desert Power

1 Project.

2 MR. KIEL: Peter Kiel, Ellison Schneider Firm on  
3 behalf of High Desert.

4 COMMISSIONER DOUGLAS: Thank you.

5 And Staff?

6 MR. PAYNE: Lon Payne with the Siting Transmission  
7 and Environmental Protection Division.

8 MS. CHESTER: Michelle Chester, Staff Attorney.

9 MR. LAYTON: Good morning. This is Matthew Layton  
10 from the Siting Division.

11 COMMISSIONER DOUGLAS: Thank you.

12 And Intervener, California Department of Fish and  
13 Wildlife?

14 MS. MURRAY: Nancee Murray, Staff Counsel. And I  
15 have Alisa Ellsworth on the phone, and Kit Custis on the  
16 phone.

17 COMMISSIONER DOUGLAS: Thank you.

18 Are there any other state, federal or local  
19 government agencies, or representatives of Native American  
20 tribes, in the room or on the phone?

21 And while we wait for everyone to speak at once,  
22 Matt Coldwell is here, also an Adviser to Janea Scott.

23 Last call for government agencies, other than the  
24 ones that have introduced themselves? All right.

25 I'll turn this over to the Hearing Officer.

1 HEARING OFFICER COCHRAN: Thank you and good  
2 afternoon.

3 I would also note that Kristy Chew, the Technical  
4 Adviser to the Committee, she's in the audience hiding -- is  
5 present. She's not in the -- she's not hiding, she's just  
6 present.

7 Notice of today's Status Conference was provided  
8 on June 30, 2017. The purpose of today's conference is to  
9 discuss progress the parties may have made on the  
10 stipulation circulated prior to the last Committee  
11 Conference on June 5th, 2017.

12 In the notice for today's proceedings the parties  
13 were directed to file status reports by July 6th, 2017.  
14 These status reports were to cover: one, a brief summary of  
15 the status of any stipulations or other agreements; two, a  
16 summary of the subject areas that remain disputed and  
17 require adjudication, and the precise nature of the dispute  
18 for each issue; and finally, proposals for briefing  
19 deadlines, the impact of any scheduling conflicts or other  
20 scheduling matters, including the amount of time required  
21 for any evidentiary hearing.

22 We received status reports from all of the  
23 parties. The Committee thanks you for your timeliness and  
24 the information provided.

25 At this point, I'm going to begin a discussion

1 with the parties about the substance of the comments that  
2 they provided in their status reports. And the first area  
3 I'm going to touch on are agreements and stipulations.

4 At the last conference the parties seemed to have  
5 agreed regarding the use of percolation as an additional  
6 method for banking water for use for the cooling purposes of  
7 the plant. And I know that applicant has said that the  
8 agreement is still solid and is agreeable to all parties.  
9 And I want to know if the other parties agree with that, as  
10 well, because I didn't see anything in either status report  
11 indicating that that was still an agreement and that those  
12 issues were no longer in play.

13 Ms. Chester, on behalf of Staff?

14 MS. CHESTER: Yes. Staff does agree to the terms  
15 of percolation. We have no further comments on those  
16 conditions.

17 HEARING OFFICER COCHRAN: Okay. Thank you.

18 Ms. Murray, on behalf of the CDF&W?

19 MS. MURRAY: CDFW also agrees that percolation  
20 would be an added asset for High Desert, and believe that  
21 just in terms of like the banking section of Soil and Water  
22 4, we would like to be added in the verification section to  
23 getting the reports.

24 HEARING OFFICER COCHRAN: Okay. Which leads me to  
25 my next question, which was disputed issues. And I know



1 that Staff had listed the various Conditions of  
2 Certification that they perceived to still be in conflict or  
3 in dispute as Soil and Water 1, 4, 5, 6, 13, 22, and a  
4 proposal by Staff and CDF&W to add a new condition, Soil and  
5 Water 23. And I didn't see a lot of discussion about 4, 5,  
6 6, 13 and 22, so is the discussion or the dispute on 4,  
7 relating to adding CDF&W as a review and suggest or comment?

8 MS. CHESTER: That's correct, from my  
9 understanding. And for my discussions with the project  
10 owner, I think we are in agreement that CDFW can be added to  
11 those discussions in Soil and Water 4. So Staff's status  
12 report focused on Soil and Water 1, 6 and 23 as having  
13 remaining issues.

14 HEARING OFFICER COCHRAN: Okay. Is that correct,  
15 Mr. Harris? I like to put you on the spot.

16 MR. HARRIS: Yeah, I think it is correct. We  
17 don't have any objection to CDFW being involved in the  
18 process, and we welcome their participation.

19 HEARING OFFICER COCHRAN: Okay. So let's then  
20 turn to Condition of Circulation -- sorry, Certification 1,  
21 which is essentially, for those of you who aren't aware, the  
22 sources and uses of water, in particular the use of recycled  
23 water. And as I understand it, there has been discussion  
24 among the parties regarding the maximum and minimum amount  
25 of recycled water use for the plant; is that correct? And

1 that still is an area in dispute?

2 MS. CHESTER: Yes, that's correct. We have agreed  
3 upon a maximum of 2,000 annually -- excuse me, 2,500  
4 annually, 2,000 on a rolling annual basis. And there is  
5 some continued discussion about a minimum either being 25  
6 percent or 20 percent of recycled water use.

7 HEARING OFFICER COCHRAN: And that 25-acre feet  
8 per year annual and 2,000-acre feet per year rolling three-  
9 year average, is that for all sources, banked, recycled,  
10 reclaimed?

11 MS. CHESTER: Twenty-five hundred, and those two  
12 are specifically relating to the use of recycled water.

13 HEARING OFFICER COCHRAN: Okay. Is there an  
14 overall water limit being proposed or that the parties have  
15 discussed?

16 MS. CHESTER: That's included in the 2,000 on a  
17 three-year rolling basis and 2,500 annual, again, only  
18 referring to recycled water use. As an overall use  
19 otherwise, we have not made any changes or additions.

20 HEARING OFFICER COCHRAN: Okay. And that's an  
21 area that the parties are anticipating would need to be  
22 resolved via evidentiary hearing?

23 MS. CHESTER: I am not sure adjudication is  
24 necessary. We're certainly close. As I mentioned in our  
25 status report, we're looking at a difference of about 140-

1 acre feet based on past years' water use, between 20 and 25  
2 percent. Rather than adjudication, perhaps a discussion  
3 with Committee supervision, with experts available for  
4 further discussion, may be more useful.

5 HEARING OFFICER COCHRAN: Okay. And I had  
6 actually listed the availability of folks for various  
7 proceedings in a later part, but let me jump to that now  
8 then.

9 If we were looking at having such a discussion, I  
10 know that neither CDF&W nor Staff has indicated an  
11 availability until essentially after September 5th. Would  
12 that hold true, as well, for this Committee-supervised  
13 discussion that we're discussing?

14 MS. CHESTER: Yes.

15 HEARING OFFICER COCHRAN: Okay. Applicant, did  
16 you want to speak to that? Because I didn't see anything  
17 about availability in your status report.

18 MR. HARRIS: We're ready to go tomorrow, of  
19 course, but we know that's not feasible. We're actually  
20 hoping that we only see you socially after this.

21 We're pretty close on a lot of issues. If we are  
22 going to have to go to adjudication, waiting until September  
23 seems to be excessive for us. We're talking about one day.

24 And we would want to look for a day sooner than that,  
25 probably in August some time, until after our vacations and

1 what have you. But again, we're hoping that that can be a  
2 pretty pro forma hearing. We've got agreement on the  
3 principle issue which is percolation, and that's, for us,  
4 the main issue and the one that I want to keep emphasizing,  
5 is pretty much resolved.

6           And so we're down to really, I think, there  
7 issues. You mentioned the 20 versus 25 percent. You know,  
8 that can probably be submitted on paper if we can't reach  
9 agreement. And I'm hopeful, as Ms. Chester, said, that we  
10 would actually be able to come up with some kind of a  
11 compromise there. We're not that far apart, to which I say,  
12 well, then they can give us the 140 that they claim is at  
13 issue and we'll be happy, or maybe we end up at 22-and-a-  
14 half percent. I don't know. There seems like there was a  
15 compromise to be made between 20 and 25 percent, and we're  
16 hopeful that that will happen. That's one of the issues  
17 that's outstanding from our perspective.

18           So the other remaining issues, and we can -- I  
19 know you're working with your agenda, we can get to those  
20 later, we're also hopeful working through those, as well, to  
21 get a full stipulation on all issues. If we don't get a  
22 stipulation on all issues, we'll have a very limited,  
23 limited set of issues to be litigating. So I think, you  
24 know, waiting until September on those remaining issues  
25 doesn't make sense from our perspective, because I think

1 we're very close. We had productive discussions less than  
2 an hour before our meeting here today. There's some new  
3 concepts on the table from both sides of the dais that  
4 you're looking at, so we'll hopeful to get through those  
5 issues. But there are some important things that we need,  
6 and we're looking mostly for certainty.

7 And I'm going to stop because I feel like I'm  
8 rambling. But I'll let you know the differences when you  
9 get to your future questions, as well.

10 HEARING OFFICER COCHRAN: Ms. Murray?

11 And instead of calling on everybody, if you want  
12 to speak just, you know, let me know somehow. And then we  
13 might be able to move this along a little bit faster.

14 And, Ms. Murray, did you have anything you wanted  
15 to add to what you've heard from Ms. Chester or Mr. Harris?

16 MS. MURRAY: No.

17 HEARING OFFICER COCHRAN: Okay.

18 MS. MURRAY: We believe we've very close.

19 HEARING OFFICER COCHRAN: Okay. And we've talked  
20 about Condition 4.

21 What's the dispute in Condition 5?

22 MS. CHESTER: I don't believe we have a remaining  
23 dispute in Condition 5.

24 HEARING OFFICER COCHRAN: Okay.

25 MS. CHESTER: There is another term in Condition

1 6.

2 HEARING OFFICER COCHRAN: That I did have. And  
3 that relates to Condition of Certification 6-D, which comes  
4 from the original 2000 decision and essentially says that it  
5 puts a limit on the life of the project for 30 years, unless  
6 the Commission has approved an amendment to its license that  
7 specifically evaluates the water resources impacts of  
8 continued operation and imposes any mitigation necessary to  
9 ameliorate any identified impacts. And I know what the  
10 positions of the parties are.

11 Is that something that is going to be able to be  
12 resolved in the next four to six weeks, say, or is that  
13 something that is likely to require attention or  
14 intervention from the Committee?

15 MS. CHESTER: Yes, I would say attention or  
16 intervention from the Committee. It's actually in our  
17 discussions outside of this room. We have raised the option  
18 of bringing this to the Committee, where we stand now --

19 HEARING OFFICER COCHRAN: Okay.

20 MS. CHESTER: -- both on opposite sides.

21 HEARING OFFICER COCHRAN: And then the next item,  
22 I believe, that I was listed was Condition of Certification  
23 13.

24 MR. HARRIS: Before we leave that issue --

25 HEARING OFFICER COCHRAN: I'm sorry.

1 MR. HARRIS: -- I'm sorry, you know the parties  
2 position on --

3 HEARING OFFICER COCHRAN: I do.

4 MR. HARRIS: -- whether that condition has been  
5 satisfied. If we're not able to reach agreement on the  
6 other issues, we may want to brief that issue early and ask  
7 for an early decision from the Commission. We can do that  
8 separately. It doesn't seem like an issue that's going to  
9 require live testimony, I guess is my point, I think. And  
10 if the other parties disagree, they can let me know.

11 I think we really are down to a legal argument  
12 about whether that condition has been satisfied or not, and  
13 experts are not going to add anything to that. So if it  
14 helps with the Committee's schedule, if you want to brief  
15 that issue early, we're available to do that. Because we  
16 think there's a pretty good record that shows that that  
17 condition is, thus, the vestigial, which is the word of the  
18 day, I got to say it first. But I don't think we're going  
19 to need witnesses to make that point, so --

20 HEARING OFFICER COCHRAN: Okay. Turning then to  
21 Condition of Certification number -- Soil and Water 22, I'm  
22 not sure I know what that condition relates to.

23 MS. CHESTER: That condition was an interim  
24 condition proposed by the Committee regarding percolation.

25 HEARING OFFICER COCHRAN: Oh. Okay.

1 MS. CHESTER: And so we've agreed to remove it at  
2 this point.

3 HEARING OFFICER COCHRAN: Okay. And did I skip  
4 over 13? I did. Sorry.

5 MS. CHESTER: As far as I know the parties do not  
6 have disagreement on the terms of Soil and Water 13, but  
7 have made minor edits to the language.

8 HEARING OFFICER COCHRAN: Okay. So let's turn  
9 then to new Condition of Certification number 23 that Staff  
10 and CDF&W have proposed that is an adjunct to changes to  
11 Soil and Water 1, to provide a somewhat different  
12 enforcement mechanism whereby the project owner would fund a  
13 local environmental enhancement program when use of water  
14 exceeds the maximum permitted under Soil and Water 1, and  
15 implements a water conservation offset program for any  
16 shortfall of the minimum recycled water use. The project  
17 owner says to use existing enforcement mechanisms; is that  
18 correct?

19 MS. CHESTER: That's correct.

20 HEARING OFFICER COCHRAN: Do either CDF&W or the  
21 Staff have actual proposed language for what that condition  
22 would look like? Is that something that can be submitted to  
23 the Committee ahead of any evidentiary hearing or --

24 MS. CHESTER: Yes. It's actually pulled up on the  
25 screen. And I have copies available of our language that I



1 can hand to you.

2 HEARING OFFICER COCHRAN: Okay. Mr. Lee, if you  
3 could pull that up for me please?

4 And is this something that has been docketed yet?

5 MS. CHESTER: No.

6 HEARING OFFICER COCHRAN: Please be sure to docket  
7 this as soon as possible.

8 MS. CHESTER: Will do.

9 HEARING OFFICER COCHRAN: Mr. Harris, have you had  
10 an opportunity to review the information contained in what  
11 Mr. Payne is handing out, what is now being shown on the  
12 screen?

13 MR. HARRIS: With reference to Soil and Water 23,  
14 is that the question?

15 HEARING OFFICER COCHRAN: Yes.

16 MR. HARRIS: Yeah, we have seen this language some  
17 time ago. And I actually thought we'd moved past this,  
18 perhaps, to maybe trying to incorporate a new enforcement  
19 mechanism into Soil and Water 1. But, yeah, we have seen  
20 this language.

21 MS. CHESTER: If I can clarify. There were, as  
22 Mr. Harris mentioned, a couple new proposals made today,  
23 within the last couple of hours. This is the Soil and Water  
24 23 referenced in Staff's status report.

25 HEARING OFFICER COCHRAN: It appears as though the

1 copy, it was originally two-sided, and we only got half of  
2 it. It's okay. These things happen. This is live theater.  
3 So now we're just going to extemporanize. If --

4 MR. HARRIS: You have more than enough, actually,  
5 so --

6 HEARING OFFICER COCHRAN: I'll just make some  
7 words up.

8 MS. CHESTER: Well, what's on the screen should be  
9 correct.

10 HEARING OFFICER COCHRAN: Okay.

11 MS. CHESTER: I realize that's hard to read. But,  
12 of course, I will docket a copy for you.

13 HEARING OFFICER COCHRAN: Thank you so much.

14 Ralph, if you could keep it on the page that  
15 you're on where it starts with the Soil and Water 23?  
16 Because we have the next page, we just don't have the lead-  
17 in information.

18 So, obviously, the Committee hasn't had a chance  
19 to digest this either. We just got the concepts in the  
20 status report.

21 Is this something that further discussion between  
22 the parties is likely to resolve, or is this something that  
23 will require Committee oversight, intervention? Pick a  
24 word.

25 MS. CHESTER: This language has been in front of

1 the parties for at least a week. Again, there were some new  
2 proposals today that attempt to replace Soil and Water 23  
3 with language just in Soil and Water 1. Soil and Water 1,  
4 as it stands now, has the three terms, the upper limits and  
5 the lower limits, as well as language that, in Staff's  
6 proposal, says, "For enforcement mechanisms, please refer to  
7 Soil and Water 23." But there is a condition allowing  
8 flexibility for an act of God or any events outside of the  
9 control of the project owner. So that's sort of centered  
10 around where the parties have continued discussions today,  
11 is including that flexibility, as well as alternative  
12 enforcement mechanisms.

13 HEARING OFFICER COCHRAN: Okay. I can't imagine  
14 you don't want to say anything, Mr. Harris?

15 MR. HARRIS: Well, this, to me, also looks  
16 vestigial, in a certain way. It's I think where we started.  
17 To really understand Soil and Water 23, you have to go back  
18 to Soil and Water 1. And Soil and Water 1 has those three  
19 triggers that Ms. Chester set forth.

20 This entire condition, the 23, was basically  
21 intended, as Staff referenced, an enforcement mechanism for  
22 those three perfect conditions that are there, the maximum  
23 annual recycled water use, the average annual, and then the  
24 blended.

25 So whether it's Soil and Water 23, and I don't

1 know whether the Staff wants to stay with that as their  
2 current position, or whether it's something in the language  
3 of Soil and Water 1, really, we're down to needing two  
4 answers. You know, one of these three, we consider them  
5 bands, we operate within those bands. If we operate outside  
6 those bands the condition is triggered, okay? The first two  
7 are about using too much recycled water, okay? So one and  
8 two is we use too much recycled water. Three is we don't  
9 use enough recycled water, okay?

10 So that's the essence of what, I think, the  
11 remaining issues are between the parties, is two conditions  
12 where we use too much and the third condition where we don't  
13 use enough. What happens if one of those conditions occurs?

14 So you either have not enough recycled water use or too  
15 much recycled water use. I was tempted to call this the  
16 Goldilocks condition, but it seems way too obvious.

17 So what do you do in those circumstances? Our  
18 entire discussion remaining really goes down to what happens  
19 if one of those bands, if we operate outside one of those  
20 bands? We think there really are just two outcomes. One  
21 outcome is we're outside the bands due to things that are  
22 outside of our control. You know, we've said several times  
23 in this proceeding, we're a customer. We're not the State  
24 Water Project. We basically get all of our water through  
25 the city, who is our wholesaler of water for us to retail.

1           So one possible outcome is we operate outside  
2 these bands for reasons that are outside our control. In  
3 our view, if that set of circumstances occurs, then we ought  
4 to sit down with the Department and with the Staff and try  
5 to figure out what happened, you know, why did this occur?  
6 One outcome could be it was something completely outside our  
7 control. There was a State Water Project issue, there was  
8 an issue with a water treatment plant, and we all try to  
9 figure out, what do we do in the future to make sure it  
10 doesn't happen again? So that's one possible outcome.

11           The second possible outcome is that it's something  
12 within our exclusive control. We made bad choices. We had  
13 equipment failure, whatever it is. And maybe not even  
14 equipment failure, but something that we have done to cause  
15 us to operate outside those bands.

16           I think the remaining issues are in that second  
17 case. What happens if we're outside the bands of those  
18 three triggers that are in Soil and Water 1? We have  
19 basically said a couple things.

20           Number one, it needs to be a collaborative  
21 process. We all sit down and figure out why it happened and  
22 whether it was within our control. And then secondly, and  
23 this is really where we are today, what do we do if we're  
24 outside those bands and it is our fault? We have talked to  
25 the Staff and Department about funding something that could

1 be used for environmental restoration on the Lower Mojave.  
2 And the language that we proposed in our status report,  
3 which, I don't know, if you can pull that up or not, Ralph -  
4 - okay.

5 HEARING OFFICER COCHRAN: Sorry. We have copies  
6 of your report with us.

7 MR. HARRIS: Okay. Good. Thank you. The  
8 language in our report basically says, you know, that we  
9 need to get together and talk about why it wasn't satisfied  
10 and, you know, whether we can come up with some kind of  
11 program to benefit the Mojave River riparian habitat in the  
12 transition zone.

13 The continuing discussions we've had with Staff,  
14 it's really been around that language being too subjective,  
15 I think, is how I'd put it, and they're looking for  
16 something a little more objective. And we're open to  
17 discussions about more objective standards. And so whether  
18 that is a one-time payment for using too much recycled  
19 water, or in the alternative case a payment for using too  
20 little recycled water, we're willing to have a discussion  
21 with them about that. The judgment has a mechanism  
22 currently that is an environmental restoration account that  
23 exists. We're open to paying into that account, if it could  
24 be accepted by Mojave. We're also open to the idea of  
25 paying into a fund that the Department could manage outside

1 of the judgment, if that's necessary.

2           So I think we really are down to the issue of  
3 figuring out, you know, causation, and then proportionality  
4 here, you know, what should that look like? And we've made  
5 some significant progress on that. And where I'd like us to  
6 end up is language that is closer to where -- you know,  
7 closest to our status report, but probably something more  
8 objective that talks about, you know, figuring out how much  
9 the overage is or the -- is underage a word -- the under  
10 usage is, and then paying into a certain amount of money  
11 that could be used by the Department for what they believe  
12 is most beneficial to the transition zone, so --

13           HEARING OFFICER COCHRAN: Okay. Thank you for  
14 that.

15           Any --

16           MS. CHESTER: If I can respond please?

17           HEARING OFFICER COCHRAN: Certainly.

18           MS. CHESTER: So he's correct, there are maximum  
19 and minimums, as we've discussed, on recycled water use,  
20 which reflects a compromise between the parties.  
21 Originally, CDF&W and Staff were working on, you know, we  
22 want a greater use of recycled water, while CDFW wanted a  
23 maximum. And so we've established those boundaries and are  
24 comfortable there. Again, there was no CEQA impact  
25 analysis, and these are just negotiated terms that don't

1 reflect any impact identified.

2           So initially what Soil and Water 23 proposes is an  
3 environmental enhancement program for any instances of  
4 overages. And the proposal is that payment to that program  
5 is equal to the cost of State Water Project water. So at  
6 this point, I think State Water Project water cost is about  
7 \$500 to \$550 acre feet. This is significantly greater than  
8 the proposal from -- that we received today from the  
9 applicant, which was suggesting about \$10.00 per acre foot  
10 for any payment program.

11           We also suggested -- Staff, excuse me, also  
12 suggested in Soil and Water 23 an offset for any instance  
13 where the project owner goes below the minimum, and that was  
14 equal to any amount of shortfall. So again, in both  
15 sections of Soil and Water 23 the payments are proportional  
16 to the amount of shortfall or exceedance.

17           These numbers, the 2,500 to 2,000 and the 20 to 25  
18 percent, have all been thoroughly discussed within the  
19 groups. We don't expect there to be an exceedance or a  
20 shortfall. The intent is not to make these conditions  
21 difficult to comply with. The issue is if they're unable to  
22 meet the conditions, there should be some terms of  
23 enforcement. The complaint process is not commonly used.  
24 And we've thoroughly talked to other people in CCO about how  
25 often or any other instances that that is used. We would



1 like there to be an enforcement mechanism within the  
2 conditions to make sure that these boundaries are complied  
3 with.

4           The issue now is the amount of funding for such  
5 programs and the mechanism for funding, whether it be an  
6 offset or this environmental enhancement program, or if it's  
7 one or both.

8           Again, as to the cause and proportionality, the  
9 discussion that was in the status report and that was  
10 reiterated by Mr. Harris shows that there seems to be, on  
11 one hand, a discussion of creating an enforcement mechanism  
12 equal to impacts. However, we have already acknowledged  
13 there is no such impact. So we just want to reiterate that  
14 Staff thinks we've come up with a proposal that is  
15 proportional to any exceedance or shortfall.

16           And I think that's the end of my rant.

17           MR. HARRIS: If I could, this, I think we're in  
18 agreement, this is not a CEQA impact analysis. And there's  
19 a simple reason for that, that's not a negotiated  
20 settlement. There's no CEQA project here.

21           We're talking about reducing our existing CEQA  
22 compliant approved water uses. We're talking about new  
23 restrictions on that use. And so it's not a negotiation as  
24 to whether CEQA applies or not; it doesn't. CEQA doesn't  
25 apply in this case. So we're talking about new limits that

1 are reductions. We're not writing on a blank piece of  
2 paper. This is not a project in theory, this is a project  
3 in operation and a project that has approvals, and so that's  
4 why there's no CEQA trigger here.

5 That, I think, in and of itself then drives the  
6 question about the severity or the magnitude of the offsets  
7 or whatever non-mitigation term you want to put about this.

8 And I guess I want to be clear about what we put on the  
9 table this morning. We put on the table what was  
10 characterized as \$10.00 an acre foot. That is ten times  
11 what is called the "biological resource assessment." Within  
12 the judgment, the Mojave judgment, there is a fund that goes  
13 to CDFW to pay for environmental restoration. That current  
14 assessment is \$0.91 an acre foot. We've offered, as an  
15 opening position, and we're going to have further  
16 discussions, okay, it's not a best or final, I think that's  
17 pretty darn close to where it should be, but that number  
18 that was sort of downplayed as \$10.00 an acre foot is ten  
19 times what anybody else in this basin pays into this fund.  
20 And so that's why we felt good about putting that number out  
21 there today, and I think that context is important.

22 So when you take into consideration, there are no  
23 CEQA impacts, if you take into consideration new limits, and  
24 you take into consideration a payment that's ten times  
25 anybody else similarly situated, a non-power plant place,

1 those are the kind of things that we're still talking about  
2 for proportionality. And we would be funding a large  
3 portion of environmental restoration in the area.

4 HEARING OFFICER COCHRAN: Ms. Murray, I believe  
5 you wanted to say something?

6 MS. MURRAY: Yeah. Thank you. So while there  
7 hasn't been a CEQA document, we did do a water balance  
8 analysis and believe that, while we have compromised and had  
9 discussions, that beyond 2,500 acre feet per year there  
10 would be an impact. So if they go beyond that, we would  
11 need to see, instead of really enhancement, a mitigation to  
12 the transition zone area for that overage. And it's easy to  
13 see a business decision that could be made that recycled  
14 water is cheaper, we're just going to blow past that. It's  
15 October. We're looking like we're going to go over. And,  
16 you know, what's the cost? Ten dollars an acre foot is what  
17 we'd have to pay versus really sticking with the Conditions  
18 of Certification are.

19 And we believe that we don't need to go into any  
20 kind of discussion or proving of a cause because beyond the  
21 2,500 there would be an impact that would need to be  
22 mitigated. And we would need to have -- hopefully we're  
23 working toward an objective standard. Just, if you go over  
24 it, you buy State Water Project water and percolate it in  
25 the area that will be available to the transition zone, or

1 you buy other additive water that can be available for the  
2 transition zone. We're open to what kind of water and how -  
3 - you know, we're open to the idea of it not immediately  
4 going to the transition zone. But beyond this, there will  
5 be an impact.

6 HEARING OFFICER COCHRAN: Anything else?

7 So we've touched on schedule already. I don't  
8 think we need to have that discussion again.

9 MR. HARRIS: This is --

10 HEARING OFFICER COCHRAN: I'm sorry, Mr. Harris.

11 MR. HARRIS: Well, I don't want to belabor the  
12 point, but the 2,500-acre feet is lower than your current  
13 approval. That is the opinion of an expert from the  
14 Department that hasn't been subject to cross-examination.  
15 And even if it was, it is lower than your current approvals.

16 And so I don't want to let that pass as accepted fact. And  
17 I think maybe you all understand that, but I wanted to make  
18 sure that we're all on the same CEQA page here.

19 HEARING OFFICER COCHRAN: Mr. Layton?

20 MR. LAYTON: Ms. Cochran, I just wanted to --  
21 well, the title of this amendment is "Drought Proofing High  
22 Desert." The reason we're here is because there was a  
23 threat to their water supply. And so we continue to work  
24 towards trying to provide a reliable water supply. And so  
25 the minimum, the 20 and 25 percent minimum, is to try to

1 encourage them to use this local supply of water as opposed  
2 to State Water Project water, which could be subject to  
3 curtailment or failure.

4           So the arguments about what was is interesting.  
5 But what we're trying to do is move the project forward,  
6 such that it's a reliable source of electricity into the  
7 future.

8           HEARING OFFICER COCHRAN: Okay. So that was the  
9 extent of what I had noticed as issues from your status  
10 reports. Is there any issue that I missed, anything else  
11 you'd like to bring to the Committee's attention?

12           Ms. Chester?

13           MS. CHESTER: I would say along with the  
14 enforcement mechanism, the type used, we, Staff, proposed a  
15 very flexible term in coordination with CDFW about if there  
16 was an act of God or anything outside of the control of the  
17 project owner. And we stand by that provision and are not  
18 trying to retract it at this point, but want to make sure  
19 that the language that is chosen for an enforcement  
20 mechanism doesn't allow so much leeway that, you know, this  
21 becomes obsolete.

22           As currently proposed the project owner, if there  
23 was any act of God or natural disaster emergency, would have  
24 to work with Staff to then become consistent with Soil and  
25 Water 1. And I'd like to point out that whatever term we

1 use should be in compliant with Soil and Water 1 to avoid  
2 just creating conditions here that have no real meaning in  
3 the real world, that there would be enough leeway to just  
4 move around them.

5           So I think we're very close to defining limits.  
6 But I hope whatever language we can come up with in the end  
7 is something that we can enforce.

8           HEARING OFFICER COCHRAN: Last call.

9           MR. HARRIS: Yeah. The shorthand act of God  
10 language, that was a very good offer, I think, from the  
11 Staff in an effort to move things forward. We've tried to  
12 use that same language. And we're really kind of driving  
13 down to the same issue of whether it's within our control or  
14 not?

15           I do need to note that we added the word  
16 "exclusive" to Staff's language. We think it ought to be,  
17 for reasons that are, you know, either within our exclusive  
18 control or not. And that's, again, to reflect our position  
19 as a customer and as a water user. It's not intended to try  
20 to give us wiggle room to get out of this.

21           And so we really are down to that set of  
22 circumstances, is what if one of those three bandwidths is  
23 violated, if we exceed one of those bandwidths and it was  
24 something within our control?

25           So I think we can have further productions with

1 our -- productive discussions with Staff and the Department  
2 on this. I don't think we're nearly as far apart as we  
3 appear to be here today. You guys, you bring it out in us,  
4 apparently. We get a little more positional in front of  
5 you, because I think we have your audience so rarely. I  
6 think we are reasonably close. And if we can find some kind  
7 of objective, you know, criteria that recognizes the  
8 reduction in water use, I think we can get there. And we're  
9 all in favor of an objective standard, and I think that's --  
10 the last couple of sets of language we've seen from both the  
11 Department and from the Staff have been making our general  
12 language more objective. And I think that things are  
13 trending in the right direction.

14 I know that we've been having discussions about  
15 hearings. I think it would be productive for you to have a  
16 -- you all to have us back again for an hour or two in a  
17 matter of weeks, like three weeks, to talk about whether  
18 we've made progress, and maybe eliminated the need for a  
19 hearing altogether. This setting seems to put pressure on  
20 us to get there. So I guess I'm requesting that you  
21 consider having another status conference within maybe three  
22 or four weeks, and ask you to direct the parties to try to  
23 get through these last issues to maybe take everything off  
24 the table, so --

25 HEARING OFFICER COCHRAN: Okay.

1 MS. CHESTER: Again, I think that sounds good and  
2 I think that's consistent with my proposal earlier about  
3 having a discussion here. It would just be helpful to have  
4 the experts and clients and everyone available in the same  
5 room, which doesn't always happen with the more informal  
6 calls.

7 HEARING OFFICER COCHRAN: Anything else?

8 With that, we will now move to the public comment  
9 portion of the agenda. Any person interested in speaking to  
10 the Committee may do so for two to three minutes now. Is  
11 there anyone in the room who would like to offer a public  
12 comment? Don't all hurry at once. Okay.

13 Seeing no one, is there anyone online who would  
14 like to speak?

15 They're all un-muted; correct, Mr. Lee? Thank  
16 you.

17 Last call for speakers.

18 There will be no closed session, so with that, we  
19 are adjourned.

20 (The meeting adjourned at 2:10 p.m.)

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**REPORTER'S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of July, 2017.



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Eduwiges Lastra  
CER-915

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I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



MARTHA L. NELSON, CERT\*\*367

July 18, 2017