

DOCKETED

Docket Number:	97-AFC-01C
Project Title:	High Desert Power Plant
TN #:	221897
Document Title:	Transcript of the 09112017 Prehearing Conference
Description:	N/A
Filer:	Cody Goldthrite
Organization:	California Energy Commission
Submitter Role:	Committee
Submission Date:	12/5/2017 12:26:32 PM
Docketed Date:	12/5/2017

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

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

PREHEARING CONFERENCE
CALIFORNIA ENERGY COMMISSION
ROSENFELD HEARING ROOM - FIRST FLOOR
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

MONDAY, SEPTEMBER 11, 2017

1:30 P.M.

Reported by:

Gig Lastra

APPEARANCES

COMMISSIONERS

Karen Douglas, Presiding Member

Janea Scott, Associate Member

ADVISERS

Le-Quyen Nguyen, Advisor to Commissioner Douglas

Rhetta DeMesa, Advisor to Commissioner Scott

Kristy Chew, Technical Advisor to the Commission on
Siting Matters

HEARING OFFICER

Susan Cochran

ENERGY COMMISSION STAFF

Lon Payne, Project Manager, Siting Division

Michelle Chester, Senior Staff Counsel, Office of the
Chief Counsel

Matthew Layton, Engineering Office Supervisor, Siting
Division

HIGH DESERT POWER PLANT

Jeffery Harris, Ellison Schneider Harris and Donlan

Peter Kiel, Ellison Schneider Harris and Donlan

INTERVENERS

Nancee Murray, Office of General Counsel, California
Department of Fish and Wildlife

Kit Custis, California Department of Fish and Wildlife

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

P R O C E E D I N G S

1:32 P.M.

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SACRAMENTO, CALIFORNIA

3

MONDAY, SEPTEMBER 11, 2017

4

(Whereupon the beginning portion was not

5

transcribed, the Committee recessed into

6

closed session at 1:34 p.m., then returned to

7

convene the prehearing conference at 2:15 p.m.)

8

COMMISSIONER DOUGLAS: All right, good

9

afternoon, everybody. This is now the public

10

portion of the prehearing conference regarding

11

the proposed amendment to the High Desert Power

12

Plant.

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The Hearing Officer, Susan Cochran,

14

previously started this meeting, and we've been

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in closed session since approximately 1:30 p.m.

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There is no reportable action from that closed

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session.

18

The Energy Commission has assigned a

19

Committee of two Commissioners to conduct these

20

proceedings. I'm Karen Douglas, the Presiding

21

Member. Janea Scott, the Associate Member of the

22

Committee is right here, to the left of the

23

Hearing Officer. And I'd like to introduce some

24

other people here today, the Hearing Officer

1 Susan Cochran, between Commissioner Scott and I.
2 To my right, my advisor, Le-Quyen Nguyen. And to
3 her right is Kristy Chew, the Technical Advisor
4 to the Commission on siting matters. And to the
5 left of Commissioner Scott is her Advisor, Rhetta
6 DeMesa.

7 Let's see, I'm just seeing nobody here
8 from the Public Adviser's Office.

9 So with that, I'll ask the parties to
10 introduce themselves and their representatives,
11 beginning with the Petitioner.

12 MR. HARRIS: If he had done that six
13 months ago, we'd be done by now.

14 Hi. Jeff Harris on behalf of the
15 Applicant.

16 COMMISSIONER DOUGLAS: Great.

17 MR. KIEL: And Peter Kiel on behalf of
18 the project owner. Good afternoon.

19 COMMISSIONER DOUGLAS: Good afternoon.
20 Staff?

21 MR. PAYNE: Lon Payne, Project Manager
22 with the Siting Division. With me is Michelle
23 Chester from our Chief Counsel's Office, and
24 Matthew Layton, our Engineering Office Director.

25 COMMISSIONER DOUGLAS: Thank you.

1 Intervener, California Department of Fish
2 and Wildlife.

3 MS. MURRAY: Good afternoon. I'm Nancy
4 Murray in the Office of General Counsel with Cal
5 Fish and Wildlife. And Kit Custis, with our
6 staff, is also here. Alisa Ellsworth is trying
7 to call in and having trouble. Has she joined
8 yet?

9 MS. ELLSWORTH: I'm on the line.

10 MS. MURRAY: Oh. Okay. Good. And Alisa
11 on the line.

12 COMMISSIONER DOUGLAS: Excellent. Thank
13 you.

14 Are there any other public agencies
15 represented in the room or -- in the room is
16 unlikely, I don't see any -- on the line, federal
17 agencies, officials representing Native American
18 tribes or nations, or elected or appointed
19 officials from other state, local -- state or
20 local jurisdictions? Is anyone on the line from
21 Mojave Water Agency or City of Victorville? All
22 right.

23 I'll now turn over the conduct of the
24 rest of the meeting to the Hearing Officer, Susan
25 Cochran.

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

3 On June 5th and July 10th of this year
4 the Committee conducted public conferences to
5 discuss the progress of the case with the
6 parties. During each such conference the parties
7 indicated that settlement was imminent.

8 The Committee issued orders after the
9 July 10 Committee Conference, directing the
10 parties to file reports indicating progress made
11 on settlement. Based on the last such reports
12 received, the Committee believed that settlement
13 negotiations had broken down and, accordingly,
14 provided notice of today's prehearing conference
15 on August 25th, 2017.

16 The purpose of today's conference is to
17 discuss the parties' readiness to proceed to
18 evidentiary hearing, currently scheduled for
19 September 20, 2017. In preparation for
20 prehearing conference, Petitioner filed a motion
21 to withdraw its prior testimony and exhibits.
22 Shortly after that motion was filed the parties
23 then filed a "Comprehensive Stipulation and
24 Agreement between the Parties." This stipulation
25 was filed on September 1, 2017 as Transaction

1 Number, or TN, 221008.

2 About an hour before the closed session
3 on this matter started, there was a further
4 filing by the Petitioner of an email and an
5 exchange with Mojave Water Agency, and that is
6 document TN 221113. That includes proposed
7 changes and modifications to the stipulation that
8 the parties had filed on September 1.

9 So let's talk first about the motion that
10 the Petitioner had filed regarding the withdrawal
11 of its prior exhibits and testimony.

12 Is there any further need for the
13 Committee to act on that motion, Mr. Harris?

14 MR. HARRIS: Thank you. Good afternoon.
15 No, there's no need to act, so I guess I withdraw
16 my withdrawal, so --

17 HEARING OFFICER COCHRAN: So you're
18 withdrawing your motion. Thank you very much.

19 So now let's turn to what we believe the
20 meat of today's discussion should be focused on,
21 and that's the stipulation. And for purposes of
22 this discussion, I'm going to be using Exhibit B
23 to the stipulation, which is the clean version.
24 So when I refer to page numbers, it will be to
25 that clean version.

1 I guess one of the first questions I have
2 is: Has this agreement received the endorsement
3 or ratification of the parties, not just the
4 lawyers who represent those parties? Is that a
5 clear enough question? I mean, in other words,
6 this will be the wording that the parties have
7 all agreed to.

8 Mr. Harris?

9 MR. HARRIS: Yes.

10 HEARING OFFICER COCHRAN: Thank you.

11 Ms. Chester?

12 MS. CHESTER: Yes.

13 HEARING OFFICER COCHRAN: Ms. Murray?

14 MS. MURRAY: Yes.

15 HEARING OFFICER COCHRAN: Thank you very
16 much.

17 So, obviously the Committee is very
18 grateful for the work that the parties did on the
19 stipulation. However, there are still some
20 questions and some issues that we would like to
21 discuss today with the parties.

22 So, first, what I'd like to do is talk
23 about substance, and then maybe we can talk a
24 little bit about procedure on how to finalize
25 Exhibit B, which are the clean Conditions of

1 Certification for Soil and Water, and then talk
2 about the method by which we will get this matter
3 before the Commission as a whole and the timing
4 of that.

5 So turning now to Exhibit B, I'd like to
6 first start on page B-1 with Soil and Water-1,
7 the very first condition of certification, and
8 the introductory paragraph, where at the end of
9 that paragraph it talks about "appropriately
10 treated recycled wastewater." It's the very last
11 phrase in the sentence. I don't see a definition
12 for appropriately treated recycled wastewater in
13 the Conditions. Is there such a definition? Is
14 such a definition needed? And if one is not
15 included, is that an area that may cause problems
16 in the future?

17 And when I'm -- when we're having this
18 discussion, just sort of raise your hand or let
19 me know you'd like to speak. I'm not going to
20 call on everybody. So if someone would like to
21 respond to that, feel free.

22 MR. LAYTON: This is Matt Layton from the
23 Energy Commission.

24 We had several words in there. It's
25 trying to get to -- I think at one point in time

1 we had Title 22 Drinking Water Standards in
2 there. But we're willing to take "appropriately"
3 out. I think the Applicant actually put the word
4 "appropriately" in. I'm trying to remember the
5 various iterations.

6 But anyway, we're -- if you believe that
7 would be a sticking point, we're willing to take
8 "appropriately" out. Would that be satisfactory,
9 or do you still want the definition of "treated",
10 as well?

11 HEARING OFFICER COCHRAN: Well, no. Let
12 me ask this question. Are there objective
13 criteria? So is there a pollutant load or sort
14 of a profile of treated effluent that is
15 acceptable to the plant? I mean, in other words,
16 because so much is reliant on the quantity and
17 quality of recycled water that that seems to be
18 an important detail.

19 MR. LAYTON: That's what the work
20 "appropriately" was in there for, to try to get
21 the Applicant, I guess, to agree, because at
22 certain point in times they did not want water,
23 that the chlorine content was too high, or things
24 like that.

25 HEARING OFFICER COCHRAN: Mr. Kiel?

1 MR. KIEL: Ms. Cochran, thank you.

2 The Condition currently includes the
3 language, "appropriately treated recycled
4 wastewater." This is not an addition or change.
5 The parties had discussed including a more
6 objective standard or a legal standard. We're
7 concerned that legal standards change. And that
8 my understanding is the parties settled on
9 maximum quantities of recycled water and a blend
10 percentage so that we didn't have to worry about
11 a technical definition of what "appropriately"
12 meant.

13 HEARING OFFICER COCHRAN: Okay.

14 MR. KIEL: But the parties certainly have
15 the interest in maximizing recycled water use,
16 subject to those limits.

17 HEARING OFFICER COCHRAN: So there's not
18 a constituent load or water quality profile that
19 we could append to this?

20 MR. KIEL: High Desert currently has a
21 contract for recycled water from the City of
22 Victorville, or I think it's Victorville Water
23 District. It includes specifications, and so we
24 can cite to that.

25 Again, having that as a standard in Soil

1 and Water 1 is, we believe, unnecessary and could
2 be confusing, should factors change in the
3 future. There have been circumstances where the
4 plant has waived some of the expressed limits in
5 order to take water that's out of spec, for
6 example.

7 HEARING OFFICER COCHRAN: Okay. And by
8 the plant, you mean the project?

9 MR. LAYTON: That's correct. Yeah.

10 HEARING OFFICER COCHRAN: Because I don't
11 want to get confused with the wastewater
12 treatment plant.

13 MR. KIEL: Correct.

14 HEARING OFFICER COCHRAN: Okay.

15 MR. KIEL: Thank you.

16 HEARING OFFICER COCHRAN: So then my
17 question is: Is it clear enough to everyone who
18 makes the determination of what appropriately
19 treated recycled wastewater is, who makes that
20 decision? Is that clear to everyone?

21 MR. LAYTON: It's clear to us. This is
22 Matt Layton again.

23 And we would prefer not to put the spec
24 in here because, you know, a miracle could happen
25 and they could spend some money and, therefore,

1 take a wider range of water, and then the
2 appropriately treated would be to the new spec.

3 HEARING OFFICER COCHRAN: Okay. Okay.

4 So then turning now to paragraph A-3, it
5 talks about that, "The use of recycled wastewater
6 shall meet a minimum of 20 percent of annual
7 cooling water needs."

8 What are the annual cooling water needs?
9 Because if you're saying 20 percent, it makes me
10 think 20 percent of X. What is X?

11 I know that this is Mr. Layton's favorite
12 topic.

13 MR. LAYTON: This is Matt Layton again.

14 It depends on how much water you use that
15 year. That is the X. If you use 3,000 acre
16 feet, then it would be 20 percent of that. And
17 if the following year you dispatch less and you
18 only used 1,500 acre feet, then it would be 20
19 percent of that.

20 HEARING OFFICER COCHRAN: So there's not
21 an absolute maximum amount of water usage
22 available? You're saying that the calculation of
23 the minimum is going to be on an annualized
24 basis?

25 MR. LAYTON: Twenty percent of the amount

1 of water that you were able to use that year --

2 HEARING OFFICER COCHRAN: Okay.

3 MR. LAYTON: -- all the water, you know,
4 the State Water Project water, the banked water,
5 and the recycled water.

6 HEARING OFFICER COCHRAN: Okay.

7 MR. HARRIS: And, Hearing Officer, I'd --
8 this is Jeff Harris -- I'd add that the word
9 "cooling" is intended to distinguish it from
10 things like, you know --

11 HEARING OFFICER COCHRAN: No.

12 MR. HARRIS: Yeah.

13 HEARING OFFICER COCHRAN: Yeah. That I
14 understood. It was more the X, not the what. It
15 was the -- it was more on the needs, not the
16 cooling water. It was more on the needs.

17 And then it talks about "excluding
18 periods recycled water is not available or not of
19 sufficient quality."

20 Here's our quality discussion again. And
21 if I'm understanding, we all know how that's
22 defined and we all know who decides; is that
23 correct?

24 MR. LAYTON: This is Matt Layton.

25 Yes.

1 HEARING OFFICER COCHRAN: Thank you.
2 Because, so that you understand, I'm not trying
3 to be incredibly picky. I know it may sound that
4 way. But when ten years has elapsed and none of
5 us are still here and someone picks up these
6 Conditions and has to decide how to enforce them
7 or whether there is an enforcement action
8 required, these words are going to really matter.
9 And as we know, what likely happens is we write a
10 beautiful 800-page reasoned decision, they rip
11 off the Conditions of Cert, and that's what
12 everyone looks at. They don't go back and look
13 at our 800, you know, Pulitzer Prize-potential
14 words, they just look at what the conditions say.
15 So as long as everyone understands?

16 MR. LAYTON: This is Matt Layton again.
17 Please do not write an 800-page decision.

18 We had a lot of discussion about this.
19 And there are periods when wastewater treatment
20 facilities do go down, they fail, they stop
21 delivering water, or they cannot deliver water.
22 You know, the bugs die, and so they cannot --

23 HEARING OFFICER COCHRAN: Right.

24 MR. LAYTON: -- treat the water. Those
25 periods will be very well defined and very well

1 understood. They have to report it. They report
2 it to, I think, another state agency. So that
3 would be worded very clear.

4 And then, again, there is a spec that
5 they have with the Applicant and the wastewater
6 treatment facility, there's a spec on what the
7 water delivery shall be. If it's above spec
8 then, yes, the Applicant or the owner can say we
9 refuse delivery.

10 HEARING OFFICER COCHRAN: Okay. So when
11 we're talking about the agreement between the
12 project and the recycled water purveyor, is that
13 the Recycled Water Purchase Agreement referenced
14 in Soil and Water 20?

15 Mr. Kiel is saying yes.

16 MR. KIEL: I believe it is.

17 HEARING OFFICER COCHRAN: Okay.

18 MR. KIEL: But I can confirm shortly.

19 HEARING OFFICER COCHRAN: Okay. That
20 would be awesome.

21 Also, is the Recycled Water Purchase
22 Agreement referenced in Soil and Water 20 part of
23 the docket in these proceedings; do we know? Has
24 that ever been filed with the Energy Commission?

25 MR. KIEL: Well, the Condition requires

1 that it be filed with the CPM.

2 HEARING OFFICER COCHRAN: Okay.

3 MR. KIEL: But I'm not aware of it being
4 docketed, but I will research.

5 HEARING OFFICER COCHRAN: Okay. Because
6 the more that we can sort of internally refer to
7 those documents, and that those documents already
8 exist, I think it give greater clarity than to
9 the expectations that the Commission had at the
10 time they adopted these Conditions, so that that
11 can also maybe fill in gaps in the event that
12 there's a dispute among the parties regarding the
13 enforcement and enforceability of these
14 Conditions.

15 So turning now to the next paragraph
16 which begins with, "If any of these three
17 criteria are not satisfied," and I don't know
18 what three criteria that references. Is it the
19 limitations on use that are enumerated in
20 Condition A, or is it the other descriptors in
21 the paragraph right before it, where I only see
22 two criteria?

23 Ms. Chester?

24 MS. CHESTER: I believe the three
25 criteria, you're regarding the paragraph about

1 "due to an act of God;" is that correct?

2 HEARING OFFICER COCHRAN: Yes.

3 MS. CHESTER: Yeah. The three criteria
4 are A-1, -2 and -3.

5 HEARING OFFICER COCHRAN: Okay.

6 MS. CHESTER: It would be the three
7 conditions of water use.

8 HEARING OFFICER COCHRAN: Okay. Thank
9 you for that.

10 So now let's do talk about the language,
11 "act of God." I think the Committee is concerned
12 that that language might be duplicative then of
13 natural disaster and emergency, as well as being
14 vague. And, for example, does that include a
15 drought?

16 And similarly, the word "an emergency,"
17 perhaps there's some language that could be added
18 there that has to be declared by either state or
19 federal or county. In other words, what -- I
20 think we know what a natural disaster is, but I
21 think that there was some confusion about "act of
22 God" and "emergency."

23 MS. CHESTER: Based on where that
24 language came from, this is actually pulled as a
25 copy, I believe, from Carlsbad or a previous

1 decision, so it was not with any particular
2 disaster or act in mind --

3 HEARING OFFICER COCHRAN: Okay.

4 MS. CHESTER: -- but rather an event
5 outside of the control of the Applicant.

6 HEARING OFFICER COCHRAN: Okay. Okay.

7 It then -- this paragraph is then -- I'm
8 sorry, did -- okay. Does anybody else have
9 any -- yeah. Does anybody else have -- are you
10 all attached to "act of God," so if we took it
11 out, would that be okay?

12 MR. HARRIS: We'd like to use force
13 majeure. That's fine, but --

14 HEARING OFFICER COCHRAN: That's just
15 French for act of God.

16 MR. HARRIS: -- people make a living out
17 of what force majeure means.

18 But as Ms. Chester said, really, the
19 emphasis is on the part about, you know, out of
20 control of the project owner. And that was
21 really what we were most interested in was
22 ensuring that, you know, for things that we can
23 control, we're held accountable, and for things
24 we can't, that we all talk about it and make the
25 world better.

1 HEARING OFFICER COCHRAN: If we were to
2 add language in there about having it be a
3 declared emergency, would that be acceptable?

4 MS. MURRAY: Acceptable to me -- or us.

5 HEARING OFFICER COCHRAN: Thank you.

6 MS. CHESTER: Staff has no issue with
7 adding a declared emergency.

8 In response to the question about
9 drought, I think that would be a situation which
10 we would want to get the parties together again,
11 so --

12 HEARING OFFICER COCHRAN: Okay.

13 MR. HARRIS: Well, I guess we're a little
14 concerned about limiting the declared. If
15 there's an issue with the water treatment plant,
16 I'm not sure there would be a disaster
17 declaration associated with that, for example.

18 HEARING OFFICER COCHRAN: Okay.

19 MR. HARRIS: So that's why we were -- and
20 declarations are typically, I know this from my
21 federal experience, tied more to funding than
22 they are to the actual events, so --

23 HEARING OFFICER COCHRAN: We're just
24 trying to provide some level of --

25 MR. HARRIS: Clarity, sure.

1 HEARING OFFICER COCHRAN: -- clarity and
2 certainty, so that way it doesn't then become a
3 battle of, oh, well, no, this isn't that. It's,
4 you know, trying to cabin that discussion.

5 In any event, so this paragraph is then
6 talking about circumstances that then lead to a
7 need to meet and confer, essentially; is that
8 correct? Am I reading that correctly? So -- and
9 it's as soon as practicable. And again, that's a
10 little squishy. And, also, what I'm not seeing
11 in this paragraph is you meet and confer, and if
12 there's no agreement, then what happens? Is the
13 plant shut down for the remainder of the year?
14 What's the remedy?

15 MS. CHESTER: So there was -- this
16 particular sentence was actually a discussion
17 among the parties. The intent is to have a
18 meeting and take action to then satisfy the
19 Conditions of Certification as soon as
20 practicable. It is a little bit flexible, and
21 that was on purpose for agreement between the
22 parties. It's not meant to just be simply meet
23 and confer, but to determine the course of action
24 following.

25 HEARING OFFICER COCHRAN: And if you're

1 unable to determine -- if you're unable to agree
2 on that course of action, what happens then?

3 MS. CHESTER: I think that was a point we
4 discussed about, you know, is this the point that
5 Staff then brings it to a Committee? Is this the
6 point then that the project owner brings it to a
7 Committee, just relying then on existing
8 regulations, and clarification from the following
9 paragraph.

10 HEARING OFFICER COCHRAN: So the intent
11 of the second paragraph is a modification of this
12 paragraph where it's an event outside the
13 exclusive control?

14 MS. CHESTER: No. It's just a
15 continuation, you know, differentiating between
16 events within the exclusive control and outside
17 of the exclusive control. And if we meet and
18 determine one way or the other, if it is one of
19 those areas that's hard to define, maybe because
20 it's not clear or certain, then you have a
21 fallback where maybe one party takes the position
22 that then the \$500 penalty would apply.

23 HEARING OFFICER COCHRAN: Okay.

24 MR. HARRIS: If I can add, our thinking
25 here on the outside our control is that we get

1 together and talk about what happened. And one
2 possible outcome is that what happened is that
3 the water treatment plant failed. And we're all
4 going to work to make sure it gets back online.
5 And those are the kind of events that I think I
6 see as more likely. The ones within our control,
7 it's very clear what happens. There's a process
8 that's followed there.

9 HEARING OFFICER COCHRAN: So I want to
10 get back to what you just said, Mr. Harris. I
11 want to make sure that I'm understanding this in
12 my head.

13 If it's outside the control of the
14 project owner, then it's meet and confer to
15 determine a course of action?

16 MS. CHESTER: Correct.

17 HEARING OFFICER COCHRAN: If it's within
18 the control of the project owner, then it's the
19 penalties set forth in this paragraph?

20 MS. CHESTER: Correct.

21 HEARING OFFICER COCHRAN: If you can't
22 agree that it was outside the control of the
23 project owner, then --

24 MS. CHESTER: Then I think that's where
25 we fall back on the Energy Commission's

1 regulations, and potentially a new proceeding
2 starts.

3 HEARING OFFICER COCHRAN: So then the
4 meet and confer is, in some ways, a two-prong
5 thing. In some ways it's to determine whether it
6 was within or without the exclusive control of
7 the project owner, and then it's to determine the
8 corrective course of action.

9 MS. CHESTER: I would agree. It's a
10 discussion of does this provision apply, and what
11 are the next steps?

12 HEARING OFFICER COCHRAN: Okay.

13 Do the other parties agree with that
14 characterization, that that was what this
15 language was intended to be?

16 I see. Out loud, please, for the record.

17 MR. HARRIS: Because I'm sitting in the
18 aisle for the exit row.

19 Yes, I understand my duties, so --

20 HEARING OFFICER COCHRAN: Okay.

21 MS. MURRAY: Yes, for CDFW.

22 HEARING OFFICER COCHRAN: Okay. Thank
23 you.

24 And by the way, we really liked this
25 paragraph with the money. That was easy to

1 understand.

2 So I'd like to now look at Soil and Water
3 2 on page B-2. I note that the existing Storage
4 Agreement is in the record. It was filed on June
5 8 and has TN 217996. I would also note, however,
6 that it expires September 30, 2018. So it then
7 leads me to a couple of questions.

8 Number one, is there a value in
9 referencing the existing agreement that we know
10 about? Are the terms and conditions of that
11 existing agreement acceptable so that we could
12 say, in some ways, that that's the form of the
13 agreement that we're looking for in the
14 verification?

15 And then in the event that for
16 whatever -- let's assume two scenarios.

17 First, that Mojave Water Agency decides
18 that it wants to make changes to that agreement,
19 how is that reviewed for consistency?

20 Second, what if Mojave Water Agency says,
21 no, we're not going to do these kinds of
22 agreements anymore, then what? Where are we
23 then?

24 MR. KIEL: Ms. Cochran --

25 HEARING OFFICER COCHRAN: Yes?

1 MR. KIEL: -- may I address those two
2 points?

3 I recommend not including specific terms
4 or form of Storage Agreement within the
5 conditions. And this is going to sound somewhat
6 contradictory to the next point. I recommend we
7 not put them in because we don't want to
8 essentially write them in stone and make it
9 difficult to change should Watermaster change its
10 rules and regulations.

11 That said, the standard -- some of the
12 basic terms of the Storage Agreement is in the
13 judgment itself. And the Watermaster has adopted
14 its rules and regulations that expand on that
15 slightly. But because it's in the judgment, I
16 don't think we should put something in the
17 Conditions. And also the fact that, you know,
18 the rules and regs could change, could add
19 detail, could add additional requirements, I'd
20 suggest that we don't want to limit it in this
21 condition.

22 HEARING OFFICER COCHRAN: Okay. Is that
23 acceptable to Staff?

24 MS. CHESTER: Yes.

25 HEARING OFFICER COCHRAN: Ms. Murray?

1 MS. MURRAY: Yes.

2 HEARING OFFICER COCHRAN: Okay.

3 So now it gets a little complicated
4 because we not only have the language of the
5 stipulation, we then have the document that was
6 submitted by, well, from Mojave Water, we'll just
7 call it from Mojave Water, that I now can't get
8 my hands on.

9 So have the other parties had a chance to
10 review the information from Mojave Water?

11 MS. CHESTER: Yes.

12 HEARING OFFICER COCHRAN: Okay. So I'm
13 going to open it up. So are there any general
14 comments you would like to share about the
15 changes in language proposed by MWA?

16 MR. KIEL: The project owner supports the
17 changes, with one exception that we'll discuss,
18 or at a minimum, doesn't object to these changes.
19 The parties did discuss that there appears to be
20 one error in the strikeout. I think there's the
21 word "facility" that should be added into Soil
22 and Water, the very first strikeout --

23 HEARING OFFICER COCHRAN: Oh, the --

24 MR. KIEL: -- in Soil and Water 4, the --

25 HEARING OFFICER COCHRAN: Yes. Right

1 after where it says "facilities"?

2 MR. KIEL: That's correct. So we
3 recommend that the word "facilities" remain. And
4 again, we support or don't oppose to making any
5 of the other changes.

6 HEARING OFFICER COCHRAN: Okay.

7 MS. CHESTER: Staff agrees. We're fine
8 with the Conditions.

9 MS. MURRAY: And CDFW supports or does
10 not oppose the MWA changes.

11 HEARING OFFICER COCHRAN: Okay. Thank
12 you. I do have a question.

13 In Soil and Water 5-A, it makes -- MWA
14 suggests a sort of big change, that instead of
15 then calculating the amount available, it's now
16 reported to MWA, pursuant to existing and future
17 storage agreements. And who is it reported by?
18 When is that report given, and how is it given?
19 And are those concepts important? Do the parties
20 see those as being important concepts? Because
21 usually, to write an effective condition, you
22 usually want to say who is responsible for doing
23 what, when, and the way in which they will
24 perform that duty.

25 Mr. Kiel shook his head.

1 MR. KIEL: Yes, Ms. Cochran. I am not
2 certain why Watermaster recommended that change.
3 It's possible that just the way this works is
4 that Victorville Water District will, in fact,
5 report what was injected to the Watermaster, and
6 the Watermaster will essentially include that in
7 its records and its calculations. I do believe,
8 though, the intent is to be consistent with what
9 is written in 5-C, which is the amount of
10 percolated water is calculated by Watermaster in
11 accordance with the terms of the Storage
12 Agreement.

13 HEARING OFFICER COCHRAN: Right. But
14 injected water has historically been calculated
15 by Staff, taking into account dissipation over
16 time and distance. And so I'm not seeing -- so
17 that's why I'm a little confused, because (A)
18 deals specifically with the injected water as
19 opposed to the percolated water.

20 MR. LAYTON: This is Matt Layton.

21 We had a lot discussion about this,
22 anticipating that you would have some questions
23 about it.

24 The amount of water that's injected
25 currently is about 2,000 acre feet, the 1,000

1 minimum, and then another 1,000 which is usable.
2 At those levels the dissipation is very low, so
3 Staff has lost its interest in trying to
4 calculate that dissipation, and we defer to the
5 Watermaster.

6 Since High Desert is now participating,
7 losses from that 1,000 basically stay in the
8 basin. So we leave it to the Watermaster to
9 determine if they've injected something and
10 misplaced it and therefore cannot use it, or if
11 they've injected something and someone gets to
12 use it, therefore they still get credit for the
13 full amount that they injected. If the 1,000
14 acre feet stays at 1,000, 1,050 I think is
15 what -- is the usable part, if that stays at
16 1,050 for the rest of the life, if they never
17 used that, there's no dissipation. That's the
18 Watermaster's accounting.

19 So we are comfortable with deferring to
20 the Watermaster and giving up the ability to
21 determine dissipation.

22 HEARING OFFICER COCHRAN: Because --
23 okay. So I just want to make sure that I
24 understood this.

25 Staff is okay with allowing the

1 Watermaster to determine the available amounts of
2 water by MWA? MWA can determine both injected
3 and percolated banked water available to the
4 HDPP?

5 MR. LAYTON: That is correct.

6 MR. KIEL: Pardon. May I also add that
7 the existing Storage Agreements expressly provide
8 for the authority of the Watermaster to account
9 for losses of both injected water and percolated
10 water?

11 HEARING OFFICER COCHRAN: Well, the
12 agreement also allows MWA to use the water
13 however they see fit. You don't necessarily have
14 it on your account. Because you're not within
15 the judgment, the language of the agreement
16 provides that they can transfer it to another
17 user who is; right?

18 MR. KIEL: I interpret it slightly
19 differently. But it's -- if hydrologic factors
20 provide that that water is no longer available or
21 it has spilled into another subbasin, yes. In
22 terms of just -- I think it's highly unlikely to
23 occur.

24 HEARING OFFICER COCHRAN: Okay. I don't
25 think that MWA had very many more changes.

1 Oh, on the top of their page B-5, it's
2 the discussion in the Conditions of Certification
3 relating to the waste discharge requirement with
4 Regional Water Quality, and there are now changes
5 being made. Do we know why these changes are
6 being proposed? Because it's my recollection
7 that most of this language has been -- was the
8 original language since 2000. Have we made any
9 changes to 11 and 12? It's the Lahontan review
10 and approval of the Water Treatment and
11 Monitoring Plan, but then there's specific
12 sampling results that MWA is changing.

13 MR. KIEL: I don't believe the project
14 owner knows why Watermaster recommends that
15 change. And we're not aware of any -- well, the
16 parties have not proposed any changes to Soil and
17 Water 12.

18 We have no objection to this change.

19 MS. CHESTER: And Staff has no objection
20 to that change.

21 HEARING OFFICER COCHRAN: So we talked
22 briefly a while ago about not having the form of
23 contract in Soil and Water 2. When I look at
24 Soil and Water 17 and Soil and Water 20, is it
25 the Petitioner's position that we also shouldn't

1 refer to specific agreements that may already be
2 in effect? So it's the Aquifer Storage and
3 Recovery Agreement and the Recycled Water
4 Purchase Agreement.

5 MR. KIEL: I could address the first one,
6 referring to -- I'm sorry. So the Storage
7 Agreement that we're talking about in Soil and
8 Water 2 is different than the one referenced in
9 Soil and Water 17.

10 HEARING OFFICER COCHRAN: Right.

11 MR. KIEL: And the ones entered into
12 between Victorville Water District and the
13 Watermaster are required to be renewed every five
14 years or they terminate. And so that agreement
15 does regulate change. And so I have some concern
16 about referencing storage agreements.

17 HEARING OFFICER COCHRAN: Fair enough.

18 MR. KIEL: The actually Storage and
19 Recovery Agreement has not changed since the
20 project owner entered into that.

21 I have no particular concern with the way
22 this is phrased, but I'm happy to, you know,
23 entertain further discussions about revising or
24 updating, as needed.

25 HEARING OFFICER COCHRAN: Okay.

1 Do any of the other parties have a
2 position on this?

3 MS. CHESTER: Staff would leave it as is
4 in the Conditions.

5 MS. MURRAY: I'm fine with the way it is.

6 HEARING OFFICER COCHRAN: Okay.

7 So now that we've talked, is there
8 anything else regarding the stipulation and the
9 Conditions of Certification that I haven't
10 touched on that you all would like to touch on,
11 specifically as it relates to the most recent
12 filing with changes from Mojave Water, anything I
13 may have missed, anything you wish I'd missed?
14 Going once? Fair warning. Okay. I'm hearing a
15 whole lot of silence.

16 So I'm going to assume we're all
17 satisfied with the discussion we just had about
18 the substance.

19 So let's talk about the procedure moving
20 forward. Strike that.

21 Let's talk about Condition of
22 Certification 6(d), first, instead. So we
23 received opening briefs from all of the parties.
24 We received a reply brief only from High Desert
25 Power Project.

1 In the Prehearing Conference Statements
2 from Staff and Applicant -- and I didn't remember
3 seeing one from CDFW; if I missed it, I'm sorry,
4 or if it got in the wrong docket somehow, I
5 didn't find it. Excuse me. In any event, what I
6 saw from everyone is that there's no need for an
7 evidentiary hearing. The only caveat is in
8 Petitioner's Prehearing Conference Statement
9 there was a desire to have oral argument, if you
10 will, on Condition of Certification 6(d); is that
11 correct?

12 MR. KIEL: If needed.

13 HEARING OFFICER COCHRAN: If needed?

14 Okay.

15 Does anyone see a need for anything --
16 for argument regarding 6(d), or are you happy
17 with the briefs submitted?

18 MS. CHESTER: Staff sees no need for oral
19 argument.

20 MS. MURRAY: CDFW sees no need for oral
21 argument.

22 HEARING OFFICER COCHRAN: And do the
23 parties all agree that Condition 6(d) and the
24 question of whether it's been satisfied is a
25 legal issue only, no factual information is

1 required, other than you have already attached?
2 Mr. Harris attached quite a bit of information to
3 his brief, but that's all in the record.

4 MR. HARRIS: I agree that it can be
5 decided on the briefs. There are legal issues
6 that are cited -- or factual issues cited in the
7 briefs and citations to TN numbers and what have
8 you.

9 But the bottom line is I feel it's ready
10 to be submitted to the Committee --

11 HEARING OFFICER COCHRAN: Okay.

12 MR. HARRIS: -- on the briefs.

13 MS. CHESTER: Staff agrees.

14 MS. MURRAY: DFW agrees.

15 HEARING OFFICER COCHRAN: So then what
16 I'm hearing is a resounding, we don't need an
17 evidentiary hearing on September 20. The parties
18 don't believe we need an evidentiary hearing on
19 September 20; is that correct?

20 MS. CHESTER: Correct.

21 HEARING OFFICER COCHRAN: Okay.

22 MS. MURRAY: Correct.

23 MR. HARRIS: Correct.

24 HEARING OFFICER COCHRAN: So let's talk a
25 little bit then about a procedure moving forward.

1 If you will recall in the July 10 orders
2 after the last conference that we had, one of the
3 matters of procedure that the Committee stated
4 was that they would be making a recommended
5 decision to the Commission, and that that
6 recommended decision would be available for a
7 comment period of 15 days. So assuming there is
8 no evidentiary hearing on September 20, it seems
9 as though it is most likely that this matter will
10 be considered by the full Commission in November
11 or December, given that 15-day review period.

12 Does anyone have any scheduling issues
13 with either of those days?

14 MR. HARRIS: It's hard to see that far in
15 the future, but we'll make it work. The
16 Applicant, the project owner, is ready to move
17 forward. And so if I'm not here and Mr. Kiel is
18 not here and he's not here, we'll find somebody
19 else, so --

20 HEARING OFFICER COCHRAN: Okay.

21 MS. CHESTER: We have coverage.

22 MS. MURRAY: We'd have to find out when
23 are --

24 HEARING OFFICER COCHRAN: Okay.

25 MS. MURRAY: Do you know when they are?

1 HEARING OFFICER COCHRAN: I don't.
2 That's not my -- it's probably on our web page.
3 We will provide notice. When we release whatever
4 document we release it will include notice of
5 consideration by the Commission as a whole, and
6 the process for that. This will not be the 800-
7 pound dissertation. I know Mr. Layton is very
8 sad. This is not going to be our typical
9 Presiding Member's Proposed Decision. This will
10 be a recommended decision from this Committee to
11 the Commission, in much the same way that the
12 interim relief was a recommended decision. And
13 that's why we've provided notice of what our
14 review periods were going to be, is because under
15 1769 of the Commission's Regulations the
16 Committee can do so.

17 Are there any objections to that?

18 MR. HARRIS: A question, clarification.

19 HEARING OFFICER COCHRAN: Yes.

20 MR. HARRIS: So next step would be a
21 Proposed Decision from the Committee. Would you
22 take comments on that from the parties before you
23 go to the full Commission, or would the comments
24 be --

25 HEARING OFFICER COCHRAN: Yes. That the

1 15-day review period.

2 MR. HARRIS: Okay. All right. So --

3 HEARING OFFICER COCHRAN: That's for the
4 parties and everyone else --

5 MR. HARRIS: Okay. That's all right.

6 HEARING OFFICER COCHRAN: -- parties,
7 public, interested persons.

8 Ms. Chester?

9 MS. CHESTER: I just want to point out
10 that sometimes the December business meetings are
11 canceled. So I wonder if any of the parties have
12 an issue if it's potentially pushed to January?

13 MR. HARRIS: Well, what's it going to be
14 this winter? Yeah.

15 HEARING OFFICER COCHRAN: If you know
16 that --

17 MR. HARRIS: Exactly. On the website,
18 November 8 and December 13, so there's not a
19 second meeting. Sometimes there's a second
20 meeting in December, actually, is probably more
21 likely. That's been my experience the last few
22 years, as opposed to cancellation, mostly because
23 of federal issues driving -- or grants driving
24 things to the end of the calendar year.

25 So -- but, as I said, either one of those

1 days will work for us, November 8 or December 13,
2 so --

3 HEARING OFFICER COCHRAN: Okay. Thank
4 you, Ms. Chester.

5 Is there anything else?

6 MR. HARRIS: Are we about to adjourn, is
7 that --

8 HEARING OFFICER COCHRAN: No. Well,
9 we're about to adjourn to closed session.

10 MR. HARRIS: Well, I guess the other
11 thing I would -- there is something else.

12 I just want to thank the parties for
13 getting us to this point, and the Committee for
14 deftly putting us in the position where we felt
15 like the compromise was going to work for
16 everybody. So nobody's really happy, so it must
17 be a good compromise, and nobody stormed out of
18 the room.

19 So, you know, I guess I just want to say
20 one more thing on sort of a personal level. You
21 know, the briefing on Soil and Water 6(d) was
22 pretty rough, but I don't think that reflects the
23 interaction the parties have had recently. I
24 think it's been very positive, and I appreciate
25 us all, if nothing else, being so tired we don't

1 want to see each other anymore. So thank you for
2 the opportunity to get to this point, and I
3 appreciate that on behalf of the High Desert
4 Project.

5 HEARING OFFICER COCHRAN: And again,
6 thank you all for your hard work and your
7 willingness and ability to answer my questions
8 that I had about your work. So I know it's not
9 easy to stare at the blinking cursor on the
10 screen and say, okay, what am I going to write
11 now. So the more I get from you the easier it
12 makes the job of the Committee and the
13 Commission.

14 Anything else?

15 With that, we'll turn to public comment.
16 Are there any members of the public who would
17 like to speak?

18 Mr. Lee, is everyone un-muted who wishes
19 to be un-muted?

20 MR. LEE: Yes, they are.

21 HEARING OFFICER COCHRAN: There's no one
22 in the room, very few folks on the line.

23 So with that, the Committee is now going
24 to recess to a closed session in accordance with
25 California Government Code section 11126,

1 subdivision(c)(3), which allows a state body,
2 including a delegated committee, to hold a closed
3 session to deliberate on a decision to be reached
4 in a proceeding the state body was required by
5 law to conduct.

6 And with that, we are in closed session.

7 (Whereupon the Committee reconvened into
8 closed session at 3:01 p.m.)

9 MS. COCHRAN: This is Susan Cochran, the
10 Hearing Officer. The Committee has met in closed
11 session and has now adjourned. There is no
12 reportable action.

13 (Whereupon the meeting adjourned at 3:45 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.

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IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of December, 2017.



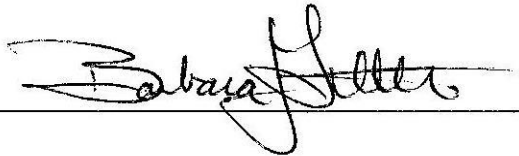
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