

**DOCKETED**  
**12-CAI-04**

TN # 2916

JAN. 31 2013

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

In the Matter of the: )  
 )  
Complaint Against the Bottle Rock ) Docket No.  
Geothermal Power Plant ) 12-CAI-04  
\_\_\_\_\_ )

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

TUESDAY, JANUARY 22, 2013

10:00 a.m.

Reported by:  
John Cota  
Contract No. 170-09-002

COMMITTEE MEMBERS PRESENT

Karen Douglas, Presiding Member

Robert B. Weisenmiller, Chair and Associate Member

HEARING OFFICER, ADVISORS PRESENT

Paul Kramer, Hearing Officer

Galen Lemei, Advisor to Commissioner Douglas

Jennifer Nelson, Advisor to Commissioner Douglas

Sekita Grant, Advisor to Commissioner Weisenmiller

Eileen Allen, Commissioners' Technical Adviser for Facility Siting

CEC STAFF PRESENT

Kevin W. Bell, Staff Counsel

Camille Remy-Obad, Compliance Project Manager

Chris Marxen, Compliance and Dockets Office Manager

OFFICE OF THE PUBLIC ADVISER

Blake Roberts, Assistant Public Adviser

COMPLAINANT

David Coleman

Donald B. Mooney, Esq.

RESPONDENT/PROJECT OWNER

Samantha Huggins  
Bottle Rock Power, LLC

John A. McKinsey, Esq.  
Locke Lord LLP

Kristen T. Castaños, Esq.  
Stoel Rives LLP

PROJECT LANDOWNER

Robert Francisco  
V.V. & J. Coleman LLC

Mark Peterson, Esq.  
Eileen Diepenbrock, Esq.  
Diepenbrock Elkin LLP

INTERESTED AGENCIES

John Dunnigan, Senior Staff Counsel  
Department of Water Resources

ALSO PRESENT

Randall Fung (via WebEx)

I N D E X

|   | <u>Page</u> |
|---|-------------|
| 1. Call to Order  | 1           |
| 2. Committee Hearing on the Complaint Against the<br>Bottle Rock Geothermal Power Plant (12-CAI-04) | 3           |
| a. Consider pending motions (if any)  | 4           |
| b. Confirm topics and issues to be presented,<br>order of testimony                                 | 5           |
| c. Testimony  | 16          |
| d. Discussion, argument   | 36          |
| e. Briefing schedule (if necessary)   | 61          |
| f. Other matters related to the Complaint   | 61          |
| 3. Public Comment   | 61          |
| 4. Closed Session   | 63          |
| 5. Adjourn  | 63          |
| Certificate of Reporter   | 64          |

E X H I B I T SComplainant

| <u>Number</u> | <u>Received</u> |
|---------------|-----------------|
| 1             | 20              |
| 2             | w/d             |
| 3             | 20              |
| 4             | w/d             |
| 5             | w/d             |
| 6             | 20              |
| 7             | 20              |
| 8             | 20              |
| 9             | 20              |
| 10            | 20              |
| 11            | 20              |

Respondent/Project Owner

| <u>Number</u> | <u>Withdrawn</u> | <u>Received</u> |
|---------------|------------------|-----------------|
| 100           |                  | w/d             |
| 101           |                  | w/d             |
| 102           |                  | w/d             |
| 103           |                  | w/d             |
| 104           |                  | w/d             |
| 105           |                  | w/d             |
| 106           |                  | 26              |
| 107           |                  | 26              |
| 108           |                  | w/d             |
| 109           |                  | w/d             |
| 110           |                  | w/d             |
| 111           |                  | 26              |
| 112           |                  | w/d             |

Staff

| <u>Number</u> | <u>Received</u> |
|---------------|-----------------|
| 200           | JN              |
| 201           | 33              |

Key: JN = judicial notice to be taken  
w/d = exhibit withdrawn

E X H I B I T SProject Landowner

| <u>Number</u> | <u>Received</u> |
|---------------|-----------------|
| 300           | w/d             |

Department of Water Resources

| <u>Number</u> | <u>Received</u> |
|---------------|-----------------|
| 400           | w/d             |
| 401           | 34              |
| 402           | 34              |
| 403           | 34              |
| 404           | 34              |
| 405           | 34              |
| 406           | 34              |
| 407           | 34              |
| 408           | 34              |
| 409           | 34              |
| 410           | 34              |

Lake County

| <u>Number</u> | <u>Received</u> |
|---------------|-----------------|
| 601           | Ref             |
| 602           | Ref             |

Key: JN = judicial notice to be taken  
 Ref = Refused by the Committee  
 w/d = exhibit withdrawn



1 MR. DUNNIGAN: John Dunnigan, Senior staff counsel  
2 with Department of Water Resources.

3 PRESIDING MEMBER DOUGLAS: Thank you.

4 What about Department of Conservation, Division of  
5 Oil, Gas & Geothermal Resources?

6 (No response.)

7 PRESIDING MEMBER DOUGLAS: Okay, nobody here from  
8 Department of Conservation.

9 Lake County, any representatives from Lake County?

10 (No response.)

11 PRESIDING MEMBER DOUGLAS: All right. And then  
12 Energy Commission staff.

13 MR. BELL: Kevin W. Bell, senior staff counsel, on  
14 behalf of the Energy Commission staff. With me here today  
15 are Camille Remy-Obad and Chris Marxen.

16 PRESIDING MEMBER DOUGLAS: Thank you. And then do  
17 we have, let's see, Project Landowner V.V. and J. Coleman  
18 represented here? Could you just introduce yourself for the  
19 record.

20 HEARING OFFICER KRAMER: Could you go to the  
21 microphone.

22 MR. PETERSON: Mark Peterson. And with me is  
23 Eileen Diepenbrock, counsel for V.V. & J. Coleman LLC and  
24 Robert Francisco who is the managing member.

25 PRESIDING MEMBER DOUGLAS: Thank you.

1           Public Adviser, Blake Roberts, so the Public  
2 Adviser is here.

3           Are there any other public agencies represented,  
4 state, local or federal public agencies?

5           (No response.)

6           PRESIDING MEMBER DOUGLAS: Okay. Well with that  
7 then I'll turn this over to the hearing officer.

8           HEARING OFFICER KRAMER: Thank you. The purpose  
9 of the hearing today is to take evidence and hear argument  
10 relevant to the complaint filed by David Coleman on October  
11 11th of 2012 alleging that the Bottle Rock Project violated  
12 conditions of a 2001 Energy Commission Order approving the  
13 change of ownership of the project.

14           We will take public comment after we hear the  
15 evidence and the arguments. To help us organize that, if  
16 you're in the room with us and wish to make a public  
17 comment, if you could fill out one of the blue comment cards  
18 that Mr. Roberts is holding up and give it to him, that will  
19 help us organize that. And if you're on the telephone we  
20 will open up the lines for comments when that time comes,  
21 you don't need to fill out a card or anything.

22           For phone listeners, please mute yourselves, you  
23 do that by pressing the star and then 6 on your phone, so  
24 that your background noise doesn't make it harder for all of  
25 us to hear each other. And if you did need to speak you

1 could unmute by again pressing star-6. I can mute you as  
2 well from the control panel. But if I do it you can't  
3 unmute yourself so it's probably better that you take care  
4 of your own business, so to speak.

5 I also wanted to remind people that on WebEx, if  
6 you are looking on your computer as well, there is probably  
7 a chat window on your screen. I just want to make it clear  
8 that if you were to type comments into that chat window  
9 those would not be captured in our record so you are going  
10 to need to speak them to us or send them in by some other  
11 means. But we don't monitor the chat window to pick up  
12 comments or testimony for that matter. It's really more of  
13 a -- it's a feature we don't use very often except maybe to  
14 let people know the status of the hearing or something like  
15 that.

16 So without further adieu we'll start through the  
17 agenda.

18 The first item was to consider any pending motions  
19 if there were any. I am unaware of any. Is anyone else  
20 aware of any motions we should be discussing?

21 Okay. As a sort of matter of housekeeping, I  
22 wanted to note that when I was going through the exhibits  
23 that were submitted, Mr. Mooney, Mr. Coleman gave us  
24 Exhibits 6 and 7 but they are both the same. I think it was  
25 Exhibit 7 was supposed to be another document but we have

1 two copies of Exhibit 6 in the record. So I don't know how  
2 you want to address that. It may or may not be relevant as  
3 we go forward today but I wanted to note that we have a  
4 description of Exhibit 7 but so far no copy of it.

5 MR. MOONEY: Okay, I'll take a look at that. I  
6 apologize for that, I'm not quite sure what happened there.  
7 And I don't think I have a -- I'm not sure if I have a --  
8 if that's the case I may not have a copy of the May 21, 2009  
9 letter with me.

10 HEARING OFFICER KRAMER: Okay. Well, again,  
11 depending on where this proceeding forks it may or may not  
12 be necessary, we'll see.

13 Also on the Exhibit List that I passed out to the  
14 parties just ahead of the hearing, you will see some notes  
15 in there that are yellow highlighted. Those are my notes of  
16 basically duplications between the exhibits of various  
17 parties submitted that we will want to resolve at some point  
18 so that we admit only one copy of a particular exhibit.  
19 Again, I will just point that out at this point and we will  
20 discuss it later in the hearing.

21 The next topic on the agenda was to confirm the  
22 topics and issues to be presented and the order of  
23 testimony. You also have as a handout this morning a  
24 spreadsheet in which I summarized the estimates for both  
25 testimony and cross-examination, the time estimates that is,

1 and oral argument that the parties gave in their prehearing  
2 filings. Again, that's a guide for all of us to see where  
3 we are. I note that it only adds up to less than three  
4 hours so if we do need to use all that time we appear to  
5 have it today.

6 But the next thing that will help determine the  
7 order in what we need to talk about today is the response  
8 that Bottle Rock filed on Thursday. Mr. McKinsey or  
9 Ms. Castaños -- is that a decent pronunciation.

10 MR. MCKINSEY: Ms. Huggins.

11 HEARING OFFICER KRAMER: Okay. So tell me if I've  
12 got it wrong with this summary. Bottle Rock is requesting  
13 that the amount of the bond and insurance, if any, to be  
14 held by the project be addressed in an amendment proceeding  
15 separate from this today and that today we just focus on  
16 whether there was a violation of a condition and what the  
17 penalty, if any, would be for that violation. Is that a  
18 fair summary of your request?

19 MR. MCKINSEY: Yes that is. And I would only add  
20 that it's a little bit broader than that to say that the  
21 whole topic of conformity to the 2001 order, to the extent  
22 that it says you have to conform to an agreement, that that  
23 would be the petition to amend. So it's a little broader  
24 than just the question of the decommissioning bond, for  
25 instance.

1 HEARING OFFICER KRAMER: Okay. So then if that,  
2 in your mind, is up in the air, whether what the provisions  
3 of that old order are, that would leave us with nothing to  
4 discuss today, wouldn't it?

5 MR. MCKINSEY: No, no, we're not -- and, you know,  
6 to put it probably better, what we recognized is that there  
7 are some core facts that just aren't in dispute between the  
8 complainant and the project owner, and I think the other  
9 parties, which was that there was a 2001 order, that it has  
10 particular language in it. We certainly disagree on, I  
11 think, what it might mean. And that second, the agreement  
12 was amended.

13 And so to some extent, you know, we realize that  
14 we are trying to do in a complaint proceeding something that  
15 the bell has been rung, so to speak, and so one way or  
16 another we are going to have to address the question of what  
17 to do about the fact that the agreement has been amended.

18 And it struck us that in the contentious nature of  
19 a hearing proceeding I don't think we are really going to  
20 get the best analysis of what to do with the project as a  
21 whole. And so one way or another the issue is the 2001  
22 order. And ultimately what is at issue is that a lot of  
23 things have changed since then but it's never been brought  
24 up, it was never addressed. Bottle Rock Power had never  
25 brought this forward before and really that should be before

1 you as a petition to amend.

2           However, the latter part of what you indicated is  
3 completely correct, that we think that by agreeing to the  
4 petition to amend portion of this it would allow the  
5 Committee to focus on the question of whether or not Bottle  
6 Rock Power's conduct was violative of the order and if so  
7 what the correct punishment or lack thereof should be. Or  
8 finding, for instance.

9           HEARING OFFICER KRAMER: Okay, does any other  
10 party want to comment on the request?

11           MR. MOONEY: I would like to comment on that, yes.

12           HEARING OFFICER KRAMER: Go ahead.

13           MR. MOONEY: I think it's a little bit outrageous  
14 for Bottle Rock at this stage to come in and say that these  
15 matters should be addressed in a petition to amend. When we  
16 had the workshop here staff indicated that the -- and my  
17 understanding is also or my recollection is that Bottle Rock  
18 also essentially requests that the complaint be treated as  
19 if it was a petition to amend and that evidence be submitted  
20 as if it was going to be a petition to amend and the staff's  
21 notice of the hearing asks for what is the desired outcome.  
22       And in terms of -- and Bottle Rock addressed that and had  
23 plenty of opportunity to address that.

24           I think that with -- getting a little bit into the  
25 argument here. But with the staff's submission and

1 Mr. Coleman's submission it became quite evident that Bottle  
2 Rock did not submit sufficient information -- and the  
3 information that was requested and the information that was  
4 brought to Bottle Rock's attention that needed to be  
5 submitted, that was brought to their attention during the  
6 workshop, it's quite evident that they did not -- they did  
7 not meet any kind of burden of proof or standard. And the  
8 information they submitted was wholly inadequate and so  
9 their response to that was to ask for, essentially, leave to  
10 file a petition to amend, and when that was part of the  
11 purpose and the basis of this hearing.

12           Again, staff indicated and the notice indicated  
13 that this hearing was essentially to be treated as a  
14 petition to amend. And for them at this point in time to  
15 say, oh, well we'd like to do that at a later date, it  
16 essentially -- if the hearing -- if the Committee was to do  
17 that they have essentially wasted a lot of energy and  
18 resources and folks' time by their actions.

19           HEARING OFFICER KRAMER: Mr. Bell?

20           MR. BELL: I can say that the revised prehearing  
21 conference statement filed by Bottle Rock did change the way  
22 staff was looking at this, slightly. But I think that  
23 Mr. Mooney is correct in that staff was viewing this  
24 complaint proceeding as an opportunity to use this as a  
25 vehicle to amend the conditions of certification at the

1 close of this proceeding.

2 Public Resources Code Section 25534 gives us three  
3 sanctioning options where there is a violation of a  
4 condition. Those options are: amend the conditions of  
5 certification, to revoke certification or define. Now,  
6 revocation of certification would be vastly disproportional  
7 of the nature of the violations that we have here.

8 However, staff was looking at this as an  
9 opportunity to amend the conditions of certification as a  
10 result of Bottle Rock's failure to petition the Commission  
11 prior to making the changes that it made. And of course  
12 there is the issue of the fine as well. Staff notes that in  
13 the revised prehearing conference statement Bottle Rock is  
14 now requesting that the Committee direct Bottle Rock to file  
15 a petition to amend.

16 Now, this proceeding isn't an end-all for Bottle  
17 Rock. If at the end of this proceeding the Committee opts  
18 to accept staff's recommendations and impose those two  
19 conditions on Bottle Rock, that wouldn't preclude Bottle  
20 Rock from coming back at a later date, at its own  
21 convenience, to change those two requirements and to provide  
22 sufficient information to justify those changes. Staff does  
23 see this as a missed opportunity, however.

24 HEARING OFFICER KRAMER: In what sense?

25 MR. BELL: We could have gotten it all done now.

1 We wouldn't have to come back for a separate petition to  
2 amend. We could have used this as a vehicle to change the  
3 conditions of certification by either granting Bottle Rock  
4 the relief that it wants, which is to do away with those two  
5 requirements that were imposed through the 2001 Order; or  
6 following staff's recommendations, impose those two  
7 conditions that were maintained in the original purchase and  
8 sale agreement that Bottle Rock was obligated to abide by.

9 HEARING OFFICER KRAMER: Any comments from any  
10 other party? Mr. McKinsey, did you want to reply?

11 MR. MCKINSEY: I wanted to elaborate on one point.  
12 Notwithstanding, Mr. Mooney is correct that we are getting  
13 a little bit into the argument side but I don't need to say  
14 that we disagree a little bit with the characterization,  
15 anyway, that our evidence, for instance, was lacking. But  
16 here is the issue.

17 Procedurally, the procedure for modifying a  
18 decision is provided for as a submittal by the project owner  
19 requesting a change. And in doing that one example of the  
20 nature of that is that they submit a declaration that they  
21 agree to abide by those changes.

22 The dilemma that was preceding in this complaint  
23 proceeding is that the authority of the Commission could be  
24 to order anything, and least, you know, subject to some  
25 interpretations of what provisions of 25534 were invoked and

1 not. But the problem was that you would then, perhaps, have  
2 the same problem you already have, which is now you have a  
3 new condition of certification that says to do something  
4 that the project owner is not currently doing and cannot see  
5 the means of doing so.

6           And so in a petition to amend proceeding you get a  
7 much cleaner presentation of what the project owner  
8 indicates are change conditions, what they seek as an order  
9 and you get a much more robust, cooperative proceeding where  
10 the Commission understands that you are issuing something as  
11 a proposed resolution that the project owner can abide by.  
12 The Energy Commission has never -- you know, they don't have  
13 very many complaints but they have certainly never attempted  
14 to replace a petition to amend proceeding.

15           And candidly, I thought it was a good idea, but  
16 the more I looked at how this was unfolding the more I  
17 realized it would create more uncertainty afterwards as to  
18 financing, as to exactly what the obligations were and  
19 weren't, than a clean petition to amend proceeding that  
20 adhered to the, to the terms of the, of the amendment  
21 process regulation that the Commission adopted.

22           But Mr. Mooney is correct that this was a fairly  
23 late development in my mind set of the issues present and  
24 so, I mean, I do apologize that it's caught everybody by  
25 surprise. But that doesn't, you know, undermine what I

1 think is the correct path for the Commission to want to  
2 follow to change a project.

3 HEARING OFFICER KRAMER: Anything further on this  
4 point? Okay, we are going to adjourn for at least ten  
5 minutes, for planning purposes, to a closed session, in  
6 accordance with Government Code Section 11126 subdivision  
7 (c)(3), which allows a state body, including a delegated  
8 committee, to hold a closed session to deliberate on a  
9 decision to be reached in a proceeding the state body was  
10 required by law to conduct. So folks on the telephone, you  
11 can hang with us, you could call in in ten minutes. We  
12 might not be back by then but I wanted to at least give you  
13 a minimum time for your break.

14 If there is anyone on the phone who wants to get a  
15 message about when exactly to come back we can do that if  
16 you speak up and either give the -- send the Public Adviser  
17 an email. Do you have your BlackBerry, Mr. Roberts? Would  
18 that work for the Public Adviser address?

19 Okay, so the address that is in the notice, just  
20 publicadviser@energy.ca.gov. Then he can send you an email  
21 when we do come back, precisely. So we will go off the  
22 record and into that closed session and see you shortly.

23 (The Committee adjourned into closed session  
24 at 10:29 a.m.)

25 (The Committee Hearing reconvened at

1 10:56 a.m.)

2 HEARING OFFICER KRAMER: Okay, we are back on the  
3 record. The Committee has emerged from a closed session to  
4 discuss the topics and issues to be presented today and it  
5 has decided to separate the issues. So the question of any  
6 changes to the bonding and insurance requirements will be  
7 addressed via the applicant's filing of an amendment request  
8 with the Commission.

9 Mr. McKinsey, do you have any timetable that you  
10 are predicting for when that would begin?

11 MR. MCKINSEY: Not an exact one but as soon as  
12 possible. I was just starting to have that discussion this  
13 morning to figure out what -- the intent is largely to use  
14 the materials that have already been prepared and shape that  
15 into the format requirements for a petition to amend, which  
16 is fairly much a template we have. I just can't commit to a  
17 specific date right now today.

18 HEARING OFFICER KRAMER: Okay. So that then will  
19 leave for today's hearing the question of whether as of  
20 today there is a violation of a Commission condition or  
21 order. And if one is found, what the appropriate sanction  
22 or penalty would be for that, basically leaving the tool of  
23 an amendment to that subsequent process.

24 So with that, the Committee actually had a couple  
25 of questions we might as well just put out there to make

1 sure that they get addressed by testimony if we need any.

2 Three questions actually.

3           Is the bond that was required by the purchase and  
4 sale agreement that was referred to in 2001 in the  
5 Commission Order, is that still in effect?

6           And also, is the insurance that was referred to in  
7 that same order and agreement, is that still in effect as of  
8 today, and if it is, when would it expire? Each of those.

9           And then, the staff proposed condition makes  
10 reference to a closure plan and we were just wondering, has  
11 one ever been prepared? Because we know that in many of our  
12 cases closure plans are only prepared towards the end of a  
13 power plant's life, so we are wondering if one was actually  
14 prepared for this particular project. Perhaps it was during  
15 the time when the project was not running. But that is of  
16 interest to us although it may not be directly relevant, but  
17 then again it may.

18           So with that, with that we will -- first I'll ask,  
19 do the parties need to -- do they need a minute or two to  
20 organize their thoughts and adjust their presentations?

21           Seeing none. Mr. Mooney and Mr. Coleman, what  
22 testimony do you wish to offer on the topic of, was there a  
23 violation and if so what the penalty should be?

24           MR. MOONEY: Well, we have submitted Mr. Coleman's  
25 testimony and I was just going to ask him. In light of the

1 withdrawal of Bottle Rock's testimony and the direction this  
2 has taken, just ask him that he would affirm his testimony.

3 In terms of whether or not there has been a  
4 violation. I think that the information that has been  
5 provided to the Board in terms of the exhibits, so what we  
6 would like to do is offer our exhibits and then further  
7 address those issues through oral argument.

8 I would note that the questions that the Committee  
9 had about is the bond still in effect and is their insurance  
10 still in effect, those are really directed probably more  
11 towards Bottle Rock. But I would note that at the workshop  
12 Mr. Harms, he was asked by me if the bond was still in  
13 effect and he acknowledged that the bond had been canceled.

14 It's my understanding from information probably in the  
15 record somewhere that the insurance policy is still in  
16 effect but it is my understanding that Mr. Harms admitted at  
17 the workshop that the bond was no longer -- that the bond  
18 had been canceled after they had entered into the eighth  
19 amendment.

20 HEARING OFFICER KRAMER: Okay, thank you. I don't  
21 think the workshop was transcribed so it probably is not  
22 written down anywhere. But you are correct that the  
23 applicant - the project owner, I can't use the word  
24 "applicant" in this case - would be the best source of that  
25 information.

1           MR. MOONEY: But I would move to -- I would offer  
2 the exhibits, our Exhibits 1 through 11 that we have  
3 submitted. And then with regards to Exhibit 1, we do have a  
4 copy of the May 21st, 2009 letter now, I do have a copy of  
5 that. That was Exhibit 7 that was duplicative of Exhibit 6.  
6 It was correctly identified. That you referenced at the  
7 beginning of the hearing.

8           HEARING OFFICER KRAMER: Okay.

9           MR. MOONEY: I have copies. If I could hand that  
10 out just to have that entered in as well.

11          HEARING OFFICER KRAMER: You just have one copy?

12          MR. MOONEY: No, I have multiple, I have multiple  
13 copies.

14          HEARING OFFICER KRAMER: Great. Please provide  
15 two for us. And then I'd ask you to docket that today if  
16 you can. Send it to Dockets via email and the parties.

17          MR. MOONEY: Okay.

18          HEARING OFFICER KRAMER: Do you have electronic  
19 copies of that?

20          MR. MOONEY: I do have an electronic copy of it  
21 and I do have a -- It is an item that was already in the  
22 docket and it's Docket 79-AFC-4C. And I was also informed  
23 that it does have a transaction number and the transaction  
24 number is 51637.

25          HEARING OFFICER KRAMER: Okay. And is that marked

1 on the copy?

2 MR. MOONEY: No, I don't believe it's marked on  
3 the copy.

4 HEARING OFFICER KRAMER: Okay. Okay. Well then  
5 with that information I'll let you know if you need to  
6 resubmit it. Unless you hear from me you won't need to.  
7 So this is Exhibit 7 that Mr. Mooney is passing out.

8 People who are familiar with my style need to know  
9 that I'm becoming a little more, because I'm getting smarter  
10 I think, becoming a little more careful about what goes into  
11 the record and what doesn't. Mr. Mooney, I'm first going to  
12 ask you if you have any objection to substituting for  
13 Exhibit 4, Exhibit 106, which is a better copy of the  
14 document and it was also optically character recognized,  
15 which means we can word search it.

16 MR. MOONEY: I have no objection to that.

17 HEARING OFFICER KRAMER: Okay.

18 MR. MOONEY: As long as Exhibit 6 is later entered  
19 into the record.

20 HEARING OFFICER KRAMER: No, 106.

21 MR. MOONEY: I mean 106, yes.

22 HEARING OFFICER KRAMER: Yes, it will be. If not  
23 we can come back.

24 And in the case of the letter from Ms. Cruthers,  
25 Exhibit 5. It sure looked to me like Exhibit 402 is a

1 better copy of that document.

2 MR. MOONEY: Again, no objection to that.

3 HEARING OFFICER KRAMER: Okay. Let's go back to  
4 Exhibit 2, the photos that were submitted. Are any of them  
5 relevant to the question of a violation of the requirements  
6 to have a bond and insurance?

7 MR. MOONEY: They are to -- well, they are not to  
8 the extent -- let me kind of qualify this a little bit.  
9 They are not to the extent in terms of the, you know, the  
10 strict requirements in terms of, is there a bond  
11 requirement, yes, is there a bond, no. But they were  
12 provided to give the Committee and the parties a sense of  
13 the concerns that are out there. Why there is the need for  
14 the bond and such as opposed to, is there an existing bond  
15 requirement and has that been complied with. Hopefully that  
16 answered your question.

17 HEARING OFFICER KRAMER: So then they would be  
18 much more relevant in the amendment process.

19 MR. MOONEY: They would probably be more relevant  
20 in the amendment process, yes.

21 HEARING OFFICER KRAMER: Okay. Would you like me  
22 to mark down that this was withdrawn by you or refused by  
23 the Committee?

24 MR. MOONEY: We'll withdraw them.

25 HEARING OFFICER KRAMER: Thank you. And if I ever

1 have to put all the exhibits on a CD I've just saved about  
2 250 megabytes.

3 Does any other party object to the entry of  
4 Exhibits 1, 3, 6, 7 through 11?

5 MR. BELL: No objection on behalf of staff?

6 HEARING OFFICER KRAMER: Then those will be  
7 admitted.

8 (Complainant's Exhibits 1, 3 and 6-11  
9 were admitted into the record.)

10 HEARING OFFICER KRAMER: Did you have anything  
11 more by way of testimony, Mr. Mooney?

12 MR. MOONEY: Nothing by way of testimony.

13 HEARING OFFICER KRAMER: Thank you. We'll come  
14 back to you on cross-examination after we have heard from  
15 the other direct testimony.

16 Project Owner/Respondent, you had listed  
17 Mr. Harms, Mr. McKinsey, but I guess he wasn't able to be  
18 with us today?

19 MR. MCKINSEY: That's correct.

20 HEARING OFFICER KRAMER: So do you have anything  
21 else you want to offer by way of testimony?

22 MR. MCKINSEY: No.

23 HEARING OFFICER KRAMER: You want to go through  
24 your exhibits now?

25 MR. MCKINSEY: Sure.

1 HEARING OFFICER KRAMER: Exhibit 103, I think  
2 Exhibit 200 is a better copy of the decision.

3 MR. McKINSEY: We withdraw our Exhibit 103, we  
4 certainly can see that.

5 (Respondent's Exhibit 103 was withdrawn.)

6 HEARING OFFICER KRAMER: Did you get a chance to  
7 compare Exhibits 104 and 105 with Exhibit 601 from Lake  
8 County?

9 MR. McKINSEY: You know, we did not compare them.  
10 At least on the cover page they portend to be the same  
11 document.

12 HEARING OFFICER KRAMER: Okay. We'll keep that  
13 one in and then maybe leave the Lake County ones out then.

14 And then on Exhibit 110. The Department of Water  
15 Resources submitted all the pieces. Basically you have the  
16 purchase agreement and then seven of the eight amendments to  
17 the agreement all in one document and they broke them out  
18 into their Exhibits 401 and then 403 through 409. And  
19 theirs I think were a little more readable.

20 MR. McKINSEY: Yes, I agree, their copies were  
21 cleaner and probably present a better copy to use.

22 HEARING OFFICER KRAMER: Okay, so we'll go with  
23 theirs.

24 And then Exhibit 112, the settlement agreement and  
25 release of claims. That was included in DWR's Exhibit 410,

1 which was a combination of the settlement agreement and the  
2 larger, recent, latest amendment to the purchase and sale  
3 agreement. So we'll go with 410, is that okay?

4 MR. McKINSEY: Yes, that's fine.

5 HEARING OFFICER KRAMER: Let's see. Exhibit 102,  
6 that just relates to the amount of -- the estimate of costs  
7 of decommissioning. So that is no longer relevant given the  
8 bifurcation, is it?

9 MR. McKINSEY: Correct.

10 HEARING OFFICER KRAMER: Are you withdrawing that  
11 one?

12 MR. McKINSEY: Yes, Bottle Rock Power withdraws  
13 102.

14 HEARING OFFICER KRAMER: Okay. And would the same  
15 argument go for the photographs?

16 MR. McKINSEY: I was waiting for that, yes.

17 HEARING OFFICER KRAMER: 101, are you withdrawing  
18 that?

19 MR. McKINSEY: Yes, we withdraw 101 as well.

20 HEARING OFFICER KRAMER: Okay. So then we have  
21 remaining to be offered Exhibit 100, 104 through 109.

22 MR. MOONEY: It is my understanding that they  
23 withdrew Mr. Harms' testimony in their submittal.

24 HEARING OFFICER KRAMER: Did you say you --

25 MR. McKINSEY: No, no. We withdrew bringing him

1 here as a witness but it wasn't our intent to withdraw any  
2 of our testimony.

3 HEARING OFFICER KRAMER: Okay. So, Mr. Mooney,  
4 are you objecting to Exhibit 100?

5 MR. MOONEY: Well we don't have the opportunity to  
6 cross-examine him on it.

7 MR. BELL: Nor does staff.

8 HEARING OFFICER KRAMER: Mr. McKinsey, do you want  
9 to argue in favor?

10 MR. MCKINSEY: Well, I guess to some extent if  
11 there are certain portions of his testimony that a party  
12 felt they had some particular cross-examination that we  
13 might be able to simply agree to withdraw those portions of  
14 it. I think his testimony is relevant, in particular to the  
15 conduct of the project owner during this time period. In  
16 other words, that the project owner did indeed negotiate  
17 with the California Department of Water Resources to amend  
18 the agreement.

19 MR. MOONEY: If I may read from their revised  
20 supplemental statement, it says the witness was withdrawn.  
21 So I am not sure how you could submit testimony of a witness  
22 that's been withdrawn. It says: "To the extent that any  
23 witnesses were identified in Bottle Rock's direct testimony  
24 submitted January 4, 2013, such witnesses have been  
25 withdrawn."

1 MR. MCKINSEY: It may have been our nomenclature  
2 but what we intended was witnesses to present at the hearing  
3 for live testimony.

4 HEARING OFFICER KRAMER: So, Mr. Mooney, which  
5 specific portions of that testimony would you be wanting to  
6 cross-examine regarding?

7 MR. MOONEY: I'd probably have to go back and  
8 look. And quite frankly, it really affected how I prepared  
9 for today's hearing. When I was told that Mr. Harms'  
10 testimony had been withdrawn I didn't, I didn't spend the  
11 weekend preparing to cross-examine Mr. Harms.

12 MR. BELL: And on behalf of staff I have to admit  
13 I also abandoned my efforts to prepare for cross-examination  
14 of Mr. Harms and enjoyed a three-day weekend in Disneyland  
15 with my family instead.

16 MR. MOONEY: And quite frankly, I am not sure how  
17 you withdraw a witness but then submit their testimony.  
18 That seems like trying to do an end-around around the rules  
19 and the procedures.

20 HEARING OFFICER KRAMER: Well then --

21 MR. MCKINSEY: And --

22 HEARING OFFICER KRAMER: Mr. McKinsey, go ahead.

23 MR. MCKINSEY: And I think that -- I completely  
24 understand the concerns of both the staff and the  
25 complainant and so I was trying to just verify -- I think

1 procedurally what I'd really like is to have a few minutes,  
2 perhaps, and then we can come back to this, but I'm hoping I  
3 can agree to withdraw this as testimony. A substantial  
4 amount of the information about what occurred is in what is  
5 essentially our argument and it is really an interpretation  
6 of what occurred, I don't think we are disputing what  
7 happened. And so I just want to verify that, that I am not  
8 leaving a hole by conceding this but I may be able to do  
9 that.

10 HEARING OFFICER KRAMER: How long would that take  
11 you?

12 MR. McKINSEY: A few minutes.

13 HEARING OFFICER KRAMER: Okay, we'll go off the  
14 record for two minutes.

15 (Off the record at 11:16 a.m.)

16 (On the record at 11:20 a.m.)

17 HEARING OFFICER KRAMER: Mr. McKinsey?

18 MR. McKINSEY: Thank you, Hearing Officer Kramer.  
19 The project owner withdraws Exhibit 100, the testimony of  
20 Mr. Harms.

21 HEARING OFFICER KRAMER: Thank you. So then --  
22 Let me ask you about 104 and 105, are those relevant at this  
23 point to the violation or not question?

24 MR. McKINSEY: No they're not.

25 HEARING OFFICER KRAMER: You want to withdraw

1 those as well?

2 MR. McKINSEY: Yes, the project owner withdraws  
3 Exhibits 104 and 105.

4 HEARING OFFICER KRAMER: And then would 108 and  
5 109, the Lake County zoning designations and code be in the  
6 same situation?

7 MR. McKINSEY: Yes, that's correct. We withdraw,  
8 the project owner withdraws Exhibits 108 and 109.

9 HEARING OFFICER KRAMER: Okay. So then what I  
10 have left is 111 -- let me work forwards. 106, 107 and 111.  
11 Does anyone object to the admittance of those three  
12 exhibits?

13 MR. BELL: Not on behalf of staff?

14 MR. MOONEY: No.

15 HEARING OFFICER KRAMER: Thank you.

16 (Respondent's Exhibits 106, 107 and 111  
17 were admitted into the record.)

18 HEARING OFFICER KRAMER: Next up. Are you going  
19 to finish your testimony then, Mr. McKinsey?

20 MR. McKINSEY: Well technically I wasn't  
21 testifying.

22 HEARING OFFICER KRAMER: I mean the offering of  
23 evidence.

24 MR. McKINSEY: Yes. You know, the questions you  
25 asked I thought could easily be addressed simply as

1 argument. But I'm not sure how comfortable -- I mean, the  
2 Committee is asking the questions so they could decide if  
3 they wanted them answered as testimony per se.

4 HEARING OFFICER KRAMER: But we do need to at  
5 least stipulate or something to the existence or non-  
6 existence of the bond and the insurance.

7 MR. MCKINSEY: The project owner can stipulate to  
8 that the bond was indeed withdrawn upon the completion of  
9 the amendment so that there is not a bond in place at this  
10 time.

11 And they can stipulate that the insurance policy  
12 -- I don't know the exact expiration but it was a five year  
13 insurance policy and it is still in effect for at least two  
14 more years. The best guess is it's in '14 or '15 is when  
15 the insurance policy would expire.

16 And on the closure plan question, the project  
17 owner doesn't have any knowledge of a closure plan being  
18 prepared. It would have been prepared by Department of  
19 Water Resources between '97 and 2000 if it was prepared but  
20 it would presumably have been in the dockets. I've never  
21 seen it. But that was in anticipation of closure. And the  
22 purchase essentially stopped that process moving forward and  
23 instead it became a purchase by a new project owner. So the  
24 project owner does not believe one was prepared. But DWR  
25 may be also able to address that one.

1           PRESIDING MEMBER DOUGLAS: Let me just ask one  
2 follow-up question. Was the engineering estimate or  
3 analysis done?

4           MR. MCKINSEY: During the purchase process one  
5 engineering attempt was made to provide the estimate and  
6 that's where the \$5 million bond number came from. But I  
7 think everybody concedes it was a pretty rough edge of the  
8 envelope attempt to put something out there and not to a  
9 specific decommissioning criteria with bids and quotes or  
10 anything that you might normally try to do to pin down costs  
11 when you're trying to finance or plan for.

12           HEARING OFFICER KRAMER: First, regarding the  
13 stipulation. Do the other parties stipulate to  
14 Mr. McKinsey's proposal that the bond has been canceled and  
15 that the insurance is still in effect at least until 2014.

16           MR. BELL: Based on the information available to  
17 staff we would be willing to stipulate to those two.

18           HEARING OFFICER KRAMER: Mr. Mooney?

19           MR. MOONEY: We would be willing to stipulate with  
20 regards to the bond. You know, quite frankly in the record  
21 I haven't seen anything about, you know, the date of the  
22 insurance policy. So that being the date or when it would  
23 expire. That being said, I will, you know, take counsel at  
24 his word that that is, in fact, the case and so stipulate.  
25 But if that turns out to be different then I think the

1 parties should be notified.

2 HEARING OFFICER KRAMER: Okay. Mr. McKinsey, do  
3 you know when the bond was canceled?

4 MR. MCKINSEY: No, but let me ask if our  
5 representative does. Early September is the estimate.

6 HEARING OFFICER KRAMER: Of 2012?

7 MR. MCKINSEY: Correct.

8 HEARING OFFICER KRAMER: Okay. Thank you for  
9 proposing that stipulation. Mr. Dunnigan, did you have any  
10 disagreement with the stipulation?

11 MR. DUNNIGAN: No, no disagreement.

12 HEARING OFFICER KRAMER: Okay. Then let's move on  
13 to our next party and that would be Commission staff. You  
14 only had cross examination listed in your statement but  
15 you've heard a couple of the questions. So let me ask if  
16 staff is aware of any closure plan that was prepared during  
17 the life of this project?

18 MR. BELL: No, that wasn't a matter that we  
19 addressed by itself, staff was looking at the closure plan  
20 in relation to the bond requirement. We felt that the  
21 relevance of a closure plan has to do with the amount of  
22 bond that's required by the 2001 order.

23 We do note that there was a closure estimate  
24 prepared based on what was submitted in October of 2011 by  
25 an organization known as Plant Reclamation, which Bottle

1 Rock was relying on to try to in some way justify the  
2 elimination of the bond. That closure plan staff felt was  
3 insufficient to justify that change or any change.

4 So the closure plan by itself in a vacuum I don't  
5 think was a relevant factor here. It's only as it relates  
6 to the amount of the bond requirement. Now eventually staff  
7 is going to have to deal with the closure plan towards the  
8 end of life, the life of the project, but I don't think  
9 that's before us now.

10 HEARING OFFICER KRAMER: So the only reason it  
11 would be relevant today was to try to come up with a number  
12 for the bond?

13 MR. BELL: That's correct. There had been some  
14 numbers passed around. I know Mr. McKinsey noted that back  
15 in 2001, at that time there was a back of the envelope  
16 estimate. I do note that Mr. Najarian, who sat in the seat  
17 of Mr. Marxen, had a figure closer to \$10 million that the  
18 Commission rejected and accepted the \$5 million  
19 representation of the project owner then. Since that time  
20 different amounts have been put forth. At one point DWR had  
21 suggested, I believe in a letter and correct me if I'm wrong  
22 on the date but around 2009, that the number could be closer  
23 to \$20 million. I'm not sure what that was based on at the  
24 time.

25 There was talk about how much the total

1 decommissioning for this facility would be. So when we're  
2 talking about a decommissioning plan, really the staff sees  
3 that as relevant to the question of the amount of the bond  
4 and not whether or not a decommissioning plan should be put  
5 forth prior to the project eventually being decommissioned.

6 HEARING OFFICER KRAMER: Was that, by chance, one  
7 of your exhibits, Mr. Mooney?

8 MR. MOONEY: Yes it was my exhibit, I believe it  
9 was exhibit -- I want to say it -- I want to say it was  
10 Exhibit 8. I know it was one of our exhibits. And we also  
11 put in there, just to kind of follow up on that, a couple of  
12 our exhibits also had estimates that were submitted by  
13 Bottle Rock to DWR back in 2007/2008. And that's where we  
14 came up with the figure, I think it was \$9 million-plus  
15 dollars for decommissioning and reclamation.

16 HEARING OFFICER KRAMER: Okay, it's not exhibit 8  
17 because that was from Bottle Rock to DWR.

18 MR. MCKINSEY: Well that could be it, actually.  
19 What Mr. Mooney is referring to is there was a dialogue  
20 going on and an exchange of various positions on the  
21 decommissioning costs, and so it could have been in that  
22 letter.

23 HEARING OFFICER KRAMER: No, actually I found  
24 it --

25 MR. MOONEY: Actually it's probably either 9 or --

1 it's either --

2 HEARING OFFICER KRAMER: It's 10.

3 MR. MOONEY: -- either probably 9 or 10.

4 HEARING OFFICER KRAMER: No, it is 10, I'm looking  
5 at it on my screen.

6 MR. MOONEY: It was the second page of that  
7 Exhibit 10 where they came up with the -- after having  
8 reviewed the various submittals of Bottle Rock to DWR they  
9 were critical of it and came up with their \$20 million  
10 figure.

11 HEARING OFFICER KRAMER: Okay, thank you. Your  
12 exhibits, Mr. Bell?

13 MR. BELL: Yes. In reviewing the other exhibits  
14 that had been offered by the other parties staff had two  
15 exhibits that it wished the Committee to take judicial  
16 notice of. There are other exhibits as well but staff did  
17 not want to offer duplicative documents into evidence.

18 HEARING OFFICER KRAMER: Okay. I note that the  
19 description on Exhibit 200 has changed from your filing. I  
20 think for some reason it was -- it had an error. It was, in  
21 fact, the original Commission decision. We can just take  
22 official notice of that since it's a Commission document.

23 MR. BELL: Yes.

24 HEARING OFFICER KRAMER: And Exhibit 201 was the  
25 best copy of the transcript of the May 2001 business

1 meeting. Are you offering that?

2 MR. BELL: Yes.

3 HEARING OFFICER KRAMER: Is there any objection to  
4 admitting Exhibit 201, which is the transcript of the May  
5 business meeting?

6 Seeing none that is admitted.

7 (Staff's Exhibit 201 was admitted  
8 into the record.)

9 HEARING OFFICER KRAMER: The Coleman Trust.  
10 Mr. Peterson, you did not have any testimony. And I don't  
11 know if you want to offer anything in lieu of what's  
12 transpired today but you did have one exhibit, which was the  
13 geothermal lease agreement from 1975.

14 MR. PETERSON: We would withdraw that as not  
15 relevant.

16 HEARING OFFICER KRAMER: Thank you. And then we  
17 have the Department of Water Resources. And we have agreed  
18 with Mr. McKinsey, I believe, that Exhibits 401 and 403-409  
19 are going to substitute for his exhibit 110.

20 And then we agreed with Mr. Coleman that Exhibit  
21 402 is the better copy -- I'll change the description so  
22 it's more informative, of the letter from Catherine Cruthers  
23 to our Chairman informing the Commission that the agreement  
24 between DWR and Bottle Rock was being amended.

25 I don't really think we need to have Exhibit 400,

1 it's just a certification of the record. And if the parties  
2 agree that the documents come in that's not important at  
3 this point.

4 MR. DUNNIGAN: I'll withdraw that.

5 HEARING OFFICER KRAMER: Thank you. So then we  
6 have Exhibits -- and then let's see. Also with Mr. McKinsey  
7 we agreed that 410 was a better copy of his 112. So is  
8 there any objection to admitting Exhibits 401 through 410?

9 (No response.)

10 HEARING OFFICER KRAMER: Seeing none they are  
11 admitted.

12 (Department of Water Resources' Exhibits 401  
13 through 410 were admitted into the record.)

14 HEARING OFFICER KRAMER: Lake County had two  
15 exhibits. Exhibit 602 is a copy of the bonds for their  
16 site. They're described as for the Bottle Rock Power site.  
17 Do we have anyone from Lake County on the phone?

18 (No response.)

19 HEARING OFFICER KRAMER: Mr. McKinsey, perhaps you  
20 can answer. These bonds, are they still in effect?

21 MR. MCKINSEY: They are. But we would also  
22 suggest that -- we have already, I think, the project  
23 owner's version of the use permit, at least the larger  
24 dynamic. But both of those I think at this point would also  
25 be irrelevant to the proceeding.

1 HEARING OFFICER KRAMER: Okay, so having nobody to  
2 refuse them we will refuse them on the Committee's stead.

3 That does raise a question though, which is, are  
4 these bonds in favor of Lake County meant to satisfy any  
5 obligation to provide bonds for the Energy Commission or are  
6 they for a separate purpose?

7 MR. MCKINSEY: They are for a separate purpose and  
8 separate permits.

9 HEARING OFFICER KRAMER: And that's the use  
10 permits on the steam fields?

11 MR. MCKINSEY: That's correct.

12 HEARING OFFICER KRAMER: Which are a different  
13 property than the property upon which the power plant is  
14 constructed.

15 MR. MCKINSEY: They're a different portion of the  
16 property, that's correct.

17 HEARING OFFICER KRAMER: Okay. Okay, I think we  
18 have dealt with all the exhibits. I apologize for the  
19 intensity of my focus, but we have discovered at times when  
20 we have boxes of materials that are irrelevant it can  
21 produce various management and legal headaches that we are  
22 trying to avoid.

23 So now let's turn around to cross-examination.

24 Oh, Mr. Dunnigan, are you aware of any closure  
25 plan that was produced for this project?

1 MR. DUNNIGAN: No, I'm not, I am not aware of a  
2 closure plan. As I recall it was done with the -- there was  
3 discussion with the original manager, Mr. Suess, for which a  
4 closure plan was not developed. And so nothing bear  
5 fruition from that.

6 HEARING OFFICER KRAMER: Okay, thank you.  
7 Mr. Mooney, any cross-examination?

8 MR. MOONEY: I don't think there's any witnesses  
9 to cross-examine.

10 HEARING OFFICER KRAMER: It's a formality, just  
11 going down my list.

12 MR. MOONEY: (Laughs) So no.

13 HEARING OFFICER KRAMER: Thank you. Mr. McKinsey.

14 MR. MCKINSEY: The project owner has no cross-  
15 examination either.

16 HEARING OFFICER KRAMER: Staff?

17 MR. BELL: No.

18 HEARING OFFICER KRAMER: Okay. So now we have  
19 reached the time for argument. Why don't we go down in the  
20 same order as the testimony. Mr. Mooney.

21 MR. MOONEY: Thank you. With kind of the change  
22 of the scope of the hearing I'll attempt to address those  
23 issues that are before the Committee this morning and try  
24 not to get into the areas that we talked about in terms of  
25 how the document should be or the order should be amended.

1           We believe that it's quite clear that there was an  
2 obligation under the existing order in 2001 to comply with  
3 the agreement or to comply with the provisions of the  
4 purchase of sale agreement, specifically Sections 2.4 and  
5 2.5. In 2.5 they still have their environmental compliance  
6 but they -- well, they still have their insurance policy.  
7 But then amendment that they have entered into takes away  
8 that obligation or at least the obligation with DWR.

9           With some of the information that was also in the  
10 staff exhibit in terms of the transcript it was quite clear  
11 back in 2001 when the Commission was approving the order  
12 that they wanted to ensure that there would be sufficient  
13 insurance and sufficient bonding to address the closure down  
14 the road.

15           And Bottle Rock knew that. We think in the  
16 exhibits that we have provided, the correspondence between  
17 Bottle Rock and its representatives and the Department of  
18 Water Resources, they were aware that any changes to the  
19 bonding requirement would need to go to the Commission.  
20 There was correspondence that they said, well, we'll  
21 certainly need to go to the Commission with regards to this.

22           But instead they just went ahead and canceled --  
23 they entered into the agreement, canceled their bond,  
24 without any real official notice or permission, I should  
25 say. They did send a letter saying, we're thinking about

1 entering into this agreement, but they didn't come and ask  
2 the Commission's approval to do away with the bond  
3 requirement. They just did it on their own. We think it is  
4 quite clear that that is a violation of the 2001 order.

5           What we would like to see done is that the  
6 Commission enforce the order, a requirement to clarify --  
7 that the provisions in the 2001 order that remain, there  
8 should be strict compliance with this purchase agreement.  
9 That that included Sections 2.4 and 2.5. That they needed  
10 to, prior to making any changes to those provisions that  
11 they needed to come to the Commission and ask for permission  
12 to be relieved of those obligation under Sections 2.4 and  
13 2.5, which they did not.

14           We agree with staff's recommendation that there  
15 should be a penalty imposed, a civil penalty of \$10,000. We  
16 think that's appropriate. We think it is particularly  
17 appropriate in light of the fact that, as I said earlier,  
18 there was correspondence between DWR and Bottle Rock about  
19 the need to go before the Commission prior to doing this,  
20 prior to taking this action and they just sidestepped the  
21 Commission.

22           So in addition we think that an order from the  
23 Commission, since the bond has been canceled, that any order  
24 from the Commission not only direct the reinstatement of the  
25 bond but put a time frame on when that bond should be

1 reinstated. We did not say that in our prehearing statement  
2 in terms of asking for a time line but my experience is an  
3 order such as this should come -- should have a date certain  
4 on when there should be compliance.

5           The other thing, since -- this is all kind of  
6 murky now because DWR has, through this eighth amendment,  
7 has attempted to absolve itself of its obligations under the  
8 purchase agreement. And part of the bonding requirements  
9 was that there be a estimate provided in terms of what the  
10 bonding requirements should be and then DWR was to sign off  
11 on that. And as indicated by some of the correspondence and  
12 I think it was as Mr. Kramer pointed out, Exhibit 10, DWR  
13 had some various concerns about what the bonding  
14 requirements should be.

15           So we believe that the Commission's order should  
16 not only direct the reinstatement of the bond but that a  
17 decommissioning estimate that was required to be submitted  
18 under 2.4 to DWR be submitted to the commission or to  
19 Commission staff for review and that upon that review there  
20 may need to be an adjustment of the bonding requirement.

21           Now again, this has gotten a little murky because  
22 DWR no longer has any -- well, I would say they still do but  
23 they may argue that they no longer have any contractual  
24 obligation to do that review. So the Commission's order  
25 should either direct DWR to do that review, or in the

1 absence of DWR doing that review of what the bond  
2 requirement should be, I would think that the best entity to  
3 do that review would be Commission staff.

4           And then -- and since there has -- under Section  
5 2.4 and under the prior purchase agreement, the purchase  
6 agreement, there was an obligation of Bottle Rock to be  
7 submitting this, I believe it was on annual basis and  
8 apparently it has not be submitted other than this October  
9 2011 one that is no longer in evidence here. It hasn't been  
10 submitted.

11           So we would also ask that the Commission's order  
12 directing compliance with the 2001 order also set a date  
13 certain as to when the decommissioning estimate costs would  
14 be submitted. We would think that two to three months would  
15 be an appropriate time frame for that. And then the order  
16 should reflect that the bond may be adjusted accordingly  
17 based upon that decommissioning estimate. Thank you.

18           HEARING OFFICER KRAMER: Thank you. Mr. McKinsey,  
19 would you prefer to go last or now?

20           MR. MCKINSEY: I can go now.

21           HEARING OFFICER KRAMER: Okay.

22           MR. MCKINSEY: I think that probably the most  
23 important difference of opinion between the project owner  
24 and Mr. Mooney's comments would be the concept that it was  
25 quite clear that there was a particular obligation. And in

1 fact I think the biggest problem that allowed this to happen  
2 was that back in 2001, which was a very busy time for the  
3 Energy Commission, what happened and what got adopted wasn't  
4 very clear and it didn't make its way into the Energy  
5 Commission's normal regulatory compliance framework.

6           And I am not trying to fault any of the parties  
7 back then, and in fact I was working for Bottle Rock at the  
8 time on this transaction, it simply is what happened. And  
9 it's an example that you have to be incredibly careful when  
10 choosing language and wording to ensure that somebody can  
11 look at something a week, a month, a year or in this case 11  
12 years later, and know what they were supposed to do or not  
13 supposed to do.

14           The order was internally inconsistent and that was  
15 because it used a term "the parties." And just by starting  
16 with that direction that the parties shall conform, it was  
17 inconsistent. Because by definition, by releasing the order  
18 and by issuing it they were removing one of those two  
19 entities, the California Department of Water Resources, that  
20 would have been a party. And so a very precise order back  
21 then would have been to direct the project owner to not only  
22 adhere to this document but to treat it as an Energy  
23 Commission order in and of itself.

24           It also could have done what I think Mr. Mooney  
25 was suggesting it did but it didn't, which is to say, and

1 specifically shall maintain a bond in accordance with 2.4 or  
2 insurance in accordance with 2.5. All it said was to adhere  
3 to an agreement.

4           And I explain this not to suggest that this  
5 wouldn't have been a lot better had a petition to amend been  
6 submitted in September but if we actually look at the rest  
7 of the language in that order it says, strictly adhere to  
8 the terms of the agreement. And yet the California  
9 Department of Resources documents that they have submitted  
10 indicate that in that case there should have been nine or  
11 ten, or at least eight, petitions to amend submitted already  
12 because it has been amended eight times. It was amended  
13 several times after that day in May.

14           And that reflects part of why this wasn't a great  
15 order. It didn't make its way as a condition of  
16 certification with very expressed language, with annual  
17 reporting and verification requirements like the Energy  
18 Commission uses for conditions of certification. And as a  
19 result it frankly was lost in a fog of time. And back in  
20 that fog of time it had some ambiguous language.

21           And I explain this only to one point and that is  
22 that the project owner today had no intent of violating an  
23 order, and quite the opposite, was very determined to, and  
24 still is, to operate the project in conformity with all  
25 environmental laws, permits and approvals. And undertook

1 this negotiation with the state of California, the  
2 Department of Water Resources, with a complete good-faith  
3 intent to resolve and change an agreement without any intent  
4 to violate a condition or an order by the Energy Commission.

5           And that goes particularly important to the nature  
6 of the finding by the Commission. If, for instance, there  
7 was evidence of parties conspiring to deceive the  
8 Commission. If that was the case then perhaps you could see  
9 the intent of trying to censure or penalize the project  
10 owner. But in this case what you really have, it was open  
11 and it wasn't hidden, it was even disclosed in advance to  
12 the Commission.

13           And even, I think, the Commission didn't react to  
14 it for the very same reason, that it wasn't codified into  
15 the compliance matrix with all the other conditions of  
16 certification for this project at all. There was no  
17 condition of certification that required a bond requirement.

18           There are conditions of certification that address  
19 decommissioning and closure like most projects have.

20           And so as this has unfolded the project owner has  
21 agreed, in particular, to submit a petition to amend so that  
22 this can be addressed carefully as to what needs to be done  
23 in the future. But as to what occurred in the past, the  
24 project owner did not engage in the type of conduct that  
25 should be penalized or punished and indeed it literally was

1 an innocent mistake.

2 I can also tell you that I was involved in the  
3 communications through portions of the decade that has  
4 passed with DWR in negotiations around the bond requirement.

5 And the actual position of DWR had been expressed at some  
6 points that, isn't this something that might require  
7 approval, but it was never actually agreed by both parties,  
8 let alone one of them. Instead it was one of those  
9 thoughts, well, we need to make sure that the Energy  
10 Commission doesn't have any issues with what we do.

11 But again, the fog of time can get in the way  
12 here. It took many, many years to get to the point that DWR  
13 was able to get to today to satisfy themselves that in this  
14 present day they were able to get a complete release and  
15 that the state of California no longer had any concerns over  
16 liability and the other things that drove the need for the  
17 bond in the first place.

18 And I think you'll hear from the Department of  
19 Water Resources a very similar story and explanation, that  
20 this was indeed an intent to do what was in the interest of  
21 the state of California, without any knowledge that that  
22 order could have been interpreted to suggest that what they  
23 were doing was a violation. And that ten year history of  
24 repeated amendments set that up for that occurrence today.

25 And I only say this because I have seen the

1 evolution of this client for 11 to 12 years. I have seen it  
2 go from what was, indeed, a newly formed corporation with  
3 one person behind it, Ron Suess and his vision to bring the  
4 Bottle Rock Power Plant back to fruition. I have seen it go  
5 from that to a mature, experienced and professionally  
6 managed entity that looks the same as all of my other  
7 clients before the Energy Commission in terms of maintaining  
8 a compliance matrix for all of their permits and approvals  
9 and a determination to adhere to them. Tremendously  
10 improved professional standards; all the things that needed  
11 to be in place were done.

12           And as I've watched that unfold I know that this  
13 is a huge importance to them, that they do not want the  
14 Energy Commission to label them as having engaged in conduct  
15 that would merit a fine or censure because their conduct was  
16 well-intended and was in the open and was engaged in the  
17 very same state that the Energy Commission is a department  
18 of, that also the Department of Water Resources.

19           And so the \$10,000 number is not the issue as much  
20 as the fact that it would be a fine and that it would be  
21 announcing that the project owner had done something that  
22 was violative of their permit in a situation where they were  
23 not given and not handed the type of clear, concise  
24 instructions and order and notice that they should have been  
25 provided in 2001. And again, the project owner is not

1 conceding the need, because it is the right resolution to go  
2 forward, but does not feel that their conduct merits  
3 punishment.

4 HEARING OFFICER KRAMER: Thank you.

5 MR. MOONEY: If I may just comment?

6 HEARING OFFICER KRAMER: Let's go around first.

7 MR. MOONEY: Well, it was more of, it was more in  
8 the form of an objection.

9 HEARING OFFICER KRAMER: Okay, go ahead.

10 MR. MOONEY: This in terms of Mr. McKinsey's  
11 comments bordered on testimony about the company, the  
12 qualification and the compliance, as opposed to argument.  
13 That's all.

14 HEARING OFFICER KRAMER: Overruled, I think it was  
15 appropriate rhetorical contents for that kind of argument.

16 Staff. Mr. Bell.

17 MR. BELL: First I do want to respond to one  
18 issue, which is that of notice and then I'll go on to the  
19 heart of staff argument.

20 Mr. McKinsey stated that this had been done out in  
21 the open and that staff had been placed on -- the Commission  
22 had been placed on sufficient notice of the changes that  
23 were being proposed and that simply is not correct. There  
24 was a letter addressed to Chairman Weisenmiller from  
25 Department of Water Resources advising that Department of

1 Water Resources and the project owner were proposing changes  
2 to the original purchase and sale agreement by deleting  
3 Sections 2.4 and 2.5 and attached a copy of that agreement  
4 for the Chairman's consideration.

5           However, the letter didn't say what the changes  
6 were. The letter didn't say the changes involved the  
7 deletion of the obligation to maintain a closure bond or  
8 environmental impairment insurance policy and the attached  
9 document didn't include those two provisions that had been  
10 deleted. Additionally, 11 days after that document was sent  
11 to Chairman Weisenmiller, Department of Water Resources  
12 signed off on the agreement; 28 days later the agreement  
13 became final. The information that we have before us is  
14 that negotiations had been happening between DWR, the  
15 project owner, and V.V. and J. Coleman LLC for at least six  
16 months. So to say that the Commission or that Commission  
17 staff were placed on notice and that this was being done in  
18 the open, is simply incorrect. Okay.

19           The Energy Commission's May 30, 2001 order placed  
20 a condition on the project owner, a specific condition to  
21 strictly adhere to the terms of the purchase agreement.  
22 That condition required the maintenance of a decommissioning  
23 bond as well as the maintenance of an environmental  
24 impairment insurance policy of not less than \$10 million.  
25 When Bottle Rock Power LLC entered into that August 29, 2012

1 agreement that eliminated those two requirements, it  
2 violated the conditions set forth in the Energy Commission's  
3 May 30, 2001 order.

4 Under Public Resources Code Section 25534 we have  
5 three sanctioning options for a violation of the  
6 Commission's orders or conditions. And that is, as I stated  
7 earlier, to amend the conditions of certification, to revoke  
8 certification, or to issue a fine.

9 Revocation is not warranted by the facts here.

10 As to amending the conditions. Right now we still  
11 have a valid order in effect from 2001 stating that the  
12 project owner shall abide by the terms of that original  
13 purchase and sale agreement. That agreement has been  
14 amended without Commission approval to delete two  
15 provisions. Those provisions are the maintenance of a  
16 decommissioning bond in an amount to be determined and the  
17 maintenance of an environmental impairment insurance policy.

18 Those provisions, because of the actions taken by the  
19 project owner, do not exist.

20 The circumstances here warrant imposing condition  
21 on the project owner to abide by those two original  
22 provisions. Staff has recommended language for the  
23 Committee and the Commission to consider that would impose  
24 two new conditions on the project owner that are, in effect,  
25 those conditions that the project owner was required to

1 abide by. Staff has proposed condition COM-1-2013,  
2 Financial Assurance for Closure and Decommissioning, and  
3 condition COM-2-2013, Environmental Impairment Insurance  
4 Policy. If the Committee accepts staff's recommendations  
5 the project owner would be in the same position that they  
6 are or should be now in maintaining those two items that the  
7 Commission ordered back in 2001.

8           If the Commission chooses not to accept that we  
9 will be in limbo, in effect, up until the time that the  
10 project owner comes forward with enough information to  
11 justify the deletion of those two provisions that were  
12 required under the 2001 order.

13           Turning to a fine. Again, 25534 provides that a  
14 fine can be imposed. The largest fine that the Commission  
15 could consider would be \$75,000 plus \$1,500 per day for each  
16 violation with an upper limit of \$50,000. Thus the total  
17 the Commission could order, aggregate amount, would be  
18 \$125,000.

19           In determining the amount of the fine 25534  
20 subdivision (e) instructs that we can consider the nature,  
21 circumstances, extent and gravity of the violation or  
22 violations, whether the violation is susceptible to removal  
23 or resolution, the cost to the state in pursuing the  
24 enforcement action, and with respect to the violator, the  
25 ability to pay, the effect to the ability to continue in

1 business, any voluntary removal or resolution efforts  
2 undertaken, any prior history of violations, the degree of  
3 culpability, economic savings, if any, resulting from the  
4 violation, and other such matters as justice may require.

5           As to the nature of circumstances, extent and  
6 gravity of the violation or violations, staff notes that in  
7 mitigation there -- there has been no environmental effects  
8 as of yet because of the project owner's actions. There has  
9 been no harm to the environment, no harm to health or human  
10 safety because of their actions. And also the project owner  
11 does appear amenable to at least presenting information that  
12 would justify the deletion of these sections.

13           However, the project owner was on notice based on  
14 some documentation that has been provided and entered into  
15 the record based on letters between the project owner and  
16 DWR that Commission approval should be sought, the amount of  
17 decommissioning would be much more than what was presented  
18 by the project owner. And also the information relied on by  
19 the project owner, while not intentionally misleading, did  
20 exclude much of the items that would be considered  
21 appropriate for decommissioning.

22           Additionally, the amount that the project owner  
23 came up with to justify the elimination of the closure bond  
24 of over \$2 million still doesn't get them to zero. Which if  
25 you look at the terms of the original purchase and sale

1 agreement, any elimination of the bond or reduction or  
2 increase in the amount of the bond had to be justified by a  
3 closure plan and that simply didn't happen.

4           Whether the violation is susceptible to removal or  
5 resolution staff does believe that ultimately it will be,  
6 either by the imposition of conditions of certification that  
7 would from here on out memorialize the project owner's  
8 obligations; or by possibly at some future date, the removal  
9 of those obligations by the project owner. But for that we  
10 are going to need more information to justify the  
11 elimination of both the closure bond and the environmental  
12 impairment insurance policy.

13           Also a factor in mitigation that the Commission  
14 staff has taken into consideration. Even though the project  
15 owner has eliminated the written requirement for a  
16 environmental impairment insurance policy of less than \$10  
17 million they do, in fact, based on information provided,  
18 still have that environmental impairment insurance policy in  
19 place, at least for a couple more years. The information  
20 provided by Mr. Harms is that at that time Bottle Rock was  
21 planning on unilaterally reducing that amount to \$2 million.

22           Again, that's information that Bottle Rock at some future  
23 date will be able to come forward with to justify the  
24 elimination of that. Or as circumstances may present  
25 themselves, not come forward with that information.

1           The cost to the state in staff time that it's  
2 taken to pursue the violations brought forth are not  
3 inconsiderable. That's a part of our job and that's what we  
4 are here to do. But that's something that the Committee can  
5 take into consideration in assessing a fine.

6           And with respect to the violator, the ability to  
7 pay, amongst other things. One of the reasons that the  
8 project owner feels that they shouldn't have to have the  
9 environmental impairments insurance policy and the closure  
10 bond in place is that the project owner, based on the  
11 representations that have been made throughout these  
12 proceedings, are in a much better financial place now than  
13 the original purchaser of the property from DWR in 2001.  
14 Not to use that against them but, well, they are now in a  
15 better position to pay than they were back in 2001.

16           The effect on the ability to continue business.  
17 voluntary removal or resolution efforts undertaken, prior  
18 history of violations. I think the record on those facts  
19 speak for themselves. The project owner is willing, I think  
20 at some point, based on representations made, to come  
21 forward with information justifying what they believe will  
22 justify the deletion of these requirements. But we will  
23 have to take a look at that when the information comes in.

24           Taking everything as a whole, staff feels that a  
25 lower amount of a \$10,000 fine based on the violation of the

1 Commission's 2001 is sufficient. It will send a message to  
2 the project owner that they can't operate contrary to the  
3 orders of the Commission without prior Commission approval  
4 and without prior justification.

5 HEARING OFFICER KRAMER: A question for you.

6 MR. BELL: Yes.

7 HEARING OFFICER KRAMER: Your proposed conditions  
8 were written, I assume, with the intention that these would  
9 be, in effect, the amendment that staff recommended.

10 MR. BELL: Yes. Just because the project owner  
11 has not availed themselves of the opportunity to use this as  
12 a vehicle to change the original 2001 order, staff hasn't  
13 given up on that idea. In fact, those two provisions that  
14 the project owner eliminated no longer exist out of that  
15 purchase and sale agreement, that purchase and sale  
16 agreement has been amended without Commission approval. So  
17 instead of staying in limbo without those two provisions,  
18 staff is recommending that the Committee impose those on the  
19 project owner. You can consider that to be punitive or you  
20 can consider that to be corrective at this point, but that  
21 is staff's recommendation.

22 I do want to add one more thing and that is, I  
23 understand that the project owner is or has planned to come  
24 forward with a petition to amend to try to justify the  
25 deletion of these provisions or a modification of these

1 provisions. The language that staff proposed in COM-1-2013  
2 regarding the closure bond would require that within 120  
3 days following adoption of the condition of certification --  
4 now the language that was proposed here was prior to the  
5 project undertaking the position that they want to come  
6 forward with a separate petition to amend in another  
7 proceeding.

8           If the Committee wanted to in some way modify that  
9 language that would stay in position of COM-1-2013 for a  
10 certain amount of time to allow the project owner to come  
11 forward with their petition to amend or wanted to accept the  
12 language in there, giving the project owner the 120 days to  
13 either provide the information required to file a petition  
14 to amend I think that's a path forward that might work for  
15 everybody.

16           HEARING OFFICER KRAMER: Now I'm just wondering,  
17 in a way we're talking about freezing the status quo until  
18 an amendment is processed which might change the  
19 requirements. So if the Committee found that the  
20 requirements remained in place would it be more appropriate  
21 that we simply repeat what was in the original purchase and  
22 sale agreement --

23           MR. BELL: We can.

24           HEARING OFFICER KRAMER: -- for the time being?

25           MR. BELL: We can, if the Committee finds that

1 mere status quo is sufficient. However, Mr. McKinsey  
2 himself a moment ago, and staff agrees with this but to a  
3 lesser extent. The original 2001 order could have been more  
4 artfully done. Rather than saying that you shall strictly  
5 adhere to the provisions of this purchase and sale agreement  
6 as the condition upon which that change of ownership was  
7 approved the Commission could have adopted additional,  
8 separate conditions of certification outside of that order.

9           In fact, if that was before us today that's what  
10 staff would recommend and that's where our recommendation  
11 comes now. In effect the language that we have here is  
12 changed slightly from what was required in Sections 2.4 and  
13 2.5 that were deleted but I think it adequately and  
14 accurately reflects what the Commission's intent was in  
15 2001. Not just based on the language in the order and in  
16 the language of the original purchase and sale agreement,  
17 but on the assurances that the Commission acted on, based on  
18 what was contained in the business meeting transcript when  
19 it approved that order.

20           HEARING OFFICER KRAMER: Would I be wrong to read  
21 the purchase and sale agreement, specifically Section 2.4,  
22 to say that they are going to provide a \$5 million bond.  
23 And if DWR is satisfied about its liability concerns then  
24 it's the option of the project owner to increase or decrease  
25 it after they prove that a new number is supported by an

1 analysis.

2 MR. BELL: Correct. Staff does note, and I think  
3 we said that in our prehearing conference, that the plain  
4 language of Section 2.4 does contemplate that Section 2.4  
5 could some time in the future be modified or possibly even  
6 deleted. But other circumstances had to take place based on  
7 the language in Section 2.4 that simply did not take place.

8 HEARING OFFICER KRAMER: Okay. Any other  
9 questions? Thank you.

10 MR. BELL: And actually the suggestion that I  
11 think that you've intimated out here that the Committee  
12 could simply require future and ongoing compliance with  
13 Section 2.4 and 2.5 is a possibility. Staff's intent was to  
14 make things as clear as possible as to exactly what the  
15 obligations are of the project owner going forward.

16 HEARING OFFICER KRAMER: Okay, thank you. The  
17 Coleman Trust, do you have anything by way of oral argument?  
18 You didn't say you did in your statement. I'm sorry, the  
19 LLC.

20 MR. PETERSON: No.

21 HEARING OFFICER KRAMER: Okay, they are saying no,  
22 for the tape.

23 You didn't indicate any need for argument,  
24 Mr. Dunnigan.

25 MR. DUNNIGAN: Yes I did, I requested 20 minutes.

1 HEARING OFFICER KRAMER: I'm sorry, you're right.  
2 I did not capture it for some reason. Go ahead.

3 MR. DUNNIGAN: First I would like to address  
4 Mr. Mooney's oral argument as well as mention in his  
5 prehearing statement that DWR was aware that we needed  
6 permission from the Commission to amend the agreement and he  
7 cites Exhibit 6 as factual evidence for that. And if you  
8 look at Exhibit 6 that's clearly not the case. Nowhere does  
9 it say that we acknowledge that we needed permission to  
10 amend the agreement, simply that if there were to be a  
11 release from the Energy Commission that DWR would wish to be  
12 released as well, so I would like to clarify that.

13 Secondly, I'd like to address Mr. Bell's comment  
14 that they were not given sufficient notice. There is no  
15 requirement for the Department of Water Resources to receive  
16 permission from the Energy Commission. However, recognizing  
17 that this eighth amendment, we've amended it seven times  
18 previously. Recognizing that this eighth amendment did have  
19 some effect we sent to the Energy Commission, to Chairman  
20 Weisenmiller, as well as Mr. Marxen and the County of Lake  
21 in advisement of what we wished to do. In fact, we  
22 mentioned that we've enclosed a copy of the contract so that  
23 you may evaluate any potential effects on your agency by  
24 this proposed amendment. That was sent on August 3rd, 2012.  
25 Our first response that we received from the Energy

1 Commission was 60 days later on the 2nd of October so I just  
2 wish to address the comment that Mr. Bell made that they had  
3 not received notice.

4           The Department of Water Resources accomplished  
5 this amendment within the law and was consistent with the  
6 Commission's 2001 order. In fact, the eighth amendment is  
7 the eighth time that this purchase agreement has been  
8 amended; and each of those times the Department of Water  
9 Resources along with Bottle Rock LLC entered into an  
10 agreement and it was ratified by the Department of General  
11 Services. And there was specific language in the purchase  
12 agreement which allows us to do just that, it's Section  
13 10.14 and it addresses amendments specifically. And it's  
14 very short and I'll just very briefly:

15           "Buyer and seller can only enter into an  
16 instrument in writing, executed by buyer and  
17 seller and approved by the California Department  
18 of General Services."

19 We have done this eight times and it is consistent with law  
20 and is consistent with the very language in the purchase  
21 order which this Commission approved.

22           It is also consistent with the public contract  
23 code. Public Contract Code 10335 allows for the parties to  
24 amend contracts, which is also certified by Department of  
25 General Services. And when these contracts are submitted to

1 General Services the original agreement as well as all  
2 previous amendments are submitted as well. So they have as  
3 their requirement the complete package before them before  
4 they ratify a given amendment.

5 As I mentioned this is the eighth such time. In  
6 no previous instance has anyone complained or suggested in  
7 any way that the Department of Water Resources was unable to  
8 process an amendment.

9 In fact, this particular amendment was  
10 contemplated, if you will, when the Commission granted the  
11 purchase agreement, in Section 2.4 it was explicit, if  
12 seller receives a complete release of liability on the  
13 Francisco Steam Field Lease then buyer may adjust the amount  
14 of an independent engineering estimate that we could amend  
15 the amendment. It took 11 years for the parties to reach  
16 that point between Bottle Rock, the landowners and DWR where  
17 there was a mutual agreement in place that allowed for that  
18 release of liability. It took 11 years for what was  
19 contemplated in the original purchase agreement to come to  
20 fore.

21 There is nothing in 2.4 that requires that as a  
22 precondition of that release and amendment that there be  
23 another bond in place. If there is a continuing requirement  
24 for a bond, DWR has no position on it, that's not within our  
25 authority to exact bonding requirements upon it. But within

1 2.4 it granted DWR the ability to and it was foreseen that  
2 this eventuality could come to pass. When the opportunity  
3 came we did the amendment just as it was foreseen. There  
4 was nothing within that section that precluded our ability  
5 from proceeding, nor was there any precondition that was  
6 necessary in order for DWR to proceed.

7           The amendment was done properly, it has the  
8 support of all the parties. I should also say that the  
9 liability release is not specific to DWR, the liability  
10 release from the landowners, V.V. and J. Coleman, it also  
11 releases the state of California. It's very inclusive and  
12 releases the state of California and its agencies and  
13 Department of Water Resources from liability from any action  
14 that they may have against the Department or the State of  
15 California.

16           So DWR was within its authority to amend the  
17 purchase agreement as it has done seven previous times. The  
18 specific instance was foreseen at the time that the purchase  
19 agreement was approved and was properly done within its  
20 authority. Thank you.

21           HEARING OFFICER KRAMER: Thank you. As far as I  
22 know Lake County is not with us nor is the Division of Oil  
23 and Gas at the Department of Conservation.

24           So that concludes the argument. Does anyone on  
25 the panel have any questions for any of the parties?

1           Okay. Okay. The next item on the agenda was a  
2 briefing schedule. The Committee does not see any need for  
3 briefing but we'll let the parties speak to the issue if  
4 they feel that some issue needs to be briefed.

5           Seeing none we'll move on to -- did you have  
6 something? No.

7           Are there any other matters related to the  
8 complaint that the parties wish to bring to our attention at  
9 this point?

10           Okay. That brings us then to the time for public  
11 comment, where members of the public and other interested  
12 persons and entities may speak up to three minutes regarding  
13 a matter that appeared on this agenda. Do we have anyone --  
14 we have no blue cards. Do we have anyone in the room who  
15 wishes to make a public comment?

16           Do we have anyone on the telephone? And I'll give  
17 you just a second to unmute yourselves. Again, that's star-  
18 6 if you want to do so.

19           Last call for public comment.

20           MR. FUNG: Yes, hello?

21           HEARING OFFICER KRAMER: Okay, please state your  
22 name and spell it for us, please, so the court reporter will  
23 properly record it in the transcript.

24           MR. FUNG: Yes. My name is Randall Fung, F-U-N-G,  
25 and I live at 8195 High Valley Road, close proximity to

1 Bottle Rock Power. I'm a neighbor down the road from Bottle  
2 Rock.

3 HEARING OFFICER KRAMER: Go ahead with your  
4 comment.

5 MR. FUNG: Yes. We are very concerned as  
6 neighbors that the closure be completed in a proper manner.  
7 And we are very worried that if DWR is absolved of its  
8 commitment to the closure that nobody will be there to clean  
9 up. V.V. and J. is an LLC and if they can't afford to do  
10 the cleanup then who will? The County of Lake is assuming  
11 no responsibility on this by virtue of their absence. We're  
12 dealing with the County on their level as well about the  
13 closure. And we see that -- I'm a neighbor that lives there  
14 and we see that the power plant is basically living on  
15 fumes.

16 And at some point within -- they were -- about the  
17 permit for the expansion. It's been two years. We see  
18 them not going forward into an expansion. So we see that  
19 closure is close by and we would really like somebody to  
20 take care of this. We don't think that absolving anybody of  
21 their liability of closure helps the environment. That's my  
22 comments.

23 HEARING OFFICER KRAMER: How do you spell your  
24 first name?

25 MR. FUNG: Randall, R-A-N-D-A-L-L.

1 HEARING OFFICER KRAMER: Okay, thank you for your  
2 comment.

3 MR. FUNG: Thank you.

4 HEARING OFFICER KRAMER: Is there anyone else on  
5 the phone who wishes to make a public comment?

6 Okay, we'll close the public comment then.

7 Okay, we are going to go into a closed session.  
8 And we'll give you a time certain about when we'll return  
9 and that time is 1:30. So on the telephone, we will leave  
10 the WebEx up so you can stay on the line or call back right  
11 before 1:30. Those in the room, you have a chance for  
12 lunch. We'll be going into a closed session, again, under  
13 Government Code Section 11126 subdivision (c)(3), which  
14 allows a state body, including a delegated committee such as  
15 this, to hold a closed session to deliberate on a decision  
16 to be reached in a proceeding the state body was required by  
17 law to conduct. So we will see you at 1:30 and we are off  
18 the record.

19 (The Committee adjourned into closed session  
20 at 10:29 a.m.)

21 (The Committee Hearing reconvened at 1:34 p.m.,  
22 reported no action was taken in closed session  
23 and immediately adjourned. The next Committee  
24 action will be in the form of a written decision.)

25 --oOo--

## 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 Commission Committee Hearing; that it was thereafter transcribed.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, or in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of January, 2013.

---

JOHN COTA

## CERTIFICATE OF TRANSCRIBER

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.

---

RAMONA COTA, CERT\*\*478

---

January 25, 2013